

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030267

1. REQUESTED MOTION:

ACTION REQUESTED: Execute Sovereign Submerged Lands Easement from the State of Florida for the Matlacha Isles public navigation channel.

WHY ACTION IS NECESSARY: The easement is a requirement of the FDEP permitting for the dredging of the Matlacha Isles Channel.

WHAT ACTION ACCOMPLISHES: Provides for the use of State submerged lands for the public navigation channel.

**2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #:**

C8C

3. MEETING DATE:

03-18-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:
(Specify)**

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER DEP Permit

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT Environmental Services
- C. DIVISION Natural Resources
- BY: Roland Ottolini, Division Director

7. BACKGROUND:

Lee County received regulatory authorization from the Florida Department of Environmental Protection to dredge the public navigation channel in the Matlacha Isles area. A condition of the DEP proprietary authorization is that an easement be executed for the portion of the channel on state sovereign submerged lands. The easement defines the area and the allowed activities. The necessary documents were prepared and sent to DEP in 2002. The final easement instrument has now been prepared by DEP and sent to Lee County for execution. It will be executed by the State and a fully executed copy returned for our records.

No funds are required for execution of the easement.

Attached: Easement and DEP cover letter. (one original)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

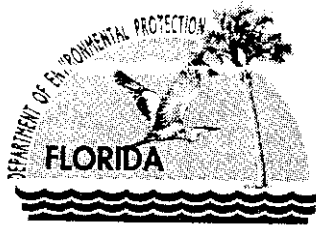
A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
<i>J. J. ... 3.3.03</i>				<i>KTB 3/16/03</i>	<i>P.M. 3/5/03</i>	<i>OM 3/6/03</i>	<i>OR 3/6/03</i>	<i>GC 3/5/03</i>	<i>J. J. ... 3.3.03</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: 3/4/03
Time: 2:00 PM
Forwarded To:
City Admin
3-21-03 2:49

RECEIVED BY
COUNTY ADMIN. *AM*
3-5-03
8:00
COUNTY ADMIN.
FORWARDED TO: *PL*
3/6/03
10:12 AM



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

February 18, 2003

Lee County Board of County Commissioners
1500 Monroe Street
Ft. Myers, FL 33901

Re: BOT File No. 360225485
Easement No. 40016
Grantee: Lee County

To Whom It May Concern:

Enclosed is an easement instrument, which requires acceptance by notarized signature of Ray Judah as Chairman of the Board of County Commissioners (two witnesses required). Pursuant to Chapter 695, Florida Statutes, the names of the person executing the instrument, the two witnesses, and the notary public must be legibly printed or typewritten directly below that person's signature.

Please execute and return the enclosed instrument and any additional information requested within 30 days after receipt of this letter. Upon receipt and acceptance, we will transmit the easement instrument for final departmental execution. A fully executed instrument will be provided to you for recording in Lee County records.

Your cooperation and assistance are appreciated. If you have any questions regarding this matter, please feel free to contact me at the letterhead address above (Mail Station No. 125) or at (850) 245-2720.

Sincerely,

M. Sue Jones, GOC II
Bureau of Public Land Administration
Division of State Lands

/msj
Enclosures (Easement)
By certified mail

LEE COUNTY DIV. OF
NATURAL RESOURCES

FEB 21 2003

RECEIVED

This Instrument Prepared By:
M. Sue Jones
Recurring Revenue Section
Bureau of Public Land Administration
3900 Commonwealth Boulevard
Mail Station No. 125
Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA

SOVEREIGN SUBMERGED LANDS EASEMENT

NO. 40016
BOT FILE NO. 360225485
PA NO. 36-0173121-002

THIS EASEMENT is hereby granted by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Grantor.

WITNESSETH: That for the faithful and timely performance of and compliance with the terms and conditions stated herein, the Grantor does hereby grant to Lee County, Florida, hereinafter referred to as the Grantee, a nonexclusive easement on, under and across the sovereign lands described as follows:

A parcel of sovereign submerged land in Section 13,
Township 44 South, Range 22 East, in Matlacha Pass,
Lee County, as is more particularly described
and shown on Attachment A, dated April 29, 2002.

TO HAVE THE USE OF the hereinabove described premises from November 13, 2002, the effective date of this easement. The terms and conditions of and for which this easement is granted are as follows:

1. USE OF PROPERTY: The above described parcel of land shall be used solely for a public navigational channel and the dredging thereof and Grantee shall not engage in any activity except as described in the Department of Environmental Protection Exemption No. 36-00173121-002, dated March 12, 2002, incorporated herein and made a part of this easement by reference. All of the foregoing subject to the remaining conditions of this Easement.

2. EASEMENT CONSIDERATION: In the event the Grantor amends its rules related to fees and the amended rules provide the Grantee will be charged a fee or an increased fee for this activity, the Grantee agrees to pay all charges required by such amended rules within 90 days of the date the amended rules become effective or by a date provided by an invoice from the Department, whichever is later. All fees charged under this provision shall be prospective in nature; i.e. they shall begin to accrue on the date that the amended rules become effective.

3. RIGHTS GRANTED: The rights hereby granted shall be subject to any and all prior rights of the United States and any and all prior grants by the Grantor in and to the submerged lands situated within the limits of this easement.

4. DAMAGE TO EASEMENT PROPERTY AND INTERFERENCE WITH PUBLIC AND PRIVATE RIGHTS: Grantee shall not damage the easement lands or unduly interfere with public or private rights therein.

5. GRANTOR'S RIGHT TO GRANT COMPATIBLE USES OF THE EASEMENT PROPERTY: This easement is nonexclusive, and the Grantor, or its duly authorized agent, shall retain the right to enter the property or to engage in management activities not inconsistent with the use herein provided for and shall retain the right to grant compatible uses of the property to third parties during the term of this easement.

6. RIGHT TO INSPECT: Grantor, or its duly authorized agent, shall have the right at any time to inspect the works and operations of the Grantee in any matter pertaining to this easement.

7. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: The Grantee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

8. VENUE: Grantee waives venue as to any litigation arising from matters relating to this easement and any such litigation between Grantor and Grantee shall be initiated and maintained only in Leon County, Florida.

9. ASSIGNMENT OF EASEMENT: This easement shall not be assigned or otherwise transferred without prior written consent of the Grantor or its duly authorized agent. Any assignment or other transfer without prior written consent of the Grantor shall be null and void and without legal effect.

10. TERMINATION: The Grantee, by acceptance of this easement, binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Grantee, its successors and assigns. In the event the Grantee fails or refuses to comply with the provisions and conditions herein set forth or in the event the Grantee violates any of the provisions and conditions herein, this easement may be terminated by the Grantor upon 30 days written notice to Grantee. If terminated, all of the above-described parcel of land shall revert to the Grantor. All costs, including attorneys' fees, incurred by the Grantor to enforce the provisions of this easement shall be paid by the Grantee. All notices required to be given to Grantee by this easement or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

Lee County
Board of County Commissioners
1500 Monroe Street
Ft. Myers, FL 33901

The Grantee agrees to notify the Grantor by certified mail of any changes to this address at least ten (10) days before the change is effective.

11. TAXES AND ASSESSMENTS: The Grantee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this easement which result from the grant of this easement or the activities of Grantee hereunder.

12. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Grantee does not remove said structures and equipment occupying and erected upon the premises after expiration or cancellation of this easement, such structures and equipment will be deemed forfeited to the Grantor, and the Grantor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Grantee at the address specified in Item 10 or at such address on record as provided to the Grantor by the Grantee. However, such remedy shall be in addition to all other remedies available to Grantor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

13. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Grantor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Grantor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

14. RECORDATION OF EASEMENT: The Grantee, at its own expense, shall record this fully executed easement in its entirety in the public records of the county within which the easement site is located within fourteen (14) days after receipt, and shall provide to the Grantor within ten (10) days following the recordation a copy of the recorded easement in its entirety which contains the O.R. Book and pages at which the easement is recorded.

15. AMENDMENTS/MODIFICATIONS: This easement is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this easement must be in writing and must be accepted, acknowledged and executed by the Grantee and Grantor.

16. ACOE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Grantee shall obtain the U.S. Army Corps of Engineers (COE) permit if it is required by the COE. Any modifications to the construction and/or activities authorized herein that may be required by the COE shall require consideration by and the prior written approval of the Grantor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

17. ADDITIONAL STRUCTURES OR ACTIVITIES/EMERGENCY STRUCTURAL REPAIRS: No additional structures shall be erected and/or activities undertaken, including but not limited to, dredging, relocation/realignment or major repairs or renovations made to authorized structures, on, in or over sovereignty, submerged lands without the prior written consent of the Grantor, with the exception of emergency repairs. Unless specifically authorized in writing by the Grantor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Grantee to administrative fines under Chapter 18-14, Florida Administrative Code. If emergency repairs are required to be undertaken in the interests of public health, safety or welfare, the Grantee shall notify the Grantor of such repairs as quickly as is practicable; provided, however, that such emergency activities shall not exceed the activities authorized by this easement.

18. UPLAND RIPARIAN PROPERTY INTEREST: During the term of this easement, Grantee must have satisfactory evidence of sufficient upland interest as defined in subsection 18-21.003(49), Florida Administrative Code, to the extent required by paragraph 18-21.004(3)(b), Florida Administrative Code, in order to conduct the activity described in this easement. If at any time during the term of this easement, Grantee fails to comply with this requirement, use of sovereignty, submerged lands described in this easement shall immediately cease and this easement shall terminate and title to this easement shall revert to and vest in the Grantor immediately and automatically.

WITNESSES:

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE
OF FLORIDA

Original Signature

(SEAL)

Print/Type Name of Witness

BY:

Ralph M. Perkins, Operations and Management Consultant
Manager, Bureau of Public Land Administration,
Division of State Lands, Department of Environmental
Protection, as agent for and on behalf of the Board of Trustees of the
Internal Improvement Trust Fund of the State of Florida

Original Signature

Print/Type Name of Witness

"GRANTOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by
Ralph M. Perkins, Operations and Management Consultant Manager, Bureau of Public Land Administration, Division of State
Lands, Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement
Trust Fund of the State of Florida. He is personally known to me.

APPROVED AS TO FORM AND LEGALITY:

Notary Public, State of Florida

DEP Attorney

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No.

WITNESSES:

Lee County, Florida _____ (SEAL)
By its Board of County Commissioners

Original Signature

BY:

Original Signature of Executing Authority

Typed/Printed Name of Witness

Ray Judah

Typed/Printed Name of Executing Authority

Original Signature

Chairman

Title of Executing Authority

Typed/Printed Name of Witness

"GRANTEE"

STATE OF _____

COUNTY OF _____

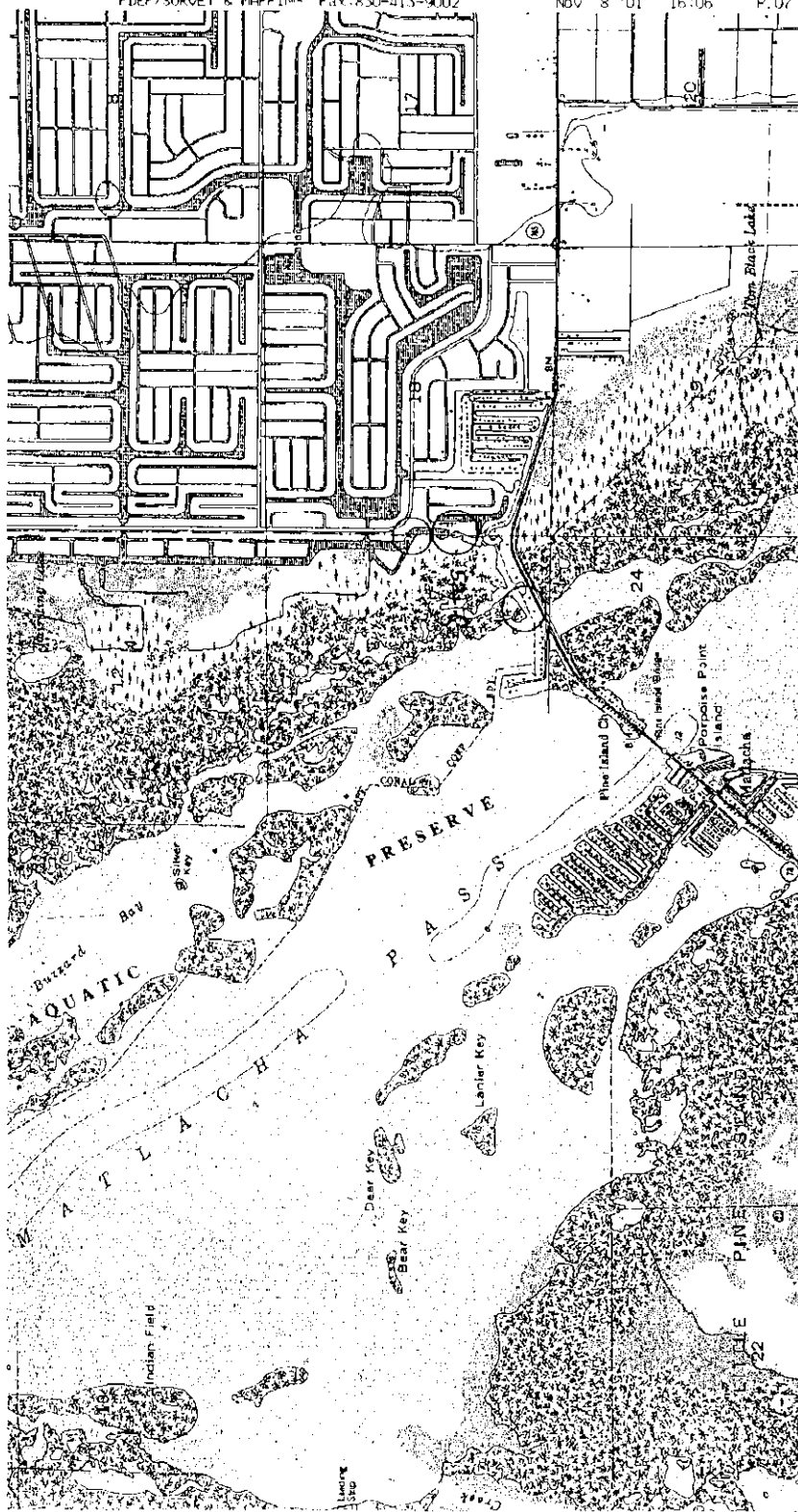
The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by
Ray Judah as Chairman, for and on behalf of the Board of County Commissioners of Lee County, Florida. He is personally
known to me or who has produced _____, as identification.

My Commission Expires:

Notary Public, State of _____

Commission/Serial No.

Printed, Typed or Stamped Name



Geological Survey
 Quad #233B, Matlacha
 1987

1:24,000 SCALE
 1 MILE
 1000 FEET
 1 KILOMETER

Vertical Interval 5 Feet

10000 FEET
 PINE ISLAND CENTER 2.0 MI
 92 5'

R. 22 E. (PINE ISLAND CENTER)
 487 11 21

R. 23 E. 230'

196

Section 17, 20, 22, 24

Indian Field
 Aquatic Bay
 Pine Island Channel
 Parrot Point Island
 Matlacha Pass
 Deer Key
 Bear Key
 Lanier Key
 Pine Island Channel
 Parrot Point Island
 Matlacha

10000 FEET
 PINE ISLAND CENTER 2.0 MI
 92 5'

R. 22 E. (PINE ISLAND CENTER)
 487 11 21

R. 23 E. 230'

196

Section 17, 20, 22, 24

Indian Field
 Aquatic Bay
 Pine Island Channel
 Parrot Point Island
 Matlacha Pass
 Deer Key
 Bear Key
 Lanier Key
 Pine Island Channel
 Parrot Point Island
 Matlacha

A PUBLIC EASEMENT LYING IN SECTION 13, TOWNSHIP 44 SOUTH,
RANGE 22 EAST, LEE COUNTY, FLORIDA.

DESCRIPTION

A PUBLIC EASEMENT LYING IN THE SOUTHEAST QUARTER (SE 1/4) OF
SECTION 13, TOWNSHIP 44 SOUTH, RANGE 22 EAST, MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE POINT OF BEGINNING BEING THE NORTHEAST CORNER OF
LOT 10 OF "THE FIRST ADDITION TO MATLACHA SHORES", A PLATTED
SUBDIVISION AS RECORDED IN PLAT BOOK 10, PAGE 42 OF THE
PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.59°55'24"W.
FOR 250.03 FEET ALONG THE SOUTH LINE OF THE PUBLIC WATERWAY
AS SHOWN ON SAID PLAT OF SAID SUBDIVISION; THENCE CONTINUE
ALONG SAID SOUTH LINE OF SAID WATERWAY, S.60°49'00"W. FOR
507.92 FEET TO THE NORTHWEST CORNER OF LOT 1 OF SAID
SUBDIVISION; THENCE N.01°33'00"W. ALONG THE WEST LINE OF SAID
WATERWAY FOR 67.73 FEET, THENCE N.60°49'00"E. FOR 318.51 FEET;
THENCE N.58°51'57"E. FOR 408.24 FEET; THENCE S.29°11'00"E. FOR 70.00
FEET TO THE POINT OF BEGINNING.

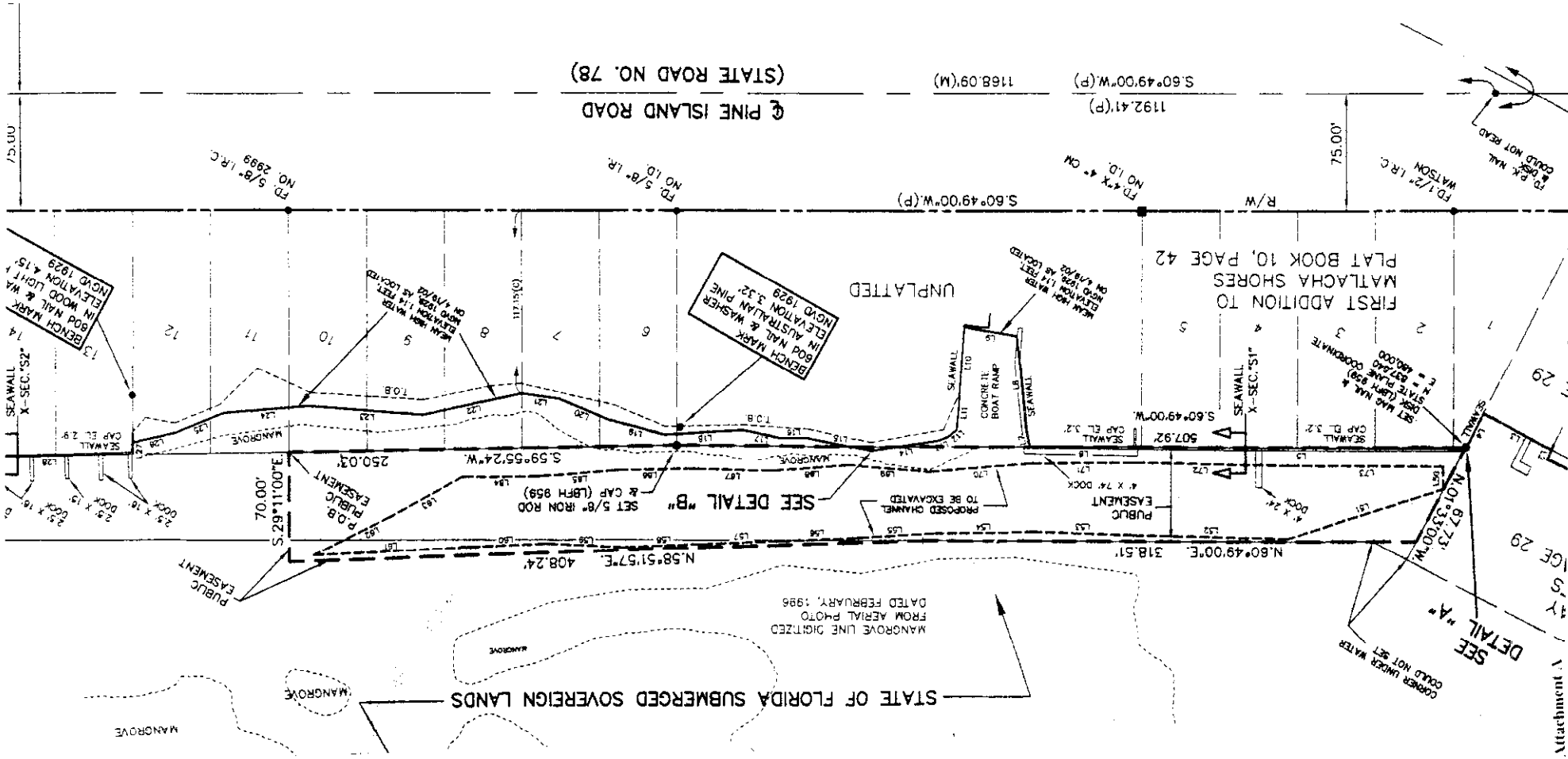
CONTAINING 46880.8 COMPUTED SQUARE FEET.

RECEIVED

JUL 11 2012

D.E.P. - South District

P:\98-7043\Survey\Boundary\98-7043DESCU.doc



① PINE ISLAND ROAD (STATE ROAD NO. 78)

MANGROVE LINE DIGITIZED FROM AERIAL PHOTO DATED FEBRUARY, 1996

FIRST ADDITION TO MALACHA SHORES PLAT BOOK 10, PAGE 42

STATE OF FLORIDA SUBMERGED SOVEREIGN LANDS