Agenda Item #: 6B-2

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date:	**January 12, 2010**	**[ ] Consent**	**[X] Regular**
		[ ] Ordinance	**[ ] Public Hearing**
Department:	**Facilities Development & Operations**		

I. EXECUTIVE BRIEF

Motion and Title: Staff requests Board Direction: regarding a request by Mecca Farms, Inc. for the Board to reconsider the effective date of termination of the Lease with Mecca Farms of the 215-acre Amestoy property in the Ag Reserve (R-2006-0906).

Summary: On July 21, 2009, the Board agreed to terminate the Lease with Mecca Farms effective as of September 1, 2007. Mecca Farms did not make the payment due in June of 2007, and would be required to pay rent for June, July and August of 2007, totaling $122,838.98 (through the effective date of termination). Mecca Farms is asking the Board to reconsider its prior decision, and to terminate the Lease effective as of June 1, 2007. Due to water management permitting issues, Mecca Farms ceased farming operations in May of 2007. Termination of the Lease effective as of June 1, 2007, would coincide with cessation of farming operations. **(PREM)** **District 5** **(HJF)**

Background and Policy Issues: The County acquired this 215-acre property in June 2004, subject to a lease with Mecca Farms. The County issued an RFP in June 2005, and Mecca Farms submitted the winning proposal to lease the property for $1,723/acre. The Lease did not contain any contingencies for obtaining permits as receipt of the revenue was required as part of the Ag Reserve bond restructuring. At the time the RFP was issued, new regulations were being drafted that were expected to restrict drainage discharges into the Arthur R. Marshal Wildlife Refuge after 2014. This property had historically discharged into the Wildlife Refuge and all proposers were put on notice of this issue. The regulations as adopted immediately prohibited discharges into the Wildlife Refuge and did not allow a phasing out of discharges over time as expected by the Meccas. As a result, the Meccas were only able to farm for one year. The property slopes from the east to the Wildlife Refuge to the west. In addition, when State Road 7/441 was widened, the culverts under the road were set at the wrong elevation. In order to implement an adequate drainage system, several additional pumps would need to be installed at an estimated cost of $250-$350,000, or the entire property would need to be regraded. At the rent Mecca was paying, they could not bear this cost.

Staff spent substantial time exploring permitting options and working through legal issues associated with Mecca's request to be let out of their Lease obligations. Staff agrees that the only viable option for providing adequate drainage for farming operations is to regrade the property. The SFWMD will not issue permits for any drainage discharges into the Wildlife Refuge.

Continued on Page 3

Attachments:
1. Location Map
2. July 21, 2009 Agenda Item

Recommended By: Ross Hering Wolf 12/17/09
Department Director **Date**

Approved By: [signature] 12/30/09
County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County					
NET FISCAL IMPACT	(see below)				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget: Yes ______ No ______

Budget Account No: Fund ______ Dept ______ Unit ______ Object ______ Program ______

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

Revenues from the Ag Reserve Leases are allocated to Maintenance of Environmentally Sensitive Lands. The forgiveness of Mecca's final rental payment would result in an additional revenue reduction of $122,838.98.

C. Departmental Fiscal Review: ______________________________

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

12-28-09
OFMB 12/23/09 12/22/09

12/28/09
Contract Development and Control

B. Legal Sufficiency:

12/30/09
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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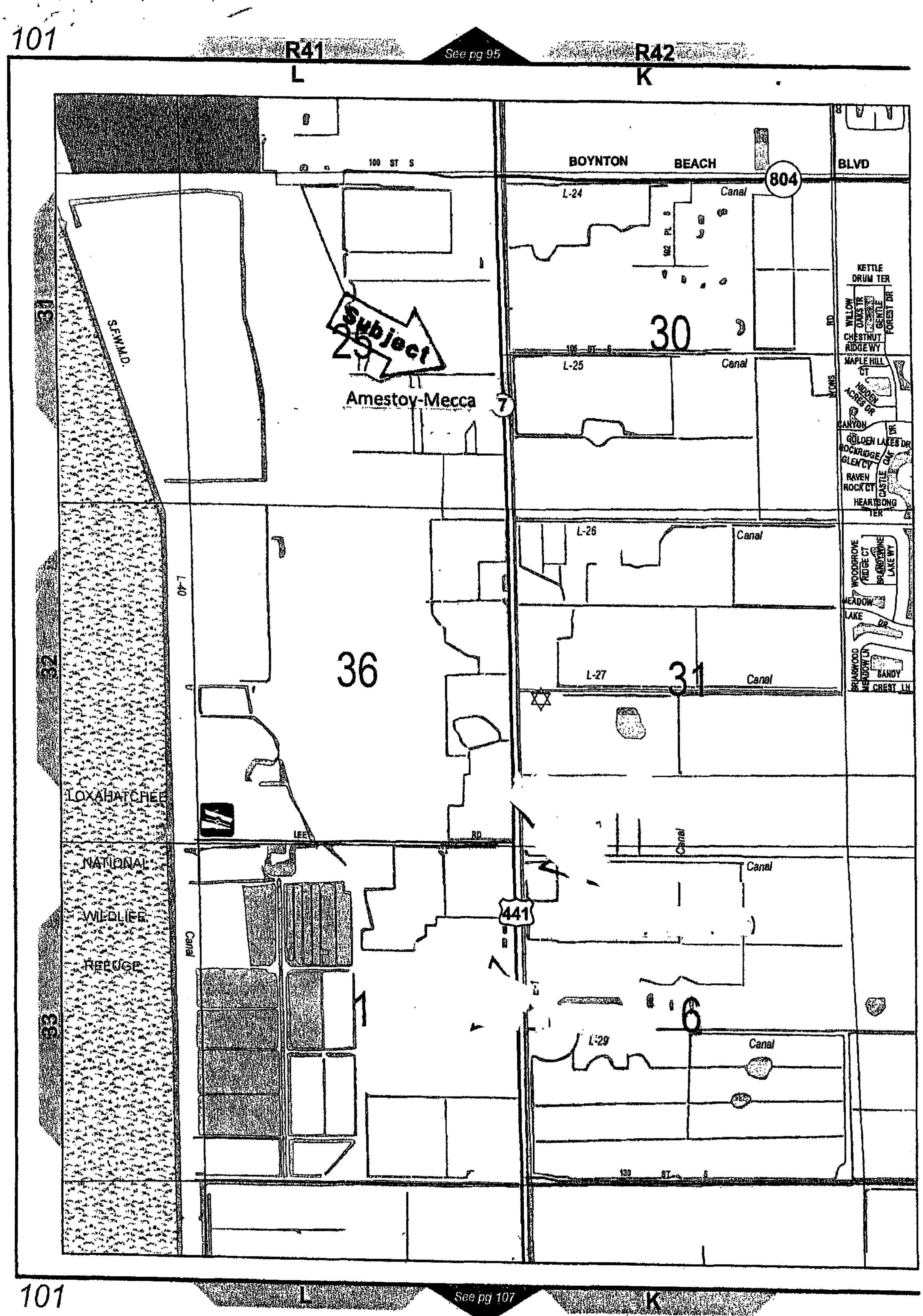
Background and Policy Issues, continued

Mecca argues that they should not be required to pay rent for property they could not farm. They also argue that the new regulations immediately prohibiting discharges into the Wildlife Refuge was a material change that could not reasonably be forseen. As such, there is a dispute as to whether rent was due. According to an opinion of the Attorney General's Office, the County cannot forgive a contractual obligation unless there is a dispute as to whether the contractual obligation is valid.

Mecca Farms had previously agreed to pay rent through September 2007, and the Board approved termination of the Lease as of that date. Subsequent to Board approval of the termination, Staff has attempted to collect rent for June, July and August of 2007, which prompted this request for reconsideration. Staff had initially proposed that the rent be stopped in June of 2007, coinciding with Mecca's cessation of farming operations in May. Due to questions raised by the County Attorney's Office regarding the timing of Mecca's notice to the County and the County's legal ability to forgive past due rent, a compromise whereby Mecca would pay through September of 2007 was proposed by Staff and approved by the Board. Although Mecca Farms had previously agreed to this proposal, they are experiencing the same economic pressures as other farmers and are seeking further relief.



Amestoy-Mecca

LOCATION MAP

Agenda Item #: 5C-1

BA /V 7-0

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

R2009-1214

Meeting Date:	**July 21, 2009**	**[ ] Consent**	**[X] Regular**
		[ ] Ordinance	**[ ] Public Hearing**

Department: **Facilities Development & Operations**

I. EXECUTIVE BRIEF

Motion and Title: Staff:
A) **requests Board direction:** regarding a request for rent reductions by our tenants leasing agricultural property in the Ag Reserve; and
B) **recommends a motion to approve:** the termination of the Lease with Mecca Farms, Inc., of the 215-acre Amestoy Farm effective as of September 1, 2007.

Summary: The farmers and nurserymen who lease property from the County are requesting reductions in the rent they pay the County. The Board requested that this matter be brought back for further consideration. While it is difficult to quantify the net financial impact of changing market conditions upon the farmers, costs have clearly gone up by roughly 30%, row crop revenues appear to have remained relatively stable and nursery revenues have decreased substantially. Recent appraisal data indicates that rents for row crop land have decreased to $500/net acre ($350/gross acre). In February, the Board approved a reduction in rent under the Pero/McMurrain Lease to $500/gross acre. Bowman and Bedner are asking for a 30% reduction in rent under their leases to $450/acre. Pero is seeking a reduction to $500/gross acre for the York Farm Lease. The nursery operators, Floral Acres and K&M, are seeking reductions of 50%. Currently, Floral Acres pays $1,318/acre and K&M pays $1,800/acre. Nurseries have been hit hard by the economic downturn and reduction in development. Unfortunately, there is not much specific data upon which to base a decision on rents other than the recent appraisal of row crop land rents, which in the case of Pero represented a 62% reduction. The farmers have not shared detailed information on their operating performance, but Staff has reviewed summary data showing that their profits have decreased substantially, with the nurseries actually operating at a loss. Options available to the Board are to cancel and rebid all Ag Leases, adopt a new rental rate for all Ag Leases, or adopt the rates requested by the farmers. Staff would recommend that if the Board is inclined to support a rent reduction without rebidding, that a uniform rate of $500/gross acre for row crops and $1,000/acre for nurseries be established, and the rents be revisited every 2-3 years, such that in the event market conditions improve, the rents will be increased. Rents from the Leases are allocated to maintenance of Environmentally Sensitive Lands. The total reduction in annual revenue proposed by the farmers would be $1,369,426.

(continued on page 3)

Attachments:
1. Location Maps (4)
2. Rent Schedule
3. February 3, 2009 Agenda Item approving Pero rent reduction
4. February 20, 2009 memorandum to the Board regarding Ag Rents

Recommended By: [signature] 7-8-09
Department Director **Date**

Approved By: [signature] 7-13-09
County Administrator **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					
NET FISCAL IMPACT	X				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget: Yes ______ No ______

Budget Account No: Fund ______ Dept ______ Unit ______ Object ______ Program ______

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

X Revenues from the Ag Reserve Leases are allocated to Maintenance of Environmentally Sensitive Lands. If the Board decides to reduce the rents to the levels requested by the farmers/nurserymen, this will result in a revenue reduction of $1,369,426 per year.

C. Departmental Fiscal Review: ______________________

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

7/1/09
OFMB
CN 7/1/9
SN 7/6/09

7/8/09
Contract Development and Control
7/8/09

B. Legal Sufficiency:

7/10/09
Assistant County Attorney

C. Other Department Review:

____
Department Director

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

Summary – continued:

Mecca Farms is asking to be let out of their Lease of the 215-acre Amestoy property. This Lease runs through 2011 and the rent was $1,723/acre. Shortly after entering into the Lease in 2006, Mecca Farms attempted to obtain permits for water use and drainage, but due to recent changes in regulations, discovered that they would be unable to obtain permits for drainage without a total redesign of the drainage system. In August of 2007, Mecca Farms notified the County that they would be unable to obtain required permits and stopped paying rent. Staff supports Mecca Farms' request to be released from the Lease effective as of September 1, 2007, in that it will enable the County to lease the property to another farmer, although it is likely that the rent will be much lower. **(PREM)** **District 5/Countywide** **(HJF)**

Background and Policy Issues: Each of the Leases is discussed in detail below.

Bowman
This 938-acre property was acquired in 2001. The purchase price was 18.89% below appraised value. A condition of the transaction was that the property be leased to Bowman Growers for 11 years (2013) at $550/acre, with increases based upon appraisals, but not to exceed increases in the CPI. Rent is currently $641/acre.

In 2007, the Lease was amended to provide Bowman Growers 12 additional 1-year options to extend the term of the lease through 2023, with rent being adjusted in 2013 and every 3-5 years thereafter to the then current fair market value as determined by appraisal. This extension was negotiated in exchange for Bowman Growers agreeing to release 40 acres of the property to SWA for a transfer facility. Bowman Growers received $430,800 ($1,795/acre/year) from SWA as compensation for the loss of the ability to farm the 40 acres for the remaining 6 years under the lease.

Bedner
This 261-acre property was acquired in 2001 for 7.5% below appraised value. A condition of the transaction was that the property be leased back to the Bedners for 10 years (2013) at $550/acre/year, with increases based upon appraisals but not to exceed increases in the CPI. Rent is currently $659/acre.

In 2007, the Lease was amended to grant the Bedners 12 additional options to extend the term through 2023, with rent being adjusted in 2011 and every 3-5 years thereafter to the then current fair market value.

Pero/McMurrain
The County initially took title to the property in 2000 subject to a lease with Pero. The Lease was extended in 2005 and the rent was increased to the then current market rate of $1,200/acre. Rent was subsequently increased to $1,311, until in February of this year it was reduced to $500/acre based upon an appraisal and the term was extended thru 2012.

Pero/York
The County acquired this property in October 2000. At that time, the property was leased to DuBois Farms for $216/acre. When the Lease expired in May 30, 2001, the County issued an RFP to lease the property for agricultural production. Pero submitted the winning proposal to lease the property for $1,205/acre. Rent is currently $1,481/acre.

Floral Acres
The County acquired this 37-acre parcel as part of its acquisition of the York Farm. An RFP was issued in May 2001 to lease the property for nursery use. Floral Acres submitted the winning proposal to lease the property for $1,117/acre. Rent is currently $1,318/acre. It should be noted that the property has a large lake which reduces the amount of useable land. Floral Acres grows potted plants such as poinsettias and liriope.

K&M

The County acquired this property in June 2008 from West Boynton Farms. At that time, the property was subject to the lease with K&M. The rent is currently $1,800/acre. K&M grows landscape plants such as palm trees and container plants such as annuals and perennials.

Mecca/Amestoy

The County acquired this 215-acre property in June 2004, subject to a lease with Mecca Farms. The County issued an RFP in June 2005, and Mecca Farms submitted the winning proposal to lease the property for $1,723/acre. The Lease did not contain any contingencies for obtaining permits as receipt of the revenue was required as part of the bond restructuring. At the time the RFP was issued, new regulations were being drafted that were expected to restrict drainage discharges into the Arthur R. Marshal Wildlife Refuge after 2014. This property had historically discharged into the Wildlife Refuge and all proposers were put on notice of this issue. The regulations as adopted immediately prohibited discharges into the Wildlife Refuge and did not allow a phasing out of discharges over time as expected by the Meccas. As a result, the Meccas were only able to farm for one year. The property slopes from the east to the Wildlife Refuge to the west. In addition, when State Road 7/441 was widened, the culverts under the road were set at the wrong elevation. In order to implement an adequate drainage system, several additional pumps would need to be installed at an estimated cost of $250-$350,000, or the entire property would need to be regraded. At the rent Mecca was paying, they could not bear this cost.

Staff spent substantial time exploring permitting options and working through legal issues associated with Mecca's request to be let out of their Lease obligations. Staff agrees that the only viable option for providing adequate drainage for farming operations is to regrade the property. The SFWMD will not issue permits for any drainage discharges into the Wildlife Refuge.

Mecca argues that they should not be required to pay rent for property they cannot farm. They also argue that the new regulations immediately prohibiting discharges into the Wildlife Refuge was a material change that could not reasonably be forseen. As such, there is a dispute as to whether rent is due. According to an opinion of the Attorney General's Office, the County cannot forgive a contractual obligation unless there is a dispute as to whether the contractual obligation is valid.

From a business standpoint, Staff believes that the purpose of buying the property, preserving agricultural production in the County, is best served by settling the dispute, terminating the Lease with Mecca Farms and leasing the property to another farmer. Staff must point out that any new farmer will most likely propose to pay under market rent due to the drainage improvements which will be required to meet the new regulations.

Mecca Farms did not make the rent payment due in June of 2007. Mecca has agreed to pay the prorated rent for June, July and August of 2007 (through the effective date of termination).