PLANNING AND COMMUNITY DEVELOPMENT

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING

AGENDA

Pender County Planning Board Meeting
June 2, 2009
7:00 p.m.

Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina

Note: The Pender County Planning Board Meeting adjourns at 11:00 p.m. Any item not discussed shall be placed on the next regular Planning Board Meeting agenda, unless otherwise stated. The items may not be discussed in the order as shown on the agenda. The agenda may be revised by the Planning Board.

Call to Order: Chairman Reynolds

Roll Call: Chairman Reynolds
Pender County Planning Board Members:
Reynolds ___Garrett ___Marshburn ___Millette ___Smith ___Williams ___ Boney____Newman___

1. **Approval of Minutes:** May 5, 2009

2. **Presentation: Cape Fear Land Trust- Ms. Erin Diener**

3. **Discussion Items**
   - **Planning Staff**
     - West Pender Rail Trail-status update and request for concept approval
     - Pinnacle Ridge-status update on conditions of approval
     - Comp Plan and UDO Committees membership update
     - Unified Development Ordinance
       - Review of development application flow chart and draft UDO Articles 2 and 11 continued

   - **Planning Board Members**

   - **Public Comment**

4. **Adjournment**

MINUTES
Pender County Planning Board Meeting
May 5, 2009
7:00 p.m.

Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina

Call to Order: Chairman Reynolds

Roll Call: Chairman Reynolds
Pender County Planning Board Members:
Reynolds___Garrett___Boney____Marshburn___Millette___Smith___Williams___Newman_X__

1. **Approval of Minutes:** April 7, 2009
   a. **Motion to approve:** Hiram Williams
   b. **Seconded:** William Marshburn
   c. **Vote: 7-0**

2. **Presentation of DRAFT recommendations for the Topsail Area Comprehensive Transportation Plan**

Tyler Bray with the North Carolina Department of Transportation - Planning Branch gave a presentation of the next thirty years in the Topsail area, taking care of all the transportation efficiencies throughout the area with this plan, including highway, pedestrian, and bicycle. There is a pedestrian element from Surf City included in the plan. He briefly presented some of the major recommendations. The major facilities are going to be US 17, NC 210, NC 172, and NC 50. Tonight he is just looking for the okay so this can be taken before the Board of Commissioners. Once okayed by them it can then go to the public. There will be four involvement sessions, one in each of the four municipalities on June 10 & 11 in their specific towns. There has to be a freeway from North Carolina to South Carolina along US Hwy 17. There are restrictions as it travels through the Holly Ridge area. The CTP visited nine different alternatives for what could be done for Hwy 17. Impacts have been minimized as much as possible. There are two interchanges that will need to be built. One at existing Hwy 210; the interchange will not adversely affect the existing development that is there. It will be moved to a new location to be determined at a later date. On the northern side where NC 210 comes back into US 17, where the school exists there would be another interchange eventually put there. As Onslow County starts and continues their development with their CTP they will be doing recommendations for that area. It is recommended that NC 210 from existing US 17 down to where the bridge starts will be improved be a four lane divided facility. There will be a change once you get into Surf City. Hwy 210 turns to the left and follows North New River Drive. As a part of this plan the proposal is to take Hwy 210 along Roland Avenue to where it intersects

with New Topsail Drive and at the existing intersection, replace the existing traffic signal with a roundabout and then reroute NC 210 along Topsail Drive where Topsail Drive and North New River intersect; put another roundabout and continue NC 210 on towards North Topsail Beach. Surf City is in favor of this proposed plan.

Hiram Williams asked if the roundabout in Surf City was going to be a major undertaking.

Mr. Bray stated with these recommendations as they are now will not take any buildings but will fit in the existing right-of-way. Ocean Isle Beach has replaced the same road alignment.

Rick Garrett stated that the Holly Ridge bypass is not given much room for expansion and why wasn't it carried out further on Hwy 17.

Mr. Bray stated that what is not shown on the maps is the Holly Shelter Game Lands. There are two training air strips that are north of Holly Ridge that Camp Lejeune uses for parachuting and aircraft carrier training. They would not support any recommendations that would go north or between the two strips. Holly Ridge would not support anything to the south. This is where all of their planned growth is directed.

He stated that because there is no more public access on Hwy 172 as it goes into Camp Lejeune, DOT has stopped providing those maps until they come up with a recommendation to change or make the route official again, its off the books. The plan has extended the section that goes through Sneeds Ferry and continues along NC 210 and will make any necessary improvements. Major recommendation for the bike map, has started in Pender County and Surf City of protecting the right-of-way along the power line easement. This goes through the entire planning area. This is an eight(8) foot wide paved path for anything that is off road and only used for bikes or pedestrians.

Malcolm Boney asked if any environmental concerns came to his attention during his study.

He answered that the only thing looked at specifically on a new location was the US 17 bypass. Any other widenings that were proposed on this plan, environmental impacts were not looked at.

There was unanimous approval from the Planning Board to take the presentation to the Commissioners.

Subdivision Review

Planner Kyle Breuer presented the case to the Planning Board.

3. **Schoolview Major Subdivision, Preliminary Plat Review (Revision)** - Southwind Surveying and Engineering applicant, on behalf of Scott Gerow, owner, is requesting revision of the Preliminary Plat approval for Schoolview Subdivision (formally known as Scott Gerow Subdivision). The revision would include off-site septic systems to be installed within the area approved as open space. The property is zoned R-20 Residential District and the subdivision is located off of NC Highway 133, across from Cape Fear Elementary School, in Rocky Point, NC.

During the Preliminary approval phase done in June 2007 there was an approval for 21 lots. Some of the conditions attached by the Planning Board were (1) that all utilities would be underground, (2) all lots

would utilize individual septic systems, (3) streets would stub out for future interconnectivity; (4) one driveway permit would be issued for the entrance and open space would equal 3.53 acres. The amended plan is for off-site septic systems. Recess Lane and Schoolview Drive will stub out to provide future connectivity. The subdivision ordinance does not specify off-site fields which would encompass the open space.

Hiram Williams wanted to know why the change and why it is coming back to the Planning Board.

In June 2007 the Planning Board approved on-site septic. When the Staff evaluated the plan it was discovered that the off-site septic was being used and a STOP WORK order was issued. The application is being presented tonight to get approval for the off-site system.

Linwood Jones, Southwind Surveying and Engineering, spokesperson for the project stated that the open space requirement has been met. The soils have been tested and the septic system design has been submitted to the Health Department.

Rick Garrett asked if there was not an issue that when the board originally looked at the plan the sites were going to be on-site and now they are off-site.

Mr. Jones stated that it depends on the terminology. In his opinion based on his experience it still is on-site. **It is** on the subdivision site.

Chairman Reynolds stated that when the project first came to the board the plan was to have a septic system on each lot.

Mr. Jones stated that he presented to the board a subdivision with twenty-one (21) lots.

Chairman Reynolds replied that it was reported that each lot would have on-site septic system which to him means that the system is built on the lot that the house is built on. If this was the intent from the beginning it should have been on the original submission rather than call it open space.

Linwood Jones stated that the soil was not tested before the Preliminary Plat was presented.

Chairman Reynolds said that his concerns were for lots 1 and 21 that someone will be buying a house that has three septic tanks fields located on it because at some point they will have to be serviced. He asked if the drain fields would be deeded with the lots or be owned by the HOA.

Mr. Jones answered that all the drain fields would be owned by the HOA. The easement will be assigned to another lot but will be owned by HOA.

Burt Millette asked if the lines from each lot are going to run to the open space, are they going to cross other lots.

He replied that the lines are running in an easement to the back of the lot along the property line, the western and eastern line. The pipes are in a common ditch with one (1) foot separation between them with magnet tape to make it easy to locate.

Chairman Reynolds told Linwood Jones that this was his Final Preliminary Plat and if there are easements or anything that is going to belong to the HOA and how they are going to be tracked to the open space to do the drain fields it should have been on the plat. Some sort of easement is going to have to be placed on the plat. He cannot personally approve the plat without all the information on it for the board to make sure that the board is not doing something it is not suppose to do. The overall design is poor.

Hiram Williams stated that there was no lot size designation on the plat. He would feel more comfortable knowing that there is adequate easement space for a machine to enter and turnaround for repair.

Rick Garrett stated that the map from June 2007 had the information.

Malcolm Boney said that he did not see the Built Upon Area percentage. The concentration of the drain fields are considered like concrete. He would like to know what the percentage for the houses, streets and others combined is. The higher the density the more the concentration of contaminates and pollutions.

Brief discussion among the board to decide on the additional information needed.

Rick Garrett stated that the alternatives were to: 1) approve the plat. 2) approve it; 3) table it (give the applicant clear instructions as to what the board wants to see); 4) deny it.

Chairman Reynolds asked if the board wanted to table the request or give him some direction.

Burt Millette stated that he would like for the developer to be given instruction through the Staff. The Staff can work with Mr. Jones and bring it back in thirty or sixty days.

Chairman stated that he would be willing to meet with the developer and staff to bring the concerns and try to find a solution. He asked Planner Breuer to invite Harry Lewis to the meeting to more clarification.

Rick Garrett wants to make sure everyone is in agreement with the items of concern so when the developer returns it will be clear. If Environmental Health is pushing this, why? Some of the density can be reduced and therefore reduce some of the spacing as well. If the density was the front, it would be better.
Planner Breuer explained what the situation was. He said that after the Planning Board approval, all the permits have to be submitted, submit the revised plan, and then the Planning Staff signs off. In this case the developer received permits and did not return to the Planning Department to get the plat signed off. It was noticed that construction was taking place without a signed preliminary plat. They had been working with Environmental Health and not the Planning Department which lead to not communication between the departments. Planning did not know this was going on.

Burt Millette made the motion to table the request until the July 2009 Meeting, seconded by Rick Garrett. The vote was unanimous 7-0.

Public Hearing

Planner Kyle Breuer presented the next case to the Planning Board. The proposal will take place on 14.71 acres which will hold coastal events such as but not limited to concerts, rodeos, carnival rides, skilled challenges, children's play area, concessions and vendors. The hours of operations will be limited to dusk and held twice monthly.

4. **PD Master Plan/Change of Use** – John Grim, applicant and owner, is requesting a change of use from Garden & Landscape Plants & Supplies to Indoor & Outdoor Recreation Establishments, Privately Operated. The property is located along the west side of U.S. Hwy 17, approximately 1/8 mile south of the Belvedere Plantation Subdivision entrance or Long Leaf Drive (S.R. 1675), Hampstead, North Carolina. The property is currently zoned PD, Planned Development and may be identified as PIN # 4204-21-9305-0000.

Malcolm Boney asked Kyle Breuer to reiterate for him again concerning the traffic on what some of the things that will be done potently that will limit the amount of increased congregation on Hwy 17.

The process will require an engineered plan which will show capacity and vehicles and basically this plan will be sent to the NCDOT for their engineering expertise and review. A driveway permit will be issued according to the submitted plan. The county will not give a final approval until Staff has a State Permit in hand.

Hiram Williams

Rick Garrett

With the services and used are temporary. The porta- potties will need to be removed at the end of the events. Any construction of stage and booths will need to be removed also. A scaled site-plan will need to be reviewed.

John Grim, applicant and owner of property classifies the project as an event facility or park. It has been a nursery for years and once all the nursery accoutrements are out. It will be graded off and he is planning on planting eleven(11) acres of grass there is an existing road going through the property. This event will be seasonal, during the warmer months. Noise from concerts will be directed away from the neighbors of Belvedere and families across the street.

In summary several citizens spoke on the same concerns of ingress, engress, traffic's major problemsthe alcholol beverages with there being two school and churches near by.

5. **Discussion Items**
    - **Planning Staff**
        - Comprehensive Land Use Plan
            - Review of outline for Policies
                - *10 issues – broad – sections –goal*
                - *Positive recommendations on format and outline*
                - *Meeting on May 19, 2009*
                - *Want approval on format from the Planning Board*

- Infrastructure and community services will include any services that the county offers.
- On track to get the CLU-Plan adopted in 2010

- Road Show Schedule
  - Community meetings to gather public input
  - Statements to have citizens make comments on
  - Need to get approval from the BOC on road schedule on 5-18-09
  - Will not have the same display at every meeting.
  - Dates are not set in stone
  - Open house in October
  - Planning Board Member to attend meeting in their area
  - Drop Penderlea and add Rocky Point to the schedule – these will be evening meetings.

- Unified Development Ordinance
  - Review of Articles 1, 2, 11 and 12
  - Application and Development review flow chart
  - Table of Uses-Existing ordinances using NAICS
    - sample table of Permitted Uses in NAICS format
    - broken down in sections
    -
- Planning Board meeting locations
  -
- Comp Plan and UDO Committees-attendance update
  -

- **Planning Board Members**
- **Public Comment**

6. Adjournment

Board Action for May 5, 2009 Minutes:

Motion:_____Seconded_____

Approved:_____Denied:_____Unanimous_____

Reynolds_____Garrett___Boney____Marshburn___Millette___Smith___Williams___

To: Pender County Planning Board

From: Patrick T. Davenport, Director

Date: May 26, 2009

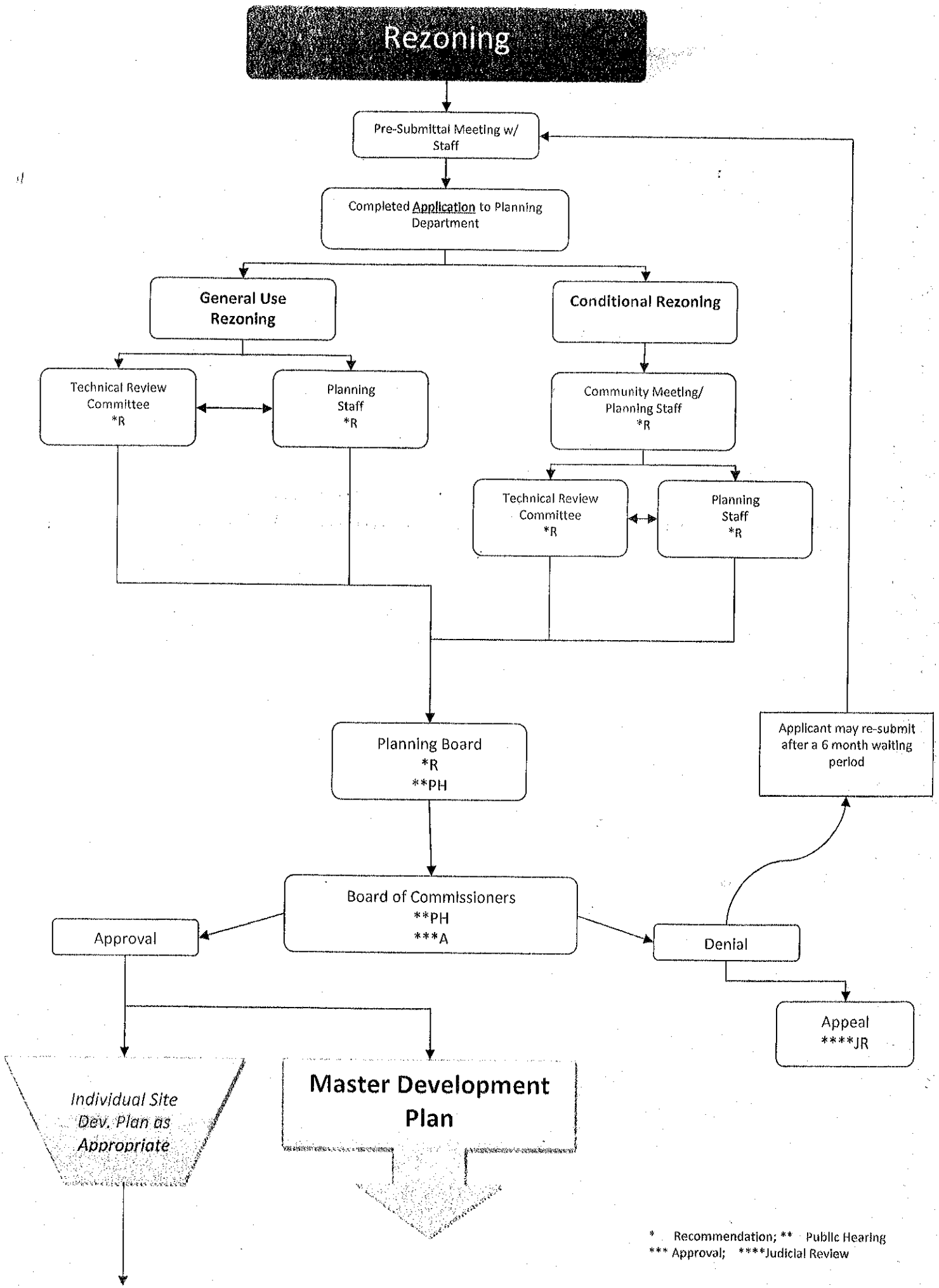
RE: Discussion: 2010 Unified Development Ordinance Project-items for review

Please find attached a proposed development application flow chart and draft UDO Articles 2 and 11 associated with the 2010 UDO for Planning Board review. Staff will continue the review and discussion started during the May 5, 2009 Board meeting. Although this is not a public hearing, it may appropriate to receive public comment on these items if the Planning Board deems necessary.

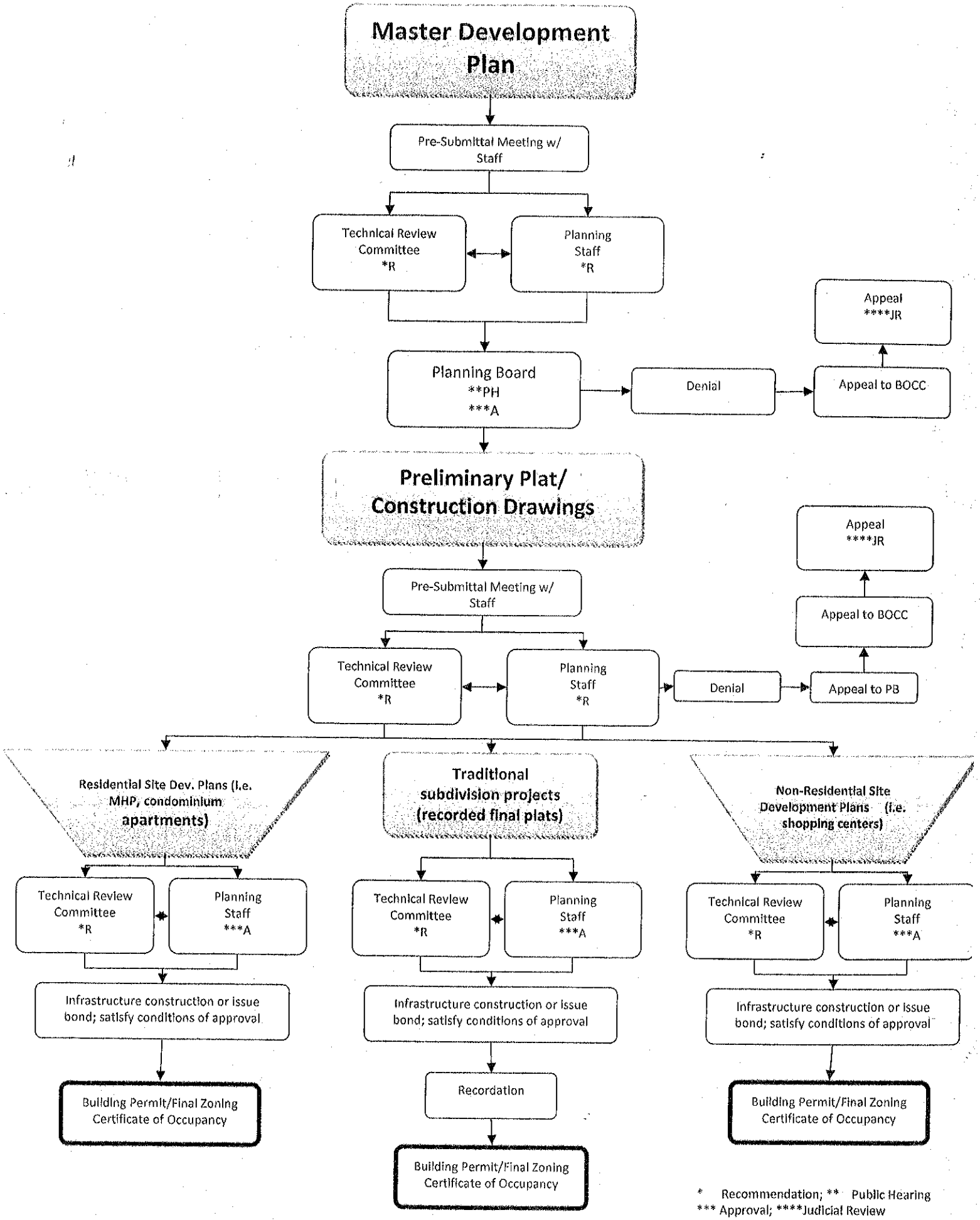
- 2010 UDO: Development Application Review flow charts. Staff has prepared the attached Development Application flow chart to illustrate a proposed development review processes that would be incorporated into the new UDO. An important change to note is that Planning Board review would continue to the Master Plan level but staff would review all applications afterwards. The Planning Board would be available for appeals of staff decisions of subdivision issues by applicants.

- 2010 UDO: DRAFT Articles 2 and 11. Staff will continue the review and discussion of DRAFT Articles 2 and 11 with the Planning Board.

Rezoning



* Recommendation; ** Public Hearing
*** Approval; ****Judicial Review


Master Development Plan
Pre-Submittal Meeting w/ Staff
Technical Review Committee *R
Planning Staff *R
Planning Board **PH ***A
Denial
Appeal to BOCC
Appeal ****JR
Preliminary Plat/ Construction Drawings
Pre-Submittal Meeting w/ Staff
Technical Review Committee *R
Planning Staff *R
Denial
Appeal to PB
Appeal to BOCC
Appeal ****JR
Residential Site Dev. Plans (i.e. MHP, condominium apartments)
Traditional subdivision projects (recorded final plats)
Non-Residential Site Development Plans (i.e. shopping centers)
Technical Review Committee *R
Planning Staff ***A
Infrastructure construction or issue bond; satisfy conditions of approval
Building Permit/Final Zoning Certificate of Occupancy
Technical Review Committee *R
Planning Staff ***A
Infrastructure construction or issue bond; satisfy conditions of approval
Recordation
Building Permit/Final Zoning Certificate of Occupancy
Technical Review Committee *R
Planning Staff ***A
Infrastructure construction or issue bond; satisfy conditions of approval
Building Permit/Final Zoning Certificate of Occupancy
* Recommendation; ** Public Hearing
*** Approval; ****Judicial Review

ARTICLE 2 – DECISION-MAKING AND ADMINISTRATIVE BODIES

2.1 General

2.1.1. Purpose

This Section establishes review authority under this Ordinance. Specific requirements for each type of application or permit are described in Article 3, Permits and Review Procedures.

2.1.2. Temporary Disqualification

A board, commission, or committee member shall not participate in any vote on a matter that would violate an applicant's right to an impartial decision maker. All board, commission, or committee members have a firm requirement to openly disclose to the full board, commission or committee any conflicts of interests they may have with any applicant or decision they are asked to make. Common conflicts include, but are not limited to:

- a member having a fixed opinion prior to hearing the matter that is not susceptible to change,
- a member having undisclosed ex parte communications,
- a member having a close familial, business, or other associational relationship with an affected person,
- a member having a personal financial interest in the outcome of the matter, or
- a member having accepted gifts from affected individuals and entities.

If a substantial objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members of the board, commission, or committee shall by majority vote rule on the objection. If the objection is approved by majority vote, the board, commission or committee shall excuse the member from voting or participating on the matter.

In addition to the above, all other existing county codes and state statutes that govern and prohibit certain conduct by county officials are incorporated by reference in this subsection. For example, the existing state statutes that prohibit bribes (G.S. 14-217, -218), contracting for one's own benefit (G.S. 14-234), accepting gifts and favors from contractors and others (G.S. 133-32), and misuse of confidential information (G.S. 14-234.1) are all still in effect. Violations of these statutes all carry criminal penalties.

2.2 Board of County Commissioners

2.2.1. Establishment, Membership and Procedure

The Board of County Commissioners is the governing body of the County of Pender. Information regarding the establishment, membership and rules of procedure of the Board of County Commissioners is available in the County Code.

2.2.2. Powers and Duties

A. General

The Board of County Commissioners shall have the following general powers and duties:

1. To maintain a Planning Board and assure that the Board performs satisfactorily in development of the CAMA Land Use Plan, Pender County Comprehensive Land Use Plan and any other adopted County land use documents including scheduled review and update of same from time to time, and further that the Planning Board performs duties and responsibilities assigned by statute and by this Ordinance;
2. To establish a Board of Adjustment and assure that Board performs satisfactorily in the duties and responsibilities assigned to it by this Ordinance;
3. To provide by appropriation funds for the administration of this Ordinance;
4. To direct and assist the County Manager and County Attorney in their responsibilities assigned by this Ordinance and by Statute.

B. Final Action

The Board of County Commissioners shall hear and take final action on the following development review procedures:

1. Ordinance Text Amendments (Section 3.11); and
2. Rezonings (Section 3.12).

2.3 Planning Board

2.3.1. Establishment, Membership and Procedure

The Planning Board is charged with carrying out the land use planning activities and setting zoning policy and regulation in Pender County. The Planning Board is established by Article ____, Code of Ordinances, Pender County, N.C. As stated in that Article and hereby reaffirmed, the Planning Board is that planning agency designated by N.C.G.S. 153A-321 and 153A-344. In addition to the duties and responsibilities assigned by Article ____, Code of Ordinances, Pender County, N.C. and by N.C.G.S. 153A-322, the Planning Board shall have the specific powers and duties provided within this Ordinance.

2.3.2. Powers and Duties

A. Review and Recommendation

The Planning Board shall review and make a recommendation on the following development review procedures:

1. Ordinance Text Amendment (Section 3.11); and
2. Rezoning (Section 3.12);

B. Final Action

The Planning Board shall hear and take final action on the following development review procedures:

1. Variance from the Subdivision Requirements (Section 3.7);
2. Major Subdivision- Preliminary Plat (Section 8.2.12);
3. Major Site Plan (Section 3.2.2.B);
4. Planned Unit Development Review (Section 4.8.5.L) and
5. Zoning Vested Rights determination (Section 3.3).

2.4 Board of Adjustment

2.4.1. Establishment, Membership, and Rules of Procedure

A. Establishment

A Board of Adjustment (BOA) is hereby created to hear appeals from decisions of the Zoning Administrator and to consider requests for variances from the terms of the Zoning Ordinance. This Board may also be known as the Zoning Board of Adjustment or Zoning Board.

B. Membership

1. The BOA shall consist of five (5) members who shall be residents of the county of Pender.
2. The members shall be appointed by the Board of Commissioners for a regular term of office of three (3) years. Board members whose terms have expired may be reappointed for one additional term so long as their length of service on the Board does not exceed six (6) years. In appointing members to fill vacancies, the Board of Commissioners shall appoint persons to serve the remaining term of office rather than a full three (3) years.
3. There will be two (2) alternate members of the Board of Adjustment.
4. No member of the Board of Adjustment shall be permitted to sit concurrently on the Planning Board or the Board of Commissioners.

C. Rules of Procedure

1. The Board of Adjustment is a quasi-judicial body.
2. Meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the majority of the Board may determine.
3. All meetings of the Board of Adjustment shall be open to the public.
4. The Board shall keep minutes of its procedures, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact; and final disposition of appeals shall be taken, all of which shall be on public record.
5. A quorum is not obtained unless four voting members are present. In the event there is abstention for reason declared into the record by a voting member, then a particular matter cannot proceed unless and until four other voting members are present and vote.

6. As required by N.C.G.S. 153A-345(e), no final action shall be taken on any matter without the concurring vote of four-fifths (4/5's) of the members of the Board.
7. The Year of the Zoning Board of Adjustment is _____.
8. As early as possible in each new year of the Board, the voting members shall elect a chairman and vice-chairman. Either such party when in the chair shall have the authority to administer oaths to witnesses. The Board may elect such other officers as the Board deems best.
9. All decisions of the Board of Adjustment run with the land, never the person or corporation. Special Exceptions may have time limits imposed on their validity.
10. The minutes of the Zoning Board of Adjustment shall be kept in such detail as necessary, and do not reflect official action of the Board until adoption of same.
11. Minutes shall be filed in the office of the Zoning Administrator, as a public record.
12. The Board of Adjustment shall have the authority to subpoena witnesses and compel the production of evidence as specified in N.C.G.S. 153A-345(g).

2.4.2. Powers and Duties

A. Final Action

The Board of Adjustment shall hear and take final action on the following development review procedures:

1. Variance (Section 3.7);
2. Zoning Vested Right (Section 3.3);
3. Special Exception Permit (Section 3.3);
4. Appeal of Administrative Decision (Section 3.9);
5. Approval of Wireless Telecommunications Facilities (Section 5.3.4.N); and
6. In concert with the Planning Director or assignee, interpret zoning lines, and Zoning District boundary lines.

2.5 Planning Director / Zoning Administrator

2.5.1. General

The Planning & Community Development Director (referred to as the Planning Director) is designated as head of the Planning & Community Development Department and shall be responsible for administering the provisions of this Ordinance as set forth in this section. The Director is also designated the Pender County Zoning Administrator and is officially charged with the enforcement of this Ordinance.

2.5.2. Delegation of Authority

The Planning Director may designate any staff member to represent the Director or Zoning Administrator in any function assigned by this Unified Development Ordinance. The Planning Director shall remain responsible for any final action.

2.5.3. Powers and Duties

A. Review and Recommendation

The Planning Director shall make a recommendation on the following development review procedures:

1. Ordinance Text Amendment (Section3.11);
2. Rezoning (Section 3.12);
3. Variance (Section 3.7);
4. Preliminary Plat (Section 8.2.12);
5. Major Site Plan (Section 3.2.2.B); and
6. Planned Unit Development Review (Section 4.8.5.L).

As Zoning Administrator, the Planning Director shall make a recommendation on the following development review procedures:
7. Ordinance Text Amendment (Section 3.11);
8. Rezoning (Section 3.12);
9. Variance (Section 3.7); and
10. Special Exception Permit (Section 3.3).

B. Final Action
The Planning Director shall hear and take final action on the following development review procedures:
1. Subdivision- Minor Plat (Section 8.2.11)
2. Subdivision- Final Plat (Section8.2.13.I);
3. Minor Site Plan (Section 3.2.2.A);
4. Administrative Adjustment (Section 3.8);
5. Traffic Impact Analysis (Section 3.5); and
6. Written Interpretation (Section 3.10).

As Zoning Administrator, the Director shall hear and take final action on the following development review procedures:
7. Zoning Permit (Section 3.6.1);
8. Temporary Use Permit (Section 3.6.4); and
9. Sign Permit (Section 10.2.1).

2.6 Building Inspector

2.6.1. General
The Planning Director shall designate a Building Inspector to review and approve certain permit applications.

2.6.2. Powers and Duties
A. Final Action
The Building Inspector shall hear and take final action on the following development review procedures:
1. Certificate of Occupancy (Section 3.6.2); and
2. Certification of Mobile Home (Section 5.3.3.C.6).

2.7 Tax Assessor

2.7.1. General
The County Manager shall designate a Tax Assessor.

2.7.2. Powers and Duties
A. Final Action
The Tax Assessor shall issue parcel identifiers during the subdivision process.

2.8 Director of Public Health

2.8.1. General
The Pender County Board of Health shall designate the Director of Public Health to enforce laws and regulations that protect health and ensure safety.

2.8.2. Delegation of Authority
The Public Health Director may designate an Environmental Health Specialist or any staff member to represent the Director in any function assigned by this Unified Development Ordinance. The Director shall remain responsible for any final action.

2.8.3. Powers and Duties
A. Review and Recommendation
The Director of Public Health shall manage the Pender County On-Site Wastewater Program to protect the safety and quality of drinking water by ensuring that all septic systems and drinking water wells in the county are appropriately designed, constructed, and safely operated. The Director shall also provide technical guidance and counseling on new septic systems, including conducting appropriate soil tests to determine the suitability of a property for a septic system. The Director shall review and take final action on the following development review procedures:
1. Subdivision (Section 8.2);
2. Planned Unit Development (Section 4.8.5.L); and
3. Any other review necessitated by health and safety codes.

2.9 Technical Review Committee

2.9.1. Establishment, Membership, and Procedures

A. Establishment
A Technical Review Committee shall be established to provide a coordinated and centralized technical review process. The members of the Technical Review Committee shall be composed of persons from various County departments and agencies which have an interest in the development review process.

B. Membership

1. Chair
The Planning Director shall serve as Chair of the Technical Review Committee and shall be responsible for all final decisions of the Committee.
2. Other Members
In addition to the Chair, the Technical Review Committee shall be comprised of the following members:

i. The County Manager;
ii. A representative from the Pender County Board of County Commissioners;
iii. A representative from the Pender County Planning Board;
iv. A representative from Pender County Utilities;
v. A representative from Pender County Environmental Health;
vi. A representative from Pender County Emergency Management;
vii. A representative from Pender County Fire Department;
viii. A representative from Pender County Parks and Recreation;
ix. A representative from Pender County School Board;
x. A representative from Pender County Sheriff Department;
xi. A representative from Pender County Information Technology Department (Road Naming Committee);
xii. A representative from North Carolina Department of Transportation (NCDOT) - District Engineer Office;
xiii. A representative from NCDOT – Planning Office;
xiv. A representative from Wilmington Metropolitan Planning Organization – Hampstead and Scotts Hill Areas;
xv. A representative from the Cape Fear Council of Government (COG);
xvi. A representative from the NC Department of Environment and Natural Resources (DENR) – Division of Water Quality
xvii. A representative from DENR – Division of Coastal Management
xviii. A representative from DENR – Division of Land Quality
xix. A representative from DENR – Division of Environmental Health
xx. A representative from Progress Energy;
xxi. A representative from Four County Electric;
xxii. Any other County staff or external agencies the Chair deems necessary for the professional review of an application.

C. Procedures
The Technical Review Committee shall meet as often as necessary to fulfill its duties or upon call of the Chair of the committee to review and discuss development applications. The meeting notes of each meeting shall be filed with the Planning Director.

2.9.2. Powers and Duties
A. Review and Recommendation
The Technical Review Committee shall make a recommendation on the following development review procedures:
1. Subdivision- Preliminary Plat (Section 8.2.12);
2. Site Plan- Major/Multifamily (Section 3.2.2.B);
3. Planned Unit Development review (Section 4.8.5.L);

4. Traffic Impact Analysis (Section 3.5); and
5. Any other review requested by an approving authority.

2.10 Other Departments

Other departments may be empowered by the Board of County Commissioners to develop, maintain and implement technical standards, specifications, and guidelines.

2.11 Summary of Review Authority

The following table summarizes review and approval authority under this Ordinance.

ARTICLE 11 - NONCONFORMITIES

11.1 General

11.1.1. Scope
The regulations of this article govern lots, uses, structures, buildings, signs and other aspects of development that came into existence lawfully but that do not conform to one or more requirements of this Ordinance. These are referred to as "nonconformities."

11.1.2. Purpose
The regulations of this article are intended to:
A. Allow nonconformities to continue until they are removed, but not to encourage their continual use;
B. Recognize the interests of property owners in continuing to use their property for lawful purposes;
C. Promote reuse and rehabilitation of existing buildings; and
D. Place reasonable limits on the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

11.1.3. Authority to Continue
A. Any nonconformity that existed on the effective date of this Ordinance or that becomes nonconforming upon the adoption of any amendment to this Ordinance may be continued in accordance with the provisions of this article.

11.1.4. Determination of Nonconformity Status
The burden of proving that a nonconformity exists (as opposed to an illegal situation) rests with the subject landowner.

11.1.5. Repairs and Maintenance
A. Minor repairs to routine maintenance of nonconformities are permitted and encouraged unless such repairs are otherwise expressly prohibited by this Ordinance.

B. Nothing in this article is to be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of the Building Inspector or other duly authorized public official.

11.1.6. Change of Tenancy or Ownership
The status of a nonconformity is not affected by changes of tenancy, ownership, or management.

11.1.7. Condemnation Does Not Affect Zoning Status
Because they are the result of actions beyond the control of the owner, a governmental taking, including but not limited to condemnation, or a conveyance in lieu of

condemnation, shall not render a lot or structure non-conforming, or preclude the use of a nonconforming single lot of record under this ordinance, with the exception of signs.

11.1.8. Cost Estimates
In making determinations regarding replacement value, the Zoning Administrator is authorized to use the County tax assessment roles, Dodge Reports, Marshall Swift, or similar cost-estimating manuals, as a basic reference.

11.2 Nonconforming Lots

A. Nonconforming Lot

11.2.1. Definition
A lot existing at the effective date of this Ordinance or any amendment hereto that cannot meet the minimum standards or requirements of the district in which the lot is located.

11.2.2. Continuation

A. Nonconforming Single Lot
1. A single lot that is nonconforming as to area or width requirements may be built upon if compliance is achieved with regard to all other Ordinance requirements.

B. Nonconforming Contiguous Lots of Record
If two or more contiguous vacant lots of record established prior to the effective date of this ordinance are in single ownership and are nonconforming to the dimensional requirements of the district where located, such lots, at the owner's option, may be combined to form a single or several lots which reduce the degree of nonconformity with regards to lot area and width requirements of the district, provided compliance is achieved with regard to all other requirements of this Ordinance.

11.3 Nonconforming Uses of Land

11.3.1. Definition
A nonconforming use is a principal or accessory land use, other than a nonconforming sign, that was lawfully established in accordance with zoning regulations in effect at the time of its establishment but that is no longer allowed by the use regulations of the zoning district in which it is now located.

11.3.2. Continuation
A nonconforming use(s) may continue, subject to the regulations of this section.

11.3.3. Change, Modification or Expansion of Use

A. A nonconforming use(s) may be changed, modified or expanded to any permitted use(s) in the subject district. Thereafter, the property may not revert to a nonconforming use.

B. The Zoning Administrator is authorized to approve an Administrative Adjustment to allow a change from one or more nonconforming uses to one or more nonconforming uses that are in the same use category or to another functionally similar use, or to allow a modification or expansion to an existing nonconforming use, provided that the proposed uses do not materially increase the degree of nonconformity, and the uses will have no greater adverse impacts on the surrounding area. To make this determination, the Administrator shall consider, but is not limited to consider, all of the following:

1. Anticipated traffic of each use;
2. Parking requirements of each use;
3. Anticipated number of persons on the premises of each use at a time of peak demand;
4. Hours of operation of each use;
5. Environmental impacts of each use; and
6. Off-site impacts of each use, such as sight distance, visibility, lighting, noise, glare, dust, vibration, or smoke;

C. If the Zoning Administrator denies the Administrative Adjustment, the Administrator must state, in writing, the reasons for the denial.

D. If a nonconforming use is changed to any use other than a conforming use without obtaining approval pursuant to subpart B of this subsection, that change shall constitute a discontinuance of the nonconforming use, and the property involved may thereafter be used only for conforming purposes.

E. Except as specifically provided in this subsection, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconforming situation.

F. Any nonconforming use may be extended within any parts of a building which were manifestly arranged or designed for such use.

G. A use listed as permitted use in the Tabulation of Permitted Uses may be established as a new use in any existing nonconforming building provided such use complies with all off-street parking requirements of this Ordinance.

H. A nonconforming use on open land may not be extended to cover more land than was occupied by that use when it became nonconforming.

I. Where a nonconforming use involves operation of equipment or processes, such equipment or processes may be changed or replaced; provided that the new equipment or processes conforms to the performance standards for the subject district, the change is to

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To: Pender County Planning Board

From: Patrick T. Davenport, Director

Date: May 26, 2009

RE: Presentation-Community Land Trusts

Please find attached several items describing the details of how a community land trust operates and its potential benefits to the community. Ms. Erin Diener will be giving a presentation and will be available to answer your questions. Staff intends to offer proposals for a variety of community land trusts options via policies in the 2010 Comprehensive Land use Plan and via regulations in the 2010 Unified Development Ordinance.

PTD

CAPE FEAR HOUSING
LAND TRUST

What is a Community Land Trust?

Cape Fear Housing Land Trust is a nonprofit organization that provides affordable homeownership opportunities in New Hanover, Brunswick and Pender counties.

Who Qualifies for a Home?

Generally, Cape Fear Housing Land Trust homes are available to families who are first-time homeowners that earn between 25-120 percent of the median income for the county they live in. Our homes are affordable for our community's teachers, police officers, fire fighters, small business owners, nurses and other service sector workers.

How Does a Community Land Trust Work?

Its simple really – our homes remain affordable because the Land Trust retains ownership of the land and the homeowner retains ownership of the home and all improvements. Since the cost of the land is taken out of the equation, our homes remain affordable relative to other homes in the community. And when homeowners sell their homes they leave with a fair percentage of the equity gained over the course of homeownership.

Why Our Community Needs a Land Trust

Cape Fear Housing Land Trust is Southeastern North Carolina's first Community Land Trust. Based in Wilmington, the Land Trust serves three key counties in the region – New Hanover, Pender, and Brunswick Counties.

Over 90 percent of New Hanover County has been built-out according to a recent affordable housing study. Available opportunities to meet housing needs of modest-income families are severely limited. This leaves working households without practical alternatives other than renting or living outside of the community they work in. Meanwhile, Brunswick and Pender counties are large, rural counties whose housing prices and opportunities are becoming negatively impacted by the urban sprawl from New Hanover County.

Benefits of Homeownership

The typical Community Land Trust buyer is someone who never dreamed they could afford to own a home in their community. The buyer gets advantages of homeownership — the tax benefits, the long term security, a share of the equity, the simple delight of planting a garden or making other improvements — while paying a mortgage often lower than rent.

Below is a chart for income limits for potential Land Trust homeowners in the Cape Fear area:

County of Residence	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
New Hanover	$48,360	$55,320	$62,160	$69,120	$74,640	$80,160	$85,680	$91,200
Brunswick	$48,360	$55,320	$62,160	$69,120	$74,640	$80,160	$85,680	$91,200
Pender	$43,080	$49,200	$55,440	$61,560	$66,480	$71,400	$76,320	$81,240

Source: FY 2009 Income Limits Documentation System, U.S. Department of Housing and Urban Development (HUD)
Website: http://www.huduser.org/datasets/il/il09/index.html

Housing Options

Cape Fear Housing Land Trust was formed in 2008 and it is one of over 200 Community Land Trusts across the United States. In the future, it will provide a wide range of affordable homeownership opportunities for first-time homebuyers. Housing options will include single-family homes, green building designs, condominiums, historic preservation, rehab/renovations, and infill lot design.

Acquiring and Stewarding Land

There are essentially two types of land trusts: conservation trusts, which acquire and protect open space and natural areas; and Community Land Trusts, which tend to focus more on housing and community development. The Cape Fear region has a number of conservation trusts, but only the Cape Fear Housing Land Trust uses the Community Land Trust model to create permanently affordable housing. So how does it all work?

Cape Fear Housing Land Trust is a tax-exempt, nonprofit organization that can receive gifts and bequests of property from individuals or corporations. The Trust may also receive property from local governments. And like other housing developers – Cape Fear Housing Land Trust purchases existing residential real estate and vacant land on the open market with funding from public sources.

CAPE FEAR HOUSING LAND TRUST

HISTORY AND FIRST PROJECT

A BRIEF HISTORY OF CAPE FEAR HOUSING LAND TRUST

Some years ago, the City of Wilmington and members of the Affordable Housing Coalition of Southeastern North Carolina identified a pressing need in our community for more affordable housing options, especially in the area of workforce housing. You might think of workforce housing as that which is affordable for our police officers, fire fighters, teachers, nurses and other service sector workers. Several notable organizations existed at that time focused on low-income and/or very low-income housing, but none existed with a mission determined to permanently preserve workforce housing for essential workers (those that earn 60-120% of the Area Median Income).

The challenge faced by all was that to impact housing affordability on a permanent basis, a significant commitment would be required to establish, fund and operate an organization that would 'out-live' us all. Last year, the long-term commitment required to address this issue was addressed through the formation of Cape Fear Housing Land Trust.

Throughout the United States, Community Land Trusts have demonstrated their ability to create permanent affordability, one owner after another, from generation to generation, in perpetuity. Thanks to some very far-sighted individuals at the City of Wilmington and the AHCSENC, the Housing Land Trust now operates under the "umbrella" of Cape Fear Habitat for Humanity. This 'transitional' structure will eventually lead to a fully-chartered 501c3 non-profit organization which will provide affordable housing opportunities for individuals between 25% - 120% AMI in a three-county service area.

Cape Fear Housing Land Trust is fortunate that the City of Wilmington has been intrinsically involved in the Trust's formation and has demonstrated its support financially and strategically through the allocation of administrative funds, land acquisition funds, and the identification of the land trust as a critical component of the City's Future Land Use Plan, the Thriving Neighborhoods Focus of the Annual Action Plan, and the Five-Year Consolidated Plan.

BUILDING CAPE FEAR HOUSING LAND TRUST – OUR FIRST PROJECT

THE SITE

Cape Fear Housing Land Trust is in the process of acquiring a 2.10 acre track of undeveloped land off of Prices Lane in the Barclay Hills Subdivision. The Land Trust recently received approval from both HUD's Internal Clearinghouse and the City of Wilmington's Subdivision Review Board and projects it will close on the property in June 2009. Development of infrastructure on this property can begin immediately after acquisition of the property, and the Land Trust has submitted a grant request to the City for funding for the development of infrastructure.

THE NEIGHBORHOOD

This site is located in a central area of the City – close to public transportation, public facilities and quality schools. As noted by the Future Land Use Plan – the City is over 90% built out and affordable, developable land for workforce housing is in severely limited supply. Gideon Pointe - the subsequent 8-unit, single-family subdivision that the Land Trust would develop would have a three-fold return on investment. First, it will provide permanent affordability for a multitude of homeowners now and for future generations. Secondly, it will provide a solid foundation for the Housing Land Trust to become self-sufficient. And lastly, it will serve as a leveraging mechanism for future property acquisition.

THE BUDGET

ACTIVITY	TIME FRAME	ESTIMATED COST	FUNDING SECURED
Land Acquisition	FY 08/09	$220,000	Yes – HUD Funds
Infrastructure Development	FY 09/10	$250,000	Securing funds
Construction	FY 10/11	$1.1M - $1.3M **	Securing funds

** - Estimate based on $90-100/square foot X 1,500 square foot unit (average) X 8 units + other development costs. Units are expected to be at least 3 bedroom, 2.5 bath and will have sustainable/green design elements.

CAPE FEAR HOUSING LAND TRUST

BOARD OF DIRECTORS

Board Member	Representing	Profession
Walter "Pete" Avery	Community Representative	Vice President - Administration, *McKinley Building Corp.*
Rick Bawcum	Cape Fear Habitat for Humanity, Inc.	Developer, *@ Home in the Carolinas*
J.Clark Hipp (President)	Community Representative	Architect, *Hipp + Best Architects PC*
Angela Keith (Secretary)	Affordable Housing Coalition of SENC, Pender County representative	Director, *Pender County Housing Authority*
Lisa Potter	Affordable Housing Coalition of SENC, Brunswick County representative	Broker/Realtor, *Compass Properties, LLC*
Matt Scharf	Community Representative	Owner, *Real Properties, LLC*
Linda Smith (Treasurer)	Affordable Housing Coalition of SENC, New Hanover County representative	Executive Director, *AME Zion Housing Development Corporation*
James Williams, III (Vice-President)	Cape Fear Habitat for Humanity, Inc., ex officio	Attorney, *Chicago Title Insurance Company*

COMMUNITY LAND TRUST FEATURES

Below are the 10 features that characterize the CLT model:

1. Nonprofit, tax-exempt corporation. CLTs are independent, nonprofit organizations, most of which qualify for 501c3 status through the Internal Revenue Service.

2. Dual ownership. The nonprofit organization owns the land and an individual homeowner (or a nonprofit housing developer or cooperative housing corporation) owns the improvements on the land.

3. Leased land. The individual homeowner "owns" the building through a renewable ground lease that gives him/her the right to the use of the land for 99 years.

4. Perpetual affordability. The ground lease gives the CLT the right-of-first-refusal to the home, should the current owner decide to sell, and the resale price is limited by a formula designed to give current owners some return on their investment while providing another lower-income household access to ownership.

5. Perpetual responsibility. The CLT plays an ongoing monitoring role with a continuing interest in the property and community in which it exists. The ground lease enables the CLT to force repairs, cure defaults, and monitor resales.

6. Community base. The CLT operates within a defined geographic area. This can be a single neighborhood, a city, or, in some cases, a region.

7. Resident control. CLT residents and community members nominate, elect, and comprise the CLT's Board of Directors.

8. Tripartite governance. The Board is composed of equal numbers of seats for CLT homeowners, community members, and public stakeholders.

9. Expansionist acquisition. CLTs are focused on bringing new units into their stewardship, though the pace of acquisition varies widely from CLT to CLT.

10. Flexible development. The model accommodates a variety of housing types, including mobile home parks, apartments, cooperatives, condominiums, and single family homes (the most common). Some also provide land for community facilities, neighborhood-serving businesses, and open space.

Community Land Trust vs. Conventional Market

Initial Affordability	CLT Transaction	Conventional Transaction	NOTES
Acquisition/Development Cost			- identical properties — same cost to develop
Land Acquisition	$ 60,000	$ 60,000	
Development	$ 140,000	$ 140,000	
Total Development Cost	$ 200,000	$ 200,000	- includes design, engineering, construction, permits, developer fees, etc.
Less Subsidy Provided / Required	$ 60,000	N/A	28.13% = Equity 71.88% = Loan to Value
Equals Original Purchase Price	$ 140,000	$ 200,000	- purchase price for conventional transaction = market value
Minimum Income Required	$40,545	$55,375	
% of Median Income (adjusted for household size)	68.37%	93.38%	- 4 person household in CLT
Original Market Value			
Land	$ 60,000	$ 60,000	
Improvements	$ 140,000	$ 140,000	
Total Appraised Value	$ 200,000	$ 200,000	$ - Amount of Appraised Value over Total Development Cost
			0.0% Increase in Total Appraised Value over Total Development Cost

Long-Term Affordability	CLT Transaction	Conventional Transaction	
			7 years later
New Market Value			
New Value of Land	$ 109,682	$ 109,682	
New Value of Improvements	$ 255,925	$ 255,925	
New Total Value	$ 365,608	$ 365,608	
Change in Total Value	$ 165,608	$ 165,608	- for CLT transaction, track change in value of:
			improvements only? no
Portion of Change In Value to be Shared	$ 165,608	$ 165,608	land & improvements? yes
Times "Shared Appreciation" Factor	25.00%	100.00%	
Equals Seller's Share of Change In Value	$ 41,402	$ 165,608	- include "Investment Ratio" in resale calculation? no
plus Original Purchase Price	$ 140,000	$ 200,000	
Equals Maximum Selling Price (also CLT's Purchase Option Price)	$ 181,402	$ 365,608	- for CLT property, actual selling price is lesser of price determined by formula OR new appraised value
Minimum Income Required	$51,867	$94,087	
% of Median Income (adjusted for household size)	73.58%	133.48%	- 4 person household in CLT

Inflation Factors:	
land	9.00%
improvements	9.00%
incomes	2.5%
housing costs	3.0%
closing costs	2.0%

Comparison of Economic Benefit to Sellers

Cash Down Payment	$ 4,200	$ 6,000	- 3% of original sale price
Principal Reduction	$ 13,534	$ 19,335	- assume mortgage terms of 6.250% for 30 years
Share of Appreciation	$ 41,402	$ 165,608	
Total Benefit	$ 59,136 *	$ 190,943	- sum of downpayment, principal reduction and share of appreciation
Rate of Return	45.91%	63.94%	- annual interest earned on deposit equal to downpayment during holding period

* ***Note:*** *Benefit shown does not reflect additional benefits to CLT homeowners which include deductibility of mortgage interest and real estate taxes, and the monthly savings from not having to amortize the purchase of land.*

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Burlington Associates in Community Development

WHAT FORECLOSURE CRISIS?

COMMUNITY LAND TRUSTS OFFER SECURE HOMEOWNERSHIP

By Van Temple, July 10, 2008

The current foreclosure crisis that is sweeping our country illustrates how vulnerable homeowners are—especially low- and moderate-income households. Some reports estimate that over 40 percent of foreclosures are occurring with homeowners who had good, 30-year, low-interest loans in place before they got caught up in the refinancing frenzy promoted by many mortgage providers. Unwisely, many homeowners switched their stable mortgages for other mortgage products that were, simply put, too good to be true.

In addition to the families that refinanced, there are many others now facing the prospect of foreclosure. Some people bought homes they could not afford as their primary residence betting that the rapid escalation in home values would continue. Others bought second and third homes expecting to resell within a short time-frame and realize a quick profit.

The fault for this crisis falls on many. Buyers who were often not well informed, mortgage brokers eager to earn fees, insurance analysts who did not accurately rate the risks, the financial industry that was pulling in investment dollars at record pace, and regulators and politicians who ignored the growing risks. The result is so widespread that it has jeopardized our nation's economy and affected the world economy as well. This crisis is especially harmful for families of modest means.

As the economy recovers over the next few years, homebuyers, especially first-time and low- and moderate-income homebuyers, need safer ways to move into responsible homeownership. Experience has shown definitively that the traditional real-estate industry cannot necessarily be counted to look out for the best interests of buyers.

While many homeowners were buying homes they couldn't afford and others were refinancing into mortgage deals that were too good to be true, another group of homebuyers has been doing just fine. Community land trust homeowners all across the country have been insulated from the irresponsible practices in the mortgage industry.

A survey of CLT homeowners found only two—yes, that is not a typo—two out of 3,100 homes in the survey foreclosed in 2007. That's an annual foreclosure rate of 0.06 percent.

How does this compare that to what is happening nationally? The overall foreclosure rate for the 4th quarter of 2007 was 2.0 percent and getting worse in 2008. That is 33 times higher than for CLT homeowners! Even compared to recent stable years like 2003 and 2004, CLT foreclosure rates were 23 times less than the national average.

How is it that CLT homeowners, of low and moderate incomes, are faring far better in the foreclosure storm than wealthier households? There are several reasons but first, some background...

Under the community land trust model, the homeowner owns the house and the CLT organization owns the land. The homeowner has a mortgage on his/her house, but the monthly payment is lower than in fee-simple homeownership.

The CLT homeowner has a 99-year secure ground lease at a nominal monthly fee with the community land trust for exclusive use of the land. Because ownership of the house and land are separated, the homeowner and the CLT are permanently involved in the well being of the household, the house, the land, and the financial arrangements that make it all possible.

When a family purchases a CLT home they receive both HUD-certified homebuyer counseling and training in shared-equity homeownership. Mortgages must meet certain criteria to be acceptable to the CLT. The partnership of homebuyer and community land trust begins when interested families enter training and it continues throughout the qualifying and purchase process. And after the family moves in, the CLT continues to offer support.

Typical first-time homebuyer programs offer assistance to families up to the point of sale, but after that they are on their own. Without continuing support, homebuyers are more vulnerable to losing their homes if economic conditions change, or if a mortgage broker offers a refinancing deal that is too good to be true. As I mentioned earlier—over 40 percent of the current U.S. foreclosures are households that gave up perfectly good, reasonable 30-year mortgages and refinanced into a mortgage they couldn't truly afford and in many cases didn't understand.

Homeowners can't refinance without the approval of the CLT organization, the permanent owner of the land. CLTs don't allow homeowners to get involved in any refinancing scheme that isn't in the best long-term interest of both the homeowner and the CLT, because CLTs are in the business of permanent affordability and secure homeownership.

Community land trusts are helping with the foreclosure crisis in two ways.

(1) **Prevention**—homeowners facing foreclosure agree to sell their home to the local CLT, thereby eliminating their unaffordable mortgage. The CLT then sells the home back to the family at a price they can truly afford, using standard 30-year mortgage products. The CLT retains ownership of the land and the homeowner signs a 99-year secure ground lease with the CLT for exclusive use of the land for a nominal monthly fee. Through the ground lease the homeowner agrees to restrict the resale price of the home when they choose to sell. The seller realizes a portion of the homes increased value and the next homeowner still gets an affordable price: Think Pay It Forward.

(2) **Recovery**—buying vacant, foreclosed homes, fixing them up and selling them to CLT buyers at affordable prices.

THE COMMUNITY LAND TRUST PROJECT
A PRODUCT OF COMMUNITY LEGAL RESOURCES

Community Legal Resources
Connecting Lawyers and Communities

COMMUNITY LAND TRUSTS:

A Primer for Local Officials

A product of Community Legal Resources
Community Land Trust Project
www.clrsolutions.org

I. BACKGROUND

A. What is a Community Land Trust?

A community land trust (CLT) is a private, nonprofit corporation created to provide secure affordable access to land and housing for the benefit of the community. The CLT provides access to ownership of housing for people who would otherwise be priced out of the housing market.

CLTs are unique in that they separate ownership of land and homes. CLTs permanently own the land on which homes and other structures or facilities are built, while individuals own the home (or other structure/facility) on the land pursuant to a long-term (usually 89-year) renewable ground lease.

The CLT model does not lend itself to a "hard sell"; informed consent is essential. CLTs work to ensure that prospective homebuyers know what they are getting and what they are giving up upon purchase of a CLT home. The ground lease entered into by every CLT homeowner requires that owners live in their homes as their primary residences. CLT homeowners and their descendents have a right to occupy and use the leased land for the term of the ground lease, provided that they abide by the terms of the ground lease. In exchange for an initial subsidy from the CLT that is built into the price of the home, the terms of the ground lease place some limitations on the resale of the home—preventing resale to a household that does not qualify as low-or moderate-income, and limiting the sales price to keep it affordable. The lease lays out a "resale formula" that determines the maximum allowable price that may be charged upon resale of the home. Each CLT designs its own resale formula to give homeowners a fair return for their investment, while keeping the price affordable for other lower income people. In addition, the CLT has the right to buy each home back for an amount limited by the CLT's resale formula.

Typically, CLTs are used in neighborhoods that are experiencing or are expected to experience gentrification. In many communities today, population growth and economic investment are driving up real estate prices so that fewer low- and moderate-income workers can afford to buy homes or rent in the communities where they work, thus posing a problem to both the workers and the business base in that community. Limited public funds are available to subsidize housing costs for lower income households. However, the gap between the amount of subsidy needed and the amount of subsidy available for affordable housing continues to widen as housing costs soar.

According to the U.S. Census, from 1990 to 2000 the median value of owner-occupied homes increased by 97% in the State of Michigan. While housing prices have escalated, government funding for affordable housing has decreased, and private funders are unable to subsidize these projects at the level previously supported by the government. While CLTs do not build equity for low-income communities as fast as conventional homeownership would, CLTs are designed to serve a population that otherwise would not have homeownership opportunities in the current conventional market. In addition, the initial investment in the affordability of the housing is preserved for future owners, thereby maximizing the utility of that investment.

CLTs are being developed in a growing number of communities – in expanding metropolitan areas from Cleveland, Ohio to Portland, Oregon; in university communities from State College, Pennsylvania, to Boulder, Colorado; and in expensive resort communities from the Florida Keys to the San Juan Islands of Washington State. In Michigan, CLTs have been formed in Traverse City, Boyne City, and Oceana County, among others.

B. The "Basics" of the Community Land Trust Transaction

The deal that a CLT homeowner makes with the Community Land Trust is the ability to purchase an affordable house now in exchange for giving up a portion of the future appreciation of the home when the CLT homeowner sells the home later. Here is a brief outline of the typical terms of a CLT purchase:

- The Homeowner purchases the house but not the land (which lowers the purchase price).
- The Homeowner leases the land from the CLT.
- The term of the lease is usually 89 years; the lease can be renewed once for another 89 years.
- When the Homeowner sells his/her house, a portion of the appreciated value stays with the land under the ground lease, so the home price is more affordable for the next buyer.
- The CLT home can be inherited.

1. The Ground Lease

An outline of a standard community land trust ground lease is provided at www.clronline.org/clt. Although each local CLT may modify the standard CLT ground lease to meet its needs and to best serve the community and the CLT homebuyers, the basic components of the CLT ground lease remain the same. Note that in some cases the overall CLT development may be organized as a condominium, and both land and homes may be owned and leased as condominium units.

2. The "Resale Formula"

The basic element of a Community Land Trust's mechanism for preserving the affordability of a CLT home is the Resale Formula. Typically, the Resale Formula limits the CLT homeowner to some percent of the gain in value of the CLT home. When the CLT homeowner wants to sell their home they are limited by the Resale Formula in their ground lease which determines the Purchase Option Price. The Resale Formula typically provides that the Purchase Option Price is equal to:

(a) What the CLT homeowner paid for the CLT home when s/he first bought it; **plus:**

(b) Some portion (often between 20 – 35%) of the appreciation in value of the CLT home, as determined by subtracting the appraised value when the CLT homeowner originally purchased the CLT home from the current appraised value of the CLT home at the time the CLT homeowner seeks to resell.

EXAMPLE (Assuming CLT homeowner retains 25% of the appreciation in value of the CLT home):

- CLT homeowner paid CLT $90,000 when it purchased the CLT home.
- At the time of purchase the CLT home was appraised at $105,000.
- At the time CLT homeowner seeks to resell the CLT home, the appraised value is $125,000 – an appreciation in value of $20,000.
- Twenty-five percent (25%) of $20,000 is $5,000.
- The Purchase Option Price equals what the CLT homeowner originally paid ($90,000) plus twenty-five percent of the appreciation in value ($5,000).
- Therefore, the CLT homeowner can resell their CLT home (to either the CLT or another low-income purchase) for the Purchase Option Price of $95,000.

C. Making Homeownership Affordable

CLTs have no magic method of creating the initial affordability in housing. The greatest advantage of a CLT is its ability to preserve affordability for future generations. Nonetheless, a CLT can use a variety of tools to make housing affordable. CLTs have arranged financing for people who cannot qualify for home mortgages from conventional sources. Other CLTs have worked to minimize the hurdle of large down payments for first-time homebuyers by creating a down payment loan pool. CLT homeowners generally must be able to handle monthly mortgage payments and other costs (including the ground lease fee for use of the land). However, the "standard permitted mortgage" for a CLT homeowner will also give the CLT the ability to step in and "cure" homeowner mortgage defaults or otherwise maintain control of the property for CLT purposes in face of a potential foreclosure.

D. Transferring Ownership Between CLT Homeowners

After giving the CLT adequate notice, a CLT homeowner can sell the CLT home to an eligible buyer (i.e., someone who meets the income qualifications), transfer the lease, and move away. Since CLTs commonly retain an option to buy the CLT home, a CLT homeowner who wishes to leave may sell his/her house to the CLT. The CLT will, in turn, sell the CLT home and lease the land to a new CLT homeowner.

Long Term Effectiveness of CLTs*

Between 1984 and 2002, the Burlington Community Land Trust (BCLT) in Burlington, Vermont developed 259 moderately-priced single-family houses and condominiums. All of these homes were sold to first-time homebuyers subject to durable controls over their occupancy and resale, controls designed to maintain their availability and affordability for low-income households far into the future. The first resale of a BCLT home occurred in 1988. By the end of 2002, the BCLT had overseen the resale of 97 houses and condominiums.

This pool of resales provided a rare opportunity to evaluate the performance of a housing model that promises to secure the benefits of homeownership for persons of limited means, while achieving larger social goals like the preservation of affordability, the stewardship of public subsidies, and the stabilization of residential neighborhoods. There had been no systematic evaluation of these claims heretofore, because most of the nation's CLTs are still too new and too small to have had a significant number of resales. The BCLT was an exception. Its sizable portfolio of resale-restricted housing offered enough cases to assess how effective the BCLT had been in actually delivering – and equitably balancing – the individual benefits and the community benefits promised by its innovative model of homeownership.

The study's principal findings were as follows:

• Preserving affordability. Affordability not only continued between successive generations of low-income homebuyers, but improved – even when the favorable effect of falling mortgage interest rates was eliminated. The average BCLT home was affordable to a household earning 62% of Area Median Income (AMI) on initial sale. On resale, it was affordable to a household earning 57% of AMI.

• Retaining community wealth. Public subsidies invested in these houses and condominiums remained in the homes at resale, underwriting their affordability not only for the first buyers but for subsequent buyers as well. Only in two cases of foreclosure were these subsidies lost. More typically, these subsidies not only remained in the property but increased in value. On the initial sale, the total value of the public subsidies put into the BCLT's homes was $1,525,148. On resale, the total value of these retained subsidies was $2,099,590.

• Enhancing residential stability. Land and housing brought under the stewardship of the BCLT were rarely removed from its portfolio. Affordability and owner occupancy protections remained in place for ninety-five percent (95%) of the 259 units of owner-occupied housing developed by the BCLT between 1984 and 2002. Even in cases where homeowners defaulted on their mortgages, their resale-restricted homes stayed under the BCLT's care – neither lost to the market nor lost to absentee ownership.

• Expanding homeownership. Access to homeownership for persons excluded from the market was expanded. All of the households served by the BCLT earned less than median income. A majority earned considerably less than 80% of AMI.

• Creating individual wealth. When reselling their BCLT homes, most homeowners walked away with more wealth than they had possessed when first buying a BCLT home. Their equity gains were modest when compared to what they might have realized from the resale of an unrestricted, market-rate home, had they been able to afford such a home, but BCLT homeowners still earned a respectable return on their initial investment. Their annualized rate of return, across all 97 resales, averaged 17%. The average BCLT homeowner, reselling after five years, recouped her original downpayment and then realized a net gain in equity of $6,184.

• Enabling residential mobility. Mobility was assured, with households who left the BCLT doing so for similar reasons, with similar destinations, and with similar success as homeowners buying and selling on the open market. Probably the most surprising finding, in light of the relatively modest equity gains realized by these homeowners on resale, was that a majority of them bought market-rate homes after leaving the BCLT. Sixty (60) households made the leap into market-rate homeownership; four (4) bought another resale-restricted BCLT home; sixteen (16) became renters; and one died. (The subsequent housing situations of another sixteen (16) households could not be determined, primarily because they left the state.) Among the BCLT homeowners whose subsequent housing situations were known, 74% of them bought market-rate homes within six months of re-selling their limited-equity houses or condominiums; another 5% traded their first resale-restricted home for another, choosing to remain within the BCLT.

The Burlington Community Land Trust operates in a housing market with rising prices, a growing demand for moderately-priced housing, and a chronic shortage of houses and condominiums within the financial reach of persons earning below 80% of median income. Community land trusts operating in markets different from the BCLT's may achieve different results. Nevertheless, the performance of the BCLT's portfolio of resale-restricted, owner-occupied housing provides encouraging evidence of the model's effectiveness, while lending credibility to the limited-equity homeownership programs of many other organizations, CLT and non-CLT alike, that seek to promote the legitimate interests of first-time homebuyers, without sacrificing the legitimate interests of a larger community. For over nineteen years, the community land trust in Burlington, Vermont has been doing what it promised to do.

*The Executive Summary of "Permanently Affordable Homeownership: How the Community Land Trust Delivers on Its Promises?" by John Emmeus Davis & Amy Demetowitz (2003), as revised with the permission of the Burlington Community Land Trust.

II. SPECIAL CONCERNS OF LOCAL OFFICIALS

A. Zoning

The development of CLT housing does not differ from the development of any other type of affordable or market-rate housing. Therefore, all applicable local zoning laws and regulations will apply.

B. Building Permits and Compliance with Municipal Codes

The acquisition, development and sale of CLT housing does not differ from the acquisition, development and sale of any other type or affordable or market-rate housing. Therefore, all applicable building permits and compliance with local building, safety and other codes and regulations will apply.

C. Land Division Act

The nature of a CLT housing development does not exempt a development from compliance with the Land Division Act. (MCL 560.101 – 560.293) In some cases, site condominiums may be used instead of platted subdivisions.

D. Affordable Housing

A community land trust, by its nature, provides for affordable housing. Where a local government makes funding or other forms of public support available to a CLT project in support of a CLT development based on assurances of continued affordability of a proposed development, a CLT structure provides assurances that the affordability of the home(s) will be maintained indefinitely. The local government should look to the terms of the CLT ground lease to determine the income restrictions imposed (e.g., low or moderate income) and the length of time for which the ground lease shall apply (usually 89 years).

Note that in certain situations the ground lease may provide for the lifting of the affordability restrictions – generally, in deference to the entity that has financed the CLT homeowner's mortgage. However, it should also be noted that the Community Land Trust's main mission is to preserve the affordability of its CLT homes and therefore it will generally do everything in its power to prevent the CLT home from being returned to market rate.

E. Transfer of Property/Recording of Deeds

The CLT will remain the owner of the land occupied by the CLT home. At the time of the initial sale to the CLT homeowner, the CLT will issue a warranty deed for the improvements (i.e., the home) and will execute a long-term (usually 89 years), renewable ground lease with the CLT homeowner for the land on which the CLT home sits. The recorded warranty deed for the improvements will reference the ground lease and a "Memorandum of Lease" will be recorded along with the warranty deed to place the interest of the homeowner in the land of record. Among other things, this helps make the homeowner's interest financeable and insurable.

F. Taxation

Community land trust properties are issued two tax bills. The first, to the CLT homeowner is for the value of the improvements (i.e., the home). The second, issued to

the CLT is for the value of the property. The CLT may, via the ground lease, provide that the CLT homeowner will pay the bill for the taxes on the property.

The tax levied on the improvements should reflect the restricted market value of the improvements given the restrictions on resale price imposed by the CLT via the CLT ground lease. Similarly, the tax levied on the land should reflect the limitations on use or resale of the land imposed by the ground lease and the substantially below-market ground lease rentals.

A sale of the improvements will be a "transfer" of that property for purposes of Proposal A. However, because of the restrictions on transfer that apply to the property, the increase in taxable value resulting from the transfer should be limited in accordance with the resale formula in the ground lease. The taxable value of the land will not be affected since the CLT continues as the owner.

G. Financing

CLT homeowners, although purchasing the CLT home at a reduced/affordable price, will almost always need to seek a loan from a commercial lender in order to buy the CLT home. CLTs make an effort to work with and educate local lenders regarding the nature of CLTs so financing will be available to potential CLT homebuyers.

Of course, because all CLT programs have the purpose of promoting, or at least preserving, the availability of affordable housing, federally regulated depository institutions can expect to receive Community Reinvestment Act (CRA) credit for participation in, and financial support of, these programs.

CLT-related mortgages are increasingly accepted in secondary markets. State housing agencies are often willing to purchase them, and FNMA offers a CLT program. The increasing acceptability of CLTs is demonstrated by the fact that FHA insurance is available for CLT purchase mortgages, and financing has also become available under the Rural Services 502 program. Of course, financial institutions may, instead of selling a CLT mortgage, hold it itself.

When first approached, lenders may be concerned that a CLT will inhibit their ability to foreclose in the event of a default and make it difficult to remarket the property in a timely manner. CLTs have been able to negotiate mortgage agreements that address the legitimate concerns of lenders and also protect the CLT's long-term interest in the property by allowing the CLT to step in and cure a default, when necessary, to prevent the property from being sold on the open market (without price restrictions to retain the home's affordability).

H. Title

The instruments used to perform the sale of the property are a ground lease of the land and a deed for the improvement on the land. What will be recorded is usually a memorandum of ground lease and a warranty deed both extending from the CLT to the CLT homeowner. The memorandum will typically set forth the restrictions on title including a reservation of mineral rights, the right to purchase retained by the CLT, the duration of the lease, and use and transfer restrictions.

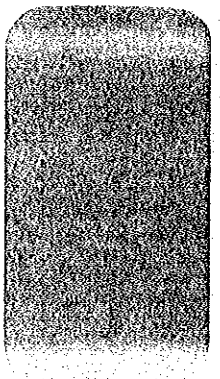
As a consequence of the transaction, title to the land will continue to be held in the CLT, subject to the lessee-homeowner's leasehold interest in that land. Title to the improvements will vest in the homeowner. The homeowner's leasehold interest

in the land and ownership interest in the improvements may both be given as security for a loan so a mortgage will often be recorded.

A homeowner may sell his or her interest to another qualified purchaser. At.that time, usually the original lease will be terminated and a new lease will be executed by the CLT and the new purchaser. The selling homeowner will also execute a deed for the improvements to the new purchaser.

The deed will recite the consideration paid for the improvements on the land and will be subject to transfer tax based on that consideration.

Generally, CLT transactions are insurable like other residential transactions. The primary difference is related to the nature of the ground lease. Therefore, an endorsement will be added to the both the owners and the loan policy to reflect the nature of the interest insured as being a leasehold owners interest or a mortgage secured by the leasehold interest in the land and the full ownership of the improvements.



I. Control and Accountability of the CLT Homeowner

Leaseholders – homeowners, farm owners, or business owners – retain most of the rights that go with ownership. CLT control is generally limited to areas where the CLT has a long-term interest. For example, it is vital to the CLT to preserve affordability of housing units. Most CLT ground leases also prohibit absentee ownership of housing. Also, CLTs want to protect the condition of the land and buildings which would be left at the end of the lease term.

J. Dissolution of the CLT

If a CLT is dissolved and ownership of the land is transferred, the new owner is obligated to honor the long-term lease agreements between the CLT and its leaseholders. Typically, if the CLT ever offers the land for sale to a non-charitable buyer, the CLT homeowner will have the right of first refusal to buy the land.

This document is a product of the Community Legal Resources Community Land Trust Project. Please check the CLR CLT Project website for updates to this document: www.clronline.org/clt.

This publication is intended to provide general information, and is not a substitute for legal advice. If you have additional questions about this issue, contact Community Legal Resources at 313/964-4130.

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FannieMae

3900 Wisconsin Avenue NW •
Washington, DC 20016-2892
Phone (202)752-7000

Fannie Mae Guidelines on the Valuation of a Property Subject to a Leasehold Interest and/or Community Land Trust (CLT)

Leasehold Interest

Leasehold interest is the right to the use and occupancy of real property by the existence of a lease agreement. The lessee (tenant or renter) enjoys these rights for a stipulated period of time, subject to the payment of rent and other conditions. The valuation of a leasehold interest may require complex analysis, so the appraiser should be prepared to develop a thorough, clear, and detailed narrative for the addendum section that describes the lease agreement's terms and conditions and discusses their impact, if any on value and marketability.

The leasehold box should be checked if the house being appraised is on leased land or is subject to what is termed a "ground rent". In brief, ground rent is the rent paid for the right to use and occupy land according to the terms of a ground lease. Although this is uncommon in most areas, there are areas of the United States where ground rents are very common. The terms of the ground lease should be identified and the effect of the lease analyzed in a narrative discussion attached as an addendum to the report.

The appraiser should use sales of properties that have similar leasehold interests. When adequate, closed leasehold comparables are available, the appraiser will report them in the sales comparison section of our report forms to arrive at an opinion of the market value of the leasehold estate for the subject.

However, the appraiser may not have sales available which have the same lease terms. In such cases, the appraiser may use the most similar sales available with different lease terms or even fee simple sales. The appraiser must make an appropriate adjustment (if any), on the sales comparison grid, to reflect the market reaction to the different lease terms or property rights appraised. The appraiser should explain why the use of these sales was appropriate.

Forms 1004, 1025 and 1073 have an adjustment line on the sales comparison grid. Forms 2055 and 2065 do not have a specific adjustment line, therefore the appraiser must use one of the blanks lines for making the appropriate property rights adjustment.

Community Land Trust Properties

Note: Community Land Trust Mortgage Loan Transactions are eligible under Part V, Chapter 3, Section 301.05 of the Fannie Mae Selling Guide. **The Lender must contact their Customer Account Manager to arrange for specific terms and conditions to be added to their Master Agreement to deliver this type of mortgage. In all cases the land records of the subject property must include adoption the terms and conditions incorporated in the Fannie Mae approved *Uniform Community Land Trust Ground Lease Rider.***

Community Land Trusts ("CLT"), typically, are non-profit organizations that acquire land for a variety of purposes including, but not limited to facilitating home ownership among lower income individuals and families. Similar to other leasehold properties, CLT's retain ownership of the land. CLT's offer a long term (99 year) , renewable ground lease to the owner of the improvements. By removing the cost of the land from the transaction, the home may be purchased at a lower cost, thereby increasing affordability. CLT's are established in communities to offer home ownership opportunities and to create and maintain a permanently affordable housing stock. Therefore, the CLT ground lease may contain restrictions on purchaser eligibility and restrictions on the resale of the property.

As the development of Community Land Trust (CLT) properties expands in the United States, the question about how to appraise these individual properties has arisen. Chapter V, of this Selling Guide, details our general appraisal requirement for analyzing the property appraisal aspects of conventional, conforming, one to four family properties. This section provides additional guidance to the appraiser and lender on the appraisal process for properties located on land held by a CLT.

Like other non-profit affordable housing developers, community land trusts, use grant, gift and subsidy dollars to acquire the land and otherwise write down development cost to an affordable level. The CLT structure is unlike traditional affordable homeownership programs where the subsidy is a) included in the selling price, b) secured by "soft second' liens on the homebuyers property and c) due on resale. The selling price of a CLT home typically does not include the subsidy amount used to acquire the land. Therefore, the sales price to the CLT homebuyer may be less than the leasehold interest in the property.

Selection of Appraiser

As is the case for all mortgages delivered to Fannie Mae, the lender is responsible for the accuracy of both the appraisal and its assessment of the marketability of the appraisal. As indicated in the Selling Guide, Part V, Chapter 1, Section 101, " Lenders are responsible for the selection of appraisers, are

accountable for their performance- and must take appropriate steps to ensure that the appraiser is qualified to perform appraisals for the particular types of property that the lender intends to refer to the appraiser." It follows that an appraiser that is to appraise a CLT property must have knowledge and experience with the tools that are necessary to value this type of property (such as direct capitalization and market derivation of capitalization rates).

Appraisal Methodology

The appraisal of a CLT property requires the appraiser to analyze the CLT property, subject to the ground lease (i.e. leasehold estate) as security for the mortgage. Fannie Mae and the Institute for Community Economics have reached agreement on a Uniform Community Land Trust Ground Lease rider, to be attached to a CLT ground lease for mortgages that will be sold to Fannie Mae. This rider amends the CLT ground lease to provide for the removal of resale and other restrictions that would hinder the mortgagee's ability to dispose of the property upon foreclosure.

Since the CLT typically subsidizes the sales price to the CLT homebuyer, that price may well be less than the market value of the leasehold interest in the property. Since the *Uniform Community Land Trust Ground Lease rider* removes these resale and other restrictions for the mortgagee, it is important that the appraised value of the leasehold interest in the property be well supported and correctly developed.

The appraiser must develop an opinion of value for the leasehold interest under the hypothetical condition that the property rights being appraised are the leasehold interest without the resale and other restrictions that the Uniform Community Land Trust Ground Lease rider removes if the mortgagee must dispose of the property upon foreclosure. The lender is required to advise the appraiser that the appraisal report must contain the following statement:

> **This appraisal is made on the basis of a hypothetical condition that the property rights being appraised are the leasehold interest without resale and other restrictions that are removed by the Uniform Community Land Trust Ground Lease rider.**

Because of the dynamics of CLT properties, the appraiser's first step should be to determine the fee simple value for the subject property using the sales comparison analysis. The second step is to determine the leased fee value of the ground lease. The final step involves deducting the leased fee value from the fee simple value to arrive at the leasehold value.

Determining the Property's Fee Simple Value

The first step in the valuation process requires the appraiser to develop an opinion of the fee simple value of the subject. Therefore, it is expected that the appraiser will use sales of fee simple ownership of similar properties.

Use of sales without a ground lease (fee simple) is preferable. However, the appraiser may use sales of leasehold properties but they will require adjustment based on their lease to reflect a fee simple interest. CLT sales may be available in the community and, if so, they should be specifically discussed in the appraisal report. However, CLT sales may not be appropriate in developing value since the prices are normally limited by restrictions in the ground lease and would therefore not be comparable to the hypothetical condition of the appraisal, which assumes a leasehold interest without resale and other restrictions.

Determining the Capitalization Rate

The most direct method for determining the capitalization rate is by extraction from the market. This normally requires an active market with sales of fee simple ownership properties and sales of comparable non-CLT properties subject to a ground lease. To extract the capitalization rate, (all things being equal) the appraiser divides the non-CLT annual ground rent by the difference in sales price of the comparable fee simple and leasehold properties.

There is another method for determining the capitalization rate that is especially applicable when no sales of comparable non-CLT properties subject to a ground lease are available. This method compares alternative low risk investment rates such as long term bond rates. The appraiser should select a rate that best reflects a "risk-less" rate (safe rate), loss of liquidity, management compensation, and compensation for investment risks assumed.

Determining the Property's Leasehold Value

Direct capitalization of the ground rent is used to convert the annual income from the CLT ground lease into an indicated leased fee value by dividing the income by a market-derived capitalization rate. Subtracting this leased fee value from the estimated fee simple value of the subject property leaves the leasehold value. This method does not require documentation of the actual land value, as do other methods.

The appropriate steps would be:

Step 1. Determine the annual contract rent due the CLT under the terms of the ground lease,

Step 2. Determine the appropriate market capitalization rate for the ground rent,

Step 3. Divide the annual rent by the market derived capitalization rate to indicate the leased fee value.

Step 4. Subtract the leased fee value from the estimated fee simple value to indicate the subject property's leasehold value.

Example (for illustrative purposes only):

- Annual rent due the CLT for ground lease: $300
- The market divided capitalization rate: 5.75%
- $300 divided by 5.75% equals $5,217.39 ($5,200 rounded)
- If the fee simple property value were $100,000; the indicated leasehold value of the property would be $100,000 minus $5,200 or $94,800. The final opinion of value reported is $94,800.

Appraisal Reporting

The CLT appraisal should be reported on Fannie Mae Form 2055. "Leasehold" property rights appraised should be indicated in the "SUBJECT" section of the report. The CLT ground rent should be reported in the "Special Assessment" area of the same section. The appraisal should also indicate "Prop.Rights" as the "FEATURE" and "Fee Simple" as the "DESCRIPTION" for the "SUBJECT" in the adjustment grid of the "SALES COMPARISON ANALYSIS" section. The adjustment grid should then estimate the Fee Simple value for the subject property. In the "Summary of sales comparison and value conclusion" area of this section of the report, the following items need to be present in addition to the normally required discussion (many times this area will have to be continued on the addendum for CLT appraisals):

1. Indicated Fee Simple Value for the Subject
2. Indicated Leasehold Value of the Subject (Fee Simple less the Leased Fee)
3. The statement "See attached addendum for development of capitalization rate and expanded discussion of sales used and considered."

At the bottom of Page 1 of the form, the "subject to the following repairs, alterations or conditions" box must be checked with the statement "see attached addendum for hypothetical condition" added at the end. If the subject property is not completed, the "subject to completion per plans and specifications ..." box should **also** be checked.

The leasehold value should be indicated as the value on the bottom line of page one and again on page three of the report.

Prepared By:

Joseph L. Minnich III
Senior Business Manager
Single Family Mortgage Business
Washington DC

Kevin R. Hickey
Underwriting Consultant
Credit Policy
Washington, DC

June 13, 2001

To: Pender County Planning Board

From: Ben Andrea, Planner I

Date: May 26, 2009

RE: Discussion: West Pender Rail Trail status update and request for concept approval

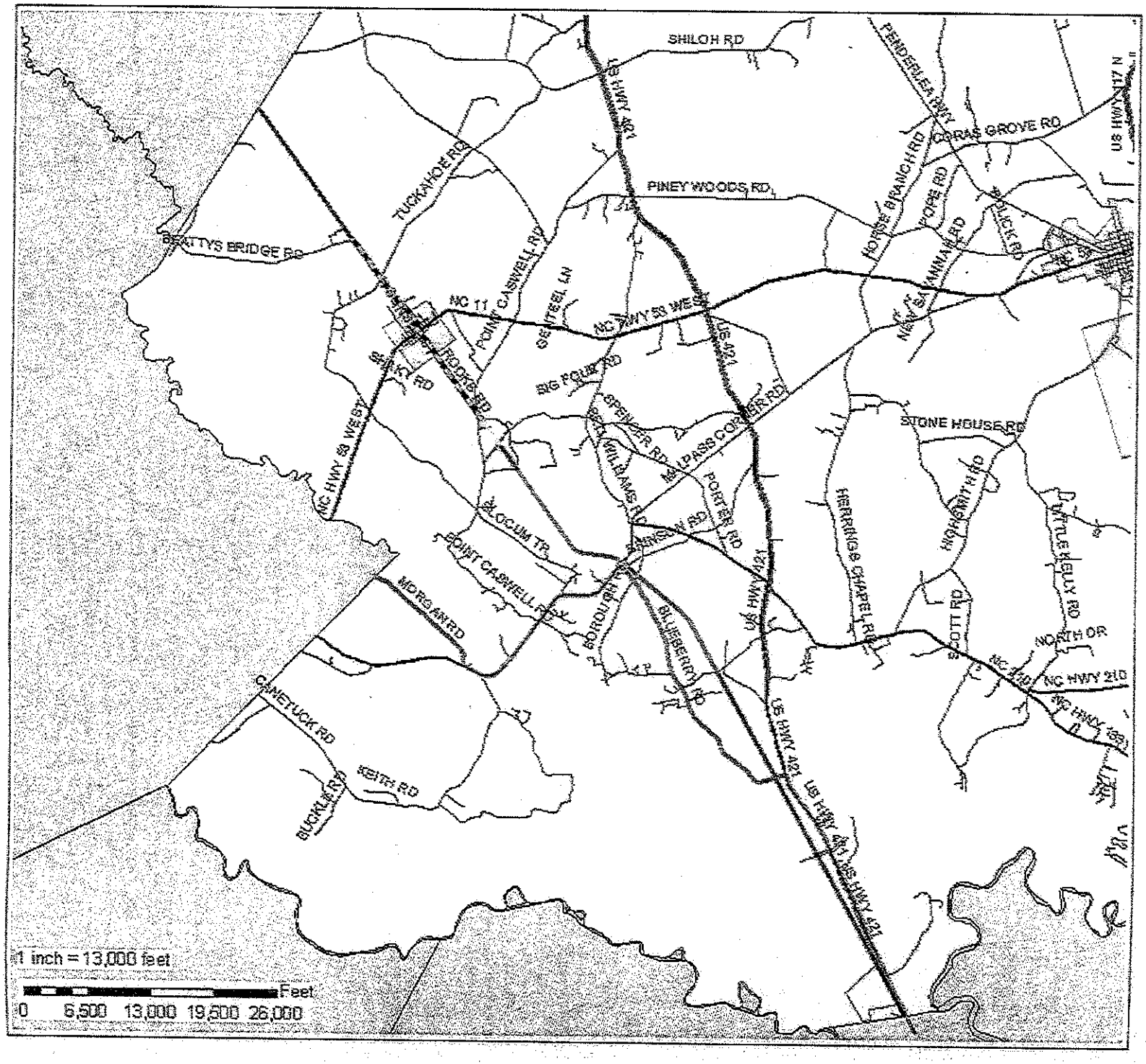
Please find attached a preliminary report provided by Ms. Kelly Pack from the National Rails to Trails Conservancy (NRTC) regarding a concept to establish a non-motorized multipurpose trail along the abandoned Atlantic Coastline Railroad right of way in western Pender County. The abandoned right of way traverses western Pender County passing through the Town of Atkinson, the communities of Currie and Rooks, eventually paralleling US 421 and the future County Commerce Park. The proposed recreational trail would ultimately connect Fayetteville to Wilmington.

Several organizations have issued resolutions of support to establish this trail concept. The NRTC recently sponsored a public input session in Currie which obtained an overall positive response with some individual concerns being noted. The Board of Commissioners recently approved a Special Use Permit for the future County Commerce Park, agreed to work with trail planers to establish a section of the trail adjacent to the County Commerce Park.

Staff is requesting that the Planning Board consider adding the concept of this future recreational facility to the 2010 Comprehensive Land Use Plan and link future development applications that are adjacent to this corridor along with other development review opportunities with the proposed trail project. The Planning Board's recommendation will be forwarded to the Board of Commissioners during the June 15, 2009 meeting. If the Planning Board and County Commission agree with the concept of this trail plan, staff will take the concept plan to the Comprehensive Plan public input meetings this summer.

Staff is available for questions.

PTD



Pender County Rail Trail Project

Overview of Proposed Phases

- On-Road Section I
- On-Road Section II
- Phase VIII
- Phase VII
- Phase VI
- Phase V
- Phase IV
- Phase III
- Phase II
- Phase I
- Primary Roads
- ECG and CFR
- Municipal Boundaries
- County Industrial Park

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The Atlantic-Seaboard Coast Line Trail Concept Plan: Connecting Fayetteville and Wilmington, NC

Interim Report to Pender County for the West Pender Rail-Trail Alliance

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I. Executive Summary [pp. 1-3]
II. Trail Benefits [pp. 4-5]
III. Rail-Trails in the Southeast: Precedence for Success [pp. 6-11]
IV. West Pender Rail-Trail (WPRT) and Atlantic-Seaboard Coastline (ASCL) Rail-Trail Vision [pp. 12-18]
V. Appendices (large electronic attachment)
   a. *Legal Principles Affecting the Ownership of Rail Trails and the Liability of Trail Managers in North Carolina.*
   b. West Pender Rail-Trail Alliance Feedback Report
   c. West Pender Rail-Trail Field Report
   d. Maps: West Pender Rail-Trail, proposed phases of development
   e. Funding for Rail-Trail Development in North Carolina
   f. Non-Governmental Trail Maintenance and Management Models

I. EXECUTIVE SUMMARY

Trails bring many benefits to the communities they traverse. Trails positively impact individuals and improve communities by providing recreation and transportation opportunities, encouraging economic and community development, and providing safe places for people to engage in physical activity. Railroads helped build America. From coast to coast, these ribbons of steel connected people and communities to create a single nation spanning the vast North American continent. As the railroad industry began to decline, communities were given the opportunity to convert these corridors, with their gentle grades and accompanying infrastructure, into community assets perfect for a variety of users including walkers, equestrians, bicyclists, and people with disabilities, linking neighborhoods, work places, schools, libraries, and additional community destinations.

This report is an assessment of the potential for the abandoned segment of the Atlantic Seaboard Coast Line (ASCL) Railroad corridor through Pender County to become a multi-use trail preserving the rich history of this line and allowing users to once again traverse the traditional route and enjoy the beauty of North Carolina's landscape.

A subsequent step is to perform a physical assessment of the corridor, noting the current physical condition of the corridor and opportunities, such as proximity to schools and businesses, and constraints, such as missing infrastructure. Along the Atlantic Coast Line, there are numerous opportunities. From the south along US-421, the State already has an on-road bike route with official signage in place. This trail would be heavily used by the cycling community, which already is on the roadways throughout the year bringing in significant tourism dollars to the County. Moores Creek Battlefield is a natural asset to which the trail can connect and thus making a unique marketing opportunity for the trail. Heading north out of Currie the corridor would offer some of the finest rural landscapes that southeastern North Carolina has to offer, luring not only bikers and walkers but also birders and wildlife and nature lovers of all types. The potential in the town of Atkinson is also exciting as the corridor passes right through the historic downtown. The obvious needs of trail users could be served through new business creation in the downtown district creating a much needed economic boost for the town.

Constraints include parcels that are currently in private ownership and may disrupt the continuity of the trail. While many property owners have expressed a desire to work with developers of the trail, including some large commercial parcel owners, there are some interests who still have deep reservations.

Social Conditions

In determining the feasibility of creating a trail, it is also beneficial to survey the communities adjacent to the trail to determine the social and health impacts a trail may impart. The rail corridor that lies in Pender County runs adjacent to towns including Currie, Rooks and Atkinson. In 2000, the total population of Pender County was 47,863. About 15% of the population is over the age of 65, 17.9% is under the age of 14 and 9.3% of the population lives below the poverty line. Trails are particularly good for older persons who may be more able to engage in physical activity when safe infrastructure is in place. Youth in rural areas are always in need of safe places to recreate and be active; this need is highlighted by the explosion in childhood obesity where North Carolina has the dubious distinction of the fifth highest percentage in the country at 31%! Additionally, poorer populations may have difficulty affording an automobile. A trail provides an opportunity to reach destinations safely by bicycle or by foot. Since socio-economic data may vary across the county, statistics for the western part of the county will be analyzed and included in the final report.

the oldest cities on Florida's west coast. Dunedin, once one of Florida's chief seaport and trading centers, saw its local economy slow considerably through the 1980s. In 1990 – the year before 4.2 miles of the Pinellas Trail opened through the heart of its downtown – the vacancy rate in Dunedin was 30 percent.

With the opening of the Pinellas Trail in 1991, though, Dunedin suddenly had 500 people traveling through its downtown on weekdays and 800 per day on weekends. Not content to leave their hopes for economic revitalization resting entirely on the trail, Dunedin's community redevelopment agency invested about $1.2 million to improve their main street's streetscape, which included new sidewalks, numerous pedestrian crosswalks, stop signs and a new posted speed limit of 15 miles per hour. With the combination of the trail's proximity to downtown and the improved accessibility for those on foot, Dunedin's main street is now a vibrant and distinctive place that no longer has vacancies.

- In a 1999 study on Ohio's Little Miami Scenic Trail users of the trail spent an average of $13.54 each on 'soft' goods such as food, beverages and gasoline. They also reported spending $277 each on 'hard' goods related to their use of the trail such as bicycles, helmets, clothing, and car bike racks etc. The estimated overall user count on the trail that year was 150,000 people. This broadcasts to an overall impact of over $2 million a year on soft goods and $41.5 million on hard goods going into the local communities along the trail.

Health Benefits: Rail-trails positively impact individuals and communities by providing equitable, safe opportunities to be physically active through recreation and transportation. This access to healthy, active recreation is important now more than ever as we see the general public ailing with health issues that can all be addressed with a well built trail development.

- In 2004, the Centers for Disease Control announced that the obesity rate among U.S. adults had swelled to 30 percent, a figure that has doubled since 1980. The current generation of children in this country is projected to be the first to have a lower life expectancy than their parents. The annual medical costs attributed to physical inactivity have been estimated at $76 Billion, nearly 10% of all medical expenses. Health risks associated with obesity can be addressed by providing safe, affordable opportunities to engage in physical activity. According to Eat Smart Move More NC, in 2007 over one-third (35.5%) of children ages 6 to 17 in N.C. were either overweight or obese and only four states had worse childhood obesity rates. (www.eatsmartmovemorenc.com) Related studies show that multi-use trails contribute to community health by providing accessible and safe walking

The lack of multi-use trail facilities in the area makes it difficult to imagine how a trail of this scale will benefit a multi-county area and the state. Below are several examples of communities and regions that have taken advantage of trail development and have embraced the concept within the broader context of community health, recreation and tourism promotion, and alternative transportation. While there are thousands of examples of successful rail-trails and multi-use greenways, the few cited below were chosen to highlight southeastern trails that have implications pertaining to the ASCL trail project, and more specifically the Pender County section. For more information and images of these trails, visit Rails-to-Trails Conservancy's trail finder web site, www.traillink.com.

Dunn-Erwin Trail – Harnett County, NC

The closest rail-trail to Pender County is a 5-mile trail that connects the communities of Dunn and Erwin. In 2004, Harnett County received over $100,000 in federal funding to acquire the abandoned corridor through Category 8 of Transportation Enhancements program. The trail is a local favorite and provides a safe route for walkers and bikers of all ages and abilities to safely exercise, recreate and enjoy the beautiful surroundings. Students from North Carolina State University developed a trail master plan in 2001. The Dunn Erwin Trail is a great example of a successful rail-trail project of similar scale (in the first phase) in nearby Harnett County.

Trail Facts

- Mileage: 5.3 miles
- Surface: crushed stone
- Contact: City of Dunn, Public Works Department
  P.O. Box 1065
  Dunn, NC 28335
  (910) 892-2948
- Funding received: Transportation Enhancements
- Management/Maintenance Model: The Dunn-Erwin Rail-Trail Authority was awarded Transportation Enhancement funding and the County accepted ownership of the trail during Phase II of trail development (asphalt surfacing). The County and the two towns of Dunn and Erwin contributed to the matching funds for completion. The City of Dunn Public Works Department maintains the trail.
- On TrailLink.com: http://www.traillink.com/ViewTrail.aspx?AcctID=6032288

- Chief Ladiga Trail – contacts for the city, county, and Jacksonville State University Environmental Policy and Information Center (assists with trail advocacy): http://epic.jsu.edu/depart/epic/clt/clt_contacts.html
- Silver Comet Trail – Ed McBrayer, Executive Director of the PATH Foundation. Phone: 404.875.PATH (7284) Email: path@pathfoundation.org

- Funding received: Transportation Enhancements; Recreational Trail Program funding; local matching funds.
- Management/Maintenance Model:
  - The Chief Ladiga Trail has a Board of Directors that manage the day-to-day operations of the trail. The Board's 13 members are appointed by and represent Calhoun County Commission and four cities that the trail connects.
  - Funding for the development of The Silver Comet Trail was co-managed by Georgia State Parks and the PATH Foundation. The PATH Foundation oversaw construction of the trail, except for in Cobb County, where the County DOT developed the trail.
- On TrailLink.com:
  - Chief Ladiga Trail: http://www.traillink.com/ViewTrail.aspx?AcctID=6031399
  - Silver Comet Trail: http://www.traillink.com/ViewTrail.aspx?AcctID=6032076

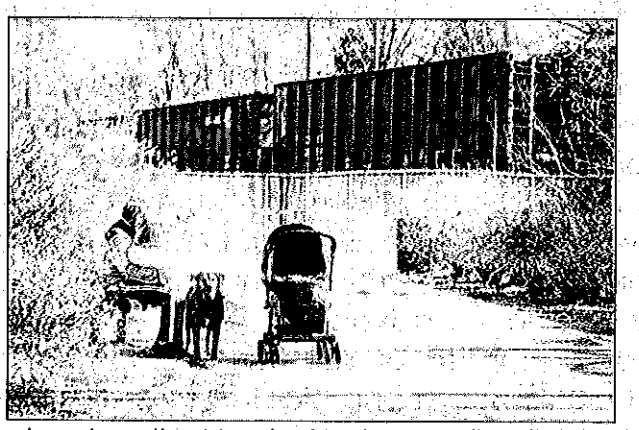
Walkers and bicyclist on the Chief Ladiga Trail. (Photo: Barabara Richey, RTC)

OTHER TRAILS – QUICK FACTS

Swamp Fox Passage *(Part of the Palmetto Trail system)*
- Location: Berkeley & Charleston Counties, South Carolina
- Mileage: 42 miles
- Surface: grass, compacted dirt

mentioned in the Executive Summary, the methods of acquisition can often play a determining role in the speed of trail development. Corridors that are railbanked, or preserved prior to abandonment, are more manageable because there is usually only one property manager to negotiate with (often the railroad company). Unfortunately, when the ASCL Railroad corridor was abandoned several years ago, rights to the corridor reverted to adjacent landowners creating dozens of parcel divisions. Acquiring property from several different landowners may prove to be more time consuming, but it is not impossible! Below are examples of trails that were developed through a combination of purchase and donation from willing landowners and eminent domain.

Marcia Cloninger Rail-Trail – Lincolnton, North Carolina *(1.5 miles)*



Taking a break on the Marcia Cloninger Rail-Trail. (Photo: RTC)

The City of Lincolnton saw the great potential for creating a trail along the unused NS ROW that ran through the center of town. Portions of the property reverted to adjacent property owners when the railroad abandoned the corridor. The city was able to acquire property from individual landowners, piece by piece and now boasts a beautiful trail that intersects the downtown square.

For more information: http://www.traillink.com/ViewTrail.aspx?AcctID=6016424
Contacts: Steve Gurley, Lincolnton Planning Director, stevegurley@ci.lincolnton.nc.us, 704-732-2281) or Dan Arrasmith of North Carolina Rail-Trails (darrasmith@ncrail-trails.org, 828-495-4472).

The preferred alignment would utilize the former corridor entirely, providing a safe and separate multi-use trail. However, alternate route alignments will allow Pender County to move forward with trail designation and promotion as the West Pender Rail-Trail Alliance works to secure agreements with landowners and explore funding options for trail development. A phased approach to trail development will allow for immediate trail identification (signage), while emphasizing the importance of acquiring parcels for continuous corridor development. This vision statement outlines the section of corridor with most immediate potential for trail development, from the New Hanover county line to Montague Road with a signed on-road spur to Moores Creek Battlefield. Focusing on this segment is advantageous because it advances a multi-modal connection between Wilmington and Moores Creek Battlefield, lending itself to natural trail marketing and branding "Battleship to Battlefield". Identifying the trail as a connecting corridor to a National Park Service (NPS) site will open up funding opportunities over the next decade as NPS prepares for its centennial celebration in 2016. The Centennial Initiative is providing federal funding and philanthropic donations to designated projects over the next seven years. More funding opportunities may become available to projects that connect people to National Park sites. The concept is also appealing to other public and private funders who want to see direct impact on community health, transportation and recreation equity, and the local economy.

Major Regional and National trail opportunities also exist for Pender County and the ASCL corridor. The East Coast Greenway has expressed their desire for this trail to be included as part of the 2,500 mile Greenway from Maine to Florida. This creates yet another amazing marketing tool and reason to believe that this trail could become a very significant economic engine in the region.

Implementation Strategy

Determining the feasibility of trail development along the corridor began with in-depth property research. Even though county property records indicate gaps in parcels where the corridor is located (suggesting unknown ownership), property research indicates that adjacent property owners may have rights to these "unknown" sections of land according to North Carolina state law related to ownership of rail corridors. For more information, see *Appendix A, Legal Principles Affecting the Ownership of Rail Trails and the Liability of Trail Managers in North Carolina.*

The next step was to determine public interest in the trail by engaging the community and soliciting input from adjacent property owners. In March 2009, WPRTA and Rails-to-Trails Conservancy (RTC) hosted a series of public meetings to gather community input on the trail concept. Individuals who owned

Traveling north along the corridor, there are a few large parcels directly adjacent to the county owned sections. Several of the larger parcels north of the new Pender Commerce Park are owned by the Corbett family, listed under different identifiers (Corbett Package Company, Corbett Brothers, Corbett Sand, LLC, Corbett Industries, Inc., etc.). As cited in the field assessment, large portions of the corridor are clear, and appear to be used as a dirt road.

Prior to development of Phase I, a signed interim alignment could follow NC Bicycle Route 5 along US-421 and continue northwest on Blueberry Road. In fact, East Coast Greenway has identified a route that shares NC Bicycle Route 5 and continues west onto Blueberry Road. South of the Blueberry Rd & US-421 intersection, there is a cluster of privately owned parcels intersected by the former corridor. Acquiring right-of-way may be challenging in this section due to the number of property owners that must agree to sell a small segment of their property or enter into an easement agreement. However, some small roads (i.e., Underwood Dr.) may allow access to sections of trail if agreements cannot be reached among all landowners.

Phase II: Blueberry Road to Montague Road (2.3 miles)
Continuing north along the corridor after its intersection with Blueberry Road, there is potential for the incorporation of a multi-use trail in the new residential development owned and managed by Pender Properties. The developers have expressed interest in including the trail in their plans, but a formal arrangement of inclusion should be negotiated between Pender Properties, the WPRTA, and Pender County. If continuous access to the corridor is obstructed by one or more smaller parcels in this area, Pender Properties could include trail development along the perimeter of the large parcel bordered by Blueberry Road on the west. An interim on-road route could follow the proposed East Coast Greenway alignment on Blueberry Road.

Phase III: Montague road to Borough road (2.5 Miles)
This section of the corridor is held by numerous landowners with whom agreements would have to be worked out for the trail to be feasible on the actual corridor. Blueberry Road parallels the corridor in this section just a half-mile to the southwest offering a possible route in collaboration with North Carolina DOT along the road right-of way.

Phase IV: Borough Road to NC-210 E (0.4 miles)
The corridor in this area passes right through historic downtown Currie. Some property owners in the area have shown interest in the trail and the economic opportunities it could bring into the old downtown area. The potential for small business creation in this section is promising.

The larger parcels present an opportunity to negotiate for longer sections of the corridor at a fraction of the time. With support from the County, the West Pender Rail-Trail Alliance (WPRTA) should continue outreach to adjacent landowners to negotiate for property easement or purchase sale agreements. The Conservation Trust of North Carolina has agreed to legally hold the property in the event that easement agreements are obtained. Property owners who provide access to their property through easements are provided liability protection through North Carolina's Recreational Use Statute (See *Appendix A, Section III*). When the property rights are acquired, the trail is ready to be developed. Funding for trail design and construction is available through North Carolina's Transportation Enhancements (TE) program and Recreational Trails Program (RTP). Examples of applied TE and RTP funding are cited in Section III of this report.

Management and Maintenance

There are several options for ensuring sustained management and maintenance of a trail. Most trails are managed at the local level and successful management models vary from single jurisdiction to multi-jurisdiction public and private partnerships. Acquisition of corridor segments in Pender County is being pursued by the WPRTA, but Pender County could increase its involvement in the acquisition process as funding and resources become available. WPRTA could also apply for funding of trail construction (see *Appendix E* for funding possibilities), but support from the county and eventual attainment is the most desirable management model. The County is best suited to receive funding from state and federal funding streams and could apply awarded funding to support trail construction and maintenance as part of a larger parks and recreation program. There are many successful examples of public-private partnerships for trail development, management and continued maintenance. A few examples are included in *Appendix F*.

Trail Surface and Specifications

The most suitable surface for the trail would be crushed stone due to the rural nature of the trail. Cost estimates for crushed stone varies depending on availability and proximity of product and equipment, but ranges from about $80k - $100k per mile. The trail will need to be built with federal construction standards guiding the process. These standards must be met to keep the trail eligible for federal dollars which will no doubt be sought for construction. According to the American Association of State Highway and Transportation Officials (AASHTO) bicycle design guidelines, recommended minimum width for a multi-use trail is 10 feet. Shoulder width recommendations vary depending on user type, but standards call for a minimum of 2 feet on either side of the trail.

- Cape Fear Cyclists
- North Carolina Rail-Trails
- Sierra Club, Cape Fear Chapter
- USS North Carolina Battleship Park
- Cape Fear River Watch
- Pender County Commissioners (support stated in minutes)

The next important step should be to include the corridor in city/county/regional recreation plans, transportation plans, comprehensive plans, and community zoning plans. Integration of the project into community plans is a requirement of many public grant programs at the state and federal level.

Conclusion

The Atlantic Seaboard Coast Line Corridor affords Pender County a unique and exciting opportunity to provide a world class trail experience, not only for its citizens, but for the entire region and visitors to the area. Local interest in the project is demonstrated by the admirable work and dedication of the West Pender County Rail-Trail Alliance and supportive feedback from local residents. It is our hope that this preliminary report has shown County officials the numerous benefits that this project can offer the residents in the area, as well as a roadmap for officials to follow to begin the process of development along the corridor. The examples of nearby successes are referenced in hope that contact will be made with your colleagues in those communities to help Pender County through the process of trail development in the years to come. This project has a broad base of supportive individuals, government entities and advocacy groups from the local, State, and Federal level; the West Pender Rail-Trail Alliance in partnership with the local leadership of Pender County should leverage this support to move forward with this rare opportunity. Support for the west Pender County section of the ASCL corridor will certainly be the impetus for a much larger and regionally significant trail effort. Please review this interim report under these considerations and expect the expanded version of this feasibility study this summer.

MEMORANDUM

TO: **Pender County Planning Board**
Mr. Trey Thurman, Pender County Attorney

FROM: **Pender County Planning and Community Development Staff**

DATE: **June 2, 2009**

RE: **Status of Conditional Approval for Pinnacle Ridge Subdivision**

The discussion item on tonight's meeting agenda is to address Pinnacle Ridge Subdivision's compliance with certain conditions of approval resulting from the September 12, 2006 and April 7, 2009 Planning Board meetings.

The Master Plan and Preliminary Plat for a 68-lot, single family residential development was approved by the Pender County Planning Board on September 12, 2006. After satisfying the conditions for preliminary and final plat approvals, the final plat was approved and recorded in two separate phases on January 2, 2007 and January 24, 2008, respectively. Further requested revisions to add 7 lots to the subdivision were denied by the Planning Board on December 2, 2008 and April 7, 2009, respectively.

Since the requested revisions, multiple concerned property owners of the adjacent development on Quarter Horse Lane have contacted staff regarding a variety of issues. Specifically, the issue of the legality of the access easement and its' compliance with the initial condition of approval have been raised as a result of increased vehicular traffic on Quarter Horse Lane. Staff has conveyed that the conditions of approval per the September 12, 2006 minutes were initially satisfied with the submission of the attached documentation which includes the Pinnacle Ridge map of record (MB 43 PG 115), Wetland Conservation Plat for Mildred Phillips (MB 47 PG 107), and easement document transmitted on December 15, 2006.

However, at this time staff cannot find that the easement document was recorded in the Pender County Register of Deeds. Therefore, staff requests interpretation and direction on 1) the status of compliance as it relates to the emergency access easement condition, 2) the validity of the easement language itself, and 3) other issues as applicable raised by the interested parties.

Pender County Planning Department

805 South Walker Street
Burgaw, North Carolina 28425

Phone (910) 259-1202
Fax (910) 259-1295

MINUTES
Pender County Planning Board Meeting
September 12, 2006
7:00 p.m.

Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina

I. Call to Order: Chairman Walton

II. Roll Call: Chairman Walton
Pender County Planning Board Members:
Walton___Reynolds___Smith___Garrett___Millette___Gonzales___Marshburn___Newman___

Also present: Attorney Trey Thurman, Planning Director Frank Palmer, Planner II Kenneth Vafier, and concerned citizens.

III. Approval of Minutes: August 1, 2006 postponed until the October 3, 2006 meeting.

Chairman Walton introduced the first pubic hearing to the board and citizens.

IV. Public Hearing

1. Pinnacle Ridge, PD Master Plan and Preliminary Plat Review – C. Lawrence Sneeden, Jr, applicant, on behalf of Pinnacle Property of Hampstead, owner, is requesting approval of a residential PD Master Plan and Preliminary Site Plan. The Master Plan consists of 68 single-family residential lots located on 127.64 acres. The property is zoned PD and is located at the intersection of US Hwy 17 and Pinnacle Parkway in Hampstead, NC.

Ken Vafier reviewed the Staff Review with the audience.

Rick Garrett and Mark Walton asked questions concerning net density.

Karen Gonzales wanted to know if the subdivision would be gated. It will not.

There being no further questions from staff. Larry Sneeden addressed the Board.

Larry Sneeden, engineer & applicant on behalf of Pinnacle Property of Hampstead stated that the net and gross density reported in the Staff Review were correct. There are a lot of wetlands on the tract. This is bounded on one side by the Holly Shelter Game Preserve and on the other side by wetlands. No wetlands will be disturbed as a part of this project.

Burt Millette posed the question concerning ingress and egress off Hwy 17. He wanted to know how far back the project will begin.

Larry Sneeden stated that the distance is approximately three-quarter of a mile.

Burt Millette asked Larry Sneeden if he had looked at any other ingress and egress for safety purposes. He asked if Quarter Horse Lane could not be connected to Pinnacle Parkway.

Larry Sneeden stated that he didn't think Quarter Horse Lane abuts this property.

Frank Palmer stated that if there is a separation between land and roads and the applicant does not have control of the property, it isn't given much consideration.

Christopher Smith stated that this was someone's property and there was a house at the end of the street. He said that they'd have to cut through someone's yard.

Rick Garrett asked if the board was thinking of connectivity.

Larry Sneeden stated that it was looked at. This is a strange situation with the property. This is bounded on one side by the game preserve and on the other by wetlands. Connectivity was not provided in wetlands. There are residences on most of the lots on Quarter Horse Lane.

William Crane, concerned citizen, mentioned the fire of 1986 and stated that it was common that a fire could start on Hwy 17 and go North at Sea Breeze and cut off several families. There needs to be access for emergency vehicles. Access might not be the whole picture but it is important to remember what fires can do in the wetlands and uplands that are being developed.

Charles Newman stated that William Crane made a valiant point. That it would probably burn again and he asked Scott from the Sloop Point Fire Department to come up. The new proposed subdivision is in his district.

He stated that if it was at all possible to have ingress and egress from Quarter Horse Lane it would be good. This is similar to Pelican Reef where there is one road in and one road out but anything that can be done as far as the ingress and egress to Quarter Horse Lane will be a benefit.

Christopher Smith stated that Quarter Horse Lane has been there for a long time and he doesn't know the people that live in the area but they probably won't be acceptable to having traffic coming down their street and being connected to Pinnacle Parkway. When the roads were built this is the way they were laid out and that's not the developer's fault.

Chairman Walton asked Frank Palmer if he had any additional information concerning Quarter Horse Lane.

Frank Palmer stated that is a private easement and he believed it to be a narrow right-of-way. This is an improved lot owned by Thomas Brooks. He didn't think it would be realistic because it's a residential lot owner.

Dave Hoover, owner of the easement on Quarter Horse Lane going from Hwy 17 back to the Fitness Center. The lady that owns the last property on Quarter Horse Lane approached him about purchasing a portion of the land on the Pinnacle which is mainly wetlands and can't be used for anything else. She has access from Quarter Horse Lane over to the existing road mentioned. She wants to buy the land, he'll do some horse trading with her to get access over to Quarter Horse Lane and that would solve the problem on the emergency road for emergency vehicles only.

After a lengthy discussion concerning Quarter Horse Lane and emergency vehicles access; Mr. Bradshaw stated that he would gladly speak to the property owners to let them know what the county is trying to achieve and the best way to achieve it. He will be on board in any way to assist.

Burt Millette stated that a statement should be obtained from the owner of the property that it would be available for emergency vehicles. Anything containing real estate needs to be in writing.

Frank Palmer stated that it should take the form of a recorded document; easement being 20' wide.

Rick Garrett made the motion that the Pinnacle Project be accepted as presented with Staff's conditions and the stipulation that an easement be established for emergency vehicles only that allows connectivity to Quarter Horse Lane. Karen Gonzales seconded the motion and the vote was unanimous.

Chairman Mark Walton introduced the next case to the board and public. He reiterated procedure for the hearing; first to hear from Staff, then the Applicant and finally anyone from the public wishing to speak, asking them not to call out from the middle of the room.

Ken Vafier presented the case to the board and citizens.

> **2.** Zoning Map Amendment - Landcraft Management, LLC, applicant, on behalf of Foy Family LTD Partnership, owner, has requested a rezoning of 113.86 acres from R-20C (Residential), to PD (Planned Development). The property is located off Scotts Hill Loop Road west of Francis Marion Drive in southeastern Pender County.

Chairman Walton reminded the audience that even though the request is to have the property rezoned PD and if it is approved, that does not mean that the applicant has to put this proposal on the land. The rezoning will allow them to put anything on the property that is permitted in the PD District. The Planning Board has more control over what goes into a Planned Development than into something that is zoned R15 or R20. this includes density. The Board can negotiate on this when they cannot on R15 or R20.

The concept presented to the Board in their package represented the net density of 3.8 units per acre. The minimum lot size would be 5000 square feet.

Rick Garrett made mention of another case when the applicant were trying to rezone near the same area; which was unsuccessful, it remained R20. When the actual development started going in the group that was here before had an issue of why the Planning Board did not do anything about it. Reiterating what the Chairman said, if this is rezoned Planned Development, then everything that they do has to come before the Planning Staff and before the Board.

Frank Palmer stated that there was a difference in wetland and land that has ponding on it occasionally. He was speaking about jurisdictional wetlands.

Attorney Trey Thurman stated that once the property is rezoned PD (Planned Development) the potential for density is much greater. It's approximately six times as great under PD than R20 zoning. It does not matter if the applicant has a plan with every lot tentatively sold with every unit. They can trash that plan come in the next day with something new they are free to do this. If the question is asked what is going into this project, this cannot be answered tonight. They can give you an answer but its not something the Board can base its decision on. They are not bound by the answer they(Board) give you. The applicant can sell the property to someone else and they could change the development plan.

Burt Millette mentioned to the Board and citizen the five criteria they have to follow in order to approve the request.

Tom Carroll, attorney for the project made the presentation before the board. He has been to a neighborhood meeting and is aware that this project is controversial; the Staff has received emails, and telephone calls. A lot of the fear and suspension has been misplaced.

Attorney Carroll introduced the Foy family and proceeded to give the family history of the pass 200 years for the Foy family. After a very lengthy presentation and stating that the Foy family has donated 63 acres for a Conservation Trust on which no homes will be built on this property.

Rick Moore, McKim & Creed, spokesperson made a short presentation of the design process for this project. There is a vegetative buffer screening the adjacent site from the new development. Where there is not enough vegetation they will be adding additional screening. They would be doing a traffic impact analyzes.

MINUTES

Pender County Planning Board Meeting
April 7, 2009
7:00 p.m.

Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina

Call to Order: Chairman Reynolds

Roll Call: Chairman Reynolds
Pender County Planning Board Members:
Reynolds ___Garrett ___Marshburn ___Millette ___Smith _X_Williams _X_Newman_X_

1. **Approval of Minutes:** March 3, 2009
   Motion: William Marshburn
   Seconded: Burt Millette
   Vote:4-0

Planning Director Patrick Davenport introduced new Planning Board Member Malcolm Boney.

Subdivision Review

Planner Kyle Breuer presented the Trenney Lea Major Subdivision case to the board.

2. **Trenney Lea Major Subdivision, Preliminary Plat Review** – Kenny Eason, applicant on behalf of Legend Builders owner, is requesting revision of the Preliminary Plat approval for Trenney Lea Subdivision. The major subdivision consists of revising the 10 approved lots to 20 lots on 76.72 acres. The property is zoned R-20 Residential District and the subdivision is located along the west side of Hoover Road, approximately (1/4) mile south of the South Topsail Elementary School in Hampstead.

Trenney Lea Subdivision received Planning Board approval on December 4, 2006 and final Preliminary approval through Staff on January 10, 2008. With the property being located next to South Topsail Elementary the school board would like to see bicycle and pedestrian access. There was discussion from a previous meeting with the recommendation that Renee Drive be utilized as a collector street prior to the collector street plan. If approved all state and federal permits will have to be amended to reflect the increase in lot numbers and a letter of compliance be submitted to the Planning Department.

Burt Millette asked if the recommendation from the Planning Department would be continuant upon the adoption of the MPO for the extension of Renee Drive.

Planner Breuer stated that recommendation is based on recommendation. The Staff would like to see this constructed as a public road eventhough it is not mandated. Previously when the recommendation came through, the MPO plan was not in place.

Burt Millette stated if it is not a public road, then the responsibility will go to the twenty home owners to maintain what is in effect a connector road.

Kyle Breuer remarked that the Staff goes with the adopted plans and the recommendation from that plan would be that the main road serving Trenney Lea would be dedicated as public with the reserve for future connection to adjacent property owners so that the connection between Hoover Road and NC 210.

Chairman Reynolds asked Planner Breuer which of the lots were going to be revised.

He replied that from the final preliminary that was approved by Staff in June. This is basically splitting some of the four and five acre lots. Lots 15 – 20 went from three lots to six lots; lots 1-3, 4, 5, & 6, are what use to be lots 1, 2, & 3. There is a division of the open space where lot nine (9) is located. The open space was 2.07 acres with the revision it is now 1.8 acres. The open space is still in compliance.

Rick Garrett asked of the open space that is left, is any of it usable?

Planner Breuer stated that he had not checked to see how much of the space was usable.

Kenneth Eason, developer/owner for the project, stated that two years ago when he started the project he came before the board they spoke of the MPO right-of-way and wanted to connect Hoover Road into NC 210. The board at that time agreed it would be better to connect Renee Drive into Hwy 210 than to try and go through property that he pointed to on the screen. Even though he is dividing the property from 10 acres to 20 lots it still considered low density and a total of seventy-five (75) acres. Approval from the stormwater runoff revision should be no problem. He asked the board if they wanted to go back now and try to make this a public road.

Burt Millette asked Mr. Eason if Renee Drive existed at this time and in what capacity; public or private.

He replied that it was a private dirt road.

Mr. Millette asked who owned the private road?

Planner Breuer stated that he did not research the ownership. There is a possibility it could be an easement with rights going to the property owners.

Chairman Reynolds asked the applicants if there would be a problem getting septic tanks on the lots. He noticed a bit of wetland delineation and it seems to be very marginal. He asked if there was a dedicated easement going to lot 6; he said that it needs to be marked on the map and there needs to be access to the open space located at the back of the property.

Planner Breuer reiterated for school access the Staff would like to see atleast a ten foot pedestrian easement, so someone could legally walk to school and be safe as possible. The school board would like to see the access where is located now, he is not sure if it really matters. The legal access is the important thing. A meeting will be arranged with the school board and Mr. Eason.

Mr. Eason will supply an easement.

Chairman Reynolds asked Board Member Boney if he was comfortable voting on this item.

Mr. Boney remarked that he did understand everything that was said but chose not to vote.

Chairman Reynolds made the motion to excuse Mr. Boney from the vote; seconded by William Marshburn and the vote was unanimous.

Burt Millette motioned to approve the request with the stipulation that Trenney Lea Drive be provided as a right-of-way; with sufficient space to allow DOT standards to be met in the future. A bicycle and pedestrian right-of-way be provided after consultation with Staff and Board of Education and meeting all other staff conditions.

Seconded: Rick Garrett
Vote: Millette, Marshburn, Garrett, Williams

Chairman Reynolds opened the public hearing.

Planner Kenneth Vafier presented the case to the board.

Public Hearing

3. **Master Plan & Preliminary Plat** - ESP & Associates, applicant, on behalf of Dave Hoover of Carolina Coast Properties, owner, is requesting an amendment to the Master Plan of Pinnacle Ridge. The request is to add 7 lots to the already approved plan. The property is located along the west side of US Highway 17, across from Sloop Point Loop Road, in Hampstead, North Carolina.

The request will add 7 lots making a total of 75 lots from the 68 that were approved in 2006. The new lots vary in size from 28000 – 58000 square feet. The revision will remove 5.65 acres of open space from the previously approved 71.65 acres. Fifty-one percent is preserved as open space.

Burt Millette asked if any of the seven new lots had been sold.

Chad Rivers, applicant, stated that sixty-one percent of the project is open space. This exceeds the fifteen percent requirement. Gross density is 5.8 and not a dense development. He said that one of the lots has been sold and the owners met with the person and do not have an issue with the lots being constructed across the street from them. This is lot 50.

Jim Verteramo, resident of Quarter Horse Lane said it was wrong for a developer to sell land that has woods across the way and then proceed to attempt to put in houses. He had a letter from the owner of lot 50 stating that he was in opposition to the new houses going up.

Attorney Thurman stated that these procedures were not quasi judicial, was presented a letter, of whom he said he could not confirm or deny its verify, he then read the letter to the board, from the property owner of Lot 50. He read the letter for the record and they will get verification if the property owner did write the letter.

Mr. Verteramo stated that the leach fields were not discussed in the previous presentation to the board. Was the subject of off-site septic leach fields. Detailed plans to this type of system must be included and they are not. The leach field is located behind his property. The water quality will jeopardize the water quality of his cat fish pond which is a source of food for his family. Mr. Hoover gave his word that a fifty-foot buffer would be maintained as a natural area. Trees will have to be cut down in order to maintain the leach fields. The constructed berm is not shown on any reports. Developer has not complied with the conditions of approval legal easement onto Quarter Horse Lane. In 9-12-06 Mr. Bradshaw stated that he would speak to the property owners and inform them of the conditions and what the county was trying to achieve. Quarter Horse Lane is a privately owned road and the homeowners pay taxes and maintain it. This emergency easement is deemed not suitable by the local fire department. Currently through traffic is using the road for construction vehicles and local traffic coming and going from the Second Wind Gym. The easement at the end of Quarter Horse Lane is not being maintained for emergency vehicles.

Director Patrick Davenport did confirm that John A. Martinelli was the resident at lot 50 and he did write the letter in opposition to the new development taking place.

There were several other citizens speaking concerning the same matters of the easement and flooding in this development. Water stands when there is a hard rain. There is a concern about well water.

A rebuttal was done by the applicant to the comments. He did not know of the letter from the homeowner stating that he was not happy with the new development going in front of him. There will be a buffer between the drainfield and Mr. Verteramo's property. The state requires this buffer to be in place. The berm that was discussed was built at the request of the neighbors but the berm can be removed if they are not happy with it. Mr. Hoover would be more than happy to gate the emergency drive-through.

The Planning Board recommended that the gate be approved by the fire department and EMS.

Motion: Burt Millette to deny the seven lots
Seconded: William Marshburn
Vote: 4-1

Planner Kyle Breuer presented the next public hearing to the Planning Board.

4. **Zoning Map Amendment** - Barbara R. Daniels, applicant and owner, is requesting to rezone one tract, totaling ±1 acre, from I-1, Industrial District (Light), to R-20 C, Residential District (Conventional). The property is located at 209 Sloop Point Loop Road, Hampstead, N.C. and can be identified as PIN # 4204-74-7049-0000.

He stated that the adjacent property owner had requested the extension of the district to his property and it was granted.

Barbara Daniels, applicant, stated she was not notified that her property was being rezoned in 2003. She just would like to have the original zoning restored.

Attorney Thurman explained the mailing procedure to her and why she may not have gotten a letter; but it was advertised in the local papers.

Motion to approve: William Marshburn
Seconded: Rick Garrett
Vote: Unanimous

Planner Ashley Frank presented the case before the Planning Board.

5. **Zoning Map Amendment** - Kevin O. Mills & J.F. Larsen, applicants and owners, are requesting to rezone three (3) tracts, totaling 6.46 acres from RT, Rural Transitional District, to B-2, Business District (Highway). The property is located on the western side of US Hwy 17 N, across from Royal Tern Drive and may be identified as PIN #'s 4215-33-2329-0000; 4215-23-9366-0000; and 4215-23-2795-0000.

J. F. Larson, applicant stated that they were trying to streamline and be uniformed.

Chairman Reynolds stated that he was not going to change his previous vote. He is looking at the situation long term with the request property backed up against a residential area.

Motion: Burt Millette to approve
Seconded; Malcolm Boney
Against: Kevin Reynolds
Vote: 4-1

W. JAMES BRANDON, ATTORNEY AT LAW, P.O. BOX 40, HAMPSTEAD, NC 28443

INGRESS, EGRESS, REGRESS AND UTILITY EASEMENT

STATE OF NORTH CAROLINA

COUNTY OF PENDER

Parcel No. 4204-39-2196-0000
4204-57-2049-0000

Excise Tax

This instrument was prepared by: W. James Brandon
The attorney preparing this instrument has made no record search or title examination as to the property herein described, unless the same is shown by his written and signed certificate. Further no tax advice of any nature has been rendered to the parties to this instrument.

Brief description for the index: Access Easement

THIS DEED OF EASEMENT, made and entered into this _15th_ day of December, 2006, by and between,

GERALD E. PHILLIPS and wife, MILDRED M. PHILLIPS

(hereinafter called "**PHILLIPS**"); and

PINNACLE PROPERTY OF HAMPSTEAD, LLC.

(hereinafter called "**PINNACLE**").

The designation **PHILLIPS** and **PINNACLE** as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

W I T N E S S E T H:

That whereas, **PHILLIPS** is the owner of a certain tract of land (hereinafter referred to as Tract A) adjoining and lying on the southwest side of Quarter Horse Lane in Topsail Township, Pender County, North Carolina, said tract of land being more particularly described in deed recorded in Book 1041 at Page 81 of the Pender County Registry; and

That whereas, **PINNACLE** is the owner of a certain tract of land (hereinafter referred to as Tract B) adjoining and lying on the northeast side of Pinnacle Parkway in Topsail Township, Pender County, North Carolina, said tract being more particularly described in deed recorded in Book 1481 at Page 113 of the Pender County Registry; and

That whereas, **PHILLIPS** and **PINNACLE** are desirous of creating a certain easement for emergency personnel and emergency vehicles over and across the said Tract A and the said Tract B thereby creating a connecting right of way between Quarter Horse Lane and Pinnacle Parkway for alternative ways of access to US Highway 17.

Now therefore, in accordance with the recitals which by this reference are made a substantial part hereof, **PHILLIPS** and **PINNACLE** both declare that the said Tract A of **PHILLIPS** and the said Tract B of **PINNACLE** upon which the hereinafter described easement is located is made subject to this declaration of easement and shall be held, sold and conveyed subject to the following easement, and that such easement shall burden and be appurtenant to and run with said Tract A and the said Tract B and be binding on all parties now or hereafter owning said Tract A and the said Tract B, and their respective heirs, successors and assigns having any right, title or interest in the said Tract A and the said Tract B, or any part thereof, and shall inure to the benefit of the emergency personnel and emergency vehicles having access to the easements.

1. Grantor grants, declares and reserves the following 30 foot wide easement for ingress, egress, regress and utilities over and upon the said Tract A and the said Tract B benefit of all types of emergency personnel and emergency vehicles:

See attached Exhibit A which is incorporated by reference as if fully set forth herein.

IN WITNESS WHEREOF, the **PHILLIPS** and **PINNACLE** have executed the foregoing document, the day and year first above written.

[This document contains separate signature pages]

W. JAMES BRANDON, ATTORNEY AT LAW, P.O. BOX 40, HAMPSTEAD, NC 28443

Gerald W. Phillips
by and thru his attn. in fact Mildred M. Phillips
_____ (SEAL)
Gerald W. Phillips

Mildred M. Phillips (SEAL)
Mildred M. Phillips

Access Easement dated December 15, 2006.

STATE OF NC, COUNTY OF Pender.

I certify that the following person(s), known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purposes stated therein and in the capacity indicated:
Mildred M. Phillips, individually, and
Mildred M. Phillips as attorney in fact for Gerald W. Phillips

Date: 12/15/06

Mary Edens
(Signature of Notary)

(Notary Stamp or Seal)

Mary Edens, Notary Public
Printed or typed name
My commission expires: 4/20/08

W. JAMES BRANDON, ATTORNEY AT LAW, P.C. BOX 40, HAMPSTEAD, NC 28443

PINNACLE PROPERTY OF HAMPSTEAD, LLC
a North Carolina Limited Liability
Company

By: _____
Member/Manager

State of North Carolina, County of Pender.

I, Mary A Edens, a Notary Public in and for the County and State aforesaid, do hereby certify that DAVE HOOVER, who is known to me or proved to me on the basis of satisfactory evidence to be the person(s) described, personally appeared before me this day and acknowledged that (s)he is the authorized member/manager of PINNACLE PROPERTY OF HAMPSTEAD, LLC, a North Carolina limited liability company, and further that (s)he acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

Date: 12/15/06

(Notary Stamp or Seal)

_____
(Signature of Notary)

Mary A Edens, Notary Public
Printed or typed name
My commission expires: 4/20/08

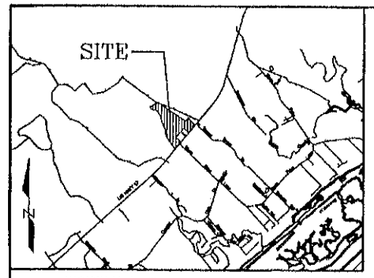
W. JAMES BRANDON, ATTORNEY AT LAW P.C. BOX 40, HAMPSTEAD, NC 28443

W. JAMES BRANDON, ATTORNEY AT LAW P.O. BOX 40 HAMPSTEAD, NC 28443

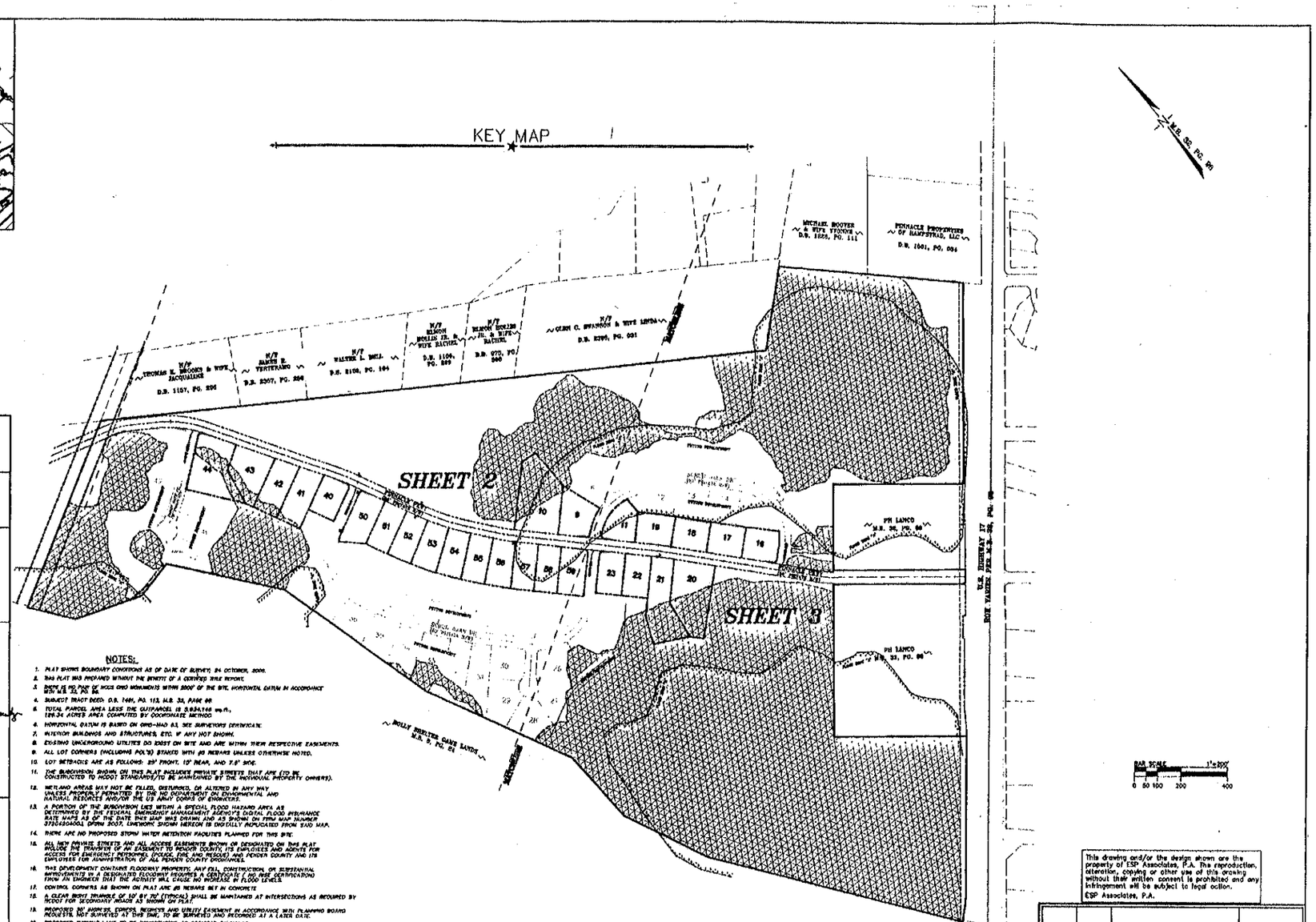
Exhibit A

Lying and being in Topsail Township, Pender County, North Carolina and more particularly described as follows:

A thirty foot (30) wide easement for ingress, egress, regress and utilities adjoining and lying along and on the northwestern side of the northwestern right of way line of the 100 foot wide Carolina Power and Light Easement centered on the southeastern line of the property owned by Gerald W. Phillips and wife, Mildred M. Phillips recorded in Book 1041 at Page 081 of the Pender County Registry running from the southwestern right of way line of Quarter Horse Lane and extending along and on the northwestern side of said Carolina Power and Light 100 foot wide right of way to the northeastern right of way line of Pinnacle Parkway.



VICINITY MAP NOT TO SCALE



CERTIFICATE OF FINAL PLAT APPROVAL

FINAL PLAT APPROVED UNDER THE PENDER COUNTY SUBDIVISION ORDINANCE.

PLANNING DIRECTOR — DATE 1-2-07

PARCEL IDENTIFIER CERTIFICATE

PARCEL IDENTIFIERS HAVE BEEN ISSUED FOR ALL PARCELS SHOWN ON THIS PLAT.

4204-67-2049-0000 — TAX SUPERVISOR — DATE 1/2/07

CERTIFICATE OF OWNERSHIP, DEDICATION AND JURISDICTION

I (WE) HEREBY CERTIFY THAT I AM (ARE) THE OWNER(S) OF THE PROPERTY SHOWN AND DESCRIBED HERE IN AND THAT I (WE) FREELY ADOPT THIS PLAN OF SUBDIVISION. I (WE) ALSO DEDICATE ALL SANITARY SEWER, WATER AND STORM SEWER EASEMENTS AND OTHER PUBLIC PROPERTIES TO PUBLIC USE AS NOTED. I (WE) ALSO HEREBY DEDICATE ALL STREETS, ALLEYS, WALKS, PARKS AND OTHER SPACES TO PUBLIC USE AS NOTED HERON OR LOCATED WITHIN THE SUBDIVISION JURISDICTION OF PENDER COUNTY.

OWNER — DATE 12-28-06

OWNER — DATE

CERTIFICATE OF REGISTRATION BY REGISTER OF DEEDS

PENDER COUNTY, NORTH CAROLINA

FILED FOR REGISTRATION THIS 2nd DAY OF JAN, 2007 AT 3:25 O'CLOCK P.M. AND DULY RECORDED IN BOOK 43 PAGE 115 SL 587

Joyce M. Sweeney — REGISTER OF DEEDS — by Sheila H. Kennedy, Deputy

MAP REVIEW OFFICER CERTIFICATE

STATE OF NORTH CAROLINA
COUNTY OF PENDER

I Janet Wooten REVIEW OFFICER OF _____ COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER — DATE 1/2/07

SURVEYOR'S CERTIFICATE

I, RAYMOND B. OWENS, PLS CERTIFY TO ONE OR MORE OF THE FOLLOWING AS INDICATED

X a. THAT THIS PLAT IS A SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.

b. THAT THIS PLAT IS OF A SURVEY THAT IS LOCATED IN SUCH PORTION OF A COUNTY OR MUNICIPALITY THAT IS UNCODIFIED AT TO AN ORDINANCE THAT REGULATES PARCELS OF LAND, AND IS THEREFORE NOT SUBJECT TO REGULATION BY A SUBDIVISION ORDINANCE.

c. THAT THIS PLAT IS OF A SURVEY OF AN EXISTING PARCEL OR PARCELS OF LAND WHICH DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET AS DEFINED IN THE SUBDIVISION ORDINANCE, AND IS THEREFORE THE DEFINITION OF SUBDIVISION CONTAINED IN SAID SUBDIVISION ORDINANCE.

d. THIS PLAT IS A SURVEY OF AN EXISTING BUILDING OR OTHER STRUCTURE, OR A NATURAL FEATURE, AND IS THEREFORE NOT SUBJECT TO REGULATION BY A SUBDIVISION ORDINANCE.

e. THIS PLAT AND SURVEY IS A CONTROL SURVEY AND IS THEREFORE NOT SUBJECT TO REGULATION BY THE PENDER COUNTY SUBDIVISION ORDINANCE.

f. THAT THIS PLAT IS OF A SURVEY OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, COURT-ORDERED SURVEY OR OTHER EXCLUSION FROM THE DEFINITION OF SUBDIVISION AND IS THEREFORE NOT SUBJECT TO REGULATION BY A SUBDIVISION ORDINANCE.

g. THAT THE INFORMATION AVAILABLE TO THIS SURVEYOR IS SUCH THAT I AM UNABLE TO MAKE A DETERMINATION TO THE BEST OF MY PROFESSIONAL ABILITY AS TO STATUS OF THIS PLAT FOR RECORDING AND IT THEREFORE MAY BE SUBJECT TO REGULATION BY A SUBDIVISION ORDINANCE.

AND,

THE SUBDIVISION SHOWN ON THIS PLAT DOES CONTAIN SPECIAL FLOOD HAZARD AREAS AND IS LOCATED IN A FLOODWAY AS DELINEATED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

AND,

THE SUBDIVISION SHOWN ON THIS PLAT DOES NOT CONTAIN AREAS OF ENVIRONMENTAL CONCERN AS DELINEATED BY THE NORTH CAROLINA COASTAL RESOURCES COMMISSION.

AND,

I CERTIFY THAT THE PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE BY ME OR UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN (SEE ABOVE INFORMATION) THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK & PAGE (SEE ABOVE) THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000 (+) THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS _____ DAY OF _____, 20__.

RAYMOND B. OWENS
PROFESSIONAL LAND SURVEYOR
LICENSE NUMBER 3990

NOTES:

1. PLAT SHOWS BOUNDARY CONDITIONS AS OF DATE OF SURVEY, 24 OCTOBER, 2006.
2. THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A CERTIFIED TITLE REPORT.
3. SHOWN HEREON ARE ALL NGS OHD MONUMENTS WITHIN 5000' OF THE SITE. HORIZONTAL DATUM IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.
4. SUBJECT TRACT DEED: D.B. 1496, PG. 113, M.B. 33, PAGE 99
5. TOTAL PARCEL AREA LESS THE CUTPARCEL IS 5,934,146 sq.ft., 136.24 ACRES AREA COMPUTED BY COORDINATE METHOD
6. HORIZONTAL DATUM IS BASED ON OHD-NAD 83. SEE SURVEYORS CERTIFICATE.
7. INTERIOR BUILDINGS AND STRUCTURES, ETC. IF ANY NOT SHOWN.
8. EXISTING UNDERGROUND UTILITIES DO EXIST ON SITE AND ARE WITHIN THEIR RESPECTIVE EASEMENTS.
9. ALL LOT CORNERS (INCLUDING POL'S) STAKED WITH #5 REBARS UNLESS OTHERWISE NOTED.
10. LOT SETBACKS ARE AS FOLLOWS: 25' FRONT, 10' REAR, AND 7.5' SIDE.
11. THE SUBDIVISION SHOWN ON THIS PLAT INCLUDES PRIVATE STREETS THAT ARE (TO BE CONSTRUCTED TO NCDOT STANDARDS)TO BE MAINTAINED BY THE INDIVIDUAL PROPERTY OWNERS).
12. WETLAND AREAS MAY NOT BE FILLED, DISTURBED, OR ALTERED IN ANY WAY UNLESS PROPERLY PERMITTED BY THE NC DEPARTMENT ON ENVIRONMENTAL AND NATURAL RESOURCES AND/OR THE US ARMY CORPS OF ENGINEERS.
13. A PORTION OF THE SUBDIVISION LIES WITHIN A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S DIGITAL FLOOD INSURANCE RATE MAPS AS OF THE DATE THIS MAP WAS DRAWN, AND AS SHOWN ON FIRM MAP NUMBER 3720450600L DRAWN 2005. LINEWORK SHOWN HEREON IS DIGITALLY REPLICATED FROM SAID MAP.
14. THERE ARE NO PROPOSED STORM WATER RETENTION FACILITIES PLANNED FOR THIS SITE.
15. ALL NOT PRIVATE STREETS AND ALL ACCESS EASEMENTS SHOWN OR DESIGNATED ON THIS PLAT INCLUDE THE TRANSFER OF AN EASEMENT TO PENDER COUNTY, ITS EMPLOYEES AND AGENTS FOR ACCESS FOR EMERGENCY PERSONNEL (POLICE, FIRE AND RESCUE) AND PENDER COUNTY AND ITS EMPLOYEES FOR ADMINISTRATION OF ALL PENDER COUNTY ORDINANCES.
16. THIS DEVELOPMENT CONTAINS FLOODWAY PROPERTY. ANY FILL, CONSTRUCTION, OR SUBSTANTIAL IMPROVEMENTS IN A DESIGNATED FLOODWAY REQUIRES A CERTIFICATE (NO RISE CERTIFICATION) FROM AN ENGINEER THAT THE ACTIVITY WILL CAUSE NO INCREASE IN FLOOD LEVELS.
17. CONTROL CORNERS AS SHOWN ON PLAT ARE #5 REBARS SET IN CONCRETE
18. A CLEAR SIGHT TRIANGLE OF 10' BY 70' (TYPICAL) SHALL BE MAINTAINED AT INTERSECTIONS AS REQUIRED BY NCDOT FOR SECONDARY ROADS AS SHOWN ON PLAT.
19. PROPOSED 30' MARGINS, EYRIES, INGRESS AND UTILITY EASEMENT IN ACCORDANCE WITH PLANNING BOARD REQUESTS, NOT SURVEYED AT THIS TIME, TO BE SURVEYED AND RECORDED AT A LATER DATE.
20. PROPOSED TURNING LANE TO BE CONSTRUCTED AS REQUIRED BY NCDOT.
21. BICYCLE PATHWAYS IS AN EXISTING PATH ROAD ESTABLISHED PRIOR TO THIS SUBDIVISION, THE RIGHT OF WAY FOR WHICH IS RECORDED IN M.B. 34, PG. 133.

LEGEND

ROW = RIGHT-OF-WAY
EYR = EXISTING IRON REBAR
EP = EXISTING IRON PIPE
M.B. = MAP BOOK
PG. = PAGE
CB = CHORD BEARING
C = CHORD DISTANCE
R = RADIUS
L = LENGTH
D = DELTA
ECM = EXISTING CONCRETE MONUMENT
PIP = PINCH TOP PIPE
FND = FOUND
POL = POINT ON LINE
PNS = POINT NOT SET
DE = DRAINAGE EASEMENT
UE = UTILITY EASEMENT
CC = CONTROL CORNER

CONTROL CORNER
CONCRETE MONUMENT FOUND
EXISTING IRON REBAR
EXISTING IRON PIPE
IRON REBAR SET
PK IN ROAD FOUND
BOUNDARY LINE
RIGHT OF WAY LINE
CENTER LINE
NOT SURVEYED LINE, INPUT BY DEED OR TAX MAP
WETLANDS
SIGHT TRIANGLE

REFERENCES

MAP BOOK 33, PAGE 133
D.B. 1496, PG. 113
M.B. 32, PAGE 99
M.B. 33, PAGE 99
M.B. 34, PAGE 133
M.B. 11, PAGE 84

ESP Associates, P.A.
2129-B Capital Dr.
Wilmington, NC 28401
phone 910.313.9640
fax 910.313.9813
www.espassociates.com

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ESP Associates, P.A.

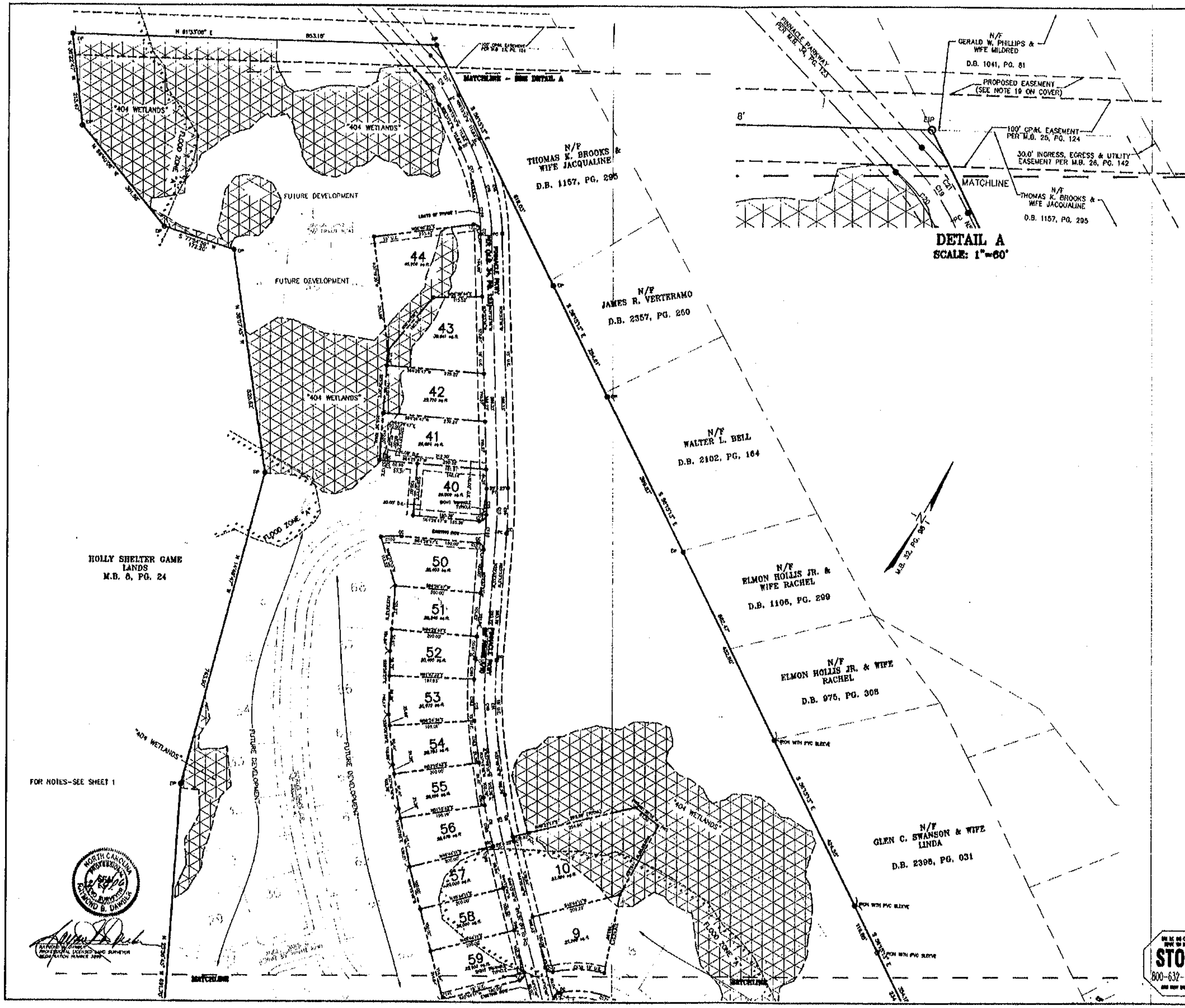
NO.	DATE	REVISION	BY

SUBDIVISION PLAT OF PINNACLE RIDGE
LOTS 9-11, 16-23, 40-44 & 60-69
SHEET 1 OF 3
OWNER: P.H. LANCO
TAX PARCEL# 4204-57-2049-0000
LOCATED IN HAMPSTEAD, TOWNSHIP OF TOPSAIL
PENDER COUNTY
NORTH CAROLINA

PINNACLE PROPERTIES OF HAMPSTEAD
106 WEST JIAN LINH
VICTORIA, TEXAS 77901

DRAWN BY: UC48.800
SCALE: 1"=200'
DATE: DEC. 7, 2006
REVISED BY: UC48.800
DATE: OCT. 26, 2006
REVISED BY: UC48.800 CurrentPHI
SHT. 1 OF 3

MB 43 PG 115 SL. 587 1 of 3



CURVE TABLE					
CURVE	LENGTH	RADIUS	BEARING	CHORD	DELTA
C188	80.62'	2463.44'	N28°05'59"W	80.60'	1°52'30"
C189	82.71'	475.00'	S37°19'35"W	82.61'	9°58'36"

LEGEND

- ROW - RIGHT-OF-WAY
- EIR - EXISTING IRON REBAR
- EIP - EXISTING IRON PIPE
- M.B. - MAP BOOK
- PG. - PAGE
- CB - CHORD BEARING
- D - CHORD DISTANCE
- R - RADIUS
- L - LENGTH
- Δ - DELTA
- ECM - EXISTING CONCRETE MONUMENT
- PTP - PINCH TOP PIPE
- FND - FOUND
- POL - POINT ON LINE
- PNS - POINT NOT SET
- NPF - NO POINT FOUND
- DE - DRAINAGE EASEMENT
- UE - UTILITY EASEMENT
- CC - CONTROL CORNER
- CONTROL CORNER
- CONCRETE MONUMENT FOUND
- EXISTING IRON REBAR
- EXISTING IRON PIPE
- IRON REBAR SET
- PK IN ROAD FOUND
- BOUNDARY LINE
- RIGHT OF WAY LINE
- CENTER LINE
- NOT SURVEYED LINE, INPUT BY DEED OR TAX MAP
- WETLANDS
- SIGHT TRIANGLE

BAR SCALE 1"=100'
0 25 50 100 200

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ESP Associates, P.A.

ESP Associates, P.A.

NO.	DATE	REVISION	BY
1	10-9-06	ADDED ROAD NAMES	BFF

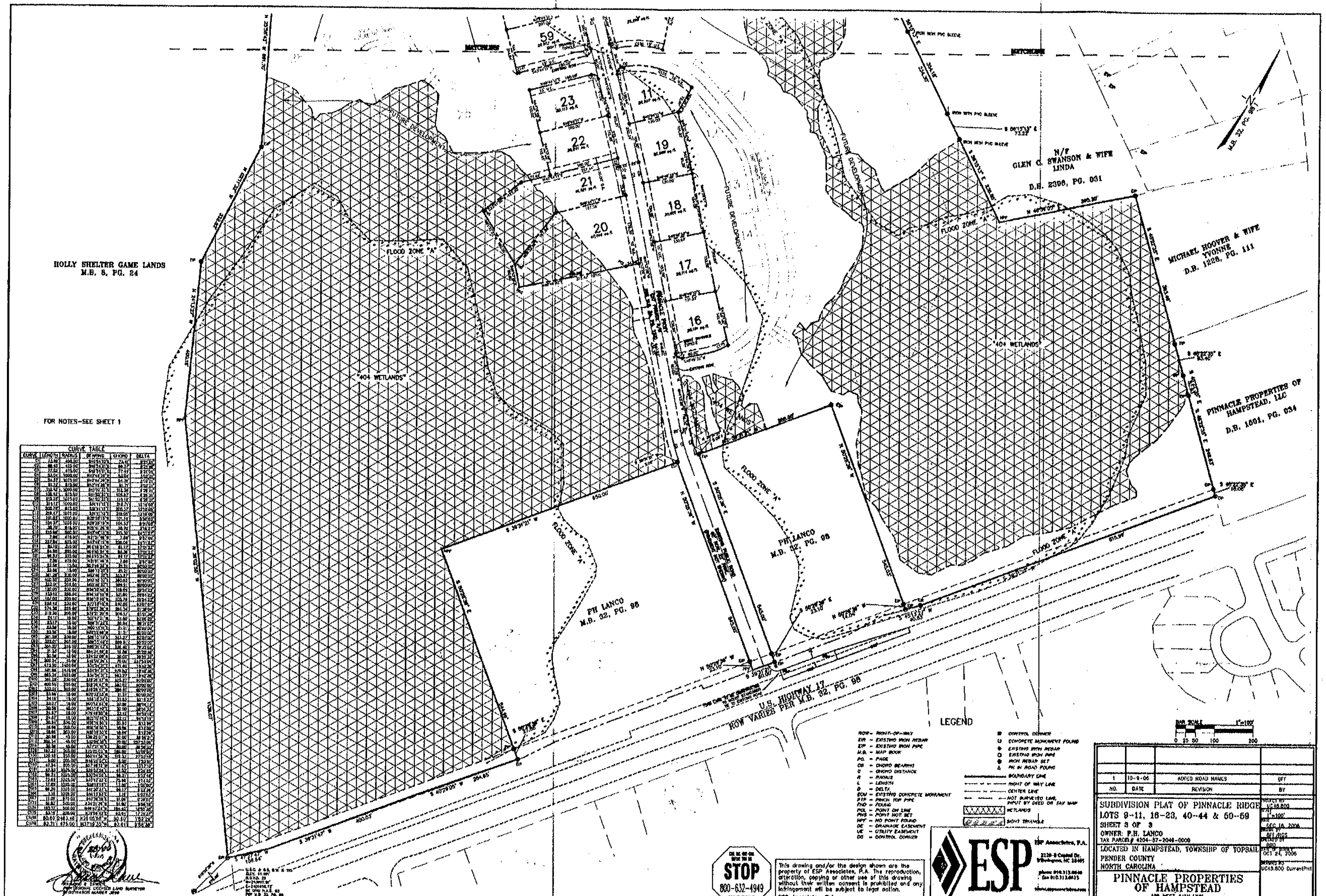
SUBDIVISION PLAT OF PINNACLE RIDGE
LOTS 9-11, 16-23, 40-44 & 50-59
SHEET 2 OF 3
OWNER: P.H. LANCO
TAX PARCEL# 4204-57-2049-0000
LOCATED IN HAMPSTEAD, TOWNSHIP OF TOPSAIL
PENDER COUNTY
NORTH CAROLINA

PINNACLE PROPERTIES
OF HAMPSTEAD

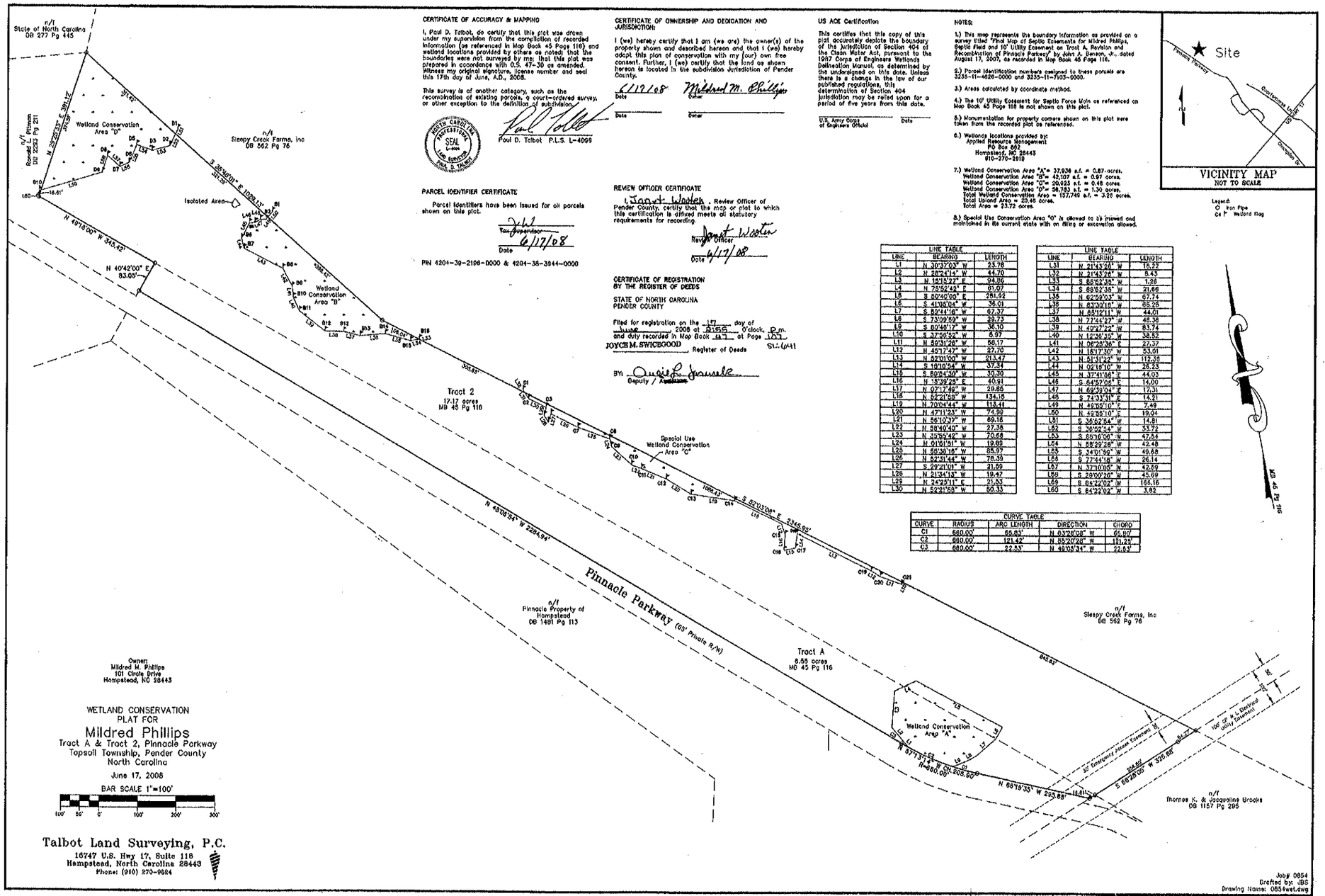
1"=100'
OCT 24, 2006

STOP
800-632-4949

MB 43 PG115 SL587 2 of 3



MB43 PG115 SL587 3of3



Owner:
Mildred M. Phillips
101 Circle Drive
Hampstead, NC 28443

WETLAND CONSERVATION
PLAT FOR

Mildred Phillips

Tract A & Tract 2, Pinnacle Parkway
Topsail Township, Pender County
North Carolina

June 17, 2008

BAR SCALE 1"=100'

100' 50' 0' 100' 200' 300'

Talbot Land Surveying, P.C.
16747 U.S. Hwy 17, Suite 118
Hampstead, North Carolina 28443
Phone: (910) 270-9684

CERTIFICATE OF ACCURACY & MAPPING

I, Paul D. Talbot, do certify that this plat was drawn under my supervision from the compilation of recorded information (as referenced in Map Book 45 Page 116) and wetland locations provided by others as noted; that the boundaries were not surveyed by me; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, license number and seal this 17th day of June, A.D., 2008.

This survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision.

NORTH CAROLINA PROFESSIONAL SEAL L-4069 LAND SURVEYOR PAUL D. TALBOT

Paul D. Talbot P.L.S. L-4069

PARCEL IDENTIFIER CERTIFICATE

Parcel Identifiers have been issued for all parcels shown on this plat.

Tax Supervisor
6/17/08
Date

PIN 4204-39-2199-0000 & 4204-38-3944-0000

CERTIFICATE OF OWNERSHIP AND DEDICATION AND JURISDICTION:

I (we) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plan of conservation with my (our) own free consent. Further, I (we) certify that the land as shown hereon is located in the subdivision Jurisdiction of Pender County.

6/17/08 — Mildred M. Phillips
Date — Owner
Date — Owner

REVIEW OFFICER CERTIFICATE

I, Janet Wooten, Review Officer of Pender County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Janet Wooten
Review Officer
Date 6/17/08

CERTIFICATE OF REGISTRATION BY THE REGISTER OF DEEDS

STATE OF NORTH CAROLINA
PENDER COUNTY

Filed for registration on the 17 day of June, 2008 at 2:55 o'clock, p.m. and duly recorded in Map Book 47 at Page 107

SL. 641

JOYCE M. SWICEGOOD, Register of Deeds

BY: Angie L. Jarrell
Deputy / Assistant

US ACE Certification

This certifies that this copy of this plat accurately depicts the boundary of the jurisdiction of Section 404 of the Clean Water Act, pursuant to the 1987 Corps of Engineers Wetlands Delineation Manual, as determined by the undersigned on this date. Unless there is a change in the law of our published regulations, this determination of Section 404 jurisdiction may be relied upon for a period of five years from this date.

U.S. Army Corps of Engineers Official — Date

NOTES:

1.) This map represents the boundary information as provided on a survey titled "Final Map of Septic Easements for Mildred Phillips, Septic Field and 10' Utility Easement on Tract A, Revision and Recombination of Pinnacle Parkway" by John A. Benson, Jr., dated August 17, 2007, as recorded in Map Book 45 Page 116.

2.) Parcel identification numbers assigned to these parcels are 3235-11-4626-0000 and 3235-11-7103-0000.

3.) Areas calculated by coordinate method.

4.) The 10' Utility Easement for Septic Force Main as referenced on Map Book 45 Page 116 is not shown on this plat.

5.) Monumentation for property corners shown on this plat were taken from the recorded plat as referenced.

6.) Wetlands locations provided by:
Applied Resource Management
PO Box 692
Hampstead, NC 28443
910-270-2918

7.) Wetland Conservation Area "A"= 37,936 s.f. = 0.87 acres.
Wetland Conservation Area "B"= 42,107 s.f. = 0.97 acres.
Wetland Conservation Area "C"= 20,923 s.f. = 0.48 acres.
Wetland Conservation Area "D"= 56,783 s.f. = 1.30 acres.
Total Wetland Conservation Area = 157,749 s.f. = 3.22 acres.
Total Upland Area = 23.46 acres.
Total Area = 23.72 acres.

8.) Special Use Conservation Area "C" is allowed to be mowed and maintained in its current state with no filling or excavation allowed.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 30°37'03" W	23.78
L2	N 28°21'15" W	44.70
L3	N 12°15'27" E	94.86
L4	N 75°52'42" E	61.07
L5	S 60°40'09" E	281.52
L6	S 41°33'04" W	36.01
L7	S 83°41'16" W	67.37
L8	S 73°09'59" W	29.73
L9	S 80°46'17" W	36.10
L10	S 37°56'52" W	6.97
L11	N 59°31'26" W	58.17
L12	N 45°17'47" W	27.70
L13	N 52°01'00" W	213.47
L14	S 19°10'54" W	37.34
L15	S 80°41'30" W	30.30
L16	N 13°39'28" E	40.91
L17	N 07°17'49" W	29.86
L18	N 52°21'58" W	134.15
L19	N 70°04'44" W	113.41
L20	N 47°11'23" W	74.99
L21	N 56°10'37" W	69.16
L22	N 58°40'40" W	27.36
L23	N 39°59'42" W	70.66
L24	N 01°51'51" W	19.89
L25	N 55°38'15" W	85.97
L26	N 52°01'44" W	78.30
L27	S 29°21'01" W	21.59
L28	N 21°34'13" W	19.47
L29	N 24°25'11" E	21.53
L30	N 52°21'58" W	50.33

LINE TABLE		
LINE	BEARING	LENGTH
L31	N 21°43'28" W	18.22
L32	N 21°43'28" W	8.43
L33	S 88°52'35" W	1.26
L34	S 88°52'35" W	21.66
L35	N 62°09'03" W	67.74
L36	N 83°30'18" W	85.26
L37	N 85°12'11" W	44.01
L38	N 77°44'22" W	46.36
L39	N 40°27'22" W	83.74
L40	N 12°36'35" W	38.52
L41	N 08°28'38" E	27.37
L42	N 16°17'30" W	53.01
L43	N 51°31'22" W	112.38
L44	N 02°18'10" W	26.23
L45	N 37°41'58" E	44.03
L46	S 84°57'06" E	14.00
L47	N 69°39'04" E	17.31
L48	S 74°33'31" E	14.21
L49	N 49°55'10" E	7.49
L50	N 49°55'10" E	19.04
L51	S 36°52'54" W	14.81
L52	S 36°52'54" W	53.72
L53	S 86°16'06" W	47.54
L54	N 88°29'28" W	42.48
L55	S 34°01'59" W	49.68
L56	S 77°41'18" W	26.14
L57	N 37°10'05" W	42.69
L58	S 29°00'20" W	45.69
L59	S 84°22'02" W	155.16
L60	S 84°22'02" W	3.82

CURVE TABLE				
CURVE	RADIUS	ARC LENGTH	DIRECTION	CHORD
C1	660.00'	65.83'	N 63°28'08" W	65.80'
C2	660.00'	121.42'	N 85°20'28" W	121.25'
C3	660.00'	22.53'	N 49°05'14" W	22.53'

Job# 0854
Drafted by: JBS
Drawing Name: 0854wet.dwg

SL 641 MB 47 PG 107

To: Pender County Planning Board

From: Patrick T. Davenport, Director

Date: August 20, 2008

RE: Comprehensive Plan and UDO Committees- Committee applicant interest

Please find attached an application form for the Development Regulations and Review Committee recently submitted by Mr. Steven Donatone. Staff is requesting the Planning Board to review the application and decide accordingly. Staff is available for questions, if necessary.

PTD

PLANNING AND COMMUNITY DEVELOPMENT

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING

PLANNING BOARD COMMITTEES
INTEREST FORM

Pender County will soon be undertaking two significant projects requiring substantive public input. The projects are creating a new Comprehensive Land Use Plan and creating a Unified Development Ordinance (to replace our existing zoning and subdivision ordinances). The County is forming two Planning Board committees to assist with the process of these two projects. If you have a vested interest in the future of Pender County's efforts to manage its growth and promote orderly development while protecting valuable natural resources and providing an atmosphere for a high quality of life, please consider volunteering to serve on one of the two committees being formed. It is anticipated that regularly scheduled monthly meetings will occur during normal business hours. Occasional night meetings may also be possible.

Persons interested in serving on these committees should come from varied backgrounds and expertise, be willing to consider opposing viewpoints and work in an atmosphere of consensus making. If you feel that you can serve Pender County on one of the following committees, please complete this form and return it to the Department staff. Information regarding the operating structure of the two committees is provided on the first page of this form. If you have any questions regarding the projects, or to submit this form, please direct them to Patrick T. Davenport, Department Director.

I am interested in serving on the (please check one):

X Development Regulations and Review Committee ☐ Comprehensive Plans and Policies Committee

Name: Steven Donatone

Mailing address: 100 Deer Cove Road, Hampstead, NC 28443

Email address: sdonatone@charter.net

Telephone: (910) 270-4730

Occupation/Affiliation: Retired

Please explain how you can contribute to the work of the committee of your choice:

Over a 25 year career in the insurance industry I took on a variety of assignments where change and innovation were needed to improve operations. My career culminated as Senior Vice President of Life and Disability Claims with Cigna where I re-engineered a nationwide claim organization of over 500 employees. Upon relocating to North Carolina in 1995 I transformed my experience as a real estate investor into a second career in real estate. As a licensed broker I established and managed real estate operations comprised of over 50
Realtors and also developed and managed a New Homes Division. In addition I have developed and managed small business operations in the pet care industry.
I believe my organizational, planning and negotiating skills along with my knowledge of real estate matters would be an asset to this committee.