

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

Meeting Date:	July 22, 2014	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Department: **Facilities Development & Operations**

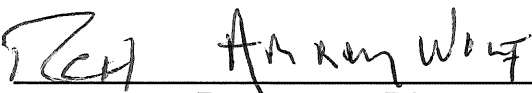
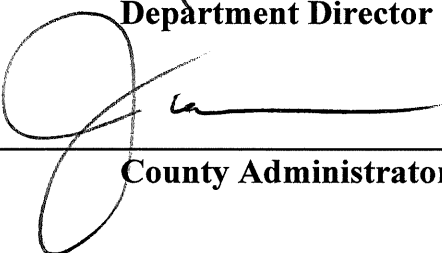
I. EXECUTIVE BRIEF

Motion and Title: **Staff recommends motion to approve:** an Agreement with the South Florida Water Management District (SFWMD) and Florida Fish & Wildlife Conservation Commission (FWCC) consenting to the transfer of 150 acres of the Mecca Farms property to FWCC.

Summary: In 2013, the County sold the 1,896 acre Mecca Farms property to the SFWMD subject to SFWMD’s agreement to comply with County bond limitations and with the understanding that the SFWMD would convey 150 acres in the N.W. corner of the property to FWCC for use as a public shooting range. SFWMD and FWCC are ready to close on the 150 acres. County consent to this transfer is required by the terms of the Sale and Purchase Agreement between the County and SFWMD (R-2013-1514) to ensure that private activity bond limitations are not violated. Pursuant to this Agreement: 1) the County consents to the conveyance to FWCC; 2) FWCC acknowledges the County bond limitations; 3) FWCC agrees not to sell or lease the Property without the County’s consent; and 4) releases SFWMD from liability to the County for FWCC’s failure to comply with County bond limitations. **(PREM) District 1 (HJF)**

Background and Justification: The Bonds issued in conjunction with the acquisition of the Mecca property for the Scripps Biotech Research Park will remain outstanding until maturity in 2027. In the Purchase and Sale Agreement with SFWMD, SFWMD acknowledged the existence of the Bonds, limitations on the use of the property and revenue that can be derived from private activity, and agreed to comply with such limitations. Any proposed transfer or private activity use of the property required the County’s consent. The County’s consent was conditioned upon any proposed transference agreeing to comply with the bond limitations and receipt of an opinion of the County’s bond counsel that such proposed action is in compliance with bond limitations and will not cause the bonds to lose their tax exempt status. Based upon review by the County’s financial advisor and bond counsel, the County represented SFWMD could receive \$250,000 in annual lease payments without violating the bond limitations. This Agreement imposes the same conditions and limitations upon FWCC and imposes a further condition that requires SFWMD consent for any use by FWCC that generates annual revenue in excess of \$125,000.

- Attachments:**
- 1. Location Map
 - 2. Agreement with SFWMD and FWCC

Recommended By:		
	Department Director	Date
Approved By:		7/17/14
	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 _____ Dept _____ Unit _____ Object _____
Program _____

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

*No fiscal impact.

Fixed Assets Number _____

C. Departmental Fiscal Review: _____ *7/15/14*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature]

OFMB *7/16*

[Signature]

Contract Development and Control *7/17/14*
7-17-14 BW hall

B. Legal Sufficiency:

[Signature] *7/17/14*

Assistant County Attorney
Agreement not sign at time of CAO review.

C. Other Department Review:

Department Director

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

LOCATION MAP



**This Instrument prepared by and return to:
South Florida Water Management District
3301 Gun Club Road, P. O. Box 24680
West Palm Beach, FL 33416-4680**

AGREEMENT

Between

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

And

FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION,

And

PALM BEACH COUNTY

On

MECCA FARMS BOND LIMITATIONS

THIS AGREEMENT ("Agreement") is entered this _____ day of _____, 2014, by and between the South Florida Water Management District, a governmental entity of the State of Florida created by Chapter 373, Florida Statutes, whose principal place of business is at 3301 Gun Club Road, West Palm Beach, Florida, 33406 (hereafter "SFWMD"), the Florida Fish and Wildlife Conservation Commission, a Constitutional Agency of the State of Florida, whose principal place of business is at 620 South Meridian Street, Tallahassee, FL 32399-1600 (hereafter "COMMISSION"), and Palm Beach County, a political subdivision of the State of Florida, whose office address is 301 North Olive Avenue, West Palm Beach, Florida 33401 (hereafter "COUNTY"). The SFWMD, COMMISSION, and COUNTY are collectively referred to as the "Parties."

WHEREAS, the COUNTY and SFWMD entered into Sale and Purchase Agreement, executed by the last party on October 22, 2013, ("Sale and Purchase Agreement") for SFWMD's purchase of approximately 1,896.49 acres of real property in Palm Beach County (hereafter referred to as "Mecca Farms"); and

WHEREAS, SFWMD acquired Mecca Farms by COUNTY Deed dated, December 17, 2013, recorded in Official Records Book 26517, Page 902, Public Records of Palm Beach County); and

WHEREAS, under the Sale and Purchase Agreement, certain COUNTY Bond limitations, as further described below, apply to Mecca Farms; and

WHEREAS, the COUNTY's consent is required for any SFWMD transfer of all or part of MECCA Farms to a third party to ensure that such transfer will not result in the Bonds being treated as private activity bonds within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended; and

WHEREAS, SFWMD has conveyed or will convey to the COMMISSION fee title to approximately 150 acres of Mecca Farms, as legally described in attached Exhibit A, made a part hereof, (hereafter "COMMISSION Parcel"); and

WHEREAS, the parties wish to memorialize: (1) the COUNTY's consent to SFWMD's transfer of the COMMISSION Parcel to the COMMISSION, (2) the COMMISSION's obligations as the owner of the COMMISSION Parcel to comply with the COUNTY Bond limitations, and (3) the COUNTY's release of SFWMD from the Bond limitations as applied to the COMMISSION Parcel.

NOW THEREFORE, for Ten Dollars and other valuable consideration, receipt of which is hereby acknowledged, including consideration of the promises and mutual covenants contained in this Agreement, the SFWMD, COMMISSION, and COUNTY do hereby covenant and agree as follows:

1. The factual recitations set forth in the "Whereas" clauses recited above are true and correct, and the same are hereby incorporated into this Agreement.
2. The COUNTY hereby consents to SFWMD's conveyance of the COMMISSION Parcel to the COMMISSION.
3. The COMMISSION acknowledges and understands with respect to the Mecca Farms, which includes the COMMISSION Parcel, the following:

(A) The COUNTY financed and refinanced its acquisition and preliminary development of Mecca Farms, with the following bonds: (i) Public Improvement Revenue Bonds (Biomedical Research Park Project), Series 2004A (the "2004A Bonds"); (ii) Taxable Public Improvement Revenue Bonds (Biomedical Research Park Project), Series 2004B (the "2004B Bonds"); (iii) Public Improvement Revenue Bonds (Biomedical Research Park Project), Series 2005A (The "2005A Bonds"); (iv) Public Improvement Revenue Bonds (Biomedical Research Park Project), Series 2007A (the "2007A Bonds"); (v) Taxable Public Improvement Revenue Bonds (Biomedical Research Park Project), Series 2007B (the "2007B Bonds"); and (vi) Public Improvement Revenue Refunding Bonds, Series 2012 (the "2012 Bonds"); (collectively the 2004A Bonds, the 2004B Bonds, the 2005A Bonds, the 2007A Bonds, the 2007B Bonds, the 2012 Bonds and any bonds issued to refund such bonds which do not increase the par amount or extend the maturity date of the bonds being refunded, are referred to as the "Bonds").

(B) The Bonds were issued pursuant to Resolution Nos. R-2004-0147, R-2004-2086, R-2004-2240, R-2005-0926, R-2007-2053 and R-2012-0525 adopted by the Board of County Commissioners on January 27, 2004, October 5, 2004, October 26, 2004, May 3, 2005, November 6, 2007 and April 3, 2012, respectively (collectively, the "Resolutions").

(C) During the life of the COUNTY Bonds, the latest maturity date of which is November 1, 2027, any sale or lease by the COMMISSION of the COMMISSION Parcel to a non-governmental entity or any private activity use of the COMMISSION Parcel may violate restrictions with regard to the tax exempt status of the Bonds and have enormous financial consequences to the holders of the Bonds and the COUNTY.

3. The COMMISSION hereby covenants that the COMMISSION reasonably expects to use the COMMISSION Parcel for governmental purposes and shall not undertake any sale or lease, or permit any private activity use, or take or permit any other similar action with respect to the COMMISSION Parcel which might cause the Bonds to be treated as private activity bonds within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"), without the prior written consent of COUNTY. COUNTY's consent shall be required for all such proposed transactions and actions, regardless of whether same were contemplated as of the date hereof, and at a minimum shall be conditioned upon:

(i) any proposed transferee or user acknowledging and agreeing to be bound by and comply with the terms of this Agreement; and

(ii) the COUNTY receiving at COUNTY expense an opinion from COUNTY'S bond counsel that the proposed sale, lease, private activity use or other similar transaction will not cause the Bonds to be treated as private activity bonds within the meaning of Section 141 of the Code, and

(iii) the COMMISSION and any proposed transferee or user providing all information, documentation and factual certifications as COUNTY'S bond counsel may reasonably require in order to issue its opinion, and

(iv) SFWMD's prior written consent to any proposed COMMISSION revenue or lease payments arising from the use of the COMMISSION Parcel that will exceed in the aggregate \$125,000 in any calendar year. The COMMISSION and SFWMD acknowledge and agree that any revenue or lease payments arising from use of Mecca Farms by non-governmental persons may not, in the aggregate, exceed \$250,000 in any calendar year while the Bonds are outstanding.

4. If the COMMISSION fails or neglects to perform its covenants under this Agreement, the COUNTY may seek specific performance without thereby waiving any action for damages resulting from the COMMISSION's breach.

5. The COUNTY hereby releases SFWMD from any liability to the COUNTY for (i) SFWMD's transfer of the COMMISSION Parcel to the COMMISSION, or (ii) failure of the COMMISSION to comply with the COMMISSION's obligations pursuant to this Agreement.

6. This Agreement survives SFWMD's transfer of the COMMISSION Parcel to the COMMISSION. The terms and provisions of this Agreement run with the COMMISSION Parcel and are binding on the COMMISSION and its successors and subsequent owners of the COMMISSION Parcel and inure to the benefit of the SFWMD and COUNTY, their successors and assigns. The COMMISSION may not assign this Agreement without the express written consent of the COUNTY as provided in Section 3 of this Agreement.

7. This Agreement shall be filed with the Clerk of the Court for Palm Beach County and made part of the public records for the COMMISSION Property. Upon the expiration of the COUNTY Bonds, upon written request, the COUNTY shall send to the COMMISSION an official notice suitable for recordation stating that the obligations of this Agreement have been fulfilled and that the COMMISSION and the COMMISSION Property is released therefrom.

8. This Agreement shall remain in effect until the Parties complete performance under this Agreement.

9. Any and all notices shall be delivered to the individuals identified below unless the applicable party notifies the other party in writing of a modification. Any notice, request, demand, instruction, or other communication to be given to the Parties hereunder at the address stated below shall be in writing and shall be deemed to be delivered upon the earlier to occur of (1) actual receipt if delivered by hand or by commercial courier (2) the day of receipt by any form of overnight mail service, (2) the date upon which return receipt is signed or delivery is refused or the notice is designated by postal authorities as not deliverable, as the case may be when mailed by registered or certified mail, return receipt requested, or (3) on the date of transmission by telefax, facsimile, or email:

For The COMMISSION:

Mike Brooks, or his successor,
Section Leader, Wildlife and Habitat Management Section
Div. of Habitat & Species Conservation
Florida Fish and Wildlife Conservation Commission
620 S. Meridian Street
Tallahassee, FL 32399-1600
Email address: mike.brooks@MyFWC.com
(850) 488-3831

For The SFWMD:

Ray Palmer, or his successor,
Section Leader, Real Estate
South Florida Water Management District
3301 Gun Club Road
MS Number 5210
West Palm Beach, FL 33406
Email address: rpalmer@sfwmd.gov
(561) 682-2246

For The COUNTY:

Palm Beach County
Property & Real Estate Management Division
Attention: Director
2633 Vista Parkway
West Palm Beach, Florida 33411-5605
Fax: (561) 233-0210

With Copy to:
County Attorney's Office
301 N Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Attention: Howard Falcon, Esquire
Fax: (561) 355-4398

10. Miscellaneous Provisions

(A). Jurisdiction. The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either Party to initiate legal action regarding this Agreement, venue shall be in the Fifteenth Judicial Circuit for claims under state law and in the Southern District of Florida for any claims which are justiciable in federal court.

(B). Independent Contractors. The Parties are independent contractors and are not employees or agents of the other. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent contractor, between the Parties, their employees, agents, subcontractors, or assigns during or after the performance of this Agreement.

(C) No Third Party Benefit. It is the intent and understanding of the Parties that this Agreement is solely for the benefit of the Parties. No person or entity other than the Parties shall have the power to enforce the terms of this Agreement and no person or entity

other than the Parties shall have any rights or privileges under this Agreement in any capacity whatsoever, either as a third-party beneficiary or otherwise.

(D). Waiver. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the Parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the Party against whom enforcement is sought. Such waiver shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

(E). Invalidity. Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.

(F). Amendment. This Agreement may be amended only with the written approval of the Parties.

(G). Entire Understanding. This Agreement states the entire understanding and agreement Between the Parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the Parties with respect to the subject matter of this Agreement. The Parties recognizes that any representations, statements or negotiations made by another party do not suffice to legally bind the other parties in a contractual relationship unless they have been reduced to writing and signed by an authorized representative of the Parties.

(H). Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy or facsimile copy of this Agreement and any signatory hereon shall be considered for all purposes as original.

(I). Interpretation. This Agreement shall be interpreted without regard to any presumption or other rule requiring interpretation against the party causing this Agreement or any part hereof to be drafted or otherwise requiring interpretation against one party or the other.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed through their duly authorized signatories on the day and year last written below.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK. SEPARATE SIGNATURE PAGES FOLLOW ON THE NEXT THREE PAGES]

FLORIDA FISH AND WILDLIFE CONSERVATION
COMMISSION, successor to Florida Game and
Freshwater Fish Commission

Witness

Print/Type Witness Name

Witness

Print/Type Witness Name

By: _____

Title: _____

Executed on: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, as its _____, of the Florida Fish and Wildlife Conservation Commission, who is personally known to me or who has produced _____ as identification.

Notary Public

Print Name: _____

Commission Number: _____

My Commission Expires: _____

Approved as to Form and Legality

By: _____
FWC Attorney

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT, a governmental entity created by
Chapter 373, Florida Statutes.

Witness

Print/Type Witness Name

Witness

Print/Type Witness Name

By: _____

Title: _____

Executed on: _____

Legal Form Approved By:

South Florida Water Management
District Counsel

Date

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of
_____, 2013, by _____ as
_____ of the South Florida Water Management District,
who is personally known to me or who has produced _____ as
identification.

.

Notary Public

Print Name: _____

Commission Number: _____

My Commission Expires: _____

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

PALM BEACH COUNTY, a political
subdivision of the State of Florida

By: _____

Title: Priscilla A. Taylor, Mayor

By: _____
Deputy Clerk

Executed on: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Department Director

STATE OF FLORIDA
COUNTY OF PALM BEACH:

The foregoing instrument was acknowledged before me this _____ day of _____,
2014, by _____, as its _____
of Palm Beach County, who is personally known to me or who has produced
_____ as identification.

(Seal)

Notary Public
Print Name: _____
Commission Number: _____
My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION

Exhibit "A"
Tract Number 23116-041
(Shooting Range)

A parcel of land in the Palm Beach County Biotechnology Research Park, a subdivision in Section 6 Township 42 South, Range 41 East, according to the plat thereof, as recorded in Plat Book 103, page 108, Palm Beach County Florida, public records; said parcel of land being described as follows:

Commence at the Northwest (NW) corner of said Section 6, bear South 00°17'57" East, along the West line of said Section 6, a distance of 200.00 feet to the Northwest (NW) corner of said plat of Palm Beach County Biotechnology Research Park; Thence, North 89°56'58" East, along the North line of said plat, a distance of 200.00 feet to a point on a line 200 feet Easterly of, parallel, contiguous and as measured at right angles to said West line of Section 6; said point also being the **POINT OF BEGINNING**; Thence, continue North 89°56'58" East, along the North line of said plat, a distance of 4284.38 feet;
Thence, South 00°03'02" East, a distance of 1930.02 feet;
Thence, South 89°56'58" West, a distance of 1588.88 feet;
Thence, North 00°03'02" West, a distance of 640.00 feet;
Thence, South 89°56'58" West, a distance of 2689.90 feet to said 200 foot parallel line;
Thence, North 00°17'57" West, along said 200 foot parallel line, a distance of 1290.03 feet to the **POINT OF BEGINNING**.

The above described parcel of land contains 150.14 acres more or less.

The bearings in the above descriptions are based on the West line of said Section 6 as shown on said Plat of Palm Beach County Biotechnology Research Park; said West line bearing South 00°17'57" East.

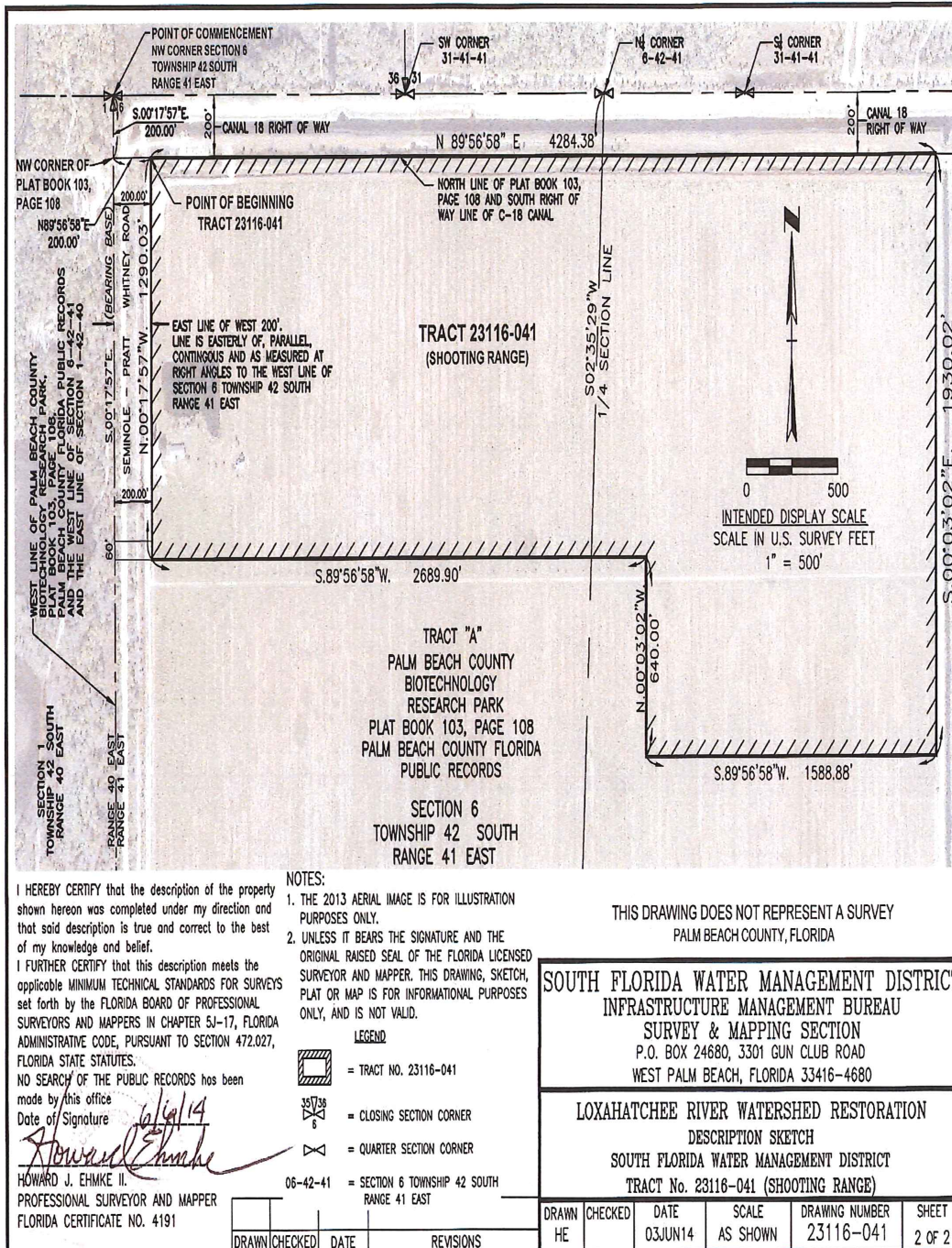
THIS DRAWING DOES NOT REPRESENT A SURVEY
PALM BEACH COUNTY, FLORIDA

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
INFRASTRUCTURE MANAGEMENT BUREAU
SURVEY & MAPPING SECTION
P.O. BOX 24680, 3301 GUN CLUB ROAD
WEST PALM BEACH, FLORIDA 33416-4680

LOXAHATCHEE RIVER WATERSHED RESTORATION
DESCRIPTION SKETCH
SOUTH FLORIDA WATER MANAGEMENT DISTRICT
TRACT No. 23116-041 (SHOOTING RANGE)

				DRAWN	CHECKED	DATE	SCALE	DRAWING NUMBER	SHEET
			REVISIONS	HE		03JUN14	AS SHOWN	23116-041	1 OF 2

Z:\District Projects\Named Projects\Corbett Wildlife Area\Legal Description Sketch (LDSK)\23116-041.dwg



Z:\District Projects\Named Projects\Corbett Wildlife Area\Legal Description Sketch (LJSK)\23116-041.dwg