COUNCIL ITEM 7B
DATE 10/22/12

CITY OF PORT ST. LUCIE, FL - CITY COUNCIL

AGENDA ITEM REQUEST

MEETING: *REGULAR* _X_ *SPECIAL* _____

DATE: OCTOBER 22, 2012

ORDINANCE ____ RESOLUTION ____ MOTION _X_ PUBLIC HEARING

ITEM: (P12-079) Site Plan Application

City of Port St. Lucie - Lyngate Tower (Wireless telecommunications tower).

RECOMMENDED ACTION:

On October 2, 2012, the Planning and Zoning Board unanimously recommended approval of the site plan for a telecommunications tower.

EXHIBITS:

A. Staff Report
B. Support Materials

SUMMARY EXPLANATION/BACKGROUND INFORMATION:

The proposed project is for the construction of a 150' tall monopole wireless telecommunications tower.

IF PRESENTATION IS TO BE MADE, HOW MUCH TIME WILL BE REQUIRED? None

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SUBMITTING DEPARTMENT: PLANNING and ZONING *DATE: 10/10/2012*

City of Port St. Lucie

Planning and Zoning Department Memorandum

TO: PLANNING AND ZONING BOARD – MEETING OF OCTOBER 2, 2012

FROM: THRESIAMMA KURUVILLA, PLANNER TK

RE: SITE PLAN APPLICATION (PROJECT NO. P12-079)
CITY OF PORT ST. LUCIE-LYNGATE TOWER
WIRELESS TELECOMMUNICATIONS TOWER

DATE: SEPTEMBER 21, 2012

APPLICANT: PJ Development, LLC

OWNER: City of Port St. Lucie; the deed and the draft lease agreement are in the file.

LOCATION: 1301 SE Lyngate Dr., Lyngate Park. The property is located west of Veterans Memorial Parkway, and is surrounded by Lyngate Drive, on the north, west and south sides.

LEGAL DESCRIPTION: The property is legally described as Tracts B and C, Port St. Lucie Unit 15.

SIZE: 16.01 acres.

EXISTING ZONING: This is a City owned property that is currently zoned OSR (Open Space Recreational).

EXISTING USE: Lyngate Park

SURROUNDING USES: North = RM-8 (Multiple Family Residential) zoning, houses; South = PUD (Planned Unit Development); East = RS-2 (Single Family Residential) zoning, existing single family residences; West = RM-11 (Multiple Family Residential) zoning, houses.

PROPOSED PROJECT: The proposed project is for the construction of a 150' tall monopole wireless telecommunications tower.

IMPACTS AND FINDINGS:

The project has been reviewed for compliance with Chapter 160, City Code, regarding provision of adequate public facilities and documented as follows:

Sewer/Water Service: City of Port St. Lucie is the water and sewer service provider. The proposed project will not require water and sewer services.

Transportation: The use of this site as a wireless communications tower is not a land use that is included in the ITE Trip Generation Manual. There will be approximately four trips per month per carrier once the site is operational. With a total of five potential carriers, the expected number of trips will be 20 trips per month for this facility. This is minimal and is not expected to adversely impact the level of services of the adjacent road.

Parks/Open Space: Not applicable.

Stormwater: A paving and drainage plan that is in compliance with the adopted level of service standard is required prior to issuance of a building permit.

Solid Waste: Solid waste impacts are measured and planned based on population projections on an annual basis. There is adequate capacity available. However, no garbage collection is needed to support this project.

Environmental: There are existing native trees surrounding this project site which are not to be disturbed. Only the exotic are to be removed and is shown as the hatched area. The Parks & Recreation Department is proposing a dog park near this project site, and it is understood that the City Manager has asked the applicant to clear all the exotics from the vicinity of the dog park. The exact location of the tower is west of the batting cages as shown in the site plan.

Other: The applicant has applied concurrently for the Special Exception Use (P12-078) and will be heard today during the public hearing. The leased area is 110'x60' (6,600 sq. ft.).

Fire District: The access location has been approved by the Fire District for safety purposes.

Public Art Advisory Board: The Public Art Advisory Board reviewed this project on 07/10/12. The applicant has agreed to pay $1,350 in lieu of art work on site. Motion passed unanimously to approve it.

STAFF RECOMMENDATION:

On August 22, 2012, the Site Plan Review Committee recommended the site plan for approval with conditions that the applicant has to address all comments from all departments. The Planning and Zoning Department staff finds the request to be consistent with the direction and intent of the City's Land Development Regulations and policies of the Comprehensive Plan, and recommends approval with the following conditions:

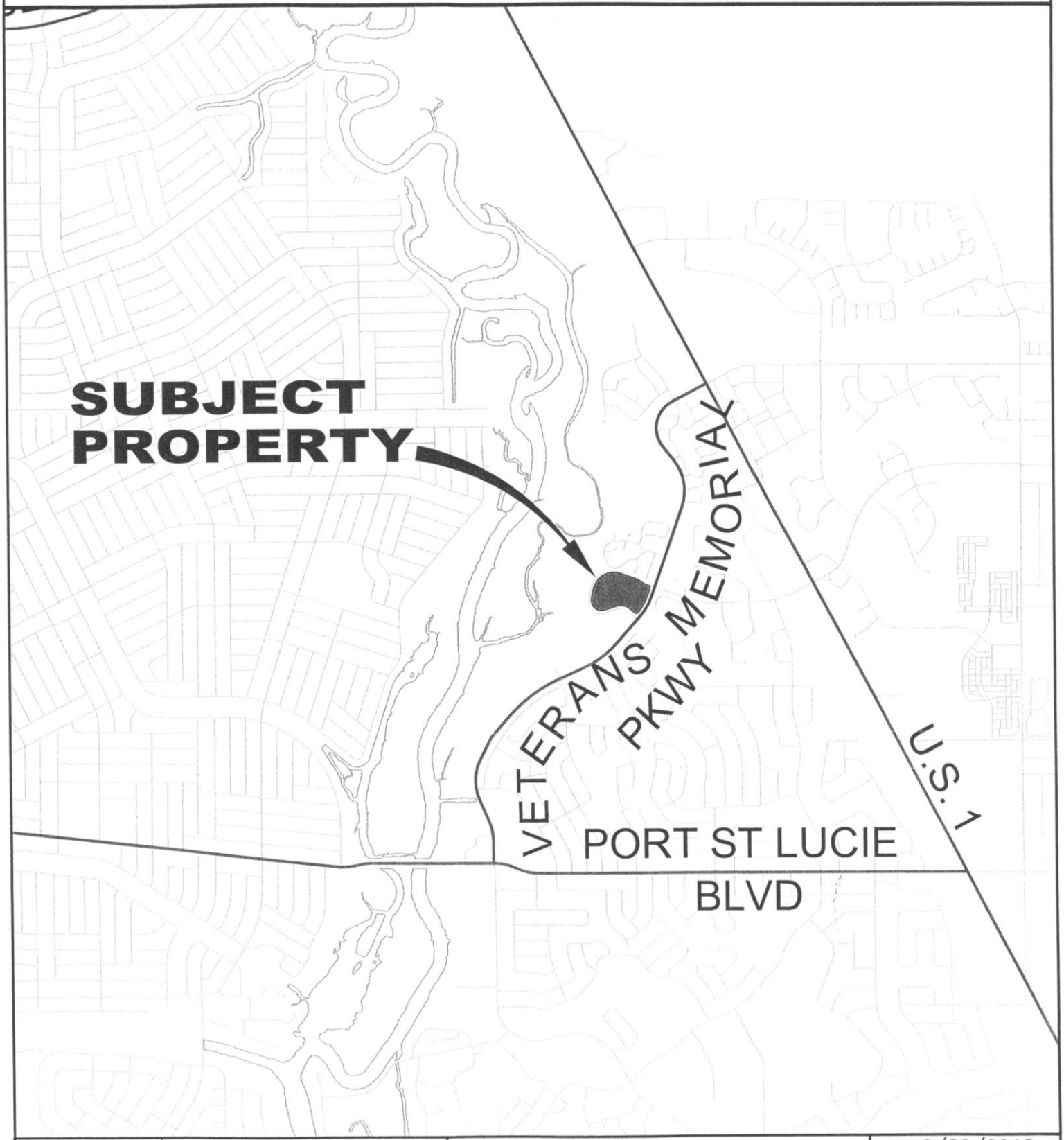
1. Any proposed tower or antennae shall not cause interference with the use of radio, television, or telephone broadcasting and reception. Interference as a result of any approved tower or antennae shall be considered a violation of the special exception approving the tower and may result in the revocation of the special exception. Such interference may further be considered a public nuisance, and the city may order abatement of the same, including but not limited to requiring removal of the tower.

2. The applicant shall provide a bond or irrevocable letter of credit equal to $15,000 prior to obtaining final site development permits.

3. The applicant has to provide certification from a Florida-registered professional engineer stating that the tower would collapse within the designed and specified fall radius depicted in the plans. Further, the engineer shall certify that it is documented that the tower shown in the plan can withstand winds of Category 3 hurricane intensity prior to issuance of a building permit.

4. The applicant shall provide the executed lease agreement with the City.

SITE LOCATION



CITY OF PORT ST. LUCIE
PLANNING & ZONING DEPT.

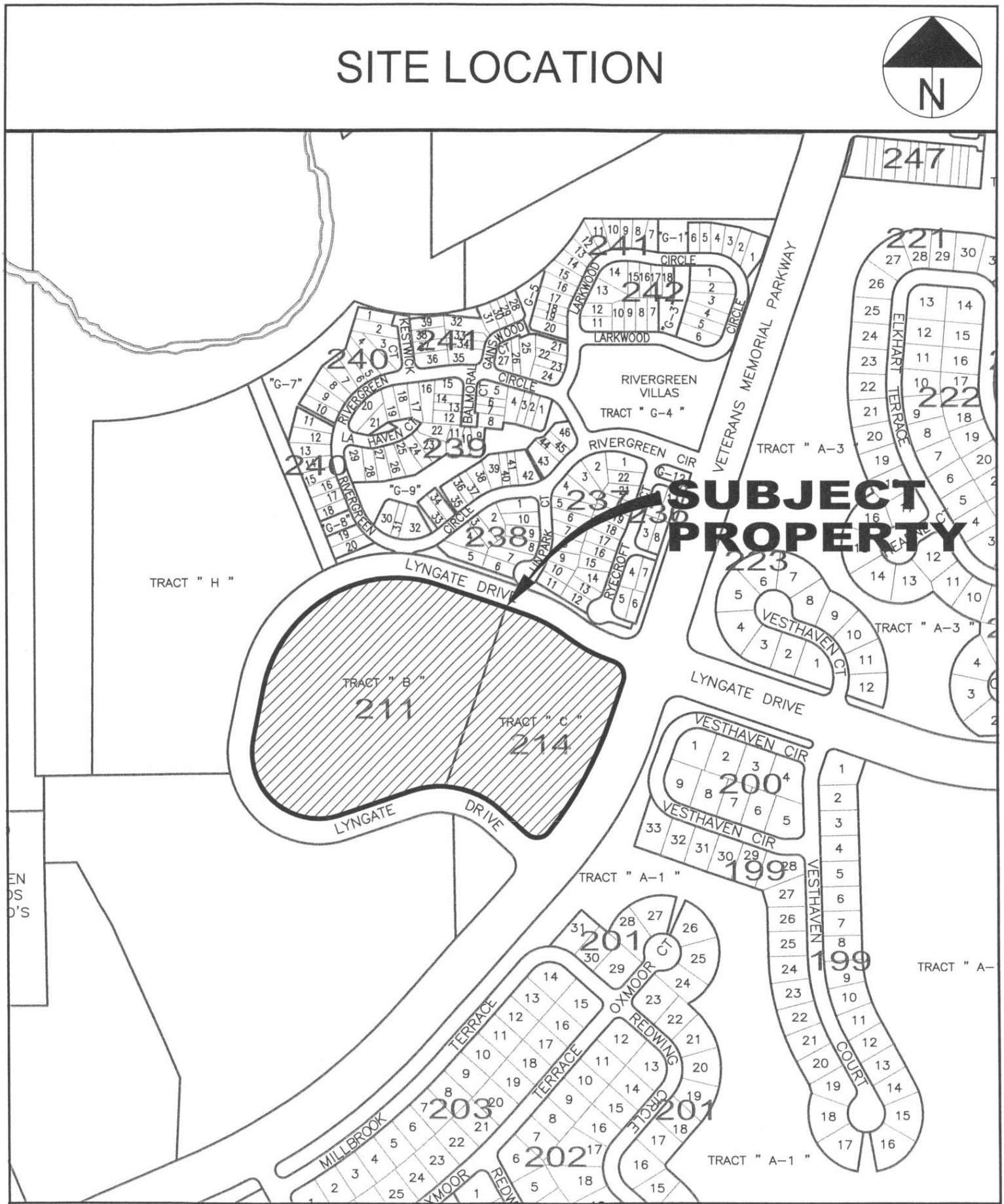
Prepared by:
M.I.S. DEPARTMENT

PZ 2012.DWG

SITE PLAN REVIEW
TRACTS "B" & "C"
PORT ST LUCIE UNIT 15

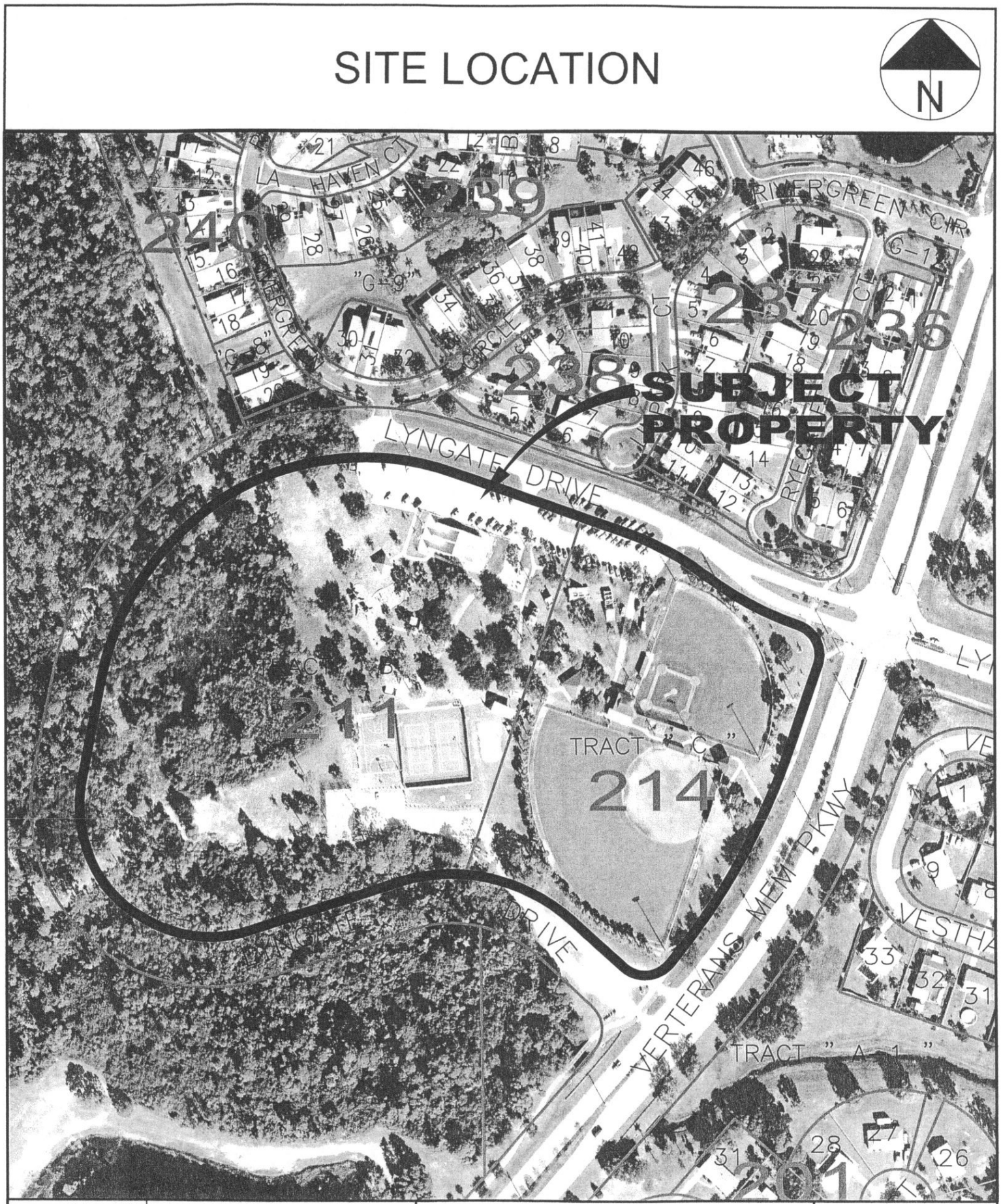
DATE: 6/29/2012
APPLICATION NUMBER: P12-079
CADD FILE NAME: P12-079L
SCALE: 1" = .5 MI.

SITE LOCATION



CITY OF PORT ST. LUCIE PLANNING & ZONING DEPT. Prepared by: M.I.S. DEPARTMENT PZ 2012.DWG	SITE PLAN REVIEW TRACTS "B" & "C" PORT ST LUCIE UNIT 15	DATE: 6/29/2012 APPLICATION NUMBER: P12-079 CADD FILE NAME: P12-079M SCALE:1"=400'	

SITE LOCATION



CITY OF PORT ST. LUCIE
PLANNING & ZONING DEPT.

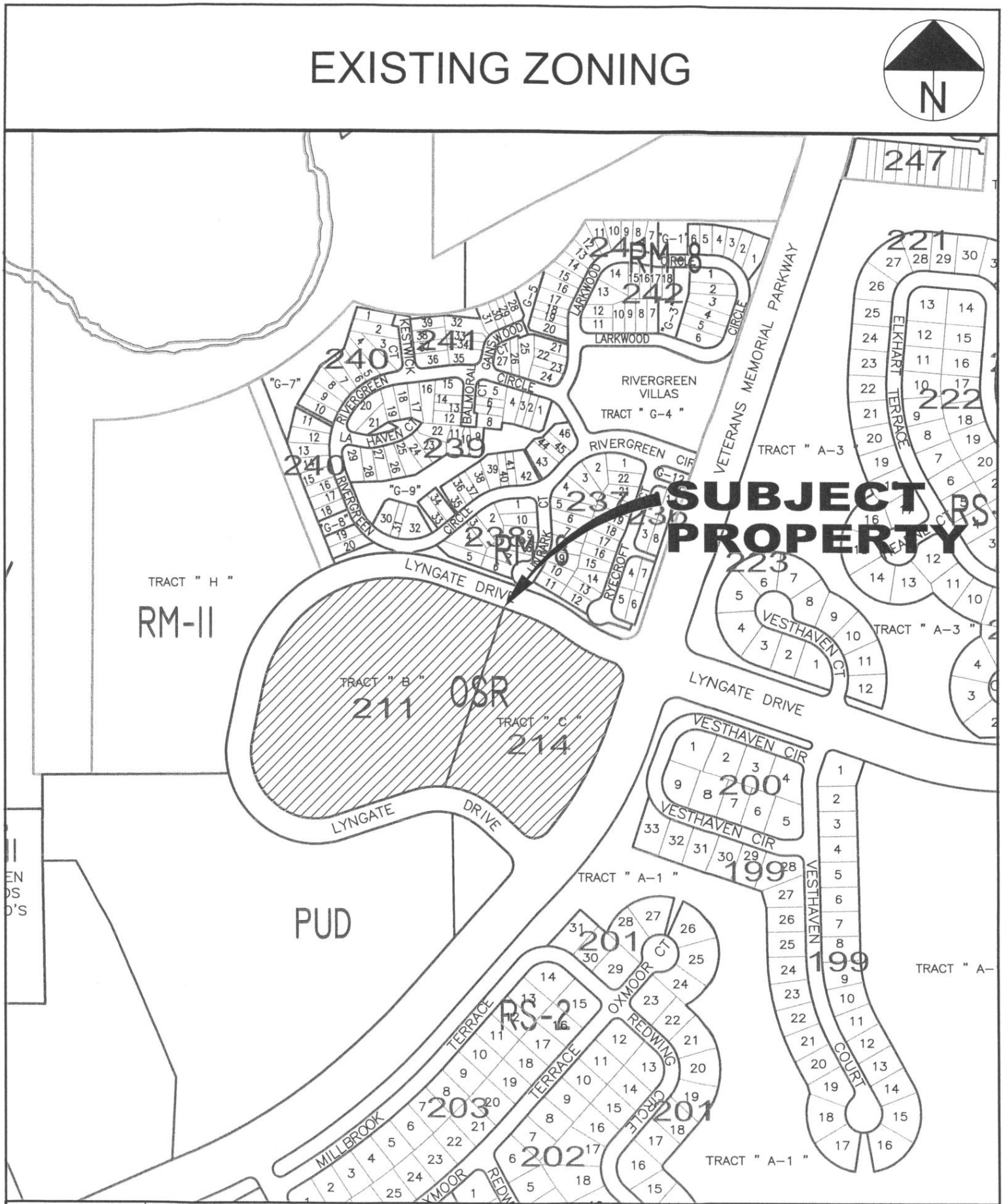
Prepared by:
M.I.S. DEPARTMENT

PZ 2012.DWG

SITE PLAN REVIEW
TRACTS "B" & "C"
PORT ST LUCIE UNIT 15
AERIAL DEC 2010

DATE: 6/29/2012
APPLICATION NUMBER: P12-079
CADD FILE NAME: P12-079A
SCALE:1"=200'

EXISTING ZONING



CITY OF PORT ST. LUCIE PLANNING & ZONING DEPT.	SITE PLAN REVIEW TRACTS "B" & "C" PORT ST LUCIE UNIT 15	DATE: 6/29/2012
Prepared by: M.I.S. DEPARTMENT PZ 2012.DWG		APPLICATION NUMBER: P12-079
		CADD FILE NAME: P12-079M
		SCALE:1"=400'

APPLICATION FOR SITE PLAN REVIEW

ONLY COMPLETE SUBMISSIONS WILL BE PROCESSED

CITY OF PORT ST. LUCIE
PLANNING & ZONING DEPARTMENT
(772) 871-5212 FAX: (772) 871-5124

P&Z File No. P12-079
Fees (Nonrefundable) $ 1,890.00 Arch.: $
Receipt #'s: 11797

PRIMARY CONTACT EMAIL ADDRESS: Tom Mackiewinz tmackiewicz@pjdevl.com

PROJECT NAME: Lyngate Tower

LEGAL DESCRIPTION: Attached

LOCATION OF PROJECT SITE: 1301 SE Lyngate Blvd. Port St Lucie, FL. 34952

PROPERTY TAX I.D. NUMBER: 3422-575-0006-000-4

STATEMENT DESCRIBING IN DETAIL 150' monopole, fence, pad, radio equipment and landscape.

THE CHARACTER AND INTENDED USE OF THE DEVELOPMENT: Tower for colocation of commercial cellular providers.

RECEIVED
JUN 14 2012
PLANNING DEPARTMENT
CITY OF PORT ST. LUCIE, FL

GROSS SQ. FT. OF STRUCTURE (S): N/A

NUMBER OF DWELLING UNITS & DENSITY FOR MULTI-FAMILY PROJECTS: N/A

UTILITIES & SUPPLIER: AT&T/FPL

GROSS ACREAGE & SQ. FT. OF SITE: 6600 sq' **ESTIMATED NO. EMPLOYEES: N/A

FUTURE LAND USE DESIGNATION: OSR ZONING DISTRICT: OSR

OWNER(S) OF PROPERTY:
Name, Address, Telephone & Fax No.:
City of Port St. Lucie
121 SW Port St. Lucie Blvd. Port St. Lucie, FL. 34984
772-871-5163/ 772-692-4475

APPLICANT OR AGENT OF OWNER:
Name, Address, Telephone & Fax No.:
Paul Scott / Tom Mackiewicz
PJ Development, L.L.C. 356 NW Alice Ave. Stuart, FL.34994
772-692-4474 / 772-692-4475

PROJECT ARCHITECT/ENGINEER:
(Firm, Engineer Of Record, Florida Registration No., Contact Person, Address, Phone & Fax No.)
John Andrew Minich, P.E.
Minich Engineering & Design Company # 60186
142 Pennock Trace Dr. Jupiter, FL. 33458
561-575-2066 / %61-743-1843

- I hereby authorize the above listed agent to represent me. I grant the planning department permission to access the property for inspection.
- I fully understand that prior to the issuance of a building permit and the commencement of any development, all plans and detail plans must be reviewed and approved by the City pursuant to Sections 158.237 through 158.245, inclusive, of the zoning ordinance.

***When a corporation submits an application, it must be signed by an officer of the corporation.** Corporation signatures must be accompanied with an approved resolution authorizing the individual to sign such applications.

NOTE: Signature on this application acknowledges that a certificate of concurrency for adequate public facilities as needed to service this project has not yet been determined. Adequacy of public facility services is not guaranteed at this stage in the development review process. Adequacy for public facilities is determined through certification of concurrency and the issuance of final local development orders as may be necessary for this project to be determined based on the application material submitted.

Paul A. Scott	Paul A. Scott	Managing Member	6/14/2012
OWNER'S SIGNATURE	HAND PRINT NAME	TITLE	DATE

PUBLIC ART REQUIREMENT CHECKLIST
January 4, 2011

Project Name: Lyngate Tower
Project Number: P12-79 **New Submittal:** ☑ **Re-submittal:** ☐ (check one)

Applicant is required to submit the public art requirement package to the Planning & Zoning Department with the site plan package. The package will be distributed to the Public Art Advisory Board (PAAB) and scheduled for their next meeting. PAAB meetings are the 2nd (second) Tuesday of every month and the applicant is strongly encouraged to attend. If any items are incomplete or missing, it may delay review of the application by the PAAB. Other drawings or information may be required, if deemed necessary, upon review by the PAAB. The Public Art Requirement approval must be obtained prior to the site plan being scheduled for City Council.

Description of Item to be provided: (Twelve copies of all items collated into sets)

✓	**Completed Public Art Requirement Checklist:** One original, completed and signed by applicant.
✓	**Copy of Site Plan Application and Proposed Site Plan**
	Cover Letter: Describe to the PAAB your proposal to meet the Public Art Requirements. Please be as descriptive as possible.
	Written Response to Comments: For resubmittals only.
✓	**Calculation of Public Art Requirement Value:** Applicant must provide cost estimate for proposed improvements which include building, site improvements such as paving, drainage and parking (civil), landscape, and site lighting. Complete Public Art Requirement Value Calculation section of this application and attach supportive cost estimates from licensed professionals within each discipline.
3	**Proposed Public Art Requirement Method:** Identify which method you are choosing to meet the requirement by placing the number in the box to the left. 1. Artwork On Site 2. Art Donated to the City of Port St. Lucie 3. Payment of Fee in Lieu of Artwork On Site ✓
	Public Art Requirement Proposal: Submit the appropriate supportive information to clearly communicate the proposal and to assist the PAAB in evaluation of the proposed Public Art. ART ON SITE: Complete "Artwork Proposal and Specifications" Section of Application. ENHANCED ARCHITECTURE: Provide proposed elevations clearly showing enhanced elements above minimum architectural requirements. ENHANCED LANDSCAPE: Provide proposed plan and elevation views clearly showing 'enhanced elements' above minimum landscape requirements. Applicant must clearly demonstrate a unique and identifiable element or space which is definable apart from the minimum landscape or site design requirements.

CALCULATION OF PUBLIC ART REQUIREMENT VALUE:

Building Costs (Vertical construction estimate)	$100,000.00
Civil Costs (Paving, Drainage, Parking)	$25,000.00
Landscape Costs	$10,000.00
Site Lighting Costs	$0.00
TOTAL ESTIMATED COSTS:	$135,000.00
Public Art Requirement Value: (1% of Total Estimated Costs)	**$**1,350.00

(Maximum Public Art Requirement Value is $50,000.00.)

ARTWORK PROPOSAL AND SPECIFICATIONS:

1. Artwork & Artist Information:

Approved on July 10th 2012.

Artwork Title:_____
Artwork Site:_____
Artwork Material:_____
Artwork Dimensions:_____
Artist Name:_____
Address:_____
City, State Zip:_____
Telephone:_____
Website:_____

2. Artwork Description:_____

3. Siting:_____

4. Materials with Specifications:_____

5. Fabrication and Installation Procedures:_____

6. Yearly Maintenance and Conservation Plan:_____

7. Examples of artist's work or related pieces:_____

I acknowledge (as applicant/owners representative) that The Public Art Requirement approval must be obtained prior to the site plan being scheduled for City Council. I have provided all required checklist items and the estimates used to calculate the Public Art Requirement Value are accurate to the best of my knowledge.

Paul A. Scott — Paul A. Scott — 6/04/2012

Applicant's Signature | Printed Applicant Name: | Date:

CELL TOWER SITE LEASE AGREEMENT
LYNGATE PARK

THIS SITE LEASE AGREEMENT ("Lease") made on 14 day of June, 2012, between the CITY OF PORT ST. LUCIE, a Florida municipal corporation (hereinafter referred to as "CITY"), and PJ Development, LLC., a Florida limited liability company, (hereinafter referred to as "PJD").

1. **Leased Premises and Permitted Uses.**

CITY hereby leases to PJD the Ground Space, a portion of the Lyngate Park property (the entirety of CITY's property is hereinafter referred to as the "Land"), which is more specifically described above, together with a non-exclusive easement (the "Easement") over, under and across the Land for (i) reasonable access to the Ground Space extending from the nearest public right-of-way and (ii) in the discretion of PJD, source of electric and telephone facilities extending to the Ground Space from the nearest public electric and telephone utility easements (the Ground Space and Easement are hereinafter collectively referred to as the "Property"). Certain ground space located within Tracts "B" and "C", South Port St. Lucie, Unit Fifteen, which consists of a park known as Lyngate Park, Parcel ID No. 3422-575-0006-000-4 in the City of Port St. Lucie. The leased premises ("the Ground Space"), is more particularly described on the attached Exhibit "A".

The Ground Space will be used by PJD for the purpose of installing, removing, replacing, maintaining and operating, at its sole expense, a wireless communications facility (the "Facility"), composed of a 150' monopole tower structure, and uses incidental thereto. PJD will use the Property in a manner that will not unreasonably disturb the quiet use and enjoyment of Lyngate Park by the park visitors and neighboring community.

PJD, at its expense, was granted the right to survey said Property, which is legally described on said survey on Exhibit B, attached hereto and made a part hereof, and shall

control in the event of discrepancies between it and the above legal description. CITY granted PJD the right to take measurements, make calculations, and to note other structures, setbacks, uses, or other information as deemed by PJD to be relevant and pertinent, as such information relates to City's park property, leased or otherwise abutting or surrounding the Property. To the extent the CITY owns adjacent lands, the CITY grants PJD the right to reasonable use of the adjoining and adjacent lands, as may be necessary, for achieving the construction, installation, maintenance, and operation of the Facility. However, PJD shall provide at least a forty-eight (48) hour advance, written notice or e-mail transmission to the CITY'S Parks and Recreation Department for coordination and approval in the CITY'S sole discretion of any proposed use or disturbance of the non-leased adjoining and adjacent lands.

2. **Initial Term.**

The initial term of this Site Lease Agreement (the "Initial Term") shall commence on the date PJD signs this Lease, or if PJD signs first, the date CITY signs this Lease. The Initial Term of this Site Lease Agreement shall be for a period of ten (10) years commencing on the date the Lease is fully executed with four 5 year options. Rent start date shall be the date the Lease is fully executed unless otherwise specified. Upon execution of this Agreement, PJD shall pay the Owner for the initial year of the Lease Term.

3. **Renewal Terms.**

This Lease shall automatically renew for four five-year (5) terms (each being a "Renewal Term"), unless PJD provides CITY with written notice, by certified mail, at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, of PJD's intention not to renew this Lease; at least ninety (90) days prior to the expiration of the initial Term or any Renewal Term. After the first Renewal Term, should PJD fail to reasonably cooperate with the Owner under the terms of this Lease, the Owner is not obligated to automatically renew said Lease,

The Owner is not obligated to automatically renew said Lease. The Owner must give PJD written notice within ninety (90) days prior to expiration of its intent not to renew this Lease or unless CITY, in its sole discretion, provides PJD with written notice, by certified mail, at least one hundred twenty (120) days prior to the expiration of the Initial Term or any Renewal Term, of CITY'S intention not to renew this Lease.

4. Rent.

Rent will commence on the ("Rent Start Date"). Rent will be paid annually in advance beginning on the Rent Start Date and on each anniversary of it. The Rent Start Date shall commence upon execution of the Lease Agreement. The annual rent will be

partial years to be prorated. The annual rent for each Renewal Term will be the annual rent in effect for the final year of the Initial Term or prior Renewal Term, as the case may be, increased by ___ ____ . per year. Rent payments shall be sent to the City of Port St. Lucie, Attn: Finance Department, 121 S.W. Port St. Lucie Boulevard, Port St. Lucie, Florida, 34984, or at such other place and to such other person as the CITY may from time to time designate in writing.

During the Initial Term and each Renewal Term, annual rent shall be increased on each anniversary of the Rent Start Date by an amount equal to of the annual rent for the previous year.

5. Title and Quite Possession.

CITY represents and agrees that (i) it is the owner of the leased premises; (ii) it has the right to enter into this Lease; (iii) the person signing this Lease has the authority to sign on behalf of the CITY; (iv) PJD is entitled to access the Property at all times and to the quiet possession of the Property throughout the Initial Term and each Renewal Term so long as PJD is not in default beyond the expiration of any cure period; (v) it will maintain the Property, in

good condition, reasonable wear and tear excepted; and (vi) there are no other liens, judgments or impediments of title on the Property or affecting CITY's title to the same and that there are no covenants, easements, restrictions or agreements binding on CITY or the Property which prevent PJD's permitted use of the Property. PJD's access to the Property "at all times" means that PJD's access shall be seven (7) days a week, twenty-four (24) hours a day, three hundred sixty-five (365) days a year. CITY agrees to provide PJD, contemporaneous with the signing of this Lease, such access information, cards or keys as may be necessary to grant access.

6. **Assignment and Subleasing.**

PJD will not assign or transfer this Lease without the prior written consent of CITY, which consent will not be unreasonably withheld, delayed or conditioned; provided; however, PJD may assign this Lease without CITY's prior written consent to PJD's principal(s), affiliates, or any subsidiary of PJD, its principal(s) or affiliates, to any entity that acquires all or substantially all of PJD's assets in the market defined by the Federal Communications Commission in which the Ground Space is located by reason of a merger, acquisition or other business reorganization. PJD may sublet the Ground Space with CITY's prior written consent but shall remain as the Lessee and fully liable to CITY under this Lease. PJD or its successors and/or assigns shall provide the City of Port St. Lucie a copy of all subleases with any co-locator for the leased premises. Failure to provide copies of the co-locate agreements for verification of proper revenue allocations to the City of Port St. Lucie shall be deemed a default of this agreement.

7. **Notices.**

All notices must be in writing and are effective when deposited in the U.S. Mail, certified (return receipt requested) and postage prepaid, or when sent via overnight delivery, to the address set forth below, or as otherwise provided by law.

CITY: City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984
Attn: City Manager

With copy to: City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099
Attn: City Attorney

With copy to: Parks and Recreation Department
City of Port St. Lucie
2195 SE Airoso Boulevard
Port St. Lucie, FL 34984
Attn: Director of Parks and Recreation

PJD: PJ Development, LLC.
7341 Westport Place, Suite A
West Palm Beach, Florida 33413
Attn: Paul A. Scott – Managing Partner

8. Improvements.

PJD shall, at PJD's expense, make such improvements on the Ground Space, as it deems necessary from time to time for the operation of the Facility, including the right to replace, repair, add or otherwise modify its equipment or any portion thereof, whether the equipment is specified or not on any exhibit attached hereto, during the term of this Lease. A security fence consisting of chain link construction or similar but comparable construction will be placed around the perimeter of the Ground Space at the expense of PJD. PJD will also provide and install public awareness signage concerning the property usage and contact information. Such signage content will be provided to the CITY'S Parks and Recreation Department for review and approval and shall be in compliance with any and all applicable federal, state and local requirements. CITY agrees to cooperate with PJD with respect to obtaining any required zoning approvals and other governmental permits for the cell tower site and such improvements.

As a condition of approval of the Lease Agreement, and as consideration of the fact that the City of Port St. Lucie intends to use the facility as a future dog park, PJD has agreed to clear additional property for the City during the clearing for construction of the tower. PJD and the City of Port St. Lucie have agreed to the area to be cleared, which is depicted on the attached Exhibit "C". There shall be no costs to the City for said clearing.

Within ninety (90) days after termination or expiration of this Lease, PJD will remove its equipment and improvements (excluding footings, landscaping or plant life) and will restore the Ground Space to the condition existing on the commencement of this Lease, except for ordinary wear and tear. CITY agrees and acknowledges that all of the equipment, fixtures and personal property of PJD shall remain the personal property of PJD and PJD shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. If such time for removal causes PJD to remain on the Ground Space after termination of this Lease, PJD shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of its equipment and improvements and all personal property is completed.

9. **Compliance with Laws.**

Owner represents that Owner's Property (including the Site), and all improvements located thereon, are in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. PJD will substantially comply with all applicable laws relating to its possession and use of the Site, including, without limitation, posting requirements of the Federal Communications Commission.

10. Removal.

A. Obsolete and unused towers. Any obsolete or unused towers. Any obsolete or unused tower shall be removed after twelve (12) months of non-use. A removal bond irrevocable letter of credit equal to the following shall be required prior to obtaining final site development permits;

1. Towers up to 150 feet in height = $15,000
2. Towers 151 to 200 feet in height = $20,000
3. Towers 201 to 300 feet in height= $25,000

11. Interference.

PJD will cure technical interference problems with other equipment located on the Land prior to the effective date of this Lease or any equipment that becomes attached to the Land at any future date when PJD desires to add additional equipment to the Property. Likewise, CITY will not permit the installation of any future equipment, upgrades or enhancements by others, which results in unreasonable technical interference problems with PJD's then existing equipment. CITY and PJD acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph and therefore, PJD shall have the right to specifically enforce the provisions of this paragraph in a court of competent jurisdiction.

12. Utilities.

CITY represents that those utilities adequate for PJD's use of the Ground Space are available. PJD shall pay for all utilities used by PJD at the Ground Space. CITY will cooperate with PJD's efforts to obtain utilities from any location provided by CITY or the servicing utility.

13. Termination.

PJD may terminate this Lease at any time within sixty (60) days written notice to CITY without further liability if PJD does not obtain all permits or other approvals (collectively

'approval") required from any governmental authority or any easements required from any third party to operate the Facility, or if any such approval subsequently is canceled, expires or is withdrawn or terminated, or if CITY fails to have proper ownership, or appropriate clear title to the Property or authority to enter into this Lease, or if PJD determines that it will be unable to use the Property for its intended purpose. Upon termination, CITY shall retain all prepaid rent.

14. Default.

If either party is in default under this Lease for a period of (i) twenty (20) days following receipt of written notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (ii) thirty (30) days following receipt of written notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Lease. If the non-monetary default may not reasonably be cured within a thirty (30) day period, this Lease may not be terminated if the defaulting party commences action to cure the default within such thirty (30) day period and proceeds with due diligence to fully cure the default.

Notwithstanding anything in this Lease to the contrary, in the event of a default by CITY which results in PJD being unable to operate the Facility for a period of time exceeding CITY's initial thirty (30) day cure period, the rent shall abate for the period of time after expiration of the initial thirty (30) day cure period until the earlier of such date as CITY has cured the non-monetary default or PJD is able to continue operating the Facility; provided, further, that if PJD is unable to operate the Facility for more than 90 days, PJD shall have the right to immediately terminate this Lease. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as

the expiration date of this Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease.

15. Hazardous Substances.

CITY represents that it has no knowledge of any substance, chemical or waste on the Land that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. PJD shall not introduce or use any such substance on the Property in violation of any applicable law.

16. Insurance.

PJD will maintain comprehensive general liability and property liability insurance with minimum liability limits of not less than ONE MILLION DOLLARS AND NO CENTS ($1,000,000.00) for injury to or death of one or more persons in any one occurrence and not less than ONE MILLION DOLLARS AND NO CENTS ($1,000,000.00) for damage or destruction of property in any one occurrence, with not less than THREE MILLION DOLLARS AND NO CENTS ($3,000,000.00) general aggregate insurance coverage. All such insurance policies shall by issued by companies approved by the CITY and licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless the CITY is given at least thirty (30) days prior written notice of such cancellation or modification. PJD shall provide the CITY certificates showing such insurance to be in place and showing the CITY as an additional named insured under the policies.

PJD shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in full force for the duration of this Lease Agreement and any extension or renewal thereof. If insurance certificates are scheduled to expire during the term of this Lease Agreement, PJD shall be responsible for submitting new or renewed insurance certificates to the CITY at a minimum of thirty (30) days in advance of such expiration.

If the insurance policies are not kept in full force during the entire term of this Lease Agreement or any extension thereof, the CITY may procure the necessary insurance policies and PJD shall repay to CITY the full amount of the premium(s) paid by the CITY for such insurance policy procurement. Said repayment shall be provided to the CITY as an additional rent installment for the year following the date on which the premiums were paid by the CITY.

17. Indemnification and Hold Harmless.

PJD shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses, or damages, including attorney fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Lease Agreement by PJD or its employees, agents, servants, partners, principals, subcontractors, guests, invitees, licensees, or assignees. PJD shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The indemnities provided by PJD under this Lease Agreement will not extend or apply to any claims, damages, suits or actions caused by or resulting from the sole negligence or willful misconduct of the CITY, or its officers, employees, agents, contractors, or instrumentalities. PJD expressly understands and agrees that any insurance protection required by this Lease Agreement or otherwise provided by PJD shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

18. Taxes.

PJD shall be responsible for making any necessary returns for and paying any and all property taxes separately levied or assessed against its improvements on the Ground Space. PJD shall reimburse the CITY, as additional rent, any documented increases in real estate taxes levied against the Property which are directly attributable to the improvements constructed by PJD and are not separately levied or assessed against PJD's improvements by the taxing authority. CITY shall provide to PJD a copy of any notice, assessment or billing relating to real estate taxes for which PJD is responsible under this Lease within thirty (30) days of receipt of the same by CITY. PJD shall have no obligation to make payment of any real estate taxes until PJD has received the notice, assessment or billing relating to such payment as set forth in the preceding sentence. PJD shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any real estate tax assessment or billing for which PJD is wholly or partly responsible for payment under this Lease. CITY shall reasonably cooperate with PJD in filing, prosecuting and perfecting any appeal or challenge to real estate taxes as set forth in the preceding sentence, including but not limited to, executing any consent to appeal or other similar document.

19. Recording.

CITY and PJD agree that this Lease Agreement will be forwarded for recording or filing in the appropriate office of St. Lucie County and CITY and PJD agree to take such actions as may be necessary to permit such recording or filing. PJD shall be responsible for the recording costs. PJD, at PJD's option and expense, may obtain title insurance on the Ground Space leased herein. CITY shall cooperate with PJD's efforts to obtain a title insurance policy by executing documents, or at PJD's expense, obtain requested documentation as required by the title insurance company. If title is found to be defective, CITY shall attempt to cure defects in

title. At PJD's option, should the CITY fail to provide requested documentation within thirty (30) days of CITY's receipt of PJD's written request, or fail to provide the Non-Disturbance instrument(s), PJD may withhold and accrue the monthly rental until such time as the requested document(s) are received, or if title is found to be defective and CITY has failed to cure the defects within a reasonable period, PJD may cancel this Lease or cure the title defect at CITY's expense utilizing the withheld payments. Any such notice of termination shall cause this Lease Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease.

20. Co-Location.

PJD shall design the 150' monopole tower structure and facility to allow for at least three (3) additional telecommunications providers. The availability of the tower shall be subject to the structural limitations as may be imposed by current or future regulations. Tenant shall pay to Owner Thirty Five percent (35%) of all rental revenues received from any subsequent co-locator after the initial service provider locates on the Tower. Rental Revenues for additional co-locators shall commence upon the start of physical alteration of the leased premises for the construction of the co-locators facilities. Tenant shall be entitled to recoup from any co-locator, a pro rata share of the capital cost of construction of the tower. The Owner shall not share this capital contribution. Owner acknowledges and agrees that the continuity of Tenant's services is of paramount importance. Owner at all times shall exercise the greatest care and judgment to prevent damage to Tenant's services. Owner agrees that Tenant may cause its engineers to verify by frequency search that the proposed additional provider will not interfere with the radiating or receiving facilities of Tenant.

21. Sale of Land.

If CITY should, at any time during the term of this Lease Agreement, decide to sell all of its Land, which includes the leased Property, to a purchaser other than PJD, such sale shall be under and subject to this Lease and PJD's rights hereunder, unless both parties agree to terminate the Lease.

22. Casualty.

If PJD's Facility or improvements are damaged or destroyed by fire or other casualty, PJD shall not be required to repair or replace the Facility or any of PJD 's improvements made by PJD. PJD shall not be required to expend funds for repairs that are more than fifty-percent (50%) of the replacement value of the Facility or any improvements. Additionally, if completion of the repairs is not possible within forty-five (45) days following the date of the damage or destruction, PJD may terminate this Lease by giving thirty (30) days written notice to CITY. Termination shall be effective immediately after such notice is given. Upon such termination, this Lease shall become null and void and CITY and PJD shall have no other further obligations to each other, other than PJD's obligation to remove PJD's property as hereinafter provided.

23. Inspections.

CITY shall permit PJD or PJD's employees, agents and contractors access to the Property by PJD or its employees, agents and contractors to conduct inspections on the Ground Space (including Phase I and Phase II audits), radio frequency tests and such other tests, investigations and similar activities as PJD may deem necessary, at the sole cost of PJD. The scope, sequence and timing of the inspections shall be at the sole discretion of PJD; upon reasonable notification to CITY and Director of the Parks and Recreation Department, or his designee; the inspections may be commenced during normal business hours, for the duration of the Lease. PJD and its employees, agents and contractors shall have the right to bring the

necessary vehicles and equipment onto the Property and any of the CITY's surrounding property to conduct such tests, investigations and similar activities.

PJD shall indemnify and hold CITY harmless against any loss of damage for personal injury or physical damage to the Property, CITY's surrounding property or the property of third parties resulting from any such tests, investigations and similar activities. Upon written request, PJD shall furnish to CITY copies of the environmental findings. Should PJD exercise this option, PJD at its expense shall restore the Land to its original condition for any changes caused by said testing excluding normal wear and tear.

24. Enforcement.

Any and all rights and remedies of the CITY under this Lease Agreement shall be cumulative and shall not be exclusive of any other rights and remedies provided to CITY under applicable law.

25. Holdover.

If PJD, with the consent of the CITY, remains in possession of the demised premises after the expiration of the term of this Lease Agreement or any Renewal Terms and if the CITY and PJD have not executed an express written agreement as to such holding over, then such occupancy shall be a tenancy from month to month at a monthly rental fee of the current rent, and such payments shall be made as herein provided. In the event of such holding over, all of the terms of this Lease Agreement including the payment of all charges owing hereunder other than rent shall remain in full force and effect on said month to month basis.

26. Governing Law.

This Lease Agreement, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida and venue of any proceedings

hereunder shall be in a court of proper jurisdiction in St. Lucie County, Florida.

27. **Additional Provisions.**

(a) Successors in Interest

This Lease applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Lease.

(b) Mechanic's, Material men's and Other Liens

PJD agrees that it will not permit any mechanic's, material men's, or other liens to stand against the demised premises for work or materials furnished to PJD; it being provided, however, that PJD shall have the right to contest the validity thereof. PJD shall immediately pay any judgment or decree rendered against PJD, with all proper costs and charges, and shall cause any such lien to be released off record without cost to the CITY.

(c) Permits, Regulations & Special Assessments

PJD covenants and agrees that during the term of this Lease Agreement PJD will obtain any and all necessary permits and approvals and that all uses of the demised premises will be in conformance with all applicable laws, including all applicable zoning regulations.

PJD shall pay any and all charges, taxes, or assessments levied against the demised premises and failure to do so will constitute a breach of this Lease Agreement.

(d) Force Majeure

PJD and the CITY shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants and conditions of this Lease Agreement when prevented from so doing by cause or causes beyond PJD's or the CITY's control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of

God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of PJD or the CITY.

(e) If any provision of this Lease is held invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to when it is held invalid or unenforceable, will not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(f) The failure of either party to insist upon strict performance of any of the terms or conditions of this Lease or to exercise any of its rights under the Lease shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Lease, either in law or in equity.

28. **Written Agreement.**

This Site Lease Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by ordinance adopted by the City Council.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the CITY and PJD have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness
Print Name: MARY ANN VERILLO

Witness
Print Name: LIRA WALKER

CITY OF PORT ST. LUCIE, a Florida municipal corporation

By: _____
Gregory J. Oravec
City Manager

MARY ANN VERILLO
Notary Public - State of Florida
My Comm. Expires Jun 9, 2015
Commission # EE 64992
Bonded Through National Notary Assn.

STATE OF FLORIDA)
) ss
COUNTY OF ST. LUCIE)

The foregoing instrument was acknowledged before me this 14 day of June 2012, by Gregory J. Oravec, **as City Manager of the City of Port St. Lucie, a Florida municipal corporation**, on behalf of the City of Port St. Lucie. ☐ He is personally known to me..

MARY ANN VERILLO
Notary Public - State of Florida
My Comm. Expires Jun 9, 2015
Commission # EE 64992
Bonded Through National Notary Assn.

NOTARY SEAL/STAMP

Notary Public

MARY ANN VERILLO
(Print Name of Notary)

Notary Public, State of Florida

My Commission expires 06/09/2015

APPROVED AS TO FORM
AND CORRECTNESS

Pam E. Booker
Senior Assistant City Attorney

Signed, sealed and delivered
in the presence of:

PJ Development, LLC, a Florida limited liability company

By: _____
Paul A. Scott Managing Partner

_____
Witness
Print Name: THOMAS J. MACKIEWICZ

_____
Witness
Print Name: Robin F Hampl

STATE OF FLORIDA)
) ss
COUNTY OF St. Lucie)

The foregoing instrument was acknowledged before me this 26 day of April 2012, by Paul A. Scott **as Managing Partner of PJ Development, LLC a Florida limited liability company.** ☐ He is personally known to me or ☐ has produced _____ as identification.

_____
Notary Public

Robin F Hampl
(Print Name of Notary)

NOTARY SEAL/STAMP

Notary Public, State of Florida

My Commission expires 7/10/15

ROBIN F. HAMPL
Notary Public - State of Florida
My Comm. Expires Jul 10, 2015
Commission # EE 110846

denise/agreements/lease agreements/lyngate park cell tower lease

EXHIBIT "A"

LEGAL DESCRIPTIONS
(AS PREPARED BY SURVEYOR)

PJ DEVELOPMENT, LLC.
LEASE PARCEL
CPSL 2620 LYNGATE PARK

A PORTION OF TRACT "B IN BLOCK 211 AND TRACT C" IN BLOCK 214 BOTH IN SOUTH PORT ST. LUCIE UNIT FIFTEEN, ACCORDING TO THE PLAT THEREOF AS RECORDED PLAT BOOK 16 AT PAGE 42, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT "B"; THENCE SOUTH 18°44'55" WEST, A DISTANCE OF 586.96 FEET; THENCE DEPARTING SAID EAST LINE, NORTH 89°59'50" WEST, A DISTANCE OF 344.41 FEET TO THE POINT OF BEGINNING: THENCE SOUTH 00°00'10" WEST, A DISTANCE OF 60.00 FEET; THENCE NORTH 89°59'50" WEST, A DISTANCE OF 110.00 FEET; THENCE NORTH 00°00'10" EAST, A DISTANCE OF 60.00 FEET; THENCE SOUTH 89°59'50" EAST, A DISTANCE OF 110.00 FEET TO THE POINT OF BEGINNING.

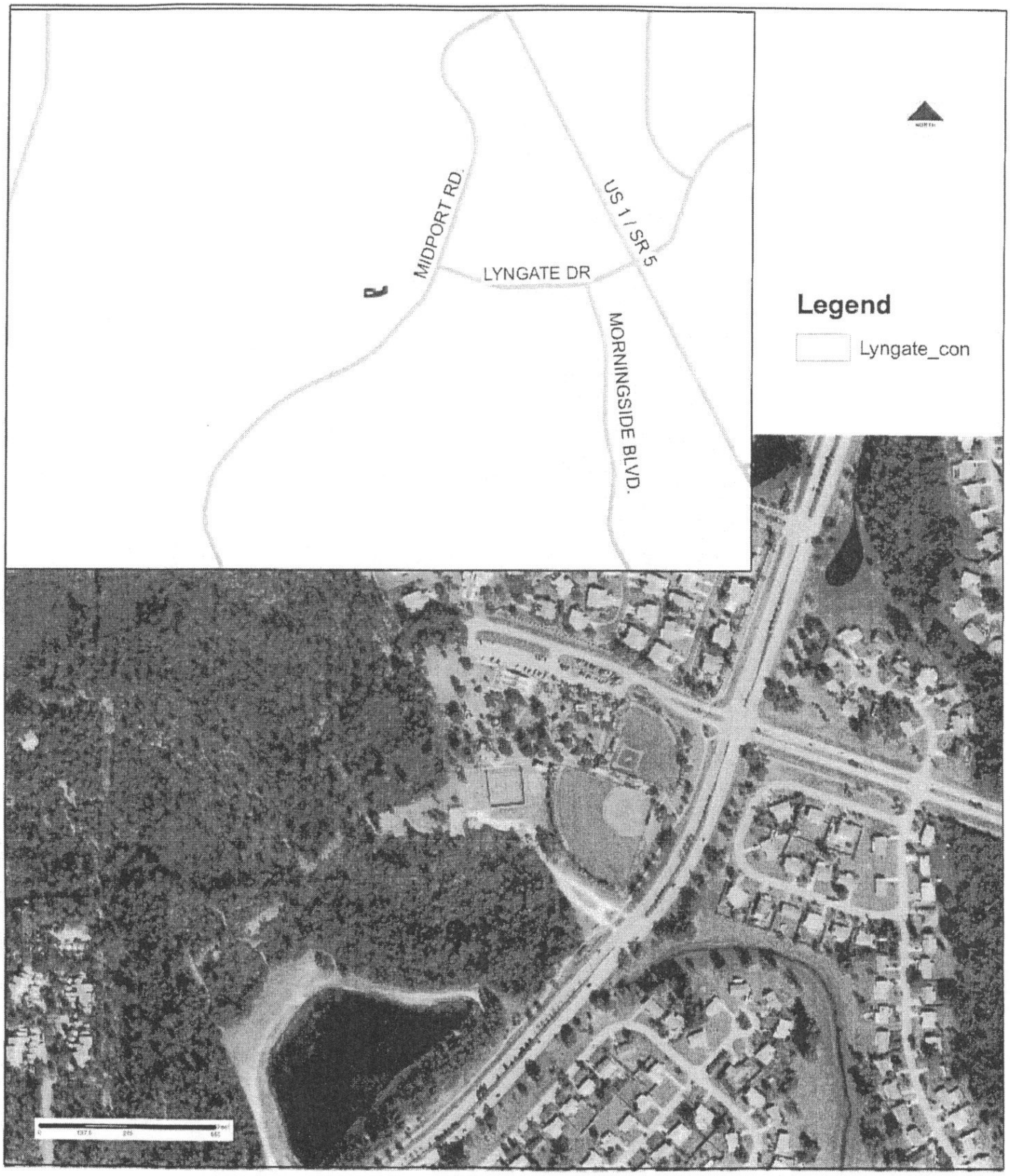
CONTAINING 0.1515 ACRES OR 6600 SQUARE FEET, MORE OR LESS.

PJ DEVELOPMENT, LLC.
INGRESS/EGRESS AND UTILITY EASEMENT
CPSL 2620 LYNGATE PARK

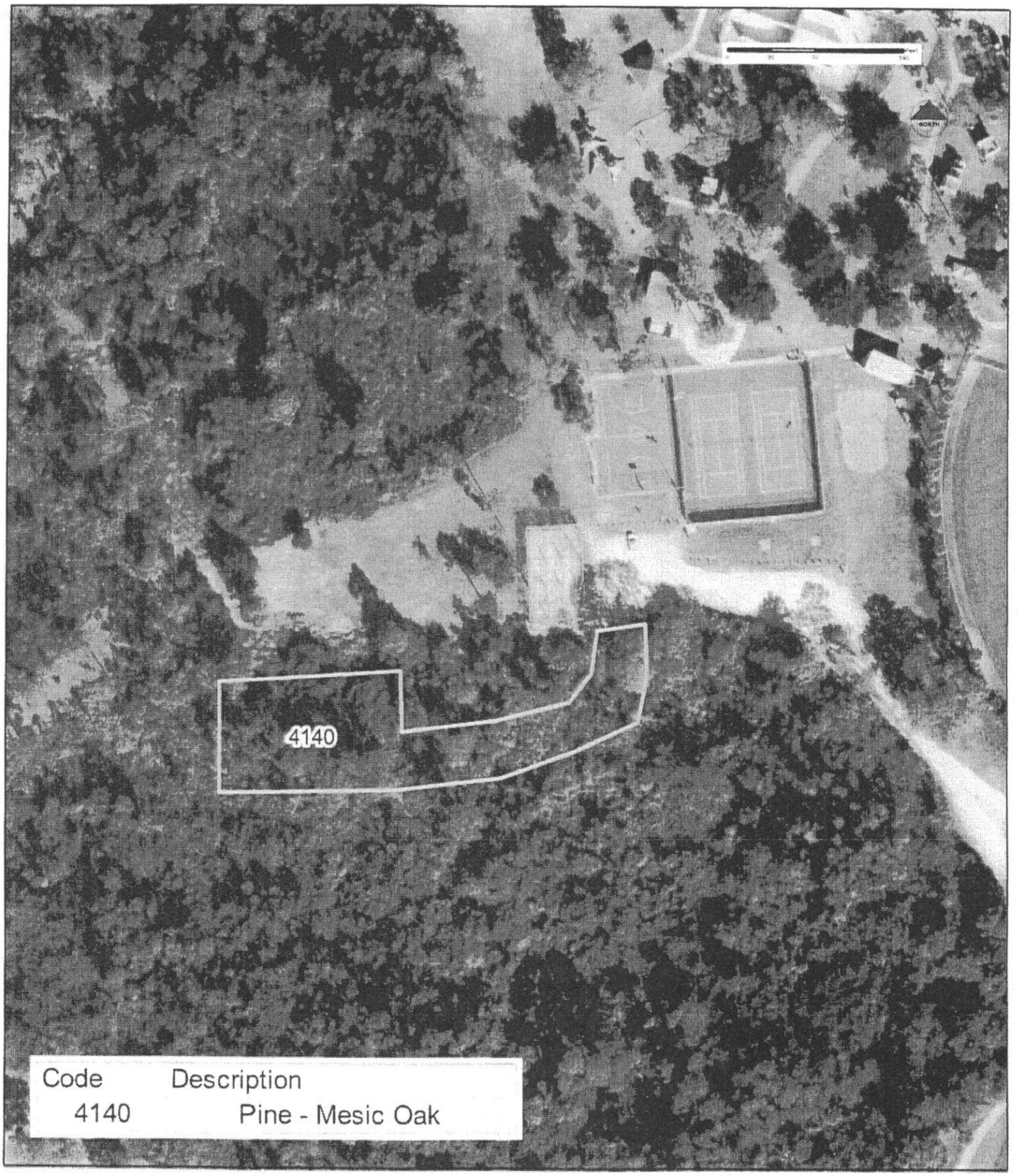
A 20.00 FEET INGRESS/EGRESS EASEMENT LYING 10.00 FEET LEFT AND RIGHT OF A CENTERLINE, SAID CENTERLINE BEING A PORTION OF TRACT "B IN BLOCK 211, SOUTH PORT ST. LUCIE UNIT FIFTEEN, ACCORDING TO THE PLAT THEREOF AS RECORDED PLAT BOOK 16 AT PAGE 42, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA, SAID CENTERLINE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT "B"; THENCE SOUTH 18°44'55" WEST, A DISTANCE OF 586.96 FEET; THENCE DEPARTING SAID EAST LINE, NORTH 89°59'50" WEST, A DISTANCE OF 344.41 FEET; THENCE SOUTH 00°00'10" WEST, A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING OF SAID CENTERLINE: THENCE SOUTH 88°55'20" EAST, A DISTANCE OF 34.17 FEET; THENCE NORTH 85°20'47" EAST, A DISTANCE OF 37.83 FEET; THENCE NORTH 76°24'47" EAST, A DISTANCE OF 53.92 FEET; THENCE NORTH 67°28'52" EAST, A DISTANCE OF 108.92 FEET; THENCE NORTH 48°55'34" EAST, A DISTANCE OF 82.79 FEET; THENCE SOUTH 72°16'23" EAST, A DISTANCE OF 27.64 FEET; THENCE SOUTH 59°17'11" EAST, A DISTANCE OF 61.09 FEET; THENCE SOUTH 44°17'17" EAST, A DISTANCE OF 69.51 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF LYNGATE DRIVE AND THE POINT OF TERMINATION OF SAID CENTERLINE.

THE SIDELINES OF SAID EASEMENT ARE TO BE SHORTENED OR LENGTHENED TO FORM ONE CONTIGUOUS SHAPE.



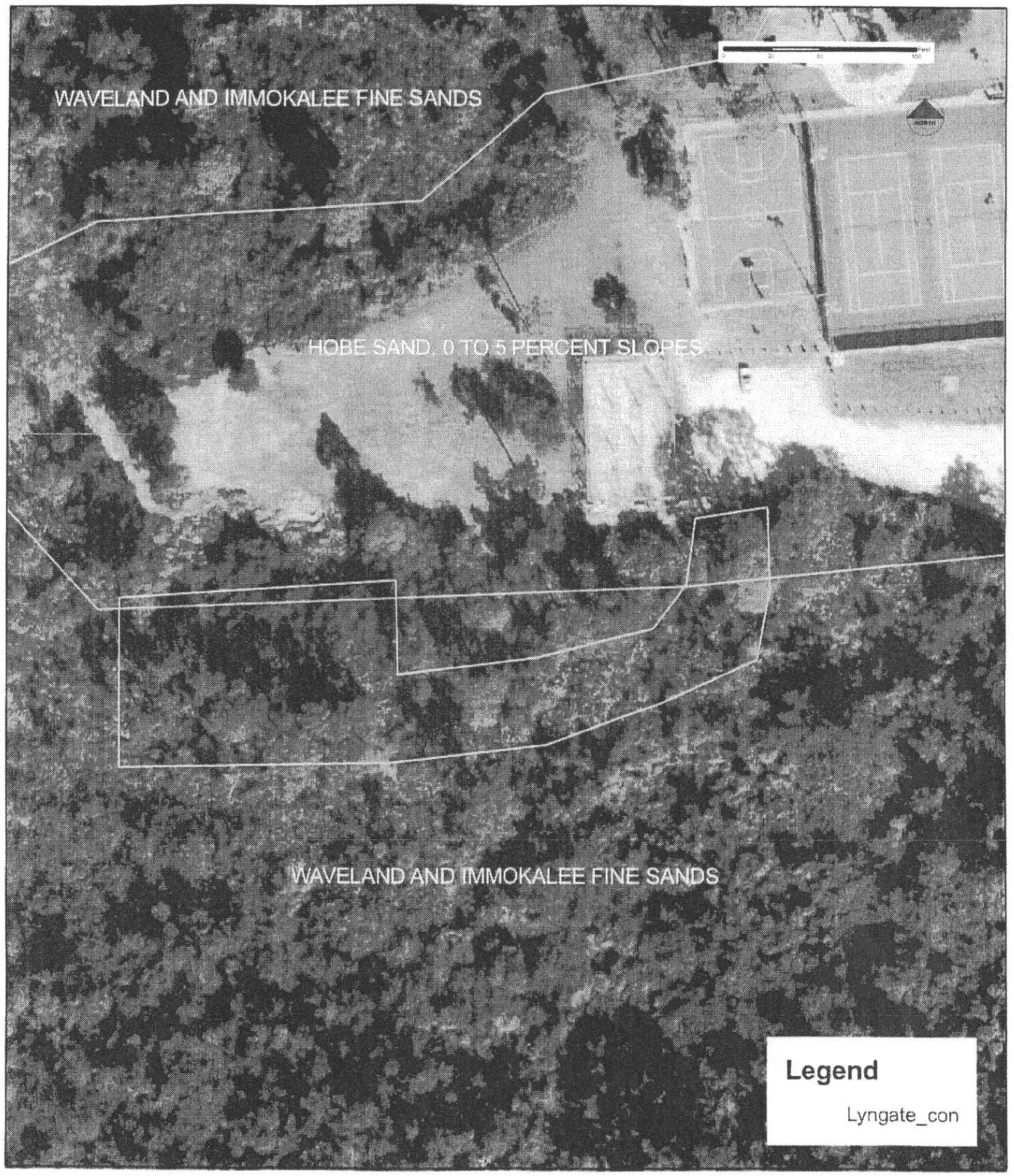
BKI, Inc. Consulting Ecologists 225 Fifth Avenue, Suite 2 Indialantic, Florida 32903 321-951-7964	Title: Location Map Project: Lyngate Tower Project Number: 12007 Source: NRCS Soils, FDEP LABINS High Res, 2009	Figure No. 1



BKI, Inc.
Consulting Ecologists
225 Fifth Avenue, Suite 2
Indialantic, Florida 32903
321-951-7964

Title: Land Use Map
Project: Lyngate Tower
Project Number: 12007
Source: NRCS Soils, FDEP LABINS High Res, 2009

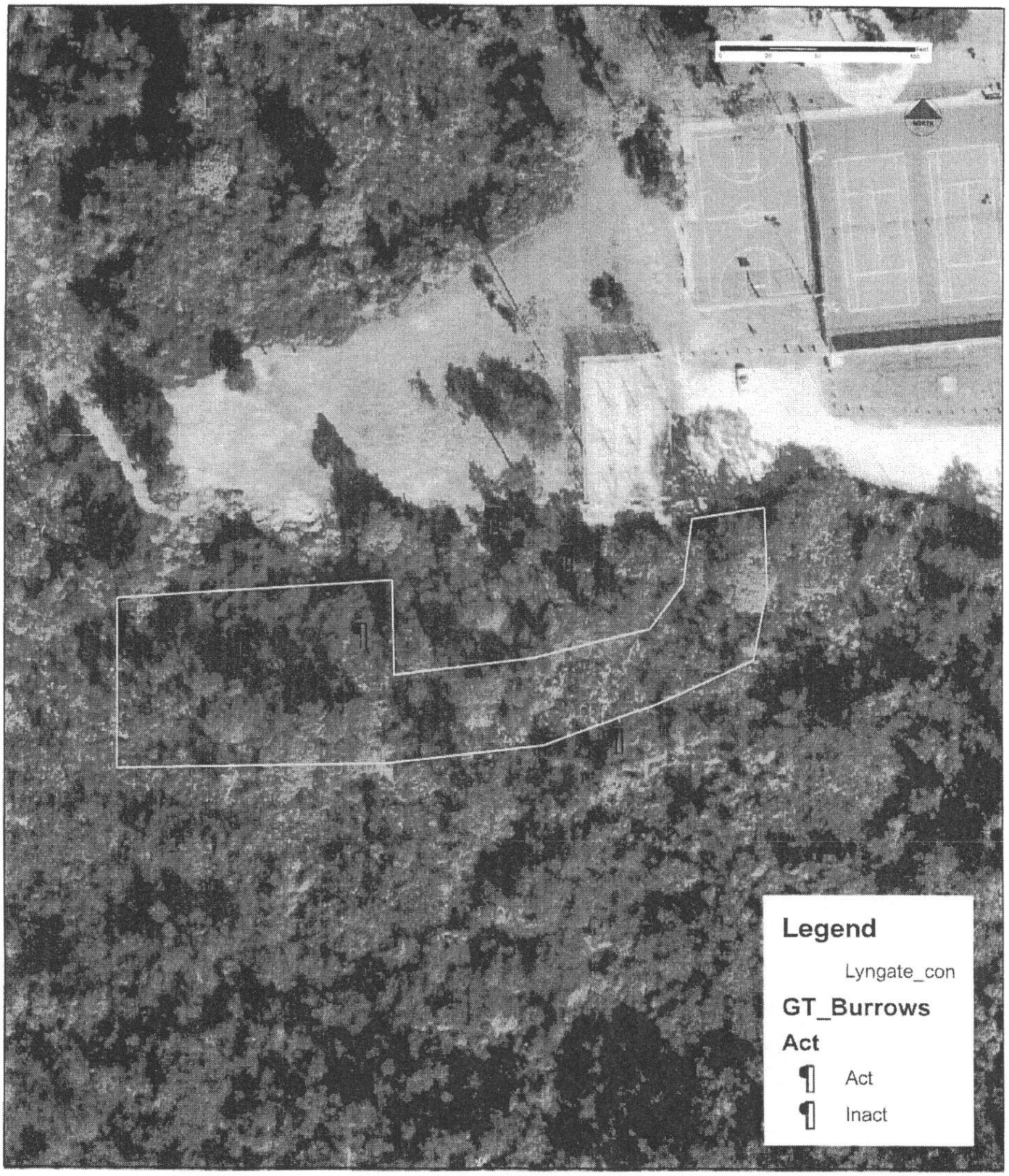
Figure No. 2



BKI, Inc.
Consulting Ecologists
225 Fifth Avenue, Suite 2
Indialantic, Florida 32903
321-951-7964

Title: NRCS Soils Map
Project: Lyngate Tower
Project Number: 12007
Source: NRCS Soils, FDEP LABINS High Res, 2009

Figure No. 3



BKI, Inc.
Consulting Ecologists
225 Fifth Avenue, Suite 2
Indialantic, Florida 32903
321-951-7964

Title: Borrow Location Map
Project: Lyngate Tower
Project Number: 12007
Source: NRCS Soils, FDEP LABINS High Res, 2009

Figure No. 4