

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 1, 2009     Consent     Regular  
    Ordinance     Public Hearing

Department

Submitted By: Environmental Resources Management

Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: an Interlocal Agreement (Agreement) for 50 years with the Florida Turnpike Enterprise (Turnpike Enterprise) that provides the use of the eastern drainage ditch of the Turnpike mainline roadway to reroute water into the Winding Waters Natural Area as part of the hydrologic restoration of that natural area; management of the Turnpike Enterprise property adjacent to the Winding Waters Natural Area as conservation lands until such time as the Turnpike Enterprise determines the land is needed for their requirements; and allows the Turnpike Enterprise to drain stormwater runoff from the Turnpike mainline through the Winding Waters Natural Area.

**Summary:** The wetland creation and restoration project at the Winding Waters Natural Area depends on the water sources coming from the eastern drainage ditch of the Turnpike mainline right-of-way. This agreement provides permission for access to conduct the field work necessary to improve the ditch for the conveyance of water to be rerouted northward from the EPB-10 Canal (located to the south), through the Turnpike ditch and into the northwest corner of the Winding Waters Natural Area. In return for the use of the Turnpike mainline ditch, the County will manage the remaining natural lands on the Turnpike Enterprise property adjacent to the natural area with similar methodologies as used on conservation lands and accept the stormwater runoff from the Turnpike mainline right-of-way between the Bee Line Highway and 45<sup>th</sup> Street, which will be routed through the created wetlands on the Winding Waters Natural Area. Approval of this agreement will allow the Department of Environmental Resources Management to proceed expeditiously with the completion of the wetland creation project and the hydrologic restoration of the site. It will allow the use of the eastern ditch of the Turnpike mainline right-of-way as envisioned in the wetland restoration plan for the Winding Waters Natural Area, and will eliminate the need to create a whole new conveyance canal on the Winding Waters Natural Area that would have destroyed approximately eight (8) acres of native habitat. The field work associated with this hydrologic restoration is funded by a \$1.5 million grant from the Natural Resources Conservation Service (NRCS) with a completion deadline of August 2010. The term of this agreement is 50 years with an opportunity for extension. District 7 (HF)

(Continued on Page 3.)

**Attachments:**

1. Interlocal Agreement with Florida Turnpike Enterprise

Recommended by:

Richard E. Wolke  
Department Director

8/13/09  
Date

Approved by:

[Signature]  
County Administrator

8/26/09  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>    ✂    </u>	_____	_____	_____	_____
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Budget Account No.: Fund \_\_\_ Department \_\_\_ Unit \_\_\_ Object \_\_\_\_\_  
 Program \_\_\_\_\_

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

✂ There is no fiscal impact associated with this item.

**C. Department Fiscal Review:**

    ✂    

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and /or Contract Administrator Comments:**

    ✂     8/21/09  
 OFMB     ✂     8/19/09  
 SN 8/19/09 CN 8/18/09

    ✂     8/24/09  
 Contract Administrator  
 8/24/09

**B. Legal Sufficiency:**

This Contract complies with our contract review requirements.

    ✂     8/26/09  
 Assistant County Attorney  
 Agreement not signed by Turonpike at time of  
**C. Other Department Review: CAD review**

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

**(Continued from Page 1.):**

**Background and Justification:** This agreement provides the necessary permissions to renovate the water conveyance/drainage ditch along the western border of the Winding Waters Natural Area that occurs on the Turnpike Enterprise property. It also provides the Turnpike Enterprise with a route to address their requirements for stormwater discharge for the section of the Turnpike mainline right-of-way between the Bee Line Highway and 45<sup>th</sup> Street.

**INTERLOCAL AGREEMENT  
BETWEEN  
PALM BEACH COUNTY  
AND  
FLORIDA'S TURNPIKE ENTERPRISE  
(WINDING WATERS NATURAL AREA)**

This Interlocal Agreement (the "Agreement") shall be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009 (the "Effective Date") and is being entered into by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, with offices at 301 North Olive Avenue, 6<sup>th</sup> Floor, West Palm Beach, Florida 33401-4791, (hereinafter referred to as the "County") and the **FLORIDA'S TURNPIKE ENTERPRISE**, a division of the Florida Department of Transportation, with offices at Florida's Turnpike Headquarters, Turkey Lake Service Plaza, Turnpike Milepost 263, Building 5315, P.O. Box 613069, Ocoee, Florida 34761 (hereinafter referred to as "Turnpike Enterprise"). The County and Turnpike Enterprise hereinafter shall be referred to as the "Parties."

**WITNESSETH:**

**WHEREAS**, the County is currently in the process of developing its Winding Waters Natural Area on those parcels of real property described in attached **Exhibit "A-1"** (hereinafter referred to as the "Winding Waters Natural Area") and generally depicted on the site plan in attached **Exhibit "A-2"**; (the "Site Plan"); and

**WHEREAS**, Turnpike Enterprise has a real property interest in that parcel of real property described in attached **Exhibit "B"** (the "Turnpike Enterprise Property") which parcels of real property contains pine flatwoods uplands, a small wetland area, and a canal for surface water drainage purposes; and

**WHEREAS**, the County has applied to Turnpike Enterprise for a permit relating to construction activities within the Turnpike Enterprise Property; and

**WHEREAS**, in order to reroute water flows as part of the County's development of its Winding Waters Natural Area, the County has asked the Turnpike Enterprise to authorize the County to clean out the surface water drainage canal on the Turnpike Enterprise Property, re-contour the canal to its original design specifications as needed, and make connections to two canals bordering the Winding Waters Natural Area, one on the northern border (hereinafter referred to as the Northwest Winding Waters Canal ["NWWW Canal"]) and one on the southern border (the "EPB-10 Canal" of the Northern Palm Beach County Improvement District drainage system); and

**WHEREAS**, the Turnpike Enterprise has asked that in return for its issuance of a

permit to the County for use of the existing Turnpike Property canal and the hydrologic connections to the NWWW Canal and the EPB-10 Canal, 1) that access to the Turnpike Enterprise Property canal for the proposed work shall not require access from the Turnpike mainline, but access shall be accomplished from the County's Winding Waters Natural Area property; 2) that the work on the canal shall all be done east of the eastern Turnpike mainline roadway embankment toe of slope; 3) that the maintenance of the renovated canal on the Turnpike Property remain with the Northern Palm Beach County Improvement District (Northern) pursuant to the executed agreement of April 6, 1989 between the Florida Department of Transportation (FDOT) and Northern (which was known at the time as the Northern Palm Beach County Water Control District) titled Joint Use Agreement for Unit of Development Number 24; 4) that the County provide vegetation management of the remaining portions of the Turnpike Enterprise Property; and 5) accept untreated stormwater runoff from the existing and any future expansion of the Turnpike mainline right of way, between SR 710 (Bee Line Highway) on the north and 45<sup>th</sup> Street on the south, routed through the created wetlands on the Winding Waters Natural Area, and provide treatment for such stormwater on real property owned by the County; and

**WHEREAS**, it is the goal of the Parties to cooperate and assist each other, where possible, in order to provide the most efficient delivery of services to their respective users and residents; and

**WHEREAS**, the Parties are authorized to enter into this Agreement pursuant to Section 163.01, Florida Statutes, which permits local government units to make the most efficient use of their powers by enabling them to cooperate with other government entities on a basis of mutual advantage; and

**WHEREAS**, the Parties agree that it is in their respective best interests to work together in a cooperative manner by pooling and advancing their resources in order to carry out the implementation and construction of their respective programs and projects.

**NOW, THEREFORE**, in accordance with Chapter 163, Part I, Florida Statutes, as amended, but specifically subject to the provisions of Section 163.01(9) and (11), Florida Statutes, the Parties for and in consideration of the mutual benefits, understandings and promises as set forth herein, do enter into this Agreement and represent, covenant, and agree with each other as follows:

**SECTION 1. RECITALS.** The Parties do hereby acknowledge and agree that the above recitals are true and correct to the best of their knowledge and belief and do incorporate them herein by this reference.

**SECTION 2. COUNTY OBLIGATIONS.** The County does hereby agree to the following duties and obligations, namely:

(A) Subject to the County obtaining all necessary permits or permit modifications from the South Florida Water Management District and the U.S. Army Corp of Engineers, upon receipt of an appropriate permit from the Turnpike Enterprise, the County will diligently pursue the clean-out and re-contouring of the Turnpike Enterprise property canal to the cross-sectional area as shown in the County's permit application with the Turnpike Enterprise. Access to the canal shall be provided from the Winding Waters Natural Area and all work will be done east of the eastern Turnpike mainline roadway embankment toe of slope.

(B) Concurrent with the canal clean-out work on the Turnpike Enterprise property and the construction of the hydrologic connections to the NWWW Canal and the EPB-10 Canal, the County will begin vegetation management of the remaining portions of the Turnpike Enterprise property. This will include the removal of non-native or invasive vegetation to a level where those species will comprise less than 5% of the total vegetation cover on the property. Other land management activities, performed at the sole cost and expense of the County, which may occur on the Turnpike Enterprise Property, include control or removal of exotic animal species, including Pythons, clearing garbage and debris, and maintaining boundary fences to maintain security for both the Winding Waters Natural Area and the Turnpike mainline right-of-way. The County will perform these land management activities on the Turnpike Enterprise property for as long as this interlocal agreement remains in effect.

(C) When performing work on the Turnpike Enterprise Property, the County agrees to comply with all laws, ordinances, orders, rules, regulations and requirements of all governmental authorities which may be applicable to the Turnpike Enterprise Property.

(D) The County agrees to accept untreated stormwater runoff from the existing and any future expansion of the Turnpike Enterprise right of way, between SR 710 (Bee Line Highway) on the north and 45<sup>th</sup> Street on the south, and to treat such stormwater on real property owned by the County. This water is to be routed through the created wetlands on the Winding Waters Natural Area with ultimate discharge to the EPB-10 Canal approximately 550 feet west of Haverhill Road. The Turnpike Enterprise may avail itself of any storm-water quality treatment and attenuation properties which the regulatory agencies recognize within the Winding Waters Natural Area at the time of any such application.

(E) It is the intention of the Parties that the County be permitted to complete the proposed construction improvements in accordance with the plans submitted in the permit application and that the Turnpike Enterprise be released from any liabilities by reason of the County's negligence or failure in performing this Agreement.

(F) The Parties shall exercise reasonable good faith efforts to conclude, within thirty (30) calendar days following the Turnpike approval of all responses and documents submitted to Turnpike by the County, the provision and processing of satisfactory information that will allow the Turnpike Enterprise to process the County's pending application for a Turnpike Enterprise Permit (plus payment of Turnpike Enterprise Permit application fees) and issue said Turnpike Enterprise Permit for the connections, excavations, re-contouring, non-native invasive vegetation removal or other changes the County intends to implement as to any portion of the Turnpike Enterprise Property.

**SECTION 3. TURNPIKE ENTERPRISE OBLIGATIONS.** Turnpike Enterprise hereby agrees to the following, namely:

(A) Allow the County to re-route water through the Turnpike Enterprise canal on the Turnpike Enterprise property for purposes of improving the hydrology of the Winding Waters Natural Area.

(B) Grant permission for the County to enter upon the Turnpike Enterprise Property to conduct the canal clean-out and re-contouring work and the land management activities described in Section 2 (A) and (B) above.

(C) Upon the County's submission of satisfactory responses and documentation to address outstanding Turnpike Enterprise comments on the pending application for the Turnpike Enterprise Permit and the County's payment of all Turnpike Enterprise permit application fees relating to the issuance of said Turnpike Enterprise Permit, Turnpike Enterprise shall issue the Turnpike Enterprise Permit to the County.

**SECTION 4. MISCELLANEOUS PROVISIONS.**

(A) **NOTICES.** Any and all written notices required or permitted to be given hereunder shall be deemed received upon hand delivery, facsimile transmission or three (3) days if same are deposited in U.S. Mail and sent via certified mail, return receipt requested.

All notices to the County shall be sent to:

Palm Beach County Board of County Commissioners  
Environmental Resources Management Department  
2300 North Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, Florida 33411-2743  
Designated Representative: Environmental Resources Management Director  
Phone: (561) 233-2400  
Fax: (561) 233-2414

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With a copy to:

County Attorney's Office  
Attention: Real Estate  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401-4791  
Phone: (561) 355-2225  
Fax: (561) 355-4398

All notices to the Turnpike Enterprise shall be sent to:

Florida's Turnpike Headquarters  
Turkey Lake Service Plaza, Turnpike Milepost 263  
Building 5315  
P.O. Box 613069  
Ocoee, Florida 34761  
Designated Representative: Executive Director  
Phone: (407) 532-3999 ext.3101  
Fax: (407) 822-6679

With a copy to:

Turnpike Enterprise Office of the Chief Counsel  
Phone: (407) 264-3170  
Fax: (407) 822-6443

(B) **AMENDMENTS.** Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality as this Agreement by both Parties.

(C) **VENUE AND ELECTION OF REMEDIES.** This Agreement shall be construed and governed by the laws of the State of Florida. Any and all legal action arising out of or necessary to enforce this Agreement shall be held in the Ninth Judicial Circuit in and for Orange County, Florida. 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 hereinafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

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(D) **DISCRIMINATION.** The Parties agree that no person shall on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, gender or identity expression, or sexual orientation be excluded from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.

(E) **CONSTRUCTION.** The Parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no Court or Administrative Hearing Officer construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

(F) **SEVERABILITY.** In the event any section, paragraph, sentence, clause or provision hereof is held invalid by a court of competent jurisdiction, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect unless the invalid finding is as to payment or construction obligations of a Party in which event the Agreement shall be thereupon terminated.

(G) **ENTIRE UNDERSTANDING.** This Agreement represents the entire understanding between the Parties and supersedes all other negotiations, representations or agreements, either written or oral, relating to the matters which are the subject of this Agreement.

(H) **HEADINGS.** The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise effect in any way the meaning or interpretation of this Agreement.

(I) **ENFORCEMENT.** Each of the parties to this Agreement is a governmental agency created under the laws of the State of Florida. Each of the parties acknowledge and agree that it is not a reasonable use of their respective limited budgetary resources to resort to litigation to resolve disputes or differences pertaining to the interpretation or enforcement of this Agreement. The parties will attempt to resolve all disputes and differences concerning the interpretation or enforcement of this Agreement by partnering. This is intended to mean that any dispute or difference will attempt to be resolved at the lowest level in each organization; but if that is not successful, then the dispute or difference will be escalated to the next higher level in each organization. This process of escalation will continue up to the Executive Director of District or the Deputy Executive Director and Chief Operating Officer of Florida's Turnpike Enterprise, if necessary. In the event that partnering is unsuccessful in resolving any dispute between the parties concerning the interpretation or enforcement of this Agreement then the parties agree to follow the conflict resolution procedures in Chapter 164, Florida Statutes. If those procedures are unsuccessful then the parties may avail themselves of all available legal or equitable remedies.

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(J) **LEGAL FEES AND COSTS.** The Parties agree to bear the expense of their respective legal fees and costs associated with the negotiation and preparation of this Agreement, as well as any actions enforcing the terms of this Agreement.

(K) **DISCLAIMER OF BENEFICIARIES.** This Agreement is solely for the benefit of the herein specifically and formally named Parties and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party not a formally named party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the formally named Parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the formally named Parties hereto and their respective representatives, successors and assigns.

(L) **CLERK AND COMPTROLLER.** A copy of this Agreement shall be filed with the Clerk & Comptroller in and for Palm Beach County, Florida.

(M) **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(N) **TERM.** This Agreement shall continue in full force and effect for fifty (50) years from its Effective Date, unless earlier terminated or extended, as authorized herein.

(O) **ASSIGNMENT.** This Agreement may not be assigned or transferred.

(P) **EFFECTIVE DATE.** This Agreement shall be effective as of the last date that it is signed by both Parties hereto.

(THE REMAINDER OF THIS PAGE LEFT BLANK)

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EXECUTED by County this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

SHARON R. BOCK  
CLERK & COMPTROLLER

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

PALM BEACH COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
John F. Koons, Chairman

(SEAL)

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

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

APPROVED AS TO TERMS AND  
CONDITIONS:

By: Richard E. Walesky  
Richard E. Walesky, Director  
Environmental Resources  
Management

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EXECUTED by Turnpike Enterprise this \_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

Florida Department of Transportation  
Florida's Turnpike Enterprise

BY: \_\_\_\_\_  
Elizabeth M. Decker  
Executive Secretary

By: \_\_\_\_\_  
James L. Ely, D.P.A.  
Executive Director and  
Chief Executive Officer

(Turnpike Enterprise SEAL)

Approved as to legal form and sufficiency:

By: \_\_\_\_\_  
Jack R. Leonard, Attorney  
Florida's Turnpike Enterprise

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**EXHIBIT "A-1"**  
**TO**  
**INTERLOCAL AGREEMENT**

**"WINDING WATERS NATURAL AREA"**

**Parcel 17.01**

A parcel of land lying in Section 35, Township 42 South, Range 42 East, within the municipal limits of the City of West Palm Beach, Palm Beach County, Florida and being more particularly described as follows:

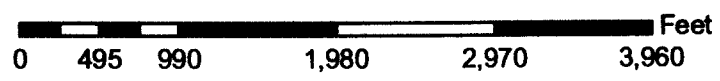
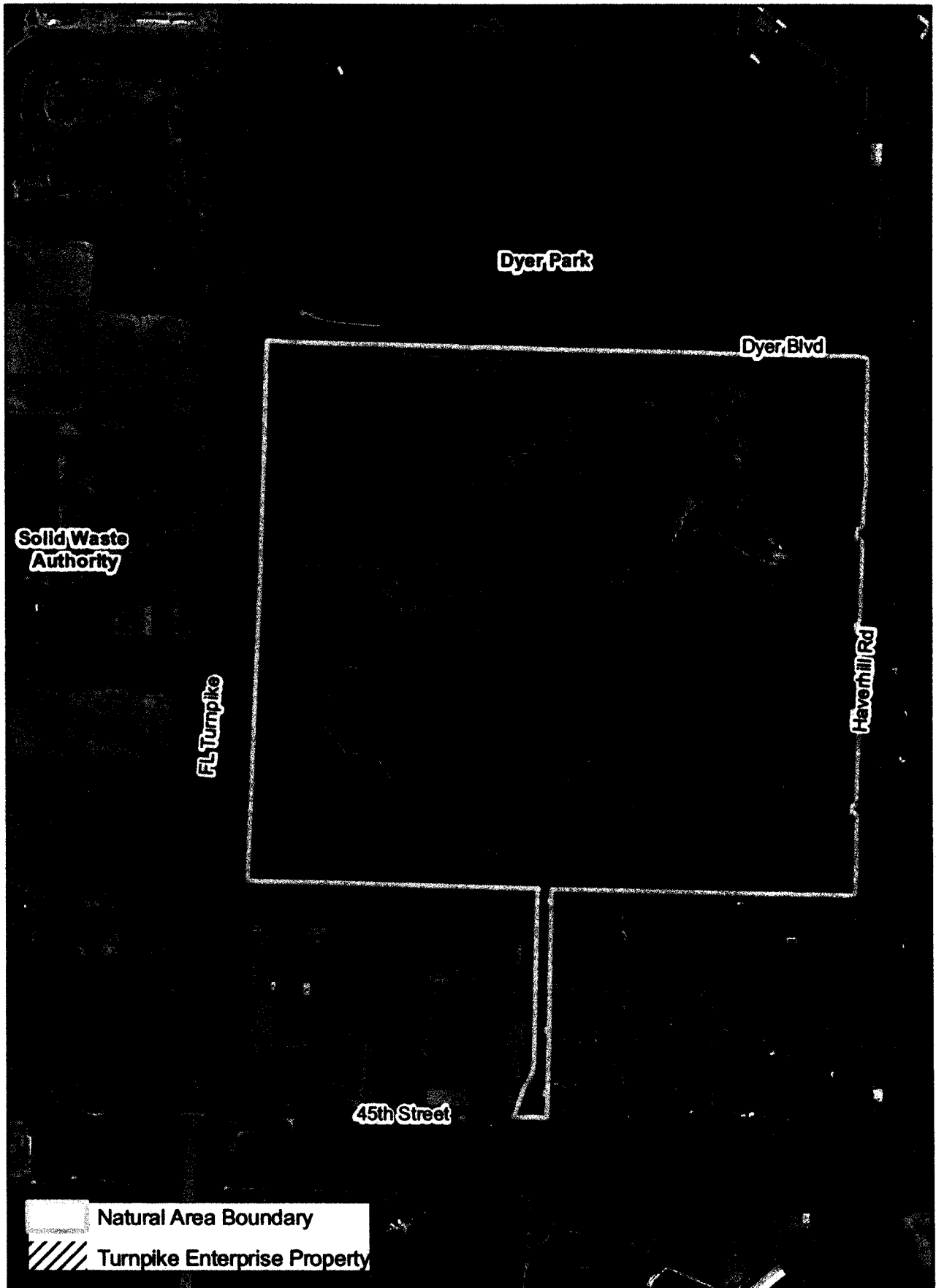
That part of said Section 35 lying South of the South line of the parcel of land described in Official Record Book 1682, page 467, public records of Palm Beach County, Florida, less and excepting therefrom the West 500 feet of the East 590 feet of the South 3,026 feet of the East Half (E ½) of said Section 35, also less the right-of-way of Haverhill Road and the lands conveyed to the Board of County Commissioners of Palm Beach County, Florida in Official Records Book 6873, Page 1172, public records of Palm Beach County, Florida.

Along with:

**Parcel 17.02**

A parcel of land situate in Section 35, Township 42 South, Range 42 East; within Palm Beach County, Florida, and being more particularly described as follows:

The West 500 feet of the East 590 feet of the South 3,026 feet of the East Half (E ½) of said Section 35, less and excepting therefrom the right-of-way of Haverhill Road and the lands conveyed to the Board of County Commissioners of Palm Beach County, Florida in Official Records Book 6873, Page 1172, public records of Palm Beach County, Florida.



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**EXHIBIT "B"**  
**TO**  
**INTERLOCAL AGREEMENT**

**"TURNPIKE ENTERPRISE PROPERTY"**

A parcel of land lying in Section 34, Township 42 South, Range 42 East, Palm Beach County, Florida, more completely described as being the easterly portion of the Turnpike mainline right-of-way lying between a line 15 feet west of the western top of bank of the eastern Turnpike Drainage Canal, eastward to the eastern boundary of the Turnpike mainline right-of-way; and located north of the southern right-of-way line of the EPB-10 Canal; and south of a line coincident with the northern property boundary of the Winding Waters Natural Area lying 4636.45 feet north of the southern right-of-way line of the EPB-10 Canal