

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: November 6, 2007

[X] Consent
[] Ordinance

☐ Regular
☐ Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Staging Area Agreement with Florida Power and Light Company (FPL) to utilize a portion of John Prince Park to park vehicles and stage equipment, employees, and contractors following a natural disaster, military, or civil disturbance.

Summary: In the event of natural disasters such as hurricanes or other catastrophic events that result in electrical power loss, this agreement will allow FPL to temporarily set up a staging area in John Prince Park for vehicles, equipment, and outside resources. The staging area will consist of approximately 10 acres at the Mound Circle picnic area and will only be used as reasonably necessary for FPL to restore electric service to Palm Beach County residents. District 3 (AH)

Background and Justification: Following a major storm or catastrophic event, FPL will require temporary staging areas from time to time in the community to park trucks, stage employee vehicles, and act as show-up sites for FPL employees, contractors, and other utilities. John Prince Park has been successfully used as a staging area, and is perfectly situated to serve in this capacity. During their use, FPL will secure the site against theft and vandalism and will return the area to the condition it was in prior to their use. There will be no cost to the County resulting from FPL's use of the park site, and FPL will not pay any fees associated with its use of the staging area.

Attachment: Staging Site Agreement

Recommended by: *Nancy Coleman*
Department Director

10/16/07
Date

Approved by: 
Assistant County Administrator

10/25/07
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
Budget Account No.: Fund _____ Department _____ Unit _____
Object _____ Program N/A

B. Recommended Sources of Funds/Summary of Fiscal Impact:

There is no fiscal impact associated with this item.

C. Departmental Fiscal Review: chopelakis

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

John Smith 10-23-07
OFMB
10/23/07
B. Legal Sufficiency: VO
10/19

John J. Smith 10/24/07
Contract Development and Control
10/24/07
This Contract complies with our
contract review requirements.

Anne Delgent 10/23/07
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment

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STAGING AREA AGREEMENT
AT JOHN PRINCE PARK

~~NOVEMBER~~ THIS STAGING AREA AGREEMENT is made and entered into as of the ____ day of September, 2007 ("Agreement") by and between Palm Beach County, a Political Subdivision of the State of Florida, 4759 S. Congress Ave., Lake Worth, FL 33461 ("Grantor") and Florida Power & Light Company, a Florida corporation with an address at 700 Universe Blvd., Juno Beach, FL 33408 ("FPL")

WITNESSETH:

WHEREAS, in the event of disasters such as major storms, hurricanes, other natural disasters, and military or civil disturbances, FPL will require temporary staging areas from time to time in the communities to park trucks and stage employee vehicles and to act as show-up sites for employees of FPL, its contractors, and other utilities assisting FPL, and

WHEREAS, the staging areas will be secured by FPL against theft, vandalism, and site abuse, and temporary lighting will be provided by FPL and used during darkness, and

WHEREAS, Grantor is willing to provide a staging area for as long as reasonably necessary for FPL to reinstall electric service to Palm Beach County residents, and

WHEREAS, FPL agrees that upon the completion of the company's storm restoration, the staging area will be returned to its previous condition, at no cost to the Grantor.

WHEREAS, providing a staging area to FPL after a disaster serves a public purpose.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants, agreements and promises contained herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Recitals as set forth above are true and correct and are reaffirmed as if specially stated herein.

2. Grantor hereby grants to FPL the use and control of the staging area described in **Exhibit "A"** to perform the functions described in the recitals above on an "as needed" basis, and that no compensation or other consideration is to be provided by either party. FPL shall provide Grantor twenty-four (24) hours prior notice before using the staging area for the purposes described in this Agreement.

3. In the event Grantor determines it is necessary or desirable to relocate, reconfigure, reassign, or otherwise modify the staging area as depicted in **Exhibit "A"**, Grantor shall provide five (5) days prior written notice to FPL of the required modification. FPL shall, at not cost to County, comply with this written notice by the date stipulated in said notice. FPL

acknowledges that any alternate location may vary in size, available improvements, and access to facilities and configuration. The Director of Parks and Recreation may execute an amendment entered into pursuant to this paragraph on behalf of Grantor.

4. FPL expressly acknowledges that it has inspected the staging area and accepts the same "As Is, Where Is" in the condition existing as of the effective date of this Agreement, together with all defects latent and patent, if any. FPL further acknowledges that Grantor has made no representations or warranties of any nature whatsoever regarding the staging area, including, but not limited to, the physical and/or environmental condition, or any improvements located thereon, or the value of the staging area, or the suitability of the staging area, or FPL's legal ability to use the staging area for its intended use.

5. FPL shall protect, defend, indemnify and hold Grantor, its tenants, and their officers, directors, partners, affiliates, subsidiaries, employees, agents, and servants ("**Grantor Entities**") free and unharmed from and against any and all third party claims (including employees of FPL, other utilities assisting FPL, and its contractors and subcontractors), claims, liabilities, losses, costs, property damage, personal injury, bodily injury or death or damages whatsoever, including court costs and reasonable attorneys' fees at trial and appellate levels, resulting from or in connection with the use of the staging area by FPL and its contractors, including ingress and egress thereto, unless such claims are caused by Grantor's sole intentional acts or negligence. FPL shall also reimburse Grantor Entities for damages sustained as a result of the negligence of its employees or the employees of its contractors or other utilities assisting FPL. This provision shall survive termination or expiration of this Agreement.

6. Upon prior written approval by the Grantor, which approval may be granted or withheld by Grantor in its sole discretion for any reason or no reason at all, FPL may provide, at its sole cost any surface improvements FPL deems necessary for the effective use of the area, required utility services, sanitation facilities, fuel dispensing for its equipment, mobile office facilities, tents, eating facilities, and upon termination of use, FPL shall restore at its sole cost the property to at least its original condition. If Grantor shall elect to supply water, gas, electricity, or any other utility service, FPL shall purchase same from Grantor and pay the reasonable charges therefor when bills are rendered at the applicable rates. FPL shall use reasonable diligence in the conservation of these utilities.

7. If the staging area, or any portion thereof, is damaged in any way whatsoever, by the act, default or negligence of FPL, its agents, employees, officers, representatives, guests, invitees, contractors, patrons, or any person admitted to the staging area by FPL or otherwise, FPL shall, at its sole cost and expense, restore the staging area to the condition existing prior to such damage. FPL shall commence such restoration within thirty (30) days and shall diligently pursue such restoration to completion. FPL shall make such repairs, replacements or rebuilding in accordance with the construction requirements as established by Grantor. If FPL fails to restore the staging area as required above, Grantor shall have the right to enter the staging area and cause the necessary restoration to be completed. FPL hereby expressly agrees that it shall fully assume and be liable to Grantor for payment of the actual costs for such restoration. Such

restoration cost shall be due and payable within thirty (30) days from the date of written notice of same and any invoices for the restoration .

8. This Agreement shall be for a term of one (1) year commencing on the date set forth above and automatically renewed from year to year thereafter until one party gives the other party ninety (90) days written notice prior to the anniversary date that the Agreement will not be renewed for the following year.

9. Nothing in this Agreement shall prevent Grantor from contracting with other utilities or entities to use John Prince Park as a staging area, but Grantor shall not allow any other utility or entity to use the same staging area as FPL .

10. This Agreement may be terminated, in whole or in part, by either party, with or without cause, immediately upon written notice to the other party. Within seven (7) days of receipt of a termination notice and except as otherwise directed by Grantor, FPL shall stop work on the date and to the extent specified by Grantor and remove all personal equipment and restore, at FPL's sole cost and expense, the staging area to at least its original condition.

11. Grantor's representative during the performance of this Agreement shall be the Assistant Director of Parks and Recreation Department, telephone no. 561-966-6613. FPL's representative during the performance of this Agreement shall be Rod Alsop, telephone no. (941) 232-0496.

12. FPL shall, at its sole cost and expense, maintain in full force and effect at all times during the term of this Agreement, the insurance limits, coverages and endorsements required herein or self-insure. Neither the requirements contained in this provision nor Grantor's review or acceptance of insurance shall in any manner limit or qualify the liabilities and obligations assumed by FPL under this Agreement.

a. Commercial General Liability Insurance. FPL shall maintain Commercial General Liability Insurance with limits of liability of not less than Five Million Dollars (\$5,000,000) each occurrence including, but not limited to, coverage for Premises/Operations, Products/Completed Operations, Contractual Liability, Personal/Advertising Injury and Cross Liability; Fire Legal liability coverage with a limit of not less than One Hundred Thousand Dollars (\$100,000); and Medical Payments (when available) with limit of not less than Five Thousand Dollars (\$5,000) or FPL may self-insure.

b. Business Auto Liability. FPL shall maintain Business Automobile Liability Insurance with limits of liability of not less than Five Million Dollars (\$5,000,000) each occurrence for owned, non-owned and hired automobiles or FPL may self-insure. In the event FPL has no owned automobiles, FPL shall be required to maintain only Hired & Non-Owned Auto Liability instead. Coverage may be satisfied by way of endorsement to the Commercial General Liability or a separate Business Auto Liability.

c. Worker's Compensation & Employer's Liability. FPL shall maintain Worker's Compensation & Employer's Liability in accordance with Chapter 440, Florida Statutes and applicable federal laws or FPL may self-insure. In the event FPL subcontracts any portion of the work or services required or permitted by this Agreement to another party, FPL shall be responsible for ensuring the subcontractor maintains Worker's Compensation & Employer's Liability, or FPL shall provide coverage under its own Worker's Compensation & Employer's Liability policy on behalf of the subcontractor. FPL shall provide this coverage on a primary basis.

d. FPL shall maintain Pollution Liability, or similar Environmental Impairment Liability, at a minimum limit not less than \$1,000,000 per occurrence/\$2,000,000 annual aggregate providing coverage for damages including, but not limited to, third-party liability, clean up, corrective action including assessment, remediation and defense costs or FPL may self-insure.

e. Deductibles, Coinsurance, & Self-Insured Retention. FPL shall be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention; including any losses, damages, or expense not covered due to an exhaustion of limits or failure to comply with the policy.

13. FPL is, and shall be, in the performance of all work, services and activities under this Agreement, an Independent Contractor, and not an employee, agent or servant of the Grantor. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to FPL's sole direction, supervision, and control. FPL shall exercise control over the means and manner in which it and its employees perform the work, and in all respects FPL's relationship and the relationship of its employees to Grantor shall be that of an Independent Contractor and not as employees or agents of the Grantor. FPL does not have the power or authority to bind Grantor in any promise, agreement or representation.

14. FPL acknowledges that it has no right whatsoever to lease, assign or sublease the staging area or any portion thereof.

15. Notwithstanding any other provision of this Agreement to the contrary, FPL hereby expressly covenants, warrants, guarantees and represents to Grantor, upon which Grantor expressly relies, that FPL is knowledgeable of any and all federal, state and local governmental laws, ordinances, regulations, orders and rules, without limitation which govern or which in any way apply to the direct or indirect results and impacts to the environment and natural resources due to, or in any way resulting from the conduct by FPL of its operations pursuant to this Agreement or upon the staging area. FPL shall comply with all applicable federal, state and local laws, regulations and ordinances protecting the environment and natural resources, as now or hereafter amended, including, but not limited to, the Federal Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation Recovery Act, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**Environmental Laws**").

16. GRANTOR HEREBY DISCLAIMS, AND FPL HEREBY RELEASES GRANTOR, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY FPL, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF FPL THAT MIGHT BE LOCATED OR STORED AT THE STAGING AREA, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED SOLELY BY GRANTOR'S INTENTIONAL ACTS, GROSS NEGLIGENCE OR SOLE NEGLIGENCE. THE PARTIES EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL GRANTOR BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), SUCH AS BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO THE USE OF THE STAGING AREA TO FPL PURSUANT TO THIS AGREEMENT. FPL ACKNOWLEDGES AND AGREES THAT GRANTOR SHALL HAVE NO LIABILITY WHATSOEVER AND FPL COVENANTS AND AGREES TO HOLD HARMLESS GRANTOR FROM ANY AND ALL LIABILITY RELATING TO ANY INFORMATION PROVIDED BY GRANTOR RELATING TO THIS AGREEMENT. FURTHERMORE, FPL ACKNOWLEDGES AND AGREES THAT ITS USE OF ANY SUCH INFORMATION, WHETHER PREPARED OR PROVIDED BY GRANTOR OR OTHERWISE, IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT, WAS AT ITS SOLE RISK.

17. This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof.

18. FPL shall not pledge Grantor's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. FPL further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

19. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

20. The failure of Grantor to insist on a strict performance of any of the terms, conditions, and covenants hereof shall not be deemed a waiver of any rights or remedies that Grantor may have for any subsequent breach, default, or non-performance, and Grantor's right to insist on strict performance of this Agreement shall not be affected by any previous waiver or course of dealing.

21. After providing FPL with notice, the authorized employees and representatives of Grantor and any applicable federal, state, and local entity having jurisdiction hereof shall have the right of access to the staging area at all reasonable times for the purposes of inspection for compliance with the provisions of this Agreement and/or applicable laws. Grantor shall not be required to provide notice to FPL in the event of an emergency.

22. As provided in Section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, FPL certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date of this Agreement. This notice is required by Section 287.133(3)(a), Florida Statutes.

23. Grantor and FPL agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized officers or representatives effective as of the date first above written.

Grantor:

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____

Name: Addie L. Greene, Chairperson

Title: Chairperson

ATTEST:

SHARON R. BOCK, Clerk &
Comptroller

By: _____

Deputy Clerk

Approved as to form and legal sufficiency

By: -

Assistant County Attorney

Approved as to terms and conditions

By: _____

Director, Parks and Recreation

FPL:

Florida Power & Light Company
A Florida corporation

By: _____

Name: DEBORAH H. CAPLAN

Title: VP, INTEGRATED SUPPLY CHAIN

EXHIBIT "A"

LEGAL DESCRIPTION MOUNDS CIRCLE

Being a parcel of land lying in part of Government Lot 2, as shown on plat of subdivision of Government Lots 2 and 3, and part of Lot 1, Section 29, Township 44 South, Range 43 East as recorded in Plat Book 6, Page 58 of the Public Records of Palm Beach County, Florida, and being more particularly described as follows:

Commencing at the Southwest Corner of the Northwest Quarter (N-W ¼) of said Section 29;

thence South 87° 27' 28" East (Assumed bearing) along the South Line of said Northwest-Quarter (N.W. ¼), a distance of 2529.00 feet;

thence North 01° 47' 40" East, a distance of 610.59 feet to the **POINT OF BEGINNING** of this description, said point being on the East Right-of-Way Line of Lake Worth Drainage District Lateral Canal No. 13;

thence continue North 01° 47' 40" East along said East Right-of-Way Line, a distance of 546.67 feet;

thence South 55° 12' 20" East, a distance of 111.98 feet;

thence South 58° 19' 56" East, a distance of .94.95 feet;

thence South 58° 07' 41" East, a distance of 57.12 feet to the beginning of a curve concave to the Southwest, having a radius of 1029.02 feet and a central angle of 15° 35' 34";

thence Southeasterly along the arc of said curve, a distance of 280.04 feet;

thence South 47° 32' 07" East along the tangent of said curve, a distance of 335.66 feet;

thence South 41° 39' 09" East, a distance of 161.60 feet;

thence South 00° 37' 00" West, a distance of 33.63 feet;

thence South 42° 53' 09" West, a distance of 411.34 feet to the beginning of a curve concave to the North having a radius of 50.00 feet and a central angle of 89° 47' 37";

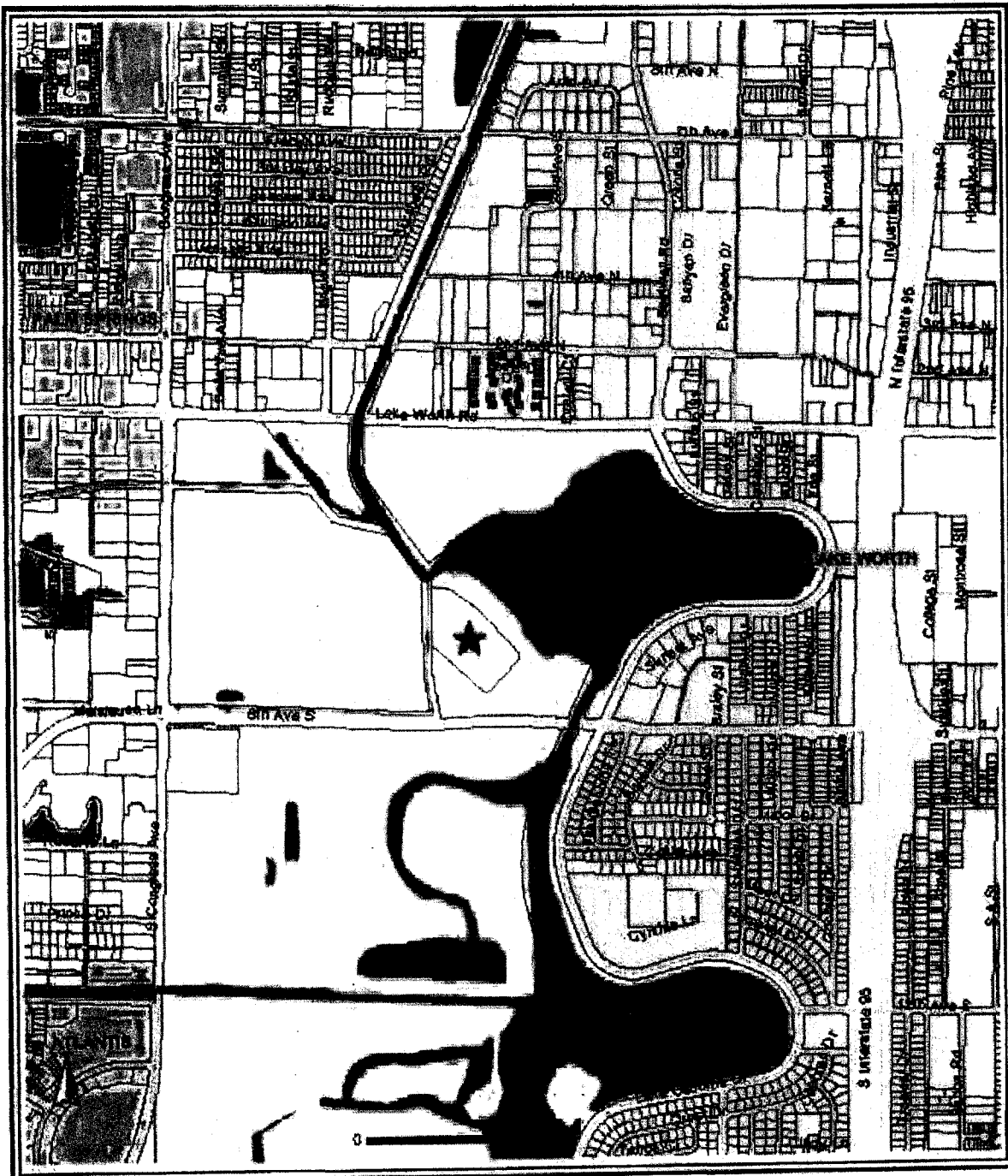
thence Southwesterly and Northwesterly along the arc of said curve, a distance of 76.36 feet;

thence North 4° 19' 14" West along the tangent of said curve, a distance of 621.50 feet to the **POINT OF BEGINNING**.

Containing 10.29 ± Acres more or less.

SUBJECT to existing Easements, Rights-of-Way, Restrictions and Reservations of record.

EXHIBIT "A"



Page 2 of 2

Map Scale 1:17542

Map produced on 6/21/2007

<http://cwgisweb.co.palm-beach.fl.us/geonav/presentation/mapping/printnew.asp?MAPUR> 6/21/2007

Nancy Beale - FPL staging agreement

From: Anne Helfant
To: Eric Call
Date: 10/4/2007 8:13 AM
Subject: FPL staging agreement

Eric,

I tried forwarding Dick's e-mail, but since it is in archive mail, I can only print it out or copy and paste it. Below is Dick's e-mail. I can fax you an original copy if you would like:

The letter is acceptable. There would not be a "self-insurance policy" per se. This letter will suffice. AS for the agreement, just add the words "or self-insured" in each paragraph requiring a certain type of coverage. I would suggest adding pollution coverage if they will be rfueling their fleet. Let me know if you need any assistance

Dick Cohen, CPCU, CIC, ARM-P
Risk Management Department
Palm Beach County
160 Australian Ave., Ste 401
West Palm Beach, FL 33406
(P) 561-233-5432
(F) 561-2335420

>>> Anne Helfant 06/25/07 9:40 AM >>>

FYI... this is the letter from their risk management department