



Celebrating 40 years of island conservation

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August 7, 2008

Ms. Diana Parker, Hearing Examiner  
Office of the Lee County Hearing Examiner  
1500 Monroe Street  
Fort Myers, FL 33902

Re: Harbour Pointe at South Seas Resort, Captiva Island  
Case No.: DCI2004-00036 - Plantation Development Ltd.

Honorable Ms Parker:

This letter is submitted on behalf of the Sanibel Captiva Conservation Foundation (SCCF) to oppose the proposed Harbour Pointe development rezoning based on its lack of consistency with the Lee Plan.

In this testimony we will demonstrate that the plan is not consistent with the Lee Plan, that the applicant has no vested right to the 6 units on HP and that the issuance of the ERP permit does not obviate the obligation to meet the Goals, Objectives and Policies of the Lee Plan.

### *Comments on the Applicants Testimony*

First I would like to address issues raised in the applicant's testimony to you last week. In Mr. Hartsell's opening he emphasized that many issues had already been addressed because the Harbour Pointe development is part of the unified Master Concept Plan (MCP) for South Seas Resort (SSR). This is a critical point in this case since the project is and always has been part of a unified development that has allocated 912 units of density to the entire 330 acre project which shares the use of the roads, water and sewage treatment facilities, utilities and amenities. Harbour Pointe is just one of 19 communities established within the larger SSR development. The Harbour Pointe phase is vested with 18 of the 912 units of density through the Lee County Administrative Interpretation of 2002. SSR has 6 unallocated units. As a phase of an overall development with vested density Harbour Pointe does not have any "right" to these additional 6 units. Further, the applicant has argued that these extra 6 units will cause them to have a greater impact to

the site and to mangroves in conflict with the Goals Objectives and Policies of the Lee Plan.

On the issue of impacts, Msrs. Hartsell, Depew & Erwin each referred to the reduction of wetland impacts that have been made to the plan. In fact, at each hearing the applicant has testified that they had minimized their impacts and could not reduce further. Yet at every hearing the impacts have been reduced demonstrating that further reductions have been possible.

In their testimony the applicant's representatives have made the point that **they** have reduced impacts and improved the project. In reality the wetland reductions and stormwater improvements have been the direct result of challenges by three non-profit organizations. Contrary to the applicants characterization, both this forum three years ago and the State Administrative Law Judge found that impacts had not been reduced or minimized, and recommended further reductions be made to reduce impacts to wetlands. Without these expensive challenges the wetland impacts would not have been reduced and stormwater improvements would not have been made. It is our position that the plan before you for 2.72 acres of wetland impact has not reduced impacts nor has it fairly characterized the other alternatives for these impacts and as such remains inconsistent with the Lee Plan.

Mr. Erwin's testimony raised several issues as well which I will discuss here and reference in context with the Lee Plan sections later. With respect to buffering he stated that the plan proposes to keep the bayfront road where it is within the developed portion of the site and have agreed to a 35 foot buffer with 100 % native vegetation. However in at least 2 sections of the site the road is closer to the water than 35 ft and has been frequently washed out by tides. See attached photos. So how will they meet the buffer requirement in those areas?

Mr. Erwin testified to mitigation credit given for removal of the road to increase flushing of mangroves lying west of the road. We fail to see how credit can be granted for removal of the road that has in the past and will again wash out by natural processes if left unmaintained. We further fail to comprehend how that equitably offsets the permanent loss of 3 acres of productive black mangrove basin forest. Their argument has been that the additional flushing is needed for the health of the mangroves, however the system has been flushing through Bryant Bayou and was healthy before Hurricane Charley and remains resilient despite the hurricane as evidenced in the recovery over the past 4 years.

Mr. Erwin also highlighted the preservation of the remaining 70 acres of mangrove wetland as offsetting their impacts. Laudable as this is it must be pointed out that there are no development units associated with those lands.

Mr. Erwin also mentioned the clearing of debris that has been allowed by the SFWMD although without any mitigation credit. The attached photos taken October, 2004 and July, 2008 reflect the contrasting and improving conditions on the site.

At the hearing in 2005 the applicant testified to dire conditions regarding the capacity of the system to recover without the assistance of tree trimming and debris clearing. They stated:

- A high percentage of tree mortality with individual mangrove trees stressed by the stripping of leaves and branches, root disturbance, trunk scarring from falling debris and significant changes in solar availability.
- The system has been converted to a much earlier successional mangrove forest that will require 20-30 years to recover the characteristics of the pre storm forest;
- That the opening of the canopy will create a favorable environment for colonization by invasive exotic species;
- That the woody biomass that has been deposited in the system restricts water and wildlife movement and creates a significant impediment to ground cover regeneration;
- That the storm deposited sand on the fill road which has caused a reduction in the flushing of the forest landward of the fill road and flushing needs to be re-established for the success of the community restoration.

In July, 2008 we visited the site to and found, in contrast to these predictions and as shown in the attached photos that:

- While many mature red mangroves did not recover many black mangroves did and are being replaced by a bumper crop of red and black mangrove seedlings that today are approximately five feet tall and thriving. The debris has not impeded the regeneration of trees or the next generation of seedlings. Damaged trees have fallen or are standing consistent with natural system response. Fallen debris is being attacked by decomposers providing detrital export supporting the base of the food chain. Remaining snags have become heavily utilized by ospreys, snowy egrets, white ibis, great blue heron and little blue herons among others. These snags are important for life cycle functions of resting, fishing and nesting of our native wading birds.
- The increased solar penetration is supporting the regeneration of seedlings.
- A fundamental result and function of storms is to revitalize systems. Mangrove forests are hurricane adapted systems that are well adapted to rebounding after storms as this system is doing without assistance.

- Very few exotic species have colonized the site. Those present are all associated with the edges of fill disturbances; the road and fill pad at the northern end, but are not competing with the mangrove forest. These species are present because there has been no spot maintenance. Based upon our experience at the Foundation in managing almost 2000 acres of land much of which is the same habitat as this project, very little maintenance will be required over time to manage exotic species on this site.
- The woody biomass has not impeded flushing nor created secondary impacts, instead it has provided the woody material critical to detrital export which feeds the food chain and supports the decomposers of the system.
- Any sand that might have been deposited on bayfront road did not affect the flushing of the system which has been flushing from Bryant Bayou for the past 30 years since the fill road was constructed. The system is naturally restoring itself without our intervention. This is simply another argument to justify mitigation credit for removal of the road.

Our science team assessment of the site is that seedlings that became established after hurricane Charley are now sapling size with a rapidly developing canopy structure providing good bird habitat and evidence of reproduction. Osprey use of dead snags/woody debris in this area is higher than observed at other locations. No restoration is necessary. Recovery post-Charley appears to be following other regions on Sanibel and Captiva, some less impacted and would not characterize it as occurring more slowly.

As a hurricane adapted system the forest is naturally rebounding as it has for millennia, without trimming trees or clearing of vegetative debris. In testimony last week it was stated that the only area proposed for “clearing” is the area adjacent to the development because of the aesthetics that a cleaned up system would provide to the adjacent high end development. We do not think the sensitivities of those likely to occupy any units here should dictate the management of the natural resources and the Lee Plan provides no such standard.

We remain opposed to any clearing or hauling of debris out of the mangrove system as it creates secondary impacts to the soil through oxidation and creates channels to water flow. debris requires slogging through the organic sediments which become oxidized thereby reducing the peat, and create channels in the it is clearly not needed for restoration of the system and does impact the natural export of material that forms the base of the food chain. We stand by our testimony from 2005: “It is my opinion that if no action is taken to change or maintain the impacted mangroves either by clearing of vegetative debris, trimming of trees or removal of the fill road, this forest will regenerate and survive.”

Regarding water taxi dock and canoe & kayak launch we question why these features are not shown on either the County or ERP permit plans. In fact they are only referenced as part of the homeowners documents in the ERP permit. Thus these two impacts as well as the boardwalk for the Chadwick mound -which will impact additional wetlands requiring permits- will need to be assessed as impacts and mitigated. Without being included in the County or ERP permit these impacts, their assessment and mitigation are not available to the public for review or comment. This seems to be piecemealing impacts and prevents review of any secondary impacts that these features might cause or contribute to.

### *Staff Plan Review Inconsistencies with the Lee Plan*

The staff report evaluation lacks a review of several applicable Goals, Objective and Policies of the Lee Plan with some consistency statements simply defaulting to the ERP permit effectively disregarding the Lee Plan standards and undermining the important functions and values of these systems.

The Lee Plan is a blueprint for the growth and development of the County providing Goals, Objectives and Policies to implement the vision and guide decision making to provide a quality of life for the residents of Lee County and Florida. This development proposal is inconsistent with the following Goals, Objectives and Policies of the Lee Plan.

#### *Future Land Use*

**GOAL 13: CAPTIVA.** *To maintain and enhance the historic pattern of development on Captiva, consisting of unobtrusive, low-density residential use in an environment characterized by diverse and healthy native vegetation, clean offshore water with diverse and healthy marine life, and limited commercial development and traffic. The purpose of this goal is to provide policies to confirm and reinforce that historic pattern. (Added by Ordinance No. 03-01).*

**OBJECTIVE 13.1:** *Develop and maintain incentive and/or regulatory programs to ensure the long-term protection and enhancement of wetland habitats, water quality, natural upland habitats, community facilities, existing land use patterns, infrastructure capacity, and historically significant features on Captiva Island. (Added by Ordinance No. 03-01).*

**POLICY 13.1.12:** *Mangroves on Captiva Island will be protected to the greatest extent possible. (Added by Ordinance No. 05-19)*

The plan is inconsistent with this section because the development is located in mangrove wetlands where alternatives to impacts are **possible**. The purpose of this application is to amend the existing plan for 18 hotel units to allow an additional six units, for a total of 24 much larger units to be arranged in a completely different configuration with the addition of a bridge that is not part of the existing plan. However, the applicant has been issued

permits that provide for the vested 18 hotel units to be built on the uplands of the site with no wetland impacts. That is a possible alternative.

Plantation Development Ltd, claims that the only property they can develop is one acre of uplands and 77 acres of wetlands because they sold the upland portion of South Seas Resort. However, the property is and always has been part of one unified Master Concept plan for which the density has been calculated and divided among 19 communities within SSRMCP. Each of these communities shares facilities and resources including roads, sewer, water and amenities. In fact, the access road for the bridge has replaced the golf course that was located in that area, demonstrating the ability for alternative placement of units in that area.

The applicant sites their privately negotiated deal where they sold off all but one acre of uplands, as limiting their options for location of the units on the one hand but on the other hand, they are asking to add six unallocated density units of SSR. So they sold the land but want to strip the units off to transfer to their wetlands to impact mangroves. If their options for placement are so limited by this private agreement then it is not reasonable to add more units to the site which will impact more mangroves in direct conflict with this Goal, Objective and Policy. In fact, these units are only available to the unified development of SSR. As part of the unified development alternatives are possible and they are not reflected in this plan which simply increases impacts to mangroves. Plantation Developments self created hardship cannot be used to obligate the County to endorse the additional impact to mangroves contrary to this Goal, Objective and Policy.

### *Parks Recreation & Open Space*

***\*\*GOAL 84: REGIONAL PARKS. To preserve a portion of the county's natural environment to augment that which is set aside by the state of Florida and the federal government, in order to preserve natural habitats, protect the water supply, and preserve the natural heritage; and to make these natural resources available to the general public for resource-based recreational activities, enjoyment of nature, and educational enrichment.***

The attached map reflects the location of this site located in proximity to four National Wildlife Refuges, one State Park, three aquatic preserves and located within the Charlotte Harbour National Estuary Program study based in Lee County.

The federal refuges include the J.N. "Ding" Darling National Wildlife Refuge, Pine Island Sound National Wildlife Refuge, Matlacha Pass National Wildlife Refuge and Island Bay National Wildlife Refuge. The Cayo Costa State Park is located to the north of the proposed site and the proposed development site is surrounded by three State Aquatic Preserves; Pine Island Sound AP, Matlacha Pass AP and Gasparilla Sound - Charlotte Harbor AP. This site is in the center of the coastal range of the Charlotte Harbour National

Estuary Program study area, a national partnership program. Each of these designations were made because of the rare and unique value of the habitat, fish and wildlife resources, water quality and uniqueness of the systems.

The CHNEP Plan (CCMP) addresses priority problems in the CHNEP study area that impede the health of the watersheds and estuaries. These priorities include water quality degradation, hydrologic alterations, fish and wildlife habitat loss. This development will contribute to each of these degraded conditions through the permanent destruction of black mangrove basin forest, replacing productive fish and wildlife habitat and scenic natural beauty with a concentrated development of impervious cover which will alter water flows and water quality. The consequences of this development are not consistent with preserving the natural environment of the County to augment natural lands preserved by the State of Florida and federal government.

Development of the black mangrove basin forest ecosystem will not only have a direct impact causing the loss of mangrove habitat but will cause secondary and cumulative impacts which negatively affect the water quality and habitat resources in areas where Federal and State resources have been identified and protected for many years.

#### *Conservation & Coastal Management*

**GOAL 104: COASTAL RESOURCE PROTECTION.** *To protect the natural resources of the coastal planning area from damage caused by inappropriate development.*

**OBJECTIVE 104.1: ENVIRONMENTALLY CRITICAL AREAS.** *Within the coastal planning area, the county will manage and regulate, on an ongoing basis, environmentally critical areas to conserve and enhance their natural functions. Environmentally critical areas include wetlands (as defined in Goal 114).*

**Policy 104.1.1** *Development will be limited in Rare and Unique upland habitats and strictly controlled in wetlands in the coastal planning area.*

The plan is inconsistent with this Goal, Objective and Policy in that the development area is located in the coastal planning area, is comprised of the most important wetland habitat for coastal fish and wildlife resources which are critical to the health of our aquatic systems and the specifically designated aquatic preserves and national wildlife refuges that surround this site. This project will permanently eliminate almost 3 acres of this critical coastal black mangrove wetland. Notwithstanding the issuance of an ERP permit, the Lee Plan directs protection of mangrove wetland systems which are designated as Environmentally Critical Areas specifically protected by Lee Plan policies.

Since the landmark 1974 State Supreme Court decision which denied *The Estuaries* project from developing mangroves, the County has recognized the critical importance of

mangrove systems and has codified the protection of this critical habitat. Approval of this plan will set a precedent for piecemeal destruction of wetlands and most importantly critical mangrove wetland systems. To allow the development of mangrove forest on a sensitive barrier island system undermines the critical standard for wetland and ecosystem protection and is in direct conflict with the goals, objectives and policy of the Lee Plan.

**GOAL 107: RESOURCE PROTECTION.** *To manage the county's wetland and upland ecosystems so as to maintain and enhance native habitats, floral and faunal species diversity, water quality, and natural surface water characteristics.*

**OBJECTIVE 107.1: RESOURCE MANAGEMENT PLAN.** *The county will continue to implement a resource management program that ensures the long-term protection and enhancement of the natural upland and wetland habitats through the retention of interconnected, functioning, and maintainable hydroecological systems where the remaining wetlands and uplands function as a productive unit resembling the original landscape. (Amended by Ordinance No. 94-30, 00-22)*

**POLICY 107.1.1:** *County agencies implementing the natural resources management program will be responsible for the following:*

- 1. Identifying upland and wetland habitats/systems most suitable for protection, enhancement, reclamation, and conservation.*
- 2. Recommending standards to the Board of County Commissioners for Board approval for development and conservation that will protect and integrate wetlands (as defined in Objective 114.1)*

**POLICY 107.2.2:** *Continue to provide regulations and incentives to prevent incompatible development in and around environmentally sensitive lands (as defined in Policy 107.1.1.4.b.). (Amended by Ordinance No. 94-30)*

**POLICY 107.2.3:** *Prevent water management and development projects from altering or disrupting the natural function of significant natural systems.*

**POLICY 107.2.4:** *Encourage the protection of viable tracts of sensitive or high-quality natural plant communities within developments.*

**POLICY 107.2.10:** *Development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas must protect the natural character and public benefit of these areas including, but not limited to, scenic values for the benefit of future generations. (Amended by Ordinance No. 00-22)*

**POLICY 107.2.13:** *Promote optimal conditions rather than minimum conditions for the natural system as the basis for sound planning. (Added by Ordinance No. 07-16)*

**OBJECTIVE 107.3: WILDLIFE.** *Maintain and enhance the fish and wildlife diversity and distribution within Lee County for the benefit of a balanced ecological system. (Amended by Ordinance No. 94-30)*

**OBJECTIVE 107.4: ENDANGERED AND THREATENED SPECIES IN GENERAL.** *Lee County will continue to protect habitats of endangered and threatened species and species of special concern in order to maintain or enhance existing population numbers and distributions of listed species.*

**OBJECTIVE 107.12: MARINE PRODUCTIVITY.** *Lee County will support maintenance and improvement of marine fisheries productivity, and promote the conservation of fishery resources through the protection and restoration of finfish and shellfish habitat. (Amended by Ordinance No. 00-22)*

**POLICY 107.12.2:** *Support state and federal fisheries management programs that protect and enhance the long-term biological and economic productivity of coastal and estuarine waters and their sources for commercial and sport fisheries.*

These policies address the fundamental elements provided and values served by our natural resources and the County's responsibility and stewardship in managing and maintaining them for the health, productivity, benefit and enjoyment of current and future generations. These policies underscore the importance of our natural resources to the local economy and quality of life. This project seeks to permanently eliminate nearly 3 acres of black mangrove basin forest in excess of the vested footprint and coverage and foregoing alternative site alternatives is inconsistent with spirit and intent of this goal, objectives and policies.

Protecting mangrove habitat also protects fish and wildlife resources including threatened and endangered species and those of special concern. Mangroves provide protected nursery areas for fishes, crustaceans, and shellfish. They also provide food for a multitude of marine species such as snook, snapper, tarpon, jack, sheepshead, red drum, oyster, and shrimp. Florida's important recreational and commercial fisheries will drastically decline without healthy mangrove forests. Many animals find shelter either in the roots or branches of mangroves. Mangrove branches are rookeries, or nesting areas, for beautiful coastal birds such as brown pelicans and roseate spoonbills.

Research has quantified one acre of black mangrove basin forest as responsible for producing up to ten thousand fish. That production per acre is transferred to the adjacent estuary which contributes to the biodiversity and stability of the natural system. According to the Charlotte Harbour National Estuary Program (CHNEP) approximately 25% of the mangrove habitat has been permanently lost to development within the study area. The loss of the functions and values of mangroves have contributed to the degradation of coastal water quality conditions. These impacts have been most dramatically evidenced in the aquatic preserves, originally selected for protection and

elevation to our highest standards of protection because of the condition of their unique and valuable resources. Today all these preserves in Lee County are considered impaired and often closed to shellfish harvesting. These conditions can be tied directly to loss of habitat and non sustainable development standards. In order to protect these resources we must change the conditions that have contributed to the degradation. This project is an example of doing the same thing that has contributed to the problem and expecting a different result. This project is inconsistent with these goals objectives and policies because it would permanently eliminate almost 3 acres of critical habitat that supports the natural systems this section seeks to protect and preserve.

***\*\*GOAL 108: ESTUARINE WATER QUALITY. To manage estuarine ecosystems so as to maintain or improve water quality and wildlife diversity; to reduce or maintain current pollution loading and system imbalances in order to conserve estuarine productivity; and to provide the best use of estuarine areas. (Amended by Ordinance No. 94-30)***

***POLICY 108.1.2: Development affecting coastal and estuarine water resources must maintain or enhance the biological and economic productivity of these resources. (Amended by Ordinance No. 00-22)***

This project is inconsistent with this goal and policy because it will result in the direct and permanent loss of almost 3 acres of mangrove and wildlife habitat and in exchange the development will generate pollutants to estuarine water quality and will create unnatural water flows all of which will contribute to the degradation of the biological and economic productivity of the resource. Alterations of freshwater flows into estuaries create undesirable changes in estuarine ecology. The increase in impervious surfaces and loss of wetland habitats associated with coastal development alter the source, timing and velocity of freshwater flows, which influence salinity patterns, with negative effects on estuarine fish, vegetation and wildlife resources.

***\*\*GOAL 110: HAZARD MITIGATION. To provide through county plans, programs, and regulations means to minimize future property losses from natural disasters such as flooding, tropical storms and hurricanes. (See also Goal 105.) (Amended by Ordinance No. 94-30)***

The proposed placement of new units in an existing wetland area that serves as the frontline in absorbing hurricane impacts and protecting infrastructure, undermines the County's responsibility to manage the high hazard zone in such a way that public health and safety are protected. Such development is specifically contrary to the Lee Plan Goals for: coastal resource protection of environmentally critical areas, wetlands and natural functions protection and protection and conservation of water quality and the economic productivity of these coastal natural resources.

**GOAL 113: COASTAL PLANNING AREAS.** *To conserve, maintain, and enhance the natural balance of ecological functions in the coastal planning area, with particular emphasis on the protection of beach and dune systems so as to retain their contribution to storm protection, natural resources, and economic development. (Amended by Ordinance No. 94-30)*

**OBJECTIVE 113.1: COASTAL PLANNING AREA IN GENERAL.** *Lee County will manage the coastal planning area to provide a balance among conservation of resources, public safety capabilities, and development. (Amended by Ordinance No. 94-30, 00-22)*

**POLICY 113.1.1:** *Coastal areas with significant public value for water retention and purification, wildlife habitat, and primary productivity will be protected through the development permitting process and enforcement of appropriate codes and regulations. (Amended by Ordinance No. 00-22)*

**POLICY 113.1.2:** *All development within the coastal planning area must be compatible with protection of natural systems. (Amended by Ordinance No. 94-30, 00-22)*

**POLICY 113.1.5:** *Lee County will protect and conserve the following environmentally sensitive coastal areas: wetlands, estuaries, mangrove stands, undeveloped barrier islands, beach and dune systems, aquatic preserves and wildlife refuges, undeveloped tidal creeks and inlets, critical wildlife habitats, benthic communities, and marine grass beds. (Amended by Ordinance No. 00-22)*

The project is not consistent with the goal, objective and policies of this section because the permanent destruction of almost 3 acres of mangroves does not protect natural systems and environmentally sensitive coastal mangroves, critical wildlife habitats and marine grass beds. This projects impacts to mangrove habitat and water quality will influence the habitat values and water resources of areas long designated and managed as aquatic preserves and national wildlife refuges where State and Federal resources have been expended to protect and preserve high quality coastal resources.

**GOAL 114: WETLANDS.** *To maintain and enforce a regulatory program for development in wetlands that is cost-effective, complements federal and state permitting processes, and protects the fragile ecological characteristics of wetland systems. (Amended by Ordinance No. 94-30)*

**OBJECTIVE 114.1:** *The natural functions of wetlands and wetland systems will be protected and conserved through the enforcement of the county's wetland protection regulations and the goals, objectives, and policies in this plan. "Wetlands" include all of those lands, whether shown on the Future Land Use Map or not, that are identified as wetlands in accordance with F.S. 373.019(17) through the use of the unified state delineation methodology described in FAC Chapter 17-340, as ratified and amended by F.S. 373.4211. (Amended by Ordinance No. 94-30, 00-22)*

***POLICY 114.1.1: Development in wetlands is limited to very low density residential uses and uses of a recreational, open space, or conservation nature that are compatible with wetland functions. The maximum density in the Wetlands category is one unit per 20 acres, except that one single family residence will be permitted on lots meeting the standards in Chapter XIII of this plan, and except that owners of wetlands adjacent to Intensive Development, Central Urban, Urban Community, Suburban, and Outlying Suburban areas may transfer densities to developable contiguous uplands under common ownership in accordance with Footnotes 9b and 9c of Table 1(a), Summary of Residential Densities. (Amended by Ordinance No. 94-30, 00-22)***

***POLICY 114.1.2: The County's wetlands protection regulations will be consistent with the following:***

- 1. In accordance with F.S. 163.3184(6)(c), the county will not undertake an independent review of the impacts to wetlands resulting from development in wetlands that is specifically authorized by a DEP or SFWMD dredge and fill permit or exemption.***
- 4. Every reasonable effort will be required to avoid or minimize adverse impacts on wetlands through the clustering of development and other site planning techniques. On- or off-site mitigation will only be permitted in accordance with applicable state standards.***

The consistency review for this section simply defaulted to the finding that an ERP has been issued for this site failing to evaluate the unique County standards for wetlands not only in this goal, objective and policy but others that equally call for the protection of wetlands in general and mangroves in particular. The essence of this review hinges on 114.1.2 subsections 1 and 4. To understand the intent of these subsections we need to review a bit of history. This language was drafted at a time when four agencies were involved in the delineation of wetlands which often lead to four sets of wetland boundaries, four sets of impacts and four sets of mitigation. In an attempt to reduce redundancy, thinking one of the three other agencies was bound to "get it right", subsection 1 was developed with the intent that the county would no longer undertake an independent, parallel review of the extent of jurisdictional wetlands or the mitigation assessed if another agency permitted the impacts. In the case where there is not an ERP this rule does not apply and the County reviews the wetland impacts and mitigation.

This was not intended to absolve the County from considering avoidance and minimization which is what subsection 4 addresses. The important point is that the ERP review is a different standard. The State review does not take into consideration standards set by individual counties. Those reviews are the purview of the County. For example, the ERP process does not recognize standards for density that the County establishes, the ERP does not establish conditions for heritage trees, the ERP addresses State listed species but the County has established more stringent criteria as necessary to address local concerns and to meet the county's vision. Other examples of this might be the national stormwater permit for water quality known as the National Pollutant Discharge Elimination System (NPDES) permit. Lee County is the permit holder and as such

responsible to the Federal government for meeting stormwater standards. This may involve establishing stricter stormwater rules than those established by the state, in order to meet their water quality targets. This is the county's option and responsibility. An ERP does not alleviate the County from doing whatever is necessary to meet those standards or more stringent standards they may set for themselves. Home rule and self determination is the reason we have county growth management plans not a one size fits all state plan. Thus the County does have jurisdiction over wetlands through this and other section of the plan and the project must be reviewed and found consistent with these standards, regardless of the issuance of an ERP. In this case the project fails meet this goal, objective and policy.

***GOAL 115: WATER QUALITY AND WASTEWATER. To ensure that water quality is maintained or improved for the protection of the environment and people of Lee County.***

***OBJECTIVE 115.1: Maintain high water quality, meeting or exceeding state and federal water quality standards.***

***POLICY 115.1.1: Sources of water pollution will be identified, controlled, and eliminated wherever feasible.***

The project is inconsistent with this goal, objective and policy because the permanent elimination and conversion of nearly 3 acres of mangrove to a development with concentrated impervious cover cannot maintain or improve water quality over the natural functions of the mangrove wetlands, it can only degrade the resource. With alternative siting of this project a new source of water pollution will not be created by destruction of mangroves and construction of unnatural freshwater discharges and concentrations not existing today.

***\*\*GOAL 121: FISHERIES MANAGEMENT. To preserve the ecosystem that nourishes and shelters the commercial and sport fisheries in Lee County.***

***POLICY 121.1.3: The county will continue to design and implement protective and incentive mechanisms to prevent adverse impacts to commercial and sport fisheries. (Amended by Ordinance No. 00-22)***

Although staff did not review the project for consistency with this section, the project is inconsistent with this goal and policy because it would permanently eliminate nursery habitat in a critical location adjacent to an island pass. Research has shown that mangroves adjacent to passes are the most critical habitat for fish spawn as the tide washes them inshore through the pass they seek out the closest mangroves for protection. With the hardened shoreline surrounding the northern end of South Seas, the mangroves at the

project location become the first refuge for this critical resource. As a result, elimination of these mangroves at this location are in direct conflict with this goal and policy.

***\*\*GOAL 158: Lee County will achieve and maintain a diversified and stable economy by providing a positive business climate that assures maximum employment opportunities while maintaining a high quality of life. (Amended by Ordinance No. 00-22)***

***OBJECTIVE 158.1: Lee County will encourage the conservation and enhancement of those natural and cultural resources that represent the foundation of the county's existing retirement, recreation, and tourist oriented economy in order to place Lee County in a competitive position to enable the retention and expansion of these and other business opportunities. (Amended by Ordinance No. 00-22)***

***POLICY 158.1.7: Lee County will encourage the preservation of sensitive natural resources, including beaches, wetlands, estuaries, clean air and water, historic resources, scenic vistas and other unique natural resources through public acquisition and/or regulatory protection. (Amended by Ordinance No. 00-22)***

***POLICY 158.2.5: Lee County, in coordination with the Tourist Development Council and other appropriate entities, will promote the development of ecotourism in Lee County. (Amended by Ordinance No. 00-22)***

According to recent studies reported by Southwick & Associates and data from the Florida Fish & Wildlife Conservation Commission (FWC) and Florida Wildlife Federation the economic impact of recreational salt water fishing in Florida produces \$14.3 million dollars a day to the economy of Florida. A study on the economic benefits of wildlife viewing in Florida compiled by Southwick & Associates for FWC establishes an economic effect in excess of \$5 billion.

Lee County is blessed with an abundance of unique natural resources that provide entertainment, enjoyment and economic vitality while requiring nothing but stewardship to allow these natural systems to continue to provide these benefits to our quality of life and local and state economy.

Compared to the value of the impact fees of a project that destroys the very habitat that produces the renewable resource that drives the economy this project is inconsistent with the goal, objective and policies of the Lee plan which establishes an ethic to support and preserve our natural resources which also serve our economy.

### ***Summary***

In closing, this project seeks to add six units of density to a plan that already has failed the test of consistency with 11 sections of the Lee Plan, five of which were not reviewed for

consistency. Plantation Development has demonstrated that the six extra units will cause them to have a greater impact to the site and to mangroves, a critical natural resource and element of the Captiva community in conflict with the Goals Objectives and Policies of the Lee Plan. We ask that you **find this project inconsistent with the Lee Plan and recommend denial.**

SCCF is a private not -for- profit conservation organization that has been dedicated to the preservation of natural resources and wildlife habitat on and around Sanibel and Captiva for the past 40 years.

Sincerely,



Rae Ann Wessel  
Sanibel Captiva Conservation Foundation  
Natural Resource Policy Director

***\*\* Sections not reviewed by staff***