

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

Meeting Date:	May 5, 2020	<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





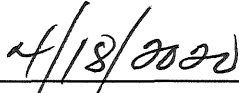
Motion and Title: Staff recommends motion to approve: an Amended and Restated Easement Agreement (Amendment) in favor of the Florida Inland Navigation District (FIND) at the County's Jupiter Beach Park in Jupiter.

Summary: On January 15, 2019, the Board approved an Easement Agreement (Easement) in favor of FIND for beach renourishment at Jupiter Beach Park and Carlin Park (R2019-0051). FIND has requested that the easement area within the Easement be expanded to include additional areas for beach restoration, access, and staging of equipment and materials in connection with FIND's various dredging and/or beach renourishment projects. This Amendment will incorporate the expanded area for restoration, access and staging and will restate some of the provisions previously granted under the Easement. The County will have the right to terminate this Amendment upon 12 months written notice to FIND. The Amendment is being granted to FIND at no charge, as it will provide beach renourishment to the Parks. **(PREM) District 1 (HJF)**

Background and Justification: The Easement that was granted by the County in 2019 allows FIND, at its sole cost and expense, to place or operate pipelines and equipment within the beach area of the Jupiter Beach Park and Carlin Park for the placement of compatible sand to support their beach renourishment project. FIND is requesting an expansion of the existing easement area within the Jupiter Beach Park to facilitate their upcoming dredging project scheduled for fall 2020. The Amendment will incorporate the expanded area for restoration, access and staging and will restate some of the relevant provisions previously granted within the Easement.

Attachments:

1. Location Map
2. Amended and Restated Easement Agreement (w/attachment "A", "B" & "C")

Recommended By:			
		Department Director	Date
Approved By:			
		County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
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 X_____

Does this item include the use of federal funds? Yes _____ No X_____

Budget Account No: Fund _____ Dept _____ Unit _____ Object _____
 Program _____

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

No fiscal impact.

Fixed Asset Number N/A

C. Departmental Fiscal Review: _____

[Handwritten Signature]

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Handwritten Signature] 4/15/2020
 OFMB SC 4/15 BR 4/15 LMS

[Handwritten Signature] 4/16/2020
 Contract Development and Control
 4/16-2020 TW

B. Legal Sufficiency:

[Handwritten Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

TWP 40

1

TEQUESTA

Coral Cove Park

JUPITER INLET COLONY 32

40

2

Jupiter

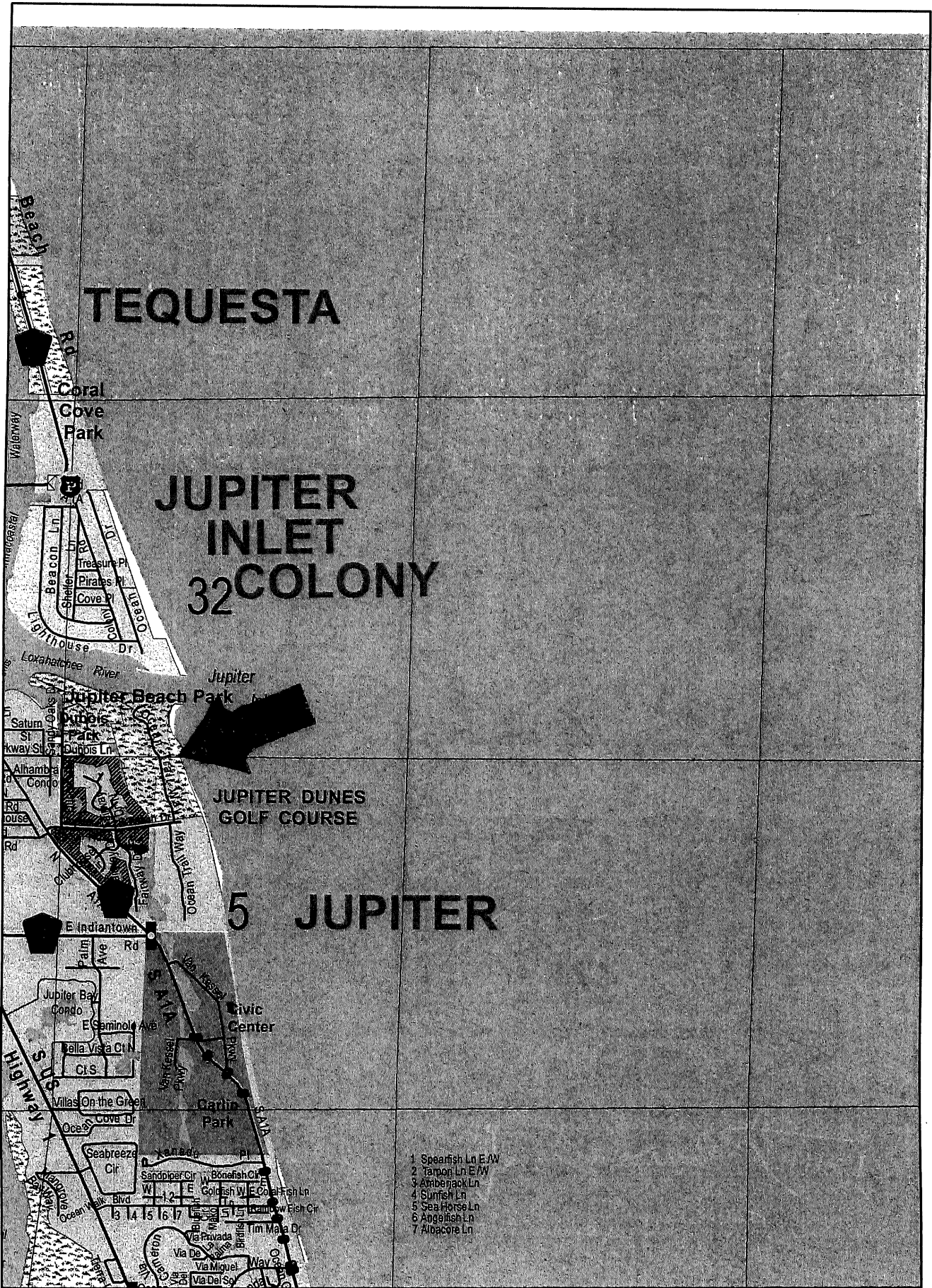
Jupiter Beach Park

JUPITER DUNES GOLF COURSE

5 JUPITER

TWP 41

3



RNG 43

RNG 43

Handwritten signature or initials.

ATTACHMENT NO. 2
Amendment and Restated Easement Agreement – 10 Pages

Prepared By and Return to:
Ben Williamson, Project Manager
Palm Beach County
Property & Real Estate Management Division
2633 Vista Parkway
West Palm Beach, Florida 33411-5605

PCN: 30-43-41-05-00-004-0060 (portion of)
and 00-43-40-30-01-000-2062 (portion of)

AMENDED AND RESTATED EASEMENT AGREEMENT

THIS AMENDED AND RESTATED EASEMENT AGREEMENT is granted this _____ by **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose mailing address is 2633 Vista Parkway, West Palm Beach, Florida 33411-5605 (“County”), to **FLORIDA INLAND NAVIGATION DISTRICT**, a Special Taxing District of the State of Florida, whose mailing address is 1314 Marcinski Road, Jupiter, Florida, 33477-9498 (“District” or “Grantee”).

WITNESSETH:

WHEREAS, County and District entered into an Easement Agreement (“Agreement”) dated January 15, 2019 (R2019-0051), recorded in Official Record Book 30381, Page 1704 in the public records of Palm Beach County, Florida; and

WHEREAS, District has requested additional easement areas across portions of the Jupiter Beach Park (“Park”) as defined herein for access to the easement areas, staging of equipment and materials within the northern paved parking lot of the Park property, and placement or operations from time to time of pipeline and equipment in connection with pumping sand for the District’s various dredging and/or beach renourishment projects; and

WHEREAS, the legal description within Exhibit “A” of the Agreement (the “Original Legal Description”) is being revised and replaced with Exhibit “A” attached hereto and made a part hereof (hereinafter called the “Restoration Easement Area”), to incorporate a northeastern portion of the Park property; and

WHEREAS, the parties agree to terminate and replace the Agreement with this Amended and Restated Easement Agreement in order to incorporate the access and staging easement areas, and the revised legal description.

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration paid, the receipt and sufficiency of which are hereby acknowledged, County hereby grants unto District, its successors and assigns, a

perpetual non-exclusive easement (the "Easement"), in, on, over and across the Restoration Easement Area to prepare, plan, construct, operate, maintain, repair, replace and remove pipelines and other equipment used from time to time in connection with the pumping, transmission, and placement of compatible sand in connection with the District's dredging and/or beach renourishment projects and the use of pipes and construction equipment (the "Dredging Activities") in connection therewith, to or across the Restoration Easement Area.

Together with the right to deposit compatible material, alter contours, construct berms, place and remove equipment and supplies on said Restoration Easement Area, and any other work as may be required for the construction and maintenance of any District dredging and/or beach renourishment project.

Together with the right to use the Restoration Easement Area and that portion of the Park property as depicted on Exhibit "B" attached hereto and made a part hereof (the "Staging Easement Area") as a staging area for the Dredging Activities, including the movement, storage, and removal of equipment and supplies, the erection and removal of temporary structures and other work necessary and incident to the Dredging Activities (the "Staging Activities"). The Restoration Easement Area and the Staging Easement Area will be collectively referred to hereafter as the ("Easement Premises").

Together with the right of reasonable ingress and egress to said Restoration Easement Area across that portion of the Park property as depicted on Exhibit "C" attached hereto and made apart hereto (the "Access Easement Area"). The Easement Premises and Access Easement Area will be collectively referred hereafter as the "Restoration/Staging/Access Easement Premises".

THE CONDITIONS OF THIS RIGHT OF USAGE ARE SUCH THAT:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. District shall cause all work in the Easement Premises to be in compliance with the permit for such work issued by the Florida Department of Environmental Protection ("FDEP") for such work. District shall obtain from County and/or any other necessary governmental entities any permits for the projects that might be required prior to commencement of the projects. Projects shall be performed at District's sole cost and expense and within the confines of the Easement Premises in accordance with the approved plans and all permits, and applicable statutes, rules, regulations, codes and ordinances.

3. County reserves the right to terminate this Easement upon 12 months written notice to District, after which District shall promptly deliver to County a Release of Easement, in a form satisfactory to County, if so requested by County.

4. District shall provide a thirty (30) day written notice of the date of commencement of any project (the "Commencement Date") to the County's Department of Environmental Resources Management ("ERM"), 2300 North Jog Road – Fourth Floor, West Palm Beach, FL 33411-2743, Attn: Environmental Director. A copy of the notice shall be provided to the County's Property & Real Estate Management Division ("PREM"), 2633 Vista Parkway, West Palm Beach, FL 33411-5605, Attn: Director.

5. District further expressly agrees to maintain in good condition and repair, at its sole cost and expense, its equipment located within the Easement Premises at all times during the term hereof. District shall require its contractors or subcontractors (collectively referred to hereinafter as "Contractor") to maintain in good condition and repair, at their sole cost and expense, their equipment within the Easement Premises at all times during the term hereof. District shall be solely responsible for and shall, at its own cost and expense, promptly repair any damage arising out of District's exercise of the rights granted hereby and restore any improvements or landscaping existing or constructed or installed within the Restoration/Staging/Access Easement Premises to the condition it was in prior to such damage, using materials of like kind and quality.

6. District shall be liable for its own actions and negligence and, to the extent permitted by law, shall indemnify, defend and hold harmless County against any actions, claims, or damages arising out of District's negligence in connection with this Easement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes Section 768.28, nor shall the same be construed to constitute agreement by District to indemnify County for County's negligent, willful or intentional acts or omissions.

7. Neither County's nor District's interest in the Restoration/Staging/Access Easement Premises shall be subject to liens arising from District's or any other person or entity's use of the Restoration/Staging/Access Easement Premises, or exercise of the rights granted hereunder. District shall promptly cause any lien imposed against the Restoration/Staging/Access Easement Premises to be discharged or bonded off, pursuant to Chapter 255.05 and Chapter 713 of the Florida Statutes. In addition, District shall require all contractors to furnish a payment and performance bond in accordance with Florida Statutes Section 255.05.

8. Grantee shall cause any Contractor exercising the rights granted by this Easement within the Restoration/Staging/Access Easement Premises on behalf of Grantee to, at all times, maintain in full force and effect General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars

(\$3,000,000) general aggregate, bodily injury and property damage liability coverage, and Workers Compensation covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for the Restoration/Staging/Access Easement Premises, Operations, Contractual Liability, Independent Contractors Contractual Liability, and Broad Form Property Damage Liability coverages. In addition, Contractor shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event Contractor does not own any automobiles, Contractor shall maintain Hired & Non-Owned Auto Liability in such amount. Coverage shall be provided on a primary basis.

Except for Workers Compensation, all insurance policies shall name County as Additional Insured. Such insurance shall be issued by an insurance company licensed to do business in the State of Florida and approved by County.

Grantee shall cause Contractor to provide a Certificate of Insurance evidencing such insurance coverage prior to the commencement of any work pursuant to this Easement, such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage, to:

Palm Beach County Board of County Commissioners
Insurance Compliance
PO Box 100085- DX
Duluth, GA 30096
pbcounty@ebix.com

The required certificates must be signed by the authorized representative of the Insurance Company shown on the certificate.

In no event shall the limits of said insurance policies be considered as limiting the liability of Grantee under this Agreement. Furthermore, Grantee shall and hereby does hold County harmless, to the extent permitted by law, from any loss or damage incurred or suffered by County due to Contractor's failure to maintain such insurance. The amount of the insurance required hereby shall be increased every ten (10) years by the increase over such ten (10) year period of the Consumer Price Index.

9. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Easement shall be in a state court of competent jurisdiction in Palm Beach County, Florida. This Easement shall not be construed more strongly against any party regardless of who was responsible for its preparation or drafting.

10. This Easement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and may not be modified or amended, except in a writing signed by all of the parties hereto.

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

12. District's use and enjoyment of and interest in the Restoration/Staging/Access Easement Premises is and shall be strictly limited to that specifically granted herein. District shall exercise the rights granted hereunder in a manner which does not unreasonably interfere with and minimizes the impact upon County's use and enjoyment of the Restoration/Staging/Access Easement Premises and County's adjoining property.

13. This Easement may not be assigned by District. Notwithstanding the foregoing, District may assign its rights under this Easement to U.S. Army Corps of Engineers "USACE" on a permanent, temporary or periodic basis provided that the District shall remain liable for its obligations under this Easement to the extent not assumed by USACE. In the event of such an assignment, contractors of either the District or USACE may be used for projects.

14. The grant of Easement contained herein is for the use and benefit of District and is not intended and shall not be construed as a dedication to the public of any portion of the Restoration/Staging/Access Easement Premises for public use.

15. By exercise of the rights granted to District by this instrument, District acknowledges and agrees that the conditions and restrictions imposed herein shall bind and be enforceable against District, its successors and assigns to the same extent as if such party had physically executed this instrument.

16. It is understood and agreed by the parties hereto that all such work shall be conducted in a workmanlike manner in compliance with all applicable permits. During sea turtle nesting season, District shall properly monitor the habitats of sea turtles and any other imperiled species in the manner prescribed by FDEP, the Florida Fish and Wildlife Conservation Commission and United States Fish and Wildlife Service according to all required permit conditions.

17. Upon conclusion of any project work, all pipes and equipment shall be completely removed from the Easement Premises and the Restoration/Staging/Access Easement Premises shall be restored substantially to the condition it was in at the time of commencement of the work, except for any additional sand.

18. The grant of this Easement shall in no way restrict the right and interest of County in the use, maintenance and quiet enjoyment of the Restoration/Staging/Access Easement Premises to the extent that such does not interfere with the rights granted herein.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, County has caused this Easement to be executed in its name, by its proper officers thereunto duly authorized, the day and year first above written.

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Dave Kerner, Mayor

Signed and delivered
in the presence of:

Witness Signature

Print Witness Name

Witness Signature

Print Witness Name

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: Jean Adel Williams
Assistant County Attorney

By: Pat Arney Wolf
Department Director

EXHIBIT "A"
RESTORATION EASEMENT AREA

Parcel "1"

PCN: 30-43-41-05-00-004-0060 (portion of)

The undeveloped beach front portion of the following described parcel lying seaward of the beach vegetation line and west of the mean high water line.

A parcel of land being all of Government Lots 6 & 7 in Section 5, Township 41 South, Range 43 East, Palm Beach County, Florida as set forth in Deed Book 1050 at Page 470 of the Public Records of said Palm Beach County.

(Carlin Park)

Parcel "2"

PCN: 00-43-40-30-01-000-2062 (portion of)

The undeveloped beach front portion of the following described parcel lying seaward of the beach vegetation line and west of the mean high water line.

A parcel of land lying in Section 5, Township 41 South, Range 43 East and Section 32, Township 40 South, Range 43 East, Palm Beach County, Florida as set forth in Deed Book 703 at Page 466 and Deed Book 703 at Page 468 of the Public Records of said Palm Beach County.

Less and except road right-of-way.

(Jupiter Beach Park)

EXHIBIT "B"
STAGING AREA
LOCATED IN SEC 5, TWN 41, RGE 43, AS DEPICTED BELOW IN THE
SOUTHERN PORTION OF JUPITER BEACH PARK
(PCN: 00-43-40-30-01-000-2062)

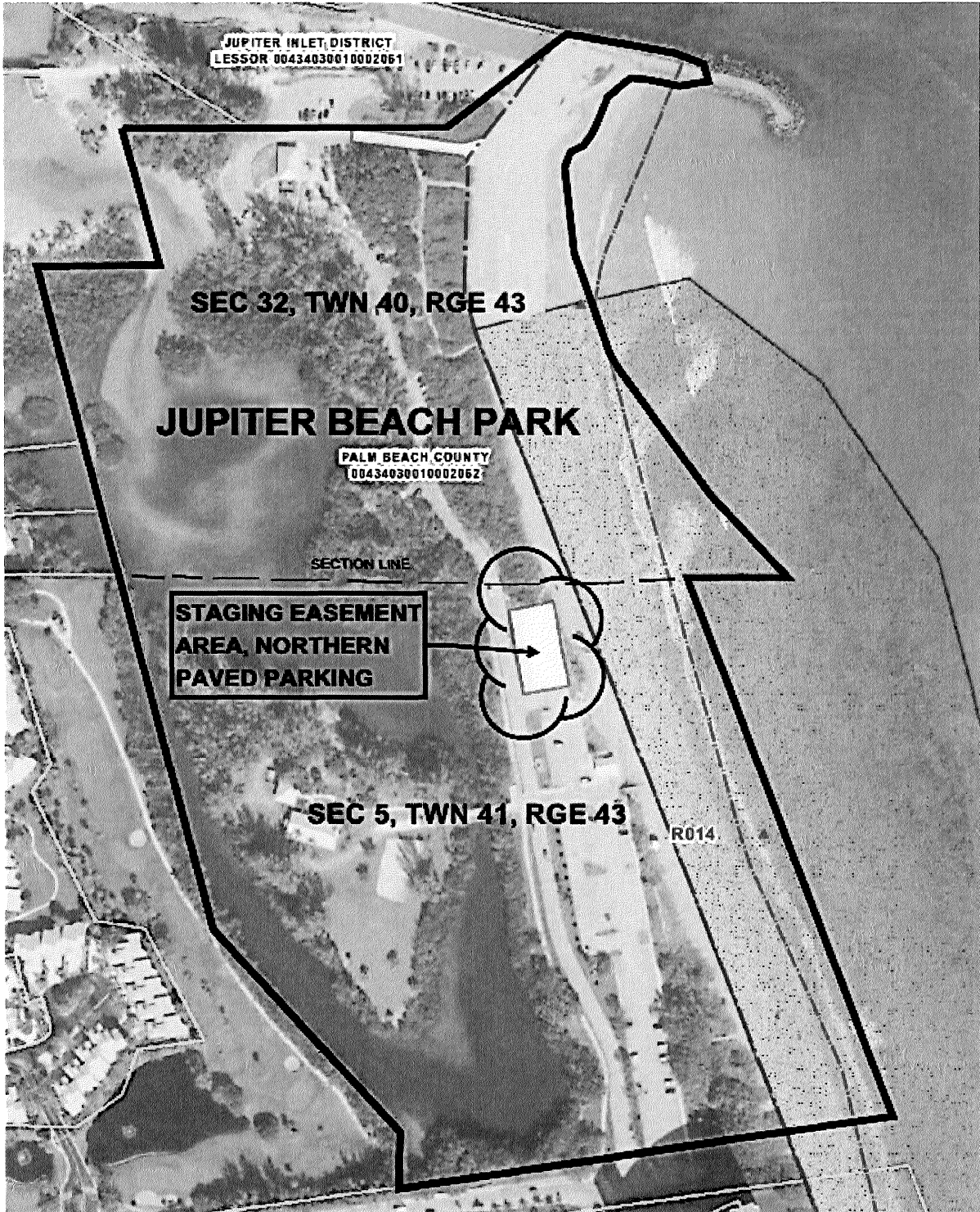


EXHIBIT "C"
ACCESS EASEMENT
LOCATED IN SEC 32, TWN 40, RGE 43, AS DEPICTED BELOW IN THE
NORTHERN PORTION OF JUPITER BEACH PARK
(PCN: 00-43-40-30-01-000-2062)

