

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 12, 2010

☒ Consent

☐ Regular

☐ Workshop

☐ Public Hearing

Department:

Submitted By: Engineering and Public Works

Submitted For: Right-of-Way Acquisition Section

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:** An Interlocal Agreement with the Lake Worth Drainage District (LWDD) to allow an existing Palm Beach County (County) pathway to remain within the LWDD's E-2W Canal right-of-way, adjacent to Boca Rio Road between S.W. 18<sup>th</sup> Street and Glades Road.

**SUMMARY:** Approval of this Interlocal Agreement with the LWDD will allow an existing County pathway to remain within the LWDD's E-2W Canal right-of-way, adjacent to Boca Rio Road from S.W. 18<sup>th</sup> Street to Glades Road, when the segment of Boca Rio Road from Palmetto Park Road to north of Boca Lago Drive is built. The County agrees to remove the pathway when Boca Rio Road is expanded in the future.

District 5 (PK)

**Background and Justification:** The County has submitted permit applications to the LWDD for roadway improvement projects on Boca Rio Road from S.W. 18<sup>th</sup> Street to Glades Road. The LWDD has issued a permit for the segment of Boca Rio Road from Palmetto Park Road to Glades Road and the County wants to modify said permit to only build the segment of Boca Rio Road from Palmetto Park Road to north of Boca Lago Drive. An unpermitted pathway for Boca Rio Road exists within the E-2W Canal right-of-way. The policy of the LWDD requires the removal of the pathway as a condition to the issuance of any permits. As part of the permit modification from the LWDD, the County would also like to obtain permission to allow the pathway to remain until Boca Rio Road is constructed to its ultimate section. LWDD has agreed to allow the pathway to remain within the E-2W Canal right-of-way provided the County agrees to maintain the existing pathway, subject to the terms and conditions contained in the Interlocal Agreement, and remove the pathway from the E-2W Canal right-of-way at the time the future construction is undertaken. The approval of this Interlocal Agreement would be in the best interest of the County and the LWDD.

**Attachments:**

1. Location Map
2. Interlocal Agreement

Recommended by:

*Ornelis A. Fernandez*  
Division Director

12/09/09  
Date

Approved by:

*A. T. Webb*  
County Engineer

12/17/09  
Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ -0-	-0-	-0-	-0-	-0-

# ADDITIONAL FTE  
POSITIONS (Cumulative) \_\_\_\_\_

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

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

☒ This item has no additional fiscal impact.

C. Departmental Fiscal Review:                     A. White                    

## III. REVIEW COMMENTS

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

                    J. White                     12/22/09  
OFMB

                    A. J. White                     12/23/09  
Contract Dev. and Control

### B. Approved as to Form and Legal Sufficiency:

                    Paul F. J.                     12/23/09  
Assistant County Attorney

This Contract complies with our  
contract review requirements.

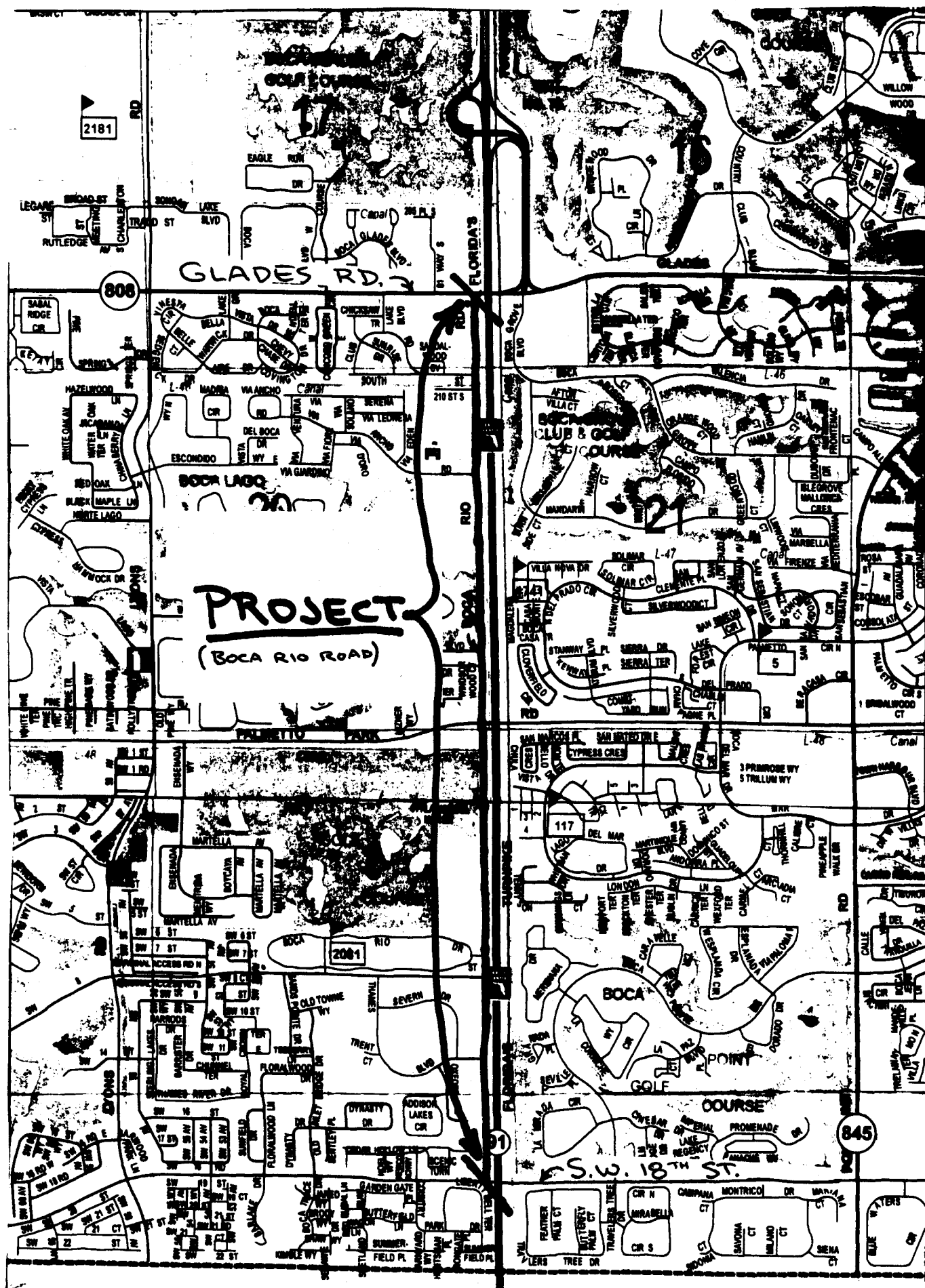
### C. Other Department Review:

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

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

I:\WP\AgendaPage2\Agnpgtwo2008\00230.No Impact

## LOCATION MAP



RETURN TO:  
LAKE WORTH DRAINAGE DISTRICT  
13081 Military Trail  
Delray Beach, FL 33484

PREPARED BY:  
MARK A. PERRY  
PERRY & KERN, P.A.  
50 SE Fourth Avenue  
Delray Beach, FL 33483

**INTERLOCAL AGREEMENT  
BETWEEN PALM BEACH COUNTY AND  
LAKE WORTH DRAINAGE DISTRICT  
BOCA RIO ROAD AND LWDD E-2W CANAL  
SEGMENT I: PALMETTO PARK ROAD TO GLADES ROAD  
SEGMENT II: SW 18<sup>TH</sup> STREET TO PALMETTO PARK ROAD**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2010, by and between the **LAKE WORTH DRAINAGE DISTRICT**, a Special Taxing District of the State of Florida, hereinafter referred to as the "DISTRICT", whose mailing address is 13081 Military Trail, Delray Beach, Florida 33484; and **PALM BEACH COUNTY**, a Political Subdivision of the State of Florida, hereinafter referred to as "COUNTY", whose address is P.O. Box 21229, West Palm Beach, Florida 33416.

**WHEREAS**, the DISTRICT either owns or has easement rights to that canal identified as Equalizer Canal No. E-2W, hereinafter referred to as "E-2W Canal right-of-way"; and

**WHEREAS**, E-2W Canal right-of-way abuts or intersects roadways and public passageways owned and operated by COUNTY; and

**WHEREAS**, the COUNTY has submitted permit applications to the DISTRICT for two roadway projects on Boca Rio Road; Segment I being from Palmetto Park Road to Glades Road - DISTRICT Project No. 01-937R.03, COUNTY Project No. 2001504, and Segment II being from SW 18<sup>th</sup> Street to Palmetto Park Road - DISTRICT Project No. 05-937R.05, COUNTY Project No. 2004519; and

**WHEREAS**, the DISTRICT has issued a permit for the widening of Boca Rio Road from Palmetto Park Road to Glades Road, Segment I; and

**WHEREAS**, the COUNTY has an unpermitted existing pathway within a portion of the DISTRICT'S E-2W Canal right-of-way between Palmetto Park Road and Glades Road, from Station 85 + 10.00 to Station 152 + 20.00, within Segment I; and between SW 18<sup>th</sup> Street and Palmetto Park Road, from Station 20 + 94.18 to 85 + 65.38, within Segment II; and

**WHEREAS**, the policies of the DISTRICT require the removal of the unpermitted existing pathway as a condition to the issuance of any DISTRICT permits; and

**WHEREAS**, the COUNTY wishes to obtain a permit modification from the DISTRICT to widen a portion of Segment I, specifically the widening of Boca Rio Road from Palmetto Park Road to north of Boca Lago Drive; and

**WHEREAS**, with this permit modification, the COUNTY desires to leave the existing unpermitted pathway in place until Segment I and Segment II are constructed to their ultimate section ("Future Construction"); and

**WHEREAS**, COUNTY agrees to maintain the existing unpermitted pathway, subject to the terms and conditions contained herein, and to remove said pathway at the time that the Future Construction is undertaken for Segments I and II, as shown on Exhibit 'A' attached hereto and made a part hereof; and

**WHEREAS**, Florida Statute, §163.01, allows governmental units to make the most efficient use of their powers by enabling them to cooperate with other governmental entities on a basis of mutual advantage; and

**NOW, THEREFORE**, in consideration of the sum of TEN DOLLARS (\$10.00) and mutual covenants, promises and representations herein, the parties agree as follows:

1. The recitals set forth above are hereby adopted and incorporated in this Agreement.

2. It is agreed by the DISTRICT that the COUNTY shall maintain an existing unpermitted pathway between Palmetto Park Road to Glades Road and between SW 18<sup>th</sup> Street to Palmetto Park Road.

3. COUNTY shall be responsible for obtaining, at its own expense, all necessary permits that may be required for Boca Rio Road.

4. COUNTY agrees that the existing unpermitted pathway adjacent to Segments I and II shall be removed upon completion of the widening of each Segment of Boca Rio Road adjacent to the DISTRICT'S E-2W Canal right-of-way.

5. COUNTY and DISTRICT agree that this Interlocal Agreement must be finalized and executed by all parties prior to issuance by the DISTRICT of Permit Modification No. 01-937R.03 submitted by A & B Engineering, Inc., Consulting Engineer.

6. Without waiver of limitation as provided for in §768.28, Florida Statutes, and to the extent permitted by law, the COUNTY agrees to be responsible for all claims, damages, losses, and expenses arising from the discharge or spill, of any contaminants, hazardous substances and/or materials from COUNTY'S right-of-way for Boca Rio Road onto the DISTRICT'S E-2W Canal right-of-way caused by the COUNTY.

7. The obligations of both parties under this Agreement are specifically contingent upon the monies available for the construction of the two roadway projects on Boca Rio Road. Should said funds become unavailable to COUNTY through no fault of COUNTY, this Agreement shall be null and void upon written notification by COUNTY to DISTRICT.

8. Once the Future Construction of the two roadway projects (Segments I and II) has commenced, it shall be prosecuted to completion and this Agreement shall be binding upon the parties and shall no longer be contingent upon the availability of funds needed for the proposed construction and neither party shall have the right to terminate the subject Agreement for the reason that sufficient funds are not available for the construction project.

9. COUNTY agrees to maintain the existing unpermitted pathway, which is the subject of this Agreement in a good, safe, and useable condition.

COUNTY also agrees to perform all reasonable acts of maintenance required by DISTRICT in writing. If COUNTY fails to initiate such maintenance within sixty (60) days of receiving notice from DISTRICT demanding same, DISTRICT shall have the right to perform maintenance, and charge COUNTY for the same, including, but not limited to, administrative expenses incurred while performing the required maintenance. If after thirty (30) days from receiving a payment demand from DISTRICT, COUNTY has not paid those reasonable costs, DISTRICT may terminate this Agreement. In such case DISTRICT shall have the authority to remove the existing unpermitted pathway from SW 18<sup>th</sup> Street to Glades Road and restore the E-2W Canal right-of-way to its original condition. DISTRICT shall have the authority to enforce the terms of this Agreement.

10. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, COUNTY shall indemnify, defend and hold harmless DISTRICT against any actions, claims, or damages arising out of COUNTY'S negligence in connection with this Agreement, and DISTRICT shall indemnify, defend and hold harmless COUNTY against any actions, claims, or damages arising out of DISTRICT'S negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond or alter the limits set forth in Florida Statutes Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's, or any third party's negligent, willful or intentional acts or omissions.

11. Any and all notices required or permitted to be given hereunder shall be received three (3) days after same are deposited in U.S. Mail sent via certified mail, return receipt required.

All notices to DISTRICT shall be sent to:

Ronald L. Crone, Manager  
Lake Worth Drainage District  
13081 Military Trail  
Delray Beach, FL 33484-1105

Mark A. Perry, Esq.  
Lake Worth Drainage District  
13081 Military Trail  
Delray Beach, FL 33484-1105

All notices to COUNTY shall be sent to:

George T. Webb, P.E., County Engineer  
Engineering and Public Works  
P.O. Box 21229  
West Palm Beach, FL 33484

Attn: Roadway Production Division

12. The provisions of this Agreement may not be modified, rescinded or amended in whole or in part without the consent of DISTRICT and COUNTY.

**IN WITNESS WHEREOF**, the Parties unto this Agreement have set their hands and seals on the day and date first written above.

LAKE WORTH DRAINAGE DISTRICT

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Burt Aaronson, Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

Attest:

Sharon R. Bock, Clerk & Comptroller

By: \_\_\_\_\_  
Ronald L. Crone, Secretary

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form and  
Legal Sufficiency

Approved as to Form and  
Legal Sufficiency



By: \_\_\_\_\_  
Mark A. Perry  
Counsel to LWDD

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Terms  
and Conditions:

Date: \_\_\_\_\_

By: *Ornelis A. Fernandez*  
Department of Engineering and  
Public Works

STATE OF FLORIDA :  
COUNTY OF PALM BEACH :

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared \_\_\_\_\_ and RONALD L. CRONE, the President and Secretary respectively, of the LAKE WORTH DRAINAGE DISTRICT, both of whom acknowledged executing the foregoing instrument; and both of whom are known to me, and did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Notary Stamp of Seal

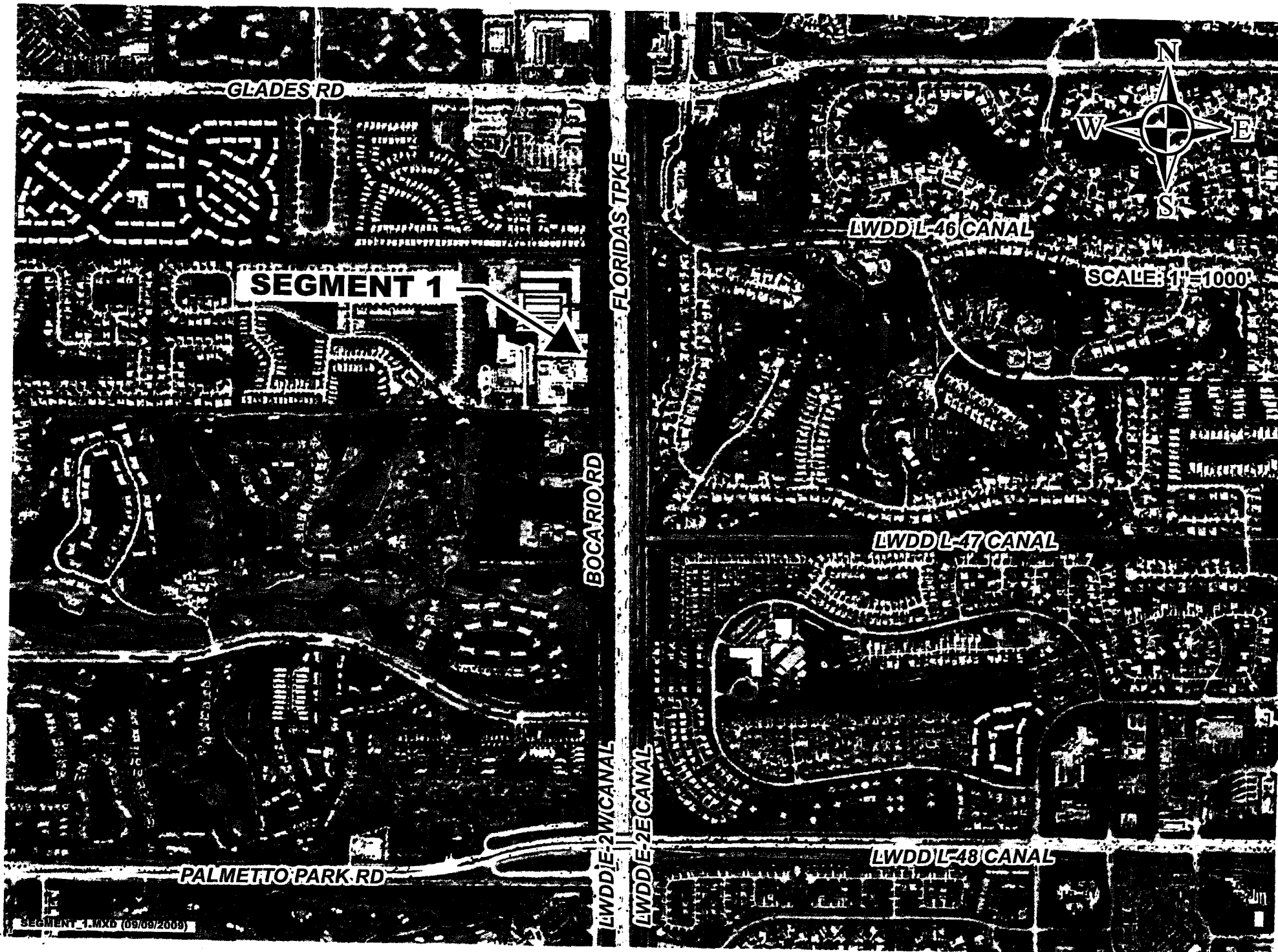


EXHIBIT "A"



SEGMENT\_2.MXD (08/09/2009)