



## **Planning Zoning & Building Dept.**

On July 28, 2005, the Board of County Commission discussed briefly Pal Mar Subdivision (aka Palm Beach Heights). Planning and ERM staff were directed to send a letter to property owners in the subdivision informing them of potential issues related to developing these parcels. Listed below is a White Paper prepared by County staff to outline the critical issues related to properties within this subdivision.

If you have general question related to developing lots in this subdivision, please contact:

Kenneth S. Rogers, P.E., Director

Land Development

561-684-4091  
[KROGERS@co.palm-beach.fl.us](mailto:KROGERS@co.palm-beach.fl.us)



**INTEROFFICE MEMORANDUM**  
**Palm Beach County**  
**Environmental Resources Management**

DATE: July 18, 2005

TO: Tony Masilloti, Chairman  
and Members of the Board of County Commissioners

FROM: Richard Walesky, Director  
Department of Environmental Resources Management

Barbara Alterman, Executive Director  
Planning, Zoning and Building Department

George Webb, County Engineer  
Engineering and Public Works Department

Frank Gargiulo, Director  
Division of Environmental Health & Engineering  
Palm Beach County Health Department

SUBJECT: Development Potential of Palm Beach Heights Parcels

This memo is in response to a May 3, 2005 Board of County Commissioners directive to provide a white paper on the "potential for building" on the lots within the Palm Beach Heights area of Palm Beach County (along the Martin County line). The white paper is a compilation of evaluations from Palm Beach County's Planning and Zoning Divisions (PZB), Land Development (Engineering), Environmental Resources Management and the Palm Beach County Health Department.

There are 432 lots within this 716 acre area. In order for the lots to be buildable they must have been created by legal subdivision, meet the density requirements of the Comprehensive Plan and meet the regulations within the Unified Land Development Code (ULDC) or Qualify under the Potentially Buildable Lot Review. They must also have an approved drainage plan before they can be issued a permit for the operation of a septic system and receive a wetland fill permit from the South Florida Water Management District (SFWMD) and the Army Corps of Engineers (ACOE) prior to impacting any existing wetlands.

Only 26 of these lots were deeded into separate ownership before February 5, 1973 and are considered "grandfathered" with respect to the subdivision rule requirements for a legal subdivision. Of these 26 lots, 2 were owned by the same entity on February 5, 1973 and were grandfathered only as a single combined lot. All other lots are considered an illegal subdivision. None of the

Chairman Tony Masilloti  
Page 2  
July 18, 2005

grandfathered lots can meet the ULDC requirement of having useable access from an existing road, in this case, to either the Beeline Highway or Indiantown Road. While some road easements exist, they are principally over submerged lands and are considered un-useable. Eight parcels along the Beeline Highway and Indiantown Road may be able to meet the requirements listed under Zoning's potential buildable lot review, however, unless they get an approved drainage plan from the SFWMD and/or the PBC Engineering Department and the necessary wetland permits, they would also be unbuildable. None of these lots have approved drainage systems according to the Land Development Division and therefore, may not be able to receive approval for septic tank usage based upon the Health Department's criteria. The likelihood of receiving SFWMD or ACOE permits for wetland fill is considered remote and building in wetland areas without such permits would be in violation of federal and state rules and regulations.

It is staff's opinion that most of the lots in the Palm Beach Heights area can not meet current land development regulations and, therefore, are not buildable. The eight lots along the Beeline Highway and Indiantown Road described above may be an exception due to their direct access to an existing road and the timing of their original deeds, however, a number of significant regulatory hurdles must be overcome for those lots to be considered buildable.

Cc: Board of County Commissioners (6)

Robert Weisman, County Administrator  
County Attorney

Attachments

## Evaluation of the “Potential for Building” on Lots within Palm Beach Heights

### The Subject Area

Palm Beach Heights is an old, nonconforming “subdivision” comprising approximately 716 acres and located north and east of the intersection of Beeline Highway and Indiantown Road. The area is comprised mostly of submerged lands (Attachment 1). While a portion of the area was subdivided by sale of lots beginning prior to 1973, the lack of access, services, and an approved drainage system have prevented residential development in the area. Recently, sales prices for these parcels have significantly increased while the factors that restrict their development potential have not changed. This evaluation was requested by the Palm Beach County Board of County Commissioners to determine the “buildability” of these parcels based upon applicable county and state requirements.

### Evaluation by PZB Zoning and Planning Divisions

The properties in the area are designated RR-20 in the Future Land Use Atlas. Lots originally deeded after June 16, 1992 that do not meet the minimum 20 acre size requirement of the Comprehensive Plan are not considered buildable. Since none of the parcels deeded on or prior to 1992 meet the minimum lot size of 20 acres, lots that were contiguous and under the same ownership as of December 1, 1989 must be combined to reduce the non-conformity with the minimum lot size requirement (Attachment 2). However, in order to be considered “buildable”, a lot must also comply with all applicable ULDC Zoning regulations. One of the most pertinent regulations in this area addresses the access to a parcel. The ULDC requires that the lot fronts on a street or has access “from a recorded exclusive easement, a minimum of 20 feet in width, granting the owner, its successors and assigns a perpetual right of useable access across all properties lying between said lot and a street”. The key word is useable, while road easements exist within the subject area; they are over submerged lands and are considered un-useable for access (Attachment 3). Those properties that front on the Beeline Highway or Indiantown Road would meet the access requirement of the lot review process, but they would have to have been first deeded prior to 6/16/92 in order to qualify for Potentially Buildable Lot Review, otherwise they could not be vested for concurrency. There are only eight parcels along Beeline Highway or Indiantown Road that were individually deeded prior to June 16, 1992 (Attachment 4).

### Evaluation by the Land Development Division

The evaluation by the Engineering Department's Land Development Division focused primarily upon whether the individual lots were created by legal subdivision of the property and the date the lots were originally deeded into separate ownerships. All parcels that were deeded prior to February 5, 1973 are considered "grandfathered" against the Subdivision regulations (Attachment 5). All parcels deeded after this date must comply with the requirements of the Subdivision regulations. Since there are no Affidavits of Exemption, Plat Waivers or Plat approvals establishing any lots in this area, all except the grandfathered lots were created in nonconformance with the Subdivision Code requirements and are not considered eligible for building permits. The 26 lots that were deeded into separate owners prior to February 5, 1973 are considered grandfathered with regard to the subdivision code prohibition against issuance of building permits (Attachment 6). Of these 26 lots, 2 were owned by the same entity on February 5, 1973 and were grandfathered only as a single combined lot.

### Evaluation by Environmental Resources Management

The area is considered a high quality wetland area. While some of Pal/Mar has been developed for agricultural uses, most of the area remains primarily natural area. Portions of the Pal/Mar Water Control District, which includes Palm Beach Heights, were evaluated using the Wetland Rapid Assessment Procedures (WRAP) by representatives of Palm Beach County, Martin County, SFWMD, Florida Department of Environmental Protection, Florida Fish and Wildlife Conservation Commission, ACOE and the City of West Palm Beach. The functional values of the wetlands are between 0.75 and 0.90 on a scale of 0 to 1.0 where a 1.0 is the highest quality wetland possible. The area is considered highly environmentally sensitive due to its wetland value, its use as a habitat by wildlife species, its value as an aquifer recharge area and its proximity to significant natural areas and wildlife management areas. Wetland permits would be required from the SFWMD and the ACOE for any proposed wetland impacts in the area. Under current regulations it is unlikely that fill permits would be issued for such a large area of high quality wetlands.

### Evaluation by Palm Beach County Health Department

The Palm Beach County Health Department participated in a meeting held on April 27, 2005, at which department representatives discussed issues related to the potential for development of the Palm Beach Heights/ Pal/Mar area. At that meeting it was noted that the subject area does not have an approved drainage system, includes significant wetland areas, and properties in that area may be subject to

frequent flooding. Staff of the Health Department also visited the area, and noted general site conditions. In accordance with Section 8 of Palm Beach County Environmental Control Regulations – 1 (ERC-1), an onsite sewage treatment and disposal system (OSTDS) **shall not** be approved:

1. "Where the property is located in an area that is subject to frequent flooding; [and]
2. For lots in a subdivision where the approved drainage has not been constructed in accordance with the requirements for the SFWMD and/or the PBC Engineering Department."

As a result, the Palm Beach County Health department may not be able to issue OSTDS permits for any proposed development in the subject area as long as the above-mentioned site conditions exist, and relevant State and local laws remain unchanged (Attachment 7).

### Summary

The ability for the parcels in the Palm Beach Heights to develop, seem to be prohibited by several layers of County and State regulations. While the area was "subdivided" years ago, only 26 lots out of the 432 shown on the February 5, 1973 map are considered grandfathered against and not precluded from obtaining building permits by the present Subdivision code. All other lots are considered the product of an illegal subdivision. However, the County's Zoning Division identifies 8 parcels as potentially buildable due to their demonstration of "useable" access from existing roads and the fact that they were originally deeded between February 5, 1973 and June 6, 1992. These are not the same parcels identified as potentially buildable by the Land Development Division. Therefore the 26 lots identified as potentially buildable by the Land Development Division would not be buildable because they did not (and still do not) have useable access to the property. In addition, due to the lack of a State approved drainage system, the Palm Beach County Health Department is unable to issue any onsite sewage treatment and disposal system permits for any of the parcels in the area. Therefore, by just applying these three regulations, none of the parcels in the Palm Beach Heights Subdivision can be considered buildable at the present time (Attachment 8). However, if the 8 lots identified by the Zoning Division as potentially buildable could meet all necessary requirements to permit and install an approved drainage system for that lot and could obtain the necessary septic tank and wetland impact permits, these 8 lots may be buildable at some point in the future.



**Attachment 2**

The subject properties are designated RR-20 on Future Land Use Atlas (FLUA) map page number 3 by the Palm Beach County Comprehensive Plan (the county adopted the Comprehensive Plan and FLUA August 31, 1989.)

**Normal Development Requirement Under the RR-20 Designation**

Normally, the RR-20 designation requires that a property total a minimum lot size of 20 acres to be developed with one (1) single-family dwelling unit. However, the subject properties represent a variety of lot sizes each less than 20 acres.

**Development Requirement of Policy 2.2.1-f**

In this situation, then, the lot combination requirement as represented by policy 2.2.1-f in the Future Land Use Element of the Comprehensive Plan becomes a factor in determining the subject properties' development potential. Policy 2.2.1-f, part 1, requires that contiguous properties *under the same ownership as of December 1, 1989* be combined together to either: 1) Meet the minimum lot size requirement of the properties' land use designation for residential development purposes; or 2) *Reduce the degree of non-conformity with the minimum lot size requirement* if the combined acreages of the contiguous properties do not equal the minimum acreage requirement of the land use designation.

For example, say a person owned as of December 1, 1989 three (3) of the subject properties that were contiguous and each property totaled 1.50 acres. The properties per the requirement of policy 2.2.1-f would have to be treated as *one (1) 4.50-acre property for the potential to be developed with one (1) dwelling unit*. The purpose would be to reduce the degree of non-conformity with the minimum 20-acre lot size requirement of these properties' RR-20 designation.

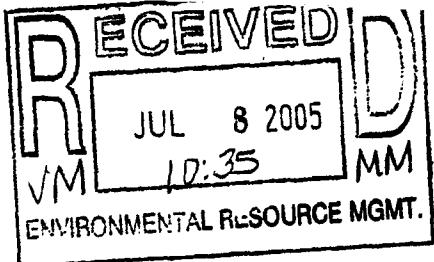
By comparison, say a person as of December 1, 1989:

- 1) Only owned one (1) property out of all the subject properties; or
- 2) Owned a property that was not contiguous to any of the other subject properties owned by this individual.

Either of these situations would allow *the property the potential to be developed with one (1) dwelling unit regardless of the property's size*.

As always, any development of a property must be consistent with all the applicable site development requirements in the county's Unified Land Development Code.

## Attachment 3



**ENV. RES. MGMT.**  
 Env. Enh. & Restoration  
 Natural Resources Stewardship  
 Resources Protection  
 Mosquito Control  
 Finance & Support Services  
 Director  
 Deputy Director  
 Other \_\_\_\_\_

**Department of Planning,  
Zoning & Building**

100 Australian Avenue  
West Palm Beach, FL 33406  
(561) 233-5000

Planning Division 233-5300  
Zoning Division 233-5200  
Building Division 233-5100  
Code Enforcement 233-5500

Contractors Certification 233-5525

Administration Office 233-5005  
Executive Office 233-5003  
[www.pbcgov.com/pzb](http://www.pbcgov.com/pzb)

Palm Beach County  
Board of County  
Commissioners

Tony Masilotti, Chairman

Addie L. Greene, Vice Chairperson

Karen T. Marcus

Jeff Koons

Warren H. Newell

Mary McCarty

Burt Aaronson

County Administrator

Robert Weisman

"An Equal Opportunity  
Affirmative Action Employer"

## INTEROFFICE MEMORANDUM

**TO:** Robert Kraus, ERM Program Supervisor  
 Development Review and Monitoring

**FROM:** Ron Sullivan, Senior Planner, *RJS*  
 Zoning Division, PZ&B

**DATE:** June 2, 2005, Revised July 8, 2005

**RE:** Palm Beach Heights/Pal-Mar Properties

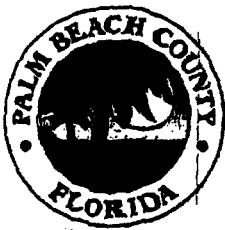
Robert - the following is in response to the information you gave me last Wednesday, May 25, 2005, on the above properties. Because of the amount of information and the various formats, I am not including a copy of that information with this response.

Zoning Division performs two lot reviews based upon when the lot was originally subdivided and this is determined by the date of the earliest recorded deed for the property. If a lot was originally subdivided after June 16, 1992, it does not qualify for either Zoning Division lot review process and these lots must meet subdivision regulations.

There are 171 lots with a first deed dated after June 16, 1992 that would not qualify for either Zoning Division lot review process. This includes all of the lots shown in the table labeled "**PALM BEACH HEIGHTS PARCELS INDIVIDUALLY DEEDED ON OR AFTER AUGUST 1, 1989 (DO NOT MEET THE RR-20 REQUIREMENTS)**". If there are 440 lots in this area that leaves 269 lots that may qualify for a Zoning lot review.

Both review processes require that the lot fronts on a street or has access "from a recorded exclusive easement, a minimum of 20 feet in width, granting the owner, its successors and assigns a perpetual right of useable access across all properties lying between said lot and a street".

**Legal Lot Review** – in addition to the access requirement, this process requires residential properties to have a recorded deed dated prior to February 5, 1973. The 26 properties listed in the table labeled "**PALM BEACH HEIGHTS PARCELS INDIVIDUALLY DEEDED BEFORE FEBRUARY 5, 1973**", all have deeds prior to February 5, 1973 but whether or not the easements provide usable access to a street is questionable. Those parcels in close proximity to the Bee Line Highway or Indiantown Road may have usable access but much of this area is



wetlands so usable access to the remaining parcels is questionable. The applicant would be required to provide evidence that there is usable access to the property.

If some of these parcels could be vested for a single family residence for concurrency, they would still be subject to the lot combination requirement of the Comprehensive Plan as well as all other applicable regulations including drainage, wetlands, and well and septic requirements prior to receiving a building permit. Since there are 26 lots with pre-73 deeds, this leaves 243 lots that may qualify for Potentially Buildable Lot Review.

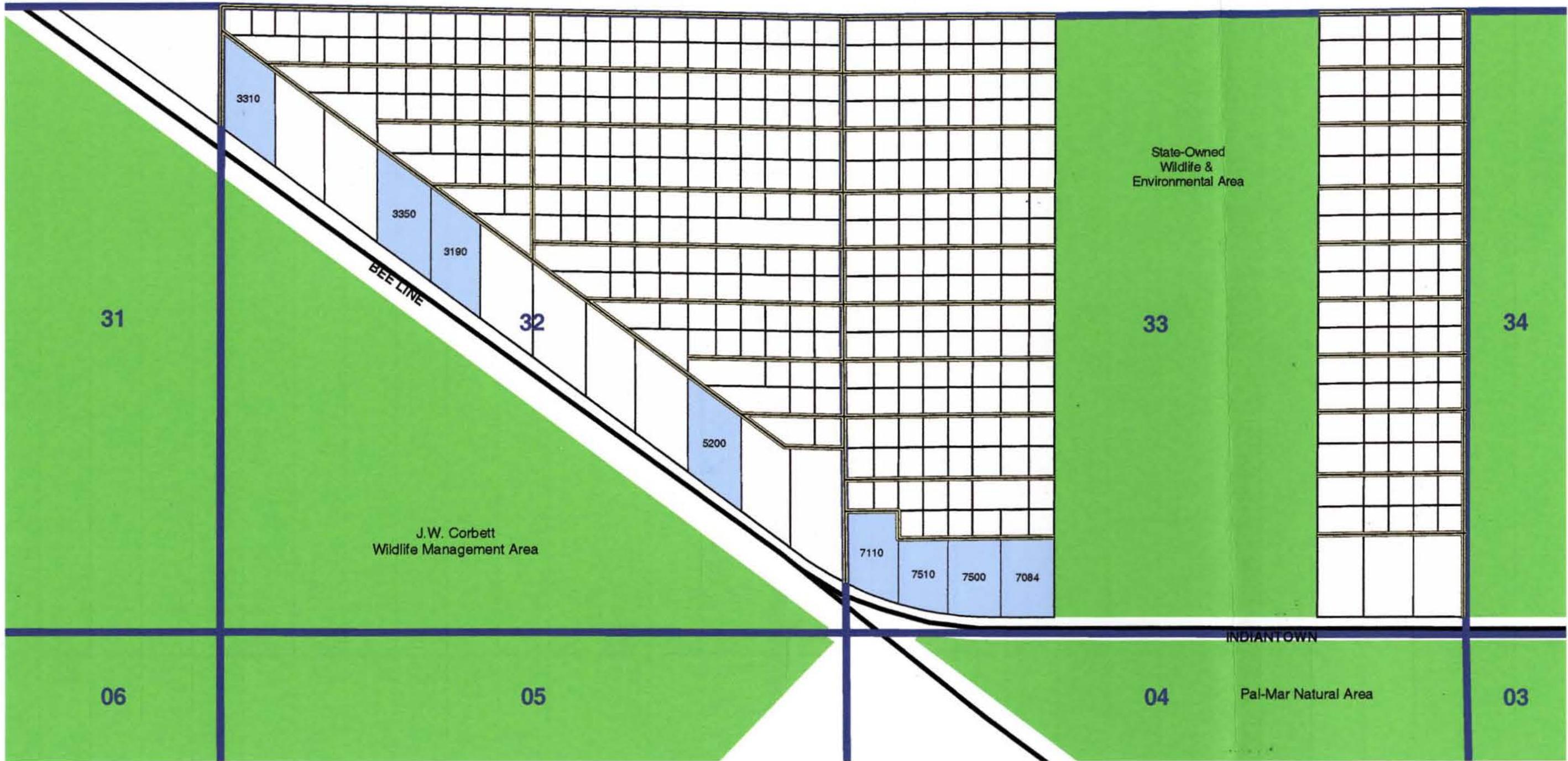
**Potentially Buildable Lot Review** – in addition to the access requirement, this process requires residential properties to have a recorded deed dated between 2/5/1973 and 6/16/1992 that describes the lot in its current configuration (as evidenced by chain of title). It also calls for the lot to meet the following 2 criteria.

1. The lot must comply with the density requirements of the Comprehensive Plan at the time it was created. This is a Planning Division determination that takes into consideration the requirements of the lot combination requirement of the Comprehensive Plan.
2. a. The lot must meet the minimum Property Development Regulations of the ULDC (Zoning Division -) OR,  
b. The lot must exist in its present configuration as shown in the 1989 Palm Beach County Future Land Use Atlas (Planning Division determination)

Since none of the lots meet the minimum lot size requirements called for in 2.a, they would have to have legal access and satisfy the requirements of items 1 and 2.b (Planning Division determinations). Although there is evidence that easements exist, many of these easements would be over submerged lands and therefore unusable for access. There are 8 of these properties that front on the Beeline Highway or Indiantown Road that would meet the access requirement.

The remaining 235 lots would have to provide evidence of useable access and all 243 properties would have to satisfy the Planning Division requirements of items 1 and 2b to qualify for an Affidavit of Potentially Buildable Lot.

Cc: Jon MacGillis, Zoning Director  
Maryann Kwok, Chief Planner, Zoning Division  
Barbara Pinkston-Nau, Principal Planner, Zoning Division  
John Rupertus, Senior Planner, Planning Division



### Palm Beach Heights Parcels Identified by The Zoning Division as Potentially Buildable

SECTIONS 31 THROUGH 33  
TOWNSHIP 40 S,  
RANGE 40 E

2,000      1,000      0      2,000      4,000  
Feet

Palm Beach County  
Department of Environmental  
Resources Management



July 2005 (SLM)

06/08/2005 13:37

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Attachment 5

PAGE 01/01



MENT OF MGMT. Env. Enh. & Restoration  
Natural Resources Stewardship  
Resources Protection  
Mosquito Control  
Finance & Support Services  
Director  
Deputy Director  
Other

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## TELECOPIER TRANSMITTAL COVER SHEET

Department of Engineering  
and Public Works  
P.O. Box 21229  
West Palm Beach, FL 33416-1229  
(561) 684-4000  
[www.pbcgov.com](http://www.pbcgov.com)

LAND DEVELOPMENT DIVISION  
FAX NUMBER: (561) 684-4123

\*\*\*\*\*  
TRANSMITTAL DATE: 6/8/05

PLEASE DELIVER THE FOLLOWING TELECOPIED MATERIAL TO:

RECEIVER'S NAME: Bob Krause

OFFICE NAME: DERM - Resources Protection

OFFICE TELEPHONE NUMBER: 233-2476

OFFICE FAX NUMBER: 233-2414

\*\*\*\*\*  
SENDER'S NAME: DAVE CUFFE 684-4089

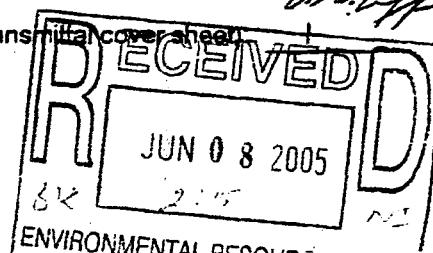
RE: Palm Beach Heights Parcels - Secs. 32 & 33, Twp. 40S, Rge. 40E

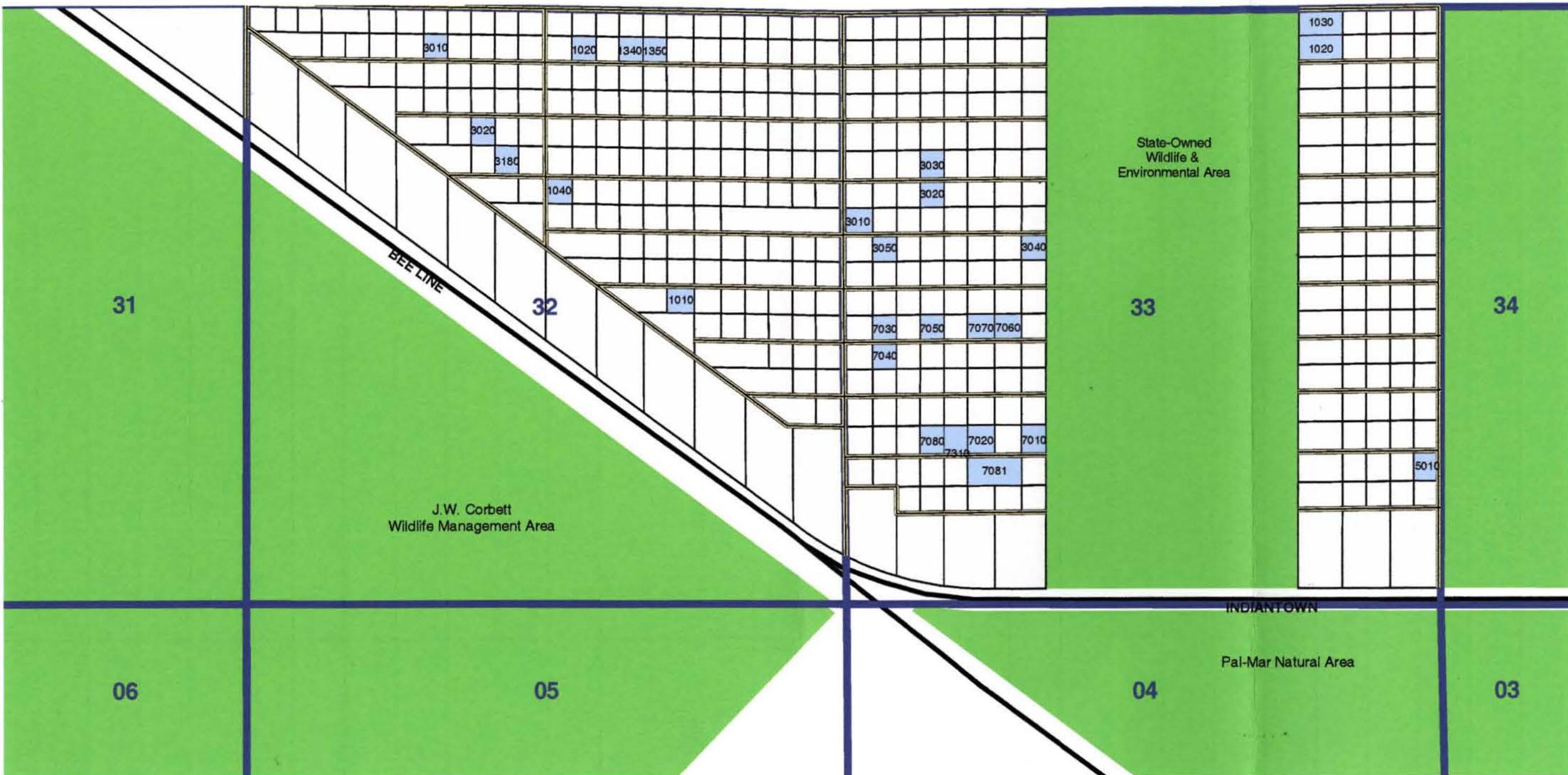
MESSAGE BASED ON MY REVIEW OF THE SUBMITTED LOT OWNERSHIP AND INITIAL DEED INFORMATION, PLUS A CURRENT CHECK ON OWNERSHIP HISTORIES FOR THOSE LOTS NOT CURRENTLY OWNED BY THE ORIGINAL OWNER, IT APPEARS THAT ALL LOTS LISTED AS "INDIVIDUALLY DEEDED BEFORE FEBRUARY 5, 1973" ARE "GRANDFATHERED" AGAINST THE SUBDIVISION CODE RESTRICTION ON BUILDING PERMIT ISSUANCE, EXCEPT THAT 00-40-40-33-00-000-702 & 731 WERE IN COMMON OWNERSHIP (UNTIL 1982) AND ARE GRANDFATHERED OUT AS A SINGLE (COMBINED) LOT. SINCE THERE WERE NO AFFIDAVITS OF EXEMPTION, PLAT APPROVALS OR PLATS APPROVED FOR ANY OF THE SUBJECT PARCELS, NO OTHER LOTS WOULD BE CONSIDERED ELIGIBLE FOR BUILDING PERMITS SINCE THEY WERE CREATED IN NON CONFORMANCE WITH THE SUBDIVISION CODE REQUIREMENTS. PLEASE CALL IF YOU HAVE ANY QUESTIONS.

*D.B.Cuffe*

TOTAL NUMBER OF PAGES (including this transmittal cover sheet)

REF: Misc-fax-form.land-dev





SECTIONS 31 THROUGH 33  
TOWNSHIP 40 S,  
RANGE 40 E

2,000      1,000      0      2,000      4,000  
Feet

Palm Beach County  
Department of Environmental  
Resources Management



July 2005 (SLM)

Jeb Bush  
Governor



John O. Agwunobi, M.D., M.B.A.  
Secretary

June 21, 2005

Mr. Robert Kraus  
Environmental Program Supervisor  
Palm Beach County Department of Environmental Resources Management  
3323 Belvedere Road, Bldg. 502  
West Palm Beach, FL 33408

Re: Palm Beach Heights/Pal-Mar Area

Dear Mr. Kraus:

Palm Beach County Health Department representatives participated in the meeting held on April 27, 2005, at which department representatives discussed issues related to the potential for development of the Palm Beach Heights/Pal-Mar area. At that meeting, it was noted that the subject area does not have an approved drainage system, includes significant wetland areas, and properties in the area may be subject to frequent flooding. Staff of the Health Department also visited the area, and noted general site conditions.

In accordance with Section 8 of Palm Beach County Environmental Control Regulations - I (ECR-I), an onsite sewage treatment and disposal system (OSTDS) shall not be approved:

- "Where the property is located in an area that is subject to frequent flooding; [and]
- For lots in a subdivision where the approved drainage has not been constructed in accordance with the requirements for the SFWMD and/or the PBC Engineering Department."

As a result, the Palm Beach County Health Department may not be able to issue OSTDS permits for any proposed development in the subject area as long as the above-mentioned site conditions exist, and relevant State and local laws remain unchanged.

I will be happy to answer any questions you may have about our comments. You may call me at (561) 355-3136 ext. 1212 or contact me by email at [courtneyL\\_shippey@doh.state.fl.us](mailto:courtneyL_shippey@doh.state.fl.us).

Sincerely,  
For the Division Director

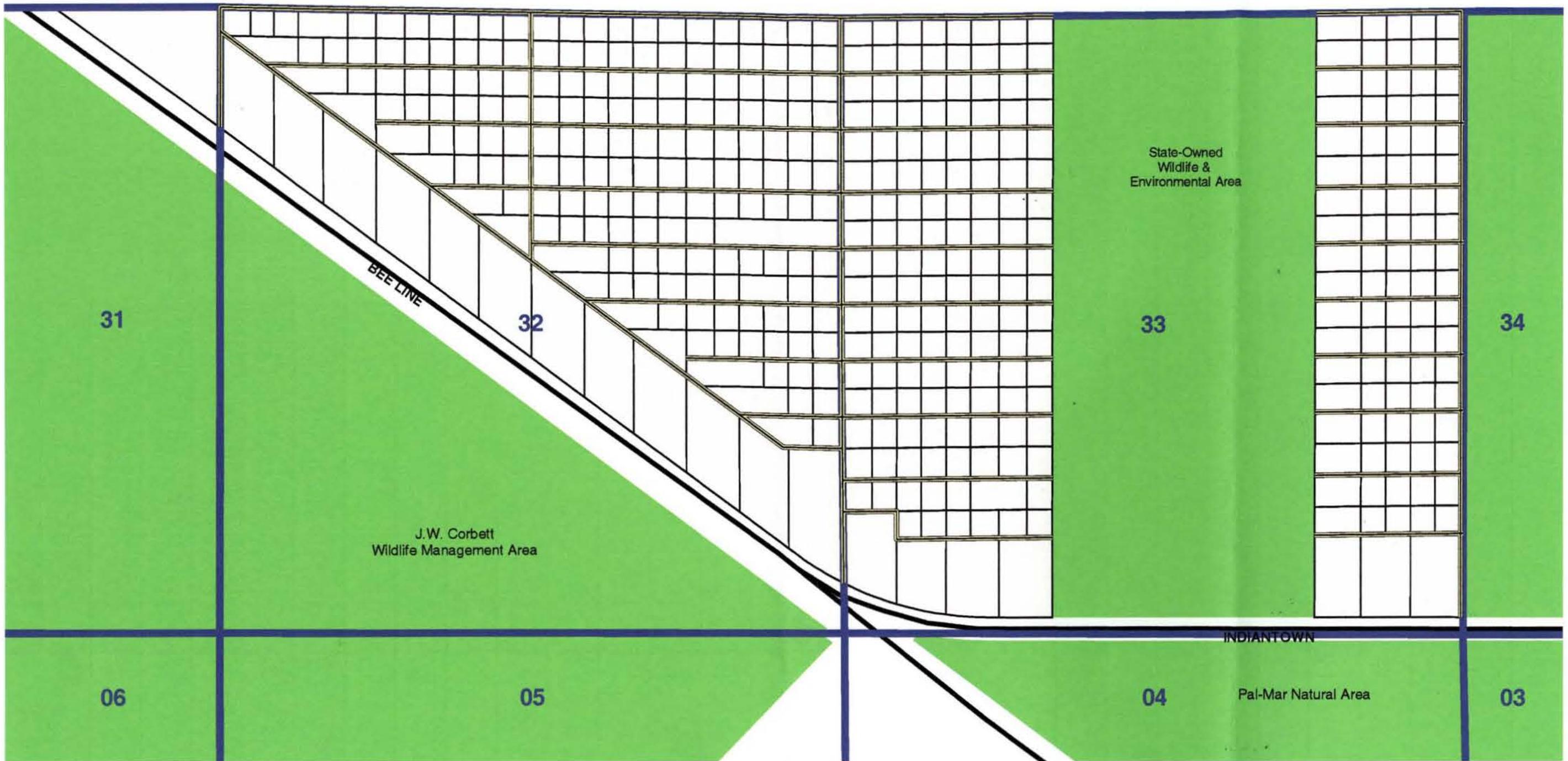
A handwritten signature in black ink, appearing to read "Courtney Shippey".

Courtney Shippey  
Environmental Specialist III  
Division of Environmental Health and Engineering

Copy: Umesh Asrani, Assistant Division Director



Palm Beach County Health Department  
Division of Environmental Health & Engineering  
Post Office Box 29 / 901 Evernia Street, West Palm Beach, FL 33402

**Legend**

- Parcels that are buildable
- Natural Areas and Wildlife Management Areas
- Parcels that are not buildable
- Section Boundary
- Road Easements

### Palm Beach Heights Parcels Deemed Buildable

SECTIONS 31 THROUGH 33  
TOWNSHIP 40 S,  
RANGE 40 E

2,000      1,000      0      2,000      4,000  
—————  
Feet



Palm Beach County  
Department of Environmental  
Resources Management



July 2005 (SLM)