

Agenda Item Summary

1. ACTION REQUESTED/PURPOSE: Conduct a Public Hearing to adopt a Resolution on Petition to Vacate a portion of a 80-foot wide IDD Canal Easement located at 1040 Averly St., south of Whiskey Creek Terrace, Ft. Myers (Case No. VAC2006-00028).

2. WHAT ACTION ACCOMPLISHES: To legitimize a portion of the existing residence which was inadvertently permitted and constructed in the easement and to provide for construction of a new accessory garage within the easement. **The vacation will not alter existing drainage conditions, however the easement is necessary to accommodate existing canal maintenance obligations and future drainage requirements.**

3. MANAGEMENT RECOMMENDATION: Do not approve. Public Works needs to retain easement for future drainage improvements.

| | | |
|--|--|--|
| 4. Departmental Category: COMMISSION DISTRICT #: 2 9:30 AM PH1 | | 5. Meeting Date: 10-3-2006 |
| 6. Agenda: <input type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input checked="" type="checkbox"/> Public <input type="checkbox"/> Walk-On | 7. Requirement/Purpose: (specify) <input checked="" type="checkbox"/> Statute F.S. Ch. 336 <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Admin. Code 13-8 <input type="checkbox"/> Other | 8. Request Initiated: Commissioner _____ Department _____ Community Development Division _____ Development Services By: <i>[Signature]</i> 8/30/06 Peter J. Eckenrode, Director |

9. Background:

The completed petition to vacate, VAC2006-00028 was submitted by Matthew D. Uhle, Esq. and Knott, Consoer, Ebelini, Hart & Sweet, P.A. on behalf of Denis P. and Yvonne A. Rohaley.

LOCATION: The site is located at **1040 Averly St., Ft. Myers, Florida 33919** and its strap number is **15-45-24-00-00005.0000**. Petition No. VAC2006-00028 proposes to vacate a portion of an eighty-foot (80') wide IDD Canal H-10 Right-of-Way located on the South portion of a Tract of Land lying within the Northeast 1/4 of the Northwest 1/4 of Section 15, Township 45 South, Range 24 East, Whiskey Creek Terrace, as recorded in Plat Book 10, Page 50 of the Public Records of Lee County, Florida.

The IDD H-10 Canal is a County maintained drainage facility which conveys drainage from Winkler Road to Wyomi/Whiskey Creek. The County actively maintains the facility west of the applicants property and wishes to retain rights to the full extent of the easement for future drainage improvements to Winkler Road. Consequently, both the Lee County Department of Transportation and Lee County Division of Natural Resources offer objection to this request.

Documentation pertaining to this Petition to Vacate is available for viewing at the Office of Lee Cares.

Attached to this Blue sheet is the Petition to Vacate, Notice of Public Hearing and Exhibits.

10. Review for Scheduling:

| Department Director | Purchasing or Contracts | Human Resources | Other | County Attorney | Budget Services | | | | County Manager/P.W. Director |
|---------------------|-------------------------|-----------------|-------|--------------------|---------------------------|---------------------------|---------------------------|---------------------------|------------------------------|
| | | | | | Analyst | Risk | Grants | Mgr. | |
| <i>[Signature]</i> | | | | <i>[Signature]</i> | <i>[Signature]</i> 9/1/06 | <i>[Signature]</i> 9/1/06 | <i>[Signature]</i> 9/1/06 | <i>[Signature]</i> 9/1/06 | <i>[Signature]</i> 9/1/06 |

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: *[Signature]*
 9:505 5:05 -mt.
 COUNTY ADMIN FORWARDED TO: *[Signature]*
 9/1/06
 4pm

Rec. by CoAtty
 Date: 8/31/06
 Time: 11:15 AM
 Forwarded to:
 Co. Admin
 9/5/06 1PM

NOTICE OF PUBLIC HEARING FOR PETITION TO VACATE

Case Number: VAC2006-00028

TO WHOM IT MAY CONCERN:

NOTICE is hereby given that on the 3rd day of October 2006 @ 9:30am in the County Commissioners' Meeting Room, Old Lee County Courthouse, 2120 Main Street, Fort Myers, Florida, the Board of County Commissioners of Lee County, Florida, will consider and take action on a Petition vacating, abandoning, closing and discontinuing the public's interest in the right-of-way or portion of a right-of-way, legally described in the attached Exhibit "A".

Interested parties may appear in person or through a representative and be heard with respect to the Petition to Vacate.

Anyone wishing to appeal the decision made by the Board with respect to any matter considered at this meeting will need a record of the proceeding for such appeal, and may need a verbatim record, to include all testimony and evidence upon which the appeal is to be based.

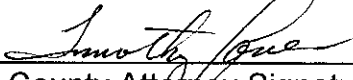
A copy of the Petition to Vacate is on file in the Office of the Clerk of the Circuit Court of Lee County, Florida, Minutes Office, 2115 Second Street, Fort Myers, Florida.

CHARLIE GREEN, CLERK

Deputy Clerk Signature

Please Print Name

APPROVED AS TO FORM



County Attorney Signature

Timothy Jones

Please Print Name



PETITION TO VACATE

TRANSMITTAL FOR PUBLIC NOTICE REQUIREMENTS

DATE: August 9, 2006

To: Molly Schweers
Public Resources

FROM: Ron Wilson
Development Services

BLUESHEET NUMBER: 20061058

CASE NUMBER: VAC2006-00028

Applicable Public Noticing Requirement:

PTV under AC13-1

1st Notice - 15 days prior to Public Hearing
2nd Notice - 7 days prior to Public Hearing

PTV under AC13-8

One Notice - 15 days prior to Public Hearing

Upon scheduling of Public Hearing date, please provide e-mail notice to Ron Wilson, Development Services (rwilson@leegov.com) and John Fredyma, Assistant County Attorney (fredymjj@leegov.com).

DESCRIPTION FOR VACATING PART OF A DRAINAGE EASEMENT KNOWN
AS THE I.D.D. CANAL H-10

A tract of land lying within the Northeast $\frac{1}{4}$, of the Northwest $\frac{1}{4}$ of Section 15, Township 45 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

Commencing at the Southwest corner of said Northeast $\frac{1}{4}$, of the Northwest $\frac{1}{4}$, thence North $89^{\circ} 57' 30''$ East, along the South line of said fraction (bearings are based on the plat of Whiskey Creek Terrace, according to the plat thereof, as recorded in Plat Book 10, Page 50, of the Public Records of Lee County, Florida), 957.70 feet;

Thence North $00^{\circ} 00' 40''$ East 20.0 feet, to a point at the approximate top of bank, and the Point of Beginning;

Thence continue North $00^{\circ} 00' 40''$ East 30.0 feet to the North line of said easement;

Thence North $89^{\circ} 57' 30''$ East along the said North line 297.5 feet more or less to the face of a seawall at Whiskey Creek;

Thence South $46^{\circ} 51' 44''$ East 7.22 feet;

Thence South $34^{\circ} 39' 07''$ East 19.48 feet along said seawall;

Thence South $21^{\circ} 31' 11''$ East 13.05 feet along said seawall;

Thence South $06^{\circ} 58' 19''$ East 4.10 feet along said seawall;

Thence South $05^{\circ} 48' 10''$ West 11.96 feet along said seawall;

Thence North $70^{\circ} 30' 13''$ West 27.96 feet along said seawall;

Thence North $15^{\circ} 56' 12''$ West 5.0 feet along said seawall to its end, and the top of bank;

Thence North $88^{\circ} 48' 46''$ West, 288.70 feet, along the top of bank to the Point of Beginning.

PREPARED BY:

URBAN SURVEYS, INC.
TED B. URBAN, PLS, 2549
1318 SE 47TH STREET
CAPE CORAL, FL. 33904

Exhibit "A"
Petition to Vacate
VAC2006-00028
[Page One of One]

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AUG 07 2006

VAC2006-00028

THIS INSTRUMENT PREPARED BY:

Department of Community Development
Development Services Division
1500 Monroe Street
Fort Myers Florida 33901

RESOLUTION NO. _____ FOR PETITION TO VACATE

Case Number: VAC2006-00028

WHEREAS, Petitioner Denis P. Rohaley and Yvonne A. Rohaley in accordance with Florida Statute (F.S.) Chapter 336 and Lee County Administrative Code (LCAC) 13-8, filed a Petition to vacate, abandon, close and discontinue the public's interest in the right-of-way or portion of a right-of-way legally described in the attached Exhibit "A"; and

WHEREAS, the Board of County Commissioners of Lee County, Florida held a Public Hearing concerning a Petition to Vacate on the _____; and

WHEREAS, a legally sufficient Affidavit of Publication regarding the Notice of Public Hearing on this Petition to Vacate was entered into the minutes of the County Commission Meeting and a copy of said Affidavit is attached as Exhibit "C"; and

WHEREAS, notice concerning the intent of the Petition to Vacate was provided in accordance with LCAC 13-8, and

WHEREAS, it appears that vacating, abandoning, closing or discontinuing the subject right-of-way or portion of right-of-way is in the best interest of the public and promotes the public's health, safety and welfare without invading or violating individual property rights; and

WHEREAS, the letters of review and recommendation provided by the various governmental and utility entities indicate granting Petitioner's request is appropriate and in accordance with F.S. Chapter 336.

NOW therefore be it resolved by the Board of County Commissioners as follows:

1. Petition to Vacate No. VAC2006-00028 is hereby granted.
2. The public's interest in the right-of-way or portion of right-of-way described in Exhibit "A" and graphically depicted in Exhibit "B" is hereby vacated, abandoned, closed and discontinued.
3. A Notice of Resolution of Adoption will be published one time within 30 days of adoption in a newspaper of general circulation. An Affidavit of Publication for the Notice of Resolution Adoption will be attached to this Resolution as Exhibit "D".
4. This Resolution will become effective upon the recording of a fully executed Resolution, including all exhibits referred to above, in the public records of Lee County, Florida.

This Resolution passed by voice and entered into the minutes of the Board of County Commissioners of Lee County, Florida, this _____.

ATTEST:
CHARLIE GREEN, CLERK

Deputy Clerk Signature

Please Print Name

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

Chairwoman Signature

Please Print Name

APPROVED AS TO FORM

County Attorney Signature

Please Print Name

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AUG 07 2006

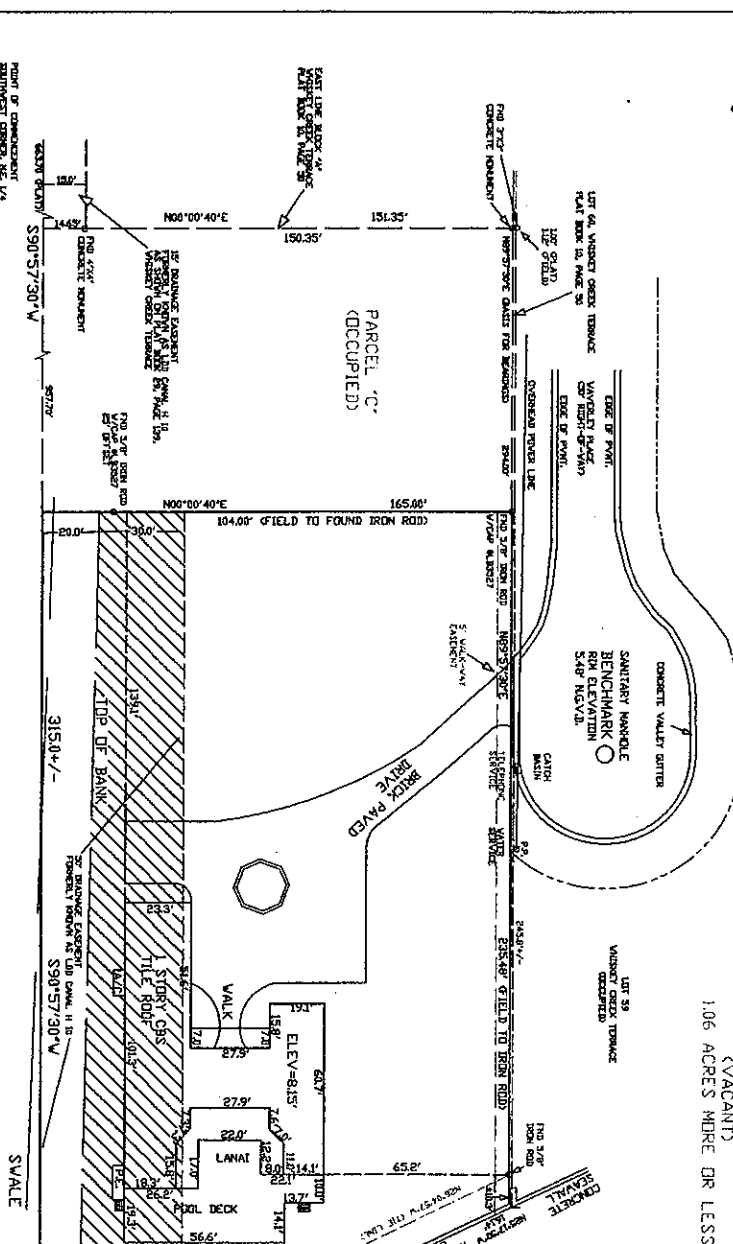
VAC2006-00028

**SURVEY DRAWING
AND
CERTIFICATION**

BOUNDARY SURVEY FOR
DENIS P. & YVONNE A. ROHALEY
AMSDOTH BANK ISRAOLA
AVERY, WIDAM & WINESETT
ATTORNEYS TITLE INSURANCE FOND
JEFFREY S. THOMES



| LINE | BEARING | LENGTH |
|------|-------------|----------|
| 1 | N00°00'40"E | 151.35' |
| 2 | S90°57'30"W | 315.04'- |
| 3 | S90°57'30"W | 104.00' |
| 4 | N00°00'40"E | 165.00' |
| 5 | S90°57'30"W | 104.00' |
| 6 | N00°00'40"E | 151.35' |
| 7 | S90°57'30"W | 315.04'- |
| 8 | S90°57'30"W | 104.00' |
| 9 | N00°00'40"E | 165.00' |
| 10 | S90°57'30"W | 104.00' |
| 11 | N00°00'40"E | 151.35' |
| 12 | S90°57'30"W | 315.04'- |
| 13 | S90°57'30"W | 104.00' |
| 14 | N00°00'40"E | 165.00' |
| 15 | S90°57'30"W | 104.00' |
| 16 | N00°00'40"E | 151.35' |
| 17 | S90°57'30"W | 315.04'- |
| 18 | S90°57'30"W | 104.00' |
| 19 | N00°00'40"E | 165.00' |
| 20 | S90°57'30"W | 104.00' |
| 21 | N00°00'40"E | 151.35' |
| 22 | S90°57'30"W | 315.04'- |
| 23 | S90°57'30"W | 104.00' |
| 24 | N00°00'40"E | 165.00' |
| 25 | S90°57'30"W | 104.00' |
| 26 | N00°00'40"E | 151.35' |
| 27 | S90°57'30"W | 315.04'- |
| 28 | S90°57'30"W | 104.00' |
| 29 | N00°00'40"E | 165.00' |
| 30 | S90°57'30"W | 104.00' |
| 31 | N00°00'40"E | 151.35' |
| 32 | S90°57'30"W | 315.04'- |
| 33 | S90°57'30"W | 104.00' |
| 34 | N00°00'40"E | 165.00' |
| 35 | S90°57'30"W | 104.00' |
| 36 | N00°00'40"E | 151.35' |
| 37 | S90°57'30"W | 315.04'- |
| 38 | S90°57'30"W | 104.00' |
| 39 | N00°00'40"E | 165.00' |
| 40 | S90°57'30"W | 104.00' |
| 41 | N00°00'40"E | 151.35' |
| 42 | S90°57'30"W | 315.04'- |
| 43 | S90°57'30"W | 104.00' |
| 44 | N00°00'40"E | 165.00' |
| 45 | S90°57'30"W | 104.00' |
| 46 | N00°00'40"E | 151.35' |
| 47 | S90°57'30"W | 315.04'- |
| 48 | S90°57'30"W | 104.00' |
| 49 | N00°00'40"E | 165.00' |
| 50 | S90°57'30"W | 104.00' |
| 51 | N00°00'40"E | 151.35' |
| 52 | S90°57'30"W | 315.04'- |
| 53 | S90°57'30"W | 104.00' |
| 54 | N00°00'40"E | 165.00' |
| 55 | S90°57'30"W | 104.00' |
| 56 | N00°00'40"E | 151.35' |
| 57 | S90°57'30"W | 315.04'- |
| 58 | S90°57'30"W | 104.00' |
| 59 | N00°00'40"E | 165.00' |
| 60 | S90°57'30"W | 104.00' |
| 61 | N00°00'40"E | 151.35' |
| 62 | S90°57'30"W | 315.04'- |
| 63 | S90°57'30"W | 104.00' |
| 64 | N00°00'40"E | 165.00' |
| 65 | S90°57'30"W | 104.00' |
| 66 | N00°00'40"E | 151.35' |
| 67 | S90°57'30"W | 315.04'- |
| 68 | S90°57'30"W | 104.00' |
| 69 | N00°00'40"E | 165.00' |
| 70 | S90°57'30"W | 104.00' |
| 71 | N00°00'40"E | 151.35' |
| 72 | S90°57'30"W | 315.04'- |
| 73 | S90°57'30"W | 104.00' |
| 74 | N00°00'40"E | 165.00' |
| 75 | S90°57'30"W | 104.00' |
| 76 | N00°00'40"E | 151.35' |
| 77 | S90°57'30"W | 315.04'- |
| 78 | S90°57'30"W | 104.00' |
| 79 | N00°00'40"E | 165.00' |
| 80 | S90°57'30"W | 104.00' |
| 81 | N00°00'40"E | 151.35' |
| 82 | S90°57'30"W | 315.04'- |
| 83 | S90°57'30"W | 104.00' |
| 84 | N00°00'40"E | 165.00' |
| 85 | S90°57'30"W | 104.00' |
| 86 | N00°00'40"E | 151.35' |
| 87 | S90°57'30"W | 315.04'- |
| 88 | S90°57'30"W | 104.00' |
| 89 | N00°00'40"E | 165.00' |
| 90 | S90°57'30"W | 104.00' |
| 91 | N00°00'40"E | 151.35' |
| 92 | S90°57'30"W | 315.04'- |
| 93 | S90°57'30"W | 104.00' |
| 94 | N00°00'40"E | 165.00' |
| 95 | S90°57'30"W | 104.00' |
| 96 | N00°00'40"E | 151.35' |
| 97 | S90°57'30"W | 315.04'- |
| 98 | S90°57'30"W | 104.00' |
| 99 | N00°00'40"E | 165.00' |
| 100 | S90°57'30"W | 104.00' |
| 101 | N00°00'40"E | 151.35' |
| 102 | S90°57'30"W | 315.04'- |
| 103 | S90°57'30"W | 104.00' |
| 104 | N00°00'40"E | 165.00' |
| 105 | S90°57'30"W | 104.00' |
| 106 | N00°00'40"E | 151.35' |
| 107 | S90°57'30"W | 315.04'- |
| 108 | S90°57'30"W | 104.00' |
| 109 | N00°00'40"E | 165.00' |
| 110 | S90°57'30"W | 104.00' |
| 111 | N00°00'40"E | 151.35' |
| 112 | S90°57'30"W | 315.04'- |
| 113 | S90°57'30"W | 104.00' |
| 114 | N00°00'40"E | 165.00' |
| 115 | S90°57'30"W | 104.00' |
| 116 | N00°00'40"E | 151.35' |
| 117 | S90°57'30"W | 315.04'- |
| 118 | S90°57'30"W | 104.00' |
| 119 | N00°00'40"E | 165.00' |
| 120 | S90°57'30"W | 104.00' |
| 121 | N00°00'40"E | 151.35' |
| 122 | S90°57'30"W | 315.04'- |
| 123 | S90°57'30"W | 104.00' |
| 124 | N00°00'40"E | 165.00' |
| 125 | S90°57'30"W | 104.00' |
| 126 | N00°00'40"E | 151.35' |
| 127 | S90°57'30"W | 315.04'- |
| 128 | S90°57'30"W | 104.00' |
| 129 | N00°00'40"E | 165.00' |
| 130 | S90°57'30"W | 104.00' |



REVISIONS:
 01/01/2005 SET CONCRETE MONUMENT
 02/01/2005 SET IRON PIN 5/8" CAP PLS 2349
 03/11/2005 SET NAIL & DISK PLS 2349
 04/11/2005 FOUND NAIL & DISK AS SHOWN
 05/11/2005 EXISTING ELEVATION ASSUMED
 06/11/2005 FLOOD ZONE PANEL #125124-0325-C
 07/11/2005 NDV-4-1992-ZONE-A10-ELEV-80'

EXHIBIT B

PREPARED BY:
 URBAN SURVEYS, INC.
 1101 S. W. 13TH ST.
 CAPE CORRAL, FL 33504
 (239)540-9390 / (540)9391
 FAX 540-9339 L.B. 4069

DATE 01/05

TED B. URBAN
 PROFESSIONAL LAND SURVEYOR
 FLORIDA REGISTRATION NO. 2549

Exhibit "B"
Petition to Vacate
VAC2006-00028
 [Page One of One]



PETITION TO VACATE (AC 13-8)

Case Number: VAC2006-00028

Petitioner(s), Denis P. Rohaley and Yvonne A. Rohaley requests the Board of County Commissioners of Lee County, Florida, to grant this Petition to Vacate and states as follows:

- 1. Petitioner(s) mailing address, 1040 Averly Street, Ft. Myers, FL 33919
2. In accordance with Florida Statute (F.S.) Chapter 336 and Lee County Administrative Code (LCAC) 13-8, Petitioner desires to vacate, abandon and discontinue the public's interest in the right-of-way or portion of right-of-way legally described in the attached Exhibit "A".
3. A sketch showing the area(s) the Petitioner desires to vacate is attached as Exhibit "B".
4. Notice concerning the intent of this Petition will be provided in accordance with LCAC 13-8.
5. In accordance with letters of review and recommendation provided by the various governmental and utility entities, there is no apparent impediment to granting Petitioner's request.

Wherefore, Petitioner respectfully requests that the Board of County Commissioners adopt a Resolution granting the Petition to Vacate.

Respectfully Submitted by:

Denis P. Rohaley
Petitioner Signature

Yvonne A. Rohaley
Petitioner Signature

Denis P. Rohaley
Printed Name

Yvonne A. Rohaley
Printed Name

NOTE: This is a legal document and is therefore not available in Word Perfect format.

RECEIVED
AUG 07 2006

VAC 2006-00028

LETTER OF AUTHORIZATION

TO LEE COUNTY COMMUNITY DEVELOPMENT

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as _____ Having Strip number 15-45-24-00-00005.0000 and legally described in exhibit A attached hereto.

The property described herein is the subject of an application for zoning or development. We hereby designate _____ as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to develop. This authority includes but is not limited to the hiring and authorizing of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain zoning and development approval on the site. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended authorization is delivered to Lee County.

Denis P. Rohaley
Owner (signature)
Denis P. Rohaley
Printed Name

Yvonne A. Rohaley
Owner (signature)
Yvonne A. Rohaley
Printed Name

Owner (signature)
Printed Name

Owner (signature)
Printed Name

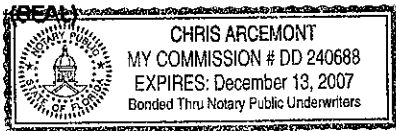
Owner (signature)
Printed Name

Owner (signature)
Printed Name

STATE OF FLORIDA
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 14th day of July, 2006, by Denis & Yvonne Rohaley, who is personally known to me or who has produced as identification and who did (did not) take an oath.

Chris Arcemont
Notary Public



(Name typed, printed or stamped)

RECEIVED

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VAC 2006-00028

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AS THE I.D.D. CANAL H-10

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PREPARED BY:

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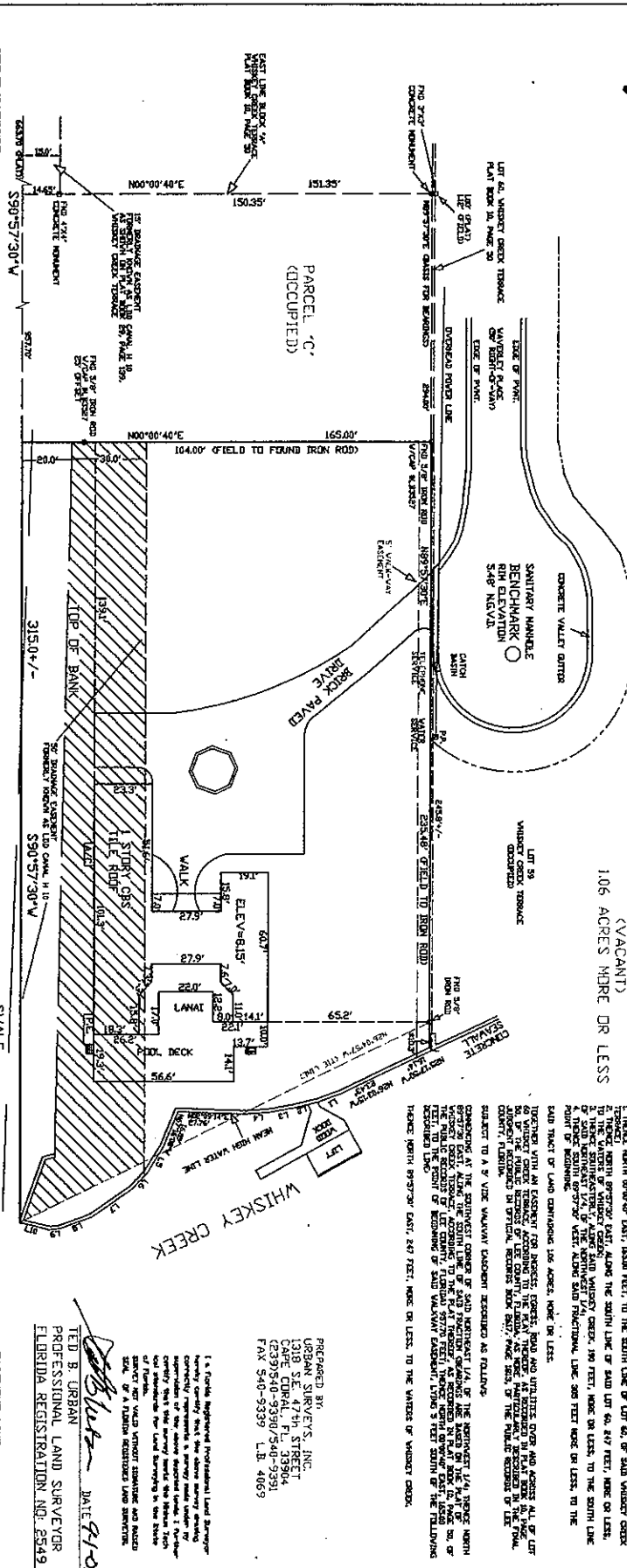
**SURVEY DRAWING
AND
CERTIFICATION**

BOUNDARY SURVEY FOR
DENIS P. & YVONNE A. ROHALEY
ANSOUTH BANK ISAGA,
ATTORNEYS WIDAM & WINSETT
ATTORNEYS TITLE INSURANCE FOND
JEFFREY S. THOMES

| LINE TABLE | LINE NUMBER | LINE DESCRIPTION |
|------------|-------------|------------------|
| 1 | 1 | BOUNDARY |
| 2 | 2 | BOUNDARY |
| 3 | 3 | BOUNDARY |
| 4 | 4 | BOUNDARY |
| 5 | 5 | BOUNDARY |
| 6 | 6 | BOUNDARY |
| 7 | 7 | BOUNDARY |
| 8 | 8 | BOUNDARY |
| 9 | 9 | BOUNDARY |
| 10 | 10 | BOUNDARY |
| 11 | 11 | BOUNDARY |
| 12 | 12 | BOUNDARY |
| 13 | 13 | BOUNDARY |
| 14 | 14 | BOUNDARY |
| 15 | 15 | BOUNDARY |
| 16 | 16 | BOUNDARY |
| 17 | 17 | BOUNDARY |
| 18 | 18 | BOUNDARY |
| 19 | 19 | BOUNDARY |
| 20 | 20 | BOUNDARY |



PARCEL 'D'
(VACANT)
1.06 ACRES MORE OR LESS



HIDDEN HARBOR CONDOMINIUM
AREA OF EASEMENT TO BE VACATED

- REVISIONS
- 01 / 01 / 2005 REVISED DESCRIPTION
 - 02 / 01 / 2005 REVISED PER LRD CANAL
 - 03 / 11 / 2005
 - 04 / 11 / 2005
 - 05 / 11 / 2005
 - 06 / 11 / 2005
 - 07 / 11 / 2005
 - 08 / 11 / 2005
 - 09 / 11 / 2005
 - 10 / 11 / 2005
 - 11 / 11 / 2005
 - 12 / 11 / 2005
 - 13 / 11 / 2005
 - 14 / 11 / 2005
 - 15 / 11 / 2005
 - 16 / 11 / 2005
 - 17 / 11 / 2005
 - 18 / 11 / 2005
 - 19 / 11 / 2005
 - 20 / 11 / 2005

EXHIBIT B


Exhibit "B"
Petition to Vacate
VAC2006-00028
[Page One of One]

PREPARED BY:
URBAN SURVEYS, INC.
3141 S.W. 7TH STREET
SUITE 100
MIAMI, FLORIDA 33135
(305) 540-9339
FAX 540-9339 LB 4069

TED B. URBAN
PROFESSIONAL LAND SURVEYOR
FLORIDA REGISTRATION NO. 2349
DATE: 9/1/05

SCALE 1"=20'

Exhibit "C"
Petition to Vacate
VAC2006-00028
 [Page One of One]

| Real Property Information | |  |
|--|--|---|
| Account | Tax Year | Status |
| 15-45-24-00-00005.0000 | 2005 | PAID |
| Original Account | Book/Page | |
| 15-45-24-00-00005.0000 | 4127/4867 | |
| Owner | | |
| ROHALEY DENIS P + YVONNE A | | |
| Physical Address | Mailing Address | |
| 1040 AVERLY ST Fort Myers FL 33919 | 1040 AVERLY ST FORT MYERS FL 33919 USA | |
| Legal Description | | |
| PARL IN NE 1/4 OF NW 1/4 DESC IN OR 3097 PG 2169 | | |
| Outstanding Balance as of 4/13/2006 | | \$0.00 |

Rec. 10.50
Stamps 1032.50

1 YEAR OF NOTARY PUBLIC IN FLORIDA FOR THE YEAR 2006

This instrument Prepared by and Return to:

RICHARD W. WINESETT
AVERY, WHIGHAM & WINESETT, P.A.
2248 FIRST STREET
FORT MYERS, FL 33902

Property Appraisers Parcel Identification (Folio) Numbers:
15-45-24-00-00005.0000

INSTR # 4677662
OR BK 03146 PG 3282

RECORDED 07/19/99 08:58 AM
CHARLIE GREEN CLERK OF COURT
LEE COUNTY
RECORDING FEE 10.50
DOC TAX PD(F. S. 201.02) 1,032.50
DEPUTY CLERK D Mays

Grantees SS #s:

SPACE ABOVE THIS LINE FOR RECORDING DATA

THIS WARRANTY DEED, made the 14th day of July, A.D. 1999 by JACK R. MERGET and MARTHA MERGET, husband and wife herein called the grantors, whose post office address is 4407 Roller Lane, Rogers, AR 72756, to DENIS P. ROHALEY and YVONNE A. ROHALEY, husband and wife whose post office address is 5657 Shaddellee Lane West, Fort Myers, FL 33919, hereinafter called the Grantees: 1407 Roller Ln.

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantors, for and in consideration of the sum of TEN AND 00/100'S (\$10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee all that certain land situate in LEE County, State of Florida, viz:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE FOR THE LEGAL DESCRIPTION.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND, the grantors hereby covenant with said grantees that the grantors is/are lawfully seized of said land in fee simple; that the grantors have good right and lawful authority to sell and convey said land, and hereby warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 1998.

IN WITNESS WHEREOF, the said grantors have signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Richard W. Winesett
Signature
Richard W. Winesett
Printed Signature

Jack R. Merget L.S.
Signature
JACK R. MERGET
Printed Signature

Signature

Printed Signature
Mary Ann Paulino-Rodriguez
Signature

Printed Signature

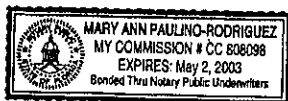
Martha Merget L.S.
Signature
MARTHA MERGET
Printed Signature

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 14th day of July, 1999 by JACK R. MERGET and MARTHA MERGET who is/are personally known to me or have produced AR DRIVER'S LICENSE as Identification.

SEAL

Mary Ann Paulino-Rodriguez
Notary Signature
Mary Ann Paulino-Rodriguez
Printed Notary Signature
My Commission Expires:



RECEIVED

JUN 15 2006

VAC 2006-00028

E X H I B I T "A"

Parcel "D"

A tract of land lying within the Northeast 1/4, of the Northwest 1/4, of Section 15, Township 45 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

Commencing at the Southwest corner of said Northeast 1/4, of the Northwest 1/4; thence North 89°57'30" East, along the South line of said Fraction (Bearings are based on the plat of Whiskey Creek Terrace, according to the Plat thereof, as recorded in Plat Book 10, Page 50, of the Public Records of Lee county, Florida), 957.70 feet, to the Point of beginning of the land herein described:

1. Thence North 00°00'40" East, 165.00 feet, to the South line of Lot 60, of said Whiskey Creek Terrace;
2. Thence North 89°57'30" East, along the South line of said Lot 60, 247 feet, more or less, to the waters of Whiskey Creek;
3. Thence Southeasterly along said Whiskey Creek 190 feet, more or less, to the South line of said Northeast 1/4, of the Northwest 1/4;
4. Thence South 89°57'30" West, along said fractional line, 305 feet more or less, to the Point of Beginning.

Said tract of land containing 1.06 acres, more or less.

Together with an easement for ingress, egress, road and utilities, over and across all of Lot 60, Whiskey Creek Terrace, according to the Plat thereof, as recorded in Plat Book 10, page 50, of the Public Records of Lee County, Florida, as more particularly described in the final judgement recorded in Official Records Book 2617, page 1813, of the Public Records of Lee County, Florida.

Grantor herein specifically reserves, on behalf of themselves and their successors in ownership to Parcels A, B, and C west of the parcel first described above, a 5' wide walkway easement described as follows:

Commencing at the Southwest corner of said Northeast 1/4 of the Northwest 1/4; thence North 89°57'30" East along the South line of said fraction (Bearings are based on the Plat of Whiskey Creek Terrace, according to the Plat thereof, as recorded in Plat Book 10, page 50, of the Public Records of Lee county, Florida), 957.70 feet; thence North 00°00'40" East, 165.00 feet, to the point of beginning of said walkway easement, lying 5 feet South of the following described line:

Thence North 89°57'30 East, 247 feet, more or less, to the waters of Whiskey Creek.

BOARD OF COUNTY COMMISSIONERS
August 15, 2006

Writer's Direct Dial Number: _____

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Tammy Hall
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

David M. Owen
County Attorney

Diana M. Parker
County Hearing Examiner

Matthew D. Uhle, Esq.
Knott, Consoer, Ebelini, Hart & Sweet, P.A.
1625 Hendry Street, Suite 301
Fort Myers, FL 33901

Re: VAC2006-00028 - Petition to Vacate a portion of IDD Canal H-10, an 80 foot wide Right-of-Way located on the South portion of a Tract of land lying within the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of S 15, T 45S, R 24E, as recorded in Plat Book 10, Page 50, in the Public Records of Lee County, FL.

Dear Mr. Uhle:

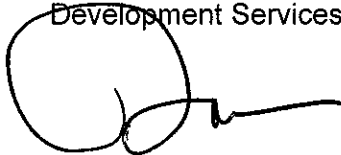
You have indicated that in order to permit portions of the existing residence which were constructed in the easement to remain and to construct a new accessory structure, your clients desire to eliminate a portion of IDD Canal Right-of-Way. You should be aware, however that should the Board of County Commissioner's approve this petition, such approval will only extinguish the rights of the public to use the right-of-way. Private rights of use may still remain. This means that certification of fee ownership in the area being vacated will be required prior to issuance of any building permit(s) within that area of the easement as it presently exists, occupied or otherwise.

Based on a review of the information provided and our subsequent research, this office does object to the proposed vacation. If you can resolve the IDD Canal conflict issue with Lee County Department of Transportation and Lee County Natural Resources Division, then our office can consider offering no objection to the proposed vacation.

Should you have any questions, please call me at the above telephone number.

Sincerely,

DEPARTMENT OF COMMUNITY DEVELOPMENT
Development Services Division



Peter J. Eckenrode
Director

PJE/RXW

**Knott, Consoer, Ebelini
Hart & Swett, P.A.**
ATTORNEYS - AT - LAW

George H. Knott *+
George L. Consoer, Jr. **
Mark A. Ebelini
Thomas B. Hart
H. Andrew Swett

* Board Certified Civil Trial Lawyer
** Board Certified Real Estate Lawyer
+ Board Certified Business Litigation Lawyer

1625 Hendry Street • Third Floor (33901)
P.O. Box 2449
Fort Myers, Florida 33902-2449

Telephone (239) 334-2722
Telecopier (239) 334-1446

MUhle@knott-law.com

Matthew D. Uhle
Aaron A. Haak
Derrick S. Eihausen
Naty Torres-Alvarado
David A. Burt

Director of
Zoning and Land
Use Planning
Michael E. Roeder, AICP

June 15, 2006

Peter J. Eckenrode, Development Services Director
Department of Community Development
P.O. Box 398
Fort Myers, FL 33902

Re: Vacation of easement - 15-45-24-00-00005.0000
Denis and Yvonne Rohaley

Dear Peter:

We are requesting a vacation of the 50 foot drainage easement located on the south side of the property at 1040 Averly Street in Fort Myers. The vacation is being requested for two reasons: to permit portions of the existing Rohaley residence which were constructed in the easement to remain there; and to permit the construction of a new accessory structure within the current boundaries of the easement.

Sincerely,

KNOTT, CONSOER, EBELINI,
HART & SWETT, P.A.



Matthew D. Uhle, Esq.

MDU/ams

RECEIVED

JUN 15 2006

VAC 2.006-00028



Florida Power & Light Company, 15834 Winkler Rd Fort Myers, FL33908

April 22, 2006

Alison M Stowe
Paralegal
1625 Hendry St
Fort Myers Fl 33901

Re: 1040 Avcrly Street, Fort Myers Fl 33919
STRAP #: 15-45-24-00-00005.0000

Dear Ms Stowe:

FPL has no jurisdiction regarding drainage easements. If there is a public utility easemcnt please resubmit your request accordingly.

Sincerely,

A handwritten signature in cursive script that reads "Carl Poole".

Carl Poole
Associate Project Designer
239-415-1349 Phone
239-415-1350 Fax

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JUN 15 2006

VAC2006-00028



P. O. Box 370
Fort Myers, FL 33902-0370

May 24, 2006

Alison M. Stowe
1625 Hendry Street 3rd floor
Fort Myers, Florida 33902

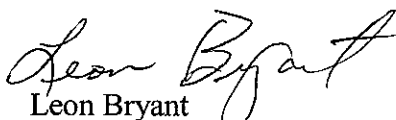
RE: Request to vacate the public interest in the drainage easement located at:
1040 Averly Street, Fort Myers, FL 33919 Strap #: 15-45-24-00-00005.0000

Dear Alison:

Sprint-Florida Incorporated has reviewed the documents for the above referenced information. Based on the review of the plans, we do not have any objections to vacating the public interest in the drainage easement located at: 1040 Averly Street, Fort Myers, FL 33919 Strap #: 15-45-24-00-00005.0000

If you should have any questions or require additional information, please give me a call at (239) 336-2131.

Sincerely,
Sprint-Florida Incorporated


Leon Bryant
Network Engineer I

cc: File

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JUN 15 2006

VAC 2006 - 00028



26102 Bonita Grande Dr.
Bonita Springs Fl. 34135
Phone: 239-732-3805
FAX: 239-498-5456

April 25, 2006

Knott, Consoer, Ebelini, Hart & Sweet P.A.
C/O Alison Stowe
1625 Henry Street Third Floor
P.O. Box 2449
Fort Myers, Fl. 33902-2449

Re: To Vacation of a Drainage Easement, 1040 Averly Street

Dear Alison Stowe,

This letter will serve to inform you that Comcast has no objection to your proposed vacation of the address referenced above.

Should you require additional information or assistance, please feel free to contact me here at 732-3805.

Cordially,

A handwritten signature in black ink, appearing to read "Mark Cook".

Mark Cook
Design Coordinator

RECEIVED

JUN 15 2006

VAC 2006-00028



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

(239) 479-8150

Writer's Direct Dial Number: _____

Bob Janes
District One

July 14, 2006

Douglas R. St. Cerny
District Two

Alison Stowe

Ray Judah
District Three

Knott, Consoer, Ebelini, Hart & Swett

Tammy Hall
District Four

1625 Hendry St

Fort Myers, FL 33902

John E. Albion
District Five

SUBJECT: VACATION OF UTILITY EASEMENT AND/OR DRAINAGE EASEMENT

Donald D. Stilwell
County Manager

STRAP #: 15-45-24-00-00005.0000

1040 AVERLY ST

David M. Owen
County Attorney

Dear Ms. Stowe,

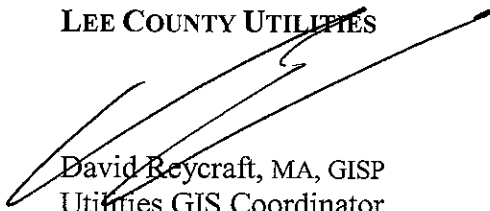
Diana M. Parker
County Hearing Examiner

Lee County Utilities has reviewed your request and has **NO OBJECTION** to the proposed vacation. Even though the area in question is located within Lee County Utilities' service area our records indicate that we have no water or wastewater facilities within the area to be vacated.

If you should have any questions, or require further assistance, please do not hesitate to contact our office at (239) 479-8150.

Sincerely,

LEE COUNTY UTILITIES


David Reycraft, MA, GISP
Utilities GIS Coordinator
Utilities Engineering Division

Original Mailed: 07/14/2006

Original Faxed: 07/14/2006

CC: Correspondence File

RECEIVED

AUG 07 2006

VAC 2006-00028

H:\Vacates\2006\Stowe07142006.doc

P.O. Box 398, Fort Myers, Florida 33902-0398 (239) 335-2111

Internet address <http://www.lee-county.com>

AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (941) 479-8124

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Tammy Hall
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

David M. Owen
County Attorney

Diana M. Parker
County Hearing
Examiner

Friday, July 14, 2006

Ms. Allison M. Stowe
Knott, Consoer, Ebelini, Hart & Swett
P.O. Box 2449
Fort Myers, FL 33902-2449

Re: Petition to Vacate a portion of IDD Canal H-10, Lee County, Florida.

Dear Ms. Stowe:

Based on the review of the documents submitted with your request, Lee County Division of Natural Resources objects to the vacation of a portion of the subject IDD Canal.

Should you have any questions, please call me at the above telephone number.

Regards,

LEE COUNTY PUBLIC WORKS DEPARTMENT

Allen L. Davies, Jr.
Natural Resources Division

-cc: Margaret Lawson, LCDOT
Roland Ottolini, P.E., NRD

RECEIVED

AUG 07 2006

VAC 2006-00028

S:\SURFACE\DOCUMENT\vac552.doc



BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: 479-8580

December 21, 2005

Bob James
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Tommy Hall
District Four

John E. Albion
District Five

Donald D. Stillwell
County Manager

David M. Owen
County Attorney

Lana M. Parker
County Hearing Examiner

Matthew D. Uhle, Esq.
Knott, Consoer, Ebelini, Hart & Swett, P.A.
1625 Hendry Street
Fort Myers, FL 33901

**RE: Proposed Petition to Vacate a portion of IDD Canal H-10;
Denis Rohaley, 1040 Averly Street (15-45-24-00-00005.0000)**

Dear Mr. Uhle:

Lee County has reviewed the sketch and legal description provided to vacate a portion of IDD Canal H-10. IDD Canal H-10 is an 80 foot wide right-of-way. Based on a review of Mr. Rohaley's sketch, it appears that there are many encroachments recently constructed within the 80 foot IDD Canal. It appears from the survey provided by Mr. Rohaley that he has constructed, therefore, encroached, within the existing IDD Canal H-10. IDD Canal H-10 is an active County drainage canal used to convey water to/from Wyomi Creek/Whiskey Creek. IDD Canal H-10 additionally provides drainage for Winkler Road. The canal is piped and there is a culvert and headwall on the east and west side of Winkler Road. The County maintains this IDD Canal H-10. Also, this canal may likely be used in the future for drainage improvements of Winkler Road.

Vacating any portion of IDD Canal H-10 is not recommended by the Department of Transportation. Additionally, DOT is continuing to research through Zoning and Permitting records to find all building and zoning permits issued for 1040 Averly Place, including any Code Violations that may have been issued to this address. DOT's research within the Zoning and Permitting files will assist the department to gain all information and additional facts relevant to review pursuant to the request to vacate IDD Canal H-10.

The Department of Transportation does not recommend the vacation of IDD Canal H-10. Please contact me if you would like to schedule a meeting to further discuss DOT's comments.

Very truly yours,

DEPARTMENT OF TRANSPORTATION

Margaret Lawson
Right-of-way Supervisor

MAL/mlb

cc: Commissioner Doug St. Cerny
John Fredyma
Paul Wingard
Pete Eckenrode
DOT PTV File (IDD Canal H-10/Rohaley)

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JUN 15 2006

VAC 2006-00028



Florida Department of Transportation

JEB BUSH
GOVERNOR

DENVER J. STUTLER, JR.
SECRETARY

April 26, 2006

Knott, Consoer, Ebelini, Hart & Swett, P.A.
Attn.: Alison M. Stowe, Paralegal
Zoning Department
Post Office Box 2449
Fort Myers, Florida 33902

Re: Vacation of Public Interest for a Drainage Easement, Located at 1040 Avery Street, Fort Myers, Lee County, Florida 33919
Strap# 15-45-24-00-00005.0000
PM Log# 06-41

Dear Ms. Stowe:

In response to your letter we received on April 17, 2006, our staff has conducted a review of your request to vacate the subject area as marked and generally described as referenced above.

Based on our review, we offer "No Objection" to this request. If we can be of further assistance, please feel free to contact this office.

Sincerely,


Sylvia Petrosky
Right of Way Agent
Property Management

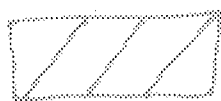
SAP/jps

cc: Scott Gilbertson, P.E. – Lee County
Peter J. Eckenrode – Lee County
Michael G. Rippe – FDOT
Thomas T. Garcia – FDOT
File, Daily File

RECEIVED

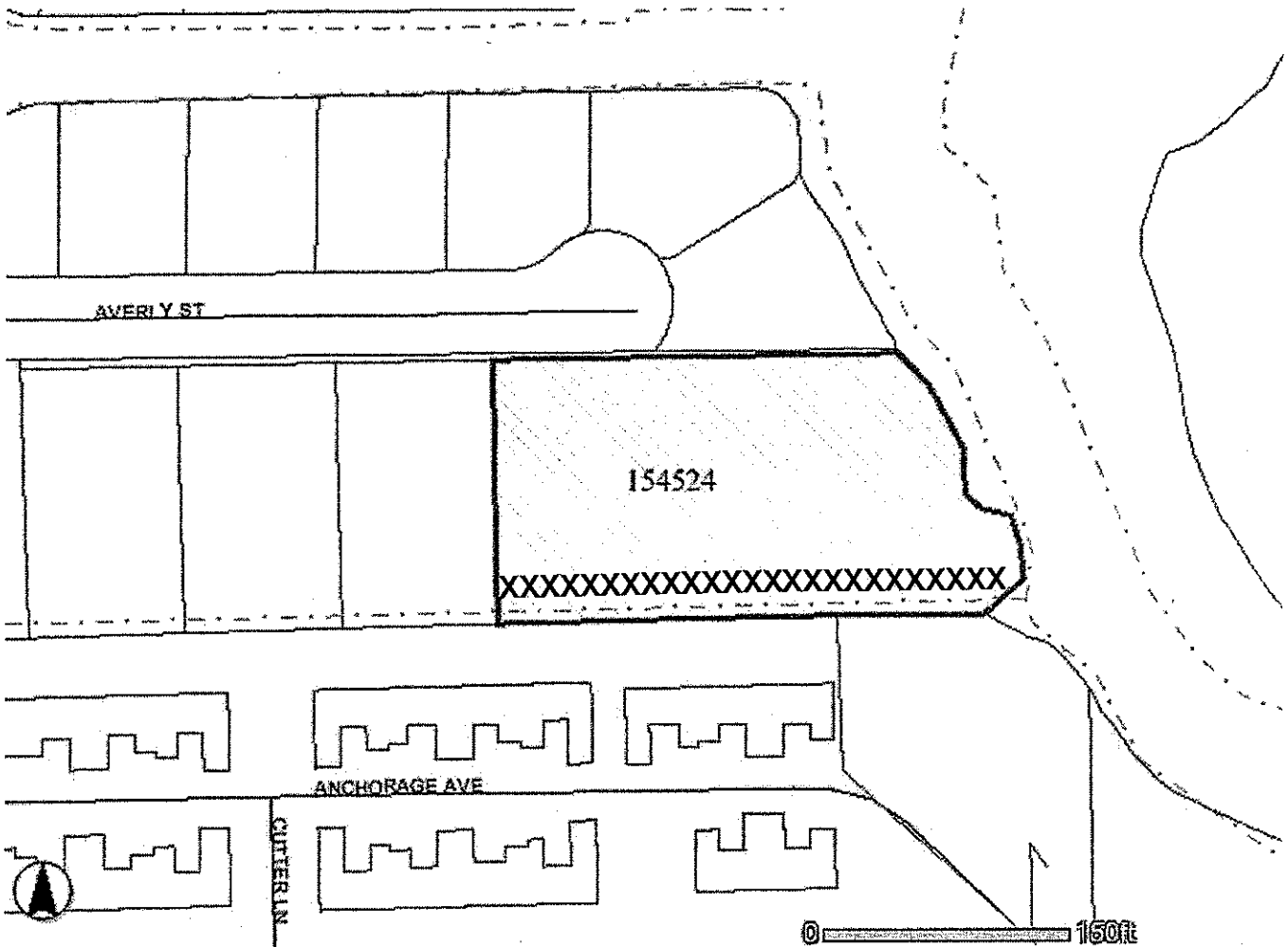
JUN 15 2006

VAC 2006-00028



- AREA TO BE VACATED

GIS Map
EXHIBIT



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JUN 15 2006

VAC 2006-00028