

# **TOWN OF DAVIE**

## **TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark Kutney, AICP, Development Services Director/(954) 797-1101

**SUBJECT:** Resolution: Developers Agreement  
DA 3-1-02 South Post Plat, 4200 Shotgun Road

**AFFECTED DISTRICT:** District 4

**TITLE OF AGENDA ITEM:**

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND EDWARD GILBERT, TRUSTEE FOR ROAD CONCURRENCY RELATING TO THE SOUTH POST PLAT; PROVIDING FOR REMEDIAL MEASURES TO SATISFY CONCURRENCY REQUIREMENTS; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

**REPORT IN BRIEF:**

On November 15, 2000 Town Council passed resolution No. R 2000-64, approving a boundary plat consisting of 308.315 acres for the development of 308 single family lots. In order to satisfy roadway concurrency, the developer is entering into a development agreement requiring contribution towards roadway improvement projects. The Town is party to the agreement solely for the purpose of issuing certificates of occupancy. The agreement states that certificates of occupancy shall not be issued until the roadway improvements required by Broward County are completed. Broward County has required the construction of a bridge crossing the C-11 South Florida Water Management District canal at a location between SW 142 and SW 148 Avenues. This agreement is an amendment to the previous agreement which was entered into on November 20, 2001. The improvement stated in the previous agreement was for modification of the existing northbound left turn lane and construction of a second northbound left turn lane at the intersection of Weston Road and South Post Road, with 300 feet of storage and 200 feet of transition. Since the time of the agreement traffic concurrency has changed, resulting in the alteration in required roadway improvements. Staff has no objection to the request.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** None

**FISCAL IMPACT:** None

**RECOMMENDATION(S):** Motion to approve

**Attachment(s):** Resolution, Amended and Restated Regional Road Concurrency Agreement, Land use map, Subject site map, Aerial

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND EDWARD GILBERT, TRUSTEE FOR ROAD CONCURRENCY RELATING TO THE SOUTH POST PLAT; PROVIDING FOR REMEDIAL MEASURES TO SATISFY CONCURRENCY REQUIREMENTS; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Edward Gilbert, Trustee proposes to develop properties known as the South Post Plat; and

WHEREAS, Broward County requires remedial measures to satisfy concurrency requirements related to the South Post Plat.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit "A", between Broward County, Edward Gilbert, Trustee, and the Town of Davie, whereby the Town of Davie Development Services Department shall not issue any certificates of occupancy until Improvement described is constructed in accordance with the Agreement.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002.

Return recorded document to:  
Dennis D. Mele, Esq.  
Ruden, McClosky, Smith,  
Schuster & Russell, P.A.  
200 East Broward Boulevard  
Fort Lauderdale, Florida 33301

Document prepared by:  
Stephanie J. Toothaker-Walker, Esq.  
Ruden, McClosky, Smith,  
Schuster & Russell, P.A.  
200 East Broward Boulevard  
Fort Lauderdale, Florida 33301

---

**AMENDED AND RESTATED  
REGIONAL ROAD CONCURRENCY AGREEMENT  
CONSTRUCTION OF IMPROVEMENTS**

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY" through its Board of County Commissioners;

AND

Edward Gilbert, as Trustee, under the provisions of an unrecorded Florida land trust agreement dated July 29, 1998 known as the imagination Farms Land Trust, its successors and assigns, hereinafter collectively referred to as "DEVELOPER",

AND

The Town of Davie, a municipal corporation created and existing under the laws of the State of Florida, hereinafter referred to as "TOWN"

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, requires that the regional transportation network be adequate to serve the reasonably projected needs of proposed developments; and

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, more specifically requires that an application for a development permit satisfy concurrency requirements for compact deferral areas; and

WHEREAS, COUNTY has approved the South Post Plat (017-MP-00) as more particularly described in Exhibit "A", hereinafter referred to as the "PLAT"; and

WHEREAS, approval of the plat was conditioned upon the DEVELOPER's compliance with the terms of that certain Regional Road Concurrency Agreement for Construction of Improvements, as recorded in Official Records Book 32520, Page 1130 of the Public Records of Broward County, Florida ("Concurrency Agreement"); and

WHEREAS, that certain Concurrency Agreement required the DEVELOPER to modify the existing northbound left turn lane and to construct a second northbound left turn lane at the intersection of Weston Road and South Post Road, with 300 feet of storage and 200 feet of transition, and to install any necessary receiving pavement on the west leg of the intersection; and

WHEREAS, subsequent to the recordation of the Concurrency Agreement, an additional study was performed which determined that an alternative remedial measure will mitigate the PLAT's traffic impacts; and

WHEREAS, the parties have determined that said alternative remedial measure will be more beneficial than the improvements described in the Concurrency Agreement; and

WHEREAS, the parties wish to amend the Concurrency Agreement; and

NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, Paragraph two of the Concurrency Agreement is amended as follows:

1. The above recitals and representations are true and correct and are incorporated herein.
2. Construction of Improvements.
  - (a) In lieu of the Improvements described in the Concurrency Agreement, DEVELOPER agrees to pay to COUNTY, Two Hundred Eighty Five Thousand Nine Hundred Three Dollars and no cents (\$285,903.00), which represents DEVELOPER's proportionate share of the cost of the IMPROVEMENT(S) described in Exhibit "B", hereinafter referred to as the "Improvements." DEVELOPER agrees that payment must be made to the

COUNTY either prior to receipt of the first certificate of occupancy for property within the PLAT, or within thirty (30) days of receiving notice from COUNTY that a contract has been let for the IMPROVEMENTS.

- (b) In connection with the Concurrency Agreement, DEVELOPER previously provided to COUNTY a Letter of Credit, a copy of which is attached hereto as Exhibit "C", in the amount of Two Hundred Eighty Five Thousand Nine Hundred Three Dollars and no cents (\$285,903.00), which represents 100% of the amount of payment to be made to COUNTY for the IMPROVEMENTS.
3. CONCURRENCY COMPLIANCE. COUNTY finds that by executing and complying with the terms of this amended Agreement, DEVELOPER has satisfied the adequacy of the Regional Roadway Network requirement of the Broward County Land Development Code for the PLAT as approved by the COUNTY.
  4. MUNICIPALITY. TOWN agrees not to issue a certificate of occupancy for any development within the PLAT until TOWN has received confirmation from COUNTY that payment for the IMPROVEMENT(S) has been received.
  5. NOTICE. Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

For the COUNTY:  
Director of the Broward County Engineering Division  
1 North University Drive  
Plantation, FL 33324

For the DEVELOPER:  
Edward H. Gilbert, as trustee  
5100 Town Center Circle, Suite 330  
Boca Raton, FL 33486

For the TOWN:  
Tom Willi, Town Administrator  
Town of Davie  
6591 Orange Drive  
Davie, FL 33314

6. RECORDATION. This Agreement shall be recorded in the Public Records of Broward County Florida, at the DEVELOPER'S expense. The benefits and obligations contained in this Agreement shall inure to grantees, successors, heirs, and assigns who have an interest in the PLAT.
7. VENUE; CHOICE OF LAW. Any controversies or legal issues arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida.
8. CHANGES TO FORM AGREEMENT. DEVELOPER represents and warrants that there have been no amendments or revisions whatsoever to the form Agreement without the prior written consent of the County Attorney's Office. Any unapproved changes shall be deemed a default of this Agreement and of no legal effect.
9. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provisions hereof.
10. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
11. EXHIBITS. All Exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference. Typewritten or handwritten provisions inserted in this Agreement or attached hereto shall control all printed provisions in conflict therewith.
12. FURTHER ASSURANCES. The parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.
13. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair or Vice Chair, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date), DEVELOPER, signing by and through its \_\_\_\_\_ duly authorized to execute same and TOWN OF \_\_\_\_\_, signing by and through its \_\_\_\_\_, duly authorized to execute same.

**COUNTY**

ATTEST:

BROWARD COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
County Administrator and  
Ex-Officio Clerk of the  
Board of County Commissioners  
of Broward County, Florida

By \_\_\_\_\_  
Chair

\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date)

Approved as to form by  
Office of County Attorney  
Broward County, Florida  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By \_\_\_\_\_  
Assistant County Attorney  
\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date)



TOWN

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
TOWN Clerk

Town of Davie

By \_\_\_\_\_  
Mayor

\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (date)

By \_\_\_\_\_  
TOWN Manager

\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (date)

APPROVED AS TO FORM:

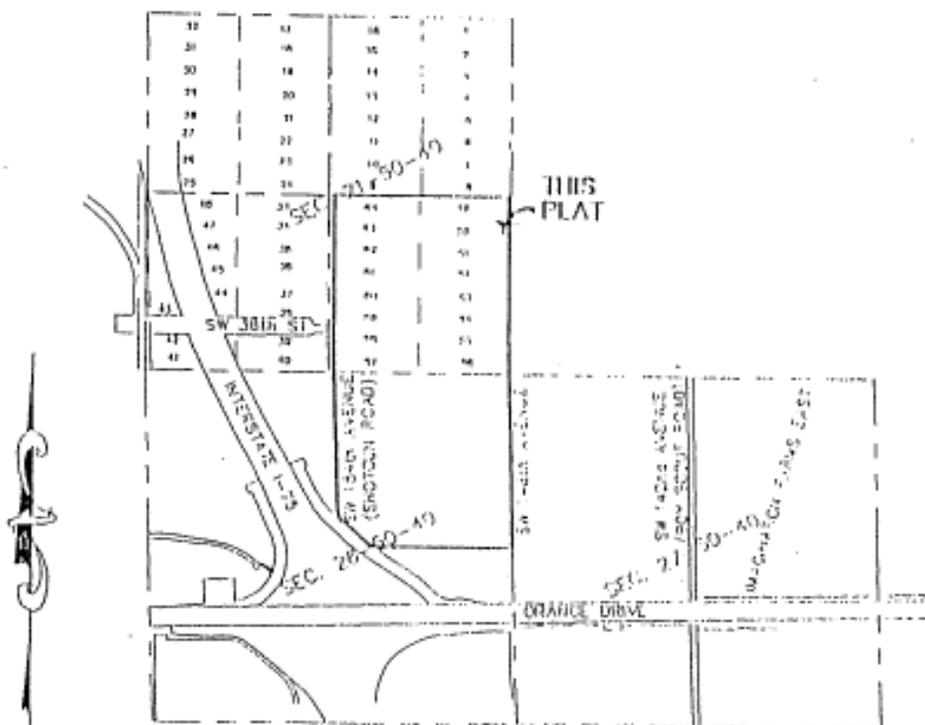
By \_\_\_\_\_  
TOWN Attorney

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**SOUTH POST**

A PORTION OF SECTIONS 21 AND 28, TOWNSHIP 50 SOUTH, RANGE 40 EAST, BROWARD COUNTY, FLORIDA, INCLUDING ALL OF TRACTS 49 THROUGH 55 AND PORTIONS OF TRACT 57 HEREAFTER BY BE SAID SECTION 21 OF FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, ACCORDING TO THE PLAT HEREIN RECORDED IN PLAT BOOK 2, PAGE 17 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, IS DESCRIBED AS FOLLOWS:

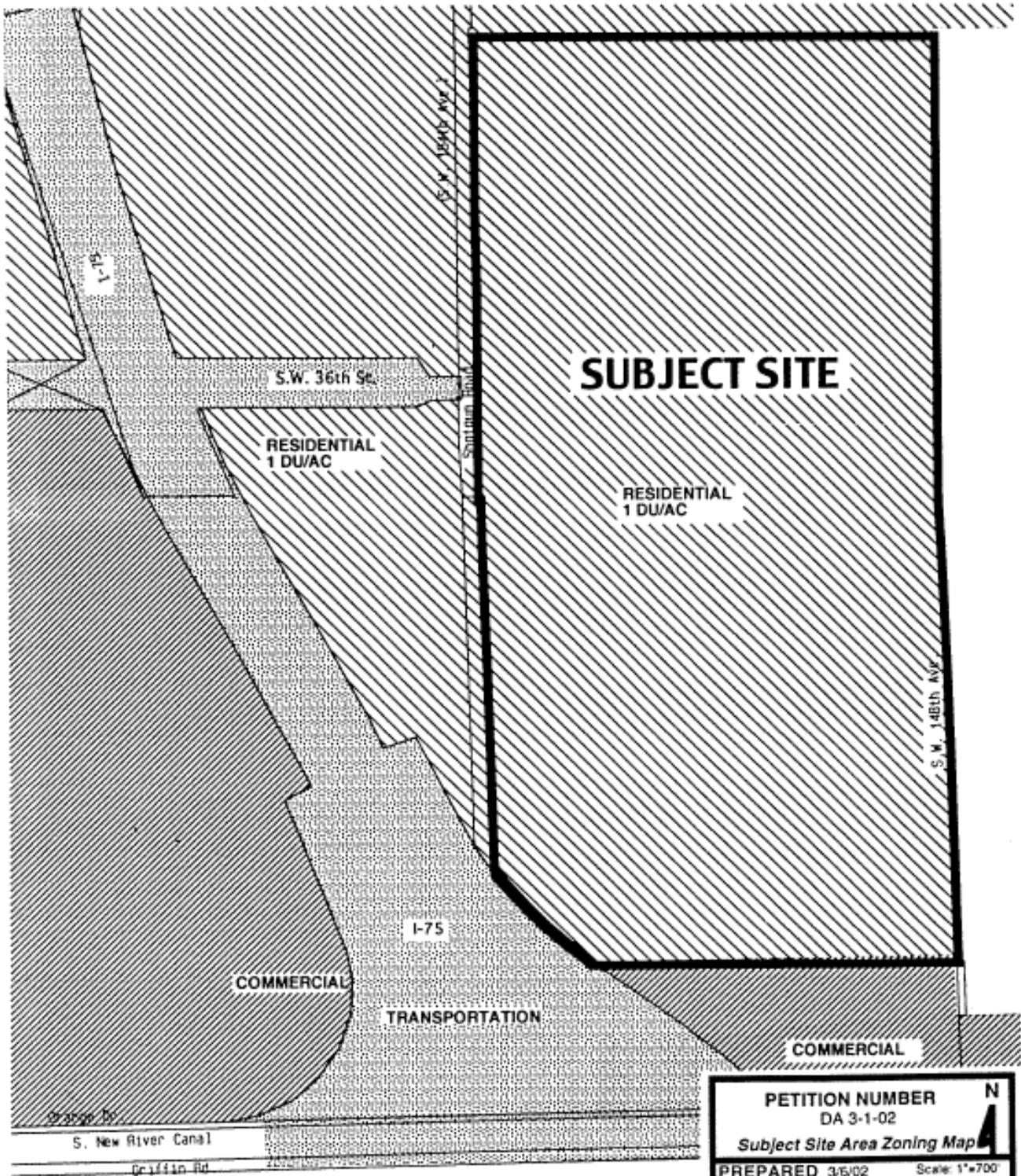
BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 28; THENCE ALONG THE EAST LINE OF THE NORTHEAST QUARTER (NE 1/4) OF SAID SECTION 28, (BEARING BEINGS) SOUTH 91°44'55" EAST 2641.07 FEET TO THE EAST QUARTER (E 1/4) CORNER OF SAID SECTION 28; THENCE ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER (NE 1/4), SOUTH 89°49'30" WEST 2041.71 FEET TO THE NORTH-EASTERN BOUNDARY OF SHOTGUN ROAD REALIGNMENT AS RECORDED IN OFFICIAL RECORD BOOK 9757, PAGE 976 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE ALONG SAID NORTHEASTERN BOUNDARY THE FOLLOWING THREE (3) COURSES: (1) NORTH 56°32'42" WEST 87.26 FEET TO A POINT OF CURVATURE OF A 2365.23 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST; (2) NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°47'46" AN ARC DISTANCE OF 528.24 FEET TO A POINT OF COMPOUND CURVATURE OF A 270.00 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST; (3) NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 42°13'51" AN ARC DISTANCE OF 198.20 FEET TO A POINT OF TANGENCY ON THE EAST RIGHT OF WAY LINE OF SHOTGUN ROAD AS DESCRIBED IN OFFICIAL RECORD BOOK 4940, PAGE 626 OF SAID PUBLIC RECORDS OF BROWARD COUNTY; THENCE ALONG SAID EAST RIGHT OF WAY LINE, NORTH 01°41'25" WEST 2089.74 FEET TO THE NORTH LINE OF SAID SECTION 28; ALSO BEING THE SOUTH LINE OF SAID SECTION 21; THENCE CONTINUE ALONG SAID EAST RIGHT OF WAY LINE, NORTH 00°10'35" WEST 2642.50 FEET TO THE NORTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SAID SECTION 21; THENCE ALONG SAID NORTH LINE, NORTH 00°00" EAST 2564.70 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 21; THENCE ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER (SE 1/4), SOUTH 00°04'35" EAST 2641.44 FEET TO THE POINT OF BEGINNING.

SAID LANDS SITUATE, LYING, AND BEING IN THE TOWN OF DAVE, BROWARD COUNTY, FLORIDA AND CONTAINING 13,430,190 SQUARE FEET (308.315 ACRES) MORE OR LESS.



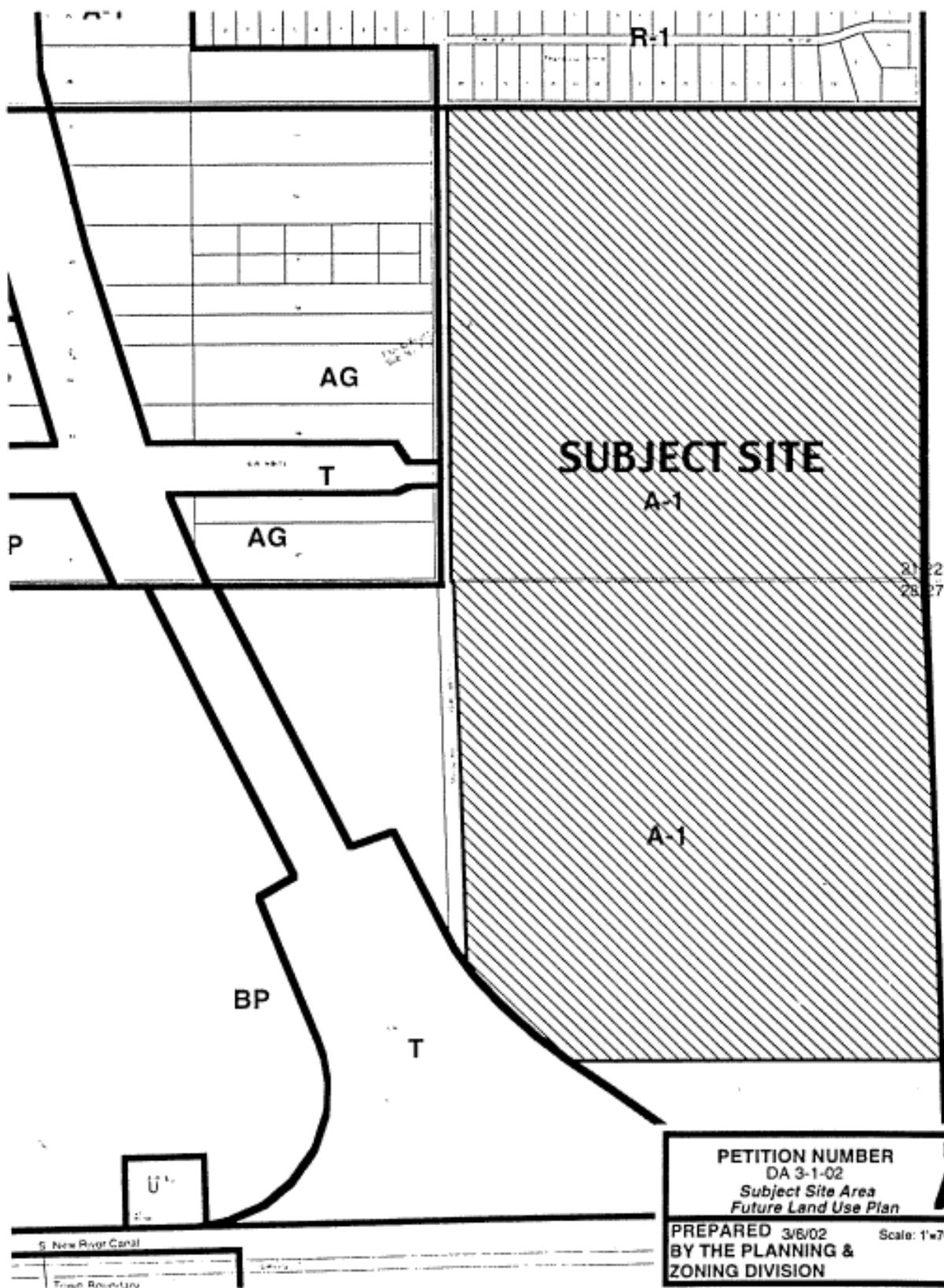
**EXHIBIT "B"**  
**IMPROVEMENTS**

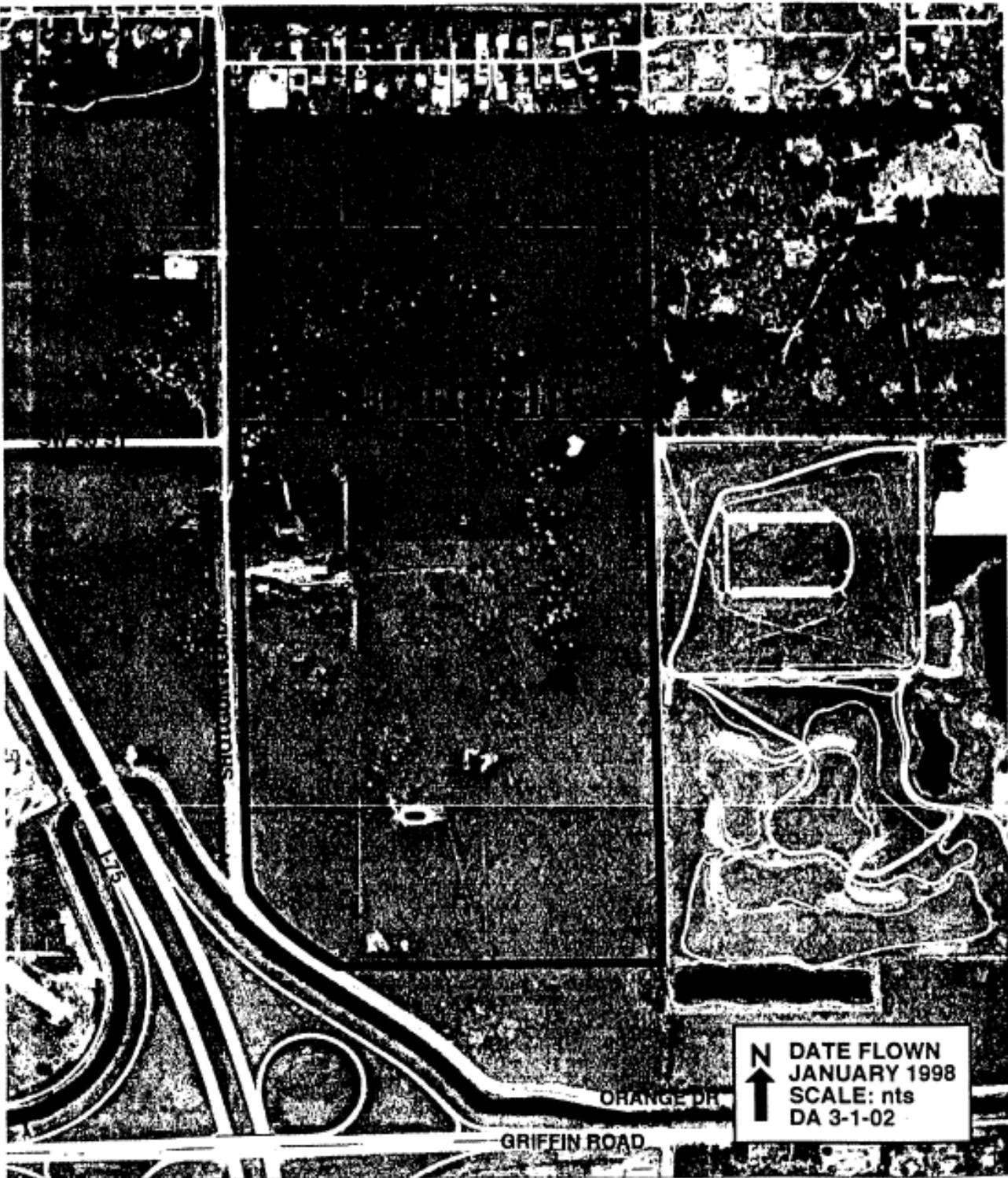
Construction of a bridge crossing the C-11 South Florida Water Management District canal at a location between 142<sup>nd</sup> Avenue and 148<sup>th</sup> Avenue, within the Town of Davie, which precise location will be more specifically designated by Broward County. Construction shall be substantially in accordance with the preliminary plans attached hereto, prepared by Atlantic Engineering, Inspection & Testing Lab, Inc.



**PETITION NUMBER**  
DA 3-1-02  
*Subject Site Area Zoning Map*

**PREPARED** 3/6/02 **Scale:** 1"=700'  
**BY THE PLANNING & ZONING DIVISION**





**N** DATE FLOWN  
↑ JANUARY 1998  
SCALE: nts  
DA 3-1-02