

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

Meeting Date:	July 19, 2011	(X) 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:

A) approve a temporary lease agreement with the Florida Inland Navigation District (FIND) for a 14.52 acre parcel of land which may be utilized as a contractor staging site for construction activities associated with the Jupiter Ridge Natural Area Shoreline Restoration Project (JRNASRP) for a period of nine (9) months; and

B) authorize the County Administrator, or his designee, to sign all future time extensions, minor amendments, or other forms associated with this temporary lease agreement that do not change the scope of work or terms and conditions of this lease.

Summary: This temporary lease agreement will authorize the Department of Environmental Resources Management (ERM) to utilize the FIND parcel as a potential offsite contractor staging site during construction of the JRNASRP. The FIND property is appropriate to serve as a staging site for heavy equipment and materials necessary to construct a series of inshore breakwaters along submerged lands in and around Palm Beach County's Jupiter Ridge Natural Area. The term of the temporary lease agreement shall be for a nine month period at a cost of one (1) dollar per month to the County. Therefore, it is anticipated that the County will receive a substantial discount in the amount of the bid for the construction activities associated with the JRNASRP for allowing the contractor to utilize the FIND staging area. District 1 (SF)

Background and Justification: The FIND parcel was identified as an appropriate contractor staging site for the JRNASRP due to its close proximity to the project area (approximately 3.5 miles to the south) and its accessibility to load and transport materials within the Intracoastal Waterway. FIND is providing grant funding for the construction of the JRNASRP (R-2011-0145). By allowing the contractor the option to utilize the FIND staging area, it is anticipated that the County will receive a significant cost savings.

Attachments:

1. FIND Temporary Lease Agreement

Recommended by:	<u>Richard E. Wadley</u>	<u>6/27/11</u>	
	Department Director	Date	

Approved by:	<u>[Signature]</u>	<u>7/14/11</u>	
	County Administrator	Date	

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures					
Operating Costs	2	7			
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	2	7			

**# ADDITIONAL FTE
POSITIONS (Cumulative)**

Is Item Included in Current Budget? Yes X No
 Budget Account No.: Fund 1226 Agency 380 Org. 3077 Object 4416
 Program Code

B. Recommended Sources of Funds/Summary of Fiscal Impact

Manatee Protection Program Matching Funds

C. Department Fiscal Review:

HP

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:

OFMB 7/5/11

Dr. J. Jacobson 7/11/11
Contract Administrator
7-11-11 B. Wheeler

B. Legal Sufficiency:

Legal Sufficiency: *29/1/11*
[Signature]
 Assistant County Attorney *7/14/11*

This Lease Agreement
Complies with our
review requirements.

C. Other Department Review:

Department Director

TEMPORARY LEASE AGREEMENT
BETWEEN
FLORIDA INLET NAVIGATION DISTRICT
AND
PALM BEACH COUNTY

This TEMPORARY LEASE AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 20__, between the Florida Inland Navigation District, an independent special district existing under the laws of the State of Florida (the "DISTRICT"), and Palm Beach Bount, a political subdivision of the State of Florida , ("LESSEE"), both being referred to collectively as "the Parties".

WITNESSETH:

WHEREAS, DISTRICT is the owner in fee simple of a parcel of land in Palm Beach County, Florida, designated as Dredged Material Management Area #617C which is intended to be used by DISTRICT and the United States for the improvement and maintenance of the Atlantic Intracoastal Waterway from St. Marys River, Florida to the Miami Harbor, Florida and holds title subject to an easement granted by it to the United States of America for such use; and

WHEREAS, LESSEE desires to lease from DISTRICT Dredged Material Management Area #617C, a description of which is attached hereto as **Exhibit A** and made a part hereof, for the purpose of contractor staging for the Jupiter Ridge Erosion Control Project as described in **Exhibit B** subject to said rights of DISTRICT and the United States of America and to the terms and conditions of this Agreement; and

WHEREAS, DISTRICT is of the opinion that such use by the LESSEE pursuant to the provisions of this Agreement is in the public interest; and

WHEREAS, DISTRICT is agreeable that a lease should be executed for a limited term at a nominal rental subject to the terms and conditions stated herein.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the parties hereto:

1. RECITALS: The recitals contained herein above are true and correct and incorporated herein by reference.

2. LEASE: DISTRICT hereby leases to LESSEE the property hereinafter known as the "Leased Premises" as described in paragraph 4 below, subject to the terms and conditions set forth herein.

3. PROJECT MANAGEMENT: The Project Manager for the DISTRICT is its Executive Director and all correspondence and communications from the LESSEE

shall be directed to him/her. The Project Manager shall be responsible for overall coordination and oversight related to the performance of this lease.

4. DESCRIPTION OF THE LEASED PREMISES: The Leased Premises which is subject to this Agreement, is situated in Palm Beach County, State of Florida, as described in **Exhibit A**, attached hereto and made a part of this Agreement.

5. EXISTING CONDITIONS: LESSEE agrees to accept the Leased Premises in as is condition subject to existing easements and deed restriction.

6. TERM: The term of this LEASE shall be for a nine (9) month period. Rent shall be one (\$1.00) dollar per month. Prepayment of the rent shall not affect in any way the DISTRICT's rights under paragraph 27 below. The lease period shall commence on the date of execution of this Agreement by both Parties.

7. PURPOSE: LESSEE shall manage the Leased Premises to provide a temporary area for the Jupiter Ridge Erosion Control Project as described in **Exhibit B**.

8. QUIET ENJOYMENT AND RIGHT OF USE: LESSEE shall have the right of ingress and egress to, from, and upon the Leased Premises for all purposes that do not conflict with the DISTRICT's and the United States of America's Dredge Material Management Program, however, use of the property is restricted to day light hours for the quiet enjoyment of the neighboring property owners.

9. UNAUTHORIZED USE: LESSEE shall, through its agents and employees, prevent the unauthorized use of the Leased Premises or any use thereof not in conformance with this LEASE.

10. ASSIGNMENT: This LEASE shall not be assigned in whole or in part without the prior written consent of DISTRICT. Any assignment made either in whole or in part without the prior written consent of DISTRICT shall be void and without legal effect; provided, however, the District acknowledges and agrees that LESSEE may utilize the services of third party LESSEE's, engineers, etc., in performance of the dredging project, and any such third party contracts for such purpose shall require the LESSEE's to abide by the terms and conditions of this Lease Agreement.

11. EASEMENTS: All easements to be granted by LESSEE including, but not limited to, utility easements are expressly prohibited without the prior written approval of DISTRICT. Any easement not approved in writing by DISTRICT shall be void and without legal effect.

12. SUBLEASES: This LEASE is for the purposes specified herein, and subleases of any nature are prohibited without the prior written approval of DISTRICT. Any sublease not approved in writing by DISTRICT shall be void and without legal effect.

13. RIGHT OF INSPECTION: DISTRICT or its duly authorized agents, representatives or employees shall have the right at any and all times to inspect the

Leased Premises and the works and operations of LESSEE in any matter pertaining to this LEASE.

14. PLACEMENT AND REMOVAL OF IMPROVEMENTS: Any equipment, supplies, or improvements constructed or placed on the property by LESSEE in accordance with a plan approved by the DISTRICT shall be removed by LESSEE at the termination of this LEASE. No trees, other than non-native species, shall be removed or major land alterations done without the prior written approval of DISTRICT. Removable equipment and removable improvements placed on the Leased Premises by LESSEE which do not become a permanent part of the Leased Premises will remain the property of LESSEE and may be removed by LESSEE upon termination of this LEASE, pursuant to Paragraph 26 below.

15. ASSUMPTION OF RISK: DISTRICT does not warrant or represent that the Lease Premises are safe or suitable for the purpose for which LESSEE is permitted to use it, and LESSEE assumes all risks in its use.

16. INDEMNIFICATION: LESSEE shall be liable for its own actions and negligence and, to the extent permitted under Florida law, LESSEE shall indemnify, defend and hold harmless DISTRICT against any actions, claims or damages arising out of LESSEE's negligence, and DISTRICT shall indemnify, defend and hold harmless LESSEE against any actions, claims or damages arising out of DISTRICT's negligence. However, nothing in this paragraph shall be interpreted as a waiver of DISTRICT's or LESSEE's sovereign immunity as provided in Section 768.28 Florida Statutes, as amended from time to time.

17. INSURANCE: LESSEE, and any contractors and sub-contractors utilized by LESSEE pursuant to this Agreement, shall have public liability and workmen's compensation insurance in the amount of not less than one million dollars (\$1,000,000.00) and shall name DISTRICT and the U.S. Army Corps of Engineers as additional insureds on such policy or policies. LESSEE shall also provide for not less than thirty (30) days' prior written notice to DISTRICT in the event of cancellation thereof. LESSEE, prior to entering upon the subject Premises, shall provide to DISTRICT copies of said insurance policies or certificates of insurance showing conformity with this provision.

18. LIENS; CNSTRUCTION LIENS: It is specifically understood and agreed that in no event shall DISTRICT or any interest of DISTRICT in the Subject Premises or any portion thereof be liable for or subject to any construction lien or liens for improvements or work made by or for LESSEE; and this Agreement specifically prohibits the subjecting of DISTRICT's interest in the Subject Premises or any portion to

any construction lien or liens for improvements made by LESSEE which LESSEE is responsible for payment under the terms of this Agreement. All persons dealing with LESSEE are hereby placed upon notice of this provision. All memoranda and short forms of this Agreement which shall be recorded among any public records shall contain the provisions set forth above in this paragraph; provided, however, nothing contained in this sentence shall permit or authorize the recording of and memorandum or short form of this Agreement other than by DISTRICT.

19. ADDITIONAL INSURANCE: LESSEE shall require any third party contractors, engineers, consultants, etc., to maintain insurance in the amounts and types indicated in paragraph 17 and shall furnish the DISTRICT copies of the Certificates of Insurance.

20. PAYMENT OF TAXES AND ASSESSMENTS: LESSEE shall assume full responsibility for and shall pay all ad-valorem taxes and drainage and special assessments or taxes of every kind and all construction liens which may be hereafter lawfully assessed and levied against the Leased Premises, resulting from LESSEE use of the Leased Premises for the purposes provided for herein.

21. NO WAIVER OF BREACH: The failure of DISTRICT to insist in any one or more instances upon strict performance of any one or more of the covenants, terms and conditions of this LEASE shall not be construed as a waiver of such covenants, terms or conditions, but the same shall continue in full force and effect, and no waiver of DISTRICT of any of the provisions hereof shall in any event be deemed to have been made unless the waiver is set forth in writing and signed by DISTRICT.

22. NON-DISCRIMINATION: LESSEE shall assure and certify that it will comply with Title IV of the Civil Rights ACT of 1964 (PL 88-352) as amended and, in accordance with that Act, shall not discriminate against any individual's race, color, creed, sex, national origin, age, handicap, or marital status with respect to any activity occurring within the Leased Premises or upon lands adjacent to and used as an adjunct of the Leased Premises.

23. UTILITY FEES: LESSEE shall be responsible for payment of all charges for the furnishing of gas, electricity, water and other public utilities to the Leased Premises, if needed by LESSEE, and for having the utilities turned off when the Leased Premises are surrendered.

24. COMPLIANCE WITH LAWS: LESSEE agrees that this LEASE is contingent upon and subject to LESSEE obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules and laws of the State of Florida or the United States or of any political subdivision or agency of either.

25. NOTICE: All notices given under this LEASE shall be in writing and shall be served by certified mail to the last address of the Party to whom notice is to be

given, as designated by such Party in writing. DISTRICT and LESSEE hereby designate their address as follows:

TO DISTRICT: Florida Inland Navigation District
1314 Marcinski Road
Jupiter, Florida 33477
Attn: Executive Director

TO LESSEE: Palm Beach County Department of Environmental
Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, Florida 33411
Attn: Director

Should either Party change its address, written notice of such new address shall promptly be sent to the other Party.

26. BREACH OF COVENANTS, TERMS OR CONDITIONS: Should LESSEE breach any of the covenants, terms, or conditions of this LEASE, DISTRICT shall give written notice to LESSEE to immediately remedy such breach. In the event LESSEE fails to immediately remedy the breach to the satisfaction of DISTRICT upon receipt of written notice, or longer period if it is not capable of being immediately cured but LESSEE has commenced the cure, DISTRICT may either terminate this LEASE and recover from LESSEE all damages DISTRICT may incur to restore the Leased Premises to the condition they were in at the commencement of this Agreement. or maintain this LEASE in full force and effect and exercise all rights and remedies herein conferred upon DISTRICT.

27. DAMAGE TO THE PREMISES: LESSEE agrees that it will not do, or cause to be done, in, on, or upon the Leased Premises or as affecting said Leased Premises, any act which may result in damage or depreciation of value to the Leased Premises, or any part thereof. Within ten (10) days following termination or expiration of this Agreement, LESSEE shall remove any alterations to the Leased Premised caused by the LESSEE and shall restore the Leased Premises to their original conditions save for ordinary wear and tear, unless otherwise approved in writing by DISTRICT.

28. HAZARDOUS MATERIALS: LESSEE agrees that, during the term of this Agreement, it:

A. Shall keep or cause the Leased Premises to be kept free of hazardous wastes or substances.

B. Shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of LESSEE or any assignees, a release of hazardous wastes or substances onto the Leased Premises.

C. Shall comply with and ensure compliance by its employees and all others under its direction with all applicable federal, state, and local laws, ordinances, rules, and regulations.

D. The terms "hazardous waste", "hazardous substance", "disposal", "release", and "threatened release", if used in this Agreement, shall have the same meaning as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. (CERCLA), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 49 U.S.C. Section 6901 et seq., the Florida Resource and Management Act, Chapter 403, Florida Statutes, the Pollution, Spill, Prevention, and Control Act, Chapter 376, Florida Statutes, or any other applicable state or federal laws, rules, or regulations adopted pursuant to any of the foregoing.

E. Shall immediately provide DISTRICT with notice of any release or threatened release of hazardous waste within the Leased Premise, and shall immediately provide DISTRICT with notice of any injury or action taken by any local, state, or federal governmental body with respect to hazardous waste within the Leased Premises.

F. Shall remove any hazardous waste or hazardous substances which exceed allowable levels in the ground or the groundwater within the Leased Premises, arising from LESSEE's use of the Leased Premises.

29. SURRENDER OF PREMISES: Upon termination or expiration of this LEASE, LESSEE, shall surrender the Leased Premises to DISTRICT. Upon termination or expiration of this LEASE, all structures permanently affixed to the land and all improvements made will become the property of the DISTRICT, provided, however, that if any structures are such, in the DISTRICT'S determination, that they can be moved without harm to the area where situated then the LESSEE may, within ten (10) days following termination of the LEASE, remove the same. Upon final termination, the property must be left in essentially the same condition as when it was first leased to the LESSEE, save for ordinary wear and tear, unless otherwise approved in writing by the DISTRICT.

30. PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES:

Fee title to the Leased Premises is held by DISTRICT. LESSEE shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the real property contained in the Leased Premises including, but not limited to, mortgages or construction liens against the Leased Premises or against any interest of DISTRICT therein.

31. PARTIAL INVALIDITY: If any term, covenant, condition or provision of this Agreement shall be ruled by a court of competent jurisdiction to be

invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

32. DUPLICATE ORIGINALS: This Agreement is executed in duplicate originals, each of which shall be considered an original for all purposes.

33. ENTIRE UNDERSTANDING: This Agreement sets forth the entire understanding between the Parties and shall only be amended with the prior written approval of the Parties.

34. MAINTENANCE OF IMPROVEMENTS: LESSEE shall maintain the real property contained within the Leased Premises and the improvements located thereon in a state of good condition, working order and repair including, but not limited to, keeping the Leased Premises free of trash or litter and meeting all building and safety codes in the location situated.

35. GOVERNING LAW: This Agreement shall be governed by and interpreted according to the laws of the State of Florida.

36. SECTION CAPTIONS: The Captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

37. VENUE: In the event of any litigation arising out of or resulting from this LEASE, the venue of such litigation shall be had only in the state courts in Palm Beach County, Florida.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the day and year first written above.

ATTEST:

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

_____, Clerk

BY: _____
Deputy Clerk

BY: _____

DATE: _____

DATE: _____

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY:  _____
Assistant County Attorney

DATE: 7/14/11 _____

APPROVED AS TO TERMS AND
CONDITIONS:

BY: _____

Richard E. Walesky
Richard E. Walesky, Director
Dept. of Environmental Resources Management

DATE: _____

6/29/11

ATTEST:

FLORIDA INLAND NAVIGATION
DISTRICT

BY: _____

BY: _____

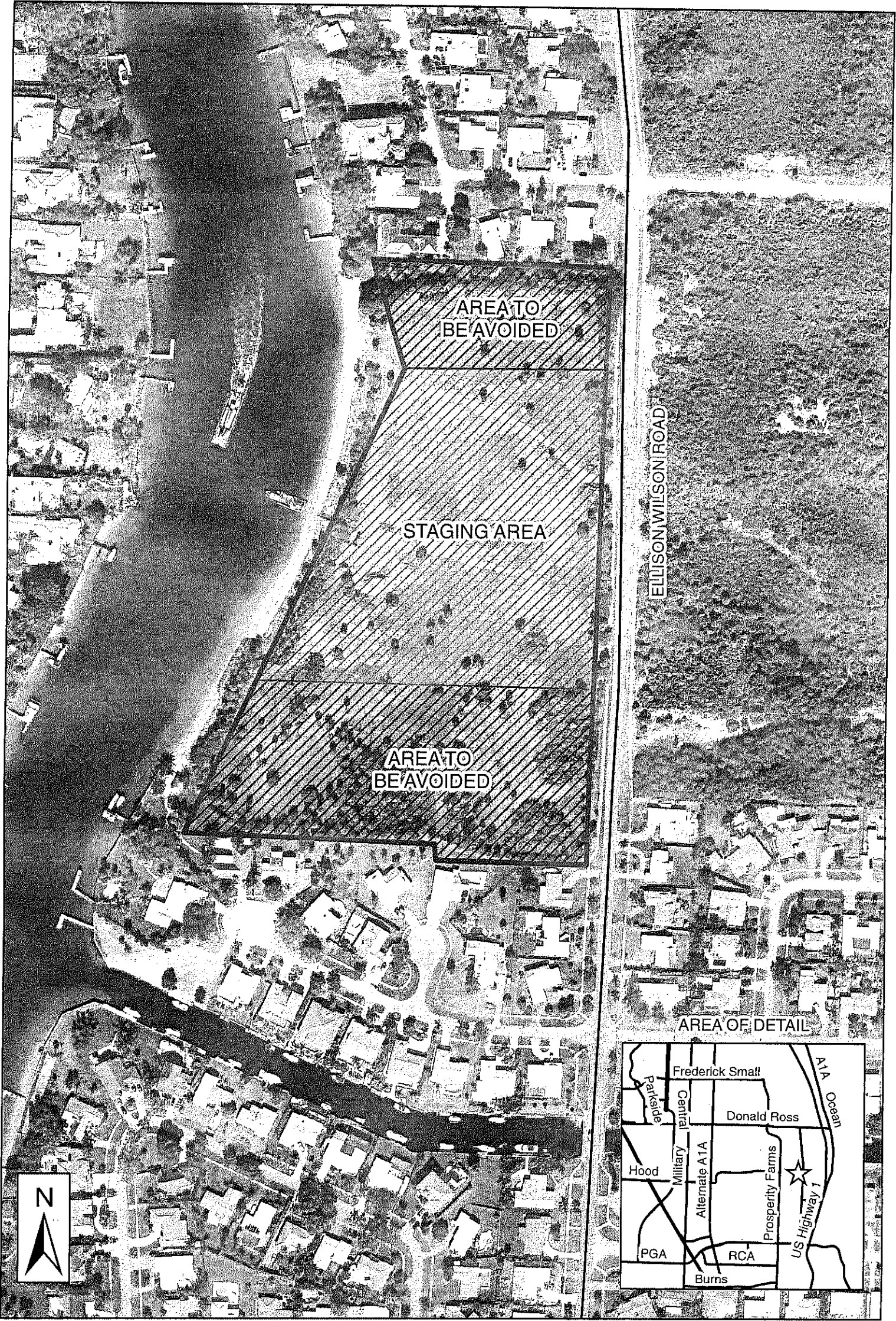
Executive Director

WITNESS:

Signature

Print witness name

EXHIBIT A
LOCATION MAP: DREDGED MATERIAL MANAGEMENT AREA



Legend

 Dredged Material Management Area

0 125 250 500 Feet



Palm Beach County
Department of
Environmental Resources Mgmt
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411
Phone: (561) 233-2400

EXHIBIT B

DESCRIPTION: JUPITER RIDGE NATURAL AREA SHORELINE RESTORATION PROJECT

The Jupiter Ridge Natural Area Shoreline Restoration Project involves construction of 23 limestone oyster reef/breakwaters on submerged lands in and around Palm Beach County's Jupiter Ridge Natural Area. The project area is located on the western portion of the Jupiter Ridge Natural Area, which includes 7,600 feet of frontage along the ICW. The purpose of the project is to protect and stabilize shoreline habitat from erosive wave activity caused by boat wakes from the ICW.

The oyster reef/breakwaters will be constructed to stabilize approximately 6,000 feet of shoreline and enhance an estimated 3.5 acres of seagrass habitat. The submerged portions of the oyster reef/breakwaters will provide essential habitat for estuarine fish and invertebrates and serve as substrate for oysters, which provides the added benefit of improved water quality. The proposed project will help to reduce long-term maintenance costs associated with dredging in the ICW by stabilizing shoreline sediment adjacent to the channel.

Approximately 14,320 tons of limestone rock, including 11,553 tons of armor stone and 2,767 tons of bedding stone, will be used to construct the project. Filter cloth will be installed underneath the limestone rip rap to prevent the constructed breakwaters from subsiding. The materials and equipment required to construct the project will be transported from the Dredged Material Management Area to the Jupiter Ridge Natural Area by tug and barge via the Intracoastal Waterway. A shallow draft barge will be used to transport all material and an excavator with a thumb attachment for grasping and manipulating the rock will be used to place the rip rap to the specific grades. The project's anticipated construction timeline is 8 months and shall include final clean-up of the Dredged Material Management Area, if utilized.