

**STATE OF FLORIDA
SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

CONSERVATION ALLIANCE OF ST. LUCIE
COUNTY, INC. a Florida Not-For-Profit Corporation,

Petitioner,

vs.

Case No.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT,

Respondents,

REQUEST FOR ADMINISTRATIVE PROCEEDING

Petitioners, Conservation Alliance of St. Lucie County, by and through their undersigned counsel, and pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rule 28-106.201, Florida Administrative Code, file this Petition for Formal Administrative Proceeding and state:

BACKGROUND

1. The Florida Department of Environmental Protection filed application number 131106-7 for a project known as Crosstown Parkway Extension Geotechnical Borings. Attachment A This project is a small piece of a larger project to construct a six-lane bridge, known as Preferred Alternative 1C of the Crosstown Parkway Extension project. This project and the larger proposed project will involve construction within the North Fork St. Lucie River Aquatic Preserve ("AP"), Savannas Preserve State Park ("SPSP") and designated Outstanding Florida Waters ("OFW").

2. This AP, OFW and SPSP are each important state and regional natural resources that provide a much-needed escape for local residents and visitors from the surrounding urban environment. Common uses of the area include passive recreation (e.g., paddling, bird watching,

etc.), boating, fishing, and crabbing. In addition, the AP, OFW and SPSP constitute a unique ecosystem that includes high quality wetland marsh and upland forested habitats, as well as an extraordinary variety of temperate and subtropical species. The project area also includes three types of essential fish habitat (EFH). It is listed by the Florida Fish and Wildlife Commission as a “Biodiversity Hotspot” that contains “Priority Wetlands.” The project area is also designated as a “Locally Significant Natural Area” as determined by the Florida Natural Areas Index. Only one other such ecosystem exists in the region.

3. As an OFW, the area is worthy of special protection because of [its] natural attributes.” Fla. Stat. 403.061(27). As an AP it is deemed to have exceptional biological, aesthetic, and scientific value and should forever be set aside for future generations. Fla. Stat. 258.36 – 258.39.

PARTIES

4. Conservation Alliance of St. Lucie County (hereinafter “Alliance”) is a not-for-profit corporation in good standing, with its principal office currently located at 3070 SE Galt Circle, Port St. Lucie, FL 34984, Telephone 772-335-3484. Alliance has approximately 200 members, and has been incorporated since 1985. Alliance’s mission is “to protect the water, soil, air, native flora and fauna upon which all the Earth’s creatures depend on for survival.” That mission is carried out in St. Lucie County including the area at issue in this Petition.

5. Many of Alliance’s members regularly go to the Halpatiokee Trail within the SPSP in order to hike, sight see, take pictures, and canoe or kayak in the AP. Alliance maintains a blog on its website exclusively showing pictures of the scenery and plant life at the Halpatiokee Trail, with descriptions of each plant shown. The proposed project would allow for the use of amphibious drilling rigs to obtain soil borings for the proposed Crosstown Parkway Extension which includes the construction of a bridge directly through the current location of the

Halpatiokee Trail. The entirety of the proposed project will cross the North Fork St. Lucie River AP and PSP and impairing the SPSP's and the AP's unique scenic, recreational, and wildlife attributes. If this project were allowed to proceed in violation of the law, the members of Alliance that regularly use this area would experience a concrete and legally cognizant injury.

6. Petitioners are represented in this proceeding by Robert N. Hartsell, Esq. and Sarah Hayter, Esq., Robert N. Hartsell, P.A., 1600 North Federal Highway, Suite 921, Pompano Beach, Florida 33062, Telephone 954-778-1052, Fax 954-941-6462 and email address Robert@hartsell-law.com and Sarah@hartsell-law.com.

7. Petitioners' substantial interests are affected by the challenged agency action because the challenged action will adversely impact public health and safety, wildlife, endangered plant species, recreation, water quality and the functions of wetlands and surface waters on SPSP, upon which they rely for their recreational and other use and enjoyment of the area.

8. A substantial number of members of the Petitioner would have standing to sue individually, and a substantial number of these members would be adversely affected if challenged agency action is upheld.

9. The relief requested in this proceeding does not require the participation of the individual members of the organizations and is appropriate for the organization to receive on behalf of its members.

10. Petitioner asked for actual notice of the issuance of the permit and received notice proposed agency action by mail on August 7, 2014. This petition is filed within 14 days of that notice.

DISPUTED ISSUES OF MATERIAL FACT

Petitioner has preliminarily identified the following disputed issues of fact and law:

11. Whether the destruction of 1.37 acres of environmentally sensitive wetland ecosystem is clearly in the public interest as required by Section 373.414(1)(a) Fla. Stat. and Rule Rule 62-330.302. Petitioners assert that the destruction of 1.37 acres of environmentally sensitive wetland ecosystem is not clearly in the public interest because of adverse direct, secondary and cumulative impacts on wetland functions and wildlife.

12. Whether the applicant adequately reduced and eliminated adverse wetland impacts associated with the proposed development.

13. Whether the State of Florida proposed sufficient mitigation to offset the adverse wetland impacts, impacts to endangered and threatened fauna such as the *tillandsia fasciculata* and impacts to submerged resources associated with the proposed project. Petitioners assert that the proposed mitigation fails to offset the adverse direct, secondary and cumulative impacts of the proposed activities, and that the proposed mitigation will not result in any benefit to the aquatic preserve.

14. Whether there are practicable design modifications that can be undertaken to further reduce the proposed project's adverse wetland impacts as required by Section 10.2.1 and 10.2.1.1 of the South Florida Water Management District's Applicant's Handbook. Petitioners assert that the State of Florida has failed to reduce or eliminate adverse impacts to wetlands and other surface water by failing to implement practicable design alternatives on the larger project that include but are not limited to alternate corridors and construction that avoid the AP and SPSP.

15. Whether the applicant adequately assessed the extent that the site is currently utilized by listed species and will adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters in violation of Rule 62-330.301(1)(d) F.A.C. Petitioners assert that the proposed activities will destroy the functions provided by 1.37 acres of

environmentally sensitive wetland ecosystem to a variety of terrestrial, avian and aquatic species, including but not limited wood storks (within the Core Foraging Area of at least 1 nesting colony), mangrove rivulus (a fish), indigo snakes, indigo snakes, tillandsia fasciculata and a few others.

16. Whether the project will cause adverse secondary impacts in violation of Section 10.2.7 of the Applicant's Handbook.

17. Whether the proposed project is clearly in the public interest considering the factors enumerated in Section 373.414, Fla. Stat. and Section 10.2.3 of the Applicant's Handbook. The seven part public interest test involves balancing the following factors:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;
6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and
7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

18. Petitioners assert that the project is not clearly in the public interest because of adverse impacts upon health, safety and welfare, conservation of fish and wildlife, and adverse impacts upon fishing, recreational values and marine productivity in the vicinity and conservation of wetland functions.

19. Whether the proposed construction and operation of the project will cause adverse secondary impacts in violation of Section 10.2.7 of the Applicant's Handbook. Petitioners assert that the operation of operation of the geotechnical borings will cause adverse secondary impacts to the water resources including adverse water quality impacts from propeller dredging, destruction of upland threatened plant species, boat wakes and adverse impacts to navigation.

20. Whether the proposed project on state owned submerged lands within an aquatic preserve would result in demonstrable environmental, social and economic benefits accruing to the public at large which would clearly exceed all demonstrable environmental, social and economic costs based upon the factors clearly articulated in subsection 18-20.004(2), Fla. Admin. Code.

21. Whether the proposed construction on state owned submerged lands within an aquatic preserve will result in significant adverse impacts to sovereignty lands and associated resources, and if so whether there is a reasonable alternative and whether adequate mitigation is proposed as required by Rule 18-21.004(2)(b), Fla. Admin. Code. Petitioners assert that the proposed activities will cause significant adverse impacts to sovereignty lands and associated resources which are not offset by mitigation.

ULTIMATE FACTS WARRANTING REVERSAL

22. The project is contrary to the public interest and is harmful to the water resources.

STATUTES AND RULES VIOLATED BY THE PERMIT

The permit violates the following statutes and rules:

As noted above, the reversal of the proposed agency action is required by at least the following rules and statutes:

- a) Section 373.414(1)(a) Fla. Stat.

- b) Sections 10.2, 10.2.1, 10.2.1.1 and 10.2.7 of the Applicant's Handbook
- c) Sections 253.03(1), Fla. Stat, and 253.77, Fla. Stat.
- d) Rules 18-20.004(1)(b), 18-20.004(2), 18-21.004(2)(b), 18-20.004(3)(a), and 18-20.004(2)(a)(1) Fla. Admin Code.
- e) Rule 62-330.301 (1)(d) Fla. Admin Code.
- f) Rule 62-330.302 Fla. Admin Code.

RELIEF SOUGHT

Petitioners respectfully request that this Petition be forwarded to the Division of Administrative Hearings to conduct a formal administrative hearing, and that the South Florida Water Management District issue a final order denying Permit No. 56-03353-P.

Respectfully submitted this 19 day of August, 2014.

Respectfully Submitted this 19th Day of August 2014,

BY: 

Robert N. Hartsell, Esq.
Florida Bar No. 636207
Sarah M. Hayter, Esq.
Florida Bar No. 83823
ROBERT N. HARTSELL, P.A.
Federal Tower Building
1600 S. Federal Hwy., Ste 921
Pompano Beach, Florida 33062
Telephone (954) 778-1052
Facsimile (954) 941-6462
Robert@Hartsell-Law.com
Sarah@Hartsell-Law.com

Attachment A



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE PERMIT NO. 56-03353-P
DATE ISSUED: August 5, 2014**

PERMITTEE: CITY OF PORT ST. LUCIE
121 PORT ST LUCIE BOULEVARD
PORT ST LUCIE, FL 34984

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
3900 COMMONWEALTH BLVD
TALLAHASSEE, FL 32399

PROJECT DESCRIPTION: The use of amphibious drilling rigs to obtain soil borings for the proposed Crosstown Parkway Extension and a letter of consent authorization to utilize sovereignty submerged lands for the geotechnical borings.

PROJECT LOCATION: ST LUCIE COUNTY, SEC 34,35 TWP 36S RGE 40E

PERMIT DURATION: See Special Condition No:1.

This is to notify you of the District's agency action for Permit Application No. 131106-7, dated November 6, 2013. This action is taken pursuant to the provisions of Chapter 373, Part IV, Florida Statutes (F.S).

Based on the information provided, District rules have been adhered to and an Environmental Resource Permit is in effect for this project subject to:

1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
2. the attached 18 General Conditions (See Pages : 2 - 4 of 6),
3. the attached 8 Special Conditions (See Pages : 5 - 5 of 6),
4. the attached General Conditions for Authorizations for Use of Sovereign Submerged Lands (See Pages : 6 - 6 of 6) and
5. the attached 3 Exhibit(s)

Should you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the "Notice of Rights," we will assume that you concur with the District's action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT this written notice has been mailed or electronically transmitted to the Permittee (and the persons listed in the attached distribution list) this 5th day of August, 2014, in accordance with Section 120.60(3), F.S. Notice was also electronically posted on this date through a link on the home page of the District's website (my.sfwmd.gov/ePermitting).

BY: Anita H. Bain
Anita Bain
Bureau Chief - Environmental Resource Permitting
Martin / St Lucie Regulatory Office

GENERAL CONDITIONS

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in accordance with Rule 62-330.315, F.A.C. Any deviations that are not so authorized shall subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S. (2012).
2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase, and shall be available for review at the work site upon request by the Agency staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.
3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the "State of Florida Erosion and Sediment Control Designer and Reviewer Manual" (Florida Department of Environmental Protection and Florida Department of Transportation June 2007), and the "Florida Stormwater Erosion and Sedimentation Control Inspector's Manual" (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.
4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the Agency a fully executed Form 62-330.350(1), "Construction Commencement Notice" indicating the expected start and completion dates. If available, an Agency website that fulfills this notification requirement may be used in lieu of the form.
5. Unless the permit is transferred under Rule 62-330.340, F.A.C., or transferred to an operating entity under Rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms and conditions of the permit for the life of the project or activity.
6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:
 - a. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex- "Construction Completion and Inspection Certification for Activities Associated With a Private Single-Family Dwelling Unit" [Form 62-330.310(3)]; or
 - b. For all other activities- "As-Built Certification and Request for Conversion to Operational Phase" [Form 62-330.310(1)].
 - c. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.
7. If the final operation and maintenance entity is a third party:
 - a. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as-built certification, whichever comes first, the permittee shall submit, as applicable, a copy of the operation and maintenance documents (see sections 12.3 thru 12.3.3 of Applicant's Handbook Volume I) as filed with the Department of State, Division of Corporations and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which the activity is located.
 - b. Within 30 days of submittal of the as-built certification, the permittee shall submit "Request for Transfer of Environmental Resource Permit to the Perpetual Operation Entity" [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.
8. The permittee shall notify the Agency in writing of changes required by any other regulatory agency that

GENERAL CONDITIONS

require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.

9. This permit does not:
 - a. Convey to the permittee any property rights or privileges, or any other rights or privileges other than those specified herein or in Chapter 62-330, F.A.C.;
 - b. Convey to the permittee or create in the permittee any interest in real property;
 - c. Relieve the permittee from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance; or
 - d. Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the permittee.
10. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.
11. The permittee shall hold and save the Agency harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any project authorized by the permit.
12. The permittee shall notify the Agency in writing:
 - a. Immediately if any previously submitted information is discovered to be inaccurate; and
 - b. Within 30 days of any conveyance or division of ownership or control of the property or the system, other than conveyance via a long-term lease, and the new owner shall request transfer of the permit in accordance with Rule 62-330.340, F.A.C. This does not apply to the sale of lots or units in residential or commercial subdivisions or condominiums where the stormwater management system has been completed and converted to the operation phase.
13. Upon reasonable notice to the permittee, Agency staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.
14. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, work involving subsurface disturbance in the immediate vicinity of such discoveries shall cease. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section, at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Such subsurface work shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and notification shall be provided in accordance with Section 872.05, F.S.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 62-330.201, F.A.C., provides otherwise.
16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other

GENERAL CONDITIONS

- uplands in a manner that does not require a permit under Chapter 62-330, F.A.C., or cause violations of state water quality standards.
17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the Agency will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.
 18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with Rule 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.

SPECIAL CONDITIONS

1. The construction phase of this permit shall expire on August 5, 2019.
2. Operation of the stormwater management system shall be the responsibility of the permittee.
3. Discharge Facilities: No discharge facilities are required by this project.
4. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
5. Prior to the commencement of construction, the permittee shall conduct a pre-construction meeting with field representatives, contractors and District staff. The purpose of the meeting will be to discuss construction methods and sequencing, including type and location of turbidity and erosion controls to be implemented during construction, mobilization and staging of contractor equipment, phasing of construction, methods of vegetation clearing, construction dewatering if required, ownership documentation for eminent domain authority, coordination with other entities on adjacent construction projects, wetland/buffer protection methods, endangered species protection with the permittee and contractors. The permittee shall contact District Environmental Resource Compliance staff from the Martin St Lucie Regulatory Office 863-762-5260 to schedule the pre-construction meeting.
6. The District reserves the right to require remedial measures to be taken by the permittee if monitoring or other information demonstrates that adverse impacts to onsite or offsite wetlands, upland conservation areas or buffers, or other surface waters have occurred due to project related activities.
7. A mitigation program for this project shall be implemented in accordance with Permit No. 56-03199-P, Platt's Creek Compensatory Mitigation Project. The permittee shall create 3.3 functional units of Stream and Lake Bottom, 15.5 functional units of freshwater marsh, and 3.5 functional units of mixed hardwood wetlands at Platt's Creek Compensatory Mitigation Project, of which 1.15 functional units are being allocated to this application. In addition, 0.50 forested estuarine credits have been purchased for the .01 acres of proposed mangrove impacts. The District has received a Mitigation Bank Credit Purchase Agreement documenting that the 0.5 credits have been purchased.
8. All provisions of application 140409-13, permit number 56-03199-P, concerning the construction, management, monitoring and maintenance of the offsite mitigation parcel are incorporated into the permit file by reference into this permit.

**GENERAL CONDITIONS FOR AUTHORIZATIONS FOR USE OF
SOVEREIGN SUBMERGED LANDS**

Project No. 131106-7

Chapter 18-21.004(7), F.A.C., provides that all authorizations granted by rule or in writing under Rule 18-21.005, F.A.C., except those for aquaculture activities and geophysical testing, shall be subject to the general conditions as set forth in paragraphs (a) through (i) below. The general conditions shall be part of all authorizations under this chapter, shall be binding upon the grantee, and shall be enforceable under Chapter 253 or Chapter 258, Part II, F.S.

Chapter 18-21.004(7), F.A.C., General Conditions for Authorizations:

(a) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.

(b) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.

(c) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.

(d) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.

(e) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.

(f) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.

(g) Structures or activities shall not create a navigational hazard.

(h) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.

(i) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(g), F.A.C., or any other applicable law.

NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., the following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a SFWMD decision which does or may affect their substantial interests shall file a petition for hearing with the District Clerk within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: 1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or 2) within 14 days of service of an Administrative Order pursuant to Subsection 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of either written notice through mail, electronic mail, or posting that the SFWMD has or intends to take final agency action, or publication of notice that the SFWMD has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

FILING INSTRUCTIONS

The Petition must be filed with the Office of the District Clerk of the SFWMD. Filings with the District Clerk may be made by mail, hand-delivery, or e-mail. **Filings by facsimile will not be accepted after October 1, 2014.** A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Any document received by the office of the District Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must be delivered to the Office of the District Clerk. **Delivery of a petition to the SFWMD's security desk does not constitute filing. To ensure proper filing, it will be necessary to request the SFWMD's security officer to contact the Clerk's office.** An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by e-mail must be transmitted to the District Clerk's Office at clerk@sfwmd.gov. The filing date for a document transmitted by electronic mail shall be the date the District Clerk receives the complete document. A party who files a document by e-mail shall (1) represent that the original physically signed document will be retained by that party for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause and that the party shall produce it upon the request of other parties; and (2) be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed.

INITIATION OF AN ADMINISTRATIVE HEARING

Pursuant to Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 and 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, SFWMD file number or any other SFWMD identification number, if known.
2. The name, address and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency decision.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

If the SFWMD takes action with substantially different impacts on water resources from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law.

MEDIATION

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Sections 120.60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the District Clerk within 30 days of rendering of the final SFWMD action.

Last Date For Agency Action: September 7, 2014

INDIVIDUAL ENVIRONMENTAL RESOURCE PERMIT STAFF REPORT

Project Name: Crosstown Parkway Extension Geotechnical Borings
Permit No.: 56-03353-P
Application No.: 131106-7
Application Type: Environmental Resource (New Construction/Operation)
Location: St Lucie County, S34,35/T36S/R40E
Permittee : City Of Port St. Lucie
 Florida Department Of Environmental Protection
Operating Entity : Permittee
Project Area: 16.04 acres
Permit Area: 16.04 acres
Project Land Use: Environmentally Sensitive
Drainage Basin: NORTH ST LUCIE
Receiving Body: North Fork St. Lucie River **Class:** OFW
Special Drainage District: NA

Total Acres Wetland Onsite: 1.37
Total Acres Impacted Onsite : 1.37
Offsite Mitigation Credits-Mit.Bank: .50 Bear Point Mitigation Bank
Conservation Easement To District : No
Sovereign Submerged Lands: Yes **Type:** Letter Of Consent

PROJECT PURPOSE

This application is a request for an Environmental Resource Permit to authorize the use of amphibious drilling rigs to obtain soil borings for the proposed Crosstown Parkway Extension. Portions of the proposed project will be occurring over sovereignty submerged lands and qualify for a Letter of Consent authorization.

PROJECT EVALUATION:

PROJECT SITE DESCRIPTION:

The project follows the footprint of the proposed Crosstown Parkway Bridge alignment. The project site includes the beginning point, on uplands, extending from SE West Virginia traveling east and crossing the North Fork of the St. Lucie River and will terminate at US-1 in Port St. Lucie. Please refer to Exhibit 1 Location Map. The majority of the proposed work will be occurring in wetlands with impacts to be discussed in the wetlands section of this staff report.

There are no permitted water management facilities within the project area. The site contains wetlands and other surface waters. There will not be any permanent facilities constructed for the borings.

PROPOSED PROJECT:

This application is a request to obtain soil borings necessary for the design, construction, and planning of the proposed Crosstown Parkway Bridge. The applicant proposes to use amphibious and all terrain drilling equipment to obtain the soil borings. The drilling equipment (rigs) will traverse wetland areas in a serpentine path, avoiding more sensitive areas where possible.

WATER QUANTITY:

Discharge Rate :

No discharge facilities will be constructed for the geotechnical borings.

WATER QUALITY:

No adverse water quality impacts are anticipated as a result of the proposed project. Best managements practices will be used to prevent impacts to water quality.

WETLANDS:

The proposed project will traverse approximately four wetland community types traveling from west to east. The western-most wetland is best described as a freshwater marsh community with a mangrove swamp fringe that extends to the approximate mean high water line. Traveling east along the proposed bridge corridor the wetland community transitions to habitat that is best described as stream and lake swamp bottom land. This community is dominated by live oak, slash pine, sabal palm, pond apple, Brazilian pepper, swamp fern, leather fern, and royal fern. Continuing east of Evans Creek the dominant wetland community becomes a mixed wetland hardwood community. The community is represented by varying amounts of red maple, dahoon holly, live oak, slash pine, sabal palm, pond apple, Brazilian pepper, swamp fern, leather fern, and royal fern.

Wetland Impacts:

The applicant has demonstrated reduction and elimination of impacts by minimizing the number of sampling locations and by deploying an amphibious drilling rig and a "mud bug", both of which are designed to minimize environmental disturbances. The drilling rig is equipped with 36" wide tracks that push vegetation down and will be used to obtain borings from wetland areas in the North Fork of the Saint Lucie River to just east of Evans Creek. Once en route to obtain the soil borings, the rig will traverse the proposed corridor in a zig-zag fashion avoiding environmentally sensitive areas leading to Evans Creek. However, moderate to severe rutting can be expected in areas devoid of vegetation and hand clearing of

hand clearing of thick vegetation maybe necessary at ingress and egress points.

A second drilling rig is proposed to obtain borings in the upland and wetland areas east of Evans Creek. This rig is a rubber tired, all-terrain vehicle that can easily travel over soft ground and minimize impacts to the ground surface and vegetation. Mud bug rutting is expected to be minimal.

To demonstrate further reduction and elimination of impacts, the applicant has reduced the number of soil borings from every 85 feet to every 350 feet. Refer to Exhibit 2 depicting potential wetland impacts.

Mitigation Proposal:

Mitigation for the proposed and potential wetland impacts will be provided for at the Platt's Creek Compensatory Mitigation Project and the Bear Point Mitigation Bank. Proposed direct impacts to mangrove swamp are approximately 0.01 acres and will be mitigated for through the purchase of 0.50 estuarine credits at the Bear Point Mitigation Bank. Mitigation was provided based on a worst case impact scenario to mangroves from the Conceptual ERP for the Cross Town Parkway Extension Project. Therefore, the mitigation was based on a higher acreage than the actual impacts to mangroves. Mitigation was determined using EWRAP, the same methodology as used by the Bear Point Mitigation Bank. EWRAP score sheets can be found in the permit file. The District has received an Executed Mitigation Bank Credit Purchase Agreement included as Exhibit 3.

Mitigation for freshwater wetland impacts is being provided at the Platt's Creek Compensatory Mitigation Project (Permit No. 56-03199-P). The applicant is proposing approximately 1.37 acres of direct impacts equating to a functional loss of 1.15 units. The applicant is proposing to offset these impacts through the use of 1.15 functional units at the Platt's Creek Compensatory Mitigation Project. As the Platt's Creek Compensatory Mitigation Project has not been constructed yet, the District is requiring that the applicant obtain a minor modification to the Platt's Creek Compensatory Mitigation Project Permit No. 56-03199-P for the release of 10% of the total functional units to be used toward offsetting the impacts to wetlands under this application. A minor modification is being processed under Application 140409-13 concurrent with this application to deduct those functional units from the ledger. A 10% release of the proposed functional units will equal 2.24 functional units. This amount is in excess of the 1.15 functional units necessary to offset impacts associated with this application. UMAM score sheets can be found in the permit file.

conditions, except for any long term maintenance and monitoring requirements. It is suggested that the permittee retain the services of an appropriate professional registered in the State of Florida for periodic observation of construction of the project.

For projects permitted with an operating entity that is different from the permittee, it should be noted that until the construction completion certification is accepted by the District and the permit is transferred to an acceptable operating entity pursuant to Sections 12.1-12.3 of the Applicant's Handbook Volume I and Section 62-330.310, F.A.C., the permittee is liable for operation and maintenance in compliance with the terms and conditions of this permit.

In accordance with Section 373.416(2), F.S., unless revoked or abandoned, all stormwater management systems and works permitted under Part IV of Chapter 373, F.S., must be operated and maintained in perpetuity.

The efficiency of stormwater management systems, dams, impoundments, and most other project components will decrease over time without periodic maintenance. The operation and maintenance entity must perform periodic inspections to identify if there are any deficiencies in structural integrity, degradation due to insufficient maintenance, or improper operation of projects that may endanger public health, safety, or welfare, or the water resources. If deficiencies are found, the operation and maintenance entity will be responsible for correcting the deficiencies in a timely manner to prevent compromises to flood protection and water quality. See Section 12.4 of Applicant's Handbook Volume I for Minimum Operation and Maintenance Standards.

SOVEREIGN/SUBMERGED LANDS

Portions of the proposed work shall occur below the mean high water line of which are sovereign submerged lands and shall qualify for a Letter of Consent authorization.

RELATED CONCERNS:

Water Use Permit Status:

The applicant has indicated that dewatering is not required for construction of this project.

This permit does not release the permittee from obtaining all necessary Water Use authorization(s) prior to the commencement of activities which will require such authorization, including construction dewatering and irrigation.

CERP:

The proposed project is not located within or adjacent to a Comprehensive Everglades Restoration Project component.

Potable Water Supplier:

Not applicable to this project.

Waste Water System/Supplier:

Not applicable to this project.

Right-Of-Way Permit Status:

A District Right-of-Way Permit is not required for this project.

DRJ Status:

This project is not a DRI.

Historical/Archeological Resources:

No information has been received that indicates the presence of archaeological or historical resources in the project area or indicating that the project will have any effect upon significant historic properties listed, or eligible for listing in the National Register of Historic Places.

This permit does not release the permittee from compliance with any other agencies' requirements in the event that historical and/or archaeological resources are found on the site.

DEO/CZM Consistency Review:

The issuance of this permit constitutes a finding of consistency with the Florida Coastal Management Program.

Third Party Interest:

Several third parties have contacted the District with concerns about application 090701-1, the application to construct the Crosstown Parkway Bridge, including the Conservation Alliance of St. Lucie County and the Indian River Keeper. These third parties have been included in the distribution list for this permit.

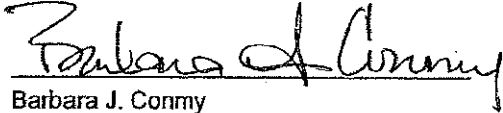
Enforcement:

There has been no enforcement activity associated with this application.

STAFF REVIEW:

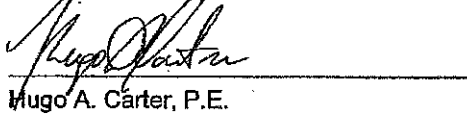
DIVISION APPROVAL:

NATURAL RESOURCE MANAGEMENT:


Barbara J. Conmy

DATE: 7/31/14

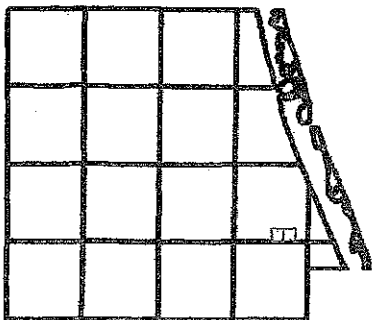
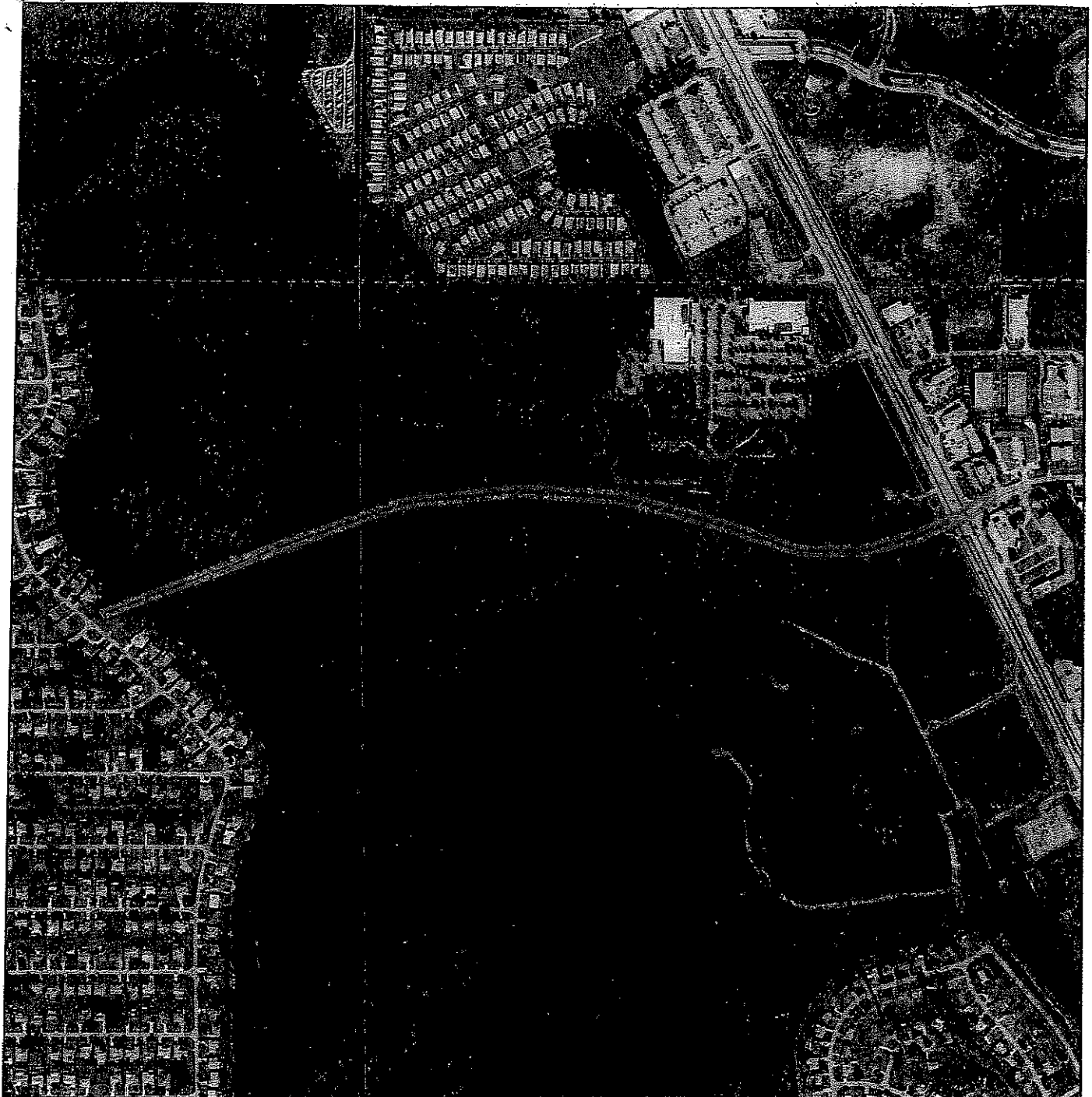
SURFACE WATER MANAGEMENT:


Mugo A. Carter, P.E.

DATE: 30 July 2014

Table of Contents for Staff Report Exhibits
App. No. 131106-7
Crosstown Parkway Geotechnical Borings

- 1.0 Location Map
- 2.0 Wetland Impacts Map
- 3.0 Credit Purchase Agreement



ST. LUCIE COUNTY, FLORIDA

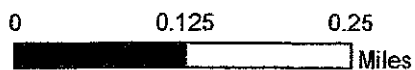
Legend

 Application

Application No: 131106-7

Sec 34,35 / Twp 36 / Rge 40

Project Name: CROSSTOWN PARKWAY EXTENSION
GEOTECHNICAL BORINGS

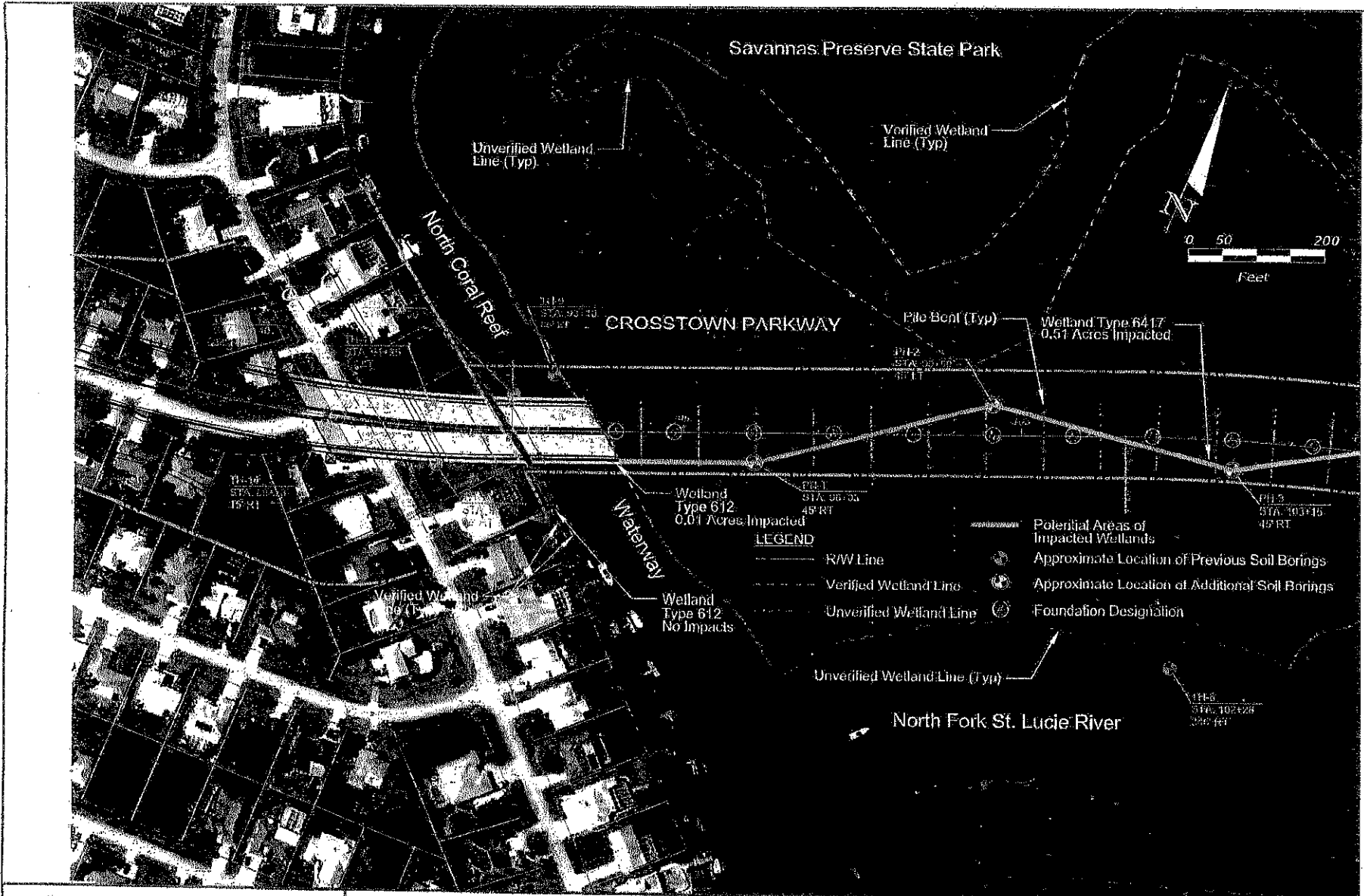


Map Date: 2014-07-15

Permit No: N/A

Exhibit Number: 1

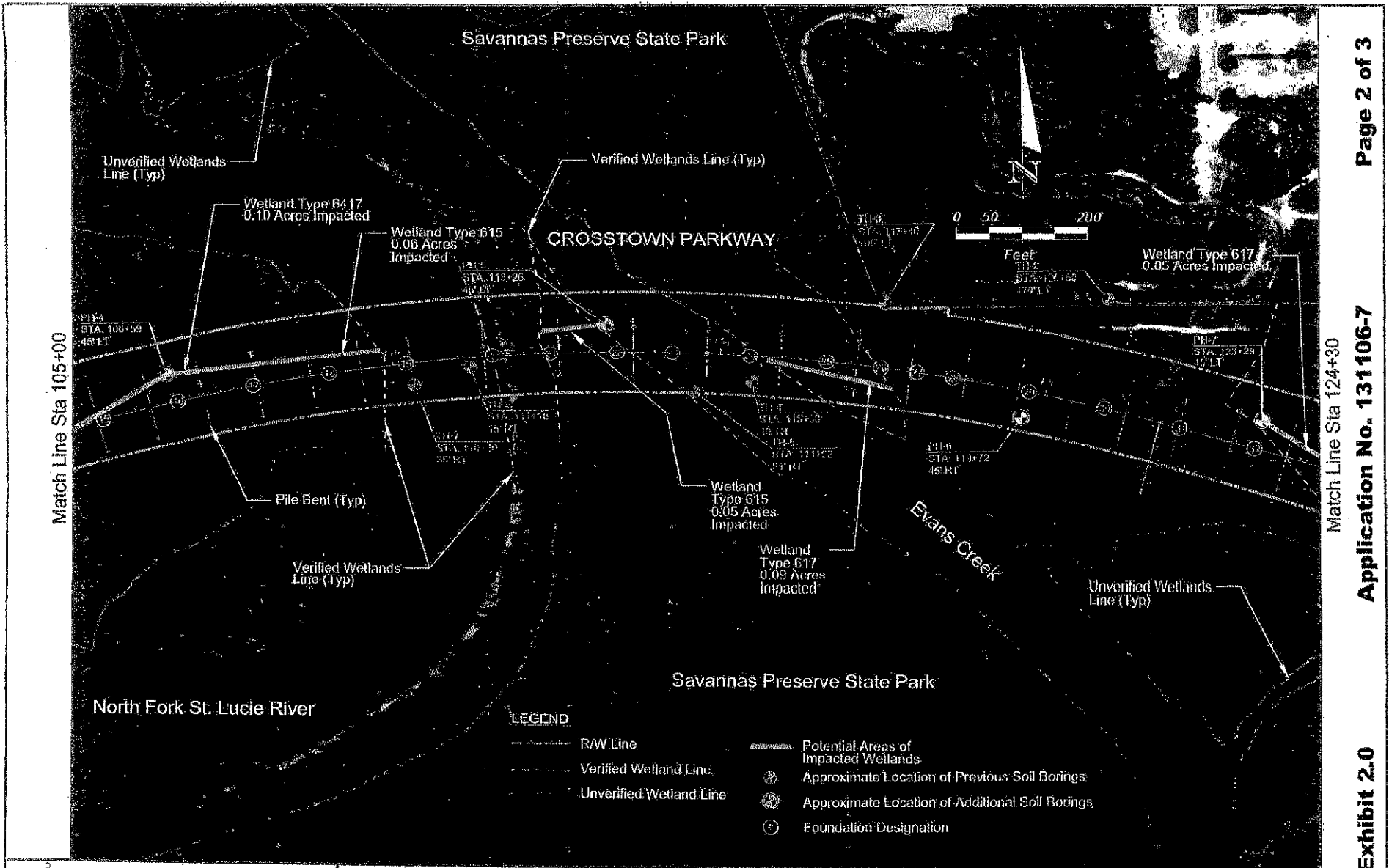
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Crosstown Parkway
Manth Lane to US 1

Project Aerial Map Geotechnical Work

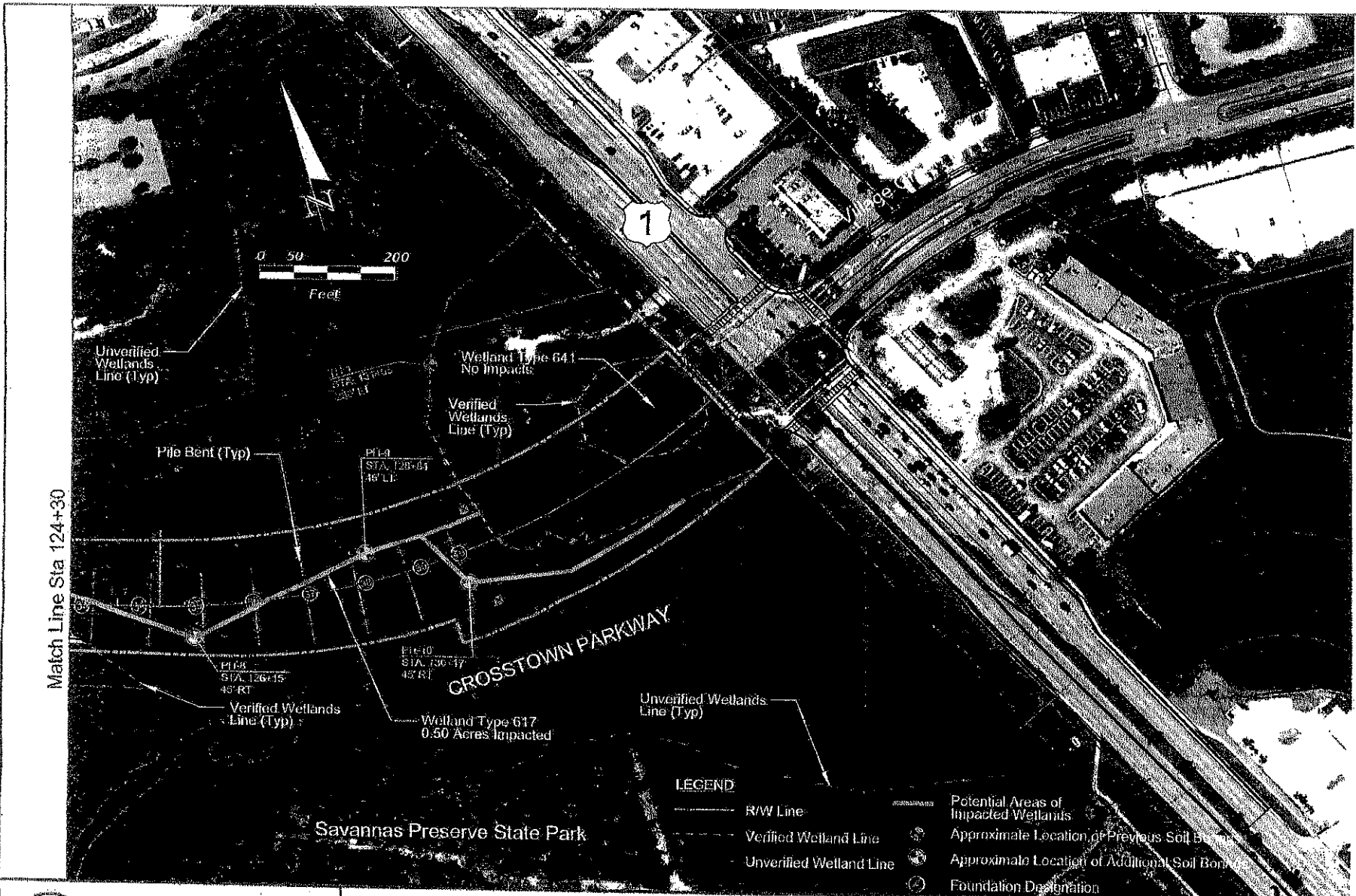




Crosstown Parkway
Manth Lane to US 1

Project Aerial Map
Geotechnical Work





LEGEND

- R/W Line
- Verified Wetland Line
- Unverified Wetland Line
- Potential Areas of Impacted Wetlands
- Approximate Location of Previous Soil Boring
- Approximate Location of Additional Soil Boring
- Foundation Designation



Crosstown Parkway
Manth Lane to US 1

Project Aerial Map
Geotechnical Work



MITIGATION BANK CREDIT PURCHASE AGREEMENT

THIS MITIGATION BANK CREDIT PURCHASE AGREEMENT ("Agreement") made and entered into this 20 day of May, 2014, by and between ST. LUCIE COUNTY, a political subdivision of the State of Florida, ("COUNTY"), whose address is 2300 Virginia Avenue, Fort Pierce, Florida, 34982, and CITY OF PORT ST. LUCIE, a Florida municipal corporation ("CITY") whose address is 121 S.W. Port St. Lucie Boulevard, Port St. Lucie, Florida 34984.

WITNESSETH:

WHEREAS, COUNTY owns and operates the 317-acre Bear Point Mitigation Bank, ("Bear Point") located in St. Lucie County Mosquito Control District Impoundment 1, south of the Ft. Pierce Inlet, in Sections 12 and 13, Township 35 South, Range 40 East, St. Lucie County; and

WHEREAS, the mitigation service area for Bear Point includes a contiguous mangrove-dominated estuarine ecosystem in the Indian River Lagoon and the St. Lucie River Lagoon and the St. Lucie River, from the Brevard/Indian River County line to the St. Lucie Inlet in Martin County; and

WHEREAS, CITY is pursuing the construction of a new bridge crossing of the North Fork of the St. Lucie River for the Crosstown Parkway Extension Project ("Project"), which will serve to extend the existing Crosstown Parkway from Manth Lane to U.S. Highway 1; and

WHEREAS, the permitting process for the Project requires mitigation of impacts to mangroves within the North St. Lucie River Drainage Basin. This mitigation can be achieved through the purchase of mitigation credits from Bear Point under Section 373.413, Florida Statutes; and

WHEREAS, CITY and its consultants, together with staff from the permitting agencies, have determined that five tenths (0.50) of a Federal/State Dual Mitigation Credit is the maximum credit needed to mitigate for unavoidable mangrove impacts; and

WHEREAS, on May 3, 2011, the parties entered into a Mitigation Bank Credit Reservation Agreement ("Credit Reservation Agreement"), which is attached hereto and incorporated herein as Exhibit "A." The Credit Reservation Agreement provides for the COUNTY'S reservation of five tenths (0.50) of a Federal/State Dual Mitigation Credit ("Reserved Credit") for future purchase by the CITY so that the Reserved Credit is available for use by the CITY in connection with mitigating for anticipated mangrove impacts that may be caused by the construction of the CITY'S Project; and

WHEREAS, the CITY desires to move forward with the purchase of the Reserved Credit as the CITY has received from the Federal Highway Administration a Record of Decision approving the Project and the construction of the Build Alternative 1C; and

NOW, THEREFORE, in consideration of the foregoing premises, a prior payment to COUNTY of deposit monies as described in the Credit Reservation Agreement, the mutual promises and covenants of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, COUNTY and CITY intending to legally bind their respective entities and successors and assigns, do hereby agree as follows:

1. Recitations. The foregoing recitations are true and correct and are incorporated herein by reference.

2. Reserved Credit Purchase Price. COUNTY agrees to sell and transfer, and CITY agrees to purchase and accept the Reserved Credit of five tenths (0.50) of Federal/State Dual Credits in connection with the CITY'S need to mitigate the anticipated mangrove impacts that may be caused by the Project. The Purchase Price for the Reserved Credit is a total sum of Sixty-five Thousand and 00/100 Dollars (\$65,000.00). The CITY has already paid COUNTY a non-refundable reservation fee ("Reservation Fee") of Sixteen Thousand Two Hundred Fifty and 00/100 Dollars (\$16,250.00). As acknowledged in the Credit Reservation Agreement, the Reservation Fee shall be deducted from the total Purchase Price. Therefore, the remaining balance due and owing from the CITY to the COUNTY ("Fee Balance") to complete the sale, purchase and transfer of the Reserved Credit to the CITY is the sum of Forty-Eight Thousand Seven Hundred Fifty and 00/100 Dollars (\$48,750.00). Said Fee Balance shall be paid to COUNTY by check, wired funds, or cashier's check, within fifteen (15) days of the Effective Date of this Agreement. The "Effective Date" shall be defined as the date that the last party approves, signs and executes this Agreement.

2. Receipt and Notice of Credit Transfer. Following the execution of this Agreement by the parties and COUNTY'S receipt of the Fee Balance, the COUNTY shall issue a written receipt and any other type of document acceptable to the regulatory agencies evidencing that the CITY has paid the Fee Balance to the COUNTY, and the Reserved Credit has been officially transferred to the CITY. It shall be the responsibility of the CITY to provide the regulatory agencies with a copy of the receipt or other acceptable proof confirming the purchase of the Reserved Credit.

3. Disputes. Any disputes relating to interpretation of the terms of this Agreement or a question of fact arising under this Agreement shall be resolved through good faith efforts upon the part of the CITY and the COUNTY. Prior to initiating any litigation concerning this Agreement, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for St. Lucie County. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall not be admissible as evidence in any subsequent proceeding concerning the disputed issue. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue for claims under state law shall be in the Nineteenth Judicial Circuit for St. Lucie County, Florida, and for any claims which are justifiable in federal court shall be the Southern District of Florida.

4. Notices. All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger or courier service, or by United States Mail with postage prepaid, and shall be directed to the addresses and authorized representatives set out below.

| | |
|-----------|-------------|
| FOR CITY: | FOR COUNTY: |
|-----------|-------------|

| | |
|--|--|
| <p>CITY OF PORT ST. LUCIE 121 SW Port St. Lucie Boulevard Port St. Lucie, FL 34984 Attn: City Attorney</p> <p><u>With a copy to:</u> CITY OF PORT ST. LUCIE 121 S.W. Port St. Lucie Boulevard Port St. Lucie, FL 34984 Attn: City Manager</p> | <p>COUNTY ADMINISTRATION ANNEX 2300 Virginia Avenue Fort Pierce, FL 34982 Attn: County Attorney</p> <p><u>With a copy to:</u> COUNTY ADMINISTRATION ANNEX 2300 Virginia Avenue Fort Pierce, FL 34982 Attn: County Administrator</p> |
|--|--|

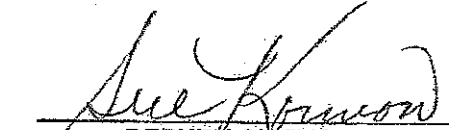
Each such notice shall be deemed delivered (i) on the date delivered if by personal delivery or (ii) on the date mailed, postage prepaid.

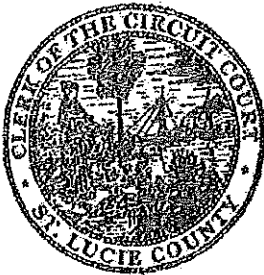
5. **Entire Agreement and Amendments.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior verbal or written agreements between the parties with respect thereto. This Agreement may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This Agreement shall be interpreted as a whole unit. All interpretations shall be governed by the laws of the State of Florida.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on behalf of their respective entities, and their successors and assigns, on the date first above written.

ATTEST:

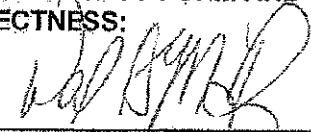

DEPUTY CLERK




BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA

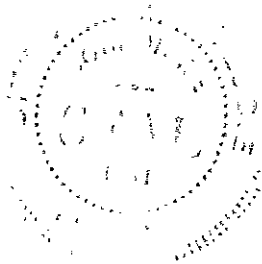
BY: 
CHAIR

APPROVED AS TO FORM AND
CORRECTNESS:

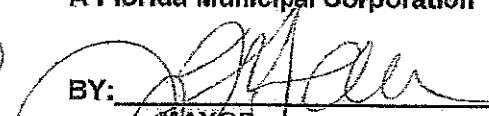

COUNTY ATTORNEY

ATTEST:

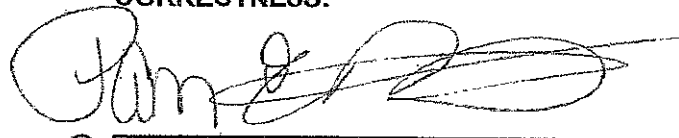

FOR CITY CLERK



CITY OF PORT ST. LUCIE,
A Florida Municipal Corporation

BY: 
MAYOR

APPROVED AS TO FORM AND
CORRECTNESS:


Pam E. Booker, Interim CITY ATTORNEY

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STAFF REPORT DISTRIBUTION LIST

CROSTOWN PARKWAY EXTENSION GEOTECHNICAL BORINGS

Application No: 131106-7

Permit No: 56-03353-P

INTERNAL DISTRIBUTION

- X David Melton
- X Hugo A. Carter, P.E.
- X Barbara J. Conmy
- X A. Bain
- X A. Waterhouse
- X ERC Martin/St. Lucie
- X M. Parrott

EXTERNAL DISTRIBUTION

- X Permittee - City Of Port St. Lucie
- X Permittee - Florida Department Of Environmental Protection
- X Agent - American Consulting Professionals

GOVERNMENT AGENCIES

- X City of Port St Lucie - Planning Div
- X Dept of Environmental Protection - Port St. Lucie
- X Dylan Gavagni, Park Manager Savannas Preserve State Park
- X St. Lucie County Engineer
- X St. Lucie County Planning and Development Services
Mark Satterfee, AICP, Director

OTHER INTERESTED PARTIES

- X Conservation Alliance of St. Lucie County
- X Indian River Keeper
- X Robert N. Hartsell, P.A.

STAFF REPORT DISTRIBUTION LIST

ADDRESSES

American Consulting Professionals
2000 Palm Beach Lakes Boulevard
Suite 1000
West Palm Beach FL 33409
anna.peterfreund@acp-ga.com

City Of Port St. Lucie
121 Port St Lucie Boulevard
Port St Lucie FL 34984
patr@cityofpsl.com

Florida Department Of Environmental Protection
3900 Commonwealth Blvd
Tallahassee FL 32399
scott.cannard@dep.state.fl.us

City of Port St Lucie - Planning Div
121 Sw Port St Lucie Blvd
Port St Lucie FL 34984-5099
dholbrook@cityofpsl.com

Dept of Environmental Protection - Port St. Lucie
1801 Se Hillmoor Drive, C 204
Port St. Lucie FL 34952
cynthia.lott@dep.state.fl.us

Dylan Gavagni, Park Manager Savannas Preserve State
Park
9551 Gumbo Limbo Lane
Jensen Beach FL 34957
dylan.gavagni@dep.state.fl.us

St. Lucie County Engineer
2300 Virginia Avenue
Fort Pierce FL 34982
powleym@stlucieco.org

St. Lucie County Planning and Development Services
Mark Satterlee, AICP, Director
2300 Virginia Avenue
Fort Pierce FL 34482
satterleem@stlucieco.org

Conservation Alliance of St. Lucie County
Po Box 12515
Fort Pierce FL 34979-2515

Indian River Keeper
Po Box 1812
Jensen Beach FL 34957

Robert N. Hartsell, P.A.
1600 S. Federal Highway
Pompano Beach FL 33062