

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: June 7, 2011

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 easement (Easement) from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida Sovereignty Submerged Lands, required for the removal and reconstruction of the Ocean Avenue Bridge over the Intracoastal Waterway in Lantana.

SUMMARY: Approval of this Easement will allow Palm Beach County to access and use the submerged lands located within the Federal Right-of-Way of the Intracoastal Waterway in order to remove and reconstruct the Ocean Avenue Bridge.

District 4 (PK)

Background and Justification: The construction of a new fender system that will protect the new Ocean Avenue Bridge from vessel traffic necessitates additional submerged land area which requires the execution of a Submerged Lands Easement. On February 1, 2011, the Board of County Commissioners (BCC) approved a Department of the Army Consent to Easement Agreement which granted permission to work within the Submerged Land Easement within the Federal Right-of-Way of the Intracoastal Waterway in Lantana, which are requirements of the permitting process. This Easement covers the additional area required. The approval of this Easement by the BCC is in the best interest of Palm Beach County and its citizens.

Attachments:

1. Location Map
2. Sovereignty Submerged Lands Easement

Recommended by:

2011/06/07
Ornelis A Fernandez
Division Director

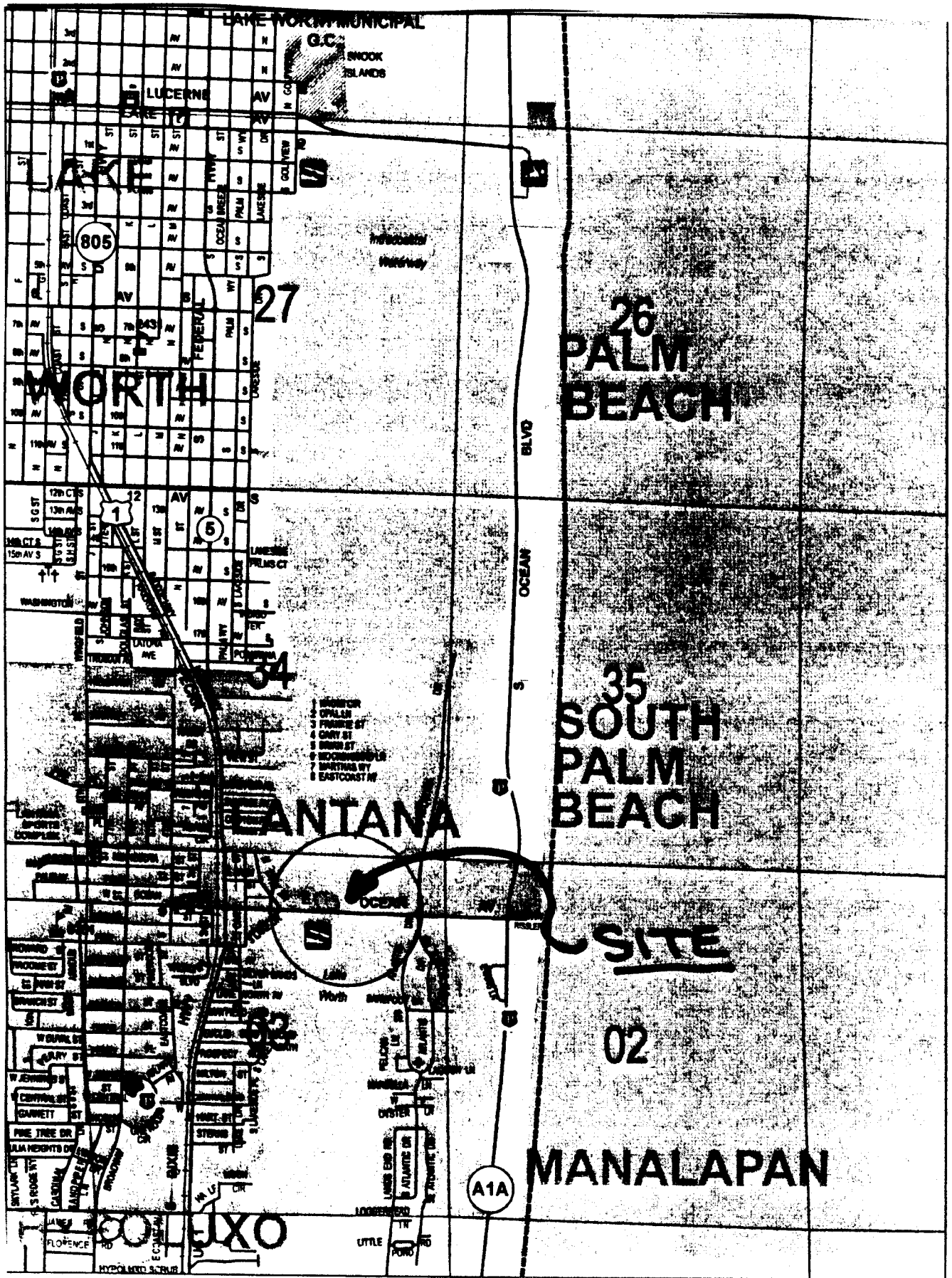
4/13/11
Date

Approved by:

Sy T. Webb
County Engineer

5/9/11
Date

ATTACHMENT 1
LOCATION MAP



This Instrument Prepared By
James Wright
Recurring Revenue Section
Bureau of Public Land Administration
3900 Commonwealth Boulevard
Mail Station No. 125
Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA

SOVEREIGNTY SUBMERGED LANDS EASEMENT

NO. 41336
BOT FILE NO. 500235666
PA NO. 50-09592-P

THIS EASEMENT is hereby granted by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Grantor.

WITNESSETH: That for the faithful and timely performance of and compliance with the terms and conditions stated herein, the Grantor does hereby grant to Palm Beach County, Florida, hereinafter referred to as the Grantee, a nonexclusive easement on, under and across the sovereignty lands, if any, contained in the following legal description:

A parcel of submerged land in Section 03,
Township 45 South, Range 43 East, in Lake Worth,
Palm Beach County, as is more particularly described
and shown on Attachment A, dated May 17, 2010.

TO HAVE THE USE OF the hereinabove described premises for a period of 50 years from December 20, 2010, the effective date of this easement. The terms and conditions on and for which this easement is granted are as follows:

1. **USE OF PROPERTY:** The above described parcel of land shall be used solely for public transportation purposes only by or under the supervision of the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION or such local governmental entity having maintenance responsibility. Grantee shall not engage in any activity except as described in the South Florida Water Management District, Environmental Resource Permit No. 50-09592-P, dated December 20, 2010, incorporated herein and made a part of this easement by reference. All of the foregoing subject to the remaining conditions of this easement.
2. **EASEMENT CONSIDERATION:** In the event the Grantor amends its rules related to fees and the amended rules provide the Grantee will be charged a fee or an increased fee for this activity, the Grantee agrees to pay all charges required by such amended rules within 90 days of the date the amended rules become effective or by a date provided by an invoice from the Department, whichever is later. All fees charged under this provision shall be prospective in nature; i.e. they shall begin to accrue on the date that the amended rules become effective.
3. **AUTOMATIC TERMINATION:** This easement shall automatically terminate when, in the opinion of Grantor, the easement is not utilized for the purposes authorized. Any costs or expenses incurred by Grantor in removing Grantee or its property from the easement area shall be paid by Grantee.
4. **WARRANTY OF TITLE/GUARANTEES OF SUITABILITY OF USE OF LAND:** Grantor neither warrants title to the lands described herein nor guarantees the suitability of any of the lands for any particular use.
5. **RIGHTS GRANTED:** The rights hereby granted shall be subject to any and all prior rights of the United States and any and all prior grants by the Grantor in and to the submerged lands situated within the limits of this easement.
6. **DAMAGE TO EASEMENT PROPERTY AND INTERFERENCE WITH PUBLIC AND PRIVATE RIGHTS:** Grantee shall not damage the easement lands or unduly interfere with public or private rights therein.
7. **GRANTOR'S RIGHT TO GRANT COMPATIBLE USES OF THE EASEMENT PROPERTY:** This easement is nonexclusive, and the Grantor, or its duly authorized agent, shall retain the right to enter the property or to engage in management activities not inconsistent with the use herein provided for and shall retain the right to grant compatible uses of the property to third parties during the term of this easement.

8. **RIGHT TO INSPECT**: Grantor, or its duly authorized agent, shall have the right at any time to inspect the works and operations of the Grantee in any matter pertaining to this easement.
9. **RIGHT TO TERMINATE**: Should a need of greater public benefit and use arise as determined by Grantor in its sole discretion, the Grantor shall have the right to terminate this easement. At such time, the Grantor shall issue written notification to the Grantee stating the effective date of such termination.
10. **RESOLUTION OF ANY INEQUITIES**: Any inequities that may subsequently arise as a result of this easement shall be subject to negotiation upon written request of either party hereto, and the parties agree to negotiate in good faith. In case of failure by the respective staffs to resolve the conflict(s), the matter shall be referred to the Grantor for final resolution.
11. **INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS**: The Grantee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.
12. **ASSIGNMENT OF EASEMENT**: This easement shall not be assigned or otherwise transferred without prior written consent of the Grantor or its duly authorized agent and which consent shall not be unreasonably withheld. Any assignment or other transfer without prior written consent of the Grantor shall be null and void and without legal effect.
13. **TAXES AND ASSESSMENTS**: The Grantee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this easement which result from the grant of this easement or the activities of Grantee hereunder.
14. **CESSATION OF AUTHORIZATION/REMOVAL OF STRUCTURES**: Upon termination of this easement all authorization granted shall cease and terminate and Grantee shall remove all facilities and related structures erected at its expense.
15. **ENFORCEMENT OF PROVISIONS**: No failure, or successive failures, on the part of the Grantor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Grantor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.
16. **RECORDATION OF EASEMENT**: The Grantee, at its own expense, shall record this fully executed easement in its entirety in the public records of the county within which the easement site is located within fourteen (14) days after receipt, and shall provide to the Grantor within ten (10) days following the recordation a copy of the recorded easement in its entirety which contains the O.R. Book and pages at which the easement is recorded.
17. **AMENDMENTS/MODIFICATIONS**: This easement is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this easement must be in writing and must be accepted, acknowledged and executed by the Grantee and Grantor.
18. **ACOE AUTHORIZATION**: Prior to commencement of construction and/or activities authorized herein, the Grantee shall obtain the U.S. Army Corps of Engineers (COE) permit if it is required by the COE. Any modifications to the construction and/or activities authorized herein that may be required by the COE shall require consideration by and the prior written approval of the Grantor prior to the commencement of construction and/or any activities on sovereign, submerged lands.
19. **ADDITIONAL STRUCTURES OR ACTIVITIES/EMERGENCY STRUCTURAL REPAIRS**: No additional structures shall be erected and/or activities undertaken, including but not limited to, dredging, relocation/realignment or major repairs or renovations made to authorized structures, on, in or over sovereignty, submerged lands without the prior written consent of the Grantor, with the exception of emergency repairs. Unless specifically authorized in writing by the Grantor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Grantee to administrative fines under Chapter 18-14, Florida Administrative Code. If emergency repairs are required to be undertaken in the interests of public health, safety or welfare, the Grantee shall notify the Grantor of such repairs as quickly as is practicable; provided, however, that such emergency activities shall not exceed the activities authorized by this easement.
20. **UPLAND RIPARIAN PROPERTY INTEREST**: During the term of this easement, Grantee must have satisfactory evidence of sufficient upland interest as defined in subsection 18-21.003(60), Florida Administrative Code, to the extent required by paragraph 18-21.004(3)(b), Florida Administrative Code, in order to conduct the activity described in this easement. If at any time during the term of this easement, Grantee fails to comply with this requirement, use of sovereignty, submerged lands described in this easement shall immediately cease and this easement shall terminate and title to this easement shall revert to and vest in the Grantor immediately and automatically.

WITNESSES:

Original Signature _____

Print/Type Name of Witness _____

Original Signature _____

Print/Type Name of Witness _____

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE
OF FLORIDA

(SEAL)

BY: _____

Jeffery M. Gentry, Operations and Management Consultant
Manager, Bureau of Public Land Administration, Division
Division of State Lands, State of Florida Department of
Environmental Protection, as agent for and on behalf of the Board
of Trustees of the Internal Improvement Trust Fund of the State
of Florida

STATE OF FLORIDA
COUNTY OF LEON

"GRANTOR"

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Jeffery M. Gentry, Operations and Management Consultant Manager, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. He is personally known to me.

APPROVED AS TO FORM AND LEGALITY:

DEP Attorney _____

Notary Public, State of Florida _____

Printed, Typed or Stamped Name _____

My Commission Expires: _____

Commission/Serial No. _____

WITNESSES:

Original Signature _____

Typed/Printed Name of Witness _____

Original Signature _____

Typed/Printed Name of Witness _____

Palm Beach County, Florida

By its Board of County Commissioners

(SEAL)

BY: _____

Original Signature of Executing Authority _____

Karen T. Marcus

Typed/Printed Name of Executing Authority _____

Chair

Title of Executing Authority _____

"GRANTEE"

STATE OF _____

COUNTY OF _____

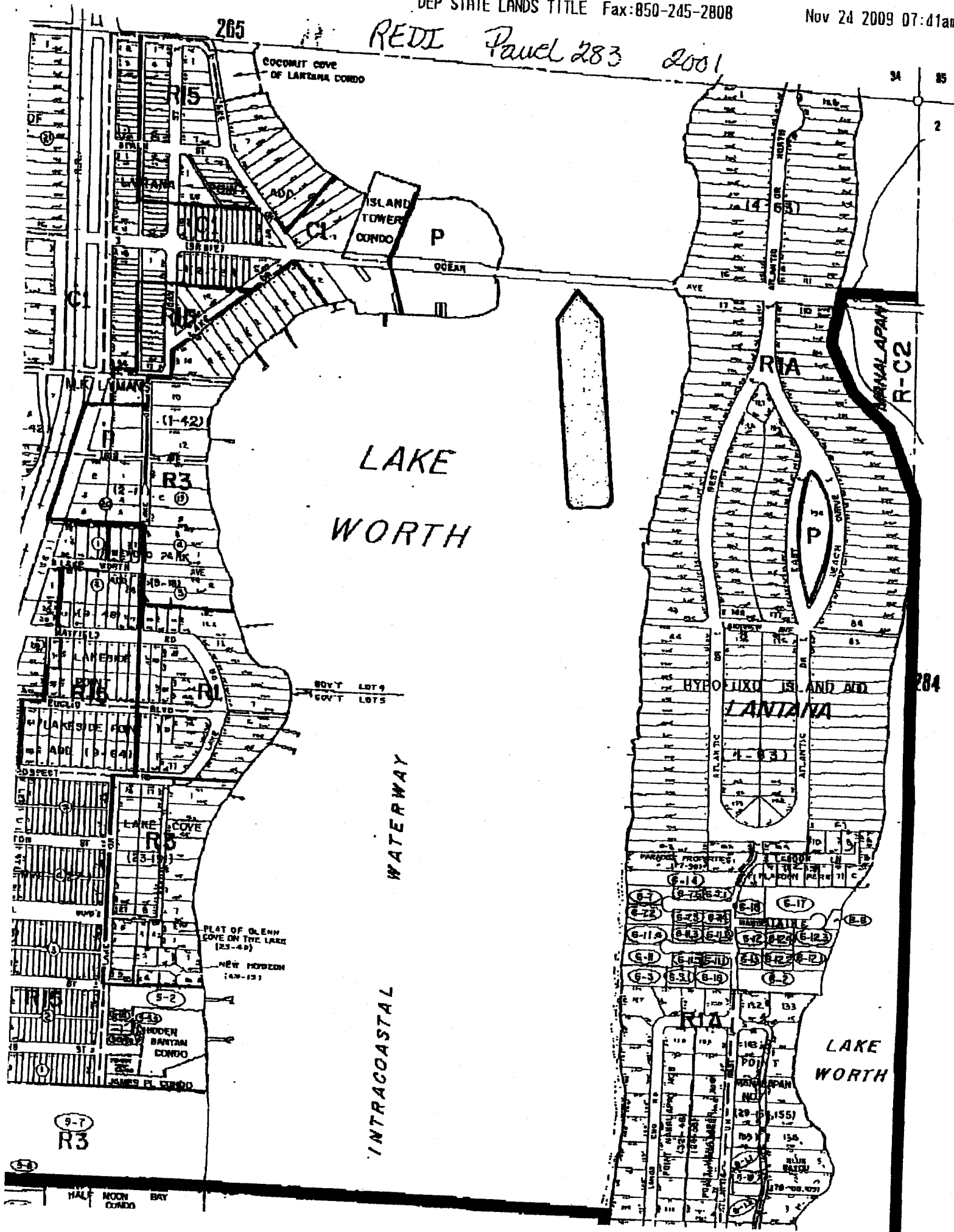
The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Karen T. Marcus as Chair for and on behalf of the Board of County Commissioners of Palm Beach County, Florida. She is personally known to me or who has produced _____, as identification.

My Commission Expires: _____

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name _____



RECORDED 01/05/2011 10:13 0800

LEGAL DESCRIPTION

SUBMERGED LANDS EASEMENTS IN SECTION 3, TOWNSHIP 45 SOUTH, RANGE 43 EAST, TOWN OF LANTANA, PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE CENTERLINES OF EAST OCEAN AVENUE (LANTANA AVENUE) AND ATLANTIC DRIVE, AS SHOWN ON THE PLAT OF HYPOLUXO ISLAND, RECORDED IN PLAT BOOK 4, PAGE 63, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA;

THENCE ALONG SAID CENTERLINE OF EAST OCEAN AVENUE, N88°25'24"W FOR 702.17 FEET TO POINT "A";
THENCE N01°34'36"E FOR 50.00 FEET TO POINT OF BEGINNING No.1;
THENCE CONTINUE N01°34'36"E FOR 76.77 FEET;
THENCE N88°25'24"W FOR 195.78 FEET;
THENCE S01°34'36"W FOR 76.77 FEET;
THENCE S88°25'24"E FOR 195.78 FEET TO POINT OF BEGINNING No.1

CONTAINING 15,030 SQUARE FEET, MORE OR LESS.

TOGETHER WITH:

COMMENCE AT SAID POINT "A";

THENCE S01°34'36"W FOR 50.00 FEET TO POINT OF BEGINNING No.2;
THENCE CONTINUE S01°34'36"W FOR 76.77 FEET;
THENCE N88°25'24"W FOR 195.78 FEET;
THENCE N01°34'36"E FOR 76.77 FEET;
THENCE S88°25'24"E FOR 195.78 FEET TO POINT OF BEGINNING No.2.

CONTAINING 15,030 SQUARE FEET, MORE OR LESS.

BEARING BASIS: N88°25'24"W ALONG THE CENTERLINE OF EAST OCEAN AVENUE.

NO 91110 11

RECEIVED

MAY 25 2010

NV RES REGULATION

ABBREVIATIONS

- P.O.B. - POINT OF BEGINNING
- P.O.C. - POINT OF COMMENCEMENT
- R/W - RIGHT-OF-WAY
- O.R.B. - OFFICIAL RECORD BOOK
- P.B. - PLAT BOOK
- ℄ - CENTERLINE
- PBCo - PALM BEACH COUNTY

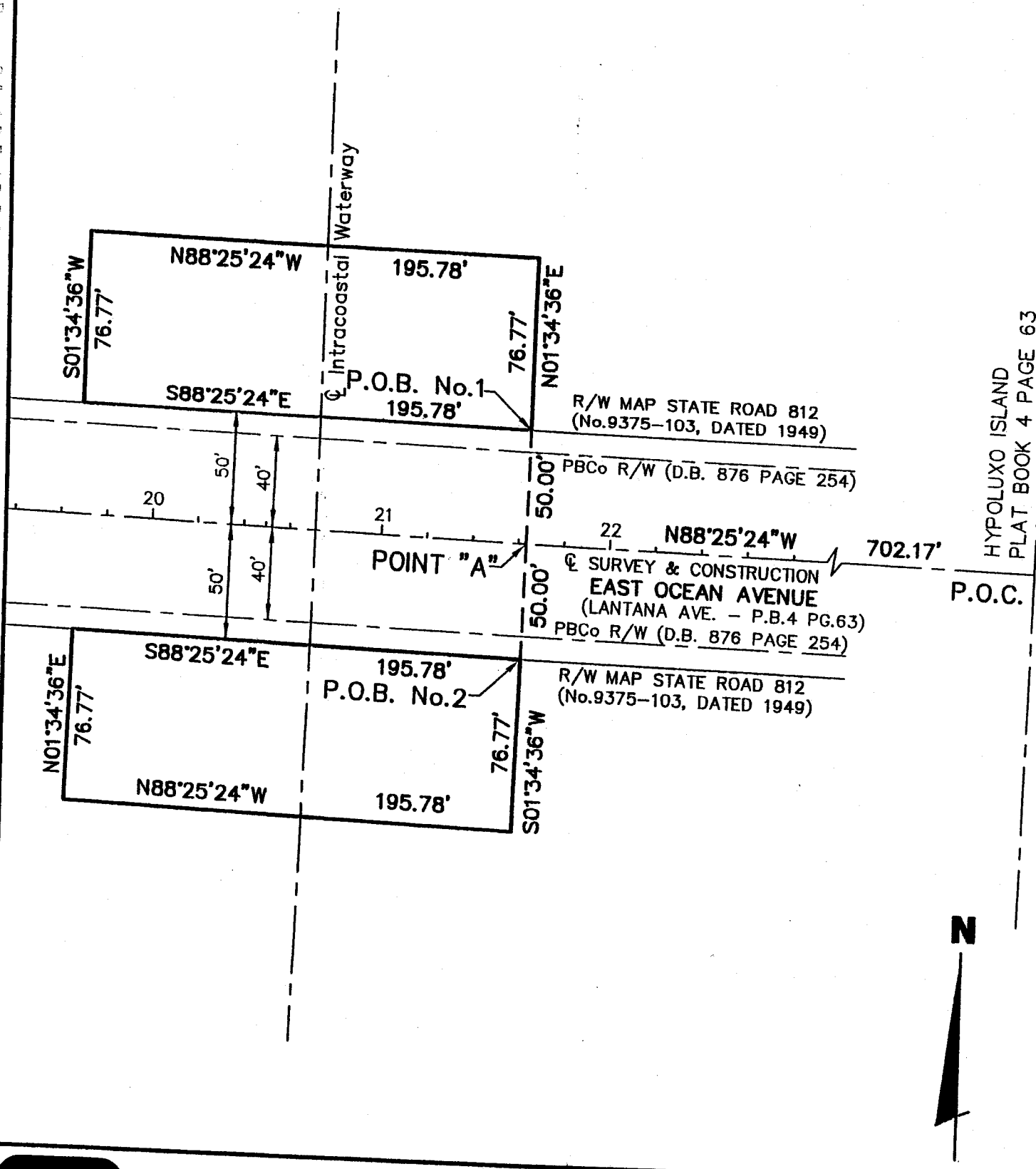
THE DESCRIPTION SKETCH AND THE DESCRIPTION TEXT COMPRISE THE COMPLETE LEGAL DESCRIPTION. THE LEGAL DESCRIPTION IS NOT VALID UNLESS BOTH ACCOMPANY EACH OTHER. REPRODUCTIONS OF THIS DOCUMENT ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND THE ORIGINAL RAISED SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER NOTED HEREON.

[Signature]
JOHN E. PHILLIPS III
PROFESSIONAL LAND SURVEYOR
STATE OF FLORIDA No. 4826
DATE: 5/18/10

BROWN & PHILLIPS, INC.
PROFESSIONAL SURVEYING SERVICES
CERTIFICATE OF AUTHORIZATION # LB 6473
901 NORTHPOINT PKWY, SUITE 119, W.P.B. FLORIDA 33407
(561) 615-3988, (561) 615-3986 FAX

| | |
|---|-----------------|
| OCEAN AVENUE BRIDGE SUBMERGED LANDS EASEMENT | |
| PROJ. No. 08-020 | DRAWN: MB |
| LEGAL DESCRIPTION | SCALE: 1" = 60' |
| | DATE: 5/17/10 |
| | SHEET 1 OF 2 |

00000 00000 00000 00000



HYPOLUXO ISLAND
PLAT BOOK 4 PAGE 63
ATLANTIC DRIVE



BP BROWN & PHILLIPS, INC.
 PROFESSIONAL SURVEYING SERVICES
 CERTIFICATE OF AUTHORIZATION # LB 6473
 901 NORTHPOINT PKWY, SUITE 119, W.P.B. FLORIDA 33407
 (561) 615-3988, (561) 615-3988 FAX

| | |
|---|-----------------|
| OCEAN AVENUE BRIDGE SUBMERGED LANDS EASEMENT | |
| PROJ. No. 08-020 | DRAWN: MB |
| SKETCH TO ACCOMPANY LEGAL DESCRIPTION (THIS SKETCH IS NOT A SURVEY) | SCALE: 1" = 60' |
| | DATE: 5/17/10 |
| SHEET 2 OF 2 | |