

Palm Island Estates Association, Inc.
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January 12, 2021

Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399-0850

VIA EMAIL: clerk@psc.state.fl.us

cc: Mr. Martin Friedman, Esq.
Dean Mead
420 South Orange Ave
Suite 700
Orlando, FL 32801

VIA EMAIL: mfriedman@deanmead.com

Re: **Docket 20200226-SU**

Commissioners of the Public Service Commission:

I am writing on behalf of the Palm Island Estates Association, Inc. (PIE), a voluntary homeowners' association of approximately 240 households with properties on Knight Island, Don Pedro Island, Palm Island Resort and Thornton Key.

We are registering our opposition to the request from Environmental Utilities, LLC (EU) to provide wastewater services in the areas specified in their application contained at Docket number 20200226-SU which includes Knight Island and Don Pedro Island (listed as area W2 on the Charlotte County Master Sewer Plan).

Our objections are based on the following:

1. **Inadequate Notice.** The public notice dated 12.17.2020 is titled "Notice of Application for Original Certificate of Authorization and Rates and Charges for Wastewater Service". This is deceptive as it implies that the estimates of the initial rates and charges were available for review so that the stakeholders might respond to the project within the 30-day period allowed. The stakeholders in reality are being asked for comment on rates and charges that have not been presented for review.

Furthermore, notice appears to have been timed such that the first half of the 30-day period overlapped the year-end holiday period. This combined with the pandemic mail delays resulted in many homeowners receiving their notices late, or not receiving them at all. There was not

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COMMISSION
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adequate time to share concerns with the Charlotte County Commissioners and the Florida Public Service Commission. Inadequate notice has been given to the affected communities. This project was not advertised widely; nor was it an open-bid process with Charlotte County. A Bulk Sewer Treatment Agreement was awarded without requests for proposals and without a hearing before the County Commissioners. After that issuance, EU applied to the FPSC for permits and bifurcation. On December 21, 2020, EU finally filed its notice with the FPSC stating that the Notice had been mailed on December 17th to affected property owners.

At no time have actual costs been disclosed by EU or its principals. EU has repeatedly stated that it won't know until after the permit is issued what the costs will be. This is a private start-up company without experience in sewer system construction with limited resources seeking permitting with the first action by the PSC having been scheduled to occur within days of the end of the holiday season.

Moreover, the Notice dated December 17th implies that the proposed initial rates are available for review when, in fact, EU had applied for a bifurcated permit excusing them from rate disclosure prior to issuance of the permit. While the Motion to Bifurcate and Temporary Rule Waiver was denied, there has been no change to the deadline for commentary from the affected ratepayers. The January 16th deadline still looms for groups or individuals to state their opposition and request a hearing as an intervenor. To that extent, the December 17th Notice is defective. Stakeholders are not able to comment on rates that have not been presented for review.

2. **No Demonstrated Need.** The County adopted the 2017 Sewer Master Plan which includes these Islands for sewer executed by CCUD (Charlotte County Utilities Dept.). In fact, Knight and Don Pedro Islands have been identified as priority areas for the extension of central sewer by CCUD. Furthermore, there was no study of the source of the nitrites alleged to be spilling into inland and shore waters. Specifically, there was no study to determine whether these were coming from leaky sewage tanks or from fertilizers. Therefore, the assumption that the alleged pollution is emanating from sewer tanks is a false one.
3. **Financial Health of the Applicant.** Any statements made by the principals of EU to the public are baseless. Instantly, EU has no demonstrable experience and no guaranteed funding (including bond issues) that could even marginally show its solvency, ability to obtain funding, complete the project and/or provide ongoing maintenance.

Specifically, **none of the publicly facing filed documents guarantee any funding and state specifically that there is no commitment to lend.** No projected costs are given. Certainly a proposed project of this size must have been cost-estimated; No CIAC was provided which would identify cash and property contributions; EU appears to have no experience with projections, certainly not sufficient enough to project annual expenses; there is no comprehensive plan in the application that describes how this project will be financed. EU is a start-up company. As such, the company and its principals are inextricably linked. A completed bond issue by a reputable financial institution should be a mandatory condition precedent for any approval. Again, a letter of interest from a local bank is meaningless. Since the reliability of the financial strength of the principals is paramount, their request to treat all of their financial information as confidential is improper and should be denied.

There have been no studies or valid estimates of the cost of this project, both globally and as it applies to Knight Island-Don Pedro Island. The verbal estimate given by Jack Boyer to community groups of approximately \$20,000 per homeowner is not based on any actual cost estimates related to this project. Given the project location and necessary involvement of multiple

state (and potentially federal) agencies, the number is likely to be much higher. This places an undue burden on the members of our community. No permits should be issued without disclosure and verification of all of the necessary costs, e.g. profits build-ins, ongoing operating costs, construction costs, construction slow-downs or complications; distribution and allocation of cost-recovery, etc.

No provision has been made to allow for payment over time should the project go forward. In addressing this question to residents, the applicant has stated that grants might be available without any factual basis for these statements and without any data in support relative to this project. Grants seem far-fetched at best since the State of Florida is facing a significant budget shortfall exacerbated by the COVID-19 crisis. This application should be rejected until the applicant provides a firm cost per ERU along with appropriate financing options and payment vehicles for those affected owners along with the demonstrated financial ability to provide for payments over time.

EU has failed to address its ongoing operating costs. In an applicant with limited operating experience and financial resources, how will ongoing operating costs be addressed? *Jack Boyer has stated to community groups that if they fight him, the costs will be passed on to the community.* While cryptic, the intent seems clear and also indicates the tenuousness of EU's financial position going into this project. EU is a private, for-profit utility company. The owners' financial history and the financial health of the company is not known and not available.

4. **Lack of Experience and Expertise.** The owner has little or no demonstrated experience with sewer systems and the owner's present water company has a long list of non-compliance and violations registered with the DEP. The Charlotte County Clerk's office website lists several foreclosures and lien actions involving Mr. Boyer. Should EU's stewardship of the project become untenable, another future utility will then have to compensate EU for the service area, resulting in further cost to the future ratepayers.

Importantly, Mr. Boyer was charged with and indicted for larceny as it relates to a utility as well as criminal mischief for stealing water from Don Pedro Island State Park to serve his own water utility on Little Gasparilla Island. See attached documents made a part hereof. In summary, Mr. Boyer waited until rangers were absent from the park over a weekend and installed a water main from the Don Pedro State Park fresh water supply pipe and trenched it to LGI and hooked it up to his water company's facility. He admitted to this and moreover refused to remove the pipe after which he was indicted. It is inconceivable that he should be granted a permit to run a utility given his history of dishonesty and theft, especially without disclosure of his funding and financing sources.

5. **Location of Project:** The proposed project is on a bridgeless barrier island with unique characteristics that have been unaddressed in the application. This will affect the cost and feasibility of the project. There is no indication that stakeholder agencies such as the West Coast Inland Navigation District (WCIND), Department of Environmental Protection (DEP), Florida State Parks, The Florida Submerged Land Trust, or Florida Fish and Wildlife (FWC) have been consulted. The plan for the pumping station on Don Pedro Island situates it on land adjacent to an access waterway required to access many homes on the island. Construction would be through a well-established flat and navigable waterway which would impede boat and emergency access. DEP permits would be required for destruction of flats and mangroves; FWC approvals would be necessary for destruction of endangered and threatened species habitat. None of these issues have been addressed, and these are only a few of them. The acquisition of easements has not been addressed in EU's application. The question of who will oversee the construction through

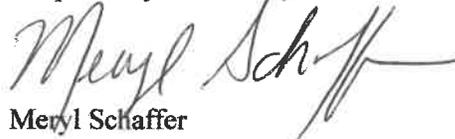
sensitive and protected habitat has not been addressed. The financial costs of this type of project, e.g. affecting threatened species and protected wetlands and shorelines, have not been addressed.

6. **Oversight by Charlotte County:** EU has been clear that Charlotte County intends to have no involvement in this project and its involvement is limited to allowing hookup to its mains on the mainland. Charlotte County intends to give EU no support for the project in the event of construction or financial difficulty, and moreover will not protect its citizens from ill effects of EU's project. The citizens will be left to bear the burden of any construction, management or financial failures of this project. This is essentially an indemnification agreement whereby EU is holding Charlotte County harmless from liability. In such an arrangement, it is even more important for EU to be required to have full financial disclosure to ensure that there is enough solvency and insurance to pay claims should the endeavor fail for any reason.

In summary EU has not demonstrated that it has the financial capability and funding to sustain itself now and during the time this project is pending. It has not demonstrated that it has the financial stability to obtain the necessary permits from all stakeholder agencies given the time that these processes take. It has not demonstrated that it has the ability to obtain the required financing. Under the circumstances, it would be a violation of the mandate of the Florida Public Service Commission to grant a permit. EU has shown a conscious disregard for the citizen stakeholders in many ways, but none moreso than its threats to pass on its legal fees to customers should they challenge its permit application.

Given the lack of demonstrated need, the absence of financial and operational data to support this project, and the absence of any discernible expertise, EU's application should be denied. Therefore, we are formally requesting an administrative hearing by the Public Service Commission for EU's Application for wastewater certificate in Charlotte County, Docket #20200226-SU.

Respectfully submitted,



Meryl Schaffer
President

Palm Island Estates Association, Inc.

P.O. Box 3151

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EXHIBIT ____ (LBB-21)

**Offense Incident Report Narrative, Maps
and Case Update Florida Park Patrol Case # 96 J29 0153**

OFFENSE INCIDENT REPORT NARRATIVE CONTINUATION REPORT # 96-329-0153

ON 04/29/96 I, OFFICER SCOTT MEDLOCK OF THE FLORIDA PARK PATROL, ALONG WITH OFFICER ANDREW COTTELLS OF THE FLORIDA PARK PATROL, MET WITH GERALD NORMAN AND RICHARD STORBERG ABOUT AN ILLEGAL WATER PIPE INSTALLED ON DON PEDRO ISLAND STATE RECREATION AREA.

R. STORBERG, PARK RANGER AT GARDNER ISLANDS GEOPARK, TOLD US THAT, ON 02/07/96, HE RETURNED TO WORK AFTER TWO REGULAR DAYS OFF. ON 02/07/96, NOTICED THAT A DITCH HAD BEEN DUG ACROSS A 1/2 MILE EXpanse OF DON PEDRO ISLAND STATE RECREATION AREA. R. STORBERG SAID THAT NONE OF THE UTILITY COMPANIES KNEW ABOUT IT. R. STORBERG TOLD US THAT HE HEARD GROSSID THAT A WATER PIPE HAD BEEN LAID BY JACK BOYER OF LITTLE GASPARILLA WATER AUTHORITY, INC. R. STORBERG SAID THAT HE WENT BACK TO DON PEDRO ISLAND SPA AND DUG UP SEVERAL DITCHES IN THE DITCH. R. STORBERG SAID THAT HE FOUND A WATER PIPE INSTALLED IN THE DITCH. HE THEN CALLED PARK MANAGER R. NORMAN.

R. NORMAN TOLD US THAT HE CAME OUT AND TOOK PICTURES OF THE PIPE. IT WAS A 2" BLUE PIPE THAT HAD BEEN CONNECTED INTO THE PARK WATERLINE. AN UNAUTHORIZED METER AND HOOK WERE ALSO INSTALLED. R. NORMAN SAID THAT HE MADE CONTACT WITH JACK BOYER, AND J. BOYER ADMITTED TO HIM THAT HE HAD COME OUT TO THE PARK WHEN HE KNEW R. STORBERG WOULD NOT BE WORKING, AND INSTALLED THE PIPE. R. NORMAN TOLD US THAT J. BOYER ALSO REFUSED TO REMOVE THE PIPE. R. NORMAN SAID THAT HE SENT J. BOYER A CERTIFIED LETTER DEMANDING

Officer(s) Reporting (please print) GERALD SCOTT MEDLOCK #329		Officer's Signature <i>Scott Medlock</i>	Date 4-29-96
Reviewed By:		Reviewer's Signature	Date
Citation Number 1837194 & 1837204	Number Arrested	OBTS Number	Original Supplement <input checked="" type="checkbox"/>

REPORT NARRATIVE CONTINUATION

REPORT #

96-J29-0153

96-30-01-

THIS REPORT IS WRITTEN BY ME, OFFICER SCOTT MEDLOCK OF THE FLORIDA PARK PATROL, TO UPDATE AND SUPPLEMENT INFORMATION ABOUT JACK BOYER AND DON PEDRO ASHARD GSA.

ON 11/06/96 CHARLOTTE COUNTY STATE ATTORNEY'S OFFICE UPDATED ME ON THE CASE AGAINST J. BOYER. BOND WAS SET AT \$2000.00 BY THE CHARLOTTE COUNTY JAIL. J. BOYER POSTED BAIL. HE WAS ARRANGED ON 10/21/96. HE PLEAD NOT GUILTY. DOCKET COMMENCING FOR J. BOYER WILL BE ON 12/20/96. TRIAL DATE IS SET FOR SOME TIME IN JANUARY OF 1997. PROSECUTING ATTORNEY IS RUSSEL KERBY.

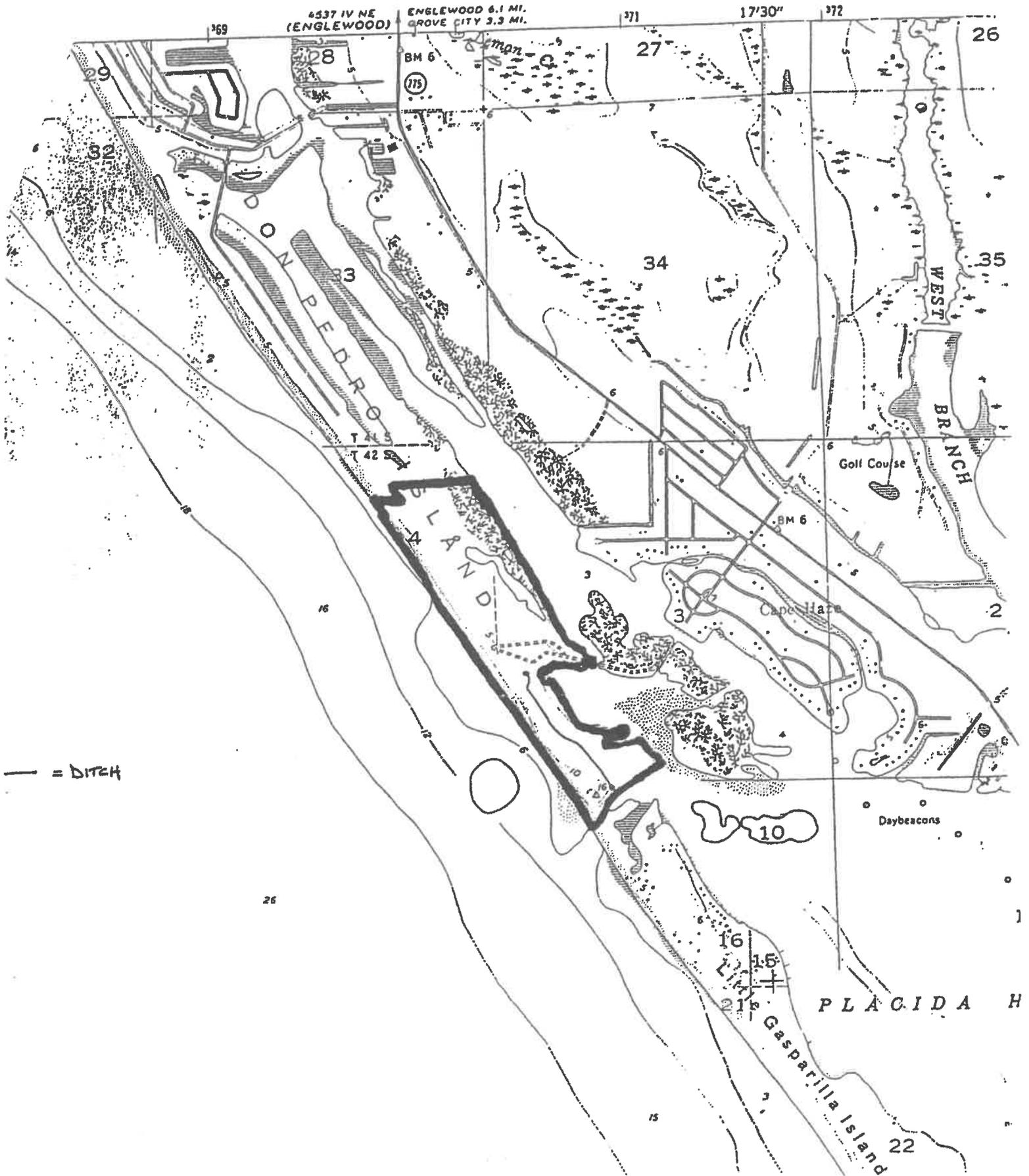
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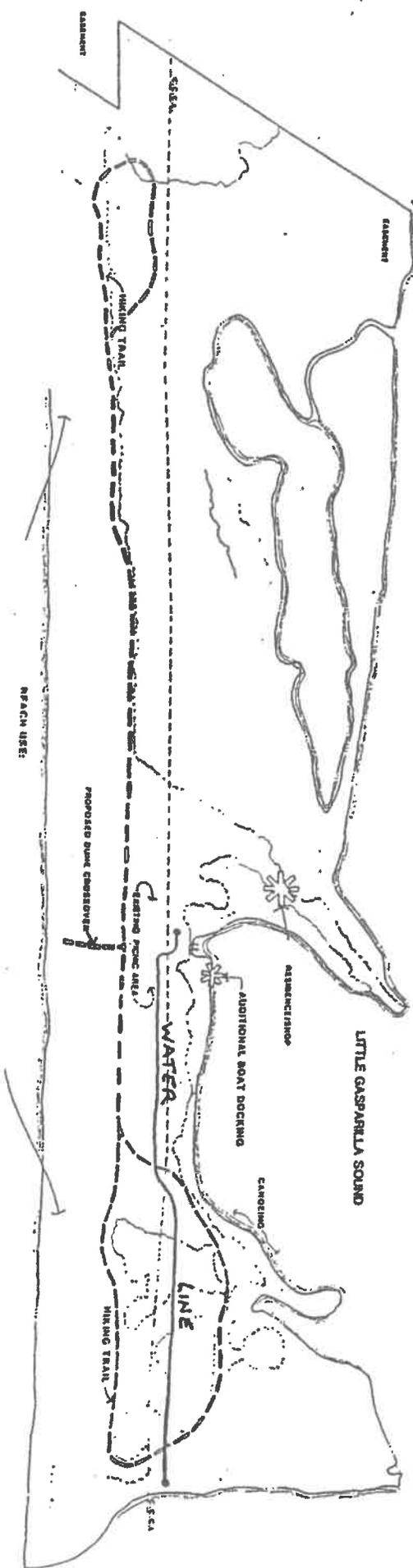
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11/11/96
TO DEP INV

ADMINISTRATIVE	Officer(s) Reporting (please print) GERALD SCOTT MEDLOCK #029		Officer's Signature <i>[Signature]</i>	Date 11/06/96
	Reviewed By CAPT. CARL NIELSEN IT3		Reviewer's Signature <i>[Signature]</i>	Date 11/6/96
	Citation Number 183720A	Number Arrested	OBTS Number	Original Supplement <input checked="" type="checkbox"/>

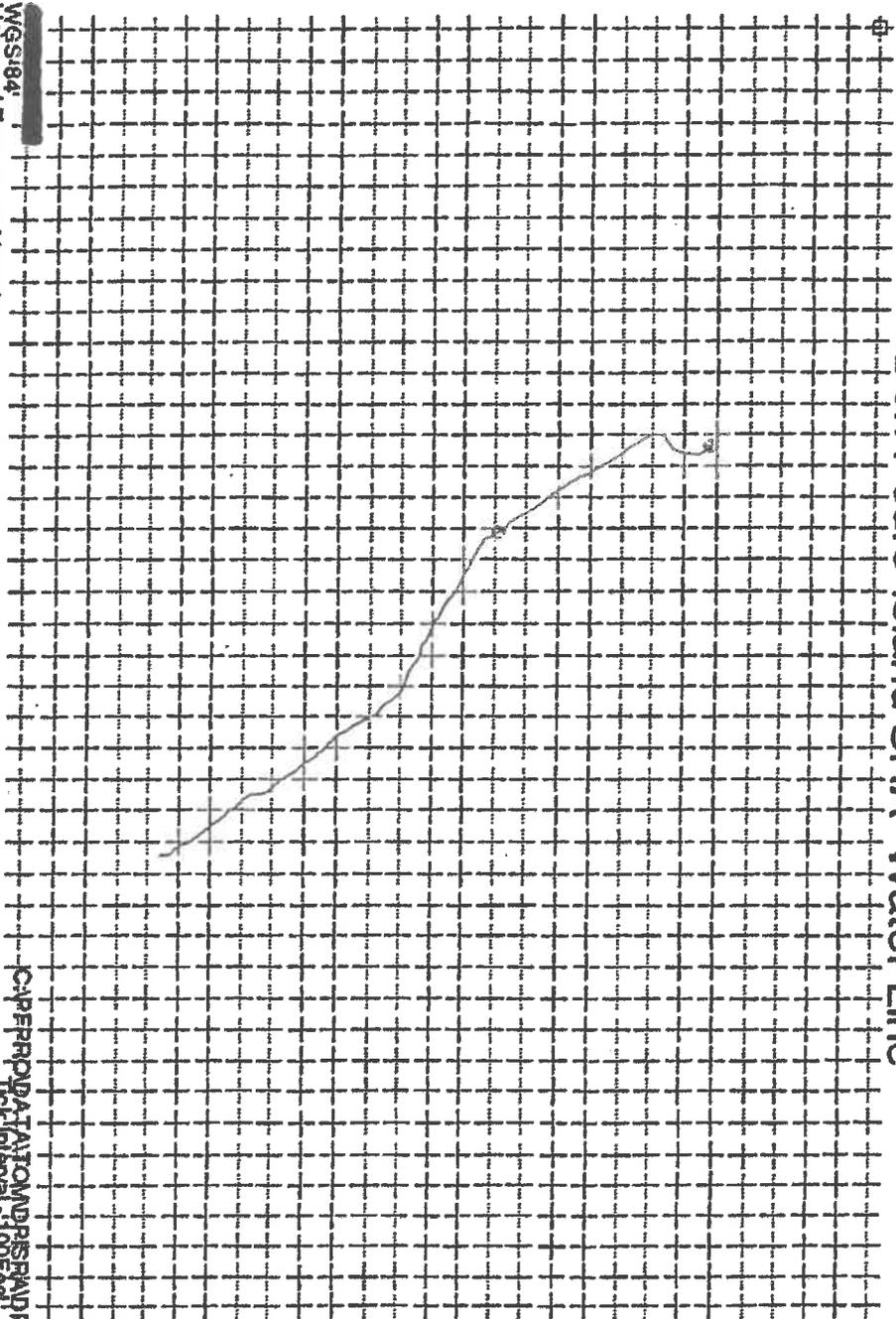
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T42S R20E S3,4,10





Don Pedro Island SRA - Water Line



WGS184
Universal Transverse Mercator

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Tick Interval - 100 Feet
Master Tick Position - 9745200 1214400

CASE UPDATE FMP
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 093096

FLORIDA PARK PATROL
 CASE # 96 J29 0153

093096

Charlotte County State Attorney filed information with Charlotte County's Circuit Court on August 01, 1996 indicting Jack Boyer for:

1. Criminal Mischief - \$1000.00 or More - Felony {FSS 806.13}.
2. Trespass/Larceny with relation to utility - 1st Degree Misdemeanor {FSS 812.14(2)(c)}

On or about August 06, 1996 Charlotte County Sheriff's Office attempted to serve said warrant of indictment to Jack Boyer. The state attorney's office further advised that as of today said warrant had not been served.

100196

Jack Boyer's Attorney called the state attorney today at approximately 0830 hours and advised that Boyer would turn himself in at Charlotte County Sheriff's Office later today. As soon as the plea date is set I will advise further.

****Note:**

Charlotte County Assistant State Attorney Mark T. Morris combined the original six charges filed to the two listed above.

Officer(s) Reporting (please print) G. S. Medlock #J29		Officer's Signature <i>[Signature]</i>		Date 10/1/96
Reviewed By: <i>[Signature]</i>		Reviewer's Signature <i>[Signature]</i>		Date 10/1/96
Citation Number	Number Arrested	OBTS Number	Original Supplement <input type="checkbox"/>	

SENT
 10/1/96