

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director/(954) 797-1101

SUBJECT: Resolution - Developers Agreement
DA 8-2-02 Stone Harbor, Inc., 3201 West State Road 84/Generally located on the north side of State Road 84 one-half mile east of State Road 7.

AFFECTED DISTRICT: District 4

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND STONE HARBOR, INC., FOR COMPLIANCE WITH CONDITIONS SET FORTH IN AN ENVIRONMENTAL IMPACT REPORT PREPARED FOR THE STONE HARBOR, INC. PLAT; PROVIDING FOR MITIGATION MEASURES TO SATISFY CONDITIONS OF THE ENVIRONMENTAL IMPACT REPORT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

On March 19, 2002, Town Council passed Resolution No. 2002-67, approving a boundary plat consisting of 5.41 acres for boat building and repairs. In order to ensure compliance with the requirements of an Environmental Impact Report for this plat, the developer is entering into an agreement to perform and complete mitigation measures described in Exhibit "B" of the attached Developers Agreement. The Town is a party to this Agreement solely for the purpose of issuing or withholding the issuance of permits for the construction of buildings within the property and for the purpose of issuing or withholding the issuance of certificates of occupancy for buildings within the property subject to this Agreement.

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: None

RECOMMENDATION: Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration.

Attachments: Resolution, Agreement for Compliance with Conditions of Environmental Impact Report, Existing Future Land Use Map, Subject Site and Aerial Map

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND STONE HARBOR, INC., FOR COMPLIANCE WITH CONDITIONS SET FORTH IN AN ENVIRONMENTAL IMPACT REPORT PREPARED FOR THE STONE HARBOR, INC. PLAT; PROVIDING FOR MITIGATION MEASURES TO SATISFY CONDITIONS OF THE ENVIRONMENTAL IMPACT REPORT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Stone Harbor, Inc. propose to develop properties known as the Stone Harbor Inc. Plat; and

WHEREAS, Broward County requires the developer to perform and complete mitigation measures to acceptably reduce the impact of the proposed development.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit "A", between Broward County, Stone Harbor, Inc. and the Town of Davie, whereby the Town of Davie shall not issue any certificates of occupancy until the improvement described is constructed in accordance with the Agreement.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2002.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2002.

Return recorded copy to:

Attachment 3

Development Management Division
115 S. Andrews Avenue, A240
Fort Lauderdale, FL 33301

Document prepared by:
FRANK A. AGUIRRE, P.E., P.L.S.
7320 GRIFFIN ROAD, SUITE 103
DAVIE, FL 33314
TEL: (954) 791-2110

AGREEMENT FOR COMPLIANCE WITH CONDITIONS OF ENVIRONMENTAL IMPACT REPORT

This is an Agreement made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

STONE HARBOR, INC., its successors and assigns, hereinafter referred to as "DEVELOPER",

[AND IF PROPERTY IS LOCATED WITHIN A MUNICIPALITY]

The City of DAVIE, a municipal corporation created and existing under the laws of the State of Florida, its successors and assigns, hereinafter referred to as "CITY."

WHEREAS, the STONE HARBOR, INC. Plat, Plat No./Clerk's File No. _____, hereinafter referred to as the "Plat," was approved by the Board of County Commissioners of Broward County on _____, 20__; and

WHEREAS, the Plat was approved by the City (if applicable) on March 19, 2002;; and

WHEREAS, certain property within the PLAT has been designated a Native Vegetative Community "Local Area of Particular Concern" ("LAPC") or an "Urban Wilderness Area," or both, by the Board of County Commissioners of Broward County; and

WHEREAS, lands designated a Native Vegetative Community, Local Areas of Particular Concern or an Urban Wilderness Area, as described in the Broward County Land Use Plan, have been determined to be environmentally sensitive lands; and

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, requires that plats of land including property which has been designated an LAPC or an Urban

Wilderness Area shall be developed consistent with conditions determined by the Board of County Commissioners to be necessary to preserve the environmental sensitivity of such property, as set forth in an Environmental Impact Report prepared for the PLAT; and

WHEREAS, the Environmental Impact Report for the PLAT, approved by the Board of County Commissioners on _____, 20__, (the "EIR") identifies the effects of the proposed development upon the natural resources within the boundaries of the PLAT and sets forth mitigation measures and techniques necessary to acceptably reduce the impact of the proposed development; and

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, requires as a condition of the issuance of a development order for the PLAT that the DEVELOPER execute and record an agreement which will ensure compliance with the requirements of the EIR as adopted by the Board of County Commissioners; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions and promises hereinafter set forth, the parties do agree as follows:

1. The above recitals and representations are true and correct and are incorporated herein.
2. DEVELOPER shall fully perform and complete the mitigation measures described in Exhibit "B," attached hereto and incorporated herein, consistent with the time frames set forth therein. If the provisions of Exhibit "B" include obligations to maintain improvements, DEVELOPER shall furnish security, in a form acceptable to the COUNTY, in an amount sufficient to insure such maintenance for the required time period.
3. The parties agree that compliance with the terms of this Agreement shall satisfy the requirement of Chapter 5, Article IX, Broward County Code of Ordinances, with respect to the Plat. Proposed developments that include all or any part of any lands designated as environmentally sensitive lands shall be developed subject to conditions determined to be necessary to reduce the impact of development on such lands. COUNTY agrees that this Agreement satisfies the requirements of the Broward County Land Development Code with respect to the protection of environmentally sensitive lands.
4. If DEVELOPER fails to perform its obligations as set forth herein, COUNTY may take any or all of the following actions to insure compliance with the Broward County Comprehensive Plan, the Land Development Code and the terms of this Agreement:
 - (a) Call upon any security provided pursuant to paragraph 2 and complete the mitigation requirements;

- (b) Withhold building permits and certificates of occupancy for development within the PLAT, or if the PLAT is located within a municipality, request the municipality issuing permits to withhold building permits and certificates of occupancy, until the DEVELOPER'S obligations are current.
 - (c) COUNTY shall be entitled to injunctions, both preliminary and final, enjoining and restraining DEVELOPER'S breach of this Agreement, specifically enjoining damage or destruction of the natural resources of the property within the PLAT.
5. If the property is located within a municipality, the parties hereto agree that, except as may otherwise be provided herein, the CITY is a party to this Agreement solely for the purpose of issuing or withholding the issuance of permits for the construction of buildings within the property subject to this Agreement and for the purpose of issuing or withholding the issuance of certificates of occupancy for buildings within the property subject to this Agreement. The parties specifically agree and recognize that nothing in this Agreement is a waiver, specific or otherwise, of the obligation of the DEVELOPER to strictly comply with all the requirements of the CITY's land development codes.
6. Upon DEVELOPER'S completion of the mitigation measures specified in Exhibit "B" and provision of adequate security, if required, as described in paragraph 2, and upon demonstration of such completion to the reasonable satisfaction of COUNTY, the COUNTY shall record a release in the Official Records of Broward County, Florida, indicating DEVELOPER'S compliance with the terms of this Agreement.
7. **NOTICE.** Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

For the COUNTY:

Broward County Development Management Division
Governmental Center, Room A-240
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

For the CITY:

For the DEVELOPER:

STONE HARBOR, INC.
ROBERT ROSCIOLI, PRESIDENT
3201 STATE ROAD 84, FT. LAUDERDALE, FL 33312

- 10. **RECORDATION.** This Agreement shall be recorded in the Public Records of Broward County Florida, at the DEVELOPER'S expense. The benefits and obligations contained in this Agreement shall inure to grantees, successors, heirs, and assigns who have an interest in the PLAT.
- 11. **VENUE: CHOICE OF LAW.** Any controversies or legal issues arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sits, and shall be governed by the laws of the State of Florida.
- 12. **CHANGES TO FORM AGREEMENT.** DEVELOPER represents and warrants that there have been no amendments or revisions whatsoever to the form Agreement without the prior written consent of the County Attorney's Office. Any unapproved changes shall be deemed a default of this Agreement and of no legal effect.
- 13. **CAPTIONS AND PARAGRAPH HEADINGS.** Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provisions hereof.

14. **NO WAIVER.** No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
15. **EXHIBITS.** All Exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference. Typewritten or handwritten provisions inserted in this Agreement or attached hereto shall control all printed provisions in conflict therewith.
16. **FURTHER ASSURANCES.** The parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.
17. **ASSIGNMENT AND ASSUMPTION.** DEVELOPER may assign all or any portion of its obligations pursuant to this Agreement to a grantee of the fee title to all or any portion of the property described in Exhibit "A." DEVELOPER agrees that any assignment shall contain a provision which clearly states that such assignment is subject to the obligations of this Agreement.
18. **AMENDMENTS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties to the Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair or Vice Chair, authorized to execute same by Board action on the _____ day of _____, 20____; _____, signing by and through its _____, duly authorized to execute same and the CITY, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

County Administrator and Ex-
Officio Clerk of the Board of
County Commissioners of Broward
County, Florida

By _____ Chair
____ day of _____, 20____

Approved as to form
Office of County Attorney
Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
Assistant County Attorney

____ day of _____, 20____

DEVELOPER-INDIVIDUAL

Witnesses:

(Signature)

Print name: _____

(Signature)

Print name: _____

Name of Developer (Individual)

(Signature)

Print name: _____

Print address: _____

____ day of _____, 20__

ACKNOWLEDGMENT - INDIVIDUAL

STATE OF _____)

) SS.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____ who is

personally known to me, or

produced identification. Type of identification produced _____.

NOTARY PUBLIC:

(Seal)

Print name:

My commission expires:

**AGREEMENT RELATING TO COMPLIANCE WITH CONDITIONS OF ENVIRONMENTAL
IMPACT REPORT**

CITY

WITNESSES:

ATTEST:

City Clerk

CITY of _____

By _____
Mayor-Commissioner

____ day of _____, 20__

By _____
City Manager

____ day of _____, 20__

APPROVED AS TO FORM:

By _____
City Attorney



EXHIBIT "A"

LEGAL DESCRIPTION

Commence at a Permanent Reference Monument (P.R.M.) at the S.E. corner of HACIENDA FLORES SUBDIVISION, according to the plat thereof, recorded in plat book 19, page 28, of the public records of Broward County, Florida; Thence proceed N 02° 43' 51" E, on an assumed bearing, along the East line of Lot 1 of said HACIENDA-FLORES SUBDIVISION a distance of 150.07 feet to the Point of Beginning; Thence continue along the afore described line N 02° 43' 51" E a distance of 617.90 feet to a point on the mean high water line of the NORTH NEW RIVER CANAL; Thence proceed along the next four courses meandering the mean high water line of the NORTH NEW RIVER CANAL, N 87° 17' 07" E 107.73 feet; Thence N 81° 28' 00" E 141.18 feet; Thence S 79° 34' 18" E 40.29 feet; Thence N 70° 21' 24" E 15.52 feet; Thence proceed S 02° 43' 51" W along a line parallel to and 300 feet East of the East line of the SW ¼ of the NE ¼ of Section 19-50-42, a distance of 32.05 feet; Thence proceed N 87° 20' 46" W a distance of 10.00 feet to a point on a non-tangential of a curve concave to the South, having a radius of 35.30 feet, a radial line through said point bears N 29° 55' 24" E; Thence continue along the arc of said curve through a central angle of 106° 05' 06" a distance of 65.36 feet to a Point of Non-tangency, said point bears N 76° 09' 42" E from the center of said curve; Thence proceed N 89° 16' 09" W a distance of 159.11 feet; Thence proceed S 02° 43' 51" W a distance of 591.64 feet; Thence proceed N 88° 57' 15" W a distance of 80.24 feet to the Point of Beginning.

Said lands situate, lying and being in the Town of Davie, Broward County, Florida containing 1.34 acres more or less.

EXHIBIT "B"

MITIGATION MEASURES

III. MITIGATION RECOMMENDATIONS

Mitigation for the impacts to the UWA will be in the form of preservation and enhancement of 1.03 acres of cypress-forested wetlands and 0.21 acres of upland buffer on-site. Off-site enhancement includes 10.54 acres of cypress-forested wetlands with the Pond Apple Slough; enhancement of 3.22 acres of wetlands located within Parcel 1 and creation of 0.38 acres of wetlands within Parcel 1A. Enhancement and mitigation will be as per drawing attached to Environmental Resource License DF01-1015 (Attachment 2).

Restrictions will be noted and recorded with the Agreement for Compliance with Conditions of the Environmental Impact Report.

The Mitigation Recommendations for the Stone Harbor, Inc. Plat are as follows:

A. Plat

The Developer shall indicate the following on the Plat prior to recordation:

- 1) The Developer shall place a note indicating that this plat is an Urban Wilderness Area and has been designated by the Board of County Commissioners as environmentally sensitive. Any clearing activities must be in compliance with Sections 5-279 and 27-331 thru 341 of the Broward County Code of Ordinances and other applicable state, federal and local ordinances.
- 2) The Developer shall place a note on the plat indicating that "Development within the Stone Harbor, Inc. Plat must be consistent with the recommendations contained in the Environmental Impact Report as incorporated in the Agreement For Compliance With Conditions of Environmental Impact Report between Broward County, the Town of Davie and the Developer approved by the Board of County Commissioners on __ (DATE) __ 2002 and recorded at OR Book __ Page __ ". A blank copy is attached as Attachment 3. This agreement shall be recorded prior to recordation of the Plat.

B. Conservation Easement

The Developer shall grant a Conservation Easement to Broward County, as shown in Figure 2, for the property contained within the Conservation Zone. This Conservation Easement shall be accepted by the Broward County Board of County Commissioners and recorded in the public records of Broward County prior to plat recordation. The Conservation Easement requires maintenance in perpetuity.

C. Agreement for Compliance with Conditions of the Environmental Impact Report

Prior to plat recordation and prior to the issuance of any building permits for the development within the plat, the Developer shall enter into a tri-party agreement with Broward County and the Town of Davie, acknowledging and agreeing to the following Mitigation Recommendations:

- 1) No development shall occur within the Conservation Zone.
- 2) With the exception of the existing easements, no utility easements shall be located with the dripline of the trees within the Conservation Zone.

- 3) Clearing, mowing and other lawn maintenance activities (including the dumping of lawn debris) are prohibited within the Conservation Zone except as described in # 7 and # 8.
- 4) Prior to the continuation of any clearing or filling activities on the property, construction barriers are to be placed around the boundary of the Conservation Zone and the dripline of all trees, or clusters of trees, to be preserved to prevent damage to the native vegetation by heavy equipment.

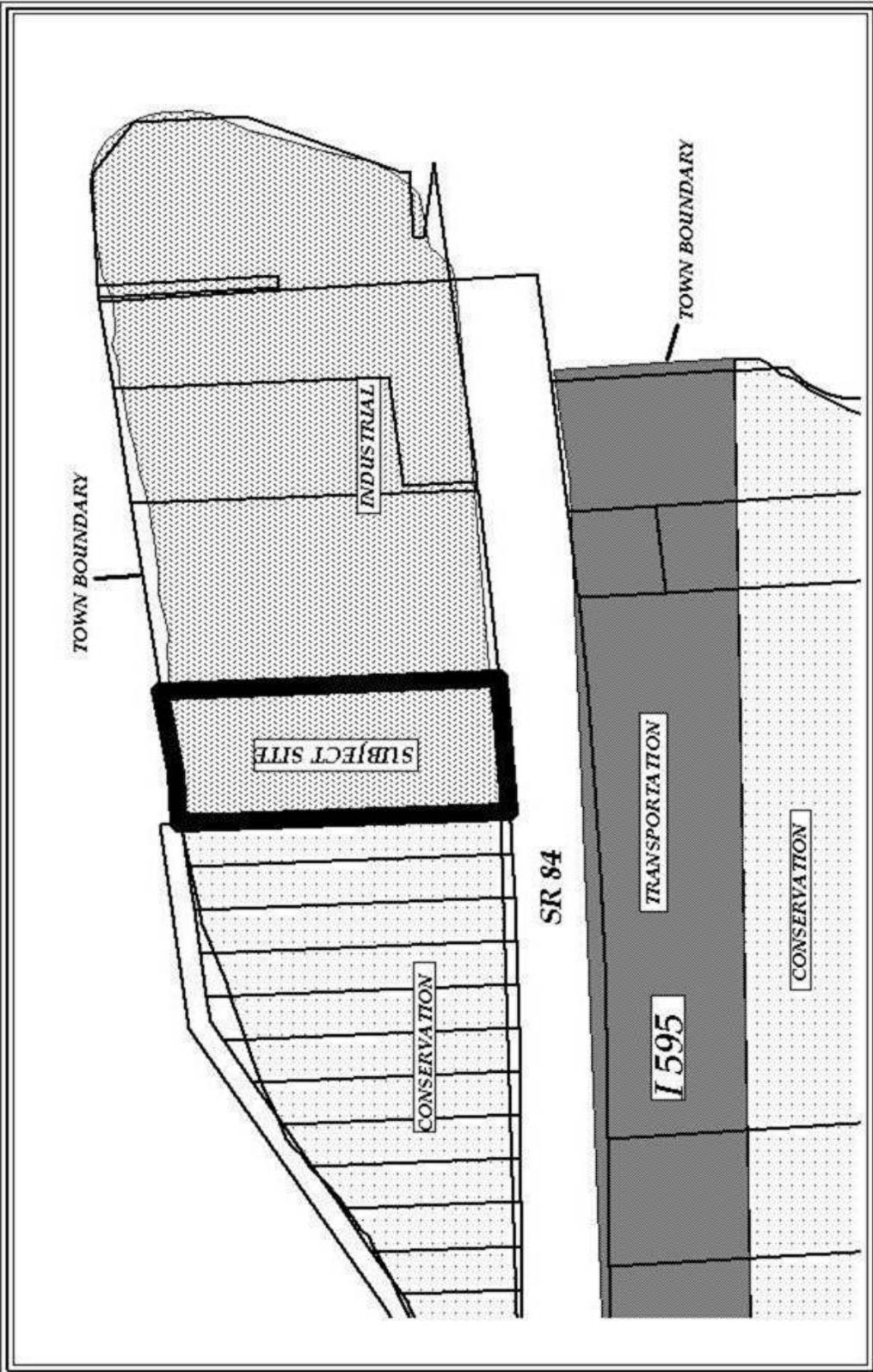
The use of filtering screen or hay bales is required around the Conservation Zone where it abuts the proposed development to prevent the siltation of these vegetative communities by construction runoff. The screening or hay bales shall be installed immediately and shall remain in place until all construction and paving has occurred. At that time they shall be removed from the site.

- 5) No ground clearing activities shall occur until all applicable state, federal, county and municipal permits and licenses are obtained.
- 6) The Developer agrees to allow access and shall allow access to the property at reasonable times by DPEP personnel for the purposes of inspection to determine compliance with the conditions of the Environmental Impact Report and Environmental Resource License DF01-1015.
- 7) Exotic vegetation, such as, but not limited to Brazilian-pepper, Australian pine, earleaf acacia, wedelia and syngonium shall be removed for the Conservation Zone by appropriate hand methods, including hand tools, chain saws and approved herbicides for the exotics to be removed. Exotic vegetation on the interior of the conservation zone shall be treated by a herbicide and left in place to decompose. A continued program of exotic plant removal shall be undertaken by the applicant or appropriate private entity, as approved by DPEP to provide for less than 2% areal coverage by exotics. All exotic vegetation shall be removed prior to the issuance of any Certificates of Occupancy for any buildings on the property.
- 8) The applicant shall obtain approval from Broward County prior to the removal or pruning of any vegetation within the Conservation Zone. Only the pruning of dead, diseased or hazardous branches may occur within Conservation Zone. No native plant shall be removed from the Conservation Zone unless it is dead, diseased or a hazard to life or property.
- 9) To the greatest extent possible, the landscape plans shall incorporate native trees, shrubs and groundcovers which are indigenous to the Stone Harbor site, following xeriscape principles. No species listed on the Exotic Pest Plant Council's List of Most Invasive Species shall be used.

Trees within the Conservation Zone, as well as trees to be preserved in the UWA, must be protected from chemical poisoning, excavation and grade changed as follows:

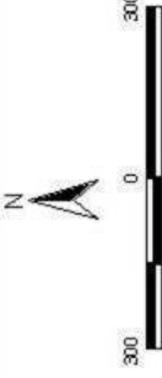
- Utility line trenches should be routed away from trees and outside the dripline;
- Retaining walls and drywells may be needed to protect trees from severe grade changes. For shallow fills, the fill material may be gently sloped down to the level of the trees roots. Leaving the tree in a depression larger than the spread of its crown.

- No parking, vehicle maintenance, storage of construction materials or debris, or cleaning of equipment shall take place within the Conservation Zone.
- 10) Stormwater runoff from the developable area shall not be directed into the Conservation Zone, with the exception of pre-treated stormwater. A surface water management license will be required from DPED prior to site development.
 - 11) The areas in the Conservation Zone that are cleared of exotic vegetation shall be replanted with native vegetation.
 - 12) Compliance with Environmental Resource License Number DF01-1015 (attached).



Developers Agreement
 DA 8-2-02
 Existing Future Land Use Map



300 0 300 Feet

 Planning & Zoning Division - GIS



Planning & Zoning Division - GIS

Developers Agreement
 DA 8-2-02
 Subject Site and Aerial Map
 Date Flown: 12/31/01