

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

**Meeting Date:** April 16, 2013

(X) Consent  
( ) Ordinance

( ) Regular  
( ) 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** an Interlocal Agreement with the City of West Palm Beach (WPB) for the Baywinds Preserve/Pond Cypress Preserve Structure Operation and Management Protocol; and

**B) authorize** the County Administrator, or his designee, to sign all necessary minor amendments that do not change the scope of work, terms or conditions of this Agreement.

**Summary:** The Department of Environmental Resources Management (ERM) currently manages the 1737-acre Pond Cypress Natural Area pursuant to the Management Plan that was approved by the Board of County Commissioners (BCC) on July 20, 2010; agenda item number 5C-1. WPB has constructed a culvert structure to hydrologically link the Pond Cypress Natural Area to the Baywinds Wetland Preserve during specific water stage levels as outlined in the Interlocal Agreement. Overflow water from the Pond Cypress Natural Area is currently discharged into water management systems or drainage canals and ultimately lost to tide. WPB wishes to receive this water, when available, for the benefit of downstream wetlands and groundwater recharge areas. District 6 (SF)

**Background and Justification Issues:** One of the management goals outlined in the BCC approved Management Plan for the Pond Cypress Natural Area is to create longer, more stable hydroperiods which mimic the conditions that were present when the site was part of the greater Loxahatchee Slough. It is expected that water levels within the site will be slightly lower during the wet season and somewhat higher during the dry season. ERM and WPB wish to cooperatively manage water levels within the Pond Cypress Natural Area and the Baywinds Preserve to derive the highest functional habitat values and the best use of freshwater resources.

**Attachments:**

1. Interlocal Agreement

**Recommended by:**

  
Department Director

3/22/13  
Date

**Approved by:**

  
County Administrator

4/17/13  
Date

## II. FISCAL IMPACT ANALYSIS

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

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<del>_____</del>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

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

### 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 Dev. and Control Comments:

OFMB 3/28/2013  
3/25/13 3/26/13  
Contract Development and Control 4/4/13  
4-4-13 B. Wheeler

### B. Legal Sufficiency:

Assistant County Attorney  
Assistant County Attorney

### C. Other Department Review:

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

**INTERLOCAL AGREEMENT  
BETWEEN  
CITY OF WEST PALM BEACH  
AND  
PALM BEACH COUNTY  
FOR THE  
BAYWINDS PRESERVE/POND CYPRESS PRESERVE STRUCTURE  
OPERATION & MANAGEMENT PROTOCOL**

WPB Legal No. 08821

THIS INTERLOCAL AGREEMENT (this "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **CITY OF WEST PALM BEACH**, a Florida municipal corporation (the "City") and **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "County"), each one constituting a public agency as defined in Part 1 of Chapter 162, Florida Statutes (hereinafter referred to collectively as the "Parties").

**WITNESSETH:**

WHEREAS, on August 8, 2011, the City of West Palm Beach submitted a Joint Application for Environmental Resource Permit with the South Florida Water Management District (i.e. Authorization to Use State Owned Submerged Lands) and the U.S. Army Corps of Engineers (i.e. Federal Dredge & Fill Permit) for the exclusive purpose of acquiring a Permit; herein referenced as Application No. 110809-1, Permit No. 50-03926-P-09, to construct and operate an interconnect culvert structure, to hydrologically link Palm Beach County's Pond Cypress Preserve and the West Palm Beach's Baywinds Wetland Preserve during specific stage-levels agreed to by both Parties; and

WHEREAS, the County owns and manages 1,736± acres of certain real property, herein after identified as the Pond Cypress Preserve, the location of which is shown on the aerial map attached as **EXHIBIT A**; and

WHEREAS, the City owns 12,672± acres of certain real property, hereinafter identified as the Water Catchment Area, the location of which is shown on **EXHIBIT A**, and an additional adjacent 664± acres of wetland property known as the Baywinds/Andros Isles Wetland Preserves (Baywinds Preserve), the location of which is also shown on **EXHIBIT A**; and

WHEREAS, the City manages the Baywinds Preserve and the Water Catchment Area for surface water resources, along with ecological benefits and services; and

WHEREAS, the County manages the Pond Cypress Preserve under a Management Plan that

prescribes descriptive hydrologic benefit to multivariant wetland and upland species which requires the setting of a target stage-level of 18.5 feet National Geodetic Vertical Datum (NGVD) to derive this benefit and to reduce excessive stage-level increases and subsequent prolonged inundation of onsite upland habitat variants; and

WHEREAS, excess water from Pond Cypress Preserve is currently discharged into water management systems or drainage canals, which lead to the Lake Worth Lagoon and Atlantic Ocean tidal waters via the C-51 canal; and

WHEREAS, such freshwater discharges may become detrimental to downstream estuarine habitat, and should be viewed as a wasted regional freshwater resource; and

WHEREAS, the City wishes to receive such excess water; when available, from the Pond Cypress Preserve for benefit of surface water resource and ecological purposes and the County wishes to supply such water; and

WHEREAS, the Parties wish to make the most efficient and beneficial use of their powers by cooperatively managing the Pond Cypress Preserve and the Baywinds Preserve in a conjunctive manner to derive the highest functional habitat values, environmental purposes and best use of freshwater resources; and

WHEREAS, the County and the City wish to enter into this Interlocal Agreement (the "Agreement") for such benefit and purpose and to cooperate and coordinate within guidelines set forth within this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and of other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Section 1 – Recitals; Authority to Enter into Agreement.**

**1.1 Recitals.** The Parties hereto acknowledge and agree that the Recitals set forth above are true and correct, and are incorporated in this Agreement as if fully set forth herein.

**1.2 Authority.** The Parties are authorized to enter into this Agreement pursuant to Section 163.01, Florida Statutes (2009), known as the "Florida Interlocal Cooperative Act of 1969".

**Section 2 – Intent.**

The Parties desire to set forth their mutual understanding and agreement with respect to the Parties' responsibilities in management of excess water from the Pond Cypress Preserve and the subsequent discharges into the Baywinds Preserve.

### **Section 3. - Water Control Structure.**

**3.1 Construction of Water Control Structure.** The Parties acknowledge that the City has, at its sole cost, designed, permitted and constructed a permanent, adjustable stop-log gated, gravity fed water control structure between the Pond Cypress Preserve and the Baywinds Preserve, at the location shown in **EXHIBIT B** (the "Water Control Structure"). This Water Control Structure is intended to convey excess surface water flows from the Pond Cypress Preserve, southward through the Water Control Structure into the North West corner of the Baywinds Preserve, in accordance with the terms of this Agreement.

**3.2 Operation.** The Water Control Structure will be operated by the City to allow excess water from Pond Cypress Preserve to flow into the Baywinds Preserve, in accordance with South Florida Water Management District permit requirements and this Agreement. The Water Control Structure will be set to initiate passive discharges through the Water Control Structure at 18.5 feet NGVD within Pond Cypress Preserve, and this discharge level will remain static, unless otherwise ordered by the South Florida Water Management District. In the event either party desires to modify this operational protocol and adjust the discharge level of the Water Control Structure, a formal written amendment to this Agreement, duly executed by both Parties, shall be required.

**3.3 Maintenance.** The Water Control Structure will be maintained at the City's cost and expense.

### **Section 4. - Berm Road Access.**

**4.1 License.** The City hereby grants the County a license and right to enter upon and over the shellrock access road along the Water Catchment Area berm which lies directly east of Pond Cypress Preserve, as shown on EXHIBIT A, for the purpose of facilitating the County's management of Pond Cypress Preserve. The City may terminate this license upon sixty (60) days written notice to County.

**4.2 Keys / Gates.** The County acknowledges that it has been provided with a key to the existing City gates on the south M-Canal levee and the western perimeter dike south of the M-Canal, for access to portions of the berm road. These City gates shall be kept closed and locked unless they are being actively used by County or City personnel, or authorized maintenance contractors.

### **Section 5. - Responsibilities of the County**

The County will manage the hydrologic aspects of Pond Cypress Preserve, consistent with SFWMD permit no. 50-05422-P, to maintain and protect the integrity of the surface water and minimize any adverse impacts to the Baywinds Preserve or Water Catchment Area resulting from receiving such water. .

**Section 6. – Term.**

This Agreement shall become effective upon execution by both Parties and shall remain in effect for a period of approximately thirty (30) years, unless sooner terminated pursuant to the terms of this Agreement. This Agreement shall expire on \_\_\_\_\_, 2042, unless extended by an amendment executed by the Parties hereto.

**Section 7. - Notices.**

All notices, consent, approvals and other communications which may be or are required to be given by either the City or the County under this Agreement shall be properly given only if made in writing and sent by (i) hand delivery, (ii) certified or registered mail, postage prepaid, return receipt requested, with all delivery charges paid by the sender, or (iii) facsimile with confirmation of receipt, and addressed to the County or City and their attorneys, as applicable, as follows:

County:

Palm Beach County  
Department of Environmental Resources Management  
Attention: Director  
2300 N. Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, Florida 33411.  
Telephone: (561) 233-2400  
Facsimile: (561) 233-2414

with copy to:

Assistant County Attorney  
Palm Beach County Attorney's Office  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401  
Telephone: (561) 355-2249  
Facsimile: (561) 355-6461

City:

City of West Palm Beach  
Attention: City Administrator (with copy to: City Attorney)  
401 Clematis Street  
West Palm Beach, Florida 33401  
Telephone: (561) 822-1400  
Facsimile: (561) 822-1424

Such notices shall be deemed received: (1) if delivered by hand, on the date of delivery; (2) if sent by certified or registered mail, on the date it is received as evidenced by signature on the return receipt; or (3) if by facsimile, on the date of delivery as shown on the delivery confirmation receipt, unless such date is a weekend or holiday, in which case the facsimile shall be deemed received upon the next business day following delivery. The refusal to accept delivery shall constitute acceptance and, in such event, the date of delivery shall be the date on which delivery was refused. Any change of address must be made by written notice to the other Party and such change shall be effective five (5) days following receipt of such written notice by the other Party. Any change of facsimile number shall be effective upon receipt. If written notice, demand or request is made as provided herein, then in the event that such notice is returned to the sender by the U.S. Postal System because of insufficient address, incorrect address or otherwise (but not refusal of acceptance), such notice shall be deemed to have been received by the Party to whom it was addressed on the date that such was initially placed in the U.S. Postal System by the sender.

#### **Section 8. – Default; Termination; Remedies.**

**8.1 Default.** In the event that a Party breaches the provisions of this Agreement, the non-breaching Party shall provide the breaching Party with written notice specifying the nature of the breach ("Default Notice"). The breaching Party shall cure such breach within thirty (30) days of receipt of the Default Notice, unless the non-breaching Party agrees in writing to additional time to cure the breach.

**8.2 Remedies.** If a Party's breach of any of the provisions of this Agreement extends beyond the cure period as set forth herein, the non-breaching Party is entitled to terminate this Agreement or pursue any available legal and equitable remedies to enforce the Agreement, including but not limited to an action for an injunction.

**8.3 Termination for Convenience.** Either Party may terminate this Agreement for convenience by providing sixty (60) days written notice to the other Party.

#### **Section 9. – General Provisions.**

**9.1 Governing Law; Venue; Waiver of Jury.** This Agreement shall be governed by and construed under the laws of the State of Florida. Venue for any lawsuit filed in connection with this Agreement shall be in Palm Beach County, Florida. THE CITY AND COUNTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT AND ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION THEREWITH.

**9.2 Interpretation.** The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement or any provision hereto. This Agreement shall be construed without regard to any

presumption or other rule requiring construction against the Party causing this Agreement to be drafted. In the event that any provision of this Agreement conflicts or appears to conflict, this Agreement and all exhibits and documents specifically incorporated herein by reference shall be interpreted as a whole to resolve the inconsistency.

**9.3 Non-waiver.** No waiver by the City or County of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to the City or County upon any breach under this Agreement shall impair such right to remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by the City or County of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained.

**9.4 Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by applicable law. If any provisions of this Agreement or the application thereof to any party or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the agreement between the Parties as contained herein, the remainder of this Agreement shall be enforced to the greatest extent permitted by law.

**9.5 Exhibits.** The Exhibits referred in and attached to this Agreement are incorporated herein in full by this reference.

**9.6 No Personal Liability of City or County.** The County acknowledges that this Agreement is entered into by a municipal corporation as the City, and the City acknowledges that this Agreement is entered into by a political subdivision of the State of Florida as the County. The City and County agree that no individual county commissioner, council member, board member, administrative official, employee, or representative of the City or County shall have any personal liability under this Agreement or under any document executed in connection with the transactions contemplated by this Agreement.

**9.7 Recording.** The Parties agree that this Agreement shall be recorded in the Public Records of Palm Beach County at the County's cost and expense.

**9.8 Liability.** Each Party shall be liable for its own actions and negligence and, to the extent permitted by law, the County shall indemnify, defend and hold harmless the City against all actions, claims or damages arising out of the County's actions in connection with this Agreement and any amendment hereto, and the City shall indemnify, defend and hold harmless the County against all actions, claims or damages arising out of the City's actions in connection with this Agreement and any amendment thereto. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either Party for such other Party's negligent, willful or intentional acts or omissions.



**9.9 Insurance.** Without waiving the right to sovereign immunity as provided by Section 768.28, Florida Statutes, the County and the City acknowledge to be insured or self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$100,000 Per Person and \$200,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the County or City maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance on self-insurance under Section 768.28, Florida Statutes, the County and City shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage. The County and the City agree to maintain or to be insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes. When requested, either Party shall provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the other Party agrees to recognize as acceptable for the above mentioned coverages. Compliance with the foregoing requirements shall not relieve the County or the City of its liability and obligations under this Agreement or any amendments hereto. The Parties further agree that nothing contained herein shall be construed or interpreted as: (1) denying to either Party any remedy or defense available to such Party under the Laws of the State of Florida or any political subdivision thereof; (2) the consent of the state of Florida, the Parties, or their agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida or its agents and agencies or any political subdivisions thereof beyond the waiver provided in Section 768.28, Florida Statutes.

**9.10 Enforcement Costs.** Any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective Parties provided, however, that this clause pertains only to the Parties to this Agreement.

**9.11 Remedies.** 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 hereafter 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.

**9.12 Records.** The Parties shall maintain, in accordance with generally accepted governmental auditing standards, all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this Agreement including supporting documentation for any service rates, expenses, research or reports for five (5) years. The Parties shall have the right to examine, in accordance with generally accepted governmental auditing standards, all records directly or indirectly related to this Agreement. In the event that the Parties should become involved in a legal dispute with a third party arising from performance under this Agreement, the Parties shall extend the period of maintenance for all records relating to the Agreement until the final disposition of the legal dispute, and all such records shall be made readily available to the Parties.

**9.13 Public Access to Records.** The Parties shall allow public access to all documents

and materials related to this Agreement in accordance with Chapter 119, Florida Statutes, and related statutes. Should either Party assert any exemption to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive relief or other relief provided by law, shall be upon the Party asserting the exemption.

**9.14 Compliance with Laws.** The Parties and their employees, subcontractors, or assigns, if any, shall comply with all applicable federal, state, and local laws and regulations relating to performance of this Agreement.

**9.15 Non-Discrimination.** No Party hereto shall discriminate against any individual because of that individual's race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation with respect to any activity occurring pursuant to this Agreement.

**9.16 Assignment.** This Agreement shall not be assigned in whole or in part without the prior written consent of both Parties. Any assignment made in whole or in part without the prior written consent of the other Party hereto shall be void and without legal effect.

**9.17 Survival.** The provisions of paragraphs 8.2, 9.1, 9.2, 9.8, 9.9, 9.10 and 9.12 shall survive the expiration or termination of this Agreement. In addition, any covenants, provisions, or conditions set forth in this Agreement that bind the Parties after the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

**9.18 Beneficiaries of Agreement.** It is the intent and understanding that this Agreement is solely for the benefit of the County and the City. No person or entity other than the City or the County shall have any rights or privileges under this Agreement in any capacity whatsoever, either as a third-party beneficiary or otherwise.

**9.19 Entire Agreement; Amendment.** This Agreement, all the Exhibits referenced herein and annexed hereto, and the Management Plan referenced herein contain the final, complete and entire Agreement of the Parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any of the matters connected with this transaction shall be effective for any purpose. This Agreement may only be amended by an agreement in writing signed by the Parties hereto.

[Remainder of this page intentionally left blank  
Signatures on following page.]

IN WITNESS WHEREOF, the City and County have caused this Agreement to be executed as of the day and year first above written.

**CITY:**

ATTEST:

By: Hazel F. Carson  
City Clerk

**CITY OF WEST PALM BEACH,**  
a Florida municipal corporation

By: Geraldine Muoio  
Geraldine Muoio, Mayor

CITY ATTORNEY'S OFFICE  
Approved as to form and legality:  
By: [Signature]  
City Attorney

**COUNTY:**

Date of Execution by County:

\_\_\_\_\_, 2013

ATTEST:  
SHARON R. BOCK  
CLERK AND COMPTROLLER

**PALM BEACH COUNTY, a**  
Political Subdivision of the State of  
Florida

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

By: \_\_\_\_\_  
Steven L. Abrams, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By: [Signature]  
Assistant County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS:

By: [Signature]  
Robert Robbins, Director  
Environmental Resources Management

## **EXHIBITS**

- A     Aerial Map Showing Pond Cypress Preserve, Baywinds Preserve  
and shellrock access road**
- B     Aerial Map showing location of Water Control Structure**

POND CYPRESS PRESERVE - BAYWINDS PRESERVE  
DRAINAGE STRUCTURE

EXHIBIT A

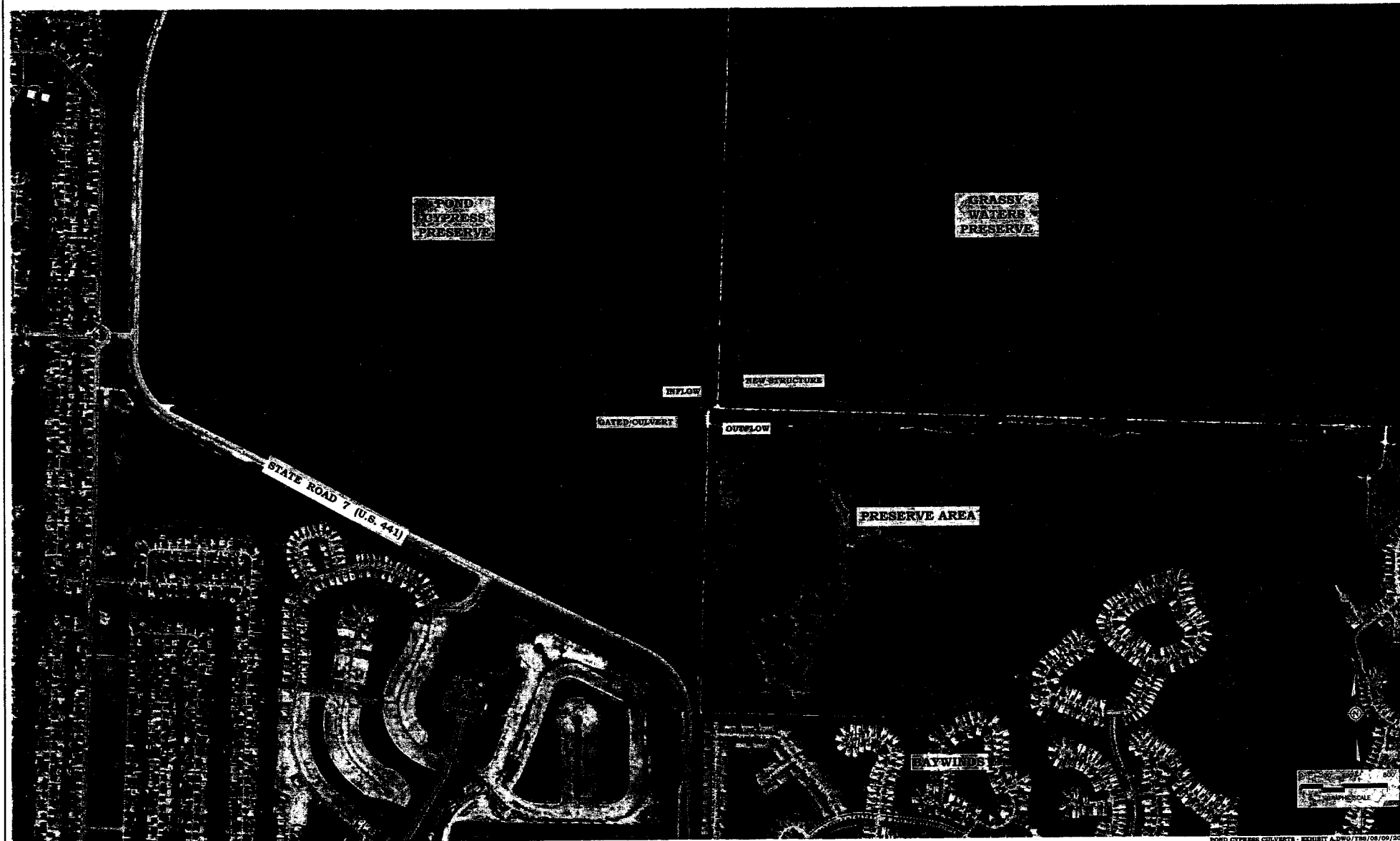
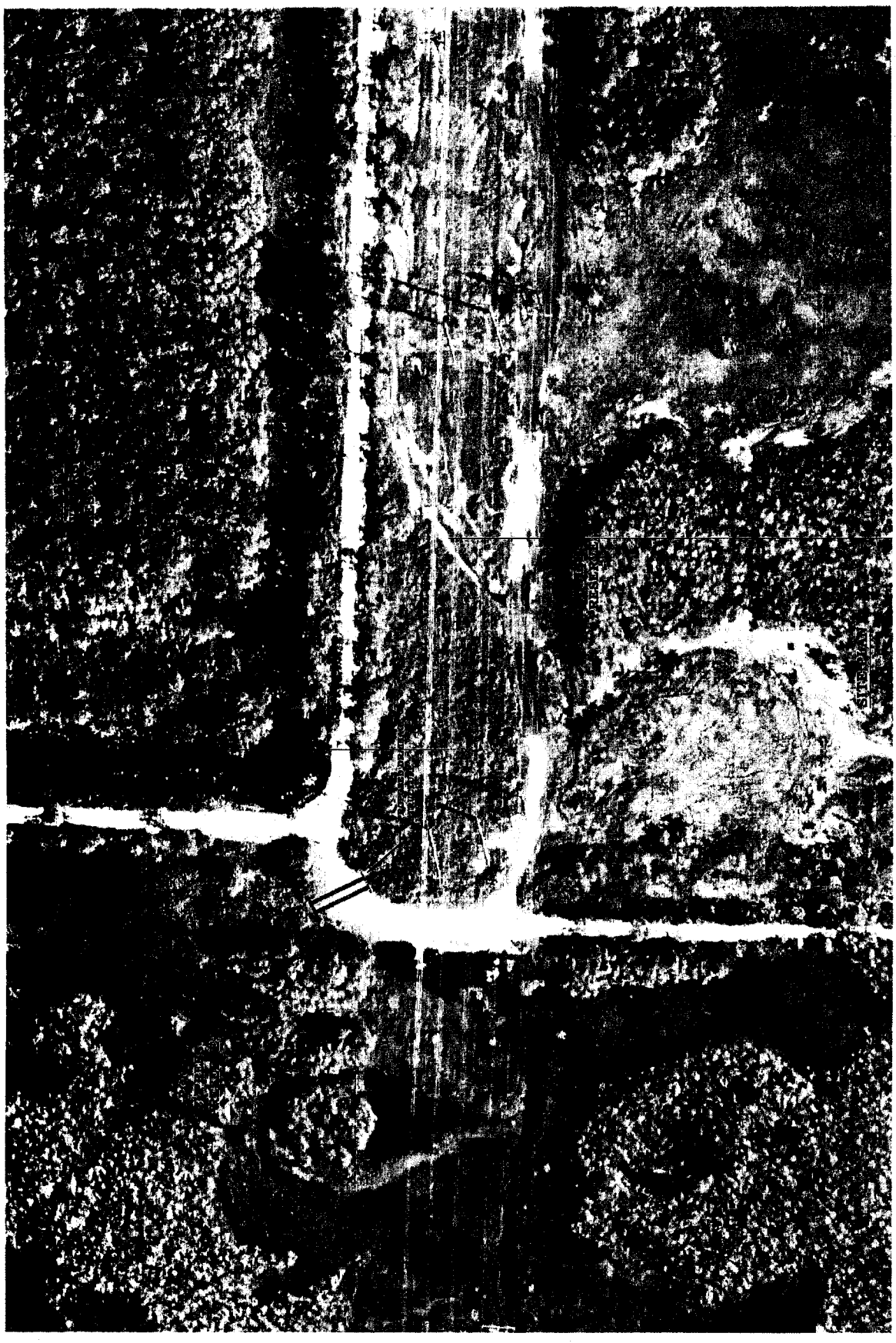


EXHIBIT A

EXHIBIT B

EXHIBIT B



DATE: AUG. 2012  
DRAWN BY: [illegible]  
CHECKED BY: [illegible]  
SCALE: AS SHOWN

NO. DATE BY DESCRIPTION

REVISIONS

CITY OF WEST PALM BEACH  
ENGINEERING & PUBLIC WORKS DEPARTMENT  
AG. CLERMONT  
WFLA 13401  
P.O. BOX 1000  
PALM BEACH, FL 33402-1000  
TEL: (561) 494-3110

POND CYPRESS - BAYWINDS  
DRAINAGE STRUCTURE  
SITE PLAN

SHEET 2 OF 3