



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.4.

7/11/2023

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**Subject:**

Waiver Request, Re: Waiver of Stormwater Management Criteria for Tidal Wave Car Wash(23WV00007) (23SP00001) (District 2)

**Fiscal Impact:**

None

**Dept/Office:**

Planning and Development

**Requested Action:**

The applicant is requesting that the Board of County Commissioners grant a waiver of Section 62-3751, Exhibit A-Stormwater Management Criteria, subsection 1.0(g) and 4.1 to allow for continued historical discharge in lieu of retaining the 25yr/96hr storm event due to no legal positive outfall.

**Summary Explanation and Background:**

Section 62-3751, Exhibit A - Stormwater Management Criteria, subsection 1.0(g) states "In the event the applicant chooses to discharge off-site, the applicant shall provide the necessary facilities to drain site run-off to positive outfalls. Those outfalls shall be public drainage systems with adequate capacity, direct discharge to natural creeks, rivers or major wetland systems, or positive outfalls that can be legally maintained in permanent use. If the applicant elects to drain the site into a public drainage system, the applicant must have the consent of the governmental entity which exercises control over the public drainage system. See section 2.2C for more details on easement requirements and section 4.1 for properties with no outfalls."

Section 62-3751, Exhibit A - Stormwater Management Criteria, subsection 4.1 stipulates the minimum design storm for Retention/detention ponds (landlocked w/no positive outfall) shall be the 25-year, 96 hour and provide total retention.

The proposed discharge location is to the west into a landlocked wet pond that used to be part of Pelican Creek. This portion of Pelican Creek no longer has a drainage connection to the rest of Pelican Creek, a public drainage system, or the Indian River. No agency has claimed jurisdiction at this time over the maintenance of this water body.

Per the attached Attorney's Opinion, the site has historically and continues to drain to the remainder of what used to be Pelican Creek. They have claimed a prescriptive right to continue to drain to this historical water body. The site will not increase the flow or volume of water from what has been historically discharged.

The Brevard County Public Works Engineering Department agrees with the assessment of historical drainage

and does not object to this waiver request. Granting the waiver is beyond staff's administrative authority. The applicant has committed to demonstrating the engineering needed to support the commitment that no additional flow or volume will be discharged to the historical outfall. Board approval of this waiver does not relieve the developer from obtaining all other necessary jurisdictional permits and is subject to staff's approval of the stormwater design depicted in Site Plan 23SP00001.

**Clerk to the Board Instructions:**



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

July 12, 2023

**M E M O R A N D U M**

**TO:** Tad Calkins, Planning and Development Director

**RE:** Item F.4., Waiver Request for Waiver of Stormwater Management Criteria for Tidal Wave Car Wash (23WV00007) (23SP00001)

The Board of County Commissioners, in regular session on July 11, 2023, granted a waiver of Section 62-3751, Exhibit A – Stormwater Management Criteria, Subsection 1.0(g) and 4.1 to allow for continued historical discharge in lieu of retaining the 25 year, 96 hour storm event due to no legal positive outfall.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

*Kimberly Powell*  
Kimberly Powell, Clerk to the Board



BOARD OF COUNTY COMMISSIONERS

Planning and Development
Planning and Zoning
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321) 633-2070 Phone

LAND DEVELOPMENT WAIVER APPLICATION

This form should be used for all waiver requests or appeals associated with the Code of Ordinances, Section 62, as it relates to Subdivisions, Minor Subdivisions, and Site Plans. Fees for Waivers are \$775.00.

Application Type:

- Subdivision Waiver
Site Plan Waiver
Other

If other, please indicate

Tax Account Numbers:

2438922

Tax Account 1

Tax Account 2

Project Information and Site Address:

Tidal Wave Car Wash

Deardoff Unlimited

Project Name

Property Owner

1850 Merritt Island Causeway

Merritt Island

FL

32952

Street

City

State

Zip Code

Applicant Information:

Bruce A. Moia, P.E.

MBV Engineering, Inc.

Applicant Name

Company

1250 W. Eau Gallie Blvd. #H

Melbourne

FL

32935

Street

City

State

Zip Code

321-253-1510

brucem@mbveng.com

Primary Phone

Secondary Phone

Email Address

**Engineer/Contractor (if different from applicant):**

**Same as applicant**

\_\_\_\_\_  
Engineer or Project Manager

\_\_\_\_\_  
Company

\_\_\_\_\_  
Street

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Primary Phone

\_\_\_\_\_  
Secondary Phone

\_\_\_\_\_  
Email Address

**Description of Waiver Request and Code Section:**

Waiver is to Division 6, Stormwater management Criteria, Section 62-3751, Exhibit A, subsection 4.1

To reduce the requirement from 100% retention of the 25 year, 96 hour event to meeting pre-development discharge rate and volume of the 25 year, 24 hour event.

If you wish to appeal any decision made by County staff on the wavier, you may request that the Board of County Commissioners make a determination. The Board's decision approving or disapproving the waiver or interpretation is final.



\_\_\_\_\_  
Owner/Applicant Signature

**Bruce A. Moia, P.E.**

\_\_\_\_\_  
Print Name

## **Land Development Application Document Submittal Requirements**

Waivers for Site Plans or Subdivisions require an application, waiver criteria (listed below), an 8 ½-inch x 11 inch vicinity map, and a fee of \$775.00.

### **Waiver Criteria for Subdivisions and Site Plans**

For a waiver to be considered and approved by staff, your request must comply with all of the following criteria. Please explain, in detail, how your request meets the following conditions.

1. The particular physical conditions, shape, or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the code is carried out.

The site is located on the remnant of what was historically Pelican Creek. The creek has been heavily modified over a long period of time and appears to be a closed basin currently. However, the subject site, and adjacent sites, currently drain to Pelican Creek. Strict compliance of the code may render this re-development unfeasible due to the amount of fill necessary to retain the entire 25 year, 96 hour storm event.

2. The granting of the waiver will not be injurious to the other adjacent property.

Granting this waiver will not be injurious to adjacent property since it will discharge no more runoff to Pelican Creek that it currently does. In fact, the proposed design will drastically reduce the historic runoff. Since 1999, this site was used almost 100% as parking and display of vehicle sales, with no retention facilities. The design is only showing credit for about 50% of the previous historical development of this site, as reflected on the current survey, thereby showing a reduced pre-development runoff rate and volume than that which was historically occurring.

3. The conditions, upon which a request for waivers are based, are particular to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant.

This does not result of any action by the applicant. Pelican Creek was a positive outfall originally, but due to development of properties in the area over the past 100 years, the connection to the river appears to have been severed.

4. The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan, and the requirements of this article.

The waiver request is consistent with the intent of the code as to provide the required retention to prevent unwarranted flooding of neighboring properties, while still allowing the property to discharge runoff as it currently does.

5. Delays attributed to state or federal permits.

None

6. Natural disasters.

None

7. County development engineer and affected agencies concur that an undue hardship was placed on the applicant. (To be filled out by County staff)

**Office Use Only**

Request Date	Fees	Board Date
Original Project Number	Waiver Number	
Coordinator Initials	Reference Files	
County Manager/Designee Approval		



**COHEN NORRIS WOLMER RAY  
TELEPMAN BERKOWITZ & COHEN**

ATTORNEYS AT LAW

**ATTORNEY'S OPINION**

June 30, 2023

To Whom It May Concern:

1. I am a practicing attorney in Palm Beach County, Florida.
2. This opinion, ("Opinion") relates to the historical stormwater drainage from PARCEL ID: 26-36-13-DE-1-31. ("Parcel") address being 55 S. Banana River Drive, Merritt Island, FL 32952.
3. In preparing this Opinion, I have relied upon the following attached documents:
  - a. Aerial of the Parcel Taken in 1943.
  - b. Aerial of the Parcel Taken in 1950.
  - c. Aerial of the Parcel Taken in 1951.
  - d. Aerial of the Parcel Taken in 1958.
  - e. Aerial of the Parcel Taken in 1969.
  - f. Aerial of the Parcel Taken in 1970.
  - g. Aerial of the Parcel Taken in 1975.
  - h. Aerial of the Parcel Taken in 1976.
  - i. Aerial of the Parcel Taken in 1979.
  - j. Aerial of the Parcel Taken In 1984.
  - k. Aerial of the Parcel Taken in 1994.
  - l. Aerial of the Parcel Taken in 1999.
  - m. Aerial of the Parcel Taken in 2007.
  - n. Aerial of the Parcel Taken in 2010.
  - o. Aerial of the Parcel Taken in 2013.
  - p. Aerial of the Parcel Taken in 2015.
  - q. Aerial of the Parcel Taken in 2017.
  - r. Aerial of the Parcel Taken in 2019.
  - s. Aerial of the Parcel Taken in 2023.
  - t. Information provided by MBV Engineering Inc.
    - i. Recent Survey obtained by Tidal Wave from December 2022.
    - ii. A Plat of Banan River Park from March of 1923.
4. After examining the aerial photographs and information listed above, it appears that the Parcel was initially developed between 1958 and 1969. Based upon these images and the current topographic survey, which we believe reflects the same development of the Parcel back in 1958 to 1969, it would appear that the stormwater drainage pattern from this Parcel flows towards and ultimately discharges into Pelican Creek.

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712 U.S. Highway One, Suite 400, North Palm Beach, FL 33408  
P 561-844-3600 F 561-842-4104  
www.cohennorris.com



5. Based upon the assumption that any development of the Parcel does not result in an increase in the volume of stormwater drainage through the drainage pattern as described in Paragraph 4 above, over and above the historical stormwater through that property for more than the past twenty years, it is my opinion that it appears that the drainage from the Parcel has been actual, continuous and uninterrupted for a period in excess of twenty years, which would meet the requirements for the creation of a prescriptive easement over and through the drainage areas set forth in paragraph 4 above. .

COHEN, NORRIS, WOLMER, RAY, TELEPMAN,  
BERKOWITZ & COHEN

By: \_\_\_\_\_

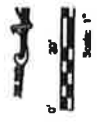
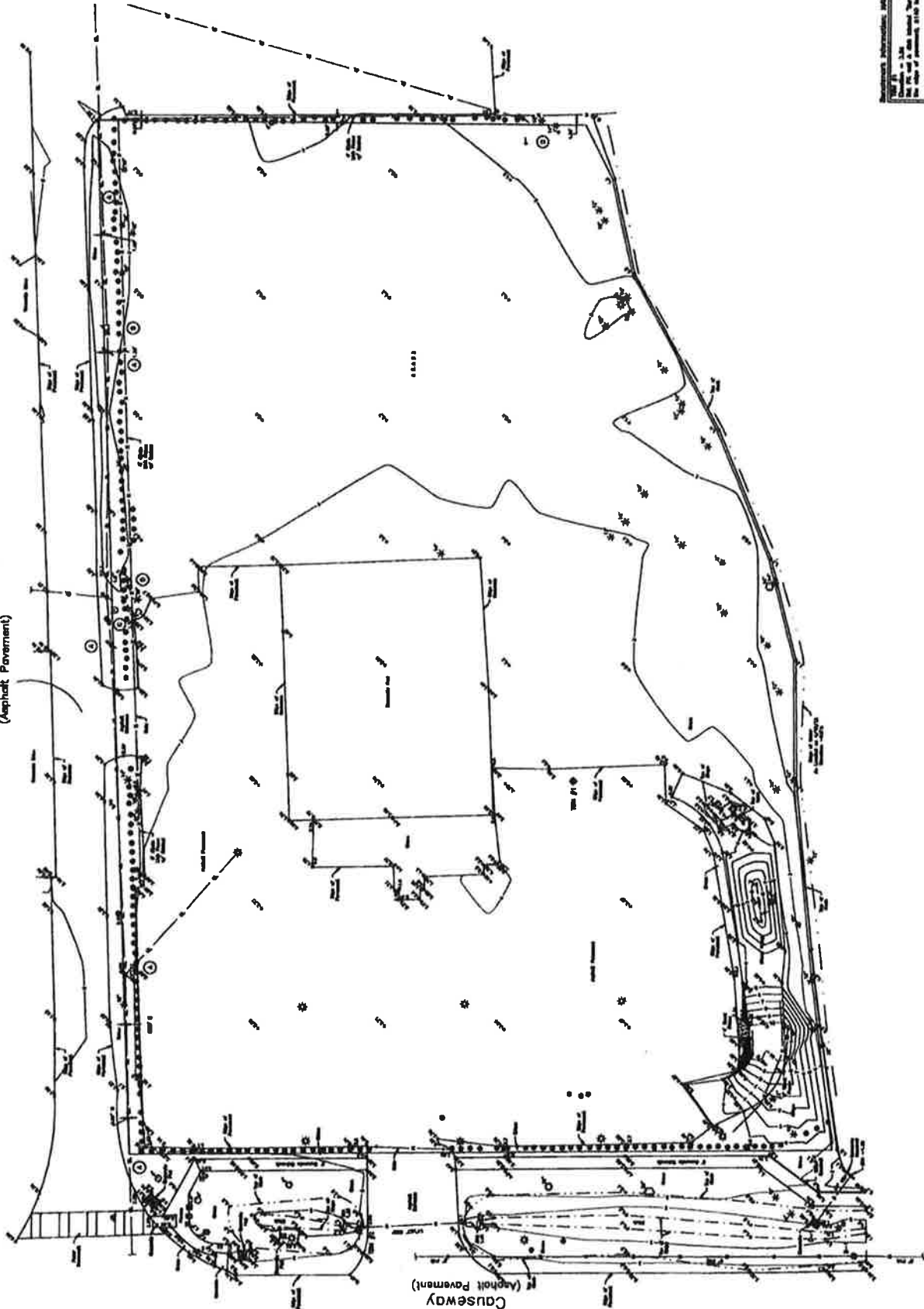
David B. Norris

Attachments

# Topographic Detail

South Banana River Drive  
(Asphalt Pavement)

East Merritt Island  
Causeway  
(Asphalt Pavement)

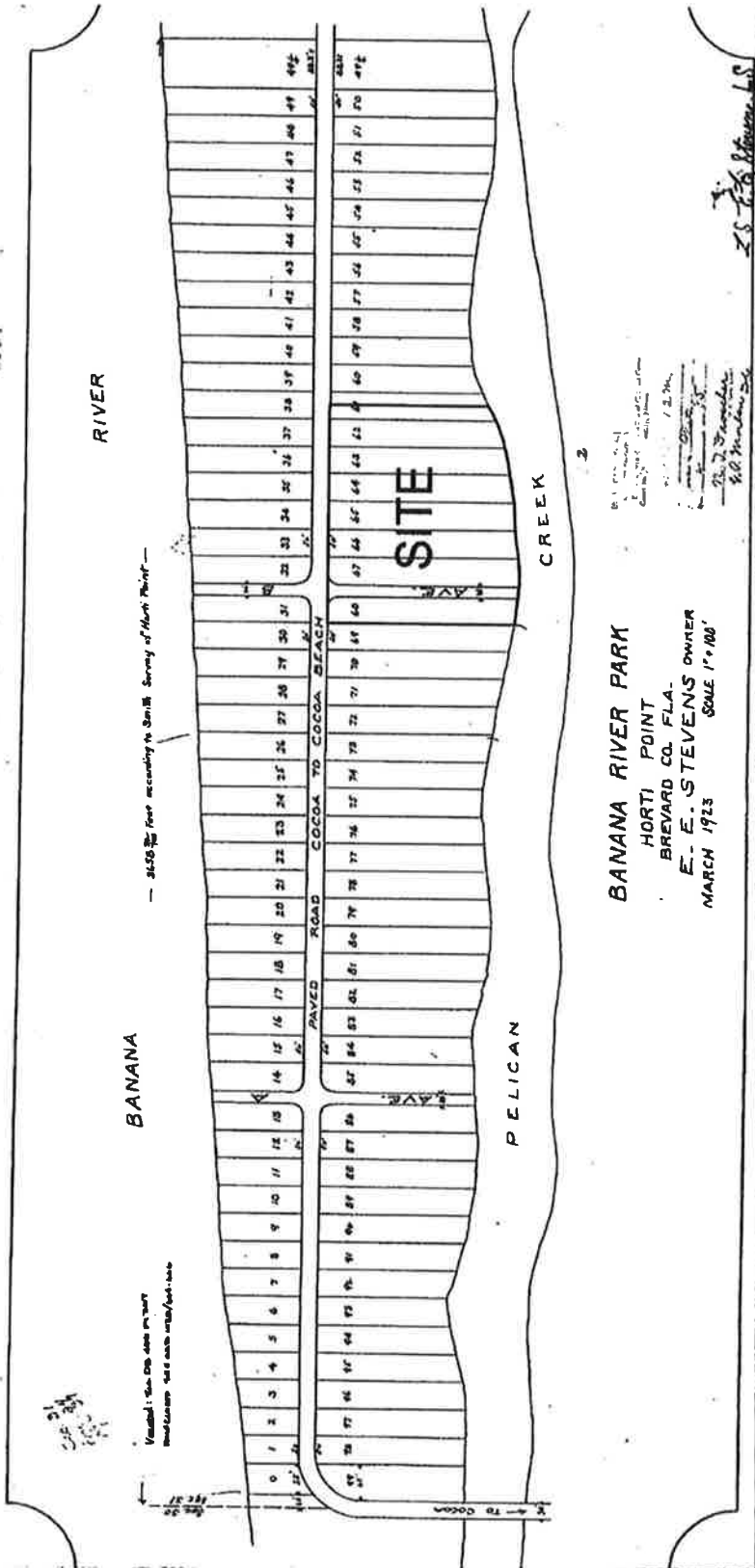


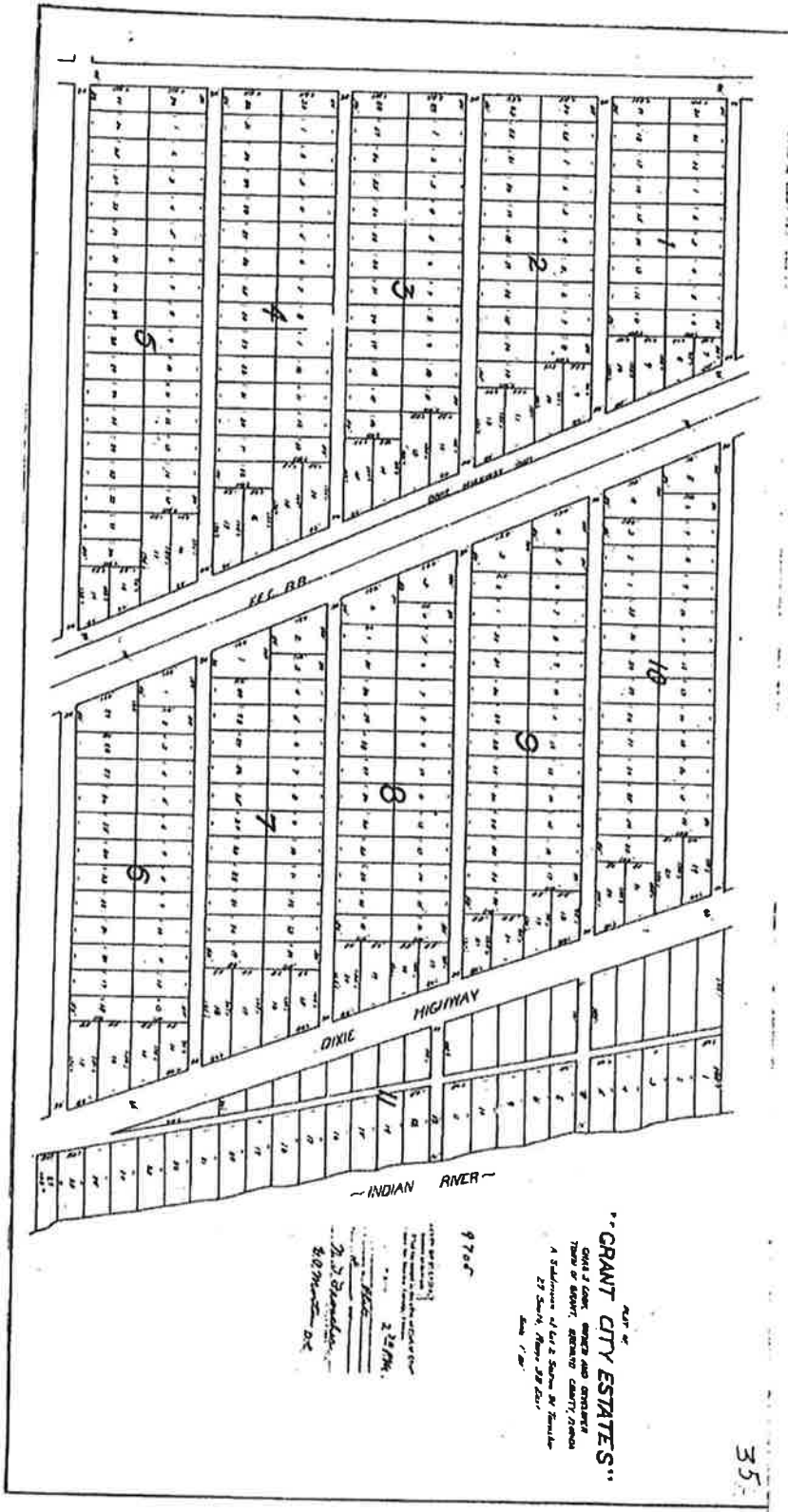
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Professional Information: MDO 1188  
 Date: 11/11/11  
 Project: 11111  
 Drawing: 11111  
 Scale: 1" = 40'

ALTAIR/SIS Land Title Survey  
 TWAS Merritt Island  
 Survey Number: 221124 (Sheet 71)







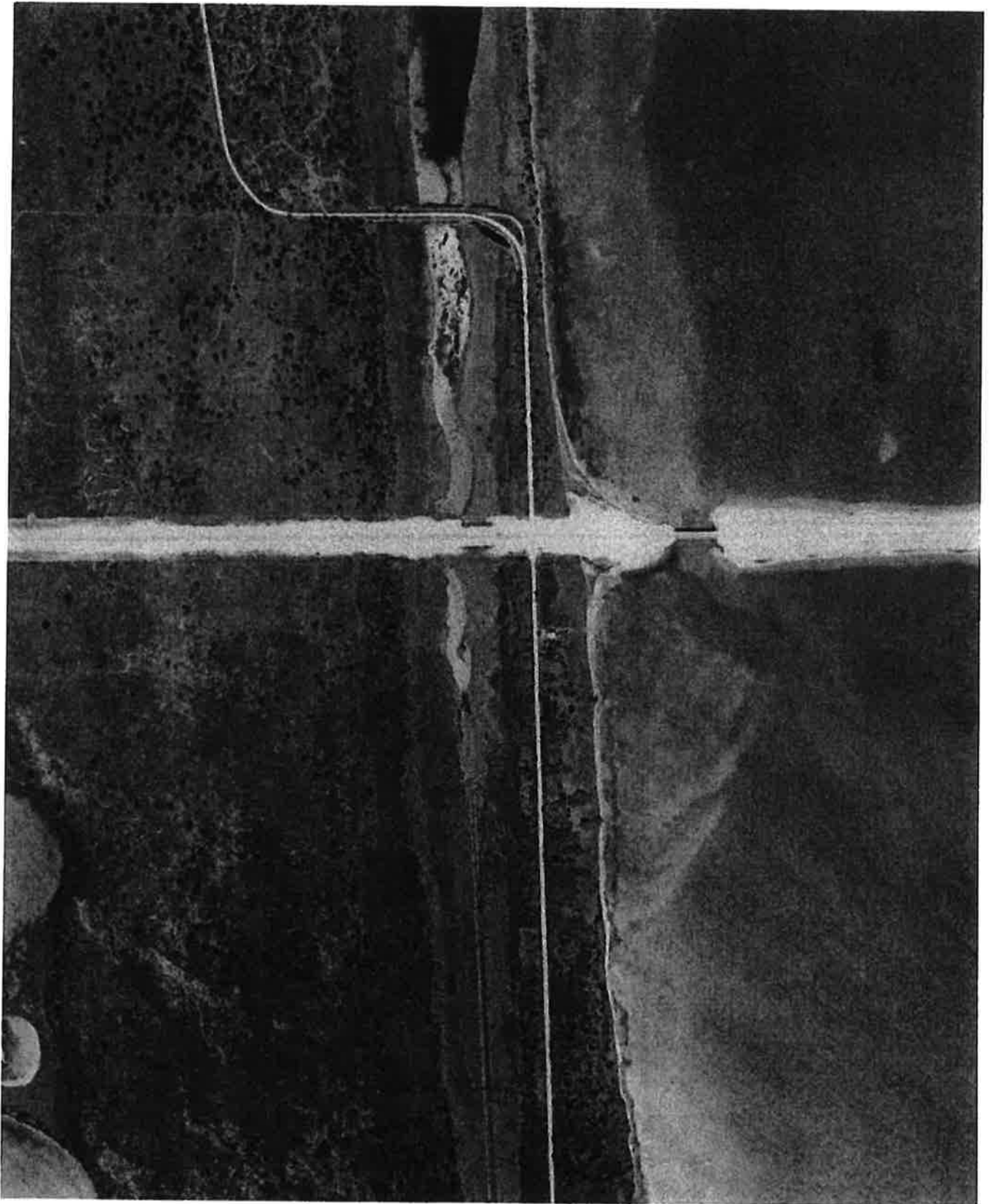
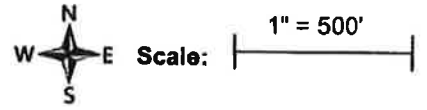
**"GRANT CITY ESTATES"**

OWNERS: GRANT AND COMPANY  
 TRUSTEES: GRANT CITY, MISSOURI  
 A Subdivision of Lot 2, Section 36, Township 37 North, Range 38 East, 10th Range


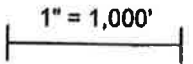
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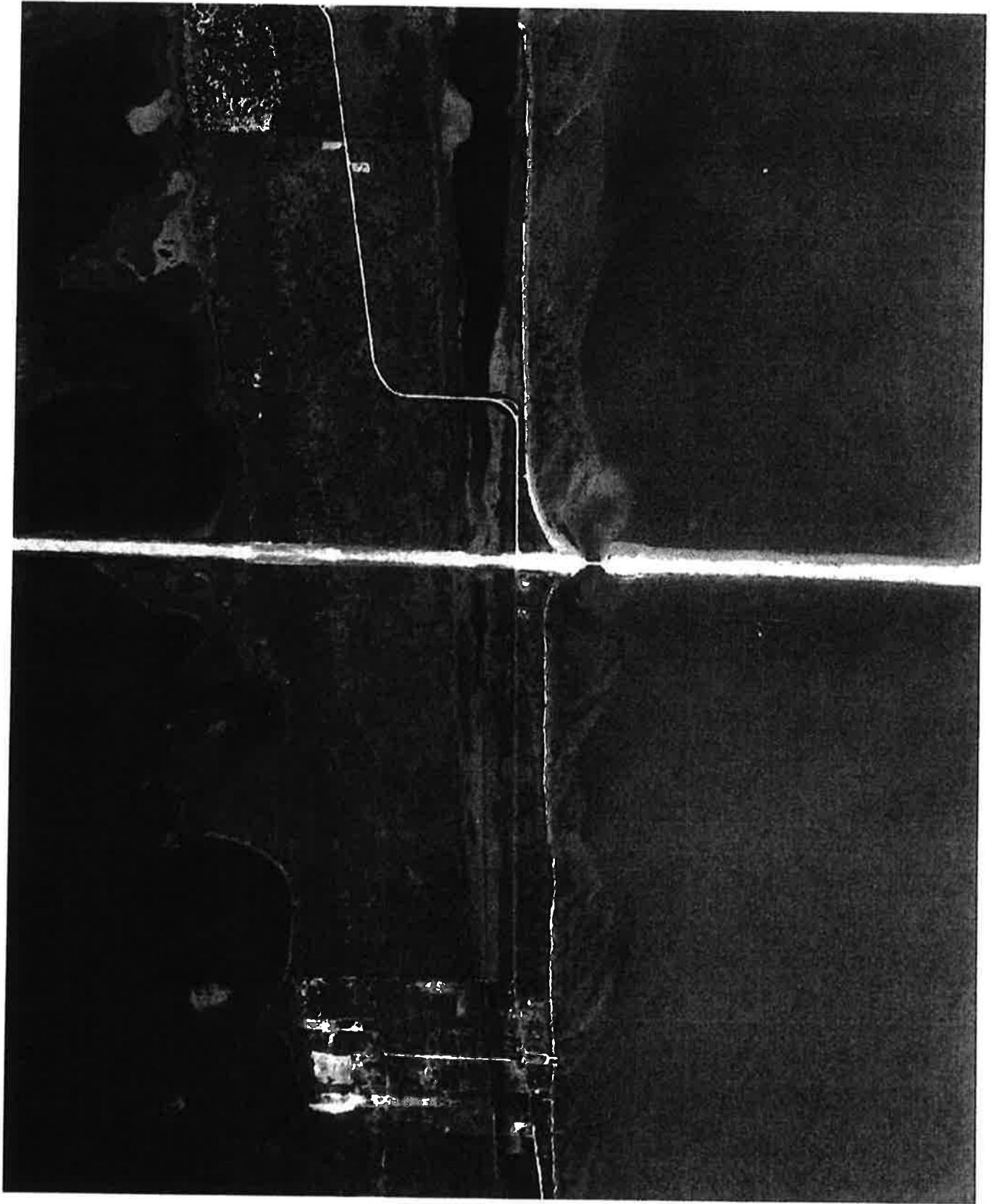
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1943




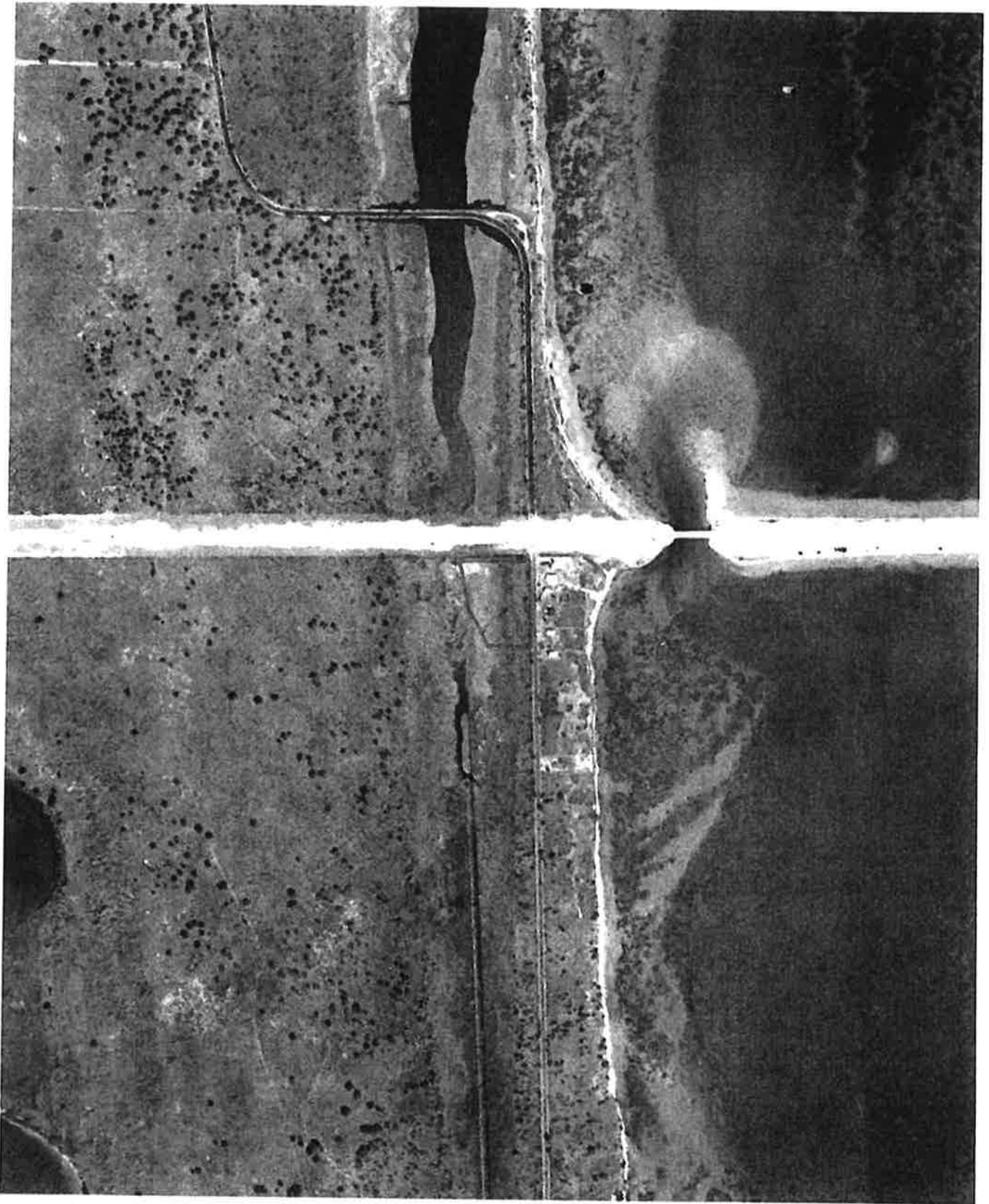
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1950

 **Scale:**  1" = 1,000'



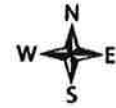
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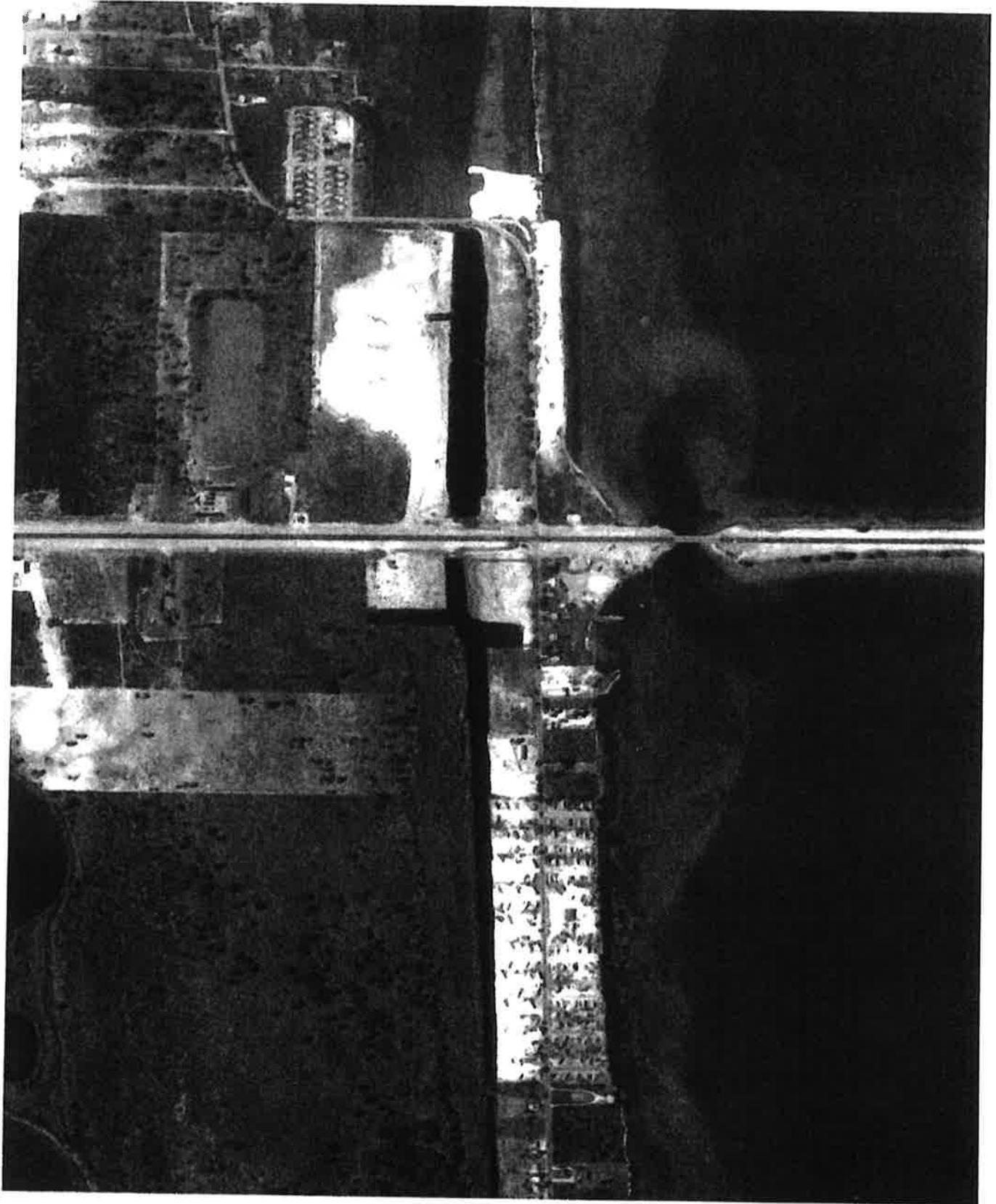
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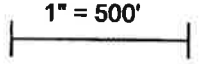


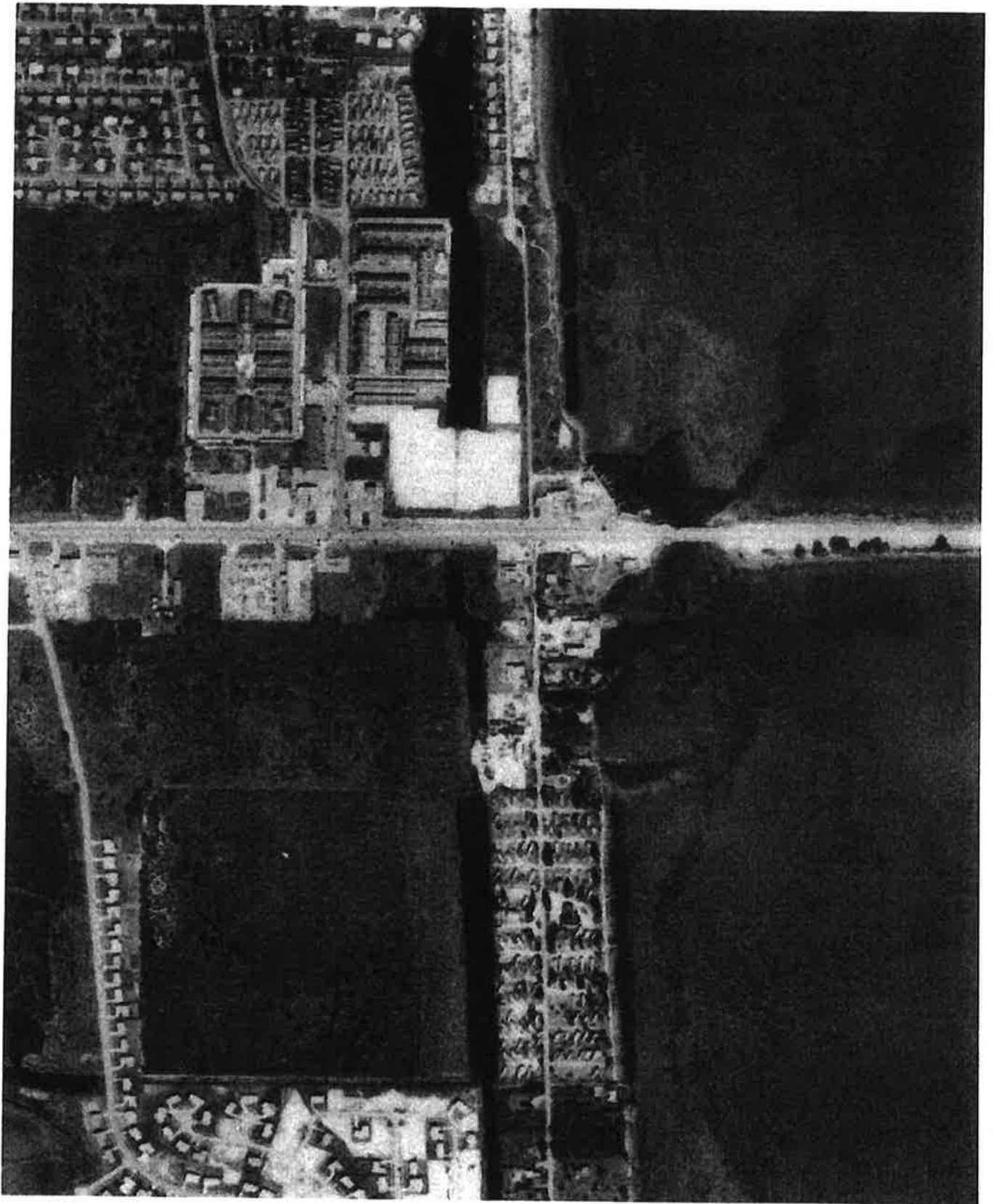
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1958

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**FLIGHT YEAR:**  
1969

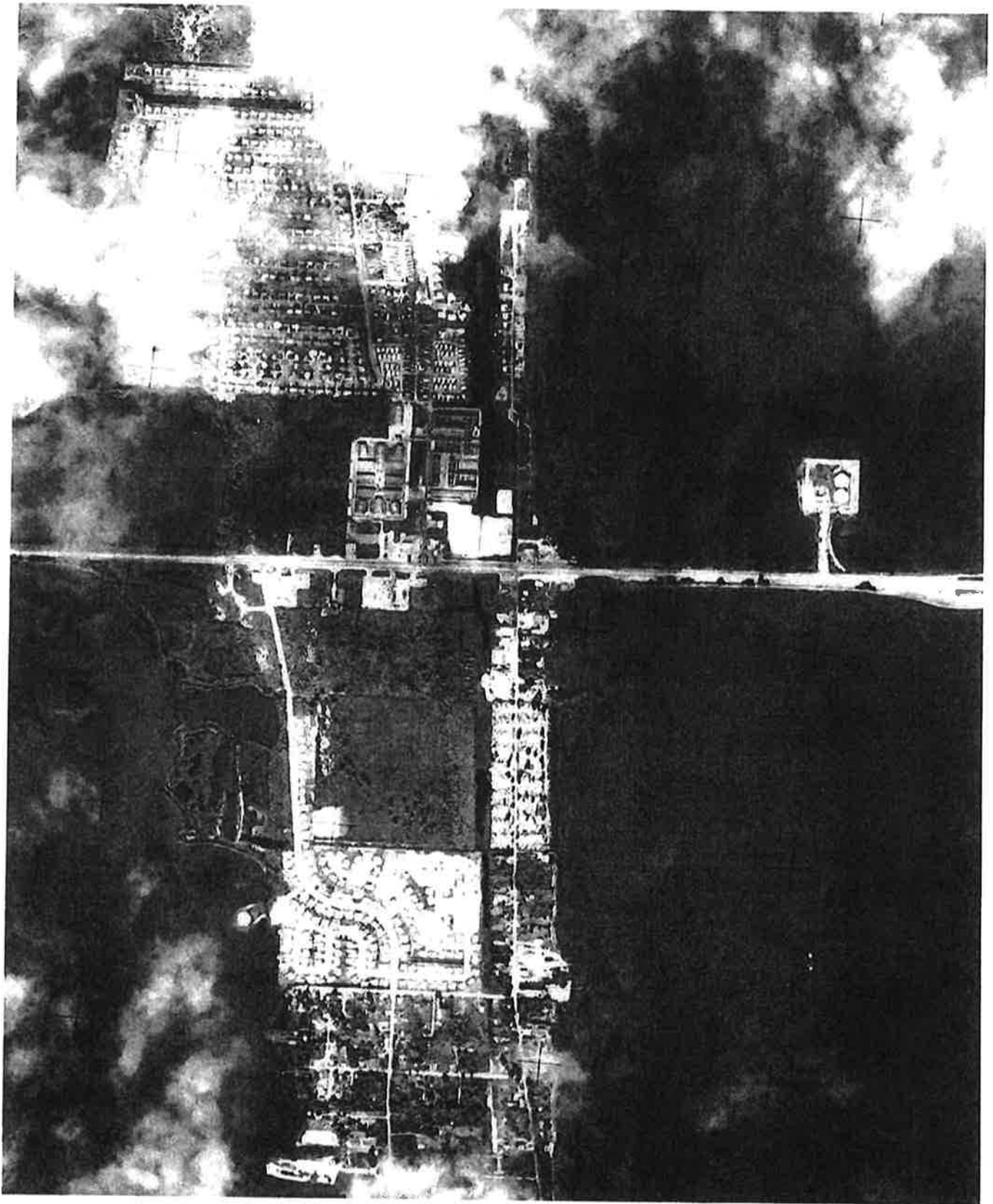
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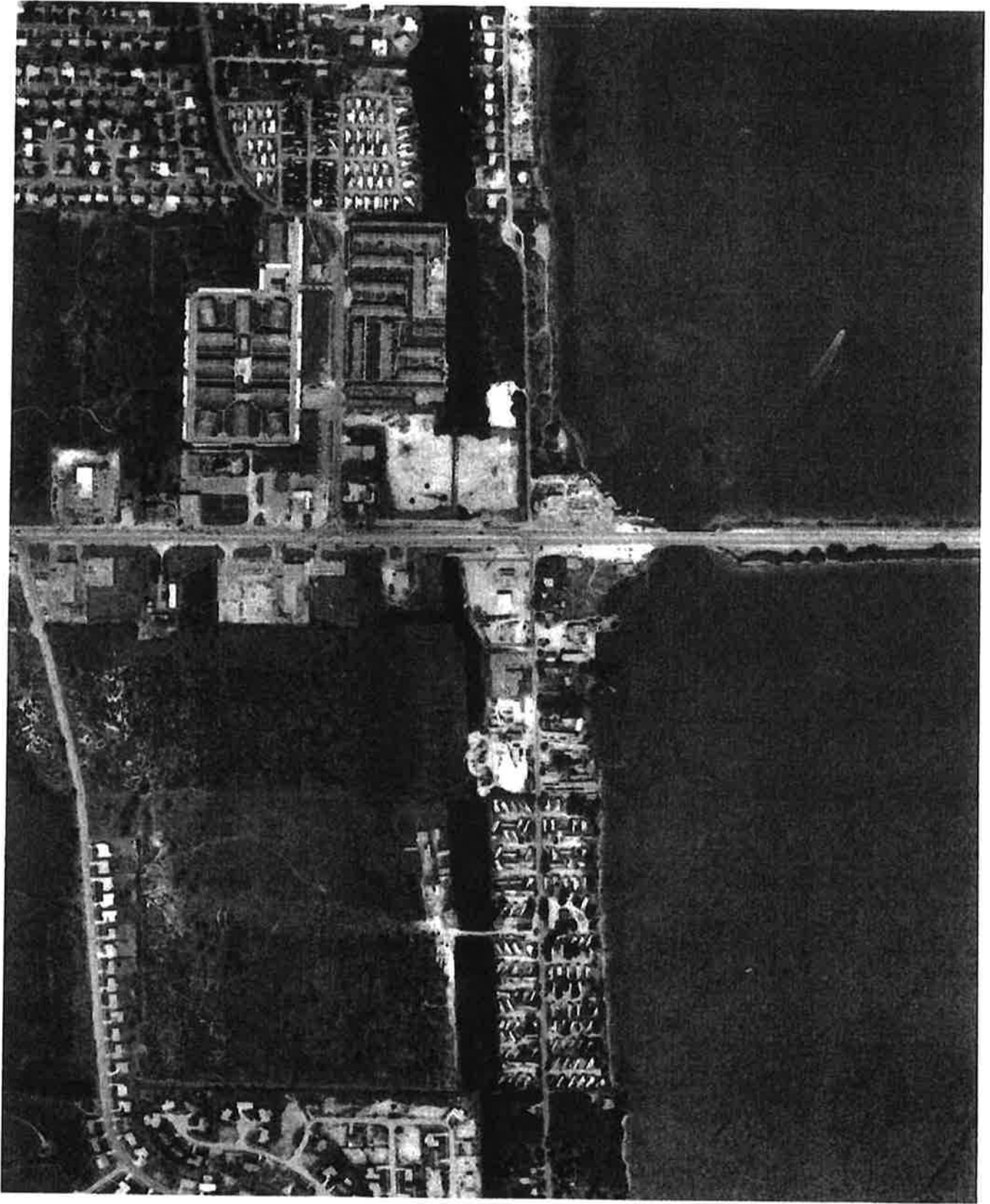
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1970

**Cloud cover on Photo**


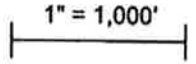
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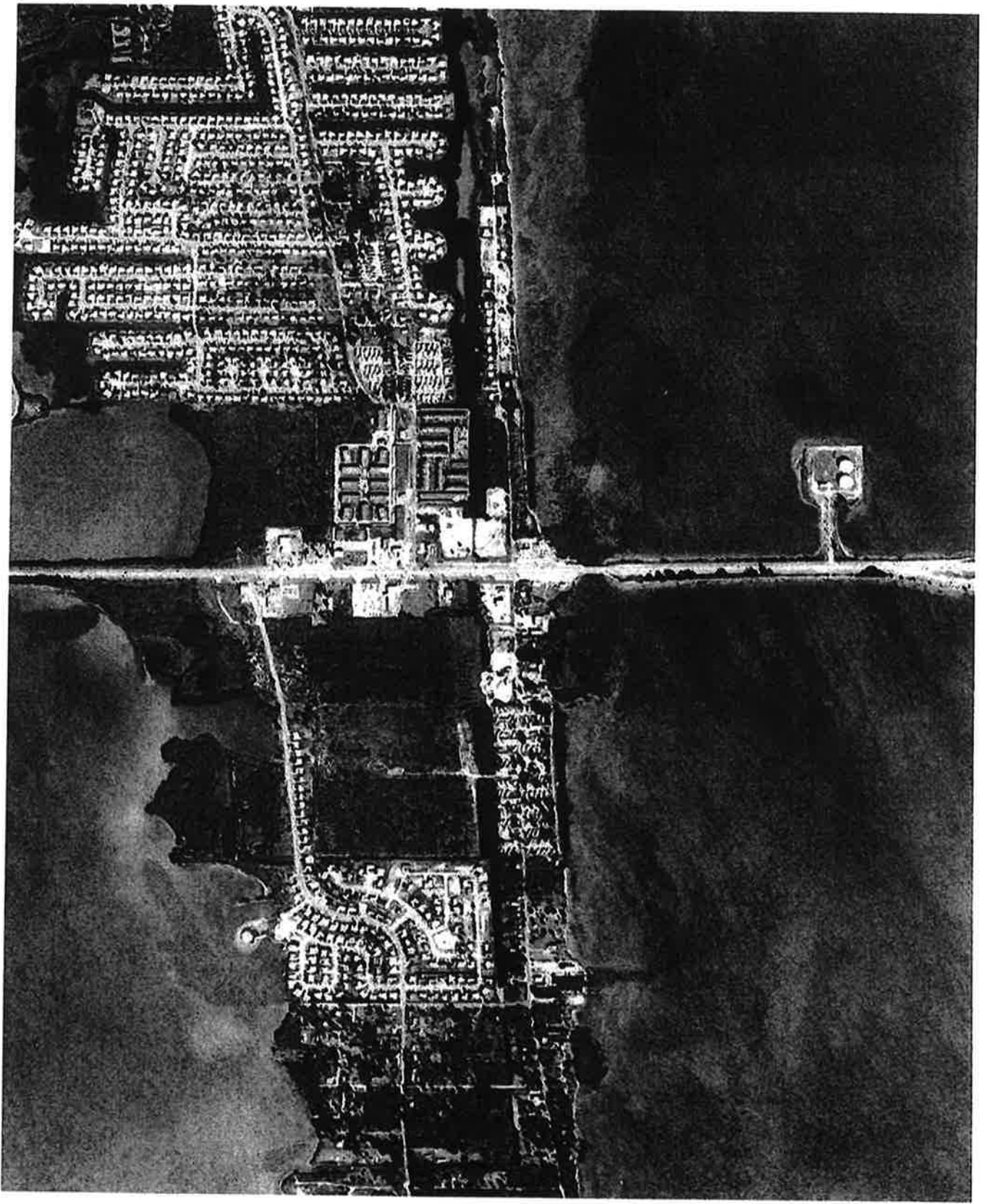


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1975




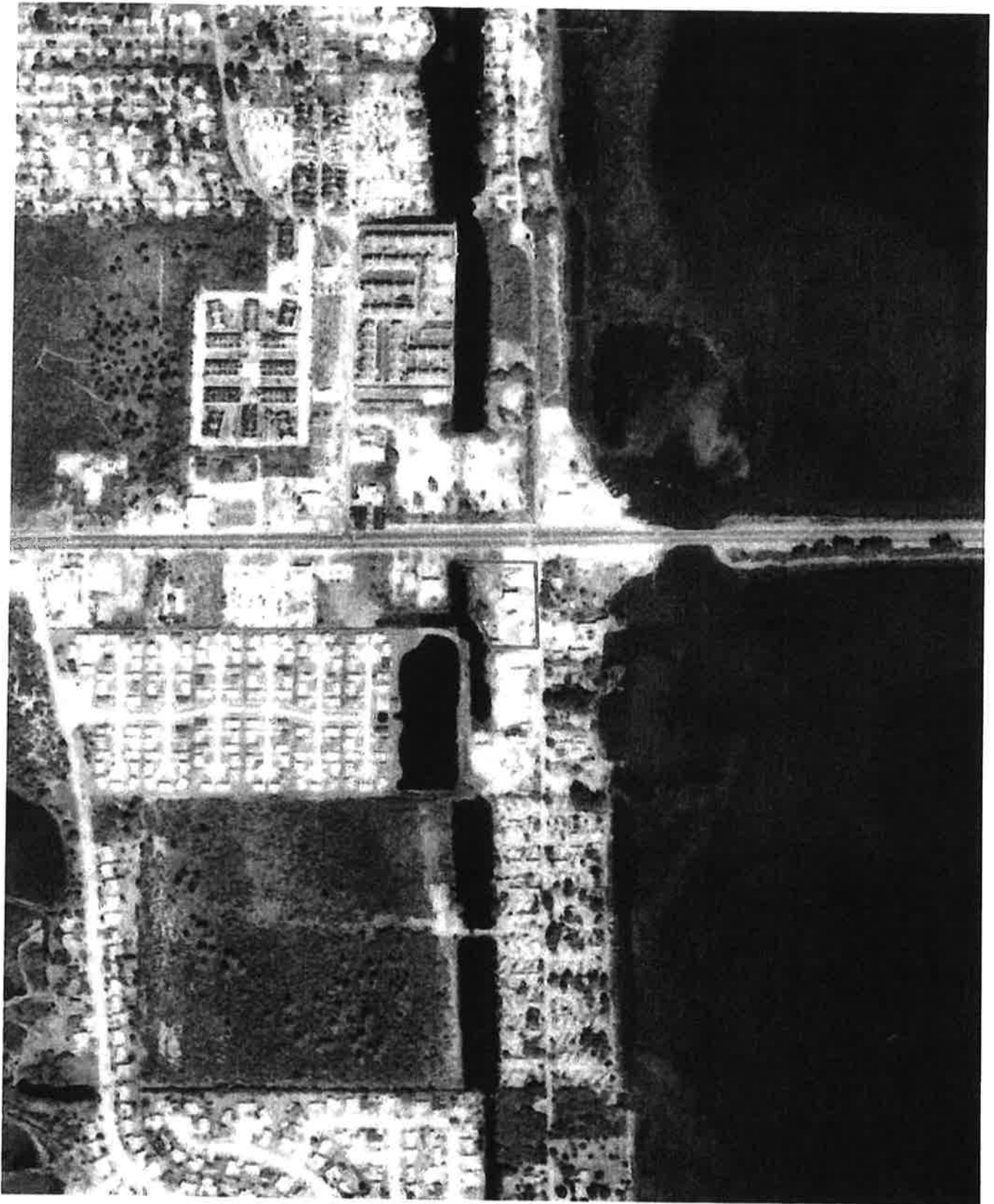
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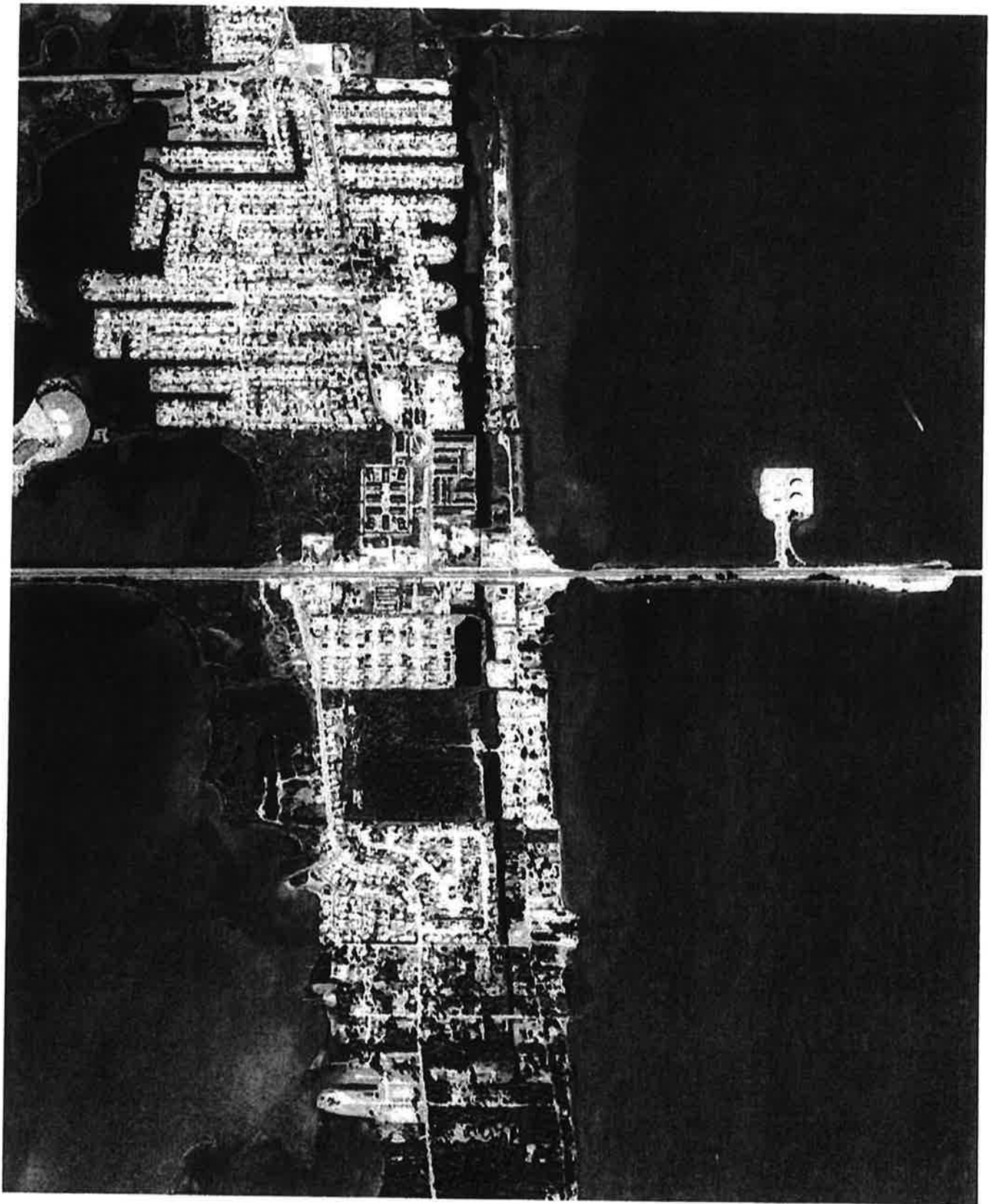
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FLIGHT YEAR:  
1984

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**FLIGHT YEAR:**  
1994

**Scale:** 1" = 500'




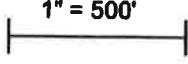


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1999

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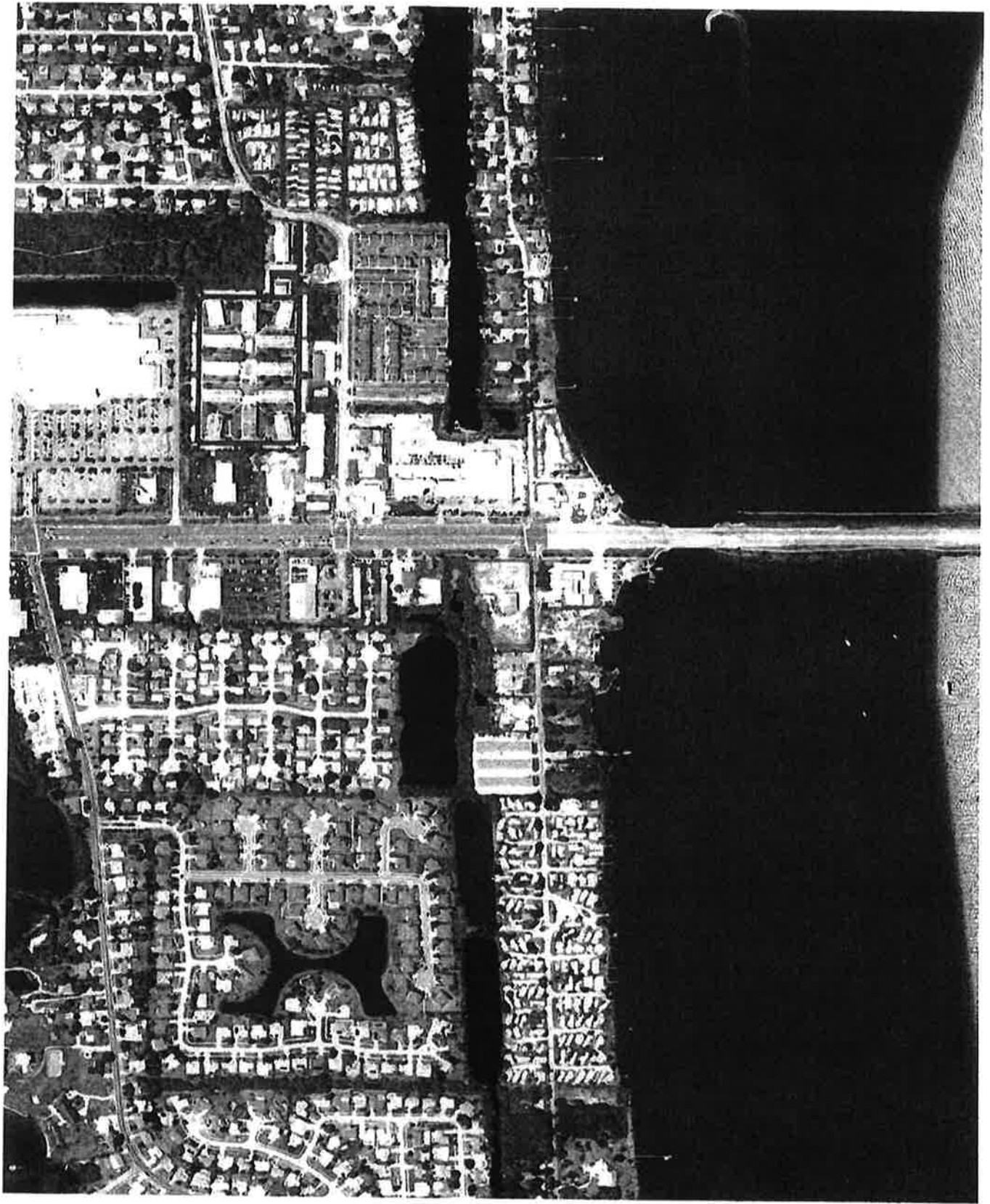
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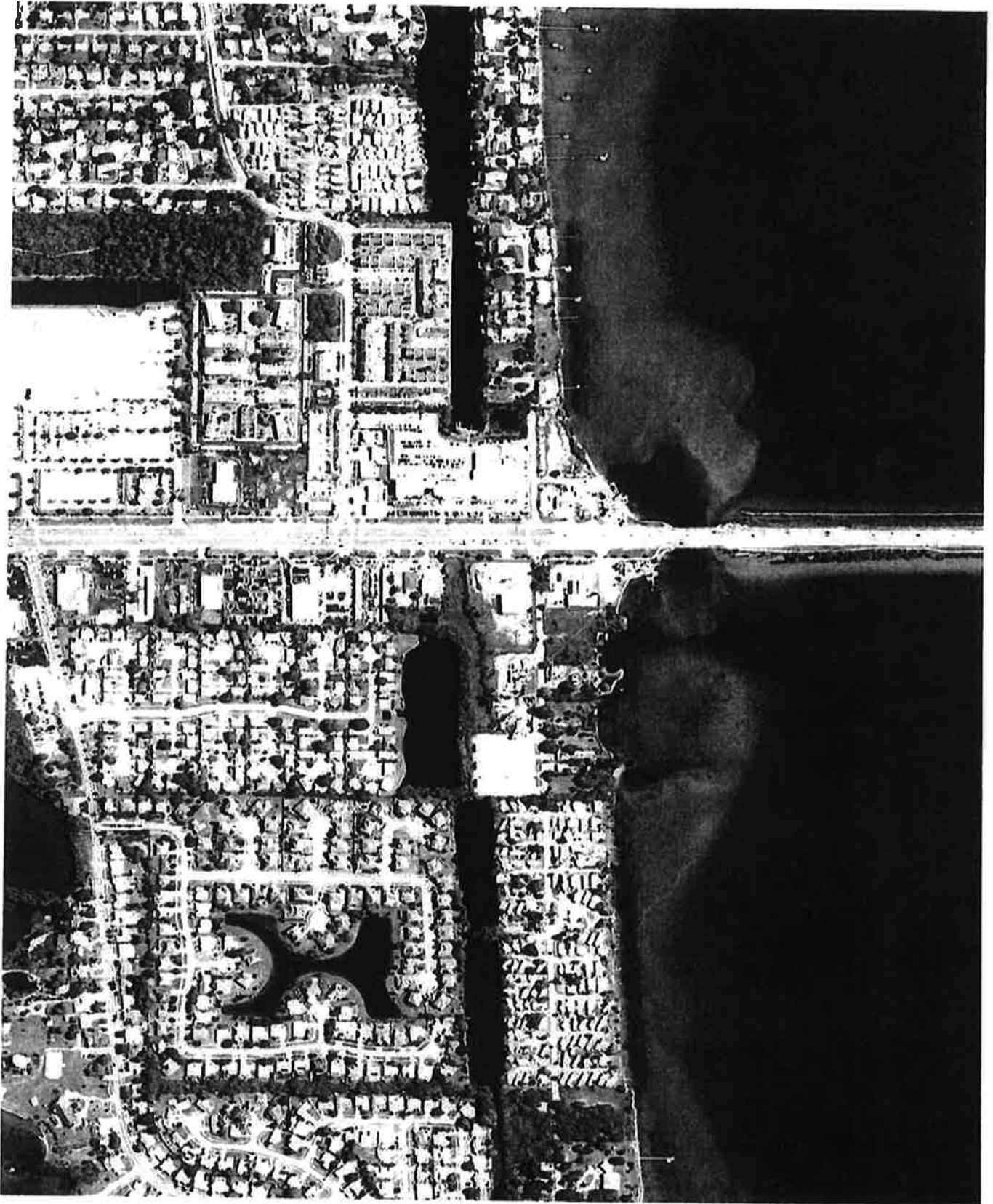
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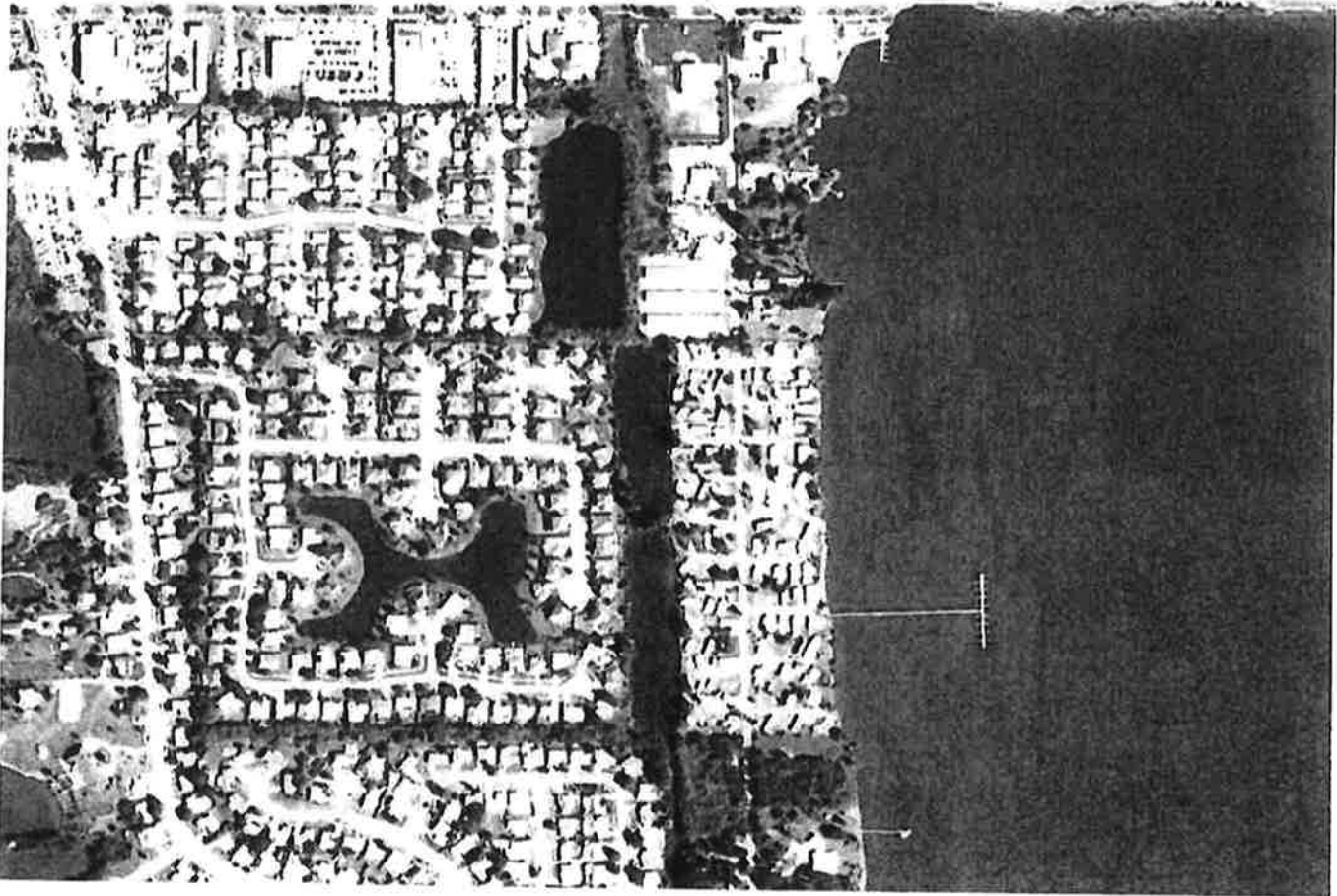
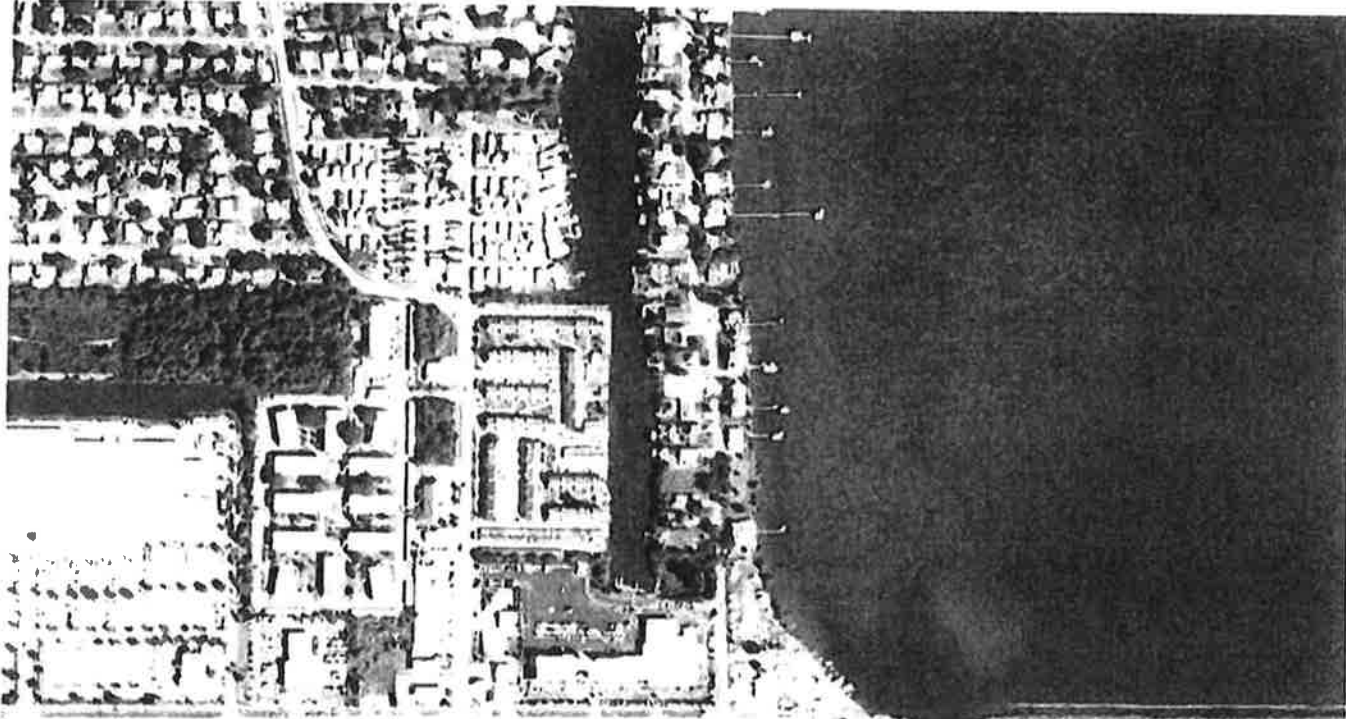
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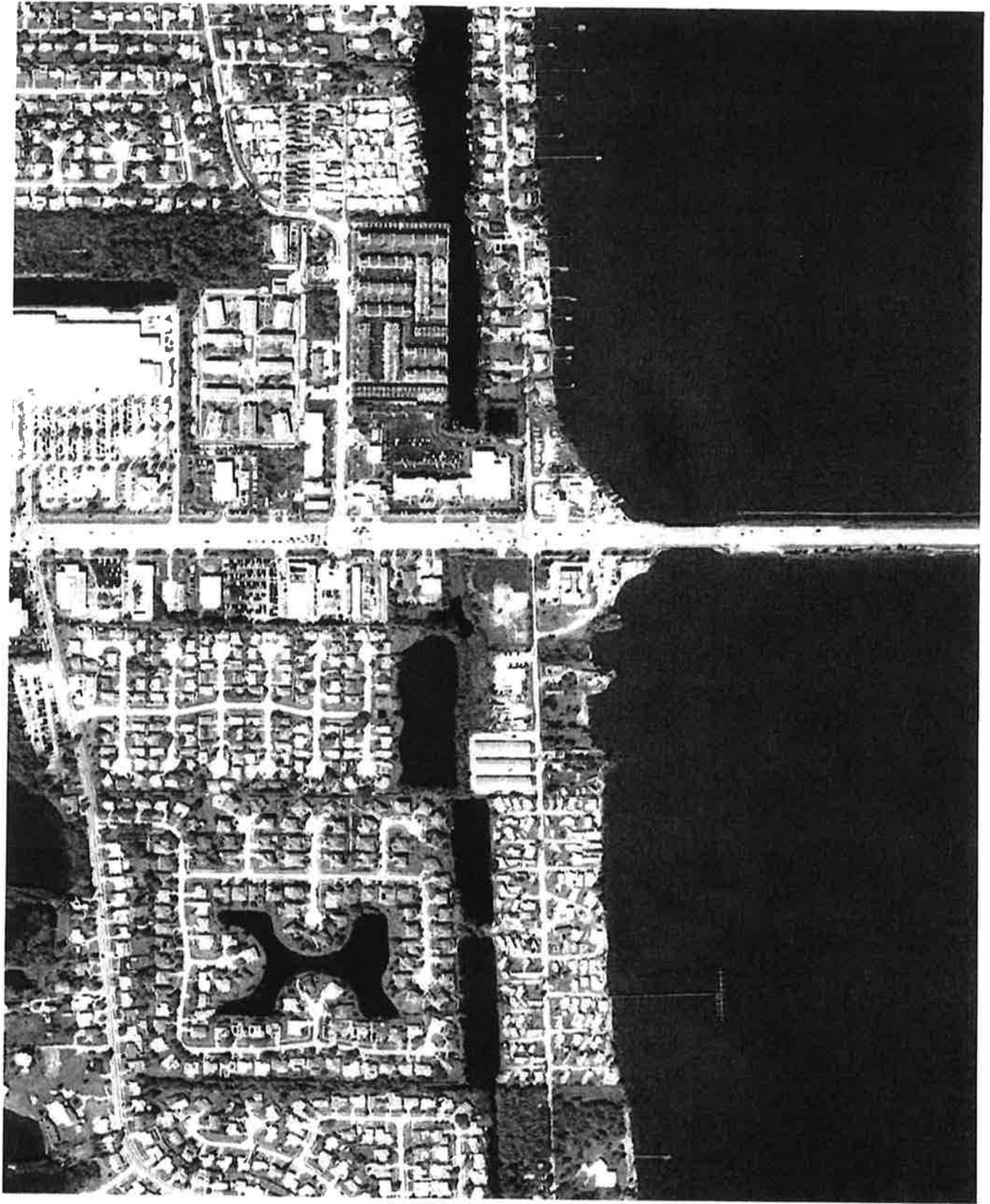
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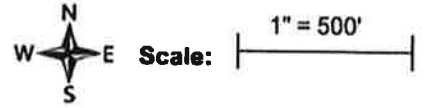


**FLIGHT YEAR:**  
2017

**Scale:** 1" = 500'



**FLIGHT YEAR:**  
2019



2023

