

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: OCTOBER 7, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF WATER AND WASTEWATER (BRADY) *pb bhm ppw and*
DIVISION OF LEGAL SERVICES (CROSSMAN, CROSSBY) *ps bl*

RE: DOCKET NO. 990194-WS - APPLICATION FOR TRANSFER OF
CERTIFICATES NOS. 560-W AND 488-S FROM LAKE YALE
CORPORATION D/B/A LAKE YALE UTILITY COMPANY TO LAKE YALE
TREATMENT ASSOCIATES, INC.
COUNTY: CHARLOTTE

AGENDA: 10/19/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR
ISSUES NOS. 3, 4, 5 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\990194.RCM

CASE BACKGROUND

Lake Yale Corporation d/b/a Lake Yale Utility Company (LYUC, utility or seller) is a Class C water and wastewater utility providing service to Sandpiper Mobile Manor mobile home park (Sandpiper), Lake Yale Estates mobile home park (Lake Yale), and Kings Peninsula in Lake County, Florida. According to its 1998 Annual Report, the utility provided service to a year-end total of 257 water and 237 wastewater active connections with combined operating revenues of \$79,042 and a combined net operating income of \$7,778.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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The utility was originally granted a landlord-tenant exemption by Order No. 18193, issued September 22, 1987, in Docket No. 870758-WS, since it provided water and wastewater service to its tenants without specific compensation for the services in lot rent. Subsequent to the issuance of that order, the St. Johns River Water Management District required LYUC to individually meter each lot and implement a conservation rate structure. As a consequence, on February 3, 1993, LYUC filed for certificates of authorization. The Commission granted original Certificates Nos. 560-W and 488-S and set rates, charges and return on equity by Order No. PSC-94-0171-FOF-WS, issued February 10, 1994, in Docket No. 930133-WS.

On April 7, 1998, LYUC executed an agreement with Lake Yale Treatment Associates, Inc. (LYTA) for the development rights to Sandpiper and Lake Yale. The utility facilities were included in the transaction. The actual transfer occurred on October 27, 1998. On February 22, 1999, an application for authority to transfer the utility facilities was filed with the Commission opening this docket. The application was completed on September 24, 1999. LYUC's apparent violation of Section 367.071, Florida Statutes, for transferring utility facilities prior to Commission approval, will be addressed in Issue 1.

At the conclusion of the audit of the utility's books, LYTA informed staff that it was in the process of negotiating for the sale of Sandpiper and Lake Yale, and associated utility facilities, to a third party. As a consequence, staff was intending to combine the second transfer with the existing application for transfer. However, negotiations on the second transfer were ultimately severed. Therefore, staff is bringing a recommendation on the existing transfer to the Commission for its consideration.

DISCUSSION OF ISSUES

ISSUE 1: Should Lake Yale Corporation d/b/a Lake Yale Utility Company be ordered to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of Section 367.071, Florida Statutes?

RECOMMENDATION: No. A show cause proceeding should not be initiated. (CROSBY)

STAFF ANALYSIS: As stated in the case background, LYUC is in apparent violation of Section 367.071, Florida Statutes, which states, in part, "No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof . . . without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest." LYUC sold the utility to LYTA on October 27, 1998, prior to Commission approval. Such action is "willful" in the sense intended by Section 367.161, Florida Statutes.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Failure of LYUC to obtain Commission approval prior to transferring the utility to LYTA appears to be due to lack of knowledge of the statutes and Commission rules. From information received, neither LYUC nor LYTA were aware of the requirement to obtain Commission approval prior to transferring the system. When LYTA purchased Sandpiper and Lake Yale, it received ownership of the utility as part of the total transaction. Shortly after

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becoming aware of the requirement to obtain Commission approval of the transfer, LYUC and LYTA filed an application for approval of the transfer.

Although regulated utilities are charged with knowledge of Chapter 367, Florida Statutes, staff does not believe that the violation of Section 367.07, Florida Statutes, rises in these circumstances to the level of warranting initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order LYUC to show cause for failing to obtain approval prior to transferring the utility to LYTA.

ISSUE 2: Should the transfer of Certificates Nos. 560-W and 488-S from Lake Yale Utility Corporation d/b/a Lake Yale Utility Company to Lake Yale Treatment Associates, Inc., be approved?

RECOMMENDATION: Yes, the transfer should be approved. A description of the territory being transferred is appended to this memorandum as Attachment A. A long-term, recorded lease for use of the land upon which the utility facilities are located should be provided within 60 days of the issuance date of the proposed agency action order in this docket. (BRADY, CROSSMAN, CROSBY)

STAFF ANALYSIS: The transfer of the utility occurred on October 27, 1998. On February 22, 1999, an application was filed for approval of the transfer of Certificates Nos. 560-W and 488-S from LYUC to LYTA. The application, as filed, contained deficiencies which were completed on September 29, 1999.

Except as indicated in Issue 1, the application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the sale, assignment, or transfer of a certificate of authorization. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. In accordance with Rule 25-30.037(2)(t), Florida Administrative Code, the utility's original certificates were returned for updating. As for the other requirements for authority to transfer facilities, the application contains the following information.

Noticing. The application contains proof of noticing as required by Rule 25-30.030, Florida Administrative Code. The original notice of the filing referenced only part of the description of the utility's service territory. As a consequence, LYTA was required to renotice. The notice published in the newspaper had to be given a third time due to newspaper error. No responses to any of the notices were received and the time for filing such has expired.

Sales Contract, Financing, and Land Ownership. As required by Rules 25-30.037(2)(g), (h), (i), (k) and (q), Florida Administrative Code, the application was accompanied by the Mobile

Home Park Purchase and Sale Agreement (sales contract). As noted in the Case Background, the sales contract was basically for the development rights to Sandpiper and Lake Yale. However, the transaction included the assets of the utility facilities, as well. The total purchase price for the entire transaction was \$2,825,000 of which LYTA approximated the value of the utility facilities to be \$147,000, exclusive of land. The purchase of Sandpiper was financed by a first mortgage with TransAtlantic, a wholly owned subsidiary of Deutsche Bank. Lake Yale was financed by a first mortgage with Old Kent Bank. However, LYTA provided title work which indicates that the water and wastewater infrastructure are exceptions on both mortgage title policies and are, therefore, not considered financed.

LYUC tariffs do not provide for customer deposits. Therefore, the disposition of such was not an issue in the sales contract. The sales contract provided for the assignment to the buyer of all leases, contracts and other terms. It also required an adjustment and proration of water and wastewater bills to the date of the closing. A copy of all service contracts was attached to the sales contract along with a provision for the seller to assign its rights, title and interest in such to the buyer at the closing.

The land and property for Sandpiper and Lake Yale were transferred by warranty deed from Lake Yale Corporation to Sandpiper Mobile Manor Associates, L.L.C. and Eustia Associates, L.L.C., respectively (L.L.C.s). Both of these L.L.C.s are owned by Mr. Peter Beer who also owns LYTA. Mr. Beer recognizes the need to provide a long-term lease from the L.L.C.s to LYTA for the use of the land upon which the utility facilities are located. Staff recommends that the Commission require a long-term, recorded lease be provided within 60 days of the issuance date of the proposed agency action order in this docket.

Annual Reports and Regulatory Assessment Fees (RAFs). Staff has confirmed that LYUC paid 1998 RAFS up through the transfer on October 27, 1998 and that LYTA submitted an Annual Report and paid RAFs for the remainder of 1998. There are no penalties, interest or refunds due.

Environmental Compliance. Pursuant to Rules 25-30.037(2)(p), Florida Administrative Code, the application contains a statement from the buyer that the utility systems were in satisfactory condition at the time of the acquisition. Staff has also confirmed with the Florida Department of Environmental Protection (FDEP) and Lake County that the utility facilities are currently in satisfactory compliance with environmental requirements and rules.

Financial and Technical Ability. Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application provides a statement of LYTA's financial and technical ability. In terms of technical ability, the buyer does not own any other water and wastewater facilities and so has no prior experience in utility operations. However, it has hired Plan Technicians Laboratory to perform day-to-day utility operations. The laboratory is licensed by FDEP through Mr. Frank Gratson.

According to the financial information provided with the application, LYTA does not have assets of any appreciable amount. However, LYTA is supported by the two L.L.C.s which now own the mobile home park developments. The mutual owner of the L.L.C.s and LYTA, Mr. Peter Beer, provided a supplemental statement that both L.L.C.s pledge financial support for LYTA. The financial statements for Sandpiper Mobile Manor were provided and indicate total assets of \$2,254,446. The buyer also provided a statement that it intends to fulfill the commitments, obligations and representations of the seller with regard to utility matters.

Based on all the above, staff recommends that the transfer of Certificates Nos. 560-W and 488-S from Lake Yale Corporation d/b/a Lake Yale Utility Company to Lake Yale Treatment Associates, Inc., is in the public interest and should be approved. A description of the territory being transferred is appended to the memorandum as Attachment A. A long-term, recorded lease for use of the land upon which the utility facilities are located should be provided within 60 days of the issuance date of the proposed agency action order in this docket.

ISSUE 3: What is the rate base of Lake Yale Utility Company at the time of transfer?

RECOMMENDATION: The rate base is \$64,462 for the water system and \$85,028 for the wastewater system, as of October 31, 1998, for a combined total rate base of \$149,490. (BRADY)

STAFF ANALYSIS: Rate base for the utility was established by Order No. PSC-94-0171-FOF-WS, issued February 10, 1994, in Docket No. 930133-WS, at \$128,687 for the water system and \$174,439 for the wastewater system. The transfer from LYUC to LYTA occurred on October 27, 1998. According to the utility books, as of October 31, 1998, the net book value of the systems was \$120,141 for the water system and \$205,976 for the wastewater system. An audit was of the utility's books was requested by staff. The resulting report contained three audit exceptions.

Audit Exception No. 1. This exception was the audit opinion that the utility was not maintaining its books pursuant to Rule 25-30.115(1), Florida Administrative Code, which requires all water and wastewater utilities to maintain their accounts and records in conformity with the NARUC Uniform System of Accounts. The buyer accepts the audit finding and indicated that it has now conformed its books and records to be in compliance with NARUC's Uniform System of Accounts.

The exception also notes that, at the time the utility facilities were originally acquired by the seller in a foreclosure, there was no attempt to separate land for the utility facilities. As noted in Issue 2; the mutual owner of the L.L.C.s and LYTA intends to provide a long-term lease to LYTA for use of the land upon which the utility facilities reside.

Audit Exception No. 2. This exception was the audit opinion that the utility had applied a 15-year service life to Plant Accounts 304 through 335 and 354 through 380 in calculating accumulated depreciation instead of using the Class C schedules provided in Rule 25-30.140(2), Florida Administrative Code. The buyer accepts the audit finding and the resulting corrections.

Audit Exception No. 3. This exception was the audit opinion that the utility had not complied with Order No. PSC-94-0171-FOF-WS which included service availability charges for meters and meter installation as well as plant capacity charges. According to the audit opinion, the utility had not been collecting the contributions-in-aid-of-construction (CIAC) charges nor recording the accumulated amortization on CIAC for the entire period since the order was issued in April of 1994 through the effective date of the transfer. The buyer accepts the audit findings and the resulting corrections.

Staff also concurs with the audit findings and the resulting corrections. The calculation of water rate base is shown on Schedule No. 1, with adjustments set forth on Schedule No. 2. The calculation of wastewater rate base is shown on Schedule No. 3, with adjustments set forth on Schedule No. 4. Based on these schedules, as of October 31, 1998, rate base for LYUC for the purpose of the transfer is \$64,462 for the water system and \$85,028 for the wastewater system for a combined utility total rate base of \$149,490. The rate base calculations are used solely to establish the net book value of the property being transferred. As such, the calculations do not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments.

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SCHEDULE 1

LAKE YALE UTILITY COMPANY
SCHEDULE OF WATER RATE BASE
AS OF OCTOBER 31, 1998

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>AUDIT ADJUSTMENTS</u>	<u>BALANCE PER STAFF</u>
Utility Plant in Service	\$ 222,130	\$ 0	\$ 222,130
Land	0	0	0
Accumulated Depreciation	(101,989)	25,122	(76,867)
Contributions in Advance of Construction (CIAC)	0	(93,690)	(93,690)
Amortization of CIAC	<u>0</u>	<u>12,889</u>	<u>12,889</u>
WATER RATE BASE	<u>\$ 120,141</u>	<u>\$ (55,679)</u>	<u>\$ 64,462</u>

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SCHEDULE 2

LAKE YALE UTILITY COMPANY
SCHEDULE OF WATER RATE BASE ADJUSTMENTS

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
Accumulated Depreciation	
1) To recalculate depreciation based on service life pursuant to Rule 25-30.140(2)	\$ 25,122
Contributions in Advance of Construction (CIAC)	
1) To account for CIAC from April 1994 through October 1998.	(93,690)
Accumulated Amortization of CIAC	
1) To account for amortization of CIAC from April 1994 through October 1998	<u>12,889</u>
TOTAL ADJUSTMENT	<u>\$ (55,679)</u>

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SCHEDULE 3

LAKE YALE UTILITY COMPANY
SCHEDULE OF WASTEWATER RATE BASE
AS OF OCTOBER 31, 1998

<u>DESCRIPTION</u>	<u>BALANCE PER UTILITY</u>	<u>AUDIT ADJUSTMENTS</u>	<u>BALANCE PER STAFF</u>
Utility Plant in Service	\$ 353,548	\$ 0	\$ 353,548
Land	0	0	0
Accumulated Depreciation	(147,572)	(28,137)	(175,709)
Contributions in Advance of Construction (CIAC)	0	(102,850)	(102,850)
Amortization of CIAC	<u>0</u>	<u>10,039</u>	<u>10,039</u>
WASTEWATER RATE BASE	<u>\$ 205,976</u>	<u>\$ (120,948)</u>	<u>\$ 85,028</u>

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SCHEDULE 4

**LAKE YALE UTILITY COMPANY
SCHEDULE OF WASTEWATER RATE BASE ADJUSTMENTS**

<u>EXPLANATION</u>	<u>ADJUSTMENT</u>
Accumulated Depreciation	
1) To recalculate depreciation based on service life pursuant to Rule 25-30.140(2)	\$(28,137)
Contributions in Advance of Construction (CIAC)	
1) To account for CIAC from April 1994 through October 1998.	(102,850)
Accumulated Amortization of CIAC	
1) To account for amortization of CIAC from April 1994 through October 1998	<u>10,039</u>
TOTAL ADJUSTMENT	<u>\$(120,948)</u>

ISSUE 4: Should a negative acquisition adjustment be approved?

RECOMMENDATION: No, the \$2,490 negative acquisition adjustment should not be included in the calculation of rate base for transfer purposes. (BRADY)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. In this instance, there was no contract for the purchase of the utility systems. Instead, systems were acquired as part of a larger transaction in which the development rights for Sandpiper and Lake Yale were acquired for a total purchase price of \$2,825,000. According to a statement provided by the buyer at staff's request, the value placed on utility facilities in the total transaction, exclusive of land, was \$147,000. No further explanation was provided as to how this value was derived.

Based on this subjective valuation, the acquisition adjustment resulting from the transfer of LYUC to LYTA is calculated as follows:

Subjective valuation of utility systems	\$ 147,000
Rate Base Adjusted to October 27, 1998	\$ <u>149,490</u>
Negative Acquisition Adjustment	\$ (2,490)

In the absence of extraordinary circumstances, it is the practice of this Commission that the purchase of a utility at a premium or discount shall not affect the rate base calculation. The circumstances in this case do not appear to be extraordinary. Further the utility is not requesting an acquisition adjustment.

Staff therefore recommends that a \$2,490 negative acquisition adjustment not be included in the calculation of rate base.

ISSUE 5: Should the rates and charges approved for Lake Yale Utility Company be continued?

RECOMMENDATION: Yes, the rates and charges approved for the utility should be continued except that a maximum 10,000 gallons usage cap should be placed on residential wastewater service. The tariff reflecting the transfer should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. (BRADY)

STAFF ANALYSIS: The utility's current rates and charges for general and residential service were administratively approved pursuant to a 1998 price index effective August 1, 1998. The utility's miscellaneous and service availability charges were approved at the time of its original certificates and became effective March 25, 1994. The utility does not require customer deposits.

**WATER
GENERAL AND RESIDENTIAL SERVICES**

Monthly Base Facility Charges

<u>Meter Size</u>	<u>Charge</u>
5/8" x 3/4"	\$ 9.40
3/4"	14.10
1"	23.50
1-1/2"	47.00
2"	75.20
3"	150.39
4"	235.00
6"	469.99
8"	751.98
Gallonage Charge	\$ 1.72
(Per 1,000 gallons)	

**WASTEWATER
GENERAL SERVICE**

Monthly Base Facility Charges

<u>Meter Size</u>	<u>Charge</u>
5/8" x 3/4"	\$ 9.78
3/4"	14.67
1"	24.43
1-1/2"	48.88
2"	78.20
3"	156.40
4"	244.38
6"	488.74
8"	782.00
Gallonage Charge	\$ 2.97
(Per 1,000 Gallons)	

**WASTEWATER
RESIDENTIAL SERVICE**

Monthly Base Facility Charge	\$ 9.78
All meter sizes	
Gallonage Charge	\$ 2.48
(Per 1,000 Gallons up to <u>10,000 Gallons Maximum</u>)*	

* **Note:** The utility's existing wastewater tariff does not provide for a maximum gallonage cap for residential service. While it is clear that provision for a maximum cap of 10,000 gallons for residential wastewater service was included in the work papers for the original order granting certificates and setting rates, the cap was inadvertently omitted from the recommendation and, hence, the resulting order. Staff recommends including the cap in the transfer rates. For this reason, this issue is a proposed agency action.

**WATER SERVICE
MISCELLANEOUS SERVICE CHARGES**

Initial Connection Fee	\$ <u>15.00</u>
Normal Reconnection Fee	\$ <u>15.00</u>
Violation Reconnection Fee	\$ <u>15.00</u>
Premises Visit Fee (in lieu of disconnection)	\$ <u>10.00</u>

**WASTEWATER
MISCELLANEOUS SERVICE CHARGES**

Initial Connection Fee	\$ <u>15.00</u>
Normal Reconnection Fee	\$ <u>15.00</u>
Violation Reconnection Fee	\$ <u>Actual Cost</u> [1]
Premises Visit Fee (in lieu of disconnection)	\$ <u>10.00</u>

[1] Actual Cost is equal to the total cost incurred for services.

**WATER
SERVICE AVAILABILITY FEES AND CHARGES**

Back-Flow Preventor Installation Fee Meters over 2"	\$ <u>Actual Cost</u> [1]
Customer Connection (Tap-in) Charge Meters over 2"	\$ <u>Actual Cost</u> [1]
Inspection Fee	\$ <u>Actual Cost</u> [1]
Meter Installation Fee 5/8" x 3/4" meters	\$ <u>125.00</u>
Meters over 2"	\$ <u>Actual Cost</u> [1]
Plan Review Charge	\$ <u>Actual Cost</u> [1]
Plant Capacity Charge Residential-per ERC (350 GPD)	\$ <u>250.00</u>

[1] Actual Cost is equal to the total cost incurred for services.

**WASTEWATER SERVICE
SERVICE AVAILABILITY FEES AND CHARGES**

Customer Connection (Tap-in) Charge	
Meters over 2"	\$ <u>Actual Cost</u> [1]
Inspection Fee	\$ <u>Actual Cost</u> [1]
Plan Review Charge	\$ <u>Actual Cost</u> [1]
Plant Capacity Charge	
Residential-per ERC (280 GPD)	\$ <u>425.00</u>

[1] Actual Cost is equal to the total cost incurred for services.

Staff recommends that LYTA continue to charge the utility's existing rates and charges with the addition of a 10,000 maximum usage cap on residential wastewater service. LYTA has filed water and wastewater tariffs reflecting the transfer. These tariffs should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

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ISSUE 6: Should this docket be closed?

RECOMMENDATION: Yes, if no timely protest is received to the proposed agency action issues, the order should become final and effective upon the issuance of a Consummating Order and the docket should be closed. (CROSBY)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, the order should become final and effective upon the issuance of a Consummating Order and the docket should be closed.

TERRITORY DESCRIPTION
LAKE YALE UTILITY COMPANY
LAKE COUNTY

WATER and WASTEWATER SERVICE AREA

Township 18 South, Range 25 East
Sections 24 and 25

The following described lands located in portions of Sections 24 and 25, Township 18 South, Range 25 East, Lake County, Florida.

Section 24, Township 18 South, Range 25 East, Lake County, Florida.
Section 25, Township 18 South, Range 25 East, less right-of-way for County Road 452.

Begin 1,802.38 feet north of the SE corner of NE 1/4 of Section 25, Township 18 South, Range 25 East, Lake County, Florida. From said Point of Beginning, run north along the east line of NE 1/4 of Section 25 to the SE corner of Section 24, Township 18 South, Range 25 East;

Thence continue north along the east line of the SE 1/4 of Section 24 to the waters of Lake Yale;

Thence run westerly along and with said waters to the west line of the East 1/2 of the SE 1/4 of the SE 1/4 of Section 24;

Thence run south along said west line to the south line of Section 24;

Thence along said section line run west to the east line of the West 1/2 of the SE 1/4 of Section 24;

Thence along said east line run north to the waters of Lake Yale;

Thence run northwesterly along and with said waters to a line that is 25.00 feet south of the north line of the SE 1/4 of Section 24;

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ATTACHMENT A

Thence run west to the west line of the SE 1/4;

Thence continue 125.00 feet;

Thence south to a point that is 138.44 feet north of the north line of the SE 1/2 of the SE 1/4 of Section 24;

Thence S 86°47'40" E, a distance of 316.98 feet;

Thence S 00°14'40" E, a distance of 261.54 feet;

Thence S 89°58'06" W, a distance of 191.41 feet to the west line of the SE 1/4 of Section 24;

Thence along said west line run S 00°14'40" E, a distance of 1,176.80 feet to the north 1/4 of aforesaid Section 25;

Thence run south along the mid-section line to the northeasterly right-of-way line of County Road C-452;

Thence southeasterly along said right-of-way line to the east line of the NW 1/4 of the NE 1/4 of Section 25;

Thence run north along said east line to a point that is west of the Point of Beginning;

Thence run east to the Point of Beginning.