

BEFORE THE STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL REGULATION  
CITY OF CAPE CORAL

DEPARTMENT OF ENVIRONMENTAL )  
REGULATION,

vs.

Order No. 15

GAC PROPERTIES, INC., )  
Lee County. )  
\_\_\_\_\_ )

CONSENT ORDER

This is a Consent Order between the State of Florida Department of Environmental Regulation (hereinafter referred to as the "Department") and Frank J. Callahan and Herbert S. Freehling, as Co-Trustees of GAC Corporation, GAC Properties Credit, Inc., and GAC Properties, Inc. (hereinafter referred to as "GAC").

Background: Permit applications were filed with the Department for certain dredge and fill work to be done at the Cape Coral Project of GAC. The Department issued a letter dated June 30, 1976 informing GAC of the Department's intent to deny certain of these permits. In addition, the Department issued Warning Notice No. 7996 dated July 9, 1976 regarding ongoing dredge and fill activities within the Cape Coral Project. On August 26, 1976, the Department set out by letter the modifications of the Cape Coral Project required to allow the completion of the project. Subsequently, the GAC verbally agreed to incorporate and implement the proposed, major modifications, subject to the approval of the Bankruptcy Court. It was also determined after the initial denial that GAC qualified for special consideration. This order represents the best efforts of the Department and GAC to improve an old project, begun prior to this decade. It does not signify water quality standards will be met in the interior canals, but is an attempt to buffer, treat, and improve water quality before it reaches Matlacha Pass or the Caloosahatchee River. This Consent Order resolves the alleged violations and serves as the authorization from the Department to complete the work.

1. GAC agrees that no development work shall be done waterward of the line identified as "A" drawn on Exhibit No. 1. Any work that has been done by GAC waterward of this line shall be restored. Restoration shall include the removal or replacement of all GAC-excavated fill material to natural elevation in the areas designated as "B" on Exhibit No. 1. Restoration shall commence within sixty (60) days of the date of entry of this Consent Order, continue in a continuous manner, and be completed to the satisfaction of the Department's district office within one (1) year of the date of entry of this Consent Order.

2. All work landward of "A" on Exhibit No. 1 will be done as described in Exhibit No. 2. The Department originally indicated its intent to deny the applications for permits because of its concern over water quality in the canal system and discharges from the canal system. GAC agrees to construct a pollution retention system landward of "A" on Exhibit No. 1. This retention system will consist of a perimeter spreader waterway to serve as a water distribution system for intercepting and releasing discharges of waters from certain areas of the Cape Coral development. GAC agrees to construct back-to-front sloping lots, swales and weirs within the inland portion of the undeveloped portion of Cape Coral, so as to retain as much of the runoff from the upland as possible, as well as increase the retention and percolation of freshwater to the aquifer. GAC shall prepare a hydraulic assessment to determine the maximum retention of runoff possible within the swales and canals. All work described in this paragraph of the Consent Order shall be performed as described in Exhibit No. 2.

3. Because of the water quality problems within the interior canal system, the Department cannot allow any direct

connection of Cape Coral waterways to waters of the State, which direct connections do not presently exist. Therefore, GAC shall install boat lifts to provide navigable access to Cape Coral canals which do not presently have access to waters of the state. The locations of the boat lifts are identified on Exhibit No. 1 as C<sub>1</sub>, C<sub>2</sub> and C<sub>3</sub>. Construction of the boat lifts shall be as described in Exhibit No. 2.

4. Because of the water quality benefits to be derived from the tidal wetlands surrounding Cape Coral and the treatment these natural areas provide for any indirect discharges from the Cape Coral area, GAC shall deed to the State, on the date of entry of this Consent Order, the lands owned by GAC as are described in the warranty deeds attached as Exhibits 3(a), 3(b) and 3(c).

5. GAC will deposit to the account of the Department's Pollution Recovery Fund the sum of \$200,000 per year, each year for five (5) consecutive years, the first such deposit to be made within thirty (30) days of the entry of this Consent Order and following payments to be made on or before the annual anniversary date of the date of entry of this Consent Order. All money deposited in the Pollution Recovery Fund to the account of GAC projects shall be identified and all interest earned on the account of GAC projects shall be credited to the Pollution Recovery Fund account of these GAC projects. This money shall be used at the discretion of the Secretary of the Department, which use shall nonetheless be restricted in use to study water quality and quantity problems in the Cape Coral and Golden Gate Estates areas, to propose solutions to the problems identified, and as funds allow, to correct the identified problems in both projects. No more than \$200,000 may be spent in any one fiscal year without the approval of GAC.

6. GAC hereby agrees to withdraw all permit applications pending for the Cape Coral development (File Numbers 36-10-3545, 36-24-3827, 36-10-3546 and 36-20-0274) on the same date as the entry of this Consent Order. The Department agrees

that this Consent Order will provide the necessary authorization to complete the work described in Exhibits 1 and 2. This Consent Order waives certification under PL 92-500, Section 401.

7. This Consent Order is enforceable under Section 120.69, Florida Statutes and can also be enforced under Section 403.161(1)(b), Florida Statutes.

JAMES E. YACOS and JOHN RODGERS  
CAMP, JR., as Co-Counsel for the  
Co-Trustees of GAC Corporation,  
et al.

By: John Rodgers Camp, Jr.

JOHN RODGERS CAMP, JR.

DEPARTMENT OF ENVIRONMENTAL  
REGULATION:

Terry Cole

TERRY COLE

Deputy General Counsel

Consented to by GAC this \_\_\_\_\_ day of \_\_\_\_\_,

1977.

Herbert S. Freehling  
HERBERT S. FREEHLING  
as Co-Trustee

Frank J. Callahan  
FRANK J. CALLAHAN  
as Co-Trustee

DATED AND ENTERED this 19 day of April,

1977.

Joseph W. Landers, Jr.  
JOSEPH W. LANDERS, JR.  
Secretary

Department of Environmental  
Regulation  
2562 Executive Center Circle, E.  
Montgomery Building  
Tallahassee, Florida 32301

RECEIVED

MAY 04 1979

DEPT. OF ENVIRONMENTAL REGULATION

BEFORE THE STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL REGULATION

DEPARTMENT OF ENVIRONMENTAL )  
REGULATION )

vs. )

GAC PROPERTIES, INC., )

Lee County, Florida. )

MODIFICATION TO CONSENT ORDER

The Department of Environmental Regulation (herein referred to as the "Department") and Frank J. Callahan and Herbert S. Freehling, as Co-Trustees of the GAC Corporation, GAC Properties Credit, Inc., and GAC Properties, Inc. (hereinafter referred to as "GAC") in executing the provisions of Consent Order No. 15 have found that certain modifications need to be made to the above mentioned Consent Order in order to carry out the environmental aims of the order.

Accordingly, the previously executed Consent Order (Order No. 15) is modified as follows:

1. All mosquito control ditches or other water courses in Unit 29 to be intersected by the spreader canal will be plugged east of and adjacent to the spreader canal excavation in a manner previously approved by the Department's district office;

2. All excavated material will be deposited in a location previously approved by the Department's district office;

3. The South Florida District Office of the Department is delegated the authority to approve in writing minor changes in the design of the spreader canal which it finds will enhance the function of the spreader canal or preserve additional wetland areas; and

4. Exhibit 2 of the Consent Order (Order No. 15) is modified by agreement of the parties as shown on the attachment

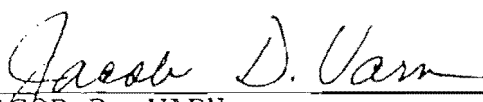
to this Modification to Consent Order and which is marked  
Exhibit 2, plate 3, revised December/1978.

Consented to by GAC this 18<sup>TH</sup> day of April, 1979.

  
HERBERT S. FREEHLING  
as Co-Trustees

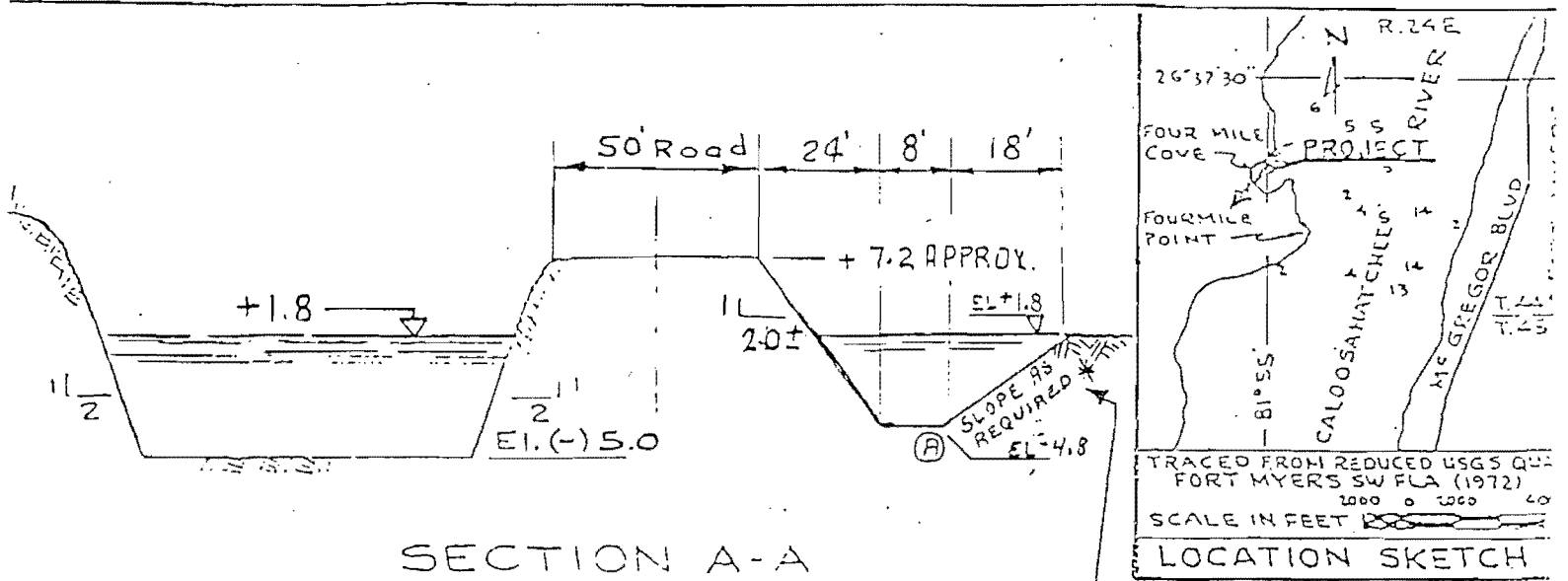
  
FRANK J. CALLAHAN  
as Co-Trustee

DATED AND ENTERED this 27<sup>TH</sup> day of April, 1979.

  
JACOB D. VARN  
Secretary

Department of Environmental  
Regulation  
2600 Blair Stone Road  
Twin Towers Office Building  
Tallahassee, Florida 32301

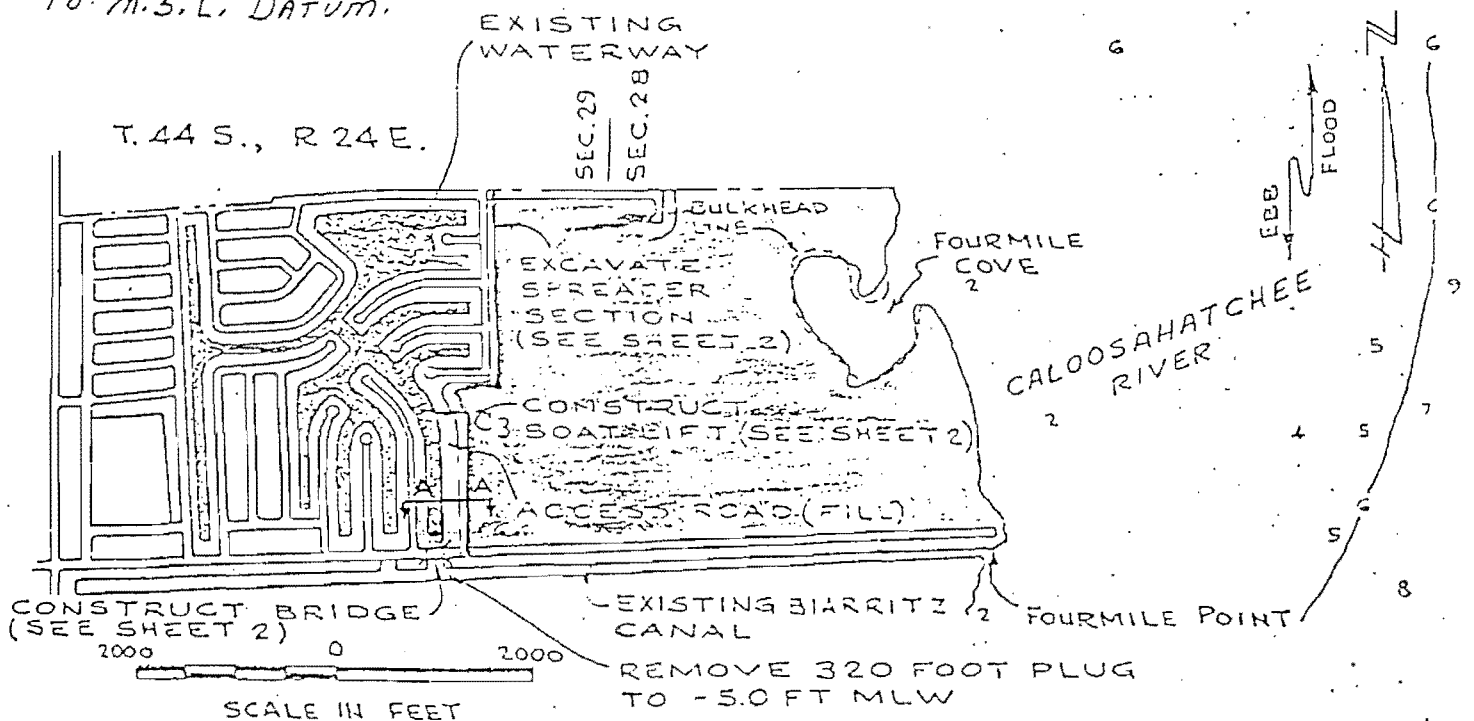
C<sub>3</sub>



- "A" - Development Limits
- Preserve Area

NOTE: ALL ELEVATIONS REFER TO M.S.L. DATUM.

NOTE:  
IF EXISTING GROUND ALONG NON-DEVELOPMENT PLAT LINE OF SPREADER W.W. IS LESS THAN EL. +1.8 M.S.L., FILL TO EL. -2.5 M.S.L. AND CONSTRUCT SIDE SLOPE TO MEET POINT (A)

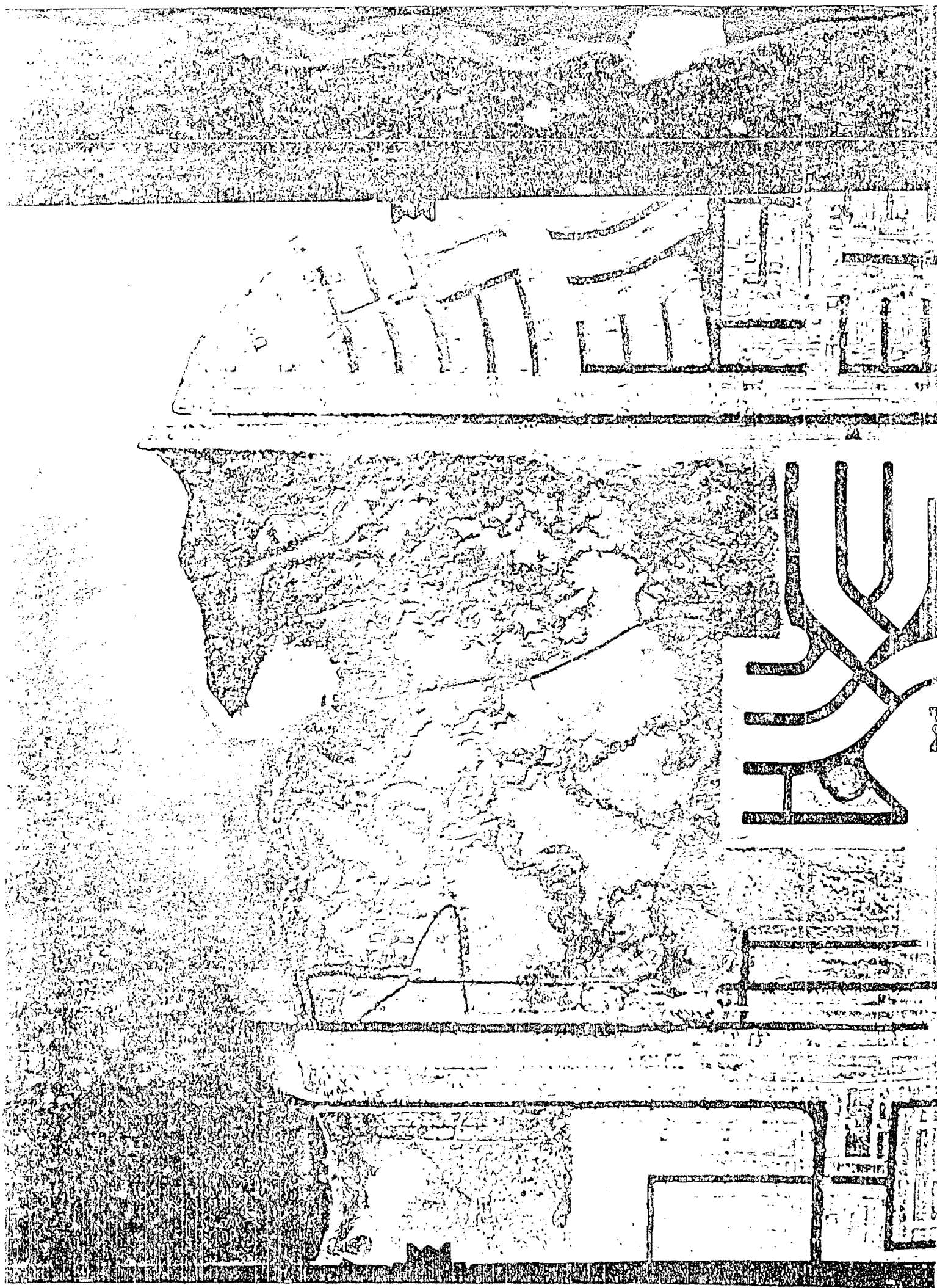


NOTE

REV. 9/78

APPROXIMATELY 600 C.Y. OF SANDY MATERIAL TO BE DREDGED FROM BELOW MHW LINE AND PLACED ON APPLICANTS UPLAND BEHIND SUITABLE DIKES. SEE ATTACHED LIST FOR ADJACENT RIPARIAN OWNERS.

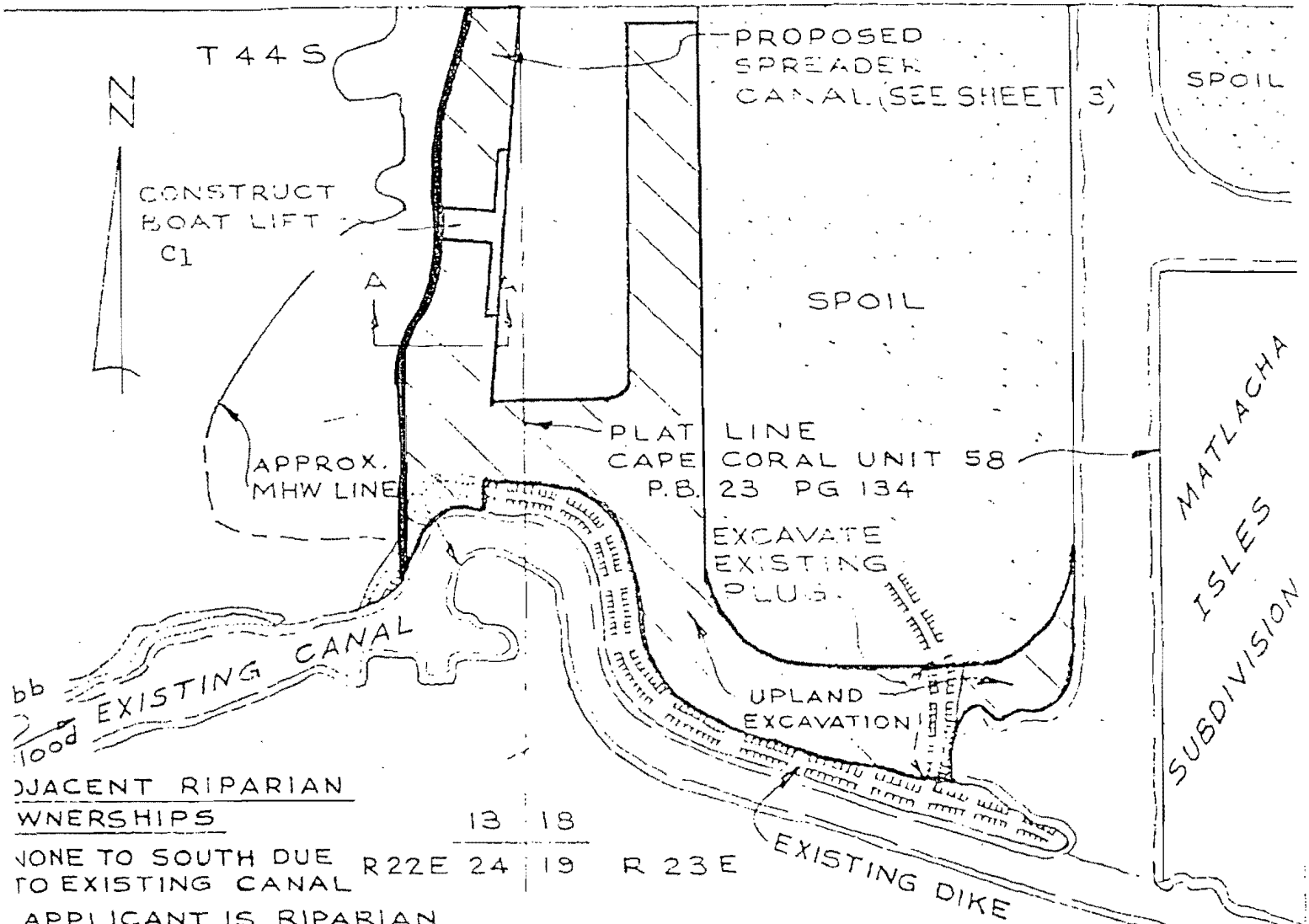
GEE & JENSON CONSULTING ENGINEERS, INC. WEST PALM BEACH FLORIDA			
UNIT 89 DEVELOPMENT 8 CHANNEL BIARRITZ CANAL LEE COUNTY, FLORIDA APPLICANT: GAC PROPERTIES, INC.			
DESIGNED D.H.O.	DRAWN MGB	CHECKED [Signature]	JOB NO. 72-45
DATE MAY 75	SCALE NOTED	APPROVED [Signature]	FILE NO. [Blank]
DRAWING NO.			SHEET 1 OF 2





C<sub>1</sub>

35-20-0274  
72K-1436



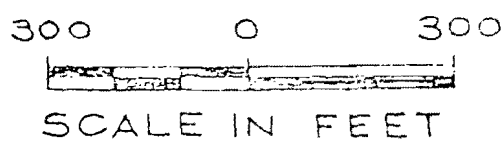
ADJACENT RIPARIAN OWNERSHIPS

13	18
20	19

NONE TO SOUTH DUE TO EXISTING CANAL

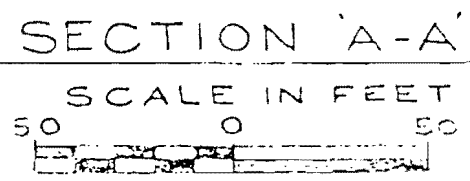
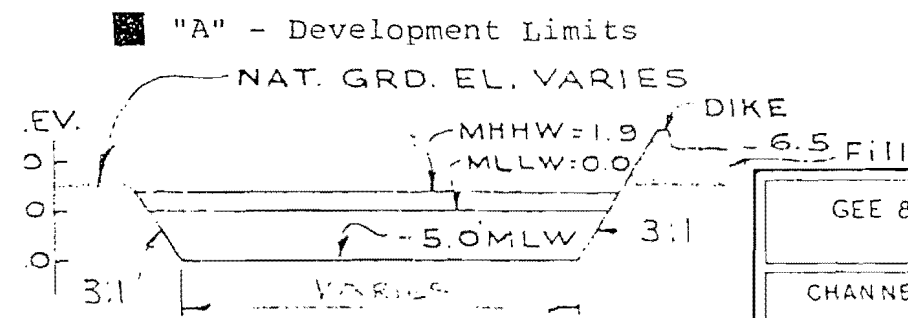
APPLICANT IS RIPARIAN OWNER FOR 38,000 FT. NORTH.

# PLAN



## NOTES:

1. ALL ELEVATIONS REFER TO MLLW DATUM.
  2. APPROX. 3800 C.Y. OF SAND WITH ORGANIC MATERIAL TO BE DREDGED FROM BELOW MHW LINE AND PLACED ON APPLICANT'S UPLAND PROPERTY BEHIND SUITABLE DIKES.
- REV. 12/13  
REV. 11/76 REV. 5/73  
REV. 2/73 REV. 12/72



GEE & JENSON CONSULTING ENGINEERS, INC.  
WEST PALM BEACH, FLORIDA

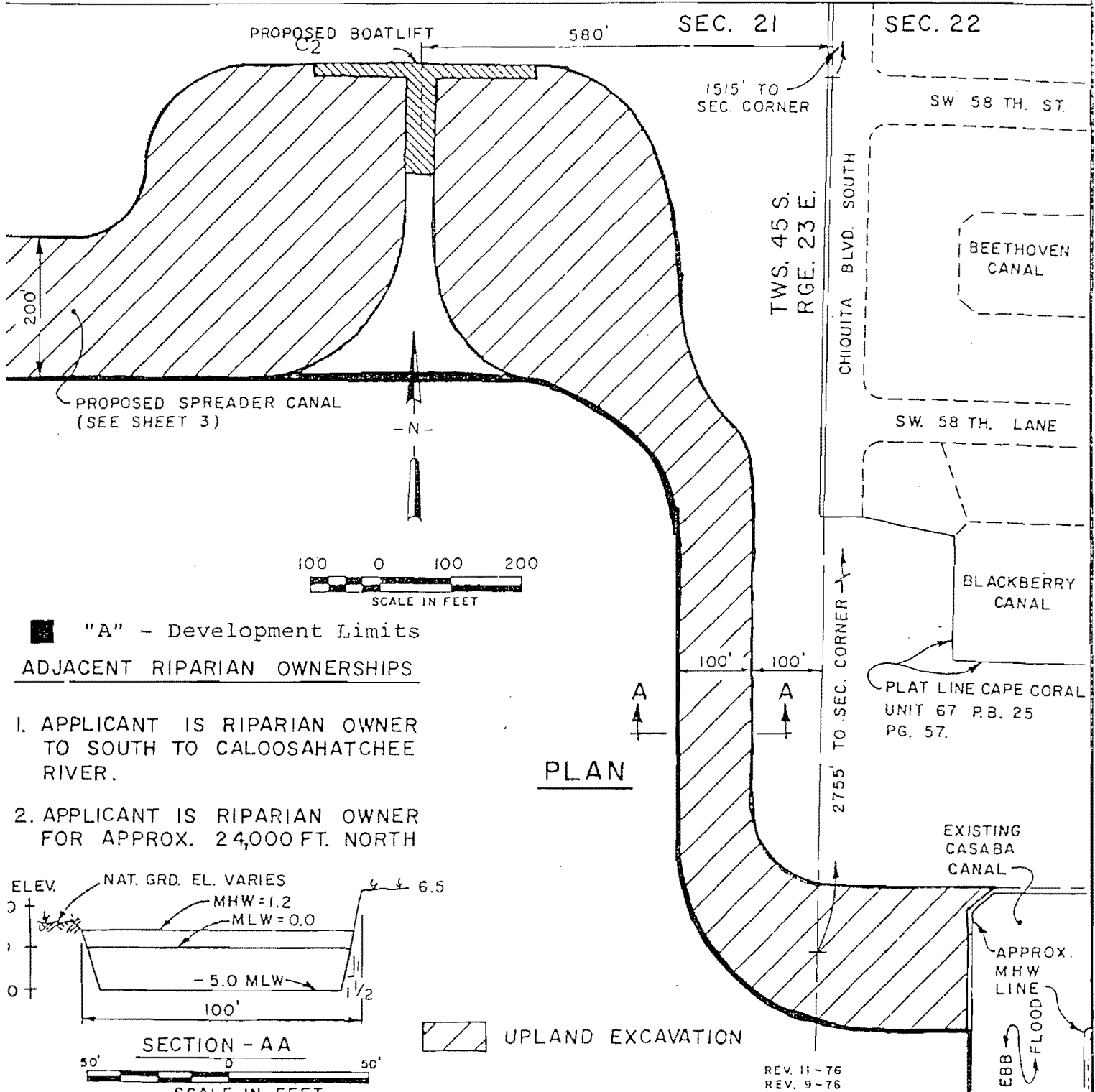
CHANNEL EXCAVATION & LIFT CONSTRUCTION  
MATLACHA PASS  
CAPE CORAL, LEE COUNTY, FLORIDA  
APPLICANT - GAC PROPERTIES, INC.

DESIGNED D.H.D.	DRAWN GB	CHECKED JMW	JOB NO. 71-133	DRAWING NO.
DATE June 72	SCALE AS SHOWN	APPROVED 797	FILE NO.	SHEET 1 OF 3

C<sub>2</sub>

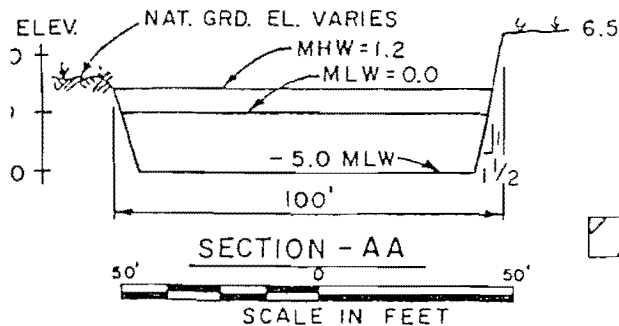
NEW PLAT AREA SOUTHWEST

36-10-3546  
75K-1005



**"A" - Development Limits**  
**ADJACENT RIPARIAN OWNERSHIPS**

1. APPLICANT IS RIPARIAN OWNER TO SOUTH TO CALOOSAHATCHEE RIVER.
2. APPLICANT IS RIPARIAN OWNER FOR APPROX. 24,000 FT. NORTH



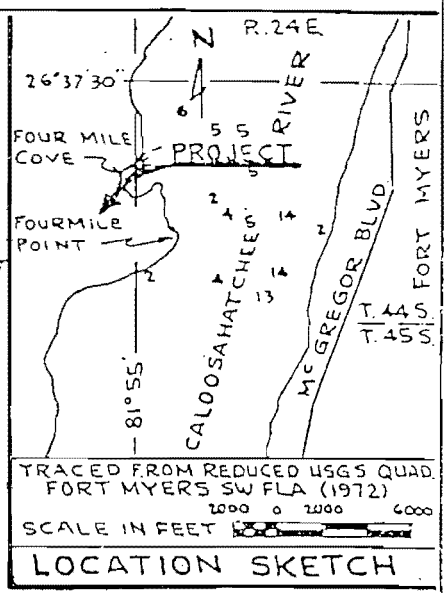
**NOTES**


ALL ELEVATIONS REFER TO MLW DATUM.  
APPROX. 3,200 C.Y. OF SAND WITH ORGANIC MATERIAL TO BE REMOVED FROM BELOW MHW LINE AND PLACED ON APPLICANT'S UPLAND BEHIND SUITABLE DIKES.

CHANNEL EXCAVATION & LIFT CONSTRUCTION  
MATLACHA PASS & CALOOSAHATCHEE RIVER  
CAPE CORAL, LEE COUNTY, FLORIDA  
APPLICANT - GAC PROPERTIES, INC.

DESIGNED P. M.	DRAWN M. M.	CHECKED [Signature]	JOB NO. 71 - 133	DRAWING NO.
DATE MAY 75	SCALE NOTED	APPROVED [Signature]	FILE NO.	SHEET 1 OF 3

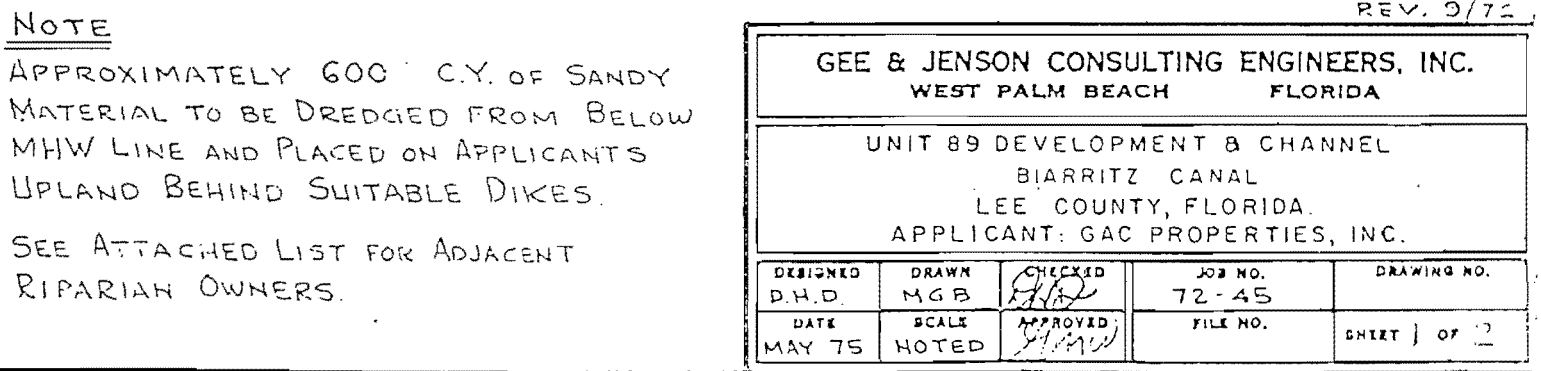
REV. 11-76  
REV. 9-76



TRACED FROM REDUCED USGS QUAD.  
FORT MYERS SW FLA (1972)  
1000 0 2000 6000  
SCALE IN FEET   
LOCATION SKETCH

\*1:20 or the landward edge of wetland vegetation.

NOTE: ALL ELEVATIONS REFER TO M.L.W. DATUM.



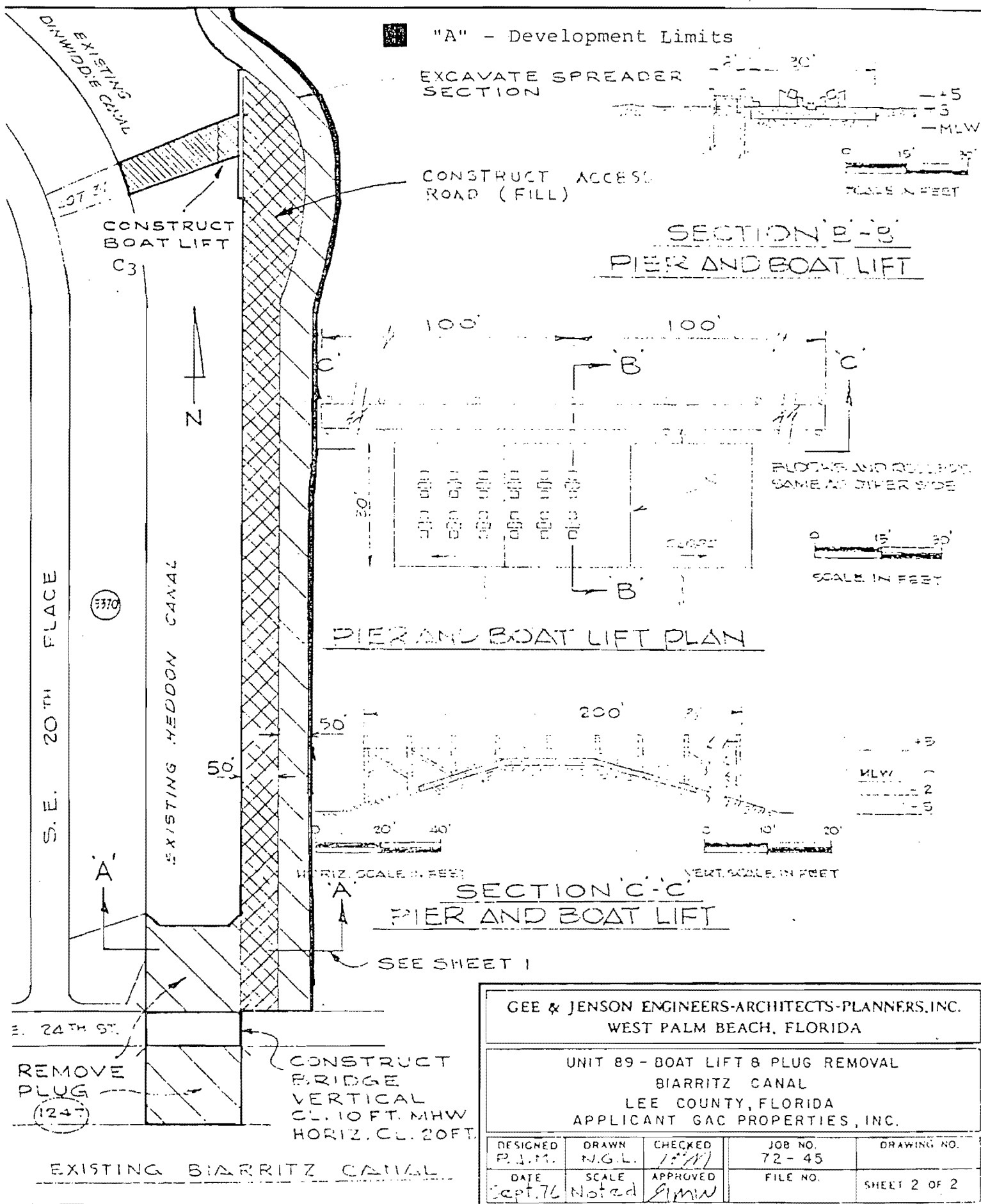
$C_3$ 

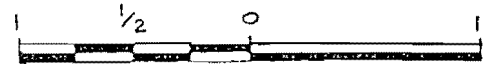
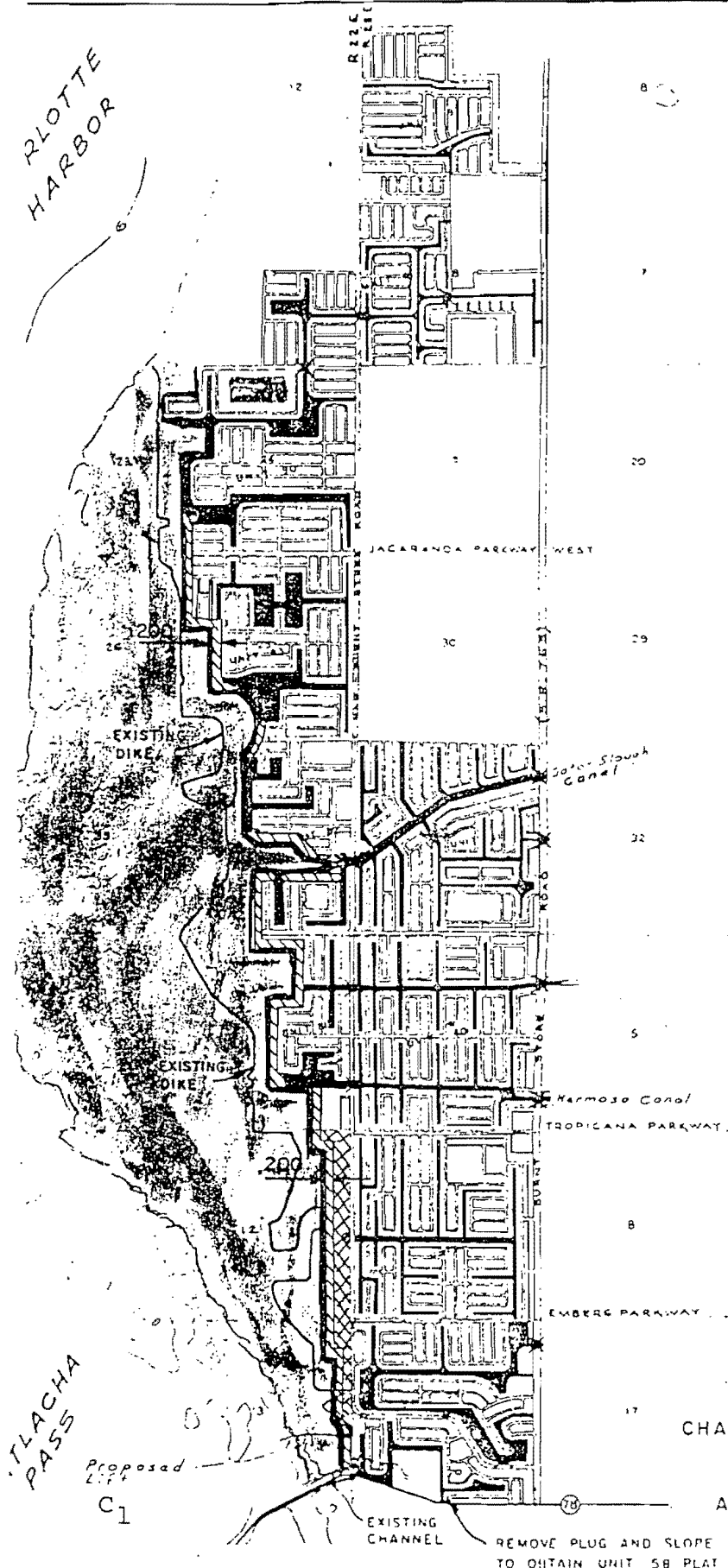
Exhibit 2      Plate 5

Construction of the boat lifts shall be to the following criteria:

- 1 - No transfer of water between the spreader waterway and state waters will be allowed.
- 2 - No part of the boat lifts will encroach beyond line A of Exhibit #1.
- 3 - The lift locations may be moved upstream from Locations C1, C2 and C3 up to 100 feet as long as such relocation does not open additional interior canals to state waters. The location of the boat lift may be moved downstream.
- 4 - The height, width and length of the earthen dam will be determined after establishing the seaward elevation of the spreader waterway and completing the hydraulic analysis.
- 5 - The type of mechanical transfer equipment will be at the discretion of GAC and its design engineer.

LOTTE  
HARBOR

TLACHA  
PASS



SCALE IN MILES

LEGEND

- ▲ WEIR
- ⌵ BRIDGE
- ▨ SPREADER CANAL
- ▩ PLATTED WATERWAYS  
CAPE CORAL UNITS 58,  
59, 60, 61, 81, 82, 83, 90,  
91 & 97 - FILL FOR DEV.
- ▤ FILL FOR DEVELOPMENT

REMOVE EXISTING DIKE TO NATURAL  
GRADE EXISTING PRIOR TO DIKE  
CONSTRUCTION.

REMOVE ANY EXISTING FILL WEST  
OF SPREADER CANAL.

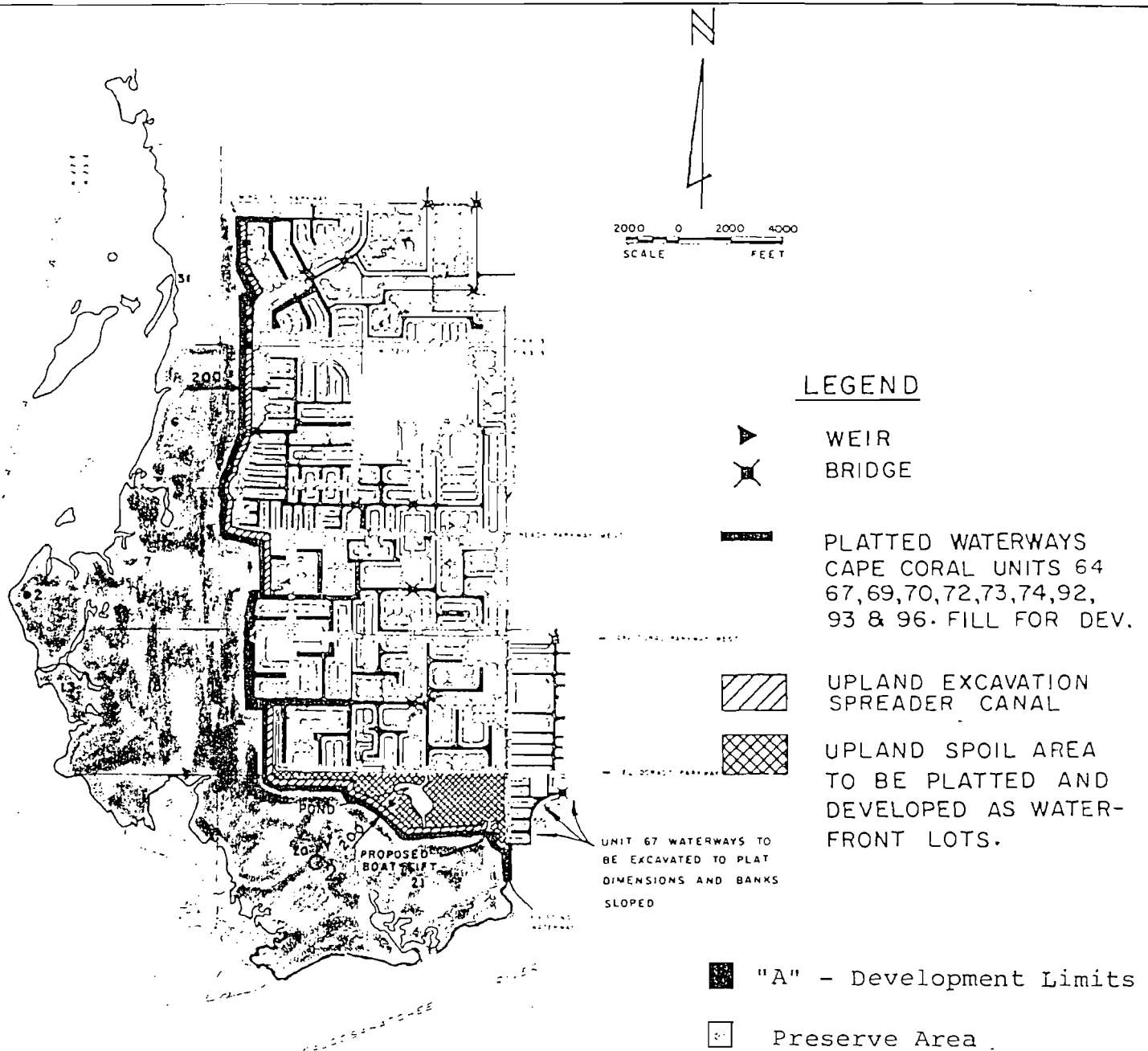
■ "A" - Development Limits

□ Preserve Area

CHANNEL EXCAVATION & LIFT CONSTRUCTION  
MATLACHA PASS  
CAPE CORAL, LEE COUNTY, FLORIDA  
APPLICANT - GAC PROPERTIES, INC.

REMOVE PLUG AND SLOPE BANKS  
TO OBTAIN UNIT 58 PLAT DIMENSIONS

11/76  
10/76 SHEET 3 OF 3  
9/76

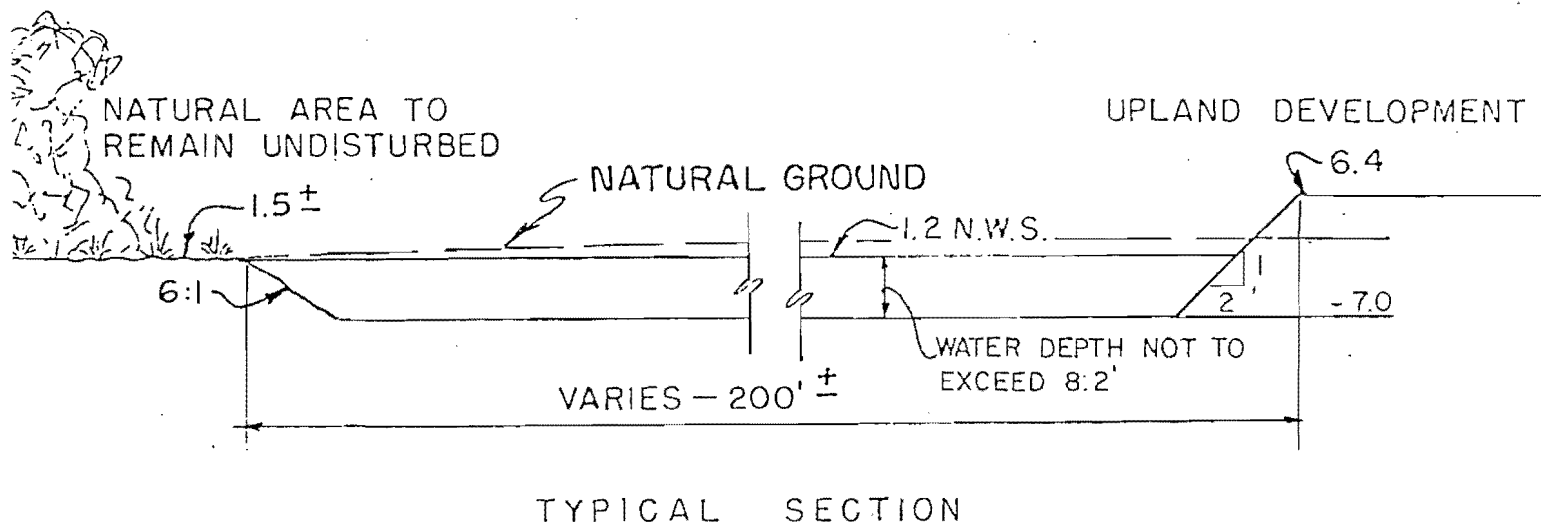
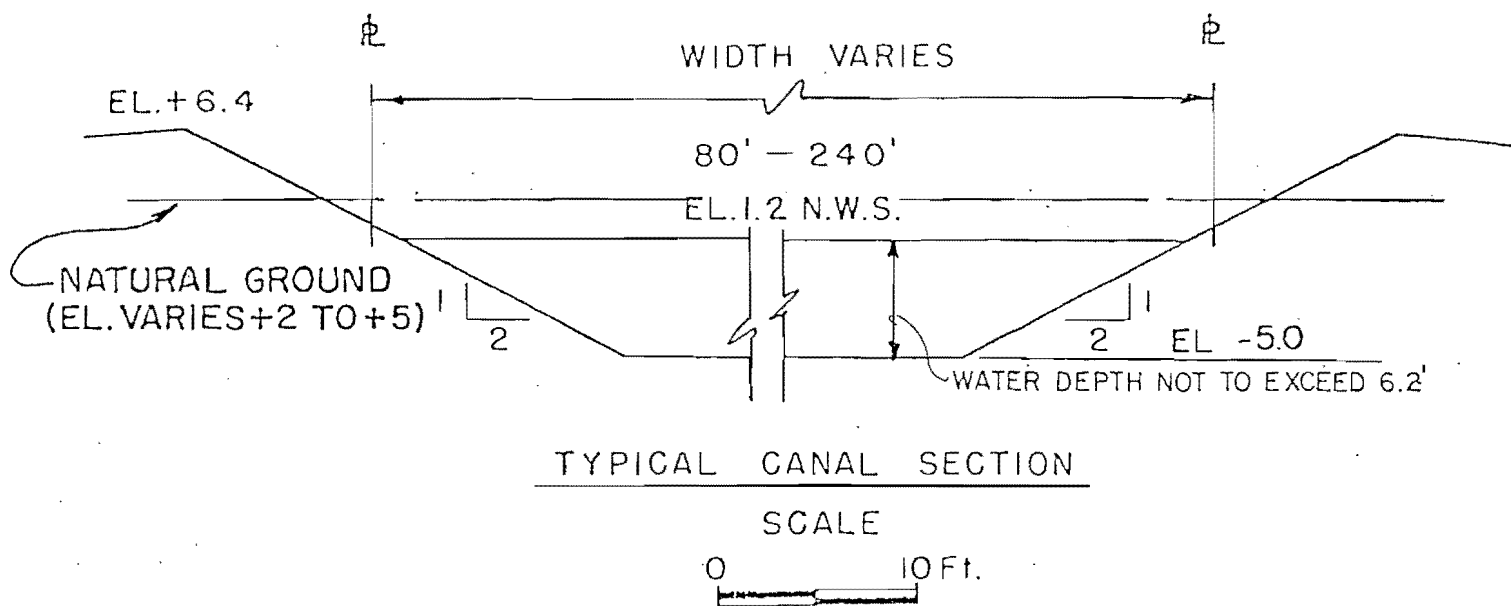


CHANNEL EXCAVATION & LIFT CONSTRUCTION  
MATLACHA PASS & CALOOSA HATCHEE RIVER  
CAPE CORAL, LEE COUNTY, FLORIDA  
APPLICANT - GAC PROPERTIES, INC.

CROSS SECTIONS  
INTERIOR CANALS AND SPREADER WATERWAY

Exhibit 2 Plate 8

36-20-027  
72K-1436



SPREADER WATERWAY EXCAVATION

HORIZ. SCALE 0 40 FEET

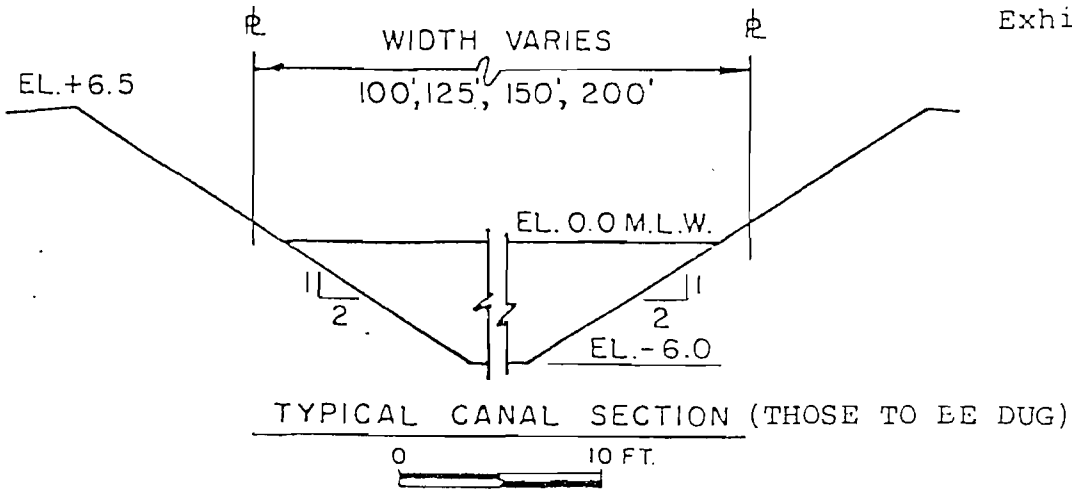
VERT. SCALE 0 20 FEET

NOTES: ALL ELEVATIONS REFER TO  
MEAN SEA LEVEL DATUM.

N. W. S. - NORMAL WATER SURFACE.

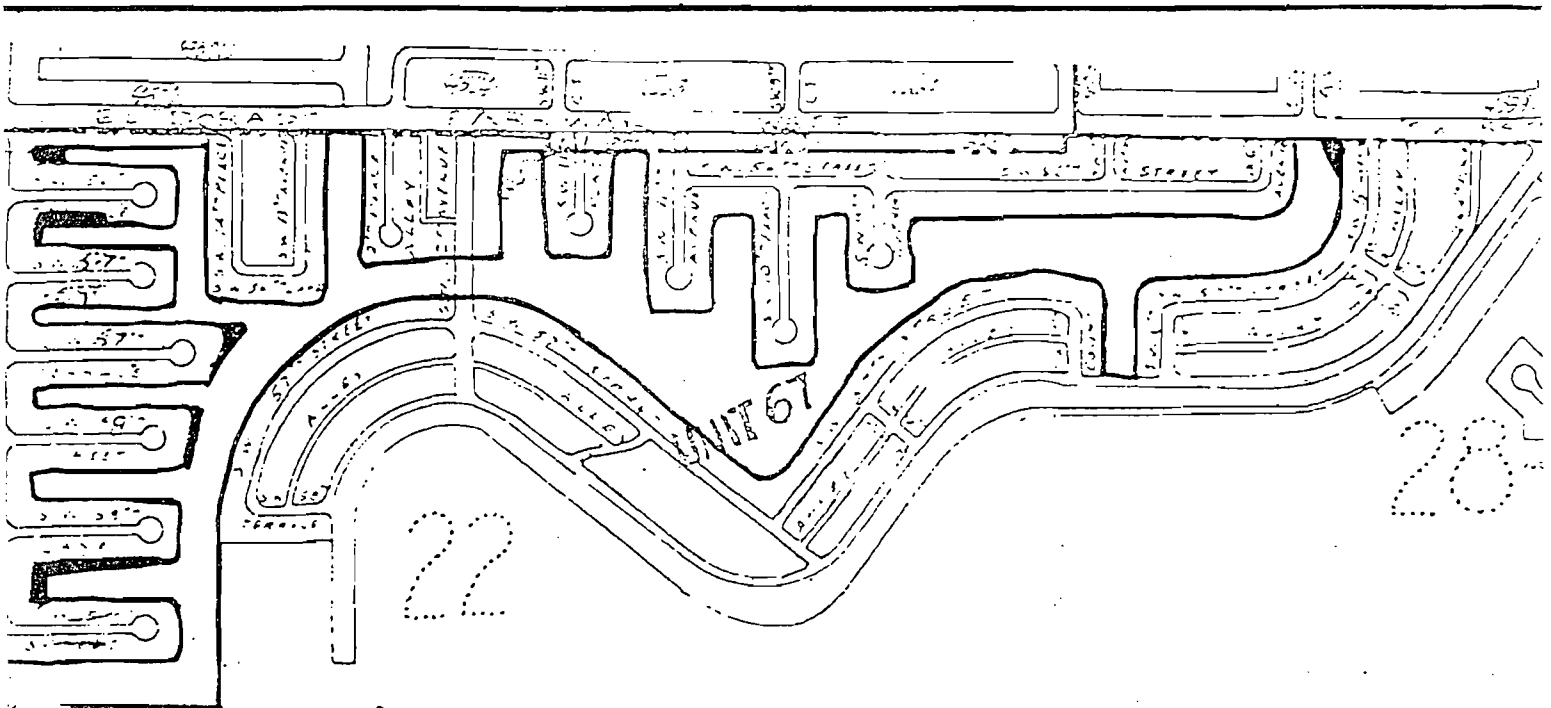
CHANNEL EXCAVATION & LIFT CONSTRUCTION				
MATLACHA PASS				
CAPE CORAL, LEE COUNTY, FLORIDA				
APPLICANT: G.A.C. PROPERTIES, INC.				
DESIGNED D.H.D.	DRAWN G.J.B.	CHECKED J.J.J.	ISS. NO. 71-133	DRAWING NO.
DATE 12-75	SCALE NOTED	APPROVED	FILE NO.	SHEET OF





UNIT 67

NOTE: ALL EL. REFER TO MLW



■ TO BE EXCAVATED	65,000 C.Y.
■ PLUS SLOPE ALL BANKS	35,000 C.Y.
	<hr/> 100,000 C.Y.
■ CANAL OVER DUG TO BE FILLED	8,500 C.Y.
FILL FOR LAND AREAS	250,000 C.Y.

Scale 1" = 1,000'

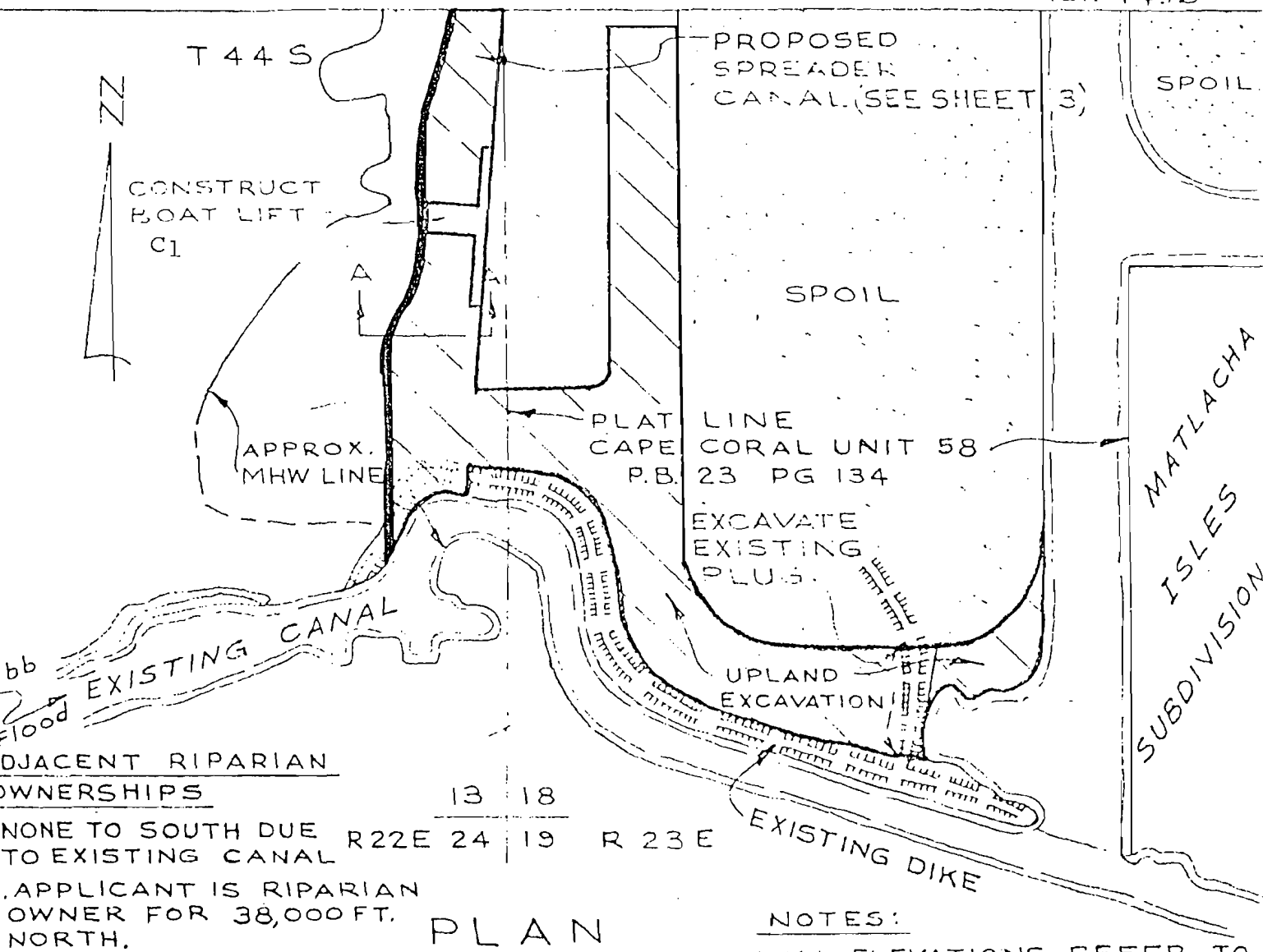
Exhibit 2      Plate 10

The Hydraulic Assessment is to evaluate and recommend adjustment to the water surface elevations, as required, to assure maximum retention and management of surface water while providing reasonable protection of the Cape Coral area from flooding during storms.

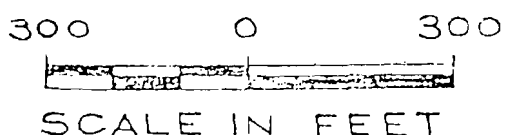
Included in the Assessment are the off-site drainage basin, storm drainage system evaluation, waterway analysis, control structure analysis, and discharge through the perimeter spreader waterway.

A report will be prepared depicting the Hydraulic System Assessment and recommendations for improvements to the system, such improvements to be implemented according thereto by GAC, upon concurrence by the District DER office.

30-20-0274  
72K-1436



PLAN

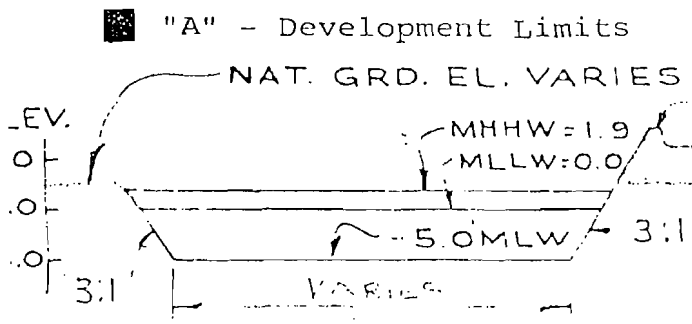


SCALE IN FEET

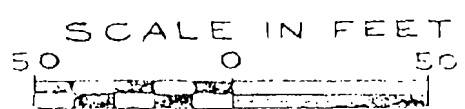
NOTES:

- 1. ALL ELEVATIONS REFER TO MLLW DATUM.
- 2. APPROX. 3800 C.Y. OF SAND WITH ORGANIC MATERIAL TO BE DREDGED FROM BELOW MHW LINE AND PLACED ON APPLICANT'S UPLAND PROPERTY BEHIND SUITABLE DIKES.

REV. 11/76 REV. 12/13  
REV. 5/73 REV. 12/12  
REV. 2/75

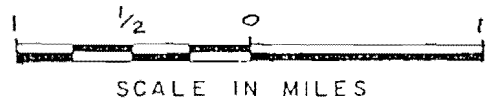
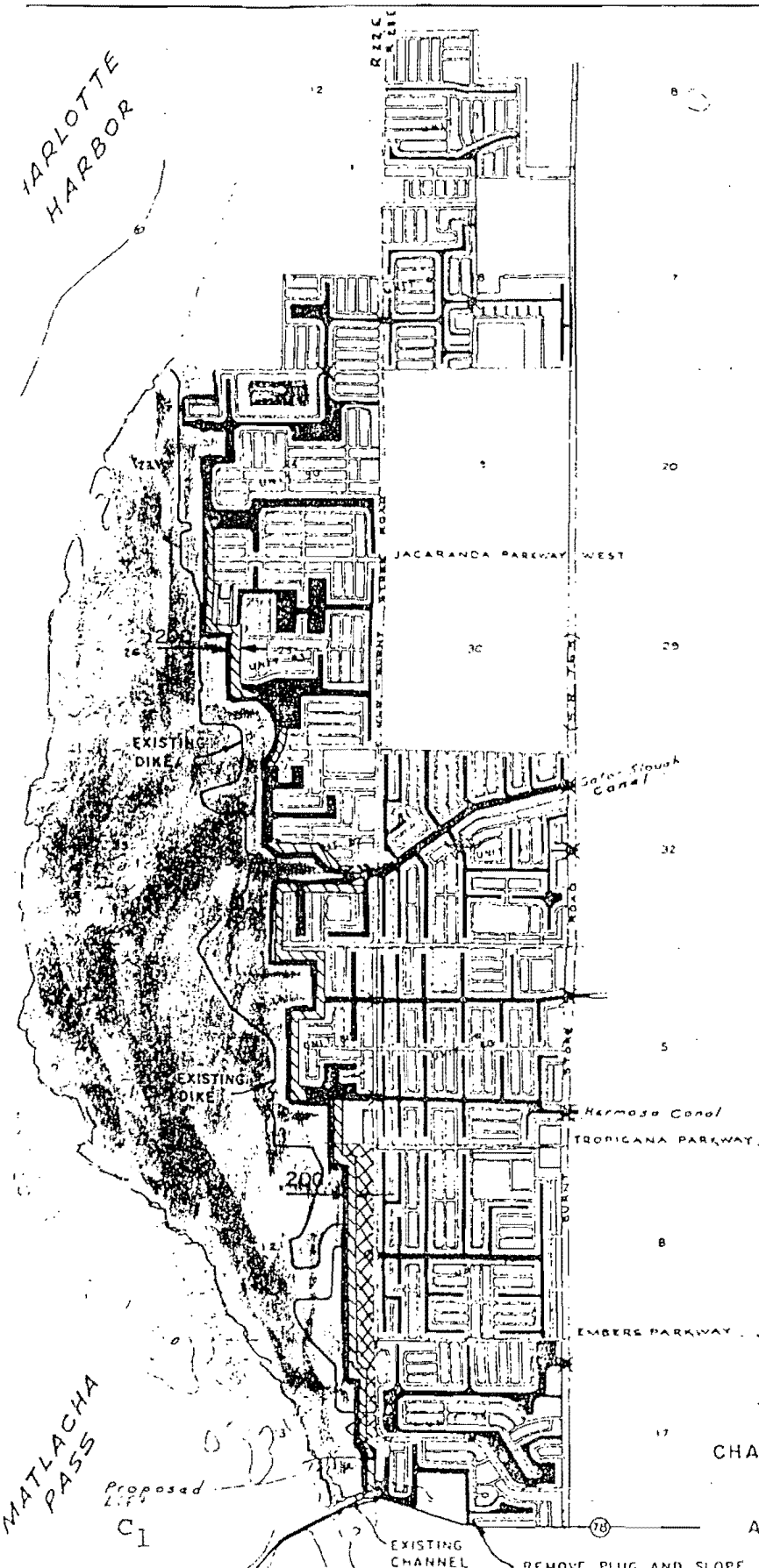


SECTION 'A-A'



SCALE IN FEET

GEE & JENSON CONSULTING ENGINEERS, INC. WEST PALM BEACH, FLORIDA				
CHANNEL EXCAVATION & LIFT CONSTRUCTION MATLACHA PASS CAPE CORAL, LEE COUNTY, FLORIDA APPLICANT - GAC PROPERTIES, INC.				
DESIGNED O.H.D.	DRAWN GB	CHECKED Jmw	JOB NO. 71-133	DRAWING NO.
DATE June 72	SCALE 1"=40'	APPROVED JH	FILE NO.	SHEET 1 OF 3



LEGEND

- ▲ WEIR
- ⌵ BRIDGE
- ▨ SPREADER CANAL
- ▤ PLATTED WATERWAYS  
CAPE CORAL UNITS 58,  
59, 60, 61, 81, 82, 83, 90,  
91 & 97 - FILL FOR DEV.
- ▩ FILL FOR DEVELOPMENT

REMOVE EXISTING DIKE TO NATURAL GRADE EXISTING PRIOR TO DIKE CONSTRUCTION.

REMOVE ANY EXISTING FILL WEST OF SPREADER CANAL.

▤ "A" - Development Limits

▩ Preserve Area

CHANNEL EXCAVATION & LIFT CONSTRUCTION  
MATLACHA PASS  
CAPE CORAL, LEE COUNTY, FLORIDA  
APPLICANT - GAC PROPERTIES, INC.

11/76  
10/76 SHEET 3 OF 3  
9/76