

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 2, 2020 [X] Consent [] Regular
[] Ordinance [] Public Hearing
Department: Engineering and Public Works
Submitted By: Engineering and Public Works
Submitted For: Roadway Production Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a subordination of utility interests (Subordination) agreement for reimbursement for additional facility relocations with Loxahatchee River Environmental Control District (ENCON) on a parcel of land located at the southwest corner of Roebuck Road and Loxahatchee River Road.

SUMMARY: Approval of the subordination agreement will subordinate ENCON’s utility easement interests and allow Palm Beach County (County) to accept a warranty deed for additional right-of-way. As part of the development conditions associated with Family Church 5 LLC, the property owners are required to provide the County with 63.5 feet of right-of-way on Roebuck Road, and 70 feet of right-of-way on Loxahatchee River Road. This right-of-way is encumbered by an ENCON sewer easement. The subordination agreement requires ENCON to relocate any facilities it may have from the dedicated right-of-way, when and if requested by the County, and requires the County to pay for reasonable relocation costs of said facilities. ENCON has negotiated their subordinations to not include the indemnity provision associated with PPM CW-F-049. This has been reviewed by the County Attorney’s office and Risk Management. District 1 (YBH)

Background and Justification: The parcel of land to be conveyed is encumbered by a sewer easement in favor of ENCON. Land conveyed to the County is required to be free and clear of all encumbrances. ENCON has already executed the subordination agreement. The Engineering Department recommends the Board of County Commissioners’ approval.

Attachments:

- 1. Location Map
- 2. Subordination of Utility Interests with Exhibit “A”

Recommended by: [Signature] County Engineer Date 9/27/2020
Approved by: [Signature] Assistant County Administrator Date 5/13/20

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ **	-0-	-0-	-0-	-0-
# 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

Recommended Sources of Funds/Summary of Fiscal Impact:

**This item has no additional fiscal impact.

Approval of the Subordination of Utility Interests may require the expenditure of funds for future relocation of utility facilities. This potential impact is not possible to quantify or state with any certainty that it will occur at the present time.

C. Departmental Fiscal Review:

atwillh-te

III. REVIEW COMMENTS

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

[Signature] 4/28/2020 *5/13/2020*
OFMB ASD 8/34/26
5/8

[Signature] 5/11/2020
Contract Dev. and Control

B. Approved as to Form and Legal Sufficiency:

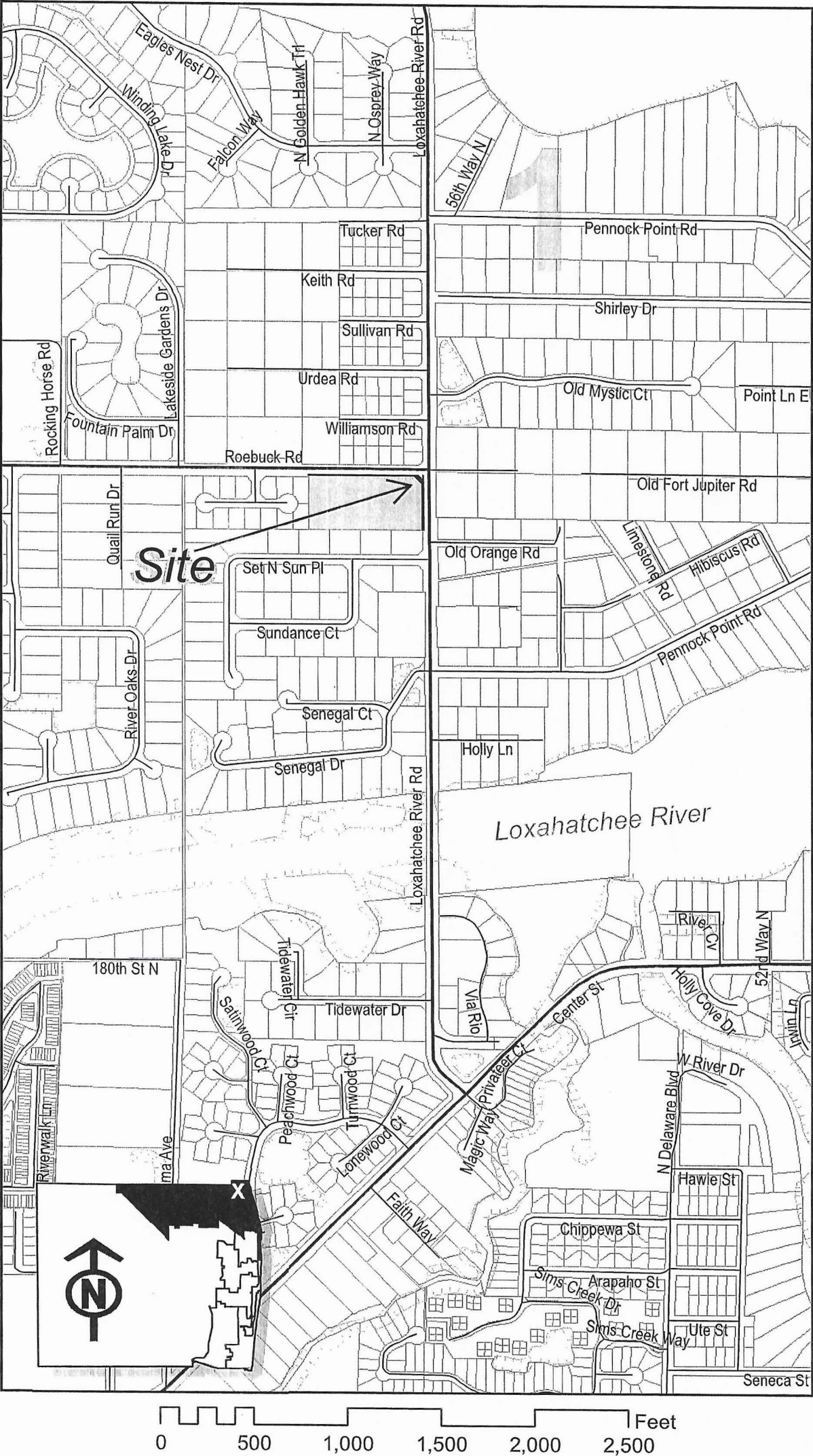
[Signature] for.
Assistant County Attorney

C. Other Department Review:

/s/ Yelizaveta B. Herman
Department Director

04.09.2020

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



Return via Palm Beach County interoffice mail to:
Brent Enck, Right-of-Way Specialist
Palm Beach County, Engineering & Public Works Department
Roadway Production Division
2300 North Jog Road, 3rd Floor West
West Palm Beach, Florida 33411-2750

This Instrument Prepared by:
Yelizaveta B. Herman, Assistant County Attorney
Palm Beach County Attorney's Office
Post Office Box 21229
West Palm Beach, Florida 33416-1229

Property Control Number: Portion of 00-42-40-35-00-000-7010

NOT TO BE RECORDED WITHOUT BOARD OF COUNTY COMMISSIONERS ACCEPTANCE DATE

SPACE ABOVE THIS LINE FOR PROCESSING DATA

PROJECT NO.: MRT 2019-017			
ROAD	NAME:	ROEBUCK	ROAD @
LOXAHATCHEE RIVER ROAD			
PARCEL NO.: RW			

SUBORDINATION OF UTILITY INTERESTS

THIS SUBORDINATION is entered into this _____ day of _____, 20____, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose post office address is Post Office Box 21229, West Palm Beach, Florida 33416-1229, (“County”) and **LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT**, an Agency of the State of Florida, created by a Special Act of Legislature, Chapter 71-822 as amended, whose post office address is 2500 Jupiter Park Drive, Jupiter, Florida 33458-8962, (“Utility”).

WHEREAS, the Utility presently has easements on certain property that has been determined necessary for public purposes; and,

WHEREAS, the proposed use of this property will require subordination to the County of the interests claimed in said property by the Utility, and at the request of the County, the Utility has agreed, subject to the following conditions, to relocate its facilities from the Utility’s easement onto public right-of-way, or has agreed to leave its facilities on the subordinated property (“Property”), described in **Exhibit “A”** attached hereto and made a part hereof; and,

WHEREAS, the County is willing to pay to have the Utility’s facilities relocated as necessary to prevent conflict between the facilities so that the benefits of each may be retained.

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, the Utility and the County agree as follows:

1. The Utility hereby subordinates any and all of its interest in that portion of the following easements lying within the Property, to the interest of the County, its successors or assigns, through, under, upon or across the Property;

<u>NATURE OF ENCUMBRANCE</u>	<u>DATE</u>	<u>AGAINST</u>	<u>RECORD IN FAVOR OF</u>	<u>FROM OR BOOK / PAGE</u>
Easement	12/5/1994	Central Baptist Church of Jupiter, Florida Inc.	Loxahatchee River Environmental Control District	ORB8529/PG1101
Easement	11/9/2012	First Baptist Church of West Palm Beach, Inc.	Loxahatchee River Environmental Control District	ORB25585/PG127

2. The Utility shall have the right to construct, operate, maintain, improve, add to, upgrade, remove, and relocate facilities on, within, and upon all the Property in accordance with the County’s current minimum standards for such facilities as of the date of such construction. Any new construction or relocation of the facilities within the Property will be subject to prior approval by the County. Should the County fail to approve any new construction or relocation of facilities by the Utility or hereafter require the Utility to alter, adjust or relocate its facilities from within the Property, the County hereby agrees to pay the Utility’s reasonable cost of any required alteration, adjustment or relocation, caused by the County’s actions, including the cost of acquiring the necessary easements.
3. The Utility shall have a reasonable right to enter upon the Property for the purposes outlined in paragraph 2 above, including the right to trim such trees, bushes, and growth which might endanger or interfere with the operation and safety of the Utility’s facilities.
4. Each party shall be liable for its own actions and negligence and, to the extent permitted by law, County shall indemnify, defend and hold harmless Loxahatchee River Environmental Control District against any actions, claims or damages arising out of County’s negligence in connection with this Agreement, and Loxahatchee River Environmental Control District shall indemnify, defend and hold harmless County against any actions, claims, or damages arising out of Loxahatchee River Environmental Control District’s negligence in connection with this Agreement. 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 either party to indemnify the other party for such other party’s negligent, willful or intentional acts or omissions.
5. This subordination shall be attached as an addendum to the permit required by the County for location of facilities on the Property.
6. This subordination is not assignable except to the State of Florida or other governmental entity for the purposes described herein.
7. This subordination is not intended to, nor shall it be construed, to create a third party beneficiary.

IN WITNESS WHEREOF County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Mayor or Vice Mayor of said Board, the day and year aforesaid.

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By:  _____
Assistant County Attorney

**APPROVED AS TO TERMS AND
CONDITIONS**

By:  _____
Division Director

County:

PALM BEACH COUNTY,
a political subdivision of the State of Florida,
by and through its Board of County Commissioners

By: _____
Dave Kerner, Mayor

(Official Seal)

Signed, sealed and delivered in the presence of:

(Signature of two witnesses
required by Florida law)

Debra Henderson
Witness Signature (Required)

Debra Henderson
Witness Name Printed or Typed

Tara Simon
Witness Signature (Required)

Tara Simon
Witness Name Printed or Typed

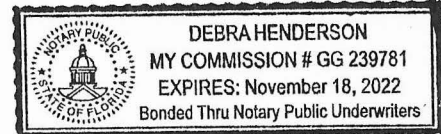
STATE OF Florida

COUNTY OF Palm Beach

Before me personally appeared D. Albrey Arrington, in person, who is personally known to me, or has produced personally known as identification, and who executed the foregoing instrument as Executive Director of LOXAHATCHEE RIVER ENVIRONMENTAL CONTROL DISTRICT, an Agency of the State of Florida, and severally acknowledged to and before me by means of (choose one) physical presence or online notarization, that they executed such instrument as such officer of said company, and that said instrument is the free act and deed of said company.

Witness my hand and official seal this 17th day of April, 2020.

(Stamp/Seal)



Debra Henderson
Notary Signature
Notary Public, State of Florida

Debra Henderson
Print Notary Name
GG 239781
Commission Number
My Commission Expires: 11-18-2022

Utility:

LOXAHATCHEE RIVER ENVIRONMENTAL
CONTROL DISTRICT,
an Agency of the State of Florida

By: D. Albrey Arrington

Print Name: D. Albrey Arrington

Title: Executive Director

(CORPORATE SEAL)

LEGAL DESCRIPTION

BEING A PORTION OF A SEWER EASEMENT, AS RECORDED IN OFFICIAL RECORDS BOOK 25585, PAGE 127, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, AND A PORTION OF A SEWER EASEMENT, AS RECORDED IN OFFICIAL RECORDS BOOK 8529, PAGE 1101, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTION 35, TOWNSHIP 40 SOUTH, RANGE 42 EAST, SAID LAND SITUATE, LYING AND BEING IN PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 35, AS SHOWN ON THE PLAT OF JUPITER HIGHLANDS AS RECORDED IN PLAT BOOK 25, PAGE 241, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; RUN THENCE NORTH 89°55'09" WEST, ALONG THE CENTERLINE OF ROEBUCK ROAD, A DISTANCE OF 110.46 FEET; THENCE SOUTH 00°04'51" WEST, (DEPARTING SAID CENTERLINE), A DISTANCE OF 30.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF ROEBUCK ROAD, SAID POINT ALSO BEING THE POINT OF BEGINNING, SAID POINT ALSO HEREAFTER REFERRED TO AS REFERENCE POINT "A"; THENCE SOUTH 44°58'03" EAST, A DISTANCE OF 4.95 FEET; THENCE NORTH 89°55'09" WEST, A DISTANCE OF 541.07 FEET; THENCE NORTH 00°01'11" WEST, A DISTANCE OF 3.50 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF ROEBUCK ROAD; THENCE SOUTH 89°55'09" EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 537.57 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

COMMENCING AT SAID REFERENCE POINT "A"; RUN THENCE SOUTH 89°55'09" EAST, ALONG THE EXISTING SOUTH RIGHT-OF-WAY LINE OF ROEBUCK ROAD, A DISTANCE OF 52.64 FEET; THENCE SOUTH 45°05'52" EAST, A DISTANCE OF 21.30 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 45°05'52" EAST, A DISTANCE OF 14.17 FEET; THENCE SOUTH 00°16'29" EAST, (DEPARTING SAID SOUTH RIGHT-OF-WAY LINE), A DISTANCE OF 91.44 FEET; THENCE SOUTH 89°42'55" WEST, A DISTANCE OF 7.00 FEET; THENCE NORTH 00°16'29" WEST, A DISTANCE OF 73.24 FEET; THENCE NORTH 45°05'49" WEST, A DISTANCE OF 4.24 FEET; THENCE NORTH 00°17'05" WEST, A DISTANCE OF 25.26 FEET TO A POINT ON THE EXISTING SOUTH RIGHT-OF-WAY LINE OF ROEBUCK ROAD, SAID POINT ALSO BEING THE POINT OF BEGINNING.

CONTAINING 2,628.1 SQUARE FEET, OR 0.0603 ACRES, MORE OR LESS.

NOT A SURVEY

EXHIBIT A

SHEET 1 OF 7

TIMOTHY M. SMITH
LAND SURVEYING, INC.

4546 CAMBRIDGE STREET
WEST PALM BEACH, FL 33415
(561) 602-8160
LB #6865



EXHIBIT A
SUBORDINATION
AGREEMENT
SKETCH OF LEGAL
DESCRIPTION

SCALE:	N/A
DATE:	JULY 2019
DIRECTORY:	FAMILOXA
FIELD BOOK:	N/A
DWG NO.:	FAMILOXA SK03

CERTIFICATION

I HEREBY CERTIFY THAT THE ATTACHED SKETCH OF LEGAL DESCRIPTION OF THE HEREON DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION ON AUGUST 2, 2019. I FURTHER CERTIFY THAT THIS SKETCH OF LEGAL DESCRIPTION MEETS THE STANDARDS OF PRACTICE SET FORTH IN RULE 5J-17 F.A.C., ADOPTED BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO FLORIDA STATUTES 472.027.

Timothy M. Smith

TIMOTHY M. SMITH, P.S.M.
FLORIDA REGISTRATION NO. 4676

NOT A SURVEY

EXHIBIT A

SHEET 2 OF 7

TIMOTHY M. SMITH
LAND SURVEYING, INC.

4546 CAMBRIDGE STREET
WEST PALM BEACH, FL 33415
(561) 602-8160
LB #6865

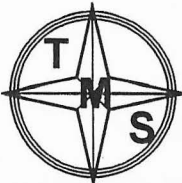
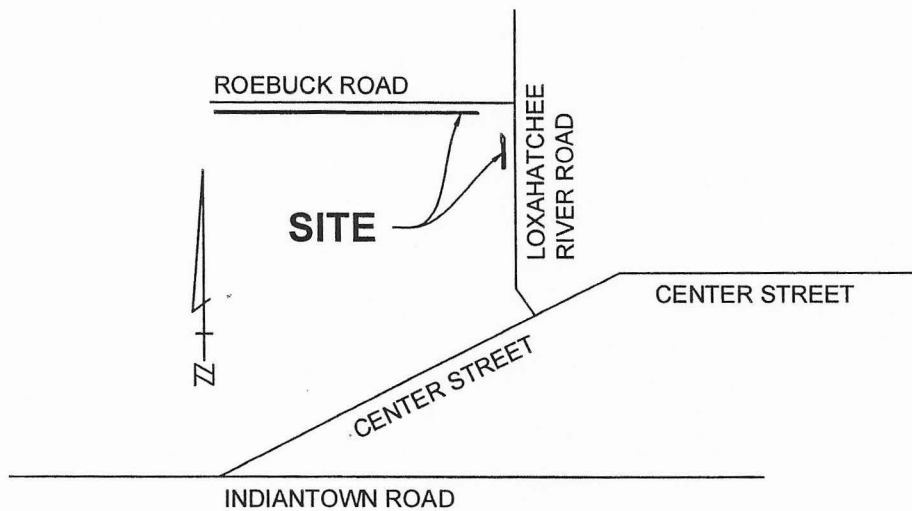


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SUBORDINATION
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SKETCH OF LEGAL
DESCRIPTION

SCALE:	N/A
DATE:	JULY 2019
DIRECTORY:	FAMILOXA
FIELD BOOK:	N/A
DWG NO.:	FAMILOXA SK03

LOCATION MAP

SECTION 35, TOWNSHIP 40 SOUTH, RANGE 42 EAST
NOT TO SCALE



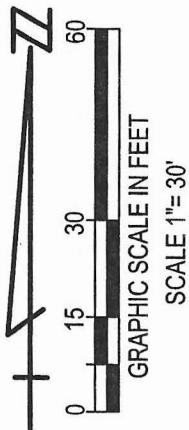
SURVEYOR'S NOTES

1. SURVEY MAP OR COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND SEAL OF TIMOTHY M. SMITH, P.S.M., FLORIDA CERTIFICATE LS 4676.
2. LANDS SHOWN HEREON WERE ABSTRACTED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, COMMITMENT NUMBER: 735696, EFFECTIVE DATE: MAY 15, 2019 AT 11:00PM. SCHEDULE B-SECTION II EXCEPTIONS WERE REVIEWED BY THIS OFFICE AND ALL PLOTTABLE EXCEPTIONS ARE SHOWN HEREON.
3. BEARINGS SHOWN HEREON ARE REFERENCED TO THE LINE BETWEEN PALM BEACH COUNTY HORIZONTAL CONTROL POINTS "FERGUS" AND "COUNTRY CLUB" WITH A GRID BEARING OF NORTH 76°59'54" WEST. (ACCORDING TO THE TRANSVERSE MERCATOR PROJECTION OF THE FLORIDA EAST ZONE, N.A.D. 83, PER THE 1990 ADJUSTMENT, BASED ON THE GEODETIC CONTROL ESTABLISHED AND ACCEPTED BY THE PALM BEACH COUNTY SURVEY DEPARTMENT.)
4. ADDITIONS OR DELETIONS TO SURVEY MAPS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
5. REFER TO SPECIFIC PURPOSE SURVEY BY TIMOTHY M. SMITH LAND SURVEYING, INC., "FAMILOXA SY03 SPS", DATED MAY 22, 2019.

COORDINATES, BEARINGS, AND DISTANCES NOTES

COORDINATES SHOWN ARE GRID DATUM = NAD 83 1990 ADJUSTMENT
ZONE = FLORIDA EAST
LINEAR UNIT = US SURVEY FEET
COORDINATE SYSTEM 1983 STATE PLANE TRANSVERSE MERCATOR
PROJECTION
ALL DISTANCES ARE GROUND
SCALE FACTOR = 1.0000341545
GROUND DISTANCE X SCALE FACTOR = GRID DISTANCE
BEARINGS AS SHOWN HEREON ARE GRID DATUM, NAD 83 1990
ADJUSTMENT, FLORIDA EAST ZONE.

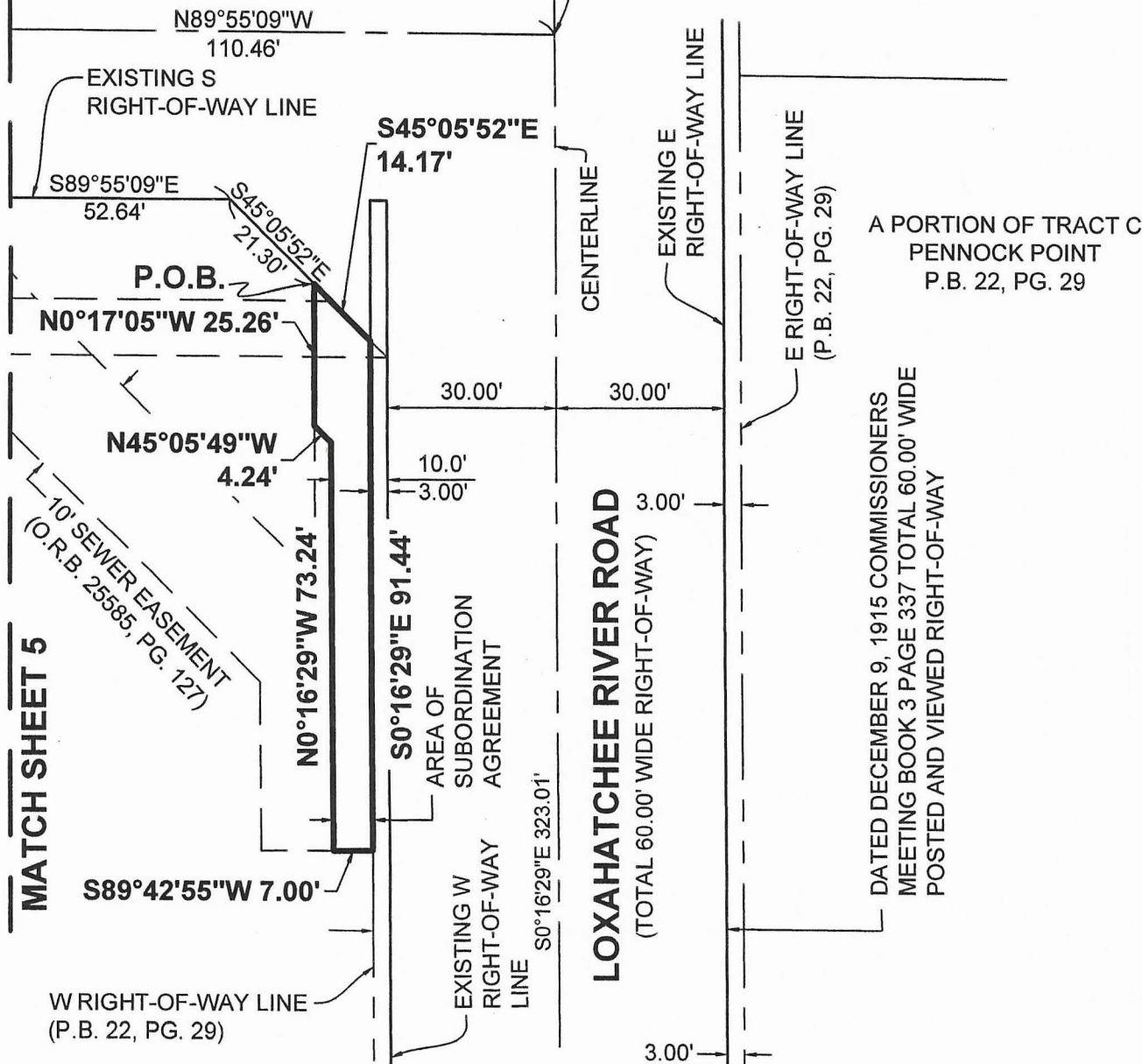
NOT A SURVEY



LEGEND:

- F.P.L. FLORIDA POWER & LIGHT
- O.R.B. OFFICIAL RECORDS BOOK
- P.B. PLAT BOOK
- PG(S). PAGE(S)
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- PBCO PALM BEACH COUNTY
- R.P. REFERENCE POINT
- R/W RIGHT OF WAY

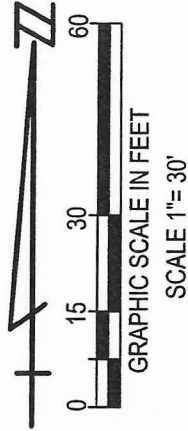
P.O.C.
SE CORNER OF THE SW 1/4 OF
THE NW 1/4 OF SECTION 35
TOWNSHIP 40 SOUTH RANGE
42 EAST PER P.B. 25, PG. 241



NOT A SURVEY

EXHIBIT A

MATCH SHEET 6



THE SW 1/4 OF THE NW 1/4 OF SECTION 35
TOWNSHIP 40 SOUTH
RANGE 42 EAST

TOTAL 60.00' WIDE POSTED AND VIEWED RIGHT-OF-WAY
COMMISSIONERS MEETING BOOK 9 PAGE 237 DATED
DECEMBER 9, 1915

EXISTING N
RIGHT-OF-WAY LINE

LEGEND:

F.P.L. FLORIDA POWER & LIGHT
O.R.B. OFFICIAL RECORDS BOOK
P.B. PLAT BOOK
PG(S). PAGE(S)
P.O.B. POINT OF BEGINNING
P.O.C. POINT OF COMMENCEMENT
PBCO PALM BEACH COUNTY
R.P. REFERENCE POINT
R/W RIGHT OF WAY

MATCH SHEET 4

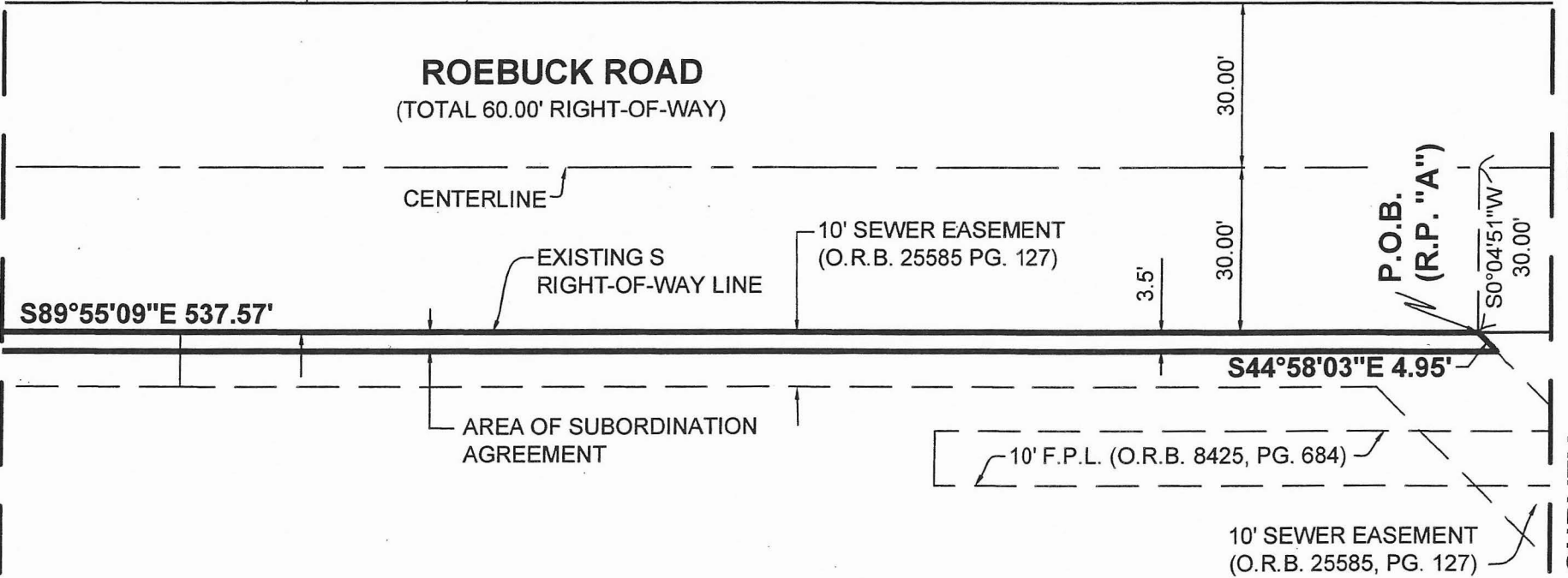
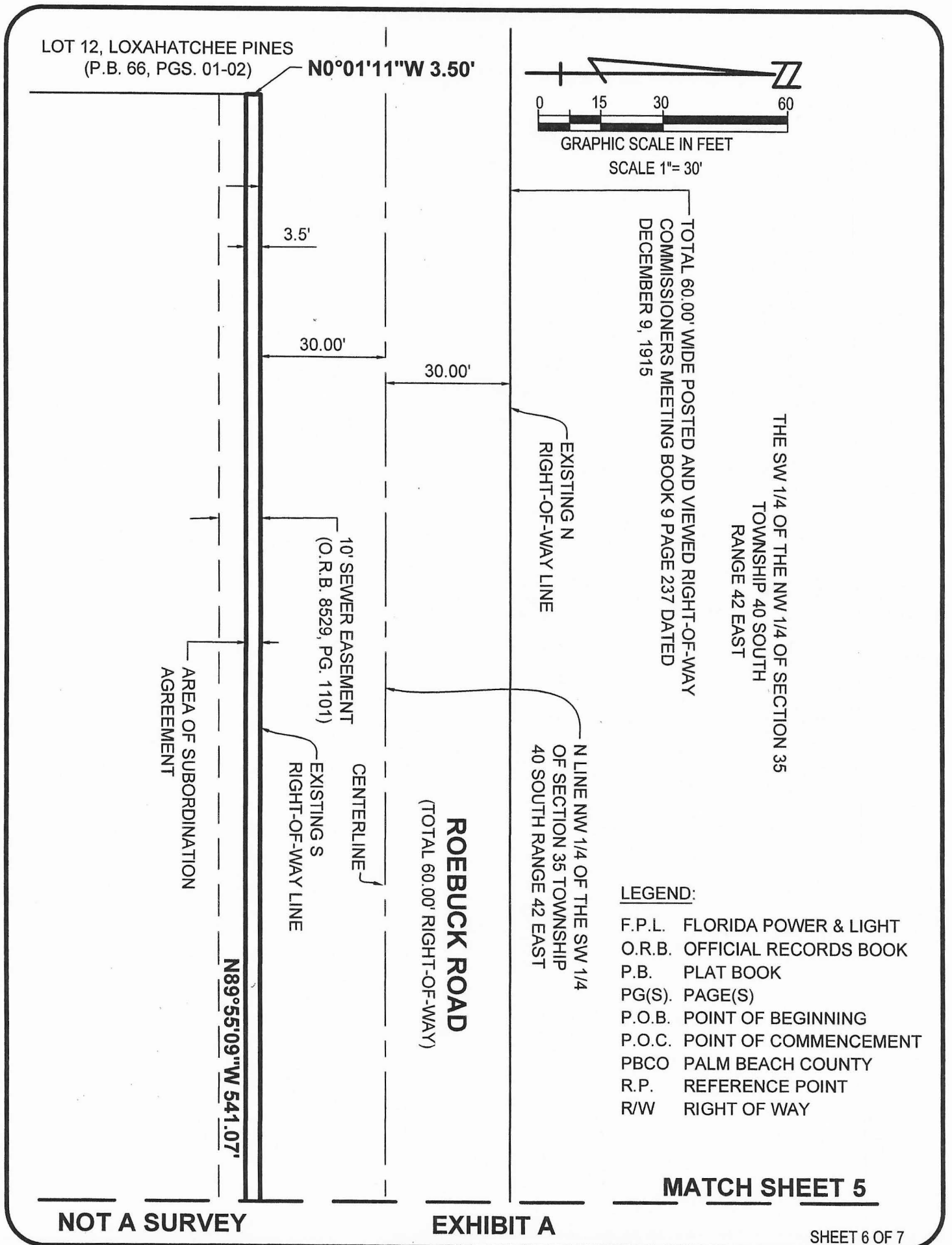


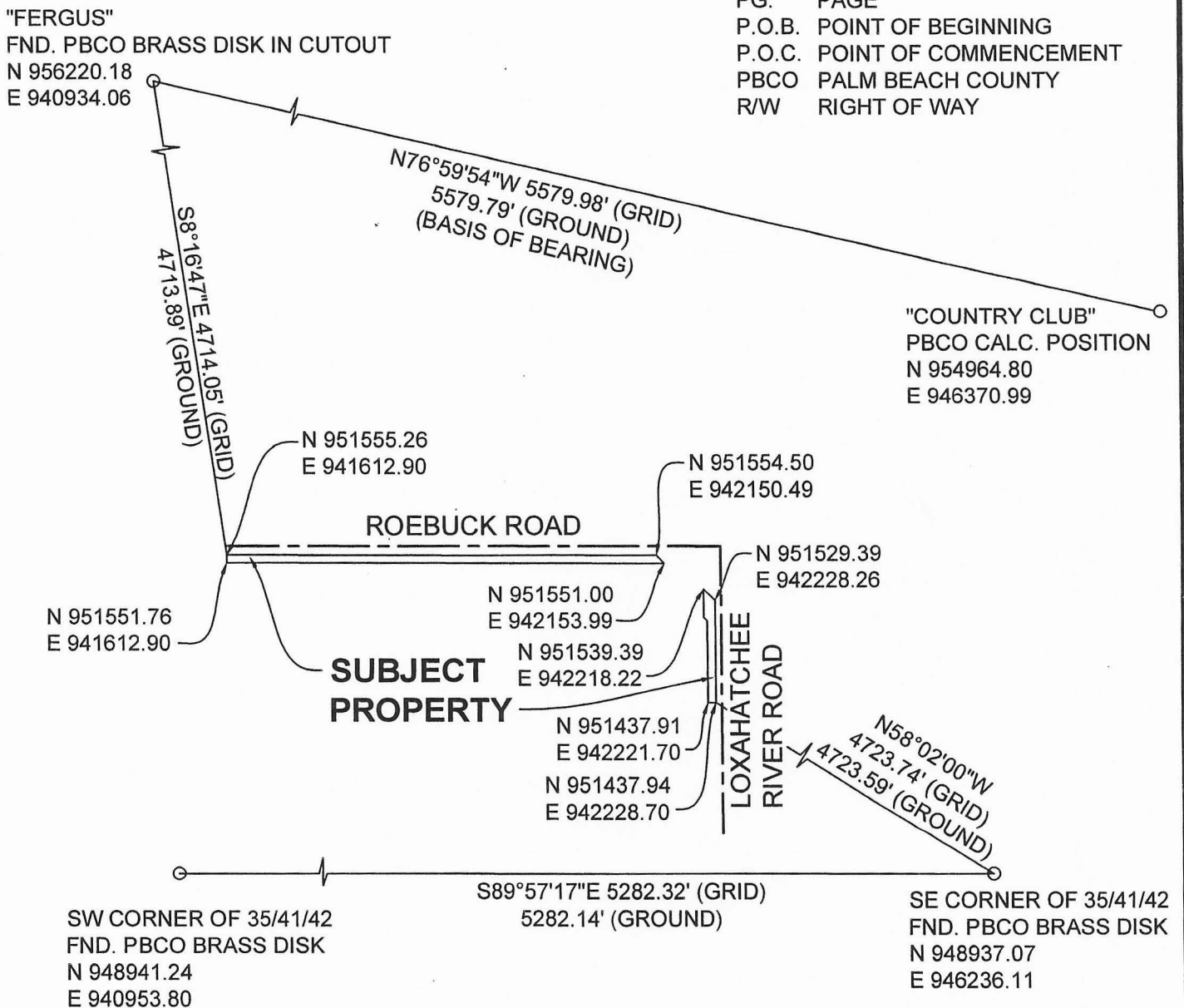
EXHIBIT A

NOT A SURVEY



LEGEND:

FND. FOUND
P.B. PLAT BOOK
PG. PAGE
P.O.B. POINT OF BEGINNING
P.O.C. POINT OF COMMENCEMENT
PBCO PALM BEACH COUNTY
R/W RIGHT OF WAY



BEARING SKETCH
NOT TO SCALE

NOT A SURVEY