

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 15, 2014 (X) Consent () Regular
() Workshop () Public Hearing

Department
Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

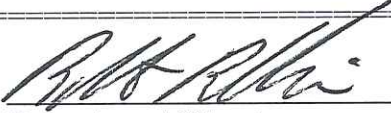
A) **approve** Lease Agreement with the City of Lake Worth (City) for the restoration and management of an approximate 13-acre City tract for a period of nineteen years and eleven months; and


B) **authorize** the County Administrator, or his designee, to sign all future time extensions, task assignments, and other forms associated with this Agreement, and necessary minor amendments that do not significantly change the scope of work, terms or conditions of this Agreement.

Summary: This Agreement provides for the environmental restoration and long-term management of the 13-acre City tract, located south of the Robert Harris Bridge, along the eastern shore of the Lake Worth Lagoon. Once funding is identified, improvements to this site would include environmental restoration, installation of a kiosk and public access infrastructure. The agreement entails no cost to the County. However, any future grants to restore the parcel may be matched from Manatee Protection or the Vessel Registration Funds. District 3 (SF)

Background and Justification: The City and County wish to enter into a lease agreement for managing a 13-acre parcel. Parcel is identified as an important natural resource within the Lake Worth Lagoon Management Plan. The management of this parcel includes preserving the dense beds of seagrasses that lie within the submerged portion of the property, as well as removing exotic vegetation and planting with mangroves and coastal hammock species that lie along the intertidal and emergent areas of the parcel. A pathway and limited parking may also be feasible on an upland portion of the site.

Attachments:
1. Lease Agreement

Recommended by:  3/10/14
Department Director Date

Approved by:  3/20/14
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	_____	_____	_____	_____	_____
 # ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No _____		
Budget Account No.:	Fund _____	Department _____	Unit _____		
	Object _____				

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

No fiscal impact at this time. Funding for improvements are being pursued. On-going maintenance will not begin until improvements are underway. Matching funds are anticipated from Vessel Registration Fees and the Manatee Protection Program.

C. Department Fiscal Review:

[Signature]

III. REVIEW COMMENTS

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

[Signature]

 OFMB
3/25/14

[Signature]

 Contract Development and Control
3-25-14

B. Legal Sufficiency:

[Signature]

 Assistant County Attorney

C. Other Department Review:

 Department Director

**LEASE AGREEMENT
BETWEEN
PALM BEACH COUNTY
AND
THE CITY OF LAKE WORTH**

THIS LEASE AGREEMENT is made and entered into on this _____ day of _____, 2014, by and between the City of Lake Worth, a Florida municipal corporation, hereinafter referred to as the "City", and Palm Beach County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "County". The City and the County shall hereinafter be referred to collectively as the "parties".

WITNESSETH:

WHEREAS, the Florida Interlocal Cooperation Act of 1969 (Section 163.01, Florida Statutes) allows governmental units to enter into intergovernmental agreements to make the most efficient use of their powers by enabling them to cooperate with each other on a basis of mutual advantage; and

WHEREAS, the City owns an approximate 13 acre tract of real property that is located within the City boundaries (the "City tract"); and

WHEREAS, the City supports projects to improve the water quality and habitats within the Lake Worth Lagoon; and

WHEREAS, an environmental restoration project along the shoreline of the City tract is identified in the Lake Worth Lagoon Management Plan endorsed and approved by the County and municipalities that border the Lake Worth Lagoon, including the City of Lake Worth; and

Whereas, the City has designated the City Tract as Conservation on both its Future Land Use Map of the City Comprehensive Plan, and the City's Official Zoning Map; and

WHEREAS, the County and the City deem that it is in the best interest of the residents and citizens of Palm Beach County and the City of Lake Worth to maintain and manage the City tract as a nature preserve, and to preserve the City tract and its associated biological communities in their natural state for future generations as examples of intact native Florida ecosystems; and

WHEREAS, the City and the County wish to restore, improve and protect natural features of the City tract to include: (1) maritime hammock; (2) seagrasses; (3) mangrove wetland; and, (4) oyster reef habitat; and

WHEREAS, the City wishes to lease the City tract to the County and the County wishes to lease the City tract from the City to assist in the construction of the natural features and to manage the City tract; and

WHEREAS, the City wishes to ensure that a portion of the upland property is reserved for possible future public amenities, including parking; and

WHEREAS, the execution of this Lease Agreement is in the best interest of the County, City and the residents and citizens of the same.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and restrictions set forth herein, the parties agree as follows:

ARTICLE I – GENERAL

1. The foregoing recitals are true and correct and are incorporated herein as if fully set forth herein.

2. The purpose of this Lease Agreement is to provide a mechanism for the County and the City to cooperate in the restoration, management, and the construction of environmental restoration features within the City tract.

3. The City tract consists of two plots of land south of Lake Worth Road (SR 802) east of the Intracoastal Waterway and west of State Road A1A. The approximately 13 acres of land is located within the boundaries of the City. The two parcels are described in Exhibit "A" and are referred to herein as the "City tract".

4. The County and City hereby agree to cooperate in the development and construction of environmental enhancement and restoration elements to the City tract including parking and limited public amenities. Work associated with these enhancement and restoration elements are contingent upon available funding. During the life of this Lease Agreement, the County will maintain the environmental enhancement features to be constructed as provided herein. Such environmental enhancement and restoration elements are depicted in Exhibit "B".

5. The City hereby leases and the County hereby accepts the lease from the City of the City tract depicted in Exhibit "A". The City tract shall consist of the real property depicted in Exhibit "A" together with any current or future improvements thereon depicted in Exhibit "B". The County shall pay the City rent at the rate of \$1.00 per year. All rent due hereunder shall be payable in advance on or before the Effective Date. The County is a tax-exempt entity as is evidenced by tax exemption #60-2211419753 C. No sales or use tax shall be included or charged with the annual rent.

6. The term of this Lease Agreement shall commence upon signature by both parties ("the Effective Date") and shall be for a period of nineteen years and eleven months. In accordance with the City's Charter, the City shall use its best efforts to place a referendum before registered voters within ten years of execution of the Lease Agreement to provide for a full 99-year lease term. The parties understand that the County wishes to manage the City tract according to the terms of this Lease Agreement for a period of 99 years

7. The County hereby agrees to manage the City tract as a nature preserve with limited public amenities including parking, and contingent on receipt of necessary approvals, permits and funding, to design and construct environmental enhancement features within the City tract in accordance with this Lease Agreement and in accordance with all applicable federal, state and local laws, rules and regulations.

8. The County shall use its best efforts to maintain and restore existing biological communities on the City tract in their natural state as examples of seagrass, oyster, mangrove, and maritime hammock ecosystems. It is the intent of the parties that the City tract shall be managed as a nature preserve, to provide scientific and educational benefits, and to provide recreational opportunities for residents and citizens of the City and the County. The City tract shall be kept in its natural state such that present and future generations will be able to experience the natural values currently exhibited thereon, acts of God or other events beyond the control of the County or the City notwithstanding.

9. The City shall use its best efforts, through its agents and employees, to prevent the unauthorized use of the City tract or any use not compatible with the management of the site as a nature preserve.

10. The City tract shall be open to the public. Any permanent or temporary restrictions on access will be agreed to jointly by the County and the City prior to the completion of the environmental restoration project.

11. The City agrees that it will not amend the Comprehensive Plan designation on this property without the express consent of the County

12. The City hereby represents and warrants that it is seized of the City tract in fee simple, that it has good title thereto, that it has full right to grant this Lease Agreement of the City tract to the County, and that it is not aware of any hazardous condition on the City tract that might affect any lawful use of the City tract. The City also represents to the County that it is not aware of any chemical, material, or substance on the property that is prohibited, limited, or regulated by federal, state, county, regional, or local authority. The City shall not be required under the terms of this Lease to remove any chemical material or substance that is prohibited, limited, or regulated by federal, state, regional, or local requirements. Notwithstanding, if during the term of this Lease Agreement a hazardous condition or any prohibited, limited, or regulated chemical, material, or substance is discovered on the City tract, the City hereby forever releases the County from any and all liability and responsibility for the same and the County may immediately terminate this Lease upon written notice to the City. In the event that the County causes any hazardous condition on the property, County hereby forever releases the City for any and all liability and responsibility for same.

13. The parties shall prepare, separately or jointly, brochures and other educational material describing the natural resources, uses, and management of the City tract. Any such materials prepared by one party shall be submitted to the other party for its prior review and approval. Approval shall not be unreasonably withheld. The cost of any jointly-prepared materials shall be shared equally by the parties. The costs of any material prepared individually shall be solely that party's responsibility.

ARTICLE II – RESPONSIBILITIES OF THE COUNTY

14. The County agrees to identify a County employee as a contact person to interact with the City in planning for and constructing the restoration project on the City tract and in managing the City tract as a nature preserve.

15. To the extent that funding is available and approved by the Board of County Commissioners, the County will construct all or portions of the environmental enhancement features as depicted in Exhibit B.

16. The County shall manage the City tract for habitat preservation and passive recreation, keeping the City tract in its natural state as agreed upon by both parties as appropriate for a nature preserve. Management shall include, but shall not be limited to, removal of exotic non-native invasive vegetation, planting of native vegetation, preservation of wetland areas, periodic removal of trash and debris during coastal cleanup events, and other maintenance and preservation activities deemed necessary by the County. The County will provide all necessary personnel, professional services, equipment, materials and supplies for ongoing, site-specific management of the City tract.

17. The County will manage the City tract to be consistent with its efforts on a countywide basis to protect ecosystems and populations of listed species throughout the County's natural areas.

18. The County will erect a kiosk identifying the City tract as owned by the City and open to the public as a nature preserve, as having improvements constructed with funding sources from other partners, and as managed by the County.

ARTICLE III – RESPONSIBILITIES OF THE CITY

19. The City shall identify a City employee as the contact person to interact with the County in planning for and constructing the restoration project on the City tract and to assist in managing the City tract as a nature preserve.

20. The City shall assume sole responsibility for public safety and law enforcement within and outside the City tract. The City shall perform routine patrols of the City tract boundaries and use its best efforts to prevent vandalism, vehicular trespass, dumping, and damage to the City tract and natural resources.

21. The City shall assume sole responsibility for the daily opening and closing of any gate providing public access to the City tract. This responsibility may be delegated to a local resident or stewardship group which the City will be solely responsible for.

22. The City shall, in reviewing any proposed changes to, uses of, or activities on, real property immediately adjacent to the City tract, within the jurisdiction of the City, consider the protection of the biological communities on the City tract nature preserve and the potential for adverse impacts to the species present.

23. The City will promptly consult with the County to determine the future of the City tract should any unforeseen events or activities, either natural or human-made, severely limit or eliminate the natural resources presently on the City tract.

ARTICLE IV - DESIGN AND CONSTRUCTION OF ENVIRONMENTAL ENHANCEMENT FEATURES

24. In the event that the County is unable to provide the necessary funds, the County will not be obligated to construct any of the environmental enhancement features pursuant to this Lease Agreement; however, the County will continue to manage the City tract as a nature preserve pursuant to this Lease Agreement.

25. The County shall provide conceptual designs for mangrove, seagrass, oyster and maritime components dependent on the County obtaining the funds, and in accordance with the requirements of this Lease Agreement.

26. The County shall provide a copy of the final design development plans to the City's contact person for review and approval. The City's contact person shall review such plans to ensure consistency with the intent of this Lease Agreement. The City shall expeditiously review and approve any site plan and associated engineering design plans for the proposed project that require approval by the City.

27. The County shall not commence construction of any improvement(s) until the City has approved the final design development plans for such improvement(s). Such approvals shall not be unreasonably withheld.

28. The parties understand and agree that construction of the environmental enhancement features on the City tract is dependent upon receiving all necessary permits and approvals.

29. To the extent permitted by law, the City shall waive any municipal fees, assessments, or permit fees applicable to the City tract due to the construction, use and maintenance of the environmental enhancement features.

ARTICLE IV - MISCELLANEOUS

30. Captions. The Captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

31. Effective Date of Agreement. This Lease Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and the Lake Worth City Commission, and shall become effective only when signed by both parties.

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

33. Insurance. Without waiving the right to sovereign immunity as provided by Chapter 768.28, Florida Statutes, the parties acknowledge to be insured or self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statute with monetary waiver limits of \$200,000 Per Person and \$300,000 Per Occurrence, or such limits that may change and be set forth by the legislature. The parties acknowledge to be insured or self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Chapter 440, Florida Statutes. When requested, the parties agree to provide a Certificate of Insurance evidencing insurance or self-insurance and/or sovereign immunity status, which the parties agree to recognize as acceptable for the above mentioned coverages.

34. Severability. In the event that any section, paragraph, sentence, clause, or provision hereof shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Lease Agreement and the same shall remain in full force and effect.

35. Governing Law. This Lease Agreement shall be governed by the laws of the State of Florida. Venue shall be in Palm Beach County, Florida.

36. Notice. For the purposes of this Lease Agreement, notices to the other party shall be deemed sufficient when addressed to the following persons and addresses and deposited in the United States Mail:

- a. City of Lake Worth
Office of the City Manager
7 North Dixie Highway
Lake Worth, Florida 33460

With copy to:
Law Offices of Glen Torcivia
City Attorney
701 Northpoint Parkway
Suite 209
West Palm Beach, Florida 33407

- b. Palm Beach County
Department Director
Department of Environmental Resources Management
2300 N. Jog Road
West Palm Beach, Florida 33411-2743

With copy to:
County Attorney's Office
Palm Beach County, 6th Floor
301 N. Olive Avenue
West Palm Beach, FL 33401

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

37. Budgetary Approval. This Lease Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding by the Board of County Commissioners of Palm Beach County.

38. Termination.
If either party fails to fulfill its obligations under this Lease Agreement in a timely and proper manner, the other party shall have the right to terminate this Agreement by giving written notice of any deficiency and its intent to terminate. The other party shall then have one hundred and eighty (180) days from receipt of notice to correct the stated deficiency. If the other party fails to correct the deficiency within this time, unless

otherwise agreed by the parties, this Lease Agreement shall terminate at the expiration of the one hundred and eighty (180) day time period.

The County may terminate this Lease for convenience by giving a one year written notice to the City.

39. Non-exclusivity of 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.

40. Non-Discrimination. The parties agree that no person shall, on the grounds of race, color, sex, national origin, disability, religion, ancestry, marital status, age, sexual orientation, familial status, gender identity or gender expression be excluded from the benefits of, or be subjected to any form of discrimination under any activity carried out by the performance of this Lease Agreement.

41. Construction. No party shall be considered the author of this Lease Agreement since the parties hereto have participated in drafting this document to arrive at a final Lease Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it.

42. Recording. The City shall record this Lease Agreement in the public records of Palm Beach County, Florida.

43. Incorporation by Reference. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Lease Agreement by reference.

44. Hazardous Substances. The County shall comply with all applicable Federal, State and local laws, regulations and ordinances protecting the environment and natural resources and regulating hazardous substances.

45. Entirety of Agreement. This Lease Agreement shall be deemed to be the sole agreement between the parties, and no prior agreements or other prior writings shall supersede that which is contained in this Lease Agreement. The Lease Agreement may be amended only by written document executed by both parties.

46. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the any party contracting with the County, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

WHEREFORE, the parties hereto have set their hands and seals on the day set forth next to their signatures.

ATTEST:

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

_____, Clerk

BY: _____
Deputy Clerk

BY: _____
Priscilla A. Taylor, Mayor

DATE: _____

DATE: _____

(SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS:

BY: 
Assistant County Attorney


BY: 
Robert Robbins, Director
Environmental Resources Management

DATE: 2/11/14

DATE: 1-29-14

ATTEST:

CITY OF LAKE WORTH, FLORIDA,
BY ITS COMMISSION

BY: 
Pamela J. Lopez, City Clerk

BY: 
Pam Triolo, Mayor

DATE: 1/12/14

DATE: 1/12/14

(SEAL)

REVIEWED AND APPROVED
FOR EXECUTION:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: 
Michael Bornstein, City Manager

BY: 
City Attorney

DATE: 1/2/14

DATE: 12/31/13

EXHIBIT A

LEGAL DESCRIPTION

A parcel of submerged land in Lake Worth, Palm Beach County, Florida, more particular described as follows:

Beginning at a point in the South right-of-way line of Lake Worth Road at the intersection with the center line of State Road A1A, in Section 26, Township 44 South, Range 43 East, in the City of Lake Worth, Palm Beach County, Florida; thence running North $86^{\circ}00'26''$ West a distance of 500 feet along the South right-of-way line of Lake Worth Road; thence running South $0^{\circ}30'26''$ East parallel to said State Road A1A in the waters of Lake Worth a distance of 1200 feet to the South property line of the Lake Worth Casino property; thence running South $88^{\circ}03'00''$ East a distance of 550 feet, more or less, along said South property line to the centerline of State Road A1A; thence in a Northerly direction along the centerline of said State Road A1A to the point of beginning. LESS the R/W for State Road A1A, containing 13 acres more or less, lying and being in Section 26 and 27, Township 44 South, Range 43 East, Palm Beach County, Florida. Containing 13 acres, more or less, and lying and being in the County of Palm Beach, in said State of Florida, and more particularly described as follows:

Commencing at the intersection of the South right-of-way line of Lake Worth Road (SR 802) and the centerline of State Road A1A (Section No 9306-11) in Section 26, Township 44 South, Range 43 East, in the City of Lake Worth, Palm Beach County, Florida; thence N- $86^{\circ}-00'-26''$ -W, along the said South right-of-way line of Lake Worth Road, a distance of 169.40 feet to the point of beginning; thence continue N- $86^{\circ}-00'-26''$ -W, along the said South right-of-way line of Lake Worth Road, a distance of 330.61 feet to a point; thence S- $0^{\circ}-30'-26''$ -E, a distance of 1227.06 feet to a point on the Easterly extension of the South line of the City of Lake Worth property; thence S- $88^{\circ}-14'-56''$ -E, along the said South line, a distance of 496.05 feet to a point on the Westerly right-of-way line of said State Road A1A; thence Northerly, along the arc of a curve, having a radius of 2914.93 feet and a central angle of $10^{\circ}19'38''$, a distance of 525.40 feet to the end of said curve; thence N- $0^{\circ}-30'-26''$ W, along the Westerly right-of-way line of said State Road A1A, a distance of 569.47 feet to the beginning of a curve, concave to the Northeast, Northwesterly and Westerly, along the arc of said curve, a distance of 192.50 feet to the end of the said curve and the point of the beginning.

LESS the North 400 feet thereof.

Exhibit B

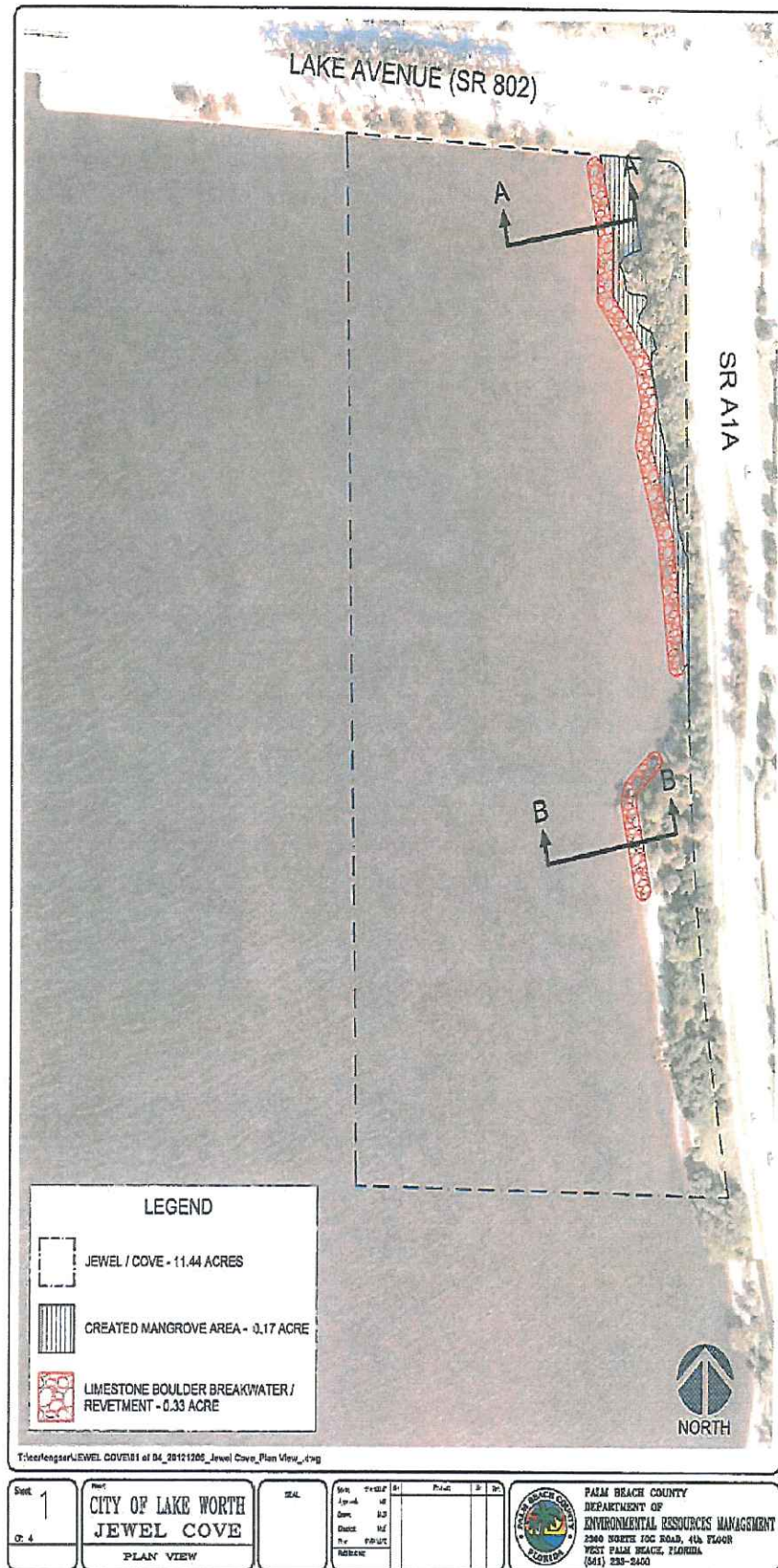


Exhibit
1-B