

Agenda Item #: **3.M.7.**

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: **September 23, 2008**

☒ 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: Special Use Agreement with the State of Florida Department of Children and Families (DCF) to utilize a portion of John Prince, Lake Ida, and Dyer Parks for administering the Disaster Food Stamp Program following a natural disaster.

**Summary:** In the event of natural disasters such as hurricanes or other catastrophic events, DCF will require temporary areas in the community for administering the Disaster Food Stamp Program. DCF feels that John Prince, Lake Ida, and Dyer Parks are strategically positioned to serve the citizens of Palm Beach County. The reserved park areas will consist of approximately seven to ten acres at each location and will only be used on an "as needed" basis. Districts 3, 4 and 7 (AH)

**Background and Justification:** Following a major storm or catastrophic event, DCF will require temporary locations within the community to administer the Disaster Food Stamp Program. John Prince, Lake Ida, and Dyer Parks have been successfully utilized in the past and are perfectly situated to serve in this capacity. During their use, DCF will secure the sites against theft and vandalism and will return the used park areas to the condition they were prior to their use. There is no cost to the County resulting from DCF's use of the park sites, and DCF will not pay any fees associated with their use of the park locations.

**Attachments:** Special Use Agreements (3)

Recommended by: \_\_\_\_\_

Department Director

8/29/08  
Date

Approved by: \_\_\_\_\_

Assistant County Administrator

9/9/08  
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 \_\_\_\_\_/Revenue Source \_\_\_\_\_ Program N/A

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

There is no fiscal impact associated with this agenda item.

C. Departmental Fiscal Review: Chapelakis

## III. REVIEW COMMENTS

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

Atwillhite 9.4.08  
OFMB 88 9/4/08 CN 9/3/08  
9/5/08 John Phibbs for ID  
Contract Development and Control

### B. Legal Sufficiency:

Anne Delgant 9/9/08  
Assistant County Attorney

This Contract complies with our  
contract review requirements.

### C. Other Department Review:

\_\_\_\_\_  
Department Director

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

REVISED 10/95  
ADM FORM 01

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SPECIAL USE AGREEMENT BETWEEN  
PALM BEACH COUNTY AND  
THE STATE OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

THIS SPECIAL USE AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008 ("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 the State of Florida Department of Children and Families, a \_\_\_\_\_ with an address at \_\_\_\_\_ ("DCF")

WITNESSETH:

WHEREAS, in the event of disasters such as major storms, hurricanes, or other natural disasters, DCF will require temporary areas in the communities for administering the Disaster Food Stamp Program, and

WHEREAS, Grantor owns and operates County Parks, ("Parks"), which offer areas within the Parks that can be reserved by the public; and

WHEREAS DCF desires to use certain Park(s) to administer the Disaster Food Stamp Program; and

WHEREAS, DCF shall secure the Park area(s) it uses against theft, vandalism, and site abuse, and provide temporary lighting if used during darkness; and

WHEREAS, DCF agrees that upon the completion of the company's Disaster Food Stamp Program, the Park area(s) will be returned to its previous condition, at no cost to the Grantor; and

WHEREAS, providing reserved Park area(s) to DCF 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 DCF the use and control of the Park area(s), as described in Exhibit "A-1, A-2 and A-3", attached hereto and made a part hereto (the "Reserved Park Area(s)") to perform the functions described in this Agreement on an "as needed" basis, and that no compensation or other consideration is to be provided by either party. DCF shall provide

Grantor at least twenty-four (24) hours prior notice before using the Reserved Park Area(s) for the purposes described in this Agreement. An amendment entered into by the parties to amend Exhibit "A" the Reserved Park Area(s) may be signed by the Director of Parks and Recreation Department on behalf of the Grantor.

3. In the event Grantor determines it is necessary or desirable to relocate, reconfigure, reassign, or otherwise modify the Reserved Park Area(s) as depicted in Exhibit "A", Grantor shall provide five (5) days prior written notice to DCF of the required modification. DCF shall, at not cost to County, comply with this written notice by the date stipulated in said notice. DCF 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. DCF expressly acknowledges that it has inspected the Reserved Park Area(s) 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. DCF further acknowledges that Grantor has made no representations or warranties of any nature whatsoever regarding the Reserved Park Area(s), including, but not limited to, the physical and/or environmental condition, or any improvements located thereon, or the value of the Reserved Park Area(s), or the suitability of the Reserved Park Area(s), or DCF's legal ability to use the Reserved Park Area(s) for its intended use.

5. To the extent permitted by 768.28, Florida Statute and without waiving the right to sovereign immunity, DCF 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, 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 Reserved Park Area(s) by DCF and its contractors, including ingress and egress thereto, unless such claims are caused by Grantor's sole intentional acts or negligence. DCF 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 DCF.

6. If Grantor supplies water, gas, electricity, or any other utility service, DCF shall purchase same from Grantor and pay the charges to Grantor when bills are rendered at the applicable rates. DCF shall use reasonable diligence in the conservation of these utilities.

7. DCF shall provide all necessary security at the Reserved Park Area(s), and shall secure the Reserved Park Area(s) against theft, violence, vandalism, and site abuse, at no cost to Grantor.

8. If the Reserved Park Area(s), or any portion thereof, is damaged in any way whatsoever, by the act, default or negligence of DCF, its agents, employees, officers, representatives, guests, invitees, contractors, patrons, or any person admitted to the Reserved Park Area(s) by DCF or otherwise, DCF shall, at its sole cost and expense, restore the Reserved

Park Area(s) to the condition existing prior to such damage. DCF shall commence such restoration within ninety (90) days and shall diligently pursue such restoration to completion. DCF shall make such repairs, replacements or rebuilding in accordance with the construction requirements as established by Grantor. If DCF fails to restore the Reserved Park Area(s) as required above, Grantor shall have the right to enter the Reserved Park Area(s) and cause the necessary restoration to be completed. DCF hereby expressly agrees that it shall fully assume and be liable to Grantor for payment of the costs for such restoration, plus twenty-five percent (25%) administrative overhead. Such restoration cost, plus the administrative cost, shall be due and payable within ninety (90) days from the date of written notice of same.

9. 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.

10. Nothing in this Agreement shall prevent Grantor from contracting with other entities to use a Reserved Park Area(s), but Grantor shall not allow any other entity to use the same Reserved Park Area(s) as DCF.

11. 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. After receipt of a termination notice and except as otherwise directed by Grantor, DCF shall stop work on the date and to the extent specified by Grantor and remove all personal equipment and restore, at DCF's sole cost and expense, the Reserved Park Area(s) to at least its original condition.

12. Grantor's representative during the performance of this Agreement shall be the Assistant Director of Parks and Recreation Department, telephone no. 561-966-6613. DCF's representative during the performance of this Agreement shall be Dennis Miles, Community Relations Consultant, telephone no. 561-837-5268.

13. Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, DCF acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event DCF maintains third-party commercial General Liability and Business Auto Liability in lieu of exclusive reliance on self-insurance under Section 786.28, Florida Statutes, DCF shall maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

14. DCF shall require each contractor engaged by DCF for work associated with this Agreement to maintain Workers Compensation coverage in accordance with Florida Statutes, and Commercial General Liability coverage, including vehicle coverage, in combined single limits of not less than One Million Dollars (\$1,000,000.00). County shall be included in the coverage as an additional insured.

15. DCF acknowledges that it has no right whatsoever to lease, assign or sublease the staging areas or any portion thereof.

16. Notwithstanding any other provision of this Agreement to the contrary, DCF hereby expressly covenants, warrants, guarantees and represents to Grantor, upon which Grantor expressly relies, that DCF 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 DCF of its operations pursuant to this Agreement or upon the Reserved Park Area(s). DCF 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").

17. TO THE EXTENT PERMITTED BY FLORIDA STATUTE 768.28 AND WITHOUT WAIVING THE RIGHT TO SOVEREIGN IMMUNITY, GRANTOR HEREBY DISCLAIMS, AND DCF 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 DCF, 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 DCF THAT MIGHT BE LOCATED OR STORED AT THE RESERVED PARK AREA(S), UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED SOLELY BY GRANTOR'S 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 AREAS TO DCF PURSUANT TO THIS AGREEMENT. DCF ACKNOWLEDGES AND AGREES THAT GRANTOR SHALL HAVE NO LIABILITY WHATSOEVER.

18. 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.

19. DCF 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. DCF further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

20. 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.

21. 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.

22. 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 areas at all reasonable times for the purposes of inspection for compliance with the provisions of this Agreement and/or applicable laws.

23. As provided in Section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, DCF 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.

24. Grantor and DCF 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.

(The remainder of this page is intentionally left blank)

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.

**ATTEST:**  
**SHARON R. BOCK, Clerk &**  
**Comptroller**

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

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Commissioner Addie L. Greene, Chairperson

**WITNESSES:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THE STATE OF FLORIDA DEPARTMENT**  
**OF CHILDREN AND FAMILIES**

By: Perry Borman  
Name (Type or Print )

Title: County Administrator

By: \_\_\_\_\_  
Signature

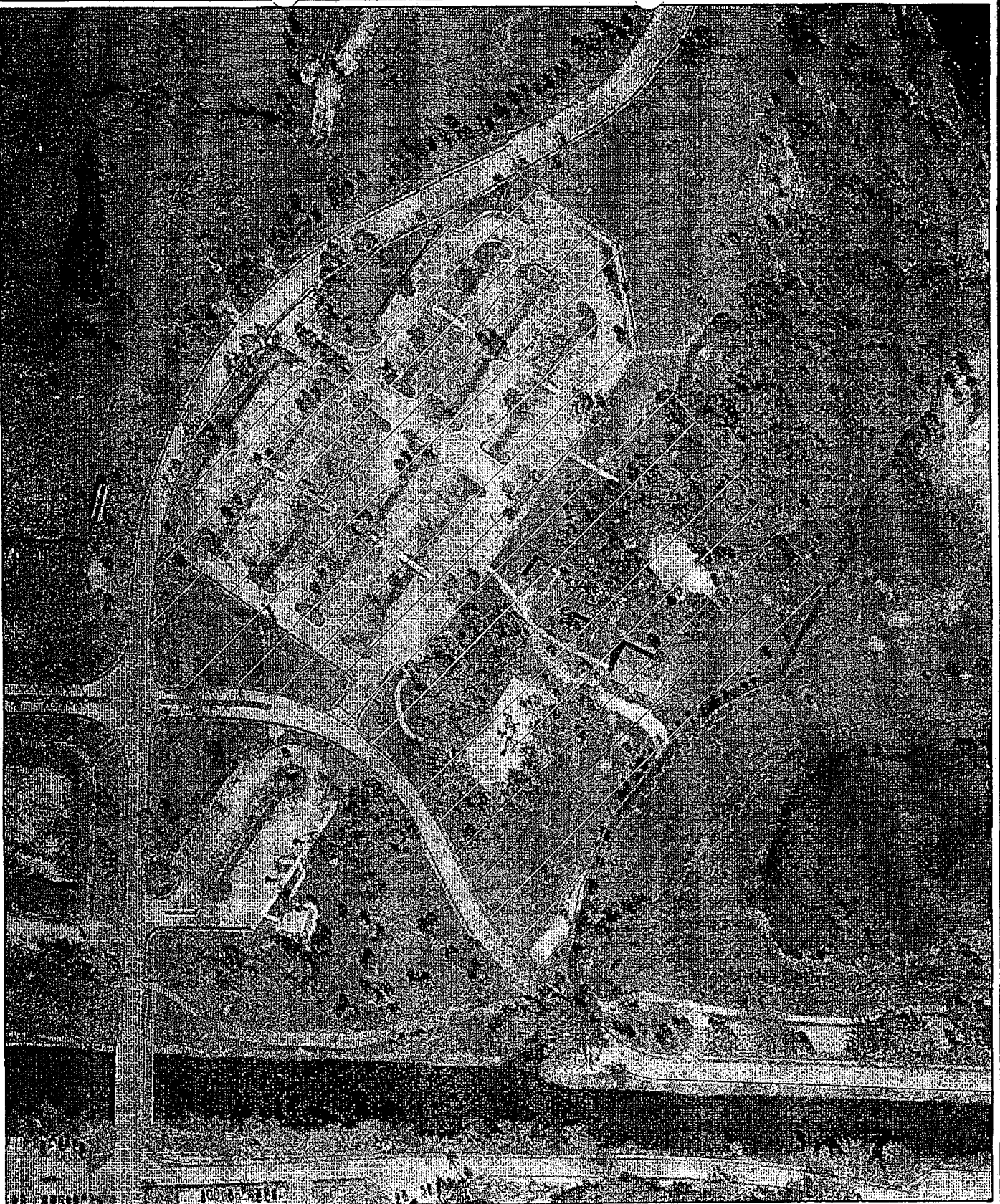
**APPROVED AS TO FORM AND**  
**LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney

**APPROVED AS TO TERMS AND**  
**CONDITIONS**

By: Dennis L. Eshleman  
Dennis L. Eshleman, Director  
Parks and Recreation Department





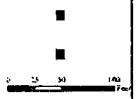
Palm Beach County  
Parks and Recreation Department  
Planning and Design Division

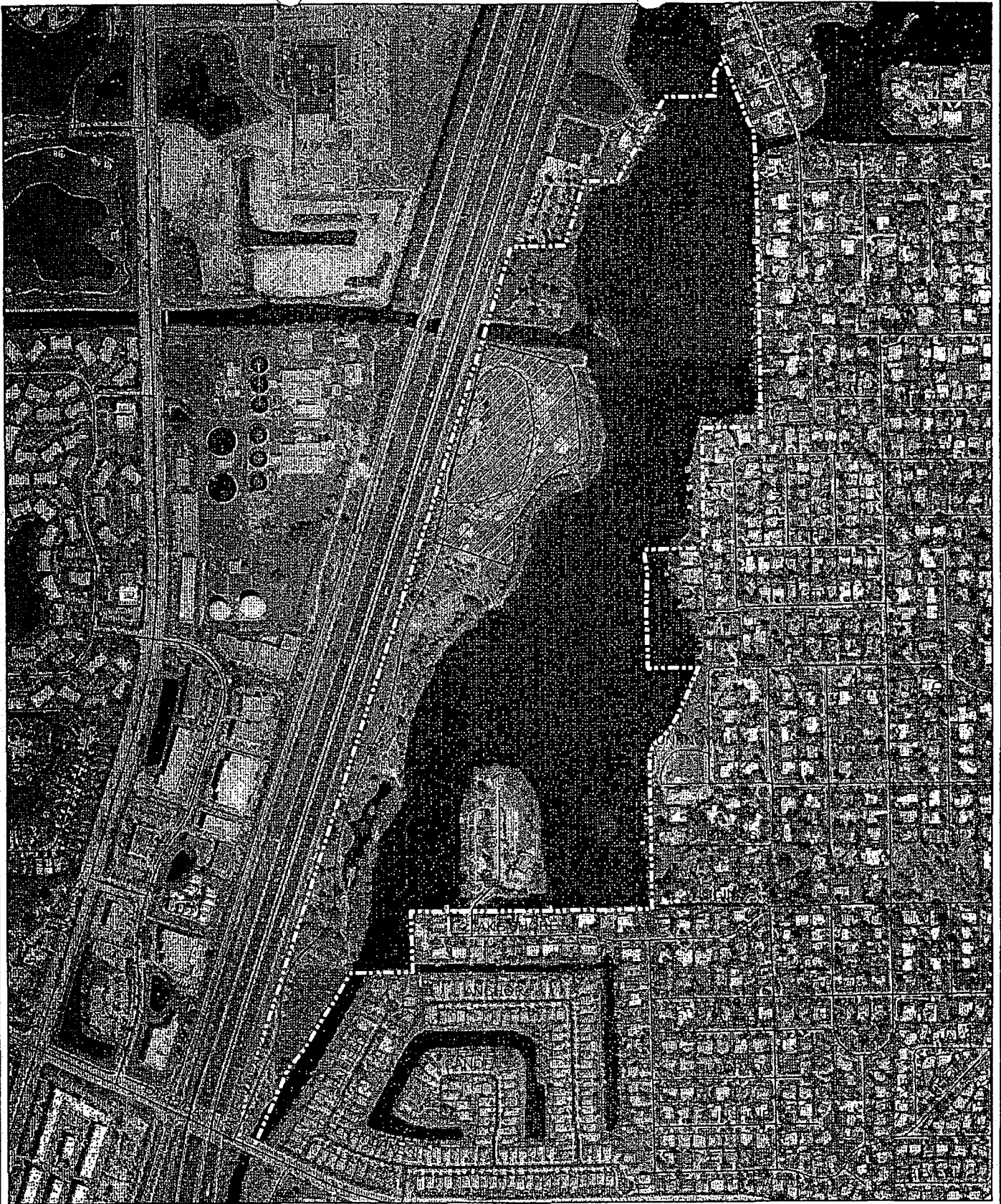
## Center Drive Pavilion Exhibit A-1

This map is provided "as is" without warranty or any representation of accuracy, usefulness or completeness. The County makes no warranties, expressed or implied, as to the use of this map. There are no implied warranties as to the accuracy or fitness for a particular purpose. The owner of this map acknowledges and accepts the limitations of the map, including the fact that the data presented are dynamic and in a constant state of change. Correction and updates.

Source:  
Palm Beach County GIS Center  
Palm Beach County Parks and Recreation  
Image Date: 2015

Map Date: September 24, 2007  
Created By: C. Glaz  
File: Center Pavilion Exhibit A-1





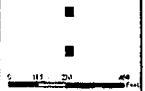
Palm Beach County  
Parks and Recreation Department  
Planning and Design Division

## Lake Ida Park Exhibit A-2

This map is provided "as is" without warranty or any representation of accuracy, timeliness or completeness. The County makes no warranty, expressed or implied, as to the use of this map. There are no implied warranties of merchantability or fitness for a particular purpose. The owner of this map acknowledges and accepts the limitations of the map, including the fact that the data coverage is dynamic and in a constant state of modification, correction and update.

Source:  
Palm Beach County GIS Coordination  
Palm Beach County Parks and Recreation  
Image Date: 2005

Map Date: September 27, 2007  
Created By: C. G. G. G.  
File: Lake Ida Park Exhibit A-2







PALM BEACH COUNTY  
PARKS AND RECREATION DEPARTMENT

## Dyer Park Exhibit A-3

This map is provided "as is" without warranty or any representation of accuracy, completeness or completeness. The County makes no warranties, expressed or implied, as to the use of this map. There are no implied warranties of merchantability or fitness for a particular purpose. The owner of this map acknowledges and accepts the limitations of the map, including the fact that the data coverages are dynamic and in a constant state of maintenance, correction and update.

Source:  
Palm Beach County GIS Coordination  
Palm Beach County Parks and Recreation  
Image Date: 2005

Map Date: September 27, 2007  
Created By: C. Glatz  
File: Dyer Park Exhibit A-3

