

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

Blue Sheet No. 20021397

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Direct consideration of a Resolution supporting the establishment of the Cocohatchee Community Development District to public hearing on January 14, 2003 at 5:00 p.m..

**WHY ACTION IS NECESSARY:** A Resolution adopted by the BOCC is the only means of expressing support or objection to the granting of a petition to establish a UCDD of greater than 1,000 acres.

**WHAT ACTION ACCOMPLISHES:** Supports the creation of an independent special district that will provide an alternative method to manage and finance basic services within the community development district.

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

*C12A*

**3. MEETING DATE:**

*12-17-2002*

**4. AGENDA:**

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

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

- STATUTE 195.005(1)  
(c)
- ORDINANCE
- ADMIN. CODE
- OTHER

**6. REQUESTOR OF INFORMATION:**

**A. COMMISSIONER**

**B. DEPARTMENT** County Attorney

**C. DIVISION**

**BY:** Dawn E. Perry-Lehnert *[Signature]*

**7. BACKGROUND:**

Beach Road Development Company, LLC has petitioned the Florida Land and Water Adjudicatory Commission (FLWAC) to adopt a rule to establish a Uniform Community Development District (UCDD) in accordance with the Uniform Community Development District Act of Florida Chapter 190, Florida Statutes. Under Section 190.005(1), the exclusive method for establishing a community development district encompassing 1,000 acres or more is through rule adoption by the FLWAC. This section also provides the County with an opportunity to consider the petition at a public hearing and to adopt a resolution in support or objection to the FLWAC grant of the petition.

A community development district is a local unit of special purpose government created for the purpose of performing those specialized and limited functions authorized by the Act concerning the delivery of urban community development services. The Act provides an  
(continued on next page)

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>[Signature]</i>	OA <i>RK 12/4</i>	COM <i>[Signature]</i>	RISK <i>[Signature]</i>	GC <i>[Signature]</i>	<i>12-502</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.  
FORWARDED TO:  
*ADMIN*  
*12/17/02 9:23*

RECEIVED BY  
COUNTY ADMIN. *RK*  
*12-4-02*  
*9:10*  
COUNTY ADMIN.  
FORWARDED TO: *DS*  
*12/5/02*

alternative streamlined method for financing the construction, maintenance and operation of major infrastructures necessary for community development. Once a community development district has been established, it serves as an infrastructure management tool that ultimately relieves the financial burden on existing County taxpayers to provide urban services to the landowners in the district.

The proposed Cocohatchee UCDD encompasses approximately 1,298 acres. The community development district property lies within Sections 1 and 2, Township 48 South, Range 26 East. The property is bounded on the west by Corkscrew Growers RPD/CPD, on the north by undeveloped property, on the east and south by the Lee and Collier County lines.

If the FLWAC grants the Petition, the Cocohatchee Community Development District will be established with the power to finance, plan, establish, acquire, construct or re-construct, enlarge or extend, equip, operate and maintain systems and facilities for the following basic infrastructure: water management; water supplies; sewer and waste water management; bridges or culverts; district roads; and other projects within and outside the district boundary for which a development order may be issued. Additional powers may be requested in the future.

Creation of the Cocohatchee Community Development District does not constitute a development order within the meaning of F.S. Chapter 380. All county planning, environmental, and land development laws and regulations will apply to the development of land within the proposed Cocohatchee District. And, the District can take no action that is inconsistent with the applicable regulations.

Lee County Division of Planning has reviewed the Petition and backup materials in light of the six factors set forth in F.S. Section 190.005(1)(e). A copy of staff's analysis relating to each of these factors is attached to this bluesheet. As a result of their review the Division of Planning recommends that the Board adopt the attached resolution in support of the FLWAC grant of the Petition to establish the Cocohatchee Community Development District.

Attachments:

- Division of Planning, Staff Analysis dated December 2, 2002
- Petition, Exhibits and Attachments (available for review at Lee Cares)
- Proposed Resolution in support of establishing the Cocohatchee Community Development District

DATE

CRITICAL

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, IN SUPPORT OF BEACH ROAD DEVELOPMENT COMPANY, L.L.C.'s PETITION TO ESTABLISH THE COCOHATCHEE COMMUNITY DEVELOPMENT DISTRICT; AND TO AUTHORIZE THE COUNTY MANAGER AND COUNTY ATTORNEY TO TAKE PROPER AND REASONABLE ACTION NECESSARY TO SUPPORT THE PETITION.

**WHEREAS**, Chapter 190, Florida Statutes, provides for establishment of a Uniform Community Development District pursuant to rulemaking triggered by petition to the Governor and Cabinet sitting as the Florida Land and Water Adjudicatory Commission (FLAWAC); and

**WHEREAS**, Beach Road Development Company, L.L.C. has petitioned the Governor and Cabinet to establish a community development district in Lee County on lands generally described as:

Property lying within Sections 1 and 2, Township 48 South, Range 26 East. The property is bounded on the west by Corkscrew Growers RPD/CPD, on the north by undeveloped property and on the east and south by the Lee and Collier County lines, and comprises 1,298 acres more or less.

**WHEREAS**, establishment of the proposed district government does not, and by law may not, affect the rights, authority and duty of Lee County to regulate land use and growth on the above-referenced property; and

**WHEREAS**, the petition was filed with the Governor and Cabinet on October 10, 2002 by Beach Road Development Company, L.L.C., and submitted to Lee County for its review on this same date, along with a processing fee of \$15,000.00; and

**WHEREAS**, under Section 190.005(1)(c), Florida Statutes, Lee County may notice and conduct an optional hearing on what position, if any, to take on the establishment

petition; and

**WHEREAS**, the exercise of its power and functions by a community development district government must by law comply with, not function inconsistent with, must be compatible with, and subject to, all laws, policies, regulations and ordinances of Lee County governing the existing and future use of the land on which the proposed district will be established, as provided in Chapter 190, Florida Statutes; and

**WHEREAS**, the exercise of the board of supervisors of the general and special powers of a community development district is subject to all procedural requirements including noticed meetings, government-in-the-sunshine, ethics and conflicts of interest, and various limitations on the powers, functions and duties of the district; and

**WHEREAS**, adoption of this Resolution will not under any circumstances, prejudice or preempt any land use decisions currently in effect or to be decided in the future by Lee County.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY**, that, having considered and reviewed the subject Petition and the representatives and acknowledgments of Beach Road Development Company, L.L.C., its representatives and counsel, and after noticed public hearing on the matter, the Board finds and determines:

- (1) that establishment of the proposed community development district is in the best interest of Lee County and its citizens;
- (2) it is in the best interest of the citizens of Lee County to support the establishment of the proposed district;

- (3) in order to provide appropriate protection for the citizens of Lee County that will reside in the District, the Board proposes that the following language be included in the enacting legislation for this District:

Any seller of property within the boundaries of the Cocohatchee Community Development District, including their seller's successors and assigns, must include the disclosure statement contained in Section 190.048, Florida Statutes, in the initial land purchase agreement as well as all subsequent purchase agreements. This condition will apply for the life of the Community Development District; and

- (4) the Board so instructs the County Manager and County Attorney to take such actions as are proper and reasonable to support the proposed district establishment and to file this Resolution in the record of the rulemaking process.

The foregoing resolution was adopted by the Board of County Commissioners by a motion by Commissioner \_\_\_\_\_, and seconded by Commissioner \_\_\_\_\_ and, when put to a vote, the result was as follows:

ROBERT P. JANES	_____
DOUGLAS R. ST. CERNY	_____
RAY JUDAH	_____
ANDREW W. COY	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2003.

ATTEST:  
CHARLIE GREEN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Dawn E. Perry-Lehnert  
Office of the County Attorney

**PLANNING DIVISION**  
M E M O R A N D U M



RECEIVED BY  
LEE CO. ATTORNEY

**to:** Dawn Lehnert, Assistant County Attorney  
**from:** B.C. by Paul O'Connor, AICP, Director of Planning  
**subject:** Cocohatchee UCDD  
**date:** Tuesday, December 3, 2002

Planning staff has completed its review of the petition to establish the Cocohatchee Uniform Community Development District. Attached is the staff report being issued by the Lee County Division of Planning supporting the establishment of the UCDD by the Florida Land and Water Adjudicatory Commission.

Planning staff is requesting that notice of any scheduled hearings or meetings concerning this petition be forwarded to us.

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ANALYSIS OF  
THE COCOHATCHEE  
PETITION TO ESTABLISH A  
UNIFORM COMMUNITY  
DEVELOPMENT DISTRICT

*Prepared for*  
*BOARD OF COUNTY COMMISSIONERS*

*by*  
*LEE COUNTY DIVISION OF PLANNING*

*December 2, 2002*



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## INTRODUCTION

Beach Road Development Company, L.L.C. has petitioned the Florida Land and Water Adjudicatory Commission to adopt a rule establishing a Uniform Community Development District (UCDD) and to designate the land area within which the UCDD may manage and finance basic infrastructure systems, facilities and services pursuant to the Uniform Community Development District Act of Florida, Chapter 190, Florida Statutes and Rule 42-1, Florida Administrative Code. The Uniform Community Development District Act was originally adopted in 1980. The act sets forth the procedure for the establishment of such a district, the district's powers and duties for public improvements and community facilities, and additional special powers that the district, after its establishment, may petition for.

If approved the district will be granted the power to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for the following basic infrastructure: water management; water supply, sewer, and waste water management; bridges or culverts; district roads; and other projects inside or outside the district boundary for which a Development Order is issued.

## BACKGROUND

Beach Road Development Company, L.L.C., hereafter called "Petitioner", is a Florida limited liability company with its principal place of business located at Town Center at The Brooks, 9990 Coconut Road #200, Bonita Springs, Florida, 34135-8488 and whose manager is Resource Conservation Properties, Inc. whose Vice President is John M. Gleeson.

The Petitioner has petitioned the Florida Land and Water Adjudicatory Commission to adopt a rule establishing a Uniform Community Development District pursuant to the Uniform Community Development District Act of Florida, Chapter 190, Florida Statutes. The Uniform Community Development District Act was originally adopted in 1980. The act sets forth the procedure for the establishment of such a district and the district's powers and duties.

F.S. 190.005(1) sets forth the "exclusive and uniform method for the establishment of a community development district with a size of 1,000 acres or more." This establishment "shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district."

The Petitioner proposes to establish a Uniform Community Development District on approximately one thousand two hundred and ninety-eight (1,298±) acres of land located in Lee County, Florida and lying within Sections 1 and 2, Township 48 South, Range 26 East, in the south eastern corner of Lee County. A map showing the land area to be

served by the District is attached as Exhibit 1 to the petition and a metes and bounds description of the external boundaries of the District is set forth in Exhibit 2 to the petition. The land area is bounded on the West by the Corkscrew Growers RPD/CPD, on the North by undeveloped property, and on the East and South by the Lee County/Collier County lines. There are no parcels within the external boundaries of the proposed District that are excluded from the District.

Adopting the rule and granting the petition would authorize the district, through its board of supervisors, to manage and finance certain basic infrastructure for the benefit of the landowners in the community. This infrastructure, or basic systems, facilities and services, under Section 190.012(1), F.S., includes four basic types: water supply; sewers and wastewater management; water control and management (drainage); and, roads, bridges and streetlights, as well as "other projects" as specified under Section 190.012(1)(f), Florida Statutes.

In order to provide the basic systems, facilities and services, the district has certain management and financing powers. However, these powers may be exercised only if the district complies with certain strict and detailed procedural requirements. These include: ethics in government; disclosure; conflict of interest requirements; noticed meetings; government-in-the-sunshine conduct; accounting and reporting requirements to various local and state agencies; consultants competitive negotiations procedures; competitive bidding procedures; and others. In addition to complying with these many procedural requirements, the district still may not manage and finance any of these services and facilities without a showing that development of the properties complies with all legitimate policies, constraints, authorities, controls or conditions on the development of the land, whether local, regional, state or federal in nature, and whether in the form of policies, laws, rules, regulations or ordinances. The district itself is not considered "development." Rather, the district is an alternative mechanism to assure the County and the landowners of the particular land in question that basic systems, facilities and services will be managed and financed in an efficient and economical way.

In order to provide these services, the district is also given certain eminent domain powers, within the very tight constraints summarized above, as well as the authority to require service charges, fees or taxes for the various services rendered, ranging from installation of capital facilities to long-term maintenance and repair. The district may also issue non-ad valorem special assessment bonds, revenue and other user bonds, and general obligation bonds. However, no general obligation bonds can be issued without a referendum and without a showing that it will not exceed 35 percent of the assessed valuation of the property within the district.

Any additional powers available to the district under s. 190.012(2) F.S., such as parks, fire prevention and control, security structures and so on, may not be exercised by the district without specific consent from the County.

Accordingly, if the Florida Land and Water Adjudicatory Commission adopts a rule creating the district, the Cocohatchee Community Development District will then be an infrastructure management tool. This pinpointed responsibility can benefit the landowners with timely, efficient, reliable and flexible services. It serves as a concurrency management tool for the County, the landowners, the developer and, ultimately, the residents. In addition, the district would be a financing tool providing financial incentives for long-range and high quality service benefits to initial and subsequent landowners without burdening Lee County and its taxpayers.

## *THE PETITION*

The statutes require that a petition be filed containing the following information:

- a metes and bounds description of the external boundaries of the district and the impact of the proposed district on property within the external boundaries of the district which is excluded from the district;
- the consent of the property owners;
- the designation of the initial members of the board of supervisors;
- the proposed name of the district;
- a map of the proposed district showing current major trunk water mains and sewer interceptors and outfalls if in existence;
- the proposed timetable and estimated cost of constructing the proposed services;
- the designation of the future general distribution, location, and extent of public and private uses of land; and,
- a statement of estimated regulatory costs.

Such a petition was received from the Petitioner by Lee County on October 10, 2002. In order to assist the Commission and its staff in reviewing the petition, supplemental materials were requested and were furnished by the Petitioner. The Petition and supplemental materials have been incorporated into this analysis. Planning staff's review of the petition finds the submittal to be sufficient.

## *FACTORS TO BE CONSIDERED*

In accordance with F.S. Chapter 190, in addition to the record of the local hearing and any resolutions adopted by local general purpose governments, the Florida Land and Water

Adjudicatory Commission is required to consider the following six factors in making a determination to grant or deny a petition for the establishment of a community development district:

1. Whether all statements contained within the petition have been found to be true and correct.
2. Whether the creation of the district is inconsistent with any applicable element or portion of the state comprehensive plan or of the effective local government comprehensive plan.
3. Whether the area of land within the proposed district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as one functional interrelated community.
4. Whether the district is the best alternative available for delivering community development services and facilities to the area that will be served by the district.
5. Whether the community development services and facilities of the district will be incompatible with the capacity and uses of existing local and regional community development services and facilities.
6. Whether the area that will be served by the district is amenable to separate special-district government.

The obligation of the Board of County Commissioners is to consider the six factors using the information in the petition and its attachments, any other documents and information that have been filed, including the expert documents, and any information presented before the commission at the public hearing. The key decisions to be made by the Board in establishing a district is simply whether it is a reasonable thing to do in view of the six factors which the law requires Lee County to analyze.

It should be noted that these factors are not specific criteria nor are they legal permit requirements or standards. Neither are they the basis for rendering any kind of final order or judgement. In accordance with F.S. s. 190.004(3), the creation of a community development district is not a development order within the meaning described in Chapter 380. All governmental planning, environmental, and land development laws, regulations, and ordinances apply to the development of the land within a community development district.

## *STAFF ANALYSIS OF FACTORS*

Planning staff has reviewed the petition and accompanied materials. Following is staff's determination of the petition's applicability to each of the six factors.

**Concerning Factor #1:** Staff concludes that all statements contained within the petition are true and correct. This determination applies to the petition and all of its Exhibits. Concerning petition Exhibit 7, staff agrees with the statement of estimated regulatory costs that there is no adverse impact on small businesses. In fact there could be positive impacts due to the opportunity for small businesses to bid on work within the district. Staff also concurs with the methodology employed in the statement of estimated regulatory costs.

**Concerning Factor #2:** Staff concludes that the creation and establishment of the district is not inconsistent with any applicable element or portion of either the state comprehensive plan or the Lee County local government comprehensive plan, the Lee Plan. In fact, the establishment of the district is affirmatively consistent with Section 187.201(21)(b)(2) F.S., which encourages restructuring political jurisdiction with the goal of greater efficiency. It is also consistent with Policy 1.4.1 of the Lee Plan, the Rural future land use category, which states that “The property consisting of sections 1, 2, and 3, Township 48 South, Range 26 East must be developed only in accordance with the following standards: 1.f. The property must be served with all necessary facilities and services at no expense to the County (including central water and sewer). Uniform Community Development Districts and any special taxing districts may be utilized to achieve this standard. The Property is presently within the Lee County Privately Funded Infrastructure Overlay (PFIO).” The request is consistent with Objective 2.2, Development Timing, which directs “new growth to those portions of the Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created.”

**Concerning Factor #3:** Planning staff has determined that the area of the land within the proposed district is of sufficient size, is sufficiently compact, and sufficiently contiguous to be developable as one functional interrelated community on the site.

**Concerning Factor #4:** Planning staff has reviewed the alternatives available for managing and financing those basic systems, facilities and services for the Cocohatchee development area and have concluded that the district is the best alternative available for delivering services and facilities to the area. The proposed district is consistent with the intent of the Rural future land use category.

**Concerning Factor #5:** Staff has reviewed the issue of the capacity and uses of any existing local and regional community development services and facilities. The establishment of the District will not create conflicts because it is anticipated by the petitioner that water and sewer will be provided by and operated and maintained by Bonita Springs Utilities. An Engineers Opinion of Probable Costs and a letter of availability from Bonita Springs Utilities have been provided by the petitioner and attached to this report. Staff has determined that the community development services and facilities of the district will not be incompatible with the capacity and uses of the existing local and regional services and facilities that deal with community development.

**Concerning Factor #6:** Staff has reviewed the area in question and has determined that it is amenable to separate special district government.

## ADDITIONAL ANALYSIS

As in previous reviews, staff has a concern that future purchasers of property or dwelling units within the proposed UCDD are aware that the property they are purchasing will be subject to additional assessments for public services and facilities, beyond those taxes and assessments levied by local governments. Section 190.048, Florida Statutes, contains a provision that requires that a buyer of an "initial" parcel, or the buyer of an "initial" residential unit within a UCDD be notified that the property or dwelling unit being purchased is subject to special assessments from the district. Second and third buyers of property or dwelling units, however, would not be notified that the property is subject to these special assessments. Staff believes that all future purchasers of property within a UCDD should be made aware that they will be subject to additional district assessments. Staff therefore recommends that the disclosure statement provided in Section 190.048, Florida Statutes apply to all subsequent sales within the UCDD, and not just to the initial sale. Staff recommends the inclusion of the following language in the resolution supporting the proposed district:

Any and all agreements for the sale of property within the boundaries of the Cocohatchee Community Development District must include the disclosure statement required in Section 190.048, Florida Statutes, for the initial sale of the property. This requirement applies to the initial seller of the property as well as all subsequent sellers, successors and assigns for the life of the Cocohatchee Community Development District.

## RECOMMENDATION

Planning staff recommends that the Board of County Commissioners adopt a resolution supporting the petition to establish the Cocohatchee Uniform Community Development District in accordance with Section 190.005(1)(f), F.S. Additionally, that any approval by the Florida Land and Water Adjudicatory Commission include the following requirement:

*Any and all agreements for the sale of property within the boundaries of the Cocohatchee Community Development District must include the disclosure statement required in Section 190.048, Florida Statutes, for the initial sale of the property. This requirement applies to the initial seller of the property as well as all subsequent sellers, successors and assigns for the life of the Cocohatchee Community Development District.*

**BBR Offsite Entrance Road**

BBR /Ronto Pro Rata for Shared Utilities

11/11/02

**Engineers Opinion of Probable Costs**

Item Description	Quantity	Unit	Unit Cost	Subtotal
<b>FORCE MAIN</b>				
1 Air Release Valves	5	EA	\$1,000.00	\$5,000.00
2 16" C905 SDR-18 Force Main	312	LF	\$32.00	\$9,984.00
3 16" C905 SDR-25 Force Main	5,136	LF	\$30.00	\$154,080.00
4 16" Plug Valves	5	EA	\$4,300.00	\$21,500.00
				<b>\$190,564.00</b>

Item Description	Quantity	Unit	Unit Cost	Subtotal
<b>WATER MAIN</b>				
4 16" C905 DR-18 Water Main	139	EA	\$32.00	\$4,448.00
5 16" C905 DR-25 Water Main	5,136	EA	\$30.00	\$154,080.00
6 16" Gate Valve w/Box	5	EA	\$4,300.00	\$21,500.00
7 Air Release Valves	5	EA	\$1,000.00	\$5,000.00
8 Temporary Blow-Off	1	EA	\$1,000.00	\$1,000.00
				<b>\$186,028.00</b>

**TOTAL**

FORCE MAIN	<b>\$190,564.00</b>
WATER MAIN	<b>\$186,028.00</b>

**Total \$376,592.00**

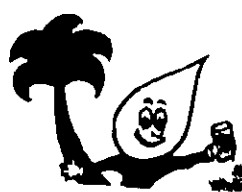


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P. 2



**Bonita Springs Utilities, Inc.**

February 6, 2001

Lee County Division of Concurrency Management  
Post Office Box 398  
1820 Hendry Street  
Fort Myers, Florida 33901

Re: Sections 1 & 2, Township 48S, Range 26E,  
Bonita Springs, Lee County, Florida

Dear Sir or Madam:

Please be advised that the Developer has requested potable water, sewer and reuse service for the project referenced above. The Developer is required to install all off-site and on-site waterline and/or sewer line extensions necessary to provide service to the project in accordance with Bonita Springs Utilities, Inc. specifications.


The projects engineer, Agnoli, Barber & Brundage, estimates the usage to be 600,000 gallons per day. Bonita Springs Utilities, Inc. will have the capacity to provide the above estimated gallonage from its 9 million gallon per day water treatment plant in October 2001, when plant expansion construction is completed. The Water Reclamation Facility will have the capacity to treat the above estimated gallonage from its 7 million gallon per day treatment plant in February, 2002, when plant expansion construction is completed.

Reuse water is not available at this time.

The static water pressure at the point the developers' waterline extension will connect currently exceeds 20 psi.

This letter should not be construed as a commitment or guarantee to serve, but only as to the availability of potable water, sewer and reuse at this time. Bonita Springs Utilities, Inc. may commit to reserve plant capacity if available, at such time as the utility company and developer enter into a Developers Agreement and approval is obtained from all appropriate state and local regulatory agencies.

Sincerely,

  
Patrick C. Jennings II, PE  
Director of Engineering

PJ/mar

cc: Agnoli, Barber & Brundage