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**MEMORANDUM**

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TO: GREGORY J. ORAVEC, CITY MANAGER

THRU: ROGER G. ORR, CITY ATTORNEY

FROM: AZLINA GOLDSTEIN SIEGEL, ASSISTANT CITY ATTORNEY

DATE: MAY 23, 2012

SUBJECT: HUGGINS PROPERTY LITIGATION FOR THE SOUTH PARCEL  
(THE EDDIE HUGGINS LAND GRADING CO.)

**RECEIVED**

MAY 22 2012

City Manager's Office

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The Legal Department was directed by you to examine the potential for pursuing legal action against the owner of a property known as the "South Parcel" for the owner's failure to comply with certain conditions imposed by the City and the failure to convey said property to the City free and clear of all liens and encumbrances. The South Parcel is located East of Interstate 95 and South of Open View Drive, and was used by the current owner, The Eddie Huggins Land Grading Co., a dissolved Florida corporation ("Huggins"), to conduct fill excavation operations. In order to gain a better understanding of why pursuing litigation against Huggins is legitimate and justified, below is a brief history and summary of the matter.

Background History: Dating back to at least the beginning of 1986, the South Parcel and another property known as the "North Parcel" were agricultural lands under the jurisdiction of St. Lucie County. Said properties were owned at that time by Peacock Fruit & Cattle Corporation, a Florida corporation ("Peacock"). Peacock submitted an Annexation & Rezoning Petition to the City's Planning and Zoning Department. Peacock desired to have the lands zoned as GU (General Use) so that the zoning would be consistent with Peacock's proposed ultimate use of the properties as City-owned land for parks and recreational purposes. The North Parcel consists of approximately 166.39 acres while the South Parcel consists of approximately 108.39 acres. The Annexation & Rezoning Petition also contained Peacock's proposal to create lakes on the lands that would serve both recreational and drainage retention purposes. Further, Peacock's proposed creation of the lakes would be the result of Peacock's excavation of the properties for fill over a period of years prior to Peacock's donation of the North and South Parcels to the City. However, while said Petition was being reviewed and processed, Peacock conveyed the North and South Parcels on June 16, 1986 to Union Holding Corporation, a Florida corporation ("Union Holding").

On August 26, 1986, the City annexed the North and South Parcels, granted a zoning of GU, and granted a special exception use to allow the excavation of fill material by duly adopting and approving Ordinance 86-79, Ordinance 86-80 and Resolution 86-R68, respectively. The Annexation Agreement between Union Holding and the City, which was approved in Ordinance 86-79 and formally entered into on June 19, 1987, established not only the terms and conditions of the fill excavation operations but also among other things, (1) the payments to the City based on the total amount of cubic yards of fill dirt excavated, (2) the payment to the City for road improvements, (3) the timeframe for completion of the excavation, and (4) the transfer of ownership of the properties to the City. As compensation to the City for parks and recreational

purposes, Union Holding was required to pay the sum of three cents (\$0.03) per cubic yard of fill dirt excavated from the properties. Excavation operations on the North Parcel were to be completed within ten (10) years and such activities on the South Parcel had to be completed within the subsequent ten (10) years. Further, fee title to the North and South Parcels were to be transferred to the City following the respective completion dates of the excavation operations on each parcel.

On May 8, 1989 the City Council duly passed and approved Resolution 89-R29, which served to amend the Special Exception Use authorized by Resolution 86-R68. Resolution 89-R29 granted Union Holding's request to increase the excavation depth from twenty-five (25) feet to fifty (50) feet, but also imposed the condition that the timeframe for completion of the operations and the conveyance of the North Parcel to the City be advanced by one (1) year. Therefore, the timeframe to complete excavation operations on the North Parcel was to expire in April 1997. The various other conditions that were the subject of the City's previous ordinances, resolutions, approvals, and agreements with Union Holdings remained unchanged.

Union Holding did not complete its excavation of the North Parcel prior to April 1997 and requested an extension. However, due to Union Holding's non-compliance with certain conditions that were originally imposed by the City, the City Council, on October 27, 1997, denied the request to extend the time period for excavation.

On or about February 20, 1998, Port St. Lucie Tractor Service, Inc., a Florida corporation ("PSL Tractor") submitted to the City an Application for a Special Exception Use to be able to complete the excavation of the North Parcel, including correcting the side slope violations, and proceed with the excavation operations on the South Parcel. PSL Tractor at the time of the submittal of its Application had a contract to purchase the North and South Parcels from Union Holding. PSL Tractor worked with City Staff on mutually agreeable terms and conditions to present to City Council for consideration.

On May 26, 1998, the City Council duly passed and approved Resolution 98-R34 granting the special exception use for both the North and South Parcels to allow the continuation and completion of fill excavation operations and the eventual transfer of fee title of both properties to the City. The granting of the special exception use contained certain conditions. The following is a summary of the significant conditions imposed by the City on PSL Tractor:

1. All of the terms and conditions that were contained in the Annexation Agreement (Agreement No. 87-11262), Resolution 86-R68 and Resolution 89-R29 shall remain in effect, except as they may be modified by Resolution 98-R34.
2. The perimeter berms serving as a buffer for the neighboring residences that were not being kept in good condition by Union Holding were to be repaired in addition to the side slope violations.
3. In lieu of providing cash payments to the City for road improvements, specifically improvements to Rosser Road, PSL Tractor shall record a two hundred fifty (250) foot easement in favor of the City for both the North and South Parcels to allow for the location, construction, maintenance and operation of telecommunications towers and/or billboards. The easement shall extinguish upon the transfer of fee title to both properties to the City.
4. The special exception for the excavation operations on the North Parcel shall expire on May 26, 2000.
5. Within ninety (90) days of completion of the excavation operations on the North Parcel, or by August 24, 2000, whichever occurs first, fee title to the

- North Parcel shall be conveyed to the City by Warranty Deed free and clear of any liens and encumbrances, and in full compliance with all conditions of the City's special exception use approval.
6. Excavation of the South Parcel shall be permitted to commence within ninety (90) days prior to the completion of excavation operations on the North Parcel and such activities shall be allowed to continue for a period of ten (10) years, or until May 26, 2010, whichever occurs first.
  7. Within ninety (90) days of completion of the excavation operations on the South Parcel, or by August 24, 2010, whichever occurs first, fee title to the South Parcel shall be conveyed to the City by Warranty Deed free and clear of any liens and encumbrances, and in full compliance with all conditions of the City's special exception use approval.
  8. The payments to the City per cubic yard of fill material hauled from the North Parcel shall remain the same as stated in the Annexation Agreement and previous special exception use approvals. The amount of the payments for the South Parcel shall be five cents (\$0.05) per cubic yard for the first year of excavation and then shall increase by one cent (\$0.01) for each year thereafter to a maximum of ten cents (\$0.10) per cubic yard.

PSL Tractor formally acquired fee title to the North and South Parcels from Union Holding via a Warranty Deed, dated June 19, 1998. Therefore, as a successor in interest to the properties, the terms and conditions of the Annexation Agreement and all of the special exception use approvals were binding on PSL Tractor. Excavation operations on the North Parcel were completed and fee title was conveyed to the City by Warranty Deed from PSL Tractor on June 24, 1999.<sup>1</sup> A revised Fill Dirt Excavation Plan and a Site Development Plan was prepared for the South Parcel. In addition, pursuant to the special exception use conditions set forth in Resolution 98-R34 PSL Tractor conveyed a two hundred fifty (250) foot easement in favor of the City for both the North and South Parcels to allow for the location, construction, maintenance and operation of telecommunications towers and/or billboards via an Easement Agreement dated September 23, 1998.

On November 30, 2000, PSL Tractor conveyed the South Parcel to Huggins by Warranty Deed. As the new owner of the South Parcel, Huggins pursued excavation operations on the site and became the successor in interest to the responsibilities and obligations associated with such excavation activities. Although not timely, Huggins eventually submitted to the City, the full amount of the payments due based on the total sum of cubic yards of fill material hauled from the site pursuant to the payment schedule imposed by Resolution 98-R34. The last payment from Huggins was received on April 14, 2008.

The Situation: During the years prior to the expiration of the timeframe for completion of the excavation operations and the transfer to the City of title to the South Parcel, City Staff occasionally visited the site. Around mid-2008 City Staff observed that Huggins violated the revised Excavation and Site Development Plans. Perimeter berms and side slopes were not properly maintained and upland areas were disturbed, cleared and/or excavated for fill.

In anticipation of having the South Parcel conveyed to the City by August 24, 2010, the Legal Department sent a letter to Huggins on March 1, 2010 informing Huggins of the issues that needed to be addressed prior to the transfer of title. Huggins failed to respond to the letter. In addition, City Staff became aware that Huggins failed to pay real estate taxes beginning with the 2007 real estate tax bill and tax certificates were issued. The unpaid and delinquent taxes for the years 2007 through 2010 total approximately \$400,000.

Since August 2010, City Staff has tried to work with Huggins to have the violations corrected and the disturbed and excavated areas restored. Unfortunately Huggins was unwilling to comply with the obligations and conditions that were imposed by the City and convey fee title to the South Parcel free and clear of all liens and encumbrances, which includes the redemption of all the tax certificates issued. The previous reasoning behind the City's delay in pursuing legal action against Huggins was due to lack of any application by a tax certificate holder for a tax deed sale. Further, since at least one of the tax year's certificates was struck/defaulted to the County, the County has a policy of applying for tax deed sales of those properties for which they have held the tax certificates for two (2) years. If no one were willing to pay the minimum bid price for the South Parcel at the tax deed sale, which would be at least \$400,000, then the South Parcel would have been placed on the List of Lands and the City would have had the opportunity to acquire fee title to the property at that time. Moreover, it was assumed that no person or entity, after performing their due diligence, would want to acquire the South Parcel due to the binding obligations on the property and the City's equitable interest therein.

Unfortunately, a company has recently acquired all of the tax certificates and applied for the tax deed sale of the South Parcel. The tax deed sale is scheduled for June 4, 2012. Although the current tax certificateholder is willing to sell all of the certificates to the City and/or sell the South Parcel once title is acquired at the tax deed sale, the City does not have the funding for such a purchase. Moreover, it is the present view of Management that Huggins should not be able to walk away from its obligations after enjoying profits from the fill excavation operations by exploiting the land and the City.

Therefore, with the upcoming June 4, 2012 tax deed sale of the South Parcel, I am requesting that this matter be presented to City Council at the May 29, 2012 Regular City Council Meeting for direction on whether legal action shall be commenced against Huggins in addition to pursuing any other legal remedies to acquire title to the South Parcel. If City Council provides the requisite direction to institute litigation, then I will immediately prepare and file a Complaint and Lis Pendens prior to June 4, 2012 in order to attempt to stay the tax deed sale.

If you have any questions or require further information, then please do not hesitate to contact me.

AGS/bb

Attachments: Site Map  
Slide Presentation for City Council Meeting

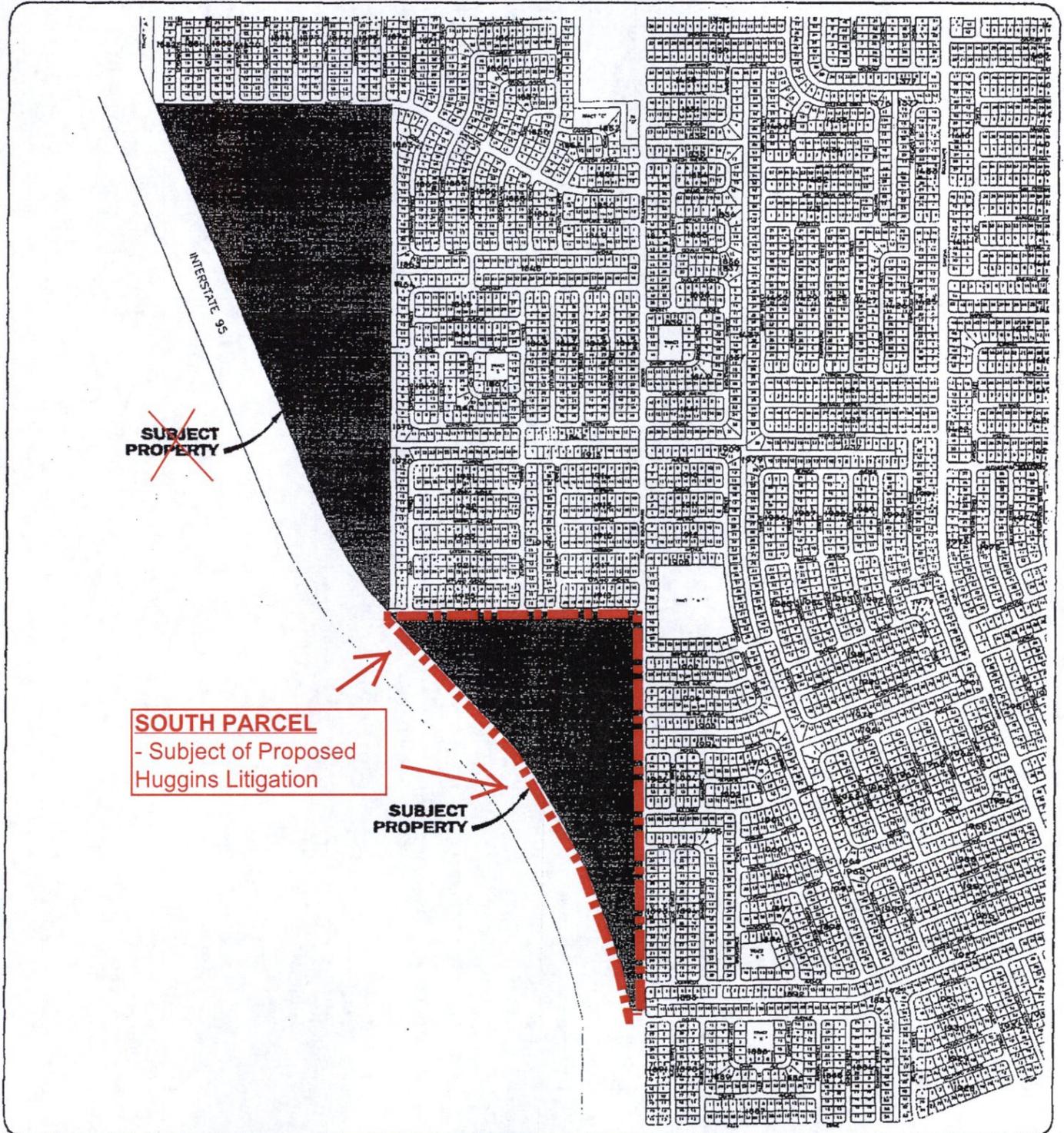
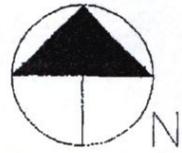
cc: Patricia Roebling, P.E., City Engineer  
Daniel Holbrook, AICP, Director of Planning and Zoning  
Sherman Conrad, Director of Park and Recreation  
Pam E. Booker, Senior Assistant City Attorney

H:\Real Estate\LITIGATION\UNION HOLDINGS - huggins turnover pit property to city\Memo to Oravec re Huggins Property Litigation.docx

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<sup>1</sup> A Corrective Warranty Deed dated May 3, 2000 was executed by PSL Tractor to correct the June 24, 1999 Warranty Deed to the City.

# SITE LOCATION



~~SUBJECT PROPERTY~~

**SOUTH PARCEL**  
- Subject of Proposed  
Huggins Litigation

SUBJECT PROPERTY



CITY OF PORT ST. LUCIE  
PLANNING & ZONING DEPT.

SPECIAL EXCEPTION USE APPLICATION  
WEST 1/2 OF S23, T37S, R39E  
EAST 1/2 OF S26, T37S, R39E

DATE: 3/3/98

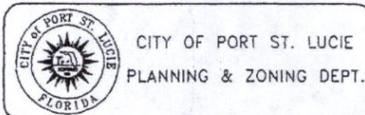
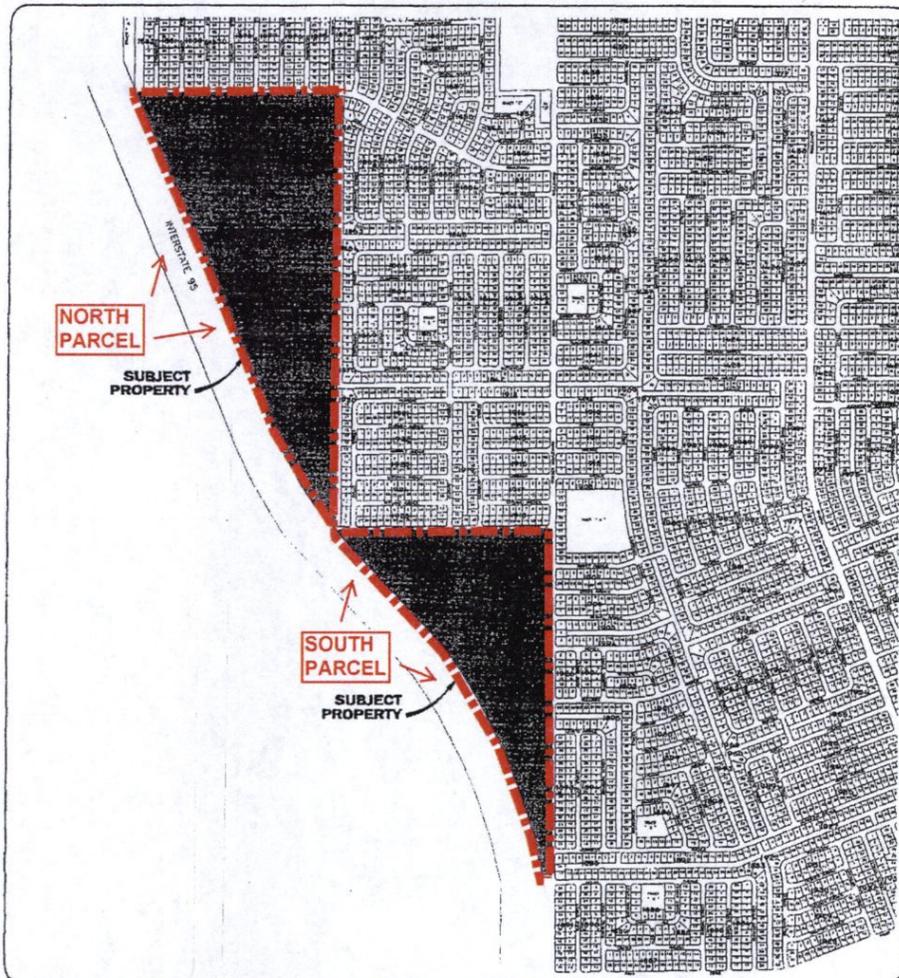
CADD FILE NAME:  
P98-28

APPLICATION NUMBER:  
P98-28

PREPARED BY:  
DATA MANAGEMENT DIVISION



## SITE LOCATION



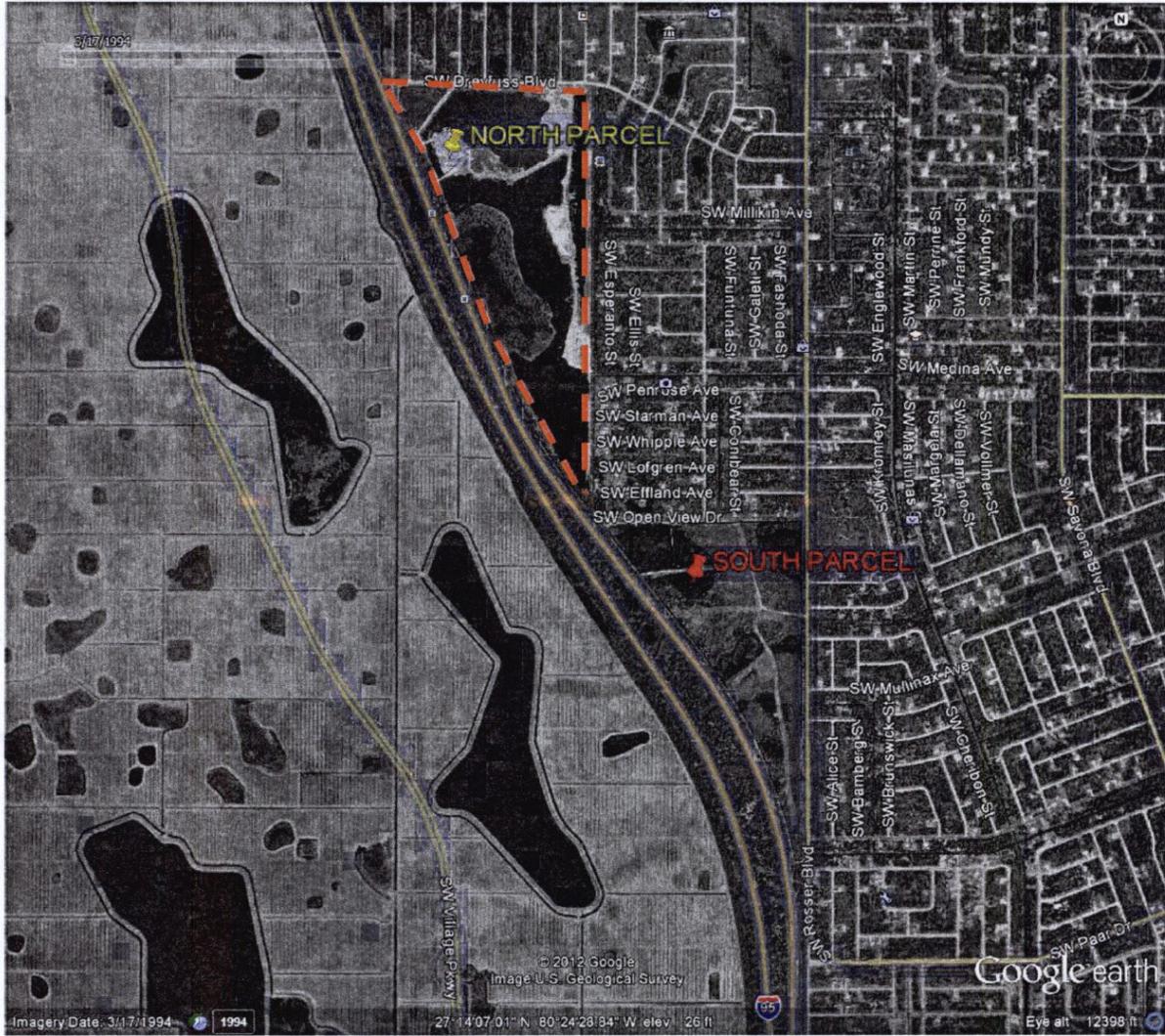
CITY OF PORT ST. LUCIE  
PLANNING & ZONING DEPT.

SPECIAL EXCEPTION USE APPLICATION  
WEST 1/2 OF S23, T37S, R39E  
EAST 1/2 OF S26, T37S, R39E

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PREPARED BY:	DATA MANAGEMENT DIVISION

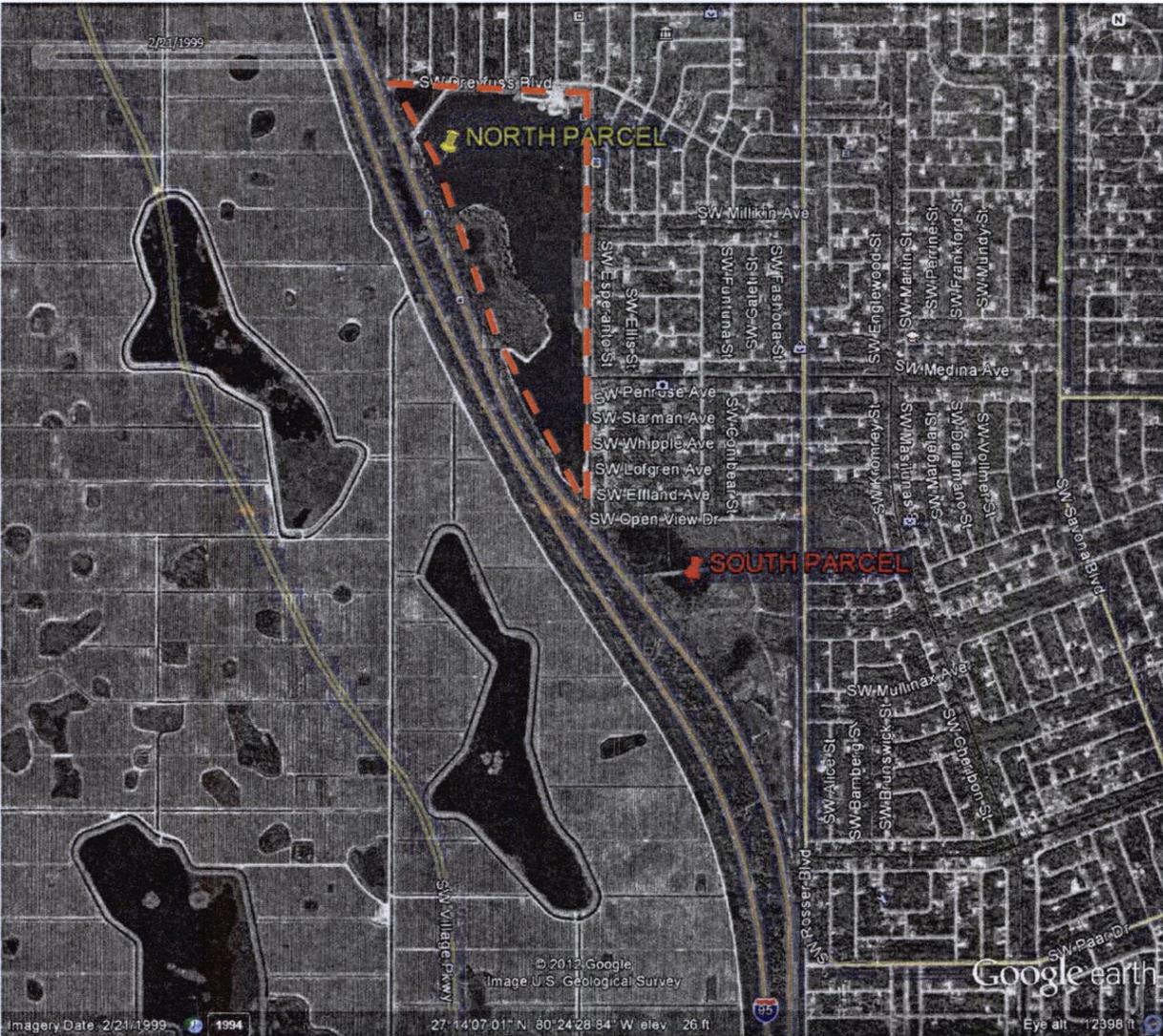
## “THE BEGINNING” North & South Parcels

- August 26, 1986: The properties are annexed into the City; City granted GU zoning and special exception use to allow the excavation of fill material
- Union Holding becomes the property owner and in 1987 enters into the Annexation Agreement with the City



Google Earth: 3/17/94

# Union Holding Continues Excavation Operations on the North Parcel...



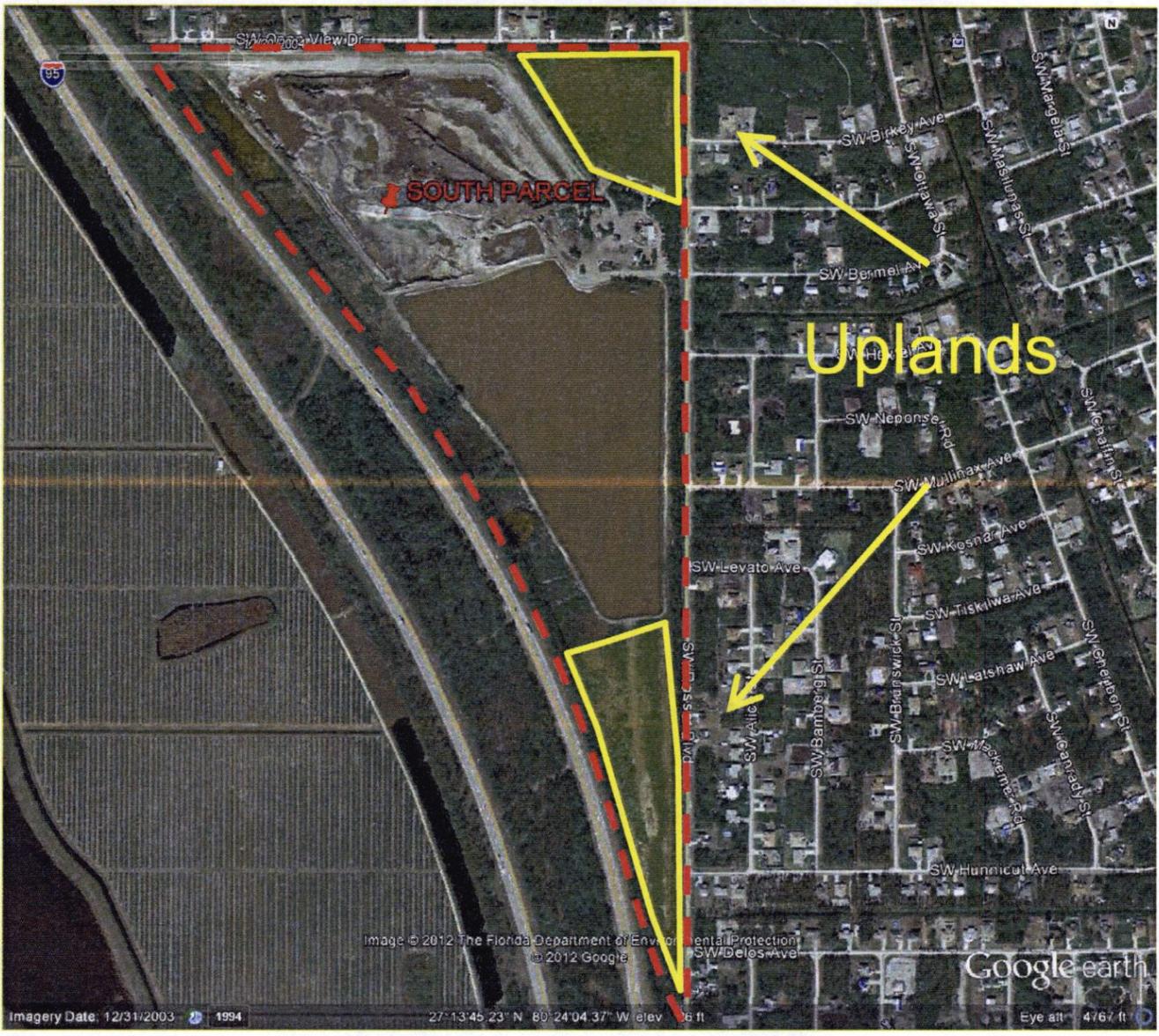
Google Earth: 2/21/99

- Union Holding does not complete excavation of North Parcel by April 1997 and City denies request for extension of time ...
- City passes Resolution 98-R34 as PSL Tractor will be assuming ownership and correcting Union Holding's violations so that the excavation of the North Parcel can be completed and title transferred to the City
- Resolution 98-R34 also sets forth additional conditions concerning the properties that PSL Tractor is required to meet prior to the eventual transfer of title to the South Parcel by August 24, 2010
- June 24, 1999 PSL Tractor conveys to the City fee title to the North Parcel free & clear of liens and encumbrances



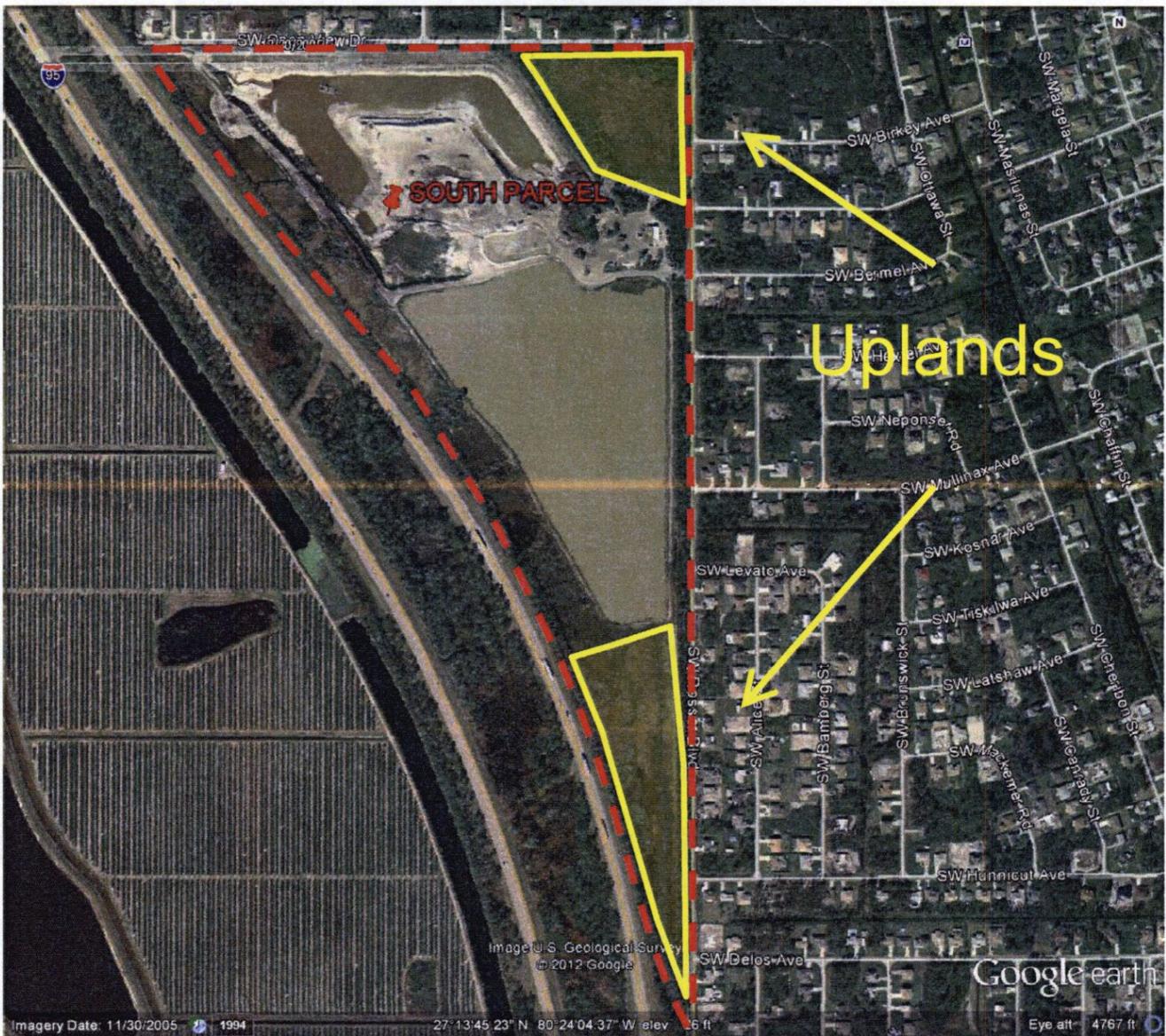
SLC Property Appraiser: 2000

November 30, 2000 Huggins acquires title to the South Parcel from PSL Tractor and performs excavation operations on the site.



Google Earth: 12.31.03

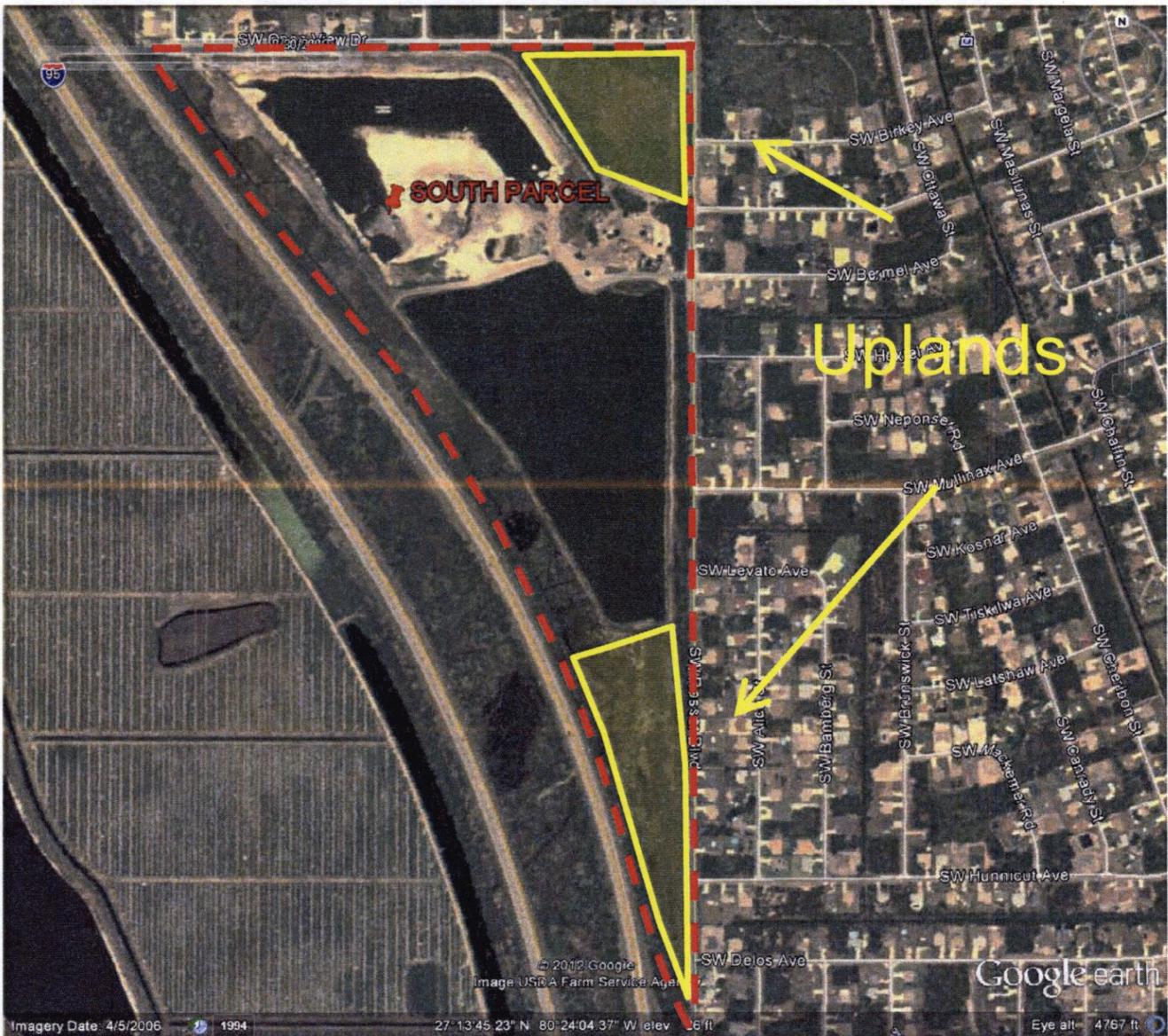
2003: Huggins continues excavation operations on the South Parcel and does not disturb or excavate the uplands areas (shown outlined and highlighted in yellow).



Google Earth: 11.30.05

2005: Huggins continues excavation operations on the South Parcel and does not disturb or excavate the uplands areas (shown outlined and highlighted in yellow).

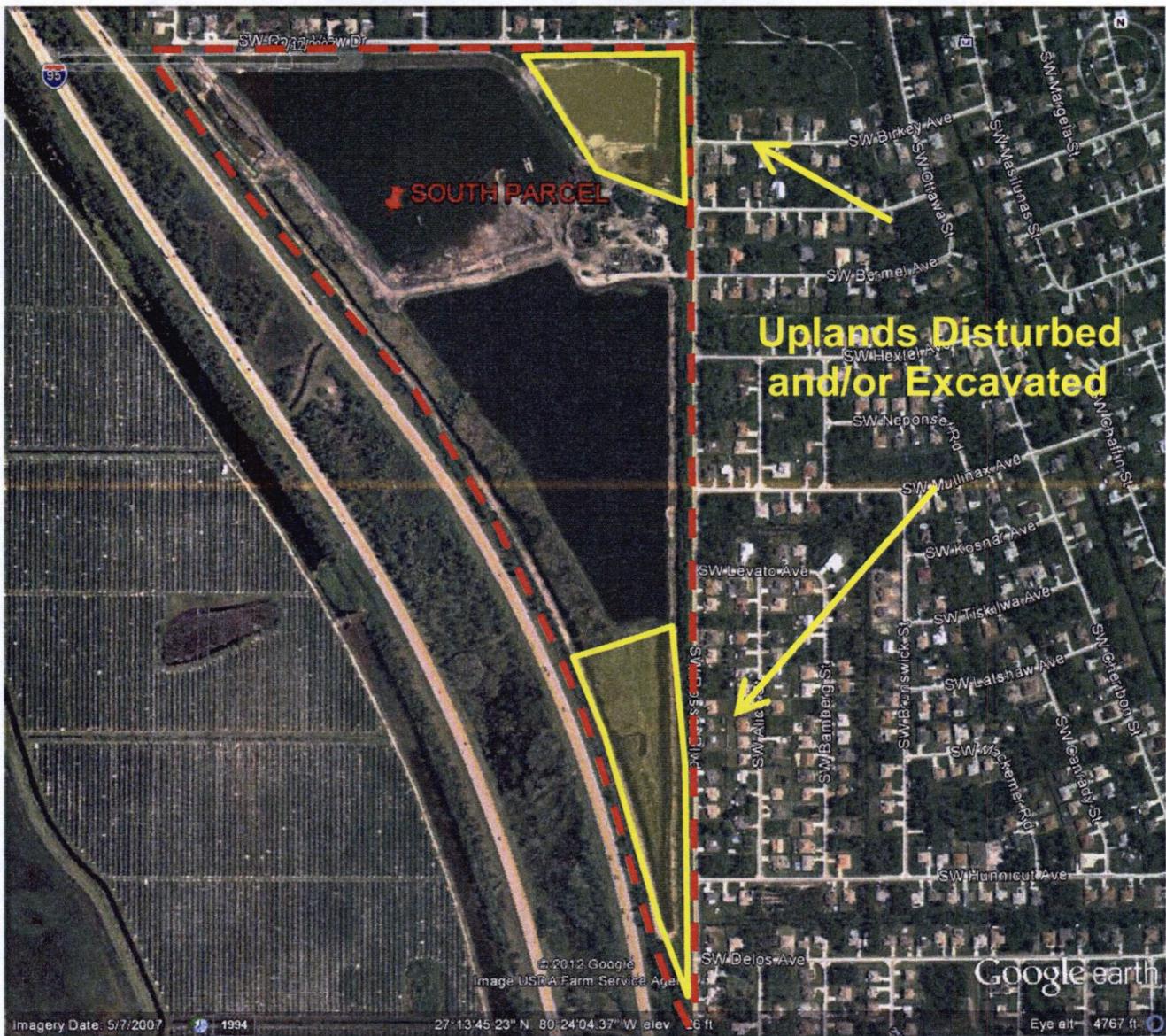
- To date: Real estate taxes are being paid together with the payments to the City based on the total sum of cubic yards of fill material being hauled off the site



Google Earth: 4.05.06

2006: Huggins continues excavation operations on the South Parcel and does not disturb or excavate the uplands areas (shown outlined and highlighted in yellow).

- To date: Real estate taxes are being paid together with the payments to the City based on the total sum of cubic yards of fill material being hauled off the site

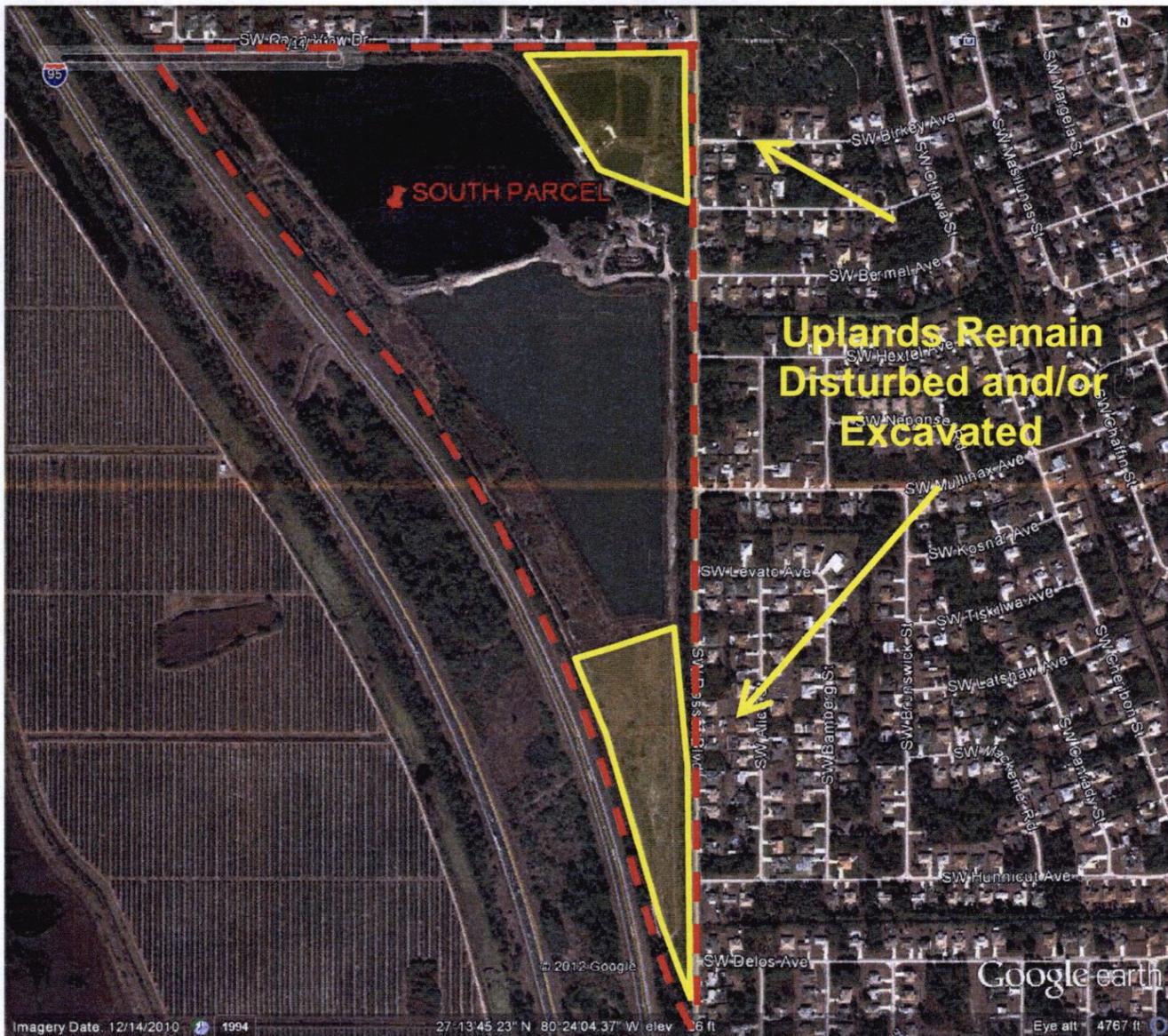


Google Earth: 5.07.07

2007: Huggins continues excavation operations on the South Parcel and **does** disturb and/or excavate the uplands areas (shown outlined and highlighted in yellow).

- 2007 Real estate taxes were not paid and a tax certificate was issued.



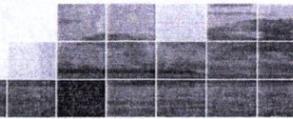


Google Earth: 12.14.10

- May 26, 2010: The date the special exception use allowing the excavation of fill on the South Parcel expires
- August 24, 2010: Huggins does not convey to the City fee title to the South Parcel as it is not free and clear of all liens and encumbrances
- Huggins and City Staff are unable to work out a plan so that clear, fee title to the South Parcel can be conveyed to the City and the disturbed and excavated uplands can be restored.



HONORABLE BOB DAVIS  
CPA, CGFO, CFC



Tax Collector Home Search Reports Shopping Cart

4/29/11 mtg w/ Roger re direction

Bill History — Real Estate Account At 0 TBD, PSL

- watch to see what happens  
- No \$ for tax certificate now

Real Estate Account #4326-111-0001-0001

Amounts as of 04-29-2011

Bill	Balance	Pay all: \$386,904.72
2010 Annual Bill	\$72,903.65	Pay this bill: \$72,903.65
2009 Annual Bill	\$94,600.25	Pay this bill: \$94,600.25
Issued certificate #11507	Face \$91,186.57 Rate 18%	06/01/2010 Certificate interest start 05/01/2010 Certificate issued 05/01/2010 Certificate advertised
2008 Annual Bill	\$103,501.39	Pay this bill: \$103,501.39
Issued certificate #11129	Face \$76,949.06 Rate 18%	06/01/2009 Certificate interest start 06/01/2009 Certificate issued 04-24-2009 Certificate advertised
2007 Annual Bill	\$115,899.43	Pay this bill: \$115,899.43
Issued certificate #10675	Face \$76,750.15 Rate 18%	07/01/2008 Certificate interest start 06/01/2008 Certificate issued 05/01/2008 Certificate advertised
2006 Annual Bill	\$0.00	12/11/2006 Paid \$71,407.08 Receipt #03-20061211-001922
2005 Annual Bill	\$0.00	01/13/2006 Paid \$32,684.45 Receipt #99-20060113-66652
2004 Annual Bill	\$0.00	11/30/2004 Paid \$16,063.55 Receipt #11-20041130-1793
2003 Annual Bill	\$0.00	11/21/2003 Paid \$15,135.16 Receipt #99-20031121-19479
1999 Annual Bill	\$0.00	11/30/2000 Paid \$17,881.96 Receipt #11-20001130-4519
Redeemed certificate #9591	Face \$16,359.73 Rate 18%	11/30/2000 Certificate redeemed 06/01/2000 Certificate interest start 06/01/2000 Certificate issued 04/23/2000 Certificate advertised
1998 Annual Bill	\$0.00	11/30/2000 Paid \$19,608.10 Receipt #11-20001130-4520
Redeemed certificate #9324	Face \$16,403.92 Rate 18%	11/30/2000 Certificate redeemed 06/01/1999 Certificate interest start 06/01/1999 Certificate issued 04-25-1999 Certificate advertised
Total Balance	\$386,904.72	Pay all: \$386,904.72

Amounts as of 04-29-2011

- Eddie Huggins should do the work to clean up the site...  
- But, shouldn't spend \$ on something we should have gotten in the first place for free... and free and clear of all encumbrances

4% \$2070.02 = \$79,820.47  
5% \$3837.52 = \$80,587.97  
6% \$4605.03 = \$81,356.48

[https://www.stlucie.county-taxes.com/public/real\\_estate/parcels/4326-111-0001-000-1/bills](https://www.stlucie.county-taxes.com/public/real_estate/parcels/4326-111-0001-000-1/bills) 4/29/2011

## REQUEST FOR CITY COUNCIL DIRECTION

- June 4, 2012 is the Tax Deed Sale of the South Parcel
- The current tax certificateholder plans to bid on the South Parcel for at least the minimum bid which is likely over \$400,000.00
- City Staff seeks direction on whether legal action shall be commenced against Huggins in addition to pursuing any other legal remedies to acquire title to the South Parcel.