

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Florida Public Utilities)
Company to resolve a territorial)
dispute with Peoples Gas System)

Docket No. 040278-GU

Filed: March 30, 2004

**PETITION OF FLORIDA PUBLIC UTILITIES COMPANY
TO RESOLVE A TERRITORIAL DISPUTE**

Pursuant to Section 366.04(3)(b), Florida Statutes and Rule 25-7.0472, Florida Administrative Code, Florida Public Utilities Company ("FPUC") hereby requests the Commission to resolve a territorial dispute between FPUC and Peoples Gas System, and states:

1. The Petitioner's name and address are:

Florida Public Utilities Company
P.O. Box 3395
West Palm Beach, Florida 33402-3395
Telephone 561-832-2461

2. The names, addresses, and telephone numbers of the persons to whom all notices and other documents should be sent are:

Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin, Davidson, Kaufman and Arnold
117 S. Gadsden Street
Tallahassee, Florida 32312
Telephone 850 222 2525

Marc L. Schneidermann
Director, South Florida Division
Florida Public Utilities Company
P.O. Box 3395
West Palm Beach, Florida 33402-3395

3. Section 366.04(3) confers on the Commission the following jurisdiction over natural gas utilities:

In the exercise of its jurisdiction, the commission shall have the authority over natural gas utilities for the following purposes:

(a) To approve territorial agreements between and among natural gas utilities. However, nothing in this chapter shall be construed to alter existing territorial agreements between the parties to such agreements.

(b) To resolve, upon petition of a utility or on its own motion, any territorial dispute involving service areas between and among natural gas utilities. In resolving territorial disputes, the commission may consider, but not be limited to consideration of, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population, the degree of urbanization of the area, its proximity to other urban areas, and the present and reasonably foreseeable future requirements of the area for other utility services.

(c) For purposes of this subsection, "natural gas utility" means any utility which supplies natural gas or manufactured gas or liquefied gas with air admixture, or similar gaseous substance by pipeline, to or for the public and includes gas public utilities, gas districts, and natural gas utilities or municipalities or agencies thereof.

4. FPUC owns and operates natural gas distribution systems in Florida. FPUC provides natural gas service to customers in northern, central, and southern areas of Palm Beach County. FPUC is a natural gas utility within the meaning of Section 366.04(3)(b). As such, FPUC is subject to the Commission's statutory jurisdiction to resolve territorial disputes.

5. Peoples Gas System ("Peoples Gas") is a division of Tampa Electric Company. Peoples Gas owns and operates natural gas distribution systems in Florida. The natural gas operations of Peoples Gas include service to certain portions of northern Palm Beach County. Peoples Gas is a natural gas utility subject to the jurisdiction conferred on this Commission by Section 366.04(3)(b), Florida Statutes.

6. In this petition, FPUC alleges that a territorial dispute exists between FPUC and Peoples Gas regarding the intention and efforts of each to serve a certain developing area

within Palm Beach County. The Commission has jurisdiction to resolve the territorial dispute pursuant to Section 366.04(3)(b), Florida Statutes.

Background

7. On January 20, 2003, FPUC and Peoples Gas executed a territorial boundary agreement that was intended to delineate the boundary between the areas of Palm Beach County in which each would provide service. The Commission approved the territorial agreement by Order No. PSC-03-0599-CO-GU, issued in Docket No. 020670-GU on May 12, 2003. In the agreement, the parties designated the intersection of the Beeline Highway and Northlake Boulevard as the westernmost point of the area allocated to Peoples Gas. Based on information and belief, Peoples Gas has no natural gas distribution network within Palm Beach County that is west of the Beeline Highway.

8. FPUC also is a party to a territorial agreement with NUI Utilities, Inc., d/b/a City Gas Company of Florida ("City Gas"). The Commission approved this agreement by Order No. PSC-03-0566-CO-GU, issued in Docket No. 030134-GU on May 2, 2003. In this agreement, City Gas and FPUC agreed, *inter alia*, that FPUC's exclusive service area would include all points in Palm Beach County east of the north-south boundary line established by the parties, subject to the provisions of any territorial agreements between FPUC and other utilities. The location of the boundary line was chosen purposely to accommodate FPUC's plan to expand its system westward within Palm Beach County.

The Dispute

9. In early 2004, as a result in part of efforts by the Governor's Office of Tourism, Trade, and Economic Development and the Palm Beach County Business Development Board, the Scripps Research Institute announced that it will locate a major biomedical

research facility in Palm Beach County (the Palm Beach County Biotechnology Research Park, hereinafter referred to as the “Scripps Project”). The Scripps Project will anchor the development of a large, mixed use, commercial (approximately 3,000,000 square feet of commercial building space) and residential (1,000 units) project on a parcel of approximately 1,900 acres known as the “Mecca Farms” property. Regarding the Scripps Project as the “critical mass” that will attract similar and related activities, Palm Beach County has targeted the adjacent “Vavrus Ranch” property (approximately 5,100 acres) as the focus of a program to develop additional projects and entities within an expanded, multi-tenant research complex. Both properties are located north of Northlake Boulevard and west of the intersection of the Beeline Highway and Northlake Boulevard. The area that is the subject of this territorial dispute, which includes both the Scripps Project and the area (including the adjacent Vavrus Ranch property) to be developed in conjunction with it, is depicted and described on Exhibit A. The location of the disputed area, identified in terms of township, range, and section, is attached as Exhibit B. A written description of the disputed area that corresponds to Exhibit B is attached as Exhibit C. A proposed site plan for the development of the Mecca Farms portion of the planned research park is attached as Exhibit D.

10. The disputed area shown on Exhibits A, B and C lies within the area allocated to FPUC in its territorial boundary agreement with City Gas. The southeast corner of the disputed area lies nearly four miles west of the westernmost point of the area allocated to Peoples Gas in the agreement between FPUC and Peoples Gas.

11. On March 22, 2004, FPUC met with the Palm Beach County Manager for the

Scripps Research Institute. FPUC scheduled the meeting to plan and coordinate the provision by FPUC of natural gas service to the Scripps Project and associated developments. During the meeting, the Palm Beach County Manager for the Scripps Research Institute informed FPUC that in February 2004 Peoples Gas had met with him to discuss Peoples Gas' desire and proposal to serve the Scripps Project.

12. A territorial dispute exists between FPUC and Peoples Gas concerning which utility should serve the area described herein and in Exhibits A, B, and C.

13. FPUC asserts that the Commission should resolve the territorial dispute by directing FPUC to provide service within the disputed area.

14. A ruling that FPUC should serve the disputed area would be consistent with the provisions of the territorial agreement between FPUC and Peoples Gas. While the disputed area is not treated explicitly within the agreement, it is clear from reading the overall agreement that the intent of the parties was to identify a boundary line that would represent the westernmost boundary of Peoples Gas' activities in Palm Beach County. To allow Peoples Gas to serve the disputed area, well west of that boundary, would be inconsistent with the spirit and intent of the territorial agreement.

15. FPUC's existing natural gas distribution system is considerably closer to the disputed area than is Peoples Gas' distribution system. FPUC can reach the southeast corner of the boundary of the disputed area by extending an existing, high pressure 6" main approximately one mile. If the utility corridor (that aligns with Grapeview Boulevard) being planned by project developers is used, the total extension would be approximately five miles. The extension that Peoples Gas would have to construct to serve the disputed area would be more than twice as long. Peoples Gas would have to

extend an existing main approximately four miles to reach the central eastern boundary of the disputed area and approximately eleven and one-half miles to place it within the planned utility corridor. The greater distance that Peoples Gas would have to extend its system would necessarily translate into higher additional labor costs and higher costs of materials (relative to FPUC's corresponding costs) that Peoples Gas would have to incur to reach the disputed area.

16. To reach the disputed area, FPUC would extend its main through a developed, largely suburban area, which would create the opportunity to add customers (who presently have no natural gas service) located on the path of the extension between the present terminus of the main and the disputed area. For example, the extension would pass the site of a proposed elementary school presently being developed that has agreed to use natural gas service when facilities are installed. Further, FPUC would require only permits to use the right-of-way along presently existing County roads.

17. On the other hand, between Peoples Gas' existing system and the disputed area lie the Loxahatchee Slough Natural Area and the North County Airport Natural Area. Environmental regulations strictly prohibit development on much of the sensitive property. To reach the disputed area, Peoples Gas would have to either cross these environmentally sensitive and protected areas, in which no potential customers are located, or plan to gain access to the rights-of-way of highways that have not yet been approved, much less constructed.

18. FPUC intends to serve the disputed area by extending an existing 6" high pressure main that now serves the IBIS Country Club, which is located just southeast of the disputed area. Attached to this Petition as Exhibit E is an aerial photograph that has been

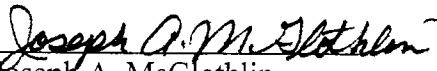
labeled to show the location of FPUC's existing main at the IBIS Country Club relative to the "Mecca Farms" and "Vavrus Ranch" properties. FPUC purposely designed and sized this main to enable FPUC to expand its system and serve additional customers in the area. In addition, the IBIS main originates at FPUC's West Palm Beach West Gate Station. This gate station has an overall design capacity of 10,000 Dth/day. Based on existing load patterns, FPUC can serve significant additional gas load reliably and economically by extending the IBIS main, without modifying its gate station or its other facilities. By contrast, on information and belief the ability of Peoples Gas to serve the disputed area is constrained by the lower design capacity (5,000 Dth/day) of its only gate station in Palm Beach County and current load/usage patterns on its system. Unlike FPUC, it is expected that Peoples Gas would have to incur the costs of constructing significant upgrades to its existing gate station and related facilities before it could serve the disputed area.

19. The Scripps project and related developments will consist primarily of commercial and residential customers. FPUC's tariff rates applicable to commercial and residential customers are lower than the corresponding tariffs of Peoples Gas. In addition, FPUC's gas costs are and have been lower than those of Peoples Gas.

20. FPUC submits that, based on the application of relevant criteria and considerations, it is in the public interest for FPUC to serve the disputed area identified herein and depicted on Exhibits A, B, and C.

WHEREFORE, Florida Public Utilities Company requests the Commission to assert jurisdiction over the territorial dispute alleged herein; expeditiously conduct proceedings, including an evidentiary hearing, to consider the allegations set forth in this

Petition; and issue an order directing Florida Public Utilities Company to provide natural gas service to the disputed area described in this Petition and accompanying Exhibits.


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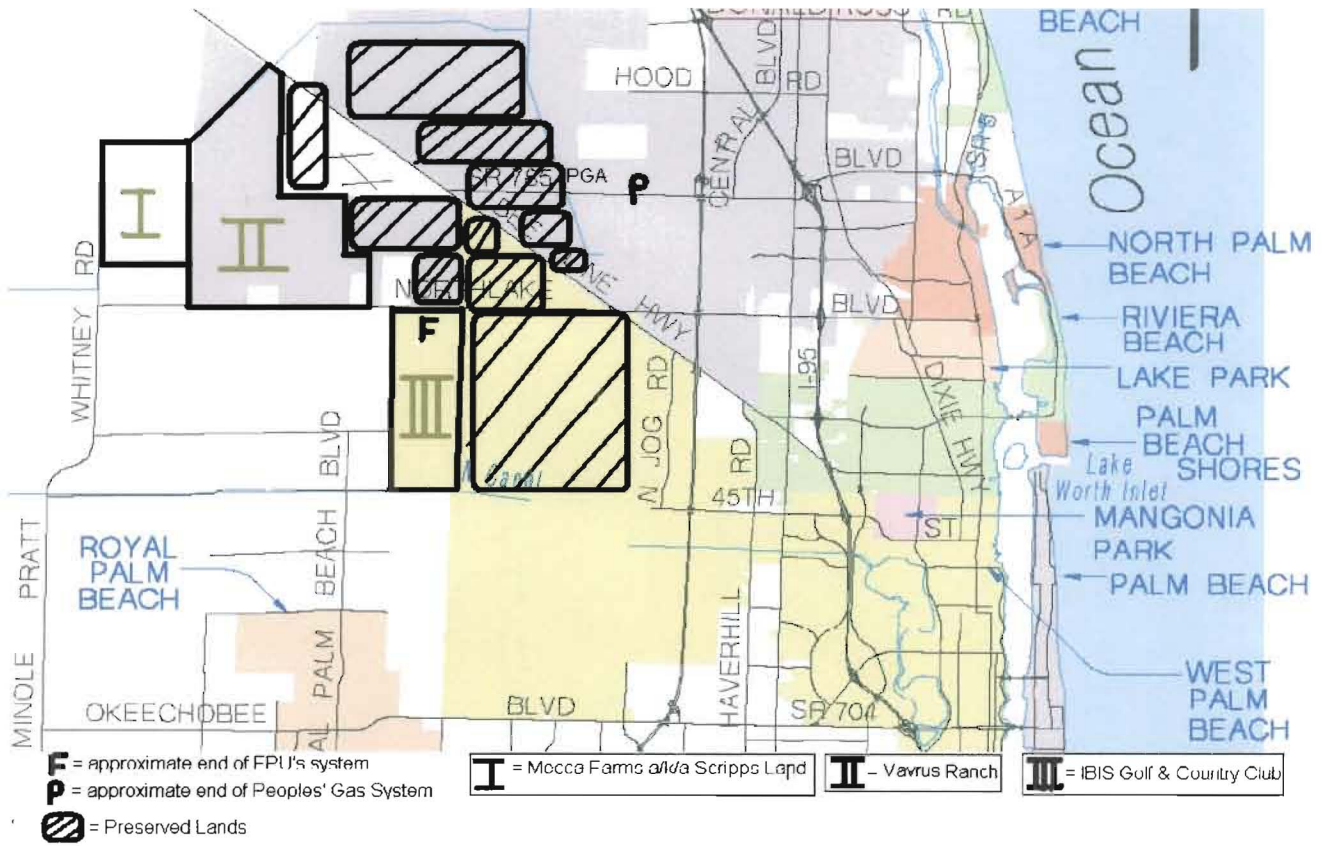
Attorney for Florida Public Utilities
Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition to Resolve a Territorial Dispute has been provided by U.S. Mail to Ansley Watson, MacFarlane Ferguson Law Firm, P.O. Box 1531, 111 Madison Street, Suite 2300, Tampa, Florida 33601, on this 30th day of March, 2004.


Joseph A. McGlothlin

Exhibit A
Properties (I & II) Comprising Planned Research
Complex with Nearest Facilities Located



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J.W CORBETT WILDLIFE
MANAGEMENT AREA

GRANADA BLVD								
139	CT							
138	ST							
137	CT							
135	LN	Canal		HUNGRYLAND SLOUGH NATURAL AREA				
135	CT	BLVD						
DRIFTWOOD RD								
134	RD							
133	LN	N		133	LN	N		
132	RD	N		BLVD	132	RD	N	
131	LN	N				131	LN	N
BONITA BLVD		HILL		BONITA BLVD				
129	LA	N		129		LA	N	
128	PL	N		128		PL	N	
127	LN	N		127		LN	N	
126	PL	N		126		PL	N	
LARGO BLVD		BLVD		LARGO BLVD				
125	ST	N		125	ST	N		
124	RD	N		124	RD	N		
123	CT	N		123	ST	N		
122	ST	N		122	ST	N		
121	CT	N		121	CT	N		
120	ST	N		120	ST	N		

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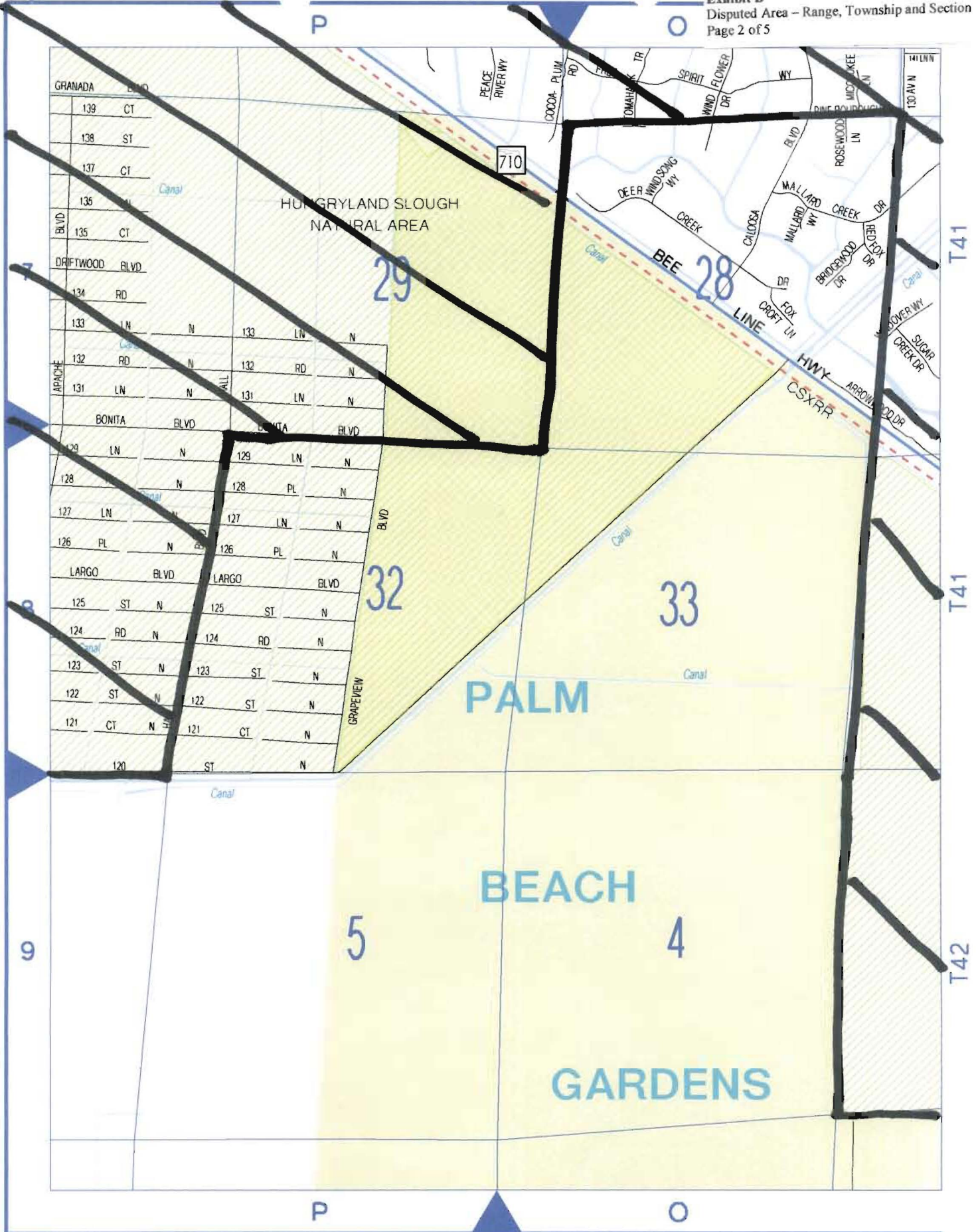
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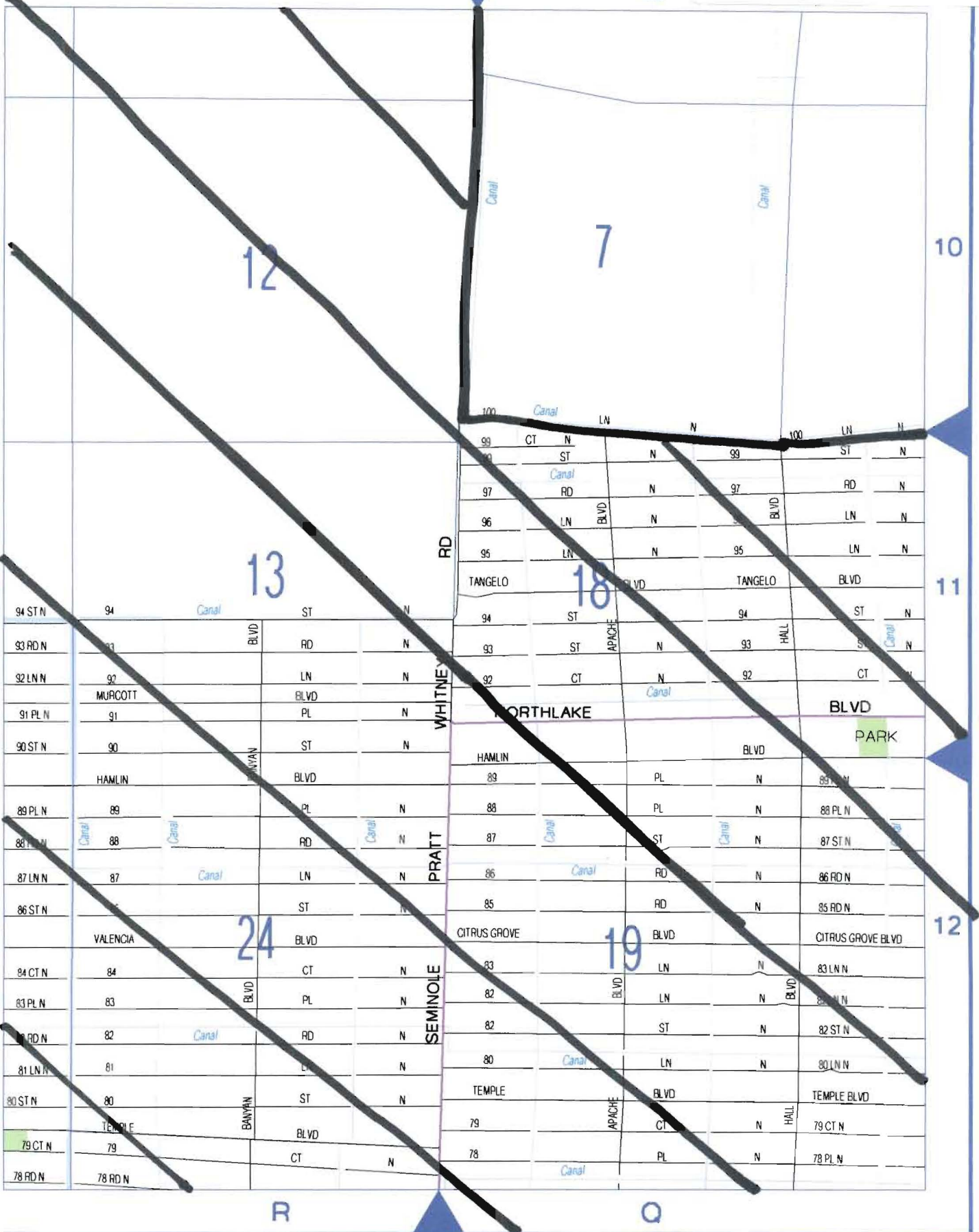
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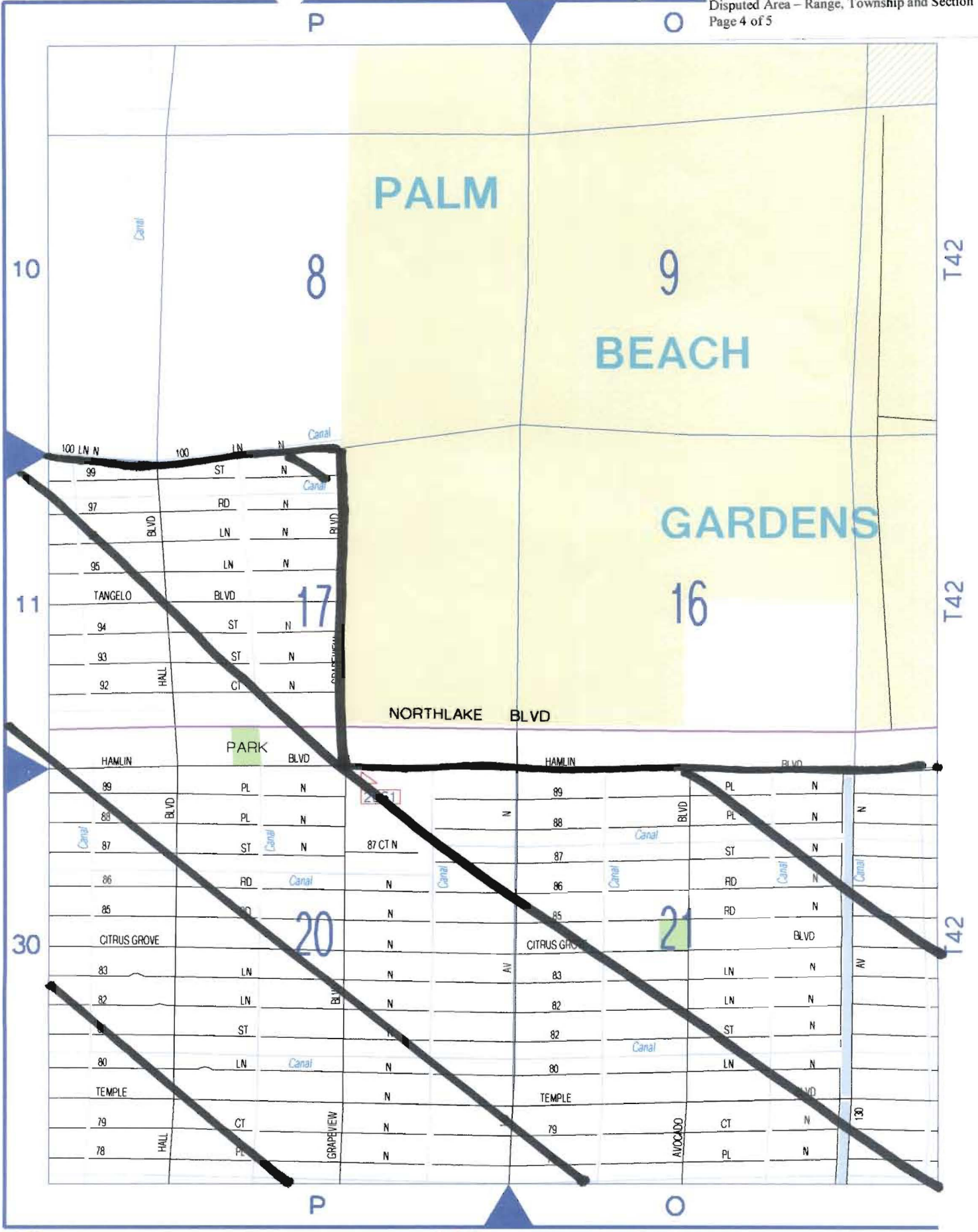
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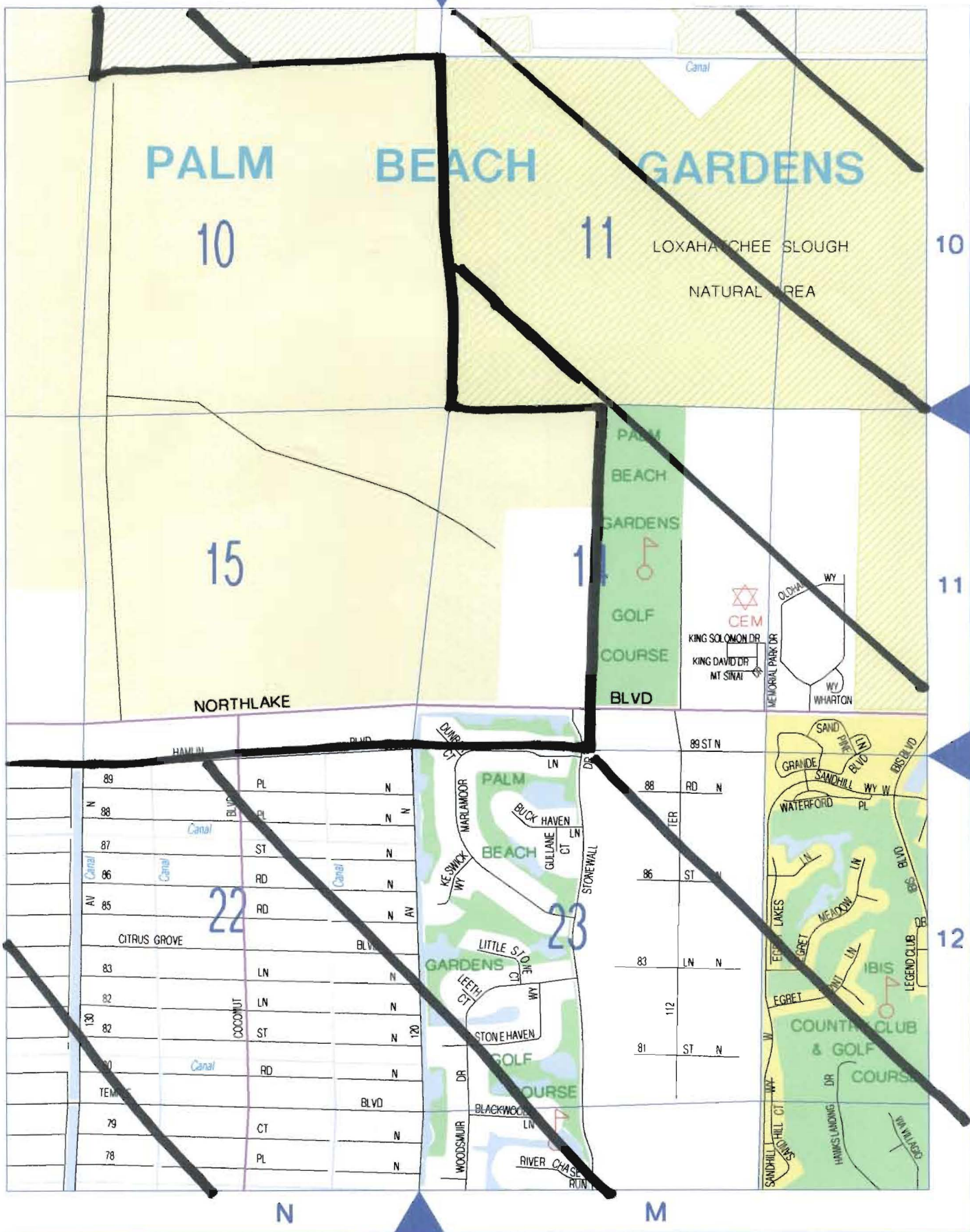
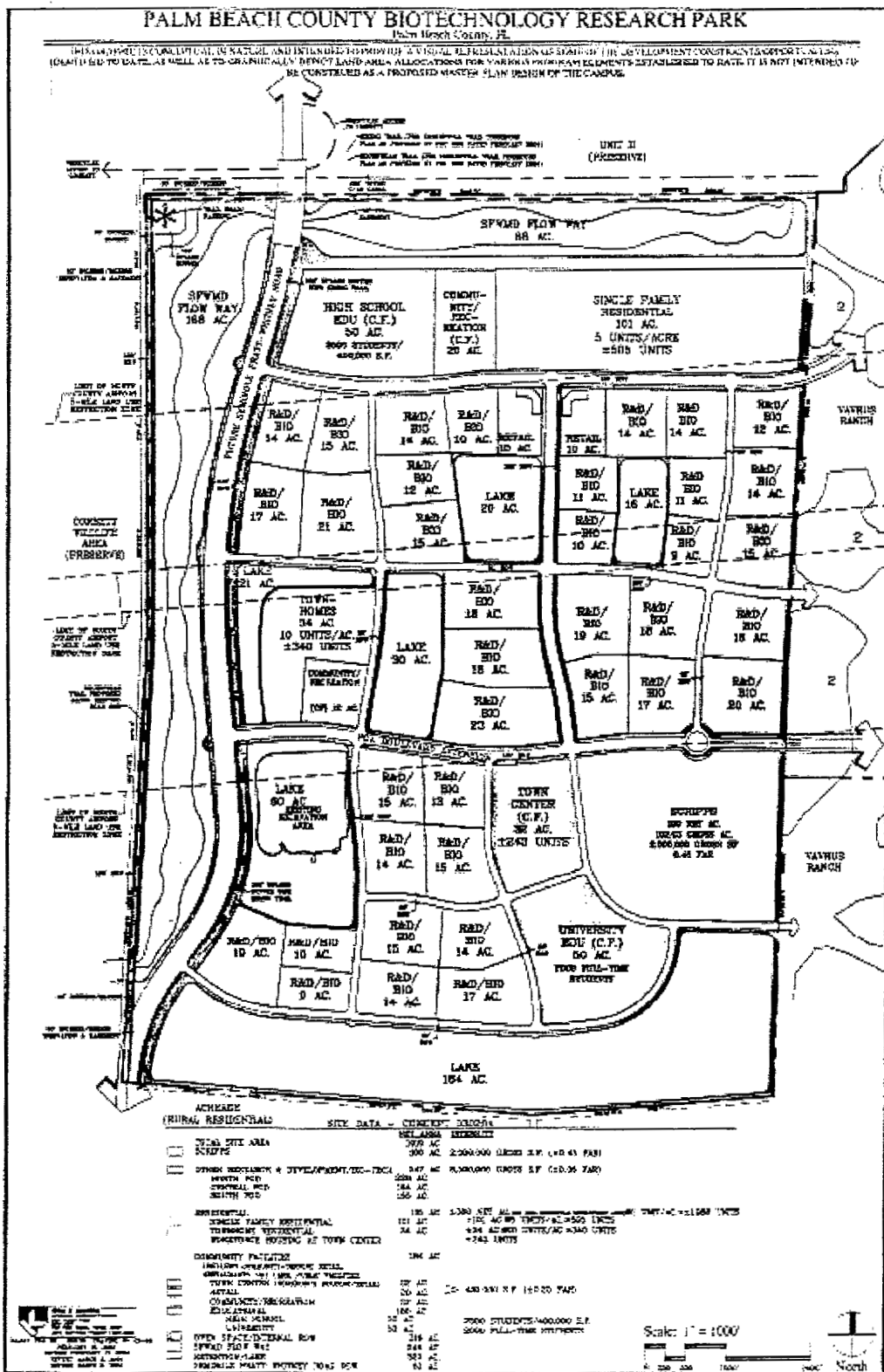


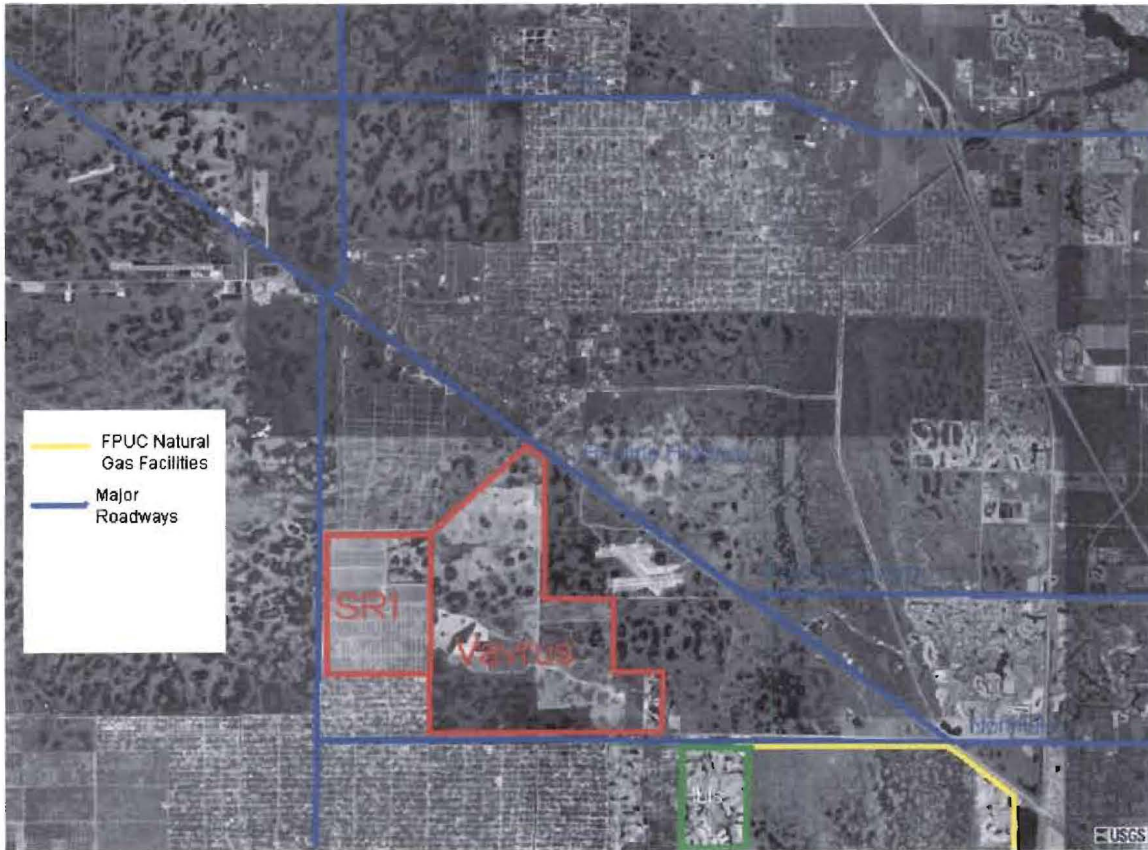
EXHIBIT C

LEGAL DESCRIPTION OF DISPUTED AREA

All Locations Described Are Within Palm Beach County, Florida

Range	Township	Section
41	41	28
41	41	32
41	41	33
41	42	04
41	42	05
41	42	06
41	42	07
41	42	08
41	42	09
41	42	10
41	42	14 (western 1/2)
41	42	15
41	42	16
41	42	17 (eastern 1/2)





Note: FPU's High Pressure Gas Main serving Ibis is shown in yellow