

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: June 5, 2007

() Consent

(X) Regular

() Workshop

() Public Hearing

Department

Submitted By: Environmental Resources Management

Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Execution of a Construction Access Easement Agreement (50-year term) with Condado Inc. of Singer Island relative to property included within the limits of the Singer Island Shore Protection Project.

Summary: The Singer Island Shore Protection Project includes dune restoration in an area determined by the Florida Department of Environmental Protection (FDEP) to be "critically eroded". Dune restoration reconstructs past dune profiles and stabilizes the sand with appropriate native dune vegetation. Easement agreements are required for construction access to the beach and dune areas within the project limits. This easement agreement is for a fifty-year term beginning on the date of execution of the document. District 1 (SF)

Background and Justification: In response to the State Declaration of Shoreline Emergency at Singer Island, staff has obtained a permit from the Florida Department of Environmental Protection (FDEP) for emergency restoration of the dune now. Staff has received a verbal commitment for State cost sharing of 50%; the remainder will come from the emergency beach response budget. The Condado construction access easement will provide access to Zone 3 of the dune restoration project area. Zone 3 has not received any dune restoration during the last two (2) restoration projects due to the inability to gain access to the beach. Three (3) similar construction access easement agreements were approved by the Board on November 21, 2006. To-date, seven (7) construction access easements are established and twenty (20) dune restoration easement agreements are in place in the project area.

Attachments:

1. Location Map
2. Construction Access Easement Agreement

Recommended by:

Richard E. Ubelly
Department Director

5/30/07
Date

Approved by:

[Signature]
County Administrator

5/30/07
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

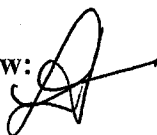
Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

There is no Fiscal Impact.

C. Department Fiscal Review:



III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

Elizabeth Green *Jim J. Javelle* 5/30/07
 OFMB 5/31/07 5/31/07 Contract Development and Control

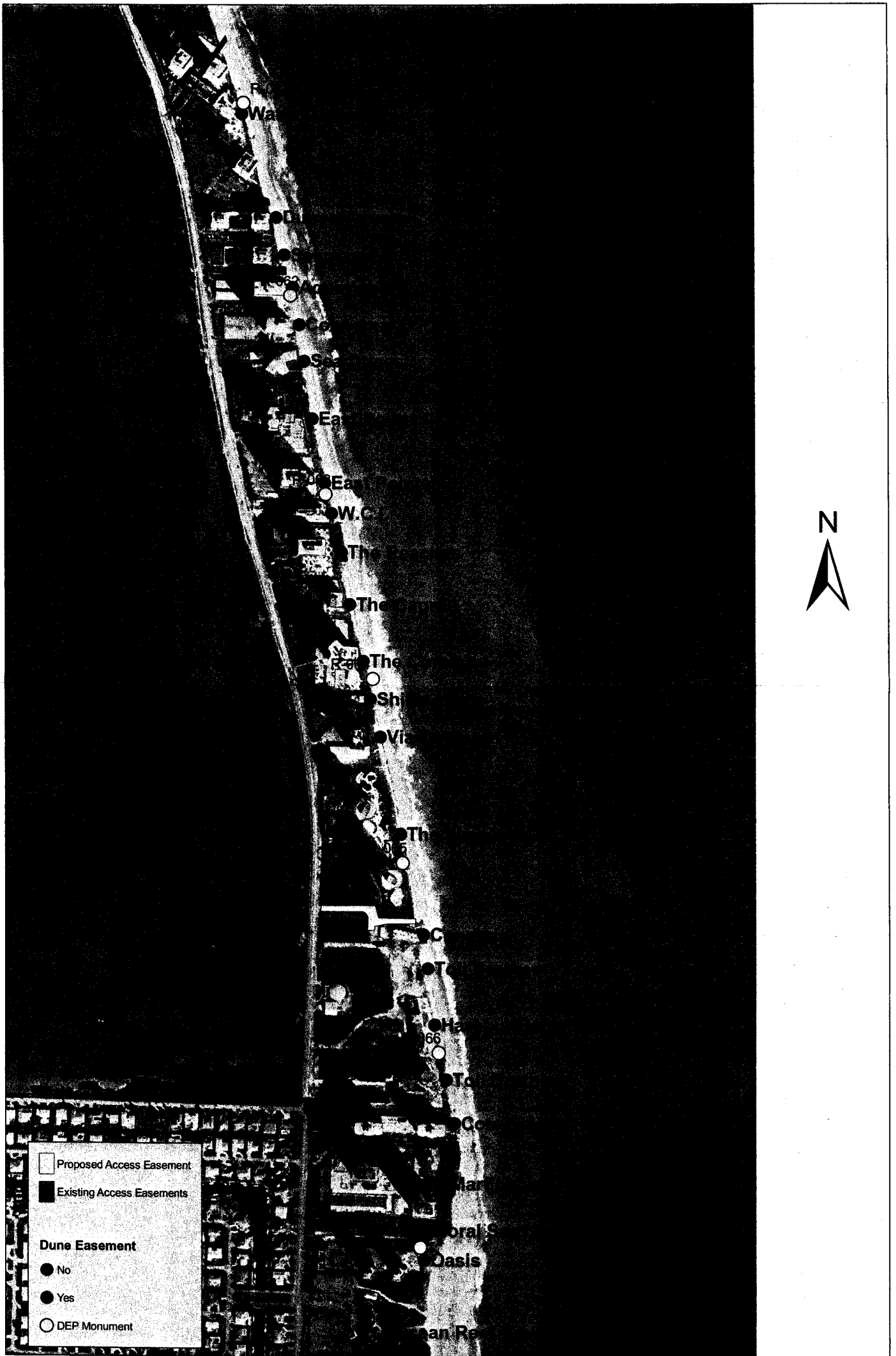
B. Legal Sufficiency:

Monroe Jay
 Assistant County Attorney

C. Other Department Review:

 Department Director

Attachment 1
Emergency Singer Island Dune Restoration Project



Palm Beach County
 Environmental Resources Management

0 500 1,000 1,500 2,000 Feet

Photo 4/18/2006

Return To:
Michael Stahl, Environmental Analyst
Palm Beach County
Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743

EASEMENT AGREEMENT FOR CONSTRUCTION ACCESS

THIS EASEMENT AGREEMENT is made this 30 day of MAY, 2007 between Condado Inc. of Singer Island, whose mailing address is 5060 North Ocean Drive, Singer Island, Florida, 34404 ("Grantor"), and Palm Beach County, a political subdivision of the State of Florida, whose mailing address is 301 North Olive Avenue, West Palm Beach, Florida 33401, ("Grantee"), both being herein referred to collectively as the "parties", for the sole purpose of providing construction access for the SINGER ISLAND SHORE PROTECTION PROJECT ("the Project").

1. Grant of Easement. In consideration of the mutual benefits to be derived from the Project, the sufficiency of which is hereby acknowledged by the parties, the Grantor hereby grants, bargains and conveys to the Grantee, its subcontractors, agents and employees, a temporary, non-exclusive easement on, over, under, through and across the Property described in Exhibit "A," attached hereto and incorporated herein ("the Easement Premises") for construction access purposes. This instrument is further subject to all easements, restrictions, covenants, conditions, limitations and reservations of record, if any. Grantee's use of the Easement Premises as provided herein shall not interfere with Grantor's right to construct or improve a sea wall on Grantor's Property.

2. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift to any public authority or any third party, and this Easement shall be strictly limited to and for the temporary limited purposes expressed herein. Nothing herein contained shall be deemed to give the public or any other persons, other than Grantor, Grantor's successors, assigns, officers, directors, partners, contractors, tenants, lessees, mortgagee, agents, employees, guests, customers, invitees members and Grantee and its subcontractors, agents and employees any access rights to the Easement Premises or access to the beach from the Grantor's property other than as may have existed prior to the date of this Agreement. Grantor hereby reserves the right to the continued free use of the property in a manner not inconsistent with the rights granted herein to Grantee and subject to the terms and conditions of this Agreement.

3. Grantee's Use. The Easement Premises may be used by Grantee, its subcontractors, agents or employees solely for the purpose of providing access during and only during periods of construction or maintenance associated with the Project. The parties acknowledge that it may be necessary to remove obstructions from the Easement Premises and this may include removing vegetation, pruning vegetation, and removing fencing or any other obstacles within the Easement Premises.

4. Grantee's Obligations. Grantee shall obtain all permits and approvals required by all applicable governmental entities in order to perform the acts contemplated herein. Grantee shall safeguard and maintain the Easement Premises and its immediate environs throughout the term of the Project. Any damage caused by Grantee or its agents or employees to the surface or sub-surface portion of the Easement Premises or any property of the Grantor or others located therein shall be repaired by the Grantee in a workmanlike manner. Such repair work may include, but is not limited to, placing sod on the easement area and re-routing any existing irrigation lines. The grade established during the initial preparation of the easement will permanently remain in the event the easement is used for future shore protection projects. Grantee will use best efforts to restore the easement area no later than three months after the completion of each Project event requiring construction access.

Grantee shall provide Grantor with ten (10) days prior written notification of Grantee's desire to enter onto the Easement Premises unless a shoreline emergency is declared by

the State, in which case the Grantee shall provide the Grantor at least 48 hours advance notice of Easement utilization.

5. Grantor's Obligations. Grantor shall not commit any act that would interfere with or impede the rights granted to Grantee, its subcontractors, agents or employees under this Agreement. Grantor specifically understands and agrees that large sums of money will be expended by the County and the State of Florida for the purpose of this Project in reliance upon the rights granted by this Easement Agreement remaining unmodified and un-revoked for the full term of this Agreement. Grantee further acknowledges and agrees that Grantor shall have a representative on-site observing the activities of Grantee and in the event Grantee, its agents, employees or consultants are violating the terms of this Easement Agreement, such Grantor representative shall have the right but not the obligation to stop the work in progress, and Grantee shall hold Grantor harmless from such work stoppage.

6. Term. This Agreement shall be effective upon execution by both parties and shall continue for fifty (50) years, except as set forth in Section 7 below. The rights and Easement granted herein shall automatically terminate fifty (50) years from the date of its commencement. Either party may thereafter record a memorandum or notice of termination.

7. Termination For Cause. This Agreement may, at the discretion of the Grantor, terminate prior to the expiration of fifty (50) years upon either (i) Grantee's failure, within three (3) years from the date of execution of this Agreement by both parties, to complete the initial dune restoration work associated with the Project, or (ii) Grantee's failure, for a period of two (2) consecutive calendar years, to do any work necessary to maintain the Project as it exists upon completion of the initial restoration. Also, this Agreement may be terminated by Grantor upon thirty (30) days prior written notice to Grantee if the Grantee fails to perform in accordance with this Agreement through no fault of the Grantor. Upon the termination of this Agreement due to any of these events either party may record a release of easement in the public records.

8. Subordination of Rights. The Easement hereby granted is subject and subordinate to: (i) the easements granted in and by any Declaration recorded or to be recorded by Grantor and any such amendments to the Declaration hereinafter enacted; and (ii) Grantor's right to enter and work upon the Easement Premises.

9. Insurance. Without waiving the right to sovereign immunity as provided by S.768.28 F.S., the Grantee acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. Grantee's subcontractors using the Easement Premises for construction access purposes shall at all times maintain insurance coverage at or above the coverage required by the Grantee.

10. Indemnification. Grantee acknowledges the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28 and acknowledges that such statute permits actions at law against the Grantee to recover damages in tort for money damages up to the amounts set forth in such statute for injury or loss of property, personal injury, or death caused by the negligence or wrongful act or omission of an employee of Grantee while acting within the scope of the employee's office or employment under circumstances in which Grantee, if a private person, would be liable under the general laws of this State.

11. Grantor's Representations. Grantor represents and warrants that Grantor is the lawful owner of and has good and marketable legal title to the Easement Premises; Grantor has the full right, power and authority to grant this Easement and all other rights granted hereunder to Grantee and that Grantor has disclosed the location and terms of all other known easements that may affect the Easement Premises. If any person shall seek to set aside this Easement or to nullify the rights granted hereunder based upon an alleged superior right in the Easement Premises, then Grantor shall, upon Grantee's request and at Grantor's expense, take any action reasonably necessary to secure to

Grantee the rights and interest granted hereunder.

12. Authority to Execute This Agreement. Any person executing this Agreement and representing Grantor hereby warrants and represents that he or she has received all corporate authorization necessary to bind Grantor to the terms of this Agreement. Any person executing this Agreement and representing Grantee hereby warrants and represents that he or she has received all governmental authorization necessary to bind Grantee to the terms of this Agreement.

13. Non-Assignability. This Agreement shall not be assignable by either party without the prior written consent of the other and any attempted assignment in derogation of such prohibition shall be null and void.

14. Prohibited Acts by Grantee. With the sole exception of the Easement Premises, Grantee shall not enter on, over, under, through or across any other portion of Grantor's property for access to or to do work on the Easement Premises. Grantee shall promptly and at Grantee's expense repair or replace any unauthorized portion of Grantor's property damaged or destroyed and/or impairment thereto caused by Grantee during the course of Grantee's work. Grantee shall not plant or erect anything upon the dune which shall unreasonably interfere with Grantor's use of any portion of Grantor's Non-Easement Premises. Unless otherwise authorized by the Grantor, the Grantee shall perform work on the Easement Premises only on weekdays, between 8:00 a.m. and 5:00 p.m. Grantee shall promptly remove, on a daily basis, any unauthorized debris resulting from Grantee's work on the Easement Premises.

15. Impending Damage. Nothing herein shall prevent Grantor from reasonably protecting their property including the dune and Easement Premises from impending damage or loss due to wind, seas, storms or other forces of nature in the event that Grantee is unwilling or unable to undertake such actions for any reason including lack of funding.

16. Governing Law and Venue. Any action to enforce this Agreement shall be brought in Palm Beach County, Florida. This Agreement shall be governed by the laws of the State of Florida.

17. Modification. This instrument shall not be modified except by written agreement signed by Grantor and Grantee.

18. Binding Effect. The covenants contained in this instrument, including all benefits and burdens, are not personal, but shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, transferees, successors and assigns.

19. No Joint Venture. Nothing in this instrument shall be construed to make the parties hereto partners or joint venturers or render them liable for the debts or obligations of the other.

20. Recordation. This instrument shall be recorded in the Public Records of Palm Beach, County, Florida.

21. Vacation Of Easement. In the event of a termination of this Easement Agreement as set forth in Paragraph 6 or 7 above, Grantee, its successors or assigns, shall vacate said easement or relevant part thereof.

(The remainder of this page left blank intentionally)

6

IN WITNESS WHEREOF, Grantor and Grantee have set hereto their hand and seals on the day and year first above set forth.

Condado Inc. of Singer Island, Grantor

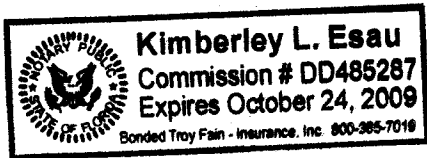
Marie Bianchini
By: Marie Bianchini, President

Ronald Helanqued
Witness
Peter Bonaccie
Witness

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 30th day of May, 2007 by Marie Bianchini, as President of Condado Inc. of Singer Island and who is personally known to me or who produced driver's license as identification.

Witness my hand and official seal this 30th day of May 2007.



Kimberley L. Esau
Notary Public, State of Florida

Printed Name: Kimberley L. Esau

My Commission Expires: 10/24/29

DD485287
Notary Commission Number

ATTEST:

Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

Approved as to Form and Legal Sufficiency

By: _____
Assistant County Attorney

Approved as to Terms and Conditions

By: Richard E. Walcott
Department Director

SINGER ISLAND
DUNE RESTORATION
CONSTRUCTION EASEMENT NO. 6

A PARCEL OF LAND FOR CONSTRUCTION EASEMENT PURPOSES, BEING A PORTION OF THE SEAWINDS SOUTH CONDOMINIUM PROPERTY RECORDED IN OFFICIAL RECORD BOOK 4024, PAGE 1282 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 22 AND 23, TOWNSHIP 42 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF TRACT "A" OF THE PLAT OF 5050 OCEAN DRIVE REPLAT, AS RECORDED IN PLAT BOOK 101, PAGE 10 OF SAID PUBLIC RECORDS; THENCE NORTH 02°11'33" EAST ALONG THE EAST RIGHT OF WAY LINE OF STATE ROAD A-1-A (SR 703) AS SHOWN ON SAID PLAT OF 5050 OCEAN DRIVE REPLAT AND FLORIDA DEPARTMENT OF TRANSPORTATION - MAINTENANCE MAP SECTION NO. 93080-2509, A DISTANCE OF 198.42 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°38'46" EAST, A DISTANCE OF 311.15 FEET; THENCE SOUTH 14°48'21" EAST, A DISTANCE OF 71.33 FEET; THENCE SOUTH 88°30'07" EAST, A DISTANCE OF 212.35 FEET; THENCE SOUTH 00°01'14" WEST, A DISTANCE OF 28.14 FEET; THENCE SOUTH 89°39'12" WEST, A DISTANCE OF 155.34 FEET; THENCE SOUTH 80°12'52" WEST, A DISTANCE OF 81.85 FEET; THENCE SOUTH 00°01'14" WEST, A DISTANCE OF 21.91 FEET; THENCE SOUTH 80°40'50" WEST, A DISTANCE OF 38.57 FEET; THENCE NORTH 01°29'53" EAST, A DISTANCE OF 64.66 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 40.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 91°50'42", AN ARC DISTANCE OF 64.12 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 89°38'46" WEST ALONG A TANGENT LINE, A DISTANCE OF 229.84 FEET TO THE EAST RIGHT OF WAY LINE OF STATE ROAD A-1-A (SR 703) AS SHOWN ON SAID PLAT OF 5050 OCEAN DRIVE REPLAT AND FLORIDA DEPARTMENT OF TRANSPORTATION - MAINTENANCE MAP SECTION NO. 93080-2509; THENCE NORTH 02°11'33" EAST ALONG SAID EAST LINE, A DISTANCE OF 34.14 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT CONTAINING 23.824 SQUARE FEET OR 0.547 ACRES MORE OR LESS.

SURVEYOR'S NOTES

BEARINGS ARE BASED ON AN ASSUMED BEARING OF SOUTH 88°34'42" EAST ALONG THE NORTH LINE OF THE PLAT OF 5050 OCEAN DRIVE REPLAT, AS RECORDED IN PLAT BOOK 101, PAGE 10 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND ALL OTHER BEARINGS ARE RELATIVE THERETO.


NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY THE SIGNING SURVEYOR.

8

PROJECT NO. 2007012-14	SHEET: 3	1
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PROJECT: SINGER ISLAND DUNE RESTORATION C.A.E. # 6	
DESIGN FILE NAME S-1-07-2730-31.DGN	DRAWING NO. S-1-07-2731

DATE 5/25/07	CHECKED M.C.E.	DRAWN S.L.D.	APPROVED G.W.M.	SCALE 1" = 80'	NO.	REVISION	BY	DATE
FIELD BOOK NO.								

	PALM BEACH COUNTY ENGINEERING AND PUBLIC WORKS
	ENGINEERING SERVICES
2300 NORTH JOG ROAD WEST PALM BEACH, FL 33411	

DATE OF AERIAL PHOTO BY OTHERS 01/25/05.

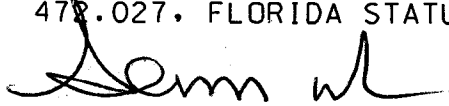
THIS IS NOT A SURVEY.

IT IS POSSIBLE THAT THERE ARE DEEDS OF RECORD, UNRECORDED DEEDS, EASEMENTS, OR OTHER INSTRUMENTS WHICH COULD AFFECT THE SUBJECT PROPERTY, WHICH ARE UNKNOWN TO THE SIGNING SURVEYOR.

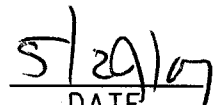
THIS INSTRUMENT PREPARED BY GLENN W. MARK, P.L.S. IN THE OFFICE OF THE COUNTY ENGINEER, VISTA CENTER 2300 NORTH JOG ROAD, WEST PALM BEACH, FLORIDA 33411-2745.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

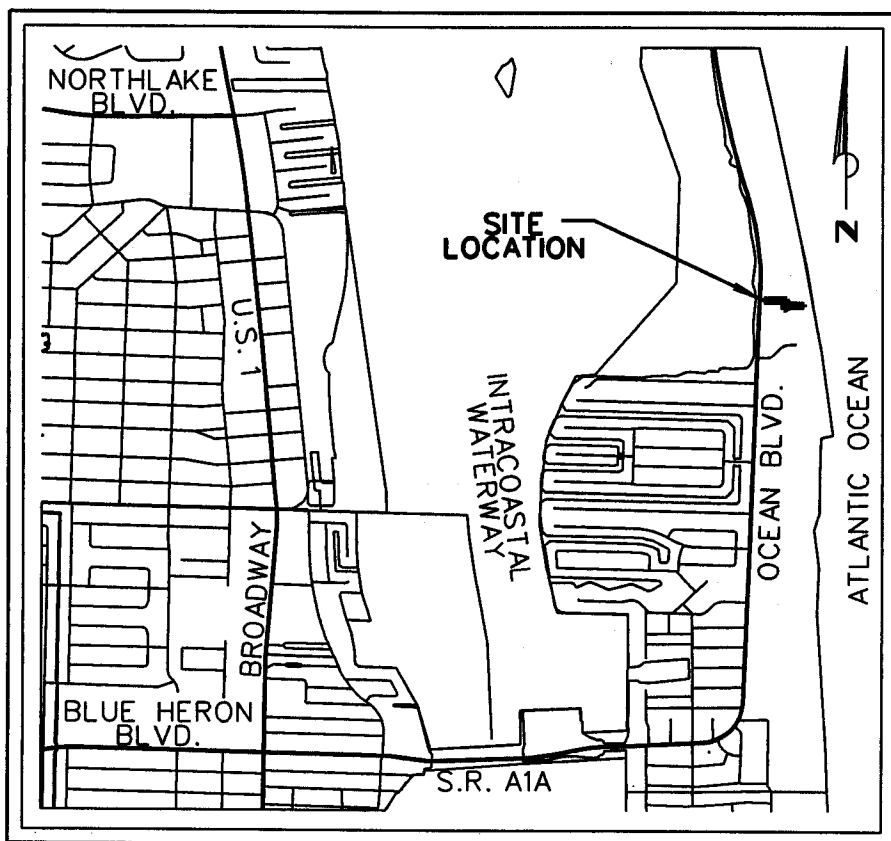
I HEREBY CERTIFY THAT THE LEGAL DESCRIPTION AND SKETCH SHOWN HEREON MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 478.027, FLORIDA STATUTES.



GLENN W. MARK, P.L.S.
FLORIDA CERTIFICATE #5304

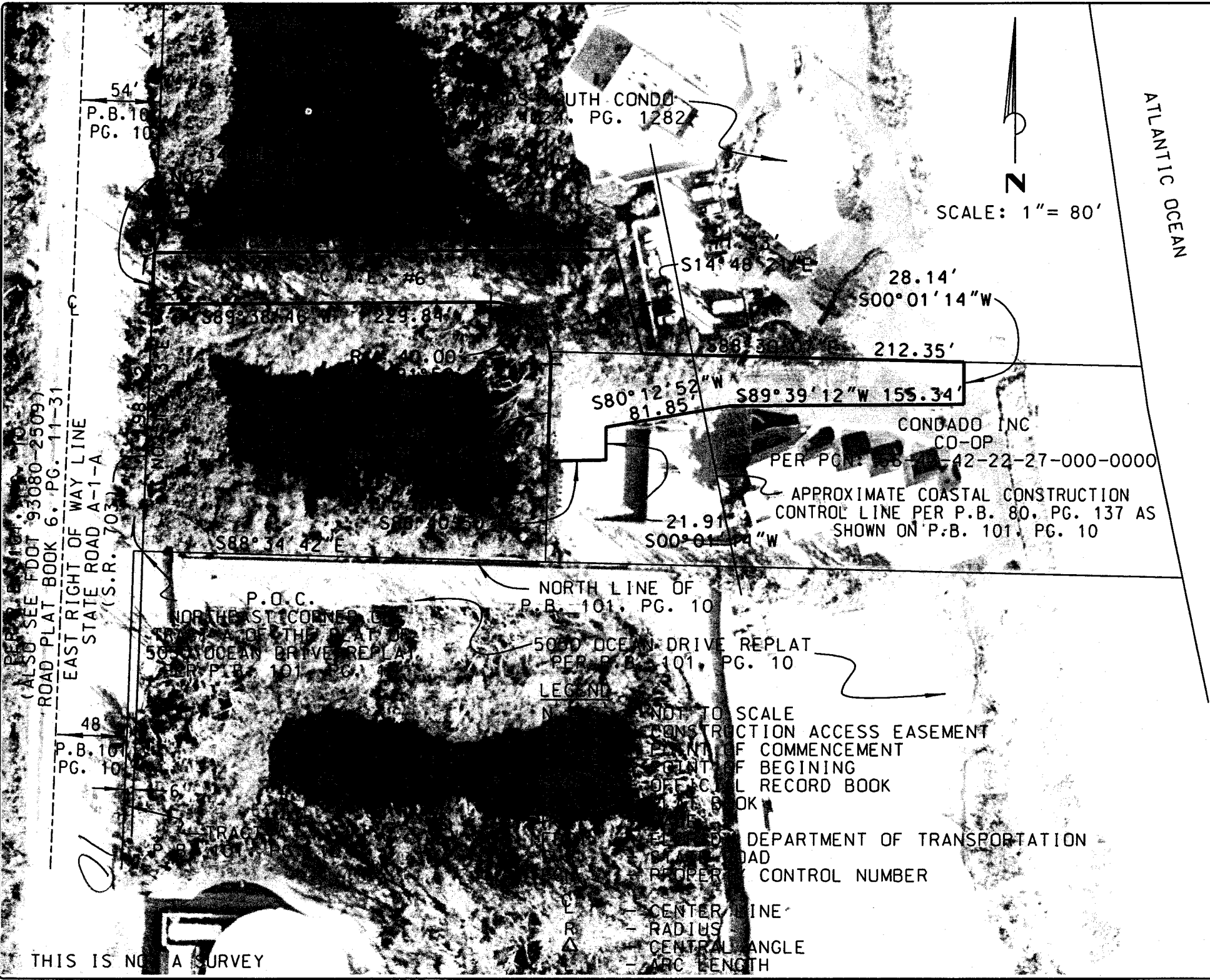


DATE



LOCATION SKETCH
N.T.S.

9



54'
P.B. 101
PG. 10

SOUTH CONDO
PG. 1282

ATLANTIC OCEAN



SCALE: 1" = 80'

S89°38'46" E 229.84'

S14°48'21" E

28.14'
S50°01'14" W

S88°39'12" E 212.35'

S80°12'52" W 81.85'
S89°39'12" W 155.34'

CONDADO INC
CO-OP
PER P.C. 8-1-42-22-27-000-0000

APPROXIMATE COASTAL CONSTRUCTION
CONTROL LINE PER P.B. 80, PG. 137 AS
SHOWN ON P.B. 101, PG. 10

S88°34'42" E

21.91'
S50°01'14" W

P.O.C.
NORTHEAST CORNER
OF THE PLAT OF
5000 OCEAN DRIVE REPLAT
PER P.B. 101, PG. 10

NORTH LINE OF
P.B. 101, PG. 10

5000 OCEAN DRIVE REPLAT
PER P.B. 101, PG. 10

LEGEND

- N - NOT TO SCALE
- CONSTRUCTION ACCESS EASEMENT
- POINT OF COMMENCEMENT
- POINT OF BEGINNING
- OFFICIAL RECORD BOOK
- BOOK
- DEPARTMENT OF TRANSPORTATION ROAD
- PROPERTY CONTROL NUMBER
- CENTERLINE
- R - RADIUS
- Δ - CENTRAL ANGLE
- L - ARC LENGTH

PER P.B. 101, PG. 10
(ALSO SEE FOOT 93080-2509)
ROAD PLAT BOOK 6, PG. 11-31

EAST RIGHT OF WAY LINE
STATE ROAD A-1-A
(S.R. 703)

48
P.B. 101
PG. 10

10

THIS IS NOT A SURVEY

PROJECT NO. 2007012-14 DRAWING NO. S-1-07-2731 PROJECT: SINGER ISLAND DUNE RESTORATION C.A.E. # 6 SHEET 3 OF 3