

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Development Solutions, LLC, filed an application on behalf of the property owners, Advance Homes, Inc., Mill Creek Florida Properties No. 3, LLC., Richard D. Fernandez, and SW Florida Land 411 LLC, to rezone a 303.34± acre parcel from Agricultural (AG-2) to Residential Planned Development (RPD) in reference to Oak Creek; and

WHEREAS, a public hearing was advertised and held on April 29, 2005, and June 17, 2005, and written submissions on June 21, 2005, June 27, 2005, and July 1, 2005, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #DCI2003-00083; and

WHEREAS, a second public hearing was advertised and held on October 17, 2005, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request to rezone a 303.34± acre parcel from AG-2 to RPD, to develop 1,120 dwelling units. Dwelling units are to include: single-family, townhouse, and multi-family. Maximum height of buildings is to be 45 feet (two stories). Blasting is not proposed on-site. The property is located in the Rural, Suburban, and Wetlands Land Use Categories and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

1. Development must be consistent with the 1-page Master Concept Plan entitled "Oak Creek Master Concept Plan Exhibits PH-4.B and 6-J," stamped received November 22, 2005, plot dated June 20, 2005, labeled Sheet 2 of 6, except as modified by the conditions below, and attached hereto as Exhibit C. This development must comply with all requirements of the Lee County LDC at time of local development order approval, except as may be granted by deviation as a part of this planned development. If changes to the Master Concept Plan (MCP) are subsequently pursued, appropriate approvals will be necessary.

10/17/05

2. The following limits apply to the project and uses:

A. Schedule of Uses:

- Accessory Uses and Structures
- Administrative Offices (located within the clubhouse only)
- Boardwalks
- Boats (non-motorized only, and only on the lake adjacent to the amenity area)
- Docks
- Dwelling Unit: Multi-family, Single-family, Townhouse
- Entrance Gates and Gatehouses
- Gazebos
- Essential Services
- Essential Service Facilities, Group I
- Excavation – Water Retention
- Fences, Walls
- Food and Beverage Service, Limited (in association with the clubhouse)
- Home Occupation (no outside help)
- Models: Model Homes, Model Units, Model Display Centers (all per Condition 8)
- Observation Piers (dock) (on lake adjacent to amenity area only)
- Parking Lot, Ancillary
- Real Estate Sales Office per Condition 9
- Recreational Facilities: Personal, and Private On-site to include a maximum 7,500 square foot clubhouse
- Signs in compliance with LDC Chapter 30
- Temporary Construction Trailer per LDC §34-3044

B. Site Development Regulations:

	Min. Lot Area (sf)	Min. Lot Width (ft)	Min. Lot Depth (ft)	Min. Rd. Set-back (ft)	Min. Side Set-back (ft)	Min. Rear Set-back (ft)	Min. Water Set-back (ft)	Min. Bldg. Separation (ft)	Max Ht. (ft)	Land Use
Single Family Estate	19,000	140	140	25/ 20*	7.5	15	20	15	35 / two stories	45%
Single Family (Parcel B)	6,500	50	130	20/ 15*	5.0	15	20	10	35 / two stories	45%
Single Family	5,000	50	100	20/ 15*	5.0	15	20	10	35 / two stories	55% ****
Town House ***	6,400 / 1,800 per unit	54 per lot / 18 per unit	100	20/ 15*	5.0 0**	15	20	10	35 / two stories	60%
Multi-family	6,400	54	100	15	7.5	20	20	20	35 / two stories	55%

Residential Accessory Uses	N/A	N/A	N/A	20 / 15*	5.0*	5.0*	10	N/A	35	N/A
Amenity Facilities	10,000	100	100	15	10	20	0*****	N/A	45 / two stories	45%

* Lesser setback for units with side entry garages

** Lesser setback for interior units

*** Three minimum townhouse units per building

**** See Condition 17

***** See Deviation 3

3. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the Lee County LDC may be required to obtain a local development order.
4. Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocations Table, Map 16 and Table 1(b).
5. No blasting is permitted on-site.
6. Parcel A is permitted a maximum of 27 dwelling units with its current underlying land uses of rural and wetlands. At the time of development order permitting, this total may be recalculated based on the underlying land use category existing at that time, and any SFWMD permits which have been obtained. However, under no circumstance can the total number of dwelling units on Parcel A exceed 130.
7. Perimeter buffers shown on the MCP will be constructed provided that the perimeter lots within the project boundary are less in size than those allowed within the AG-2 zoning district.

The buffer along the western side of Parcel D must be maintained in such a manner to allow the vegetation to grow to its natural height, and be maintained in a healthy state through appropriate horticultural/arboricultural practices, to create a dense visual buffer.

8. Model homes, model units, and model display centers are permitted in compliance with the following conditions:
 - a. They may only be located as depicted on the approved MCP; and
 - b. Each model must be a unique example. Multiple examples of the same model are not permitted; and
 - c. A total maximum of 28 models are permitted at any one time with a total maximum of seven in any one location; and

- d. Hours of operation are restricted to Sunday through Saturday, 8:00 a.m. through 6:00 p.m.
9. A single Real Estate Sales Office is permitted in compliance with the following conditions:
 - a. It must be located in any one location for models as depicted on the approved MCP; and
 - b. Hours of operation are restricted to Sunday through Saturday, 8:00 a.m. through 6:00 p.m.
10. Agriculture uses are not a permitted use in the schedule of uses for this application. Thus, they must cease upon approval of this rezoning.
11. Prior to issuance of a Vegetation Removal Permit for any area containing gopher tortoise habitat, the area must be surveyed specifically for gopher tortoise burrows. All active and inactive gopher tortoise burrows must be flagged and numbered in the field. An aerial photo delineating the location of all active and inactive gopher tortoise burrows located within the clearing limits must be supplied to the Division of Environmental Sciences staff for field verification.
12. A copy of the appropriate gopher tortoise permit and payment receipt issued by the Florida Fish and Wildlife Conservation Commission must be submitted to the Division of Environmental Sciences staff prior to excavation and moving of any gopher tortoises.
13. Gopher tortoises and commensal species found during burrow excavation must be moved to on-site preserves containing appropriate gopher tortoise habitat.
14. Prior to issuance of a Vegetation Removal Permit for any area containing fox squirrel habitat, the area must be surveyed specifically for fox squirrel nests. Located nests must be observed for five consecutive days to determine if the nest is active. Active fox squirrel nests must be provided a minimum of 125-foot-wide buffer until the nest is confirmed inactive.
15. Construction activity occurring within the secondary protection zone of the southern bald eagle nest located to the south of the Oak Creek RPD must follow the United States Fish and Wildlife Service monitoring guidelines.
16. Prior to the issuance of the Certificate of Completion for the local development order for infrastructure that includes the entry road, the developer must install the approximately 40 buffer trees as required by the Oak Creek Bald Eagle Management Plan along the west side of the entry road. The trees must be planted within the easement area acquired by the applicant, but outside of the area dedicated to pavement and utilities.
17. Prior to local development order approval, 100.08 acres of common open space, which meets the 40 percent open space requirement for the entire site with the exception of Parcel B, must be provided for the overall site, of which, 50.04 actual acres must be provided as preservation in substantial compliance with the MCP. A minimum of 50.04

acres of existing indigenous plant communities must be preserved. Each development parcel must provide a minimum of 10 percent open space.

18. The applicant acquired an adjacent parcel of property in order to provide the requested emergency access. At the time of development order application, the developer must furnish the County with a copy of the easement, in favor of the Homeowner's Association, that provides for the legal right to traverse the property. The developer must ensure that any secondary emergency access is stabilized, and must obtain a limited review development order from the County for its construction. The secondary emergency access is required prior to the issuance of the Certificate of Completion for Parcels B or C, whichever is developed last, and in the event they are constructed prior to Parcel A. The secondary emergency access is required to be constructed prior to the Certificate of Completion for Parcel A. This access cannot be used as a primary access point without an amendment of this zoning approval through the public hearing process. The location of the access identified on the MCP can be adjusted to address topographical, design, drainage or other concerns.
19. Flow way Cleaning and Maintenance.
 - a. Prior to issuance of a development order for the box culvert construction or an approval that will permit fill to be located within 100 feet of the "limits of fill" as identified on the approved MCP, the developer must remove all exotics, debris and existing culverts and any dead vegetation from the flow way, as it is shown on the approved MCP.
 - b. The developer will maintain the flow way free of exotics, debris and dead vegetation. The developer will also maintain the box culvert and the entrance and exit to the box culvert. The maintenance will be performed in a manner that will ensure the conveyance characteristics identified in the HEC RAS modeling are met.
 - c. The Homeowner's Association documents will include a provision in the association documents that will permit the County to access the flow way, as identified on the MCP, for the sole purpose of maintenance. The County has the right, but not the obligation, to perform maintenance work in the flow way. The property owner's association, a uniform community development district, or other similar entity, will have the obligation to maintain the flow way. The County Attorney's office will review the association, uniform community development district, or other similar entity documents during its routine review of local development order submittal documents, to ensure that the documents require ongoing maintenance by the applicant or its successor entity and to ensure that the County has the ability to perform maintenance within the flow way.

If the property owner's association, UCDD, or other legal entity charged with the maintenance of the flow way does not maintain the flow way in accordance with the parameters identified in the HEC-RAS model on file with the County, then the County may send the appropriate legal entity written notice of the maintenance deficiency. The notice must identify the deficiencies with sufficient specificity to enable the association, UCDD, or other legal entity to remedy the deficiency. If the

association does not commence the maintenance activity within thirty days after receipt of the written notice from the County, then the County has the option of performing the maintenance or having the maintenance performed by an independent contractor at the association, UCDD, or other legal entity's expense. If there are extenuating circumstances that would prevent the work from commencing within thirty days, the association or other legal entity must contact the County Department of Community Development Director of Development Services and advise the Director of the problem and request an extension of time for commencement. The Director has discretion as to whether or not an extension can be granted.

20. HEC-RAS Modeling.

- a. The project must be developed in a manner that is substantially in compliance with the parameters identified in the HEC-RAS model reviewed and accepted by Lee County Department of Natural Resources as part of the zoning review process. A copy of the official HEC-RAS analysis must be identified, and retained in the zoning file in the Zoning Department and the Department of Natural Resources for future reference. The local development order construction plan submittals for that portion of the project adjacent to, and/or including, the flow way must be consistent with the lakes, cross-sections, and fill limits identified on the MCP. Compliance with the MCP ensures compliance with the HEC-RAS model. If any significant changes are proposed to the flow way, fill limits, cross-sections or flow way lakes, the applicant must provide a revised HEC-RAS model. The County Department of Natural Resources will review the revised model results and assumptions to ensure that the development proposed adjacent to the flow way will be consistent with the adopted Lee County Surface Water Management Master Plan, dated December 1992, the FIRM/FIS in effect at the time of Environmental Resource Permit application and the Environmental Resource Permit.
- b. Applications for a local development order for any development that includes all, a portion of, or property within 100 feet of the flow way will provide for maintenance of the creek bed if the submitted cross-sections for the creek differ substantially from the historic cross-sections established in the 1992 Lee County Stormwater Master Plan. This maintenance of the creek bed to historical cross-section will be completed prior to a Certificate of Compliance for the applied for local development order.

21. Certificate of Completion.

Prior to the issuance of the Certificate of Completion for any development order that includes all, or a portion of the flow way, or property adjacent to the flow way, a certified as built drawing of the portion of the flow way included within, or adjacent to, the property that is the subject of the development order must be provided. A condition will be included in the local development order which requires the submission of a record drawing, with the engineers' certification and request for a Certificate of Completion, to assure that the record drawings will be provided prior to the issuance of the Certificate of Completion.

22. Ongoing Education.

An educational meeting regarding proper ongoing maintenance of the flow way must be conducted annually in March, with the Board of the homeowner's association, property owner's association or uniform community development district, whichever entity ultimately has the authority and responsibility for the maintenance of the flow way. The Board must provide the notice of the meeting to all residents, and the Board must provide the location for the meeting. The Board will coordinate with the Department of Natural Resources who will be responsible for providing the personnel or person who will provide the education to the Board and any residents desirous of attending the public meeting.

23. The developer and future residents of this project do not have a legal right to use Bright Road, meaning it is not a public right-of-way to the project site, nor is there an easement providing access. The developer or future residents of this project cannot use Bright Road without a legal right to use the road. Bright Road access is not permitted in this resolution, and any effort to use Bright Road for access to the property would require an amendment to the MCP. Any amendment to the MCP to provide for access to Bright Road would require the submission of an application to amend the zoning and a public hearing. No amendment to add access to Bright Road can occur administratively.
24. Street lights for the development within 500 feet of adjacent properties must be properly shielded or directed, in accordance with Lee County LDC, to reduce the affects on adjacent properties.
25. The proposed Emergency Access, from Slater Pines Road, will not be used by construction vehicles for ingress or egress to the subject real property, and, will be used only for emergency access purposes when the main entrance to the property is blocked. Except, the developer may allow construction vehicles on Slater Pines Road incident to their use in the construction of the stabilized road on the property.

SECTION C. DEVIATIONS:

1. Deviation (1) seeks relief from the LDC §34-935(e)(4) requirement to provide building separations on lots where more than one building will be built to be a minimum of 20 feet, or one-half the sum of their heights, to allow the building separation to be 20 feet. This deviation is APPROVED.
2. Deviation (2) seeks relief from the LDC §10-329(d)(4) requirement to provide excavation bank slopes to be no greater than 4:1, to allow the project to conform to SFWMD permits. This deviation is APPROVED, SUBJECT TO the following conditions:
 - a. Approval is limited to 20 percent of the lake shoreline and limited to the amenity center area delineated on the MCP. The shoreline of the approximately 32-acre existing lake must be reconfigured to provide a littoral shelf (minimum 4:1 slope), and an expanded compensatory littoral shelf equivalent to the linear footage of the bulkhead must be provided within the lake. Littoral plantings must be calculated on two plants per linear foot of the entire lake shoreline, with concentrating the plantings within the compensatory littoral shelf.

- b. The lake bank slope must intersect the bulkhead at the lake control elevation.
3. Deviation (3) seeks relief from the LDC §34-2194(c)(3)b. requirement to provide a 10-foot setback for non-seawalled artificial bodies of water, to permit common recreational amenity structures to be placed at the lake's control elevation. This deviation is APPROVED, SUBJECT TO the following condition:

Approval is limited to the amenity center area delineated on the MCP and any amenity feature, other than a fishing pier or dock, must be located behind a bulkhead structure.

4. Deviation (4) seeks relief from the LDC §30-181(a)(1)(b) requirement to provide specifications for off-site directional signs, to allow for project identification signs at the entrance on Bayshore Road as set forth in LDC §30-153. This deviation request was WITHDRAWN by the applicant.
5. Deviation (5) seeks relief from the LDC §10-329(d)(1)a.1. requirement to provide a 25-foot setback for water retention lakes along local roadways, to allow lakes to be located within 20 feet of a roadway. This deviation is APPROVED, SUBJECT TO the following condition:

The protection for wayward vehicles to be approved by the Director of Development Services as part of the development order process.

6. Deviation (6) seeks relief from the LDC §10-416(d)(6) requirement to provide a 25-foot-wide buffer with a wall and/or wall berm combination to buffer adjacent residential uses from roads within 125 feet, to allow the buffer detail contained in Attachment 'D' of the Staff Report. This deviation is APPROVED, SUBJECT TO the following condition:

The accessway depicted on the detail (Attachment 'D' of the Staff Report), must be revised to be a minimum of 20 feet in width, and this detail must replace the current one on the MCP prior to a zoning hearing before the Board of County Commissioners.

SECTION D. EXHIBITS AND STRAP NUMBER:

The following exhibits are attached to this resolution and incorporated by reference:

- Exhibit A: Legal description
Exhibit B: Zoning Map (subject parcel identified with shading)
Exhibit C: The Oak Creek Master Concept Plan

The applicant has indicated that the STRAP numbers for the subject property are: 17-43-25-00-00002.0000, 20-43-25-00-00001.0000, 20-43-25-00-00001.001A, 20-43-25-00-00001.0010, 19-43-25-00008.0060, 19-43-25-00-00008.0050.

SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.
2. The rezoning to Residential Planned Developments, as approved:
 - a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request; and,
 - b. is consistent with the densities, intensities and general uses set forth in the Lee Plan; and,
 - c. is compatible with existing or planned uses in the surrounding area; and,
 - d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and,
 - e. will not adversely affect environmentally critical areas or natural resources.
3. The RPD rezoning satisfies the following criteria:
 - a. the proposed use or mix of uses is appropriate at the subject location; and
 - b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
 - c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
4. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.
5. The approved deviations, as conditioned, enhance achievement of the residential planned development objectives, and preserve and promote the general intent of LDC Chapter 34, to protect the public health, safety and welfare.

The foregoing resolution was adopted by the Lee County Board of Commissioners upon the motion of Commissioner Albion, seconded by Commissioner Hall, and, upon being put to a vote, the result was as follows:

Robert P. Janes	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Tammy Hall	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 17th day of October 2005.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Michele B. Cooper
Deputy Clerk

BY: [Signature]
Chairwoman

Approved as to form by:
[Signature]
Donna Marie Collins
County Attorney's Office



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EXHIBIT PH-3.C.1

DCI2003-00083

DESCRIPTION

Parcel in
Sections 17, 19 & 20, Township 43 South, Range 25 East
Lee County, Florida

A tract or parcel of land lying in Sections 17, 19 and 20, Township 43 South, Range 25 East, Lee County, Florida. Said tract or parcel being those lands described in deed recorded in Official Record Book 2603, Page 3632; Official Record Book 1518, Page 1649; Official Record Book 3212, Page 659; Official Record Book 3212, Page 642; Official Record Book 1059, Page 139; Official Record Book 1059, Page 137; Lee County Records. Said tract or parcel being more particularly described as follows:

Beginning at the southwest corner of the southwest quarter (SW 1/4) of said Section 17 run N00°06'34"W along the west line of said fraction for 1,802.86 feet to an intersection with the southwesterly line of the Seaboard Coast Line Railroad as described in Deed Book 17, Pages 248 and 249, Lee County Records; thence run S45°46'33"E along said southwesterly line for 4,463.79 feet to an intersection with the south line of the northwest quarter (NW 1/4) of the northeast quarter (NE 1/4) of said Section 20; thence run S89°35'12"W along the south line of said fraction for 569.98 feet to the northeast corner of the southeast quarter (SE 1/4) of the northwest quarter (NW 1/4) of said Section 20; thence run S00°02'58"W along the east line of said fraction for 1,335.70 feet to the southeast corner of said fraction; thence run S89°35'46"W along the south line of the northwest quarter (NW 1/4) of said section 20 for 2,649.00 feet to the southwest corner of said fraction; thence run S00°10'14"E along the east line of the northeast quarter (NE 1/4) of the southeast quarter (SE 1/4) of said section 19 for 1,335.96 feet to the southeast corner of said fraction; thence run S89°02'55"W along the south line of said fraction for 298.24 feet to an intersection with the centerline of William's Road; thence run N43°43'44"W along said centerline for 168.94 feet to a point of curvature; thence continuing along said centerline run northwesterly along the arc of said curve to the right of radius 3,125.43 feet (delta 04°17'59") (chord bearing N41°34'45"W) (chord 234.49 feet), for 234.55 feet to a point of tangency; thence continuing along said centerline run N39°25'45"W for 1,190.43 feet to an intersection with the west line of said fraction; thence run N00°11'23"E along said west line for 101.73 feet to the northwest corner of said fraction; thence run N00°32'23"E along the west line of the east half (E 1/2) of the northeast quarter of said Section 19 for 2,652.91 feet to the northwest corner of said fraction; thence run N88°20'13"E along the north line of the northeast quarter (NE 1/4) of said section 19 for 1,322.60 feet to the POINT OF BEGINNING.

Containing 303.34 acres, more or less.

Bearings hereinabove mentioned are State Plane for the Florida West Zone (NAD 1983/90 adjustment) and are based on the north line of the northwest quarter (NW 1/4) of said Section 20 to bear N89°32'23"E.

Applicant's Legal Checked

by [Signature] February 24, 2004.

DCI 2003-00083

RECEIVED

Scott A. Wheeler (For The Firm)
Professional Surveyor and Mapper
Florida Certificate No. 5949

11/13/03

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COMMUNITY DEVELOPMENT

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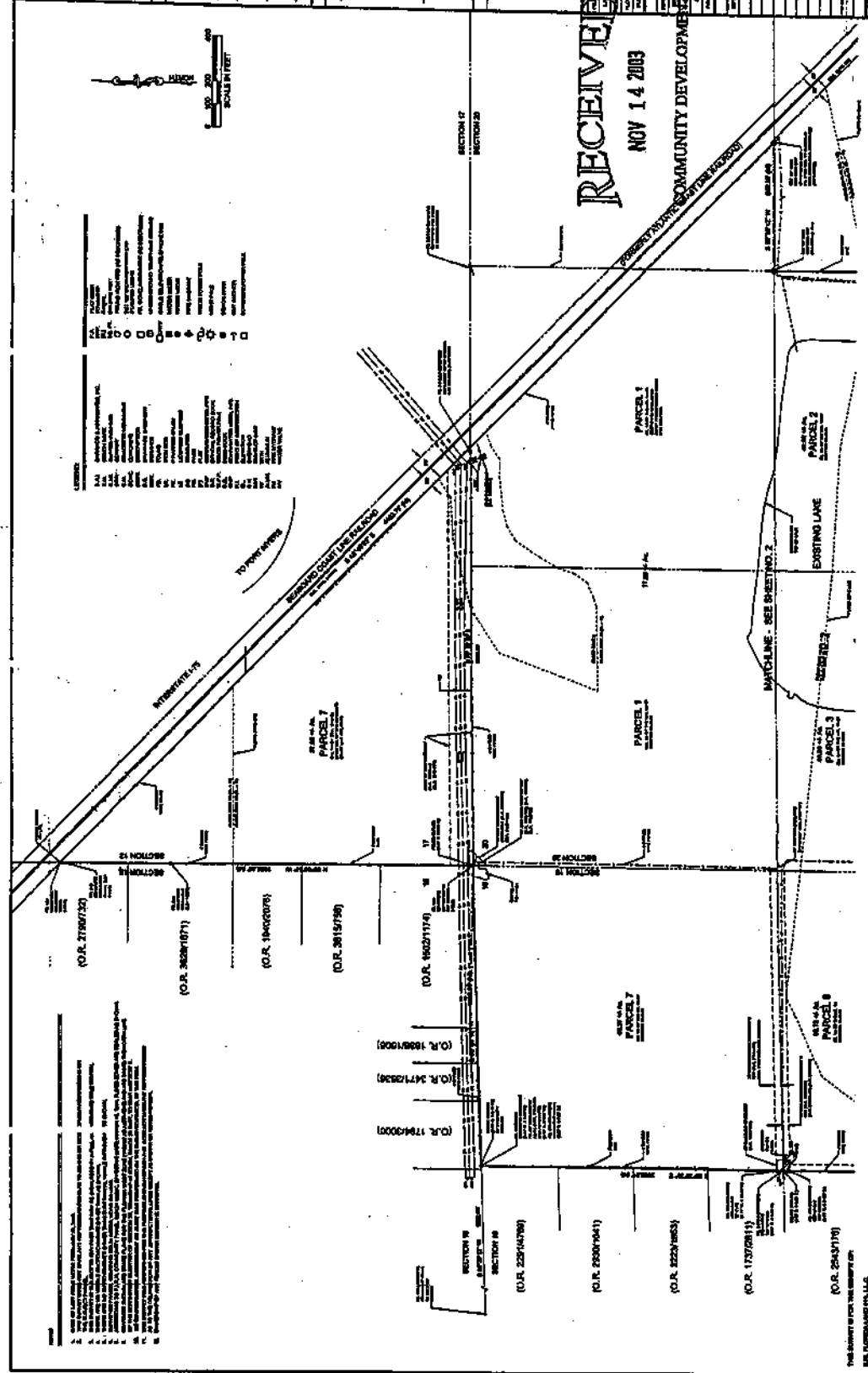
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EXHIBIT PH-3.D.3/6-A

BOUNDARY SURVEY
1 OF 2



Applicant's Survey Checked
By *[Signature]* February 24, 2004

[Signature]
Surveyor

ZONING INTAKE M ^D

2/25/2005

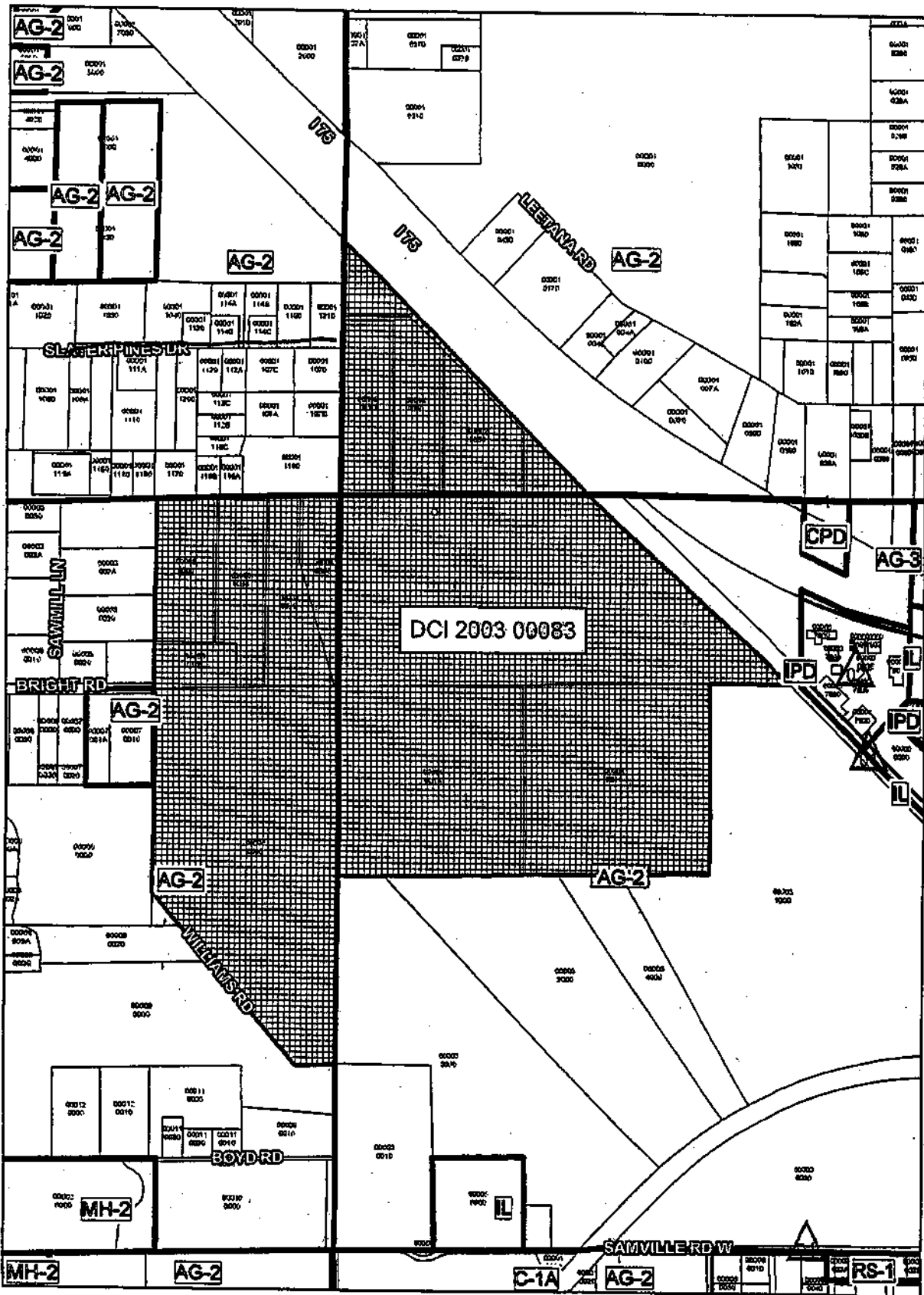


EXHIBIT B

1,100 550 0 1,100 Feet

Resolution-2-05-037