

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
WORKSHOP/ SPECIAL AGENDA ITEM #4**

SUBJECT: Consideration of County Acquisition of Billboards Along State Road A1A and Interstate 95

DATE OF MEETING: June 3, 2013

OVERVIEW/SUMMARY: Staff is presenting a proposal to acquire up to eleven (11) billboards along State Road A1A and Interstate 95. Staff proposes to utilize funding received from the Admiral Corporation associated with the closeout of the Hammock Dunes DRI for the acquisition of the billboards along State Road A1A. Staff is also proposing to utilize funds from economic development or tourism for the acquisition of the Interstate 95 billboard.

These purchases would include all assets related to the billboards, including land, access and maintenance easements, as well as the licenses and permits necessary for the ownership and operation of the billboards.

The total purchase price would not exceed \$140,000.00. Under this proposal, the County would acquire:

- Four (4) large billboards on State Road A1A for \$12,500.00 each;
- Four (4) small billboards on State Road A1A for \$7,500.00 each;
- Two (2) additional billboards on State Road A1A at no cost; and
- One (1) large billboard on Interstate 95 for \$60,000.00 which can only be used for County purposes (Economic Development or Tourism); or, if it is determined that this billboard cannot be legally used, the cost of purchase would be \$20,000.00 plus the County would be responsible for the removal of the billboard.

In exchange for a reduced purchase price, the eight State Road A1A billboards will include provisions whereby the Seller would retain the right to continue advertising (and collecting revenue there from) for a period of 36-months after acquisition by the County.

Staff proposes to utilize the Interstate 95 billboard for advertising and promotional purposes, specifically for economic development and tourism. In the coming months, we will also be working with the Scenic A1A PRIDE group on the billboards on State Road A1A to likely remove the majority of the ten (10) billboards but explore the possibility of keeping two (2) of the billboards for tourism and economic development purposes only.

At their September 28, 2012 meeting, Scenic A1A PRIDE ranked the removal of billboards along State Road A1A as its #1 priority for the use of DRI closeout funds. The Scenic A1A PRIDE group deserve a great deal of credit on bringing this issue forward, as does the County Attorney, who held some earlier negotiations on this issue .

Also, several years ago, the Board banned any new billboards in the unincorporated portions of our County.

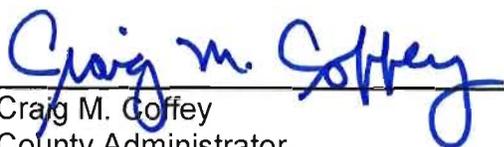
FUNDING INFORMATION: Funding for the purchase of the State Road A1A billboards will be appropriated in the General Fund for \$80,000.00 at the next available public hearing using the restricted fund balance received from the Admiral Corporation. Funding of \$60,000.00 for the purchase of the Interstate 95 billboard will be appropriated from Economic Development or Tourist Development funds as approved by the Board of County Commissioners.

DEPT./CONTACT/PHONE #: Craig Coffey - County Administrator / 313-4001

RECOMMENDATION: Recommend the Board approve the attached contract to acquire the billboards noted in the staff report above, and authorize the County Administrator and County Attorney to take all actions necessary to move forward and close on these transactions.

ATTACHMENTS:

1. Draft Billboard Purchase and Sale Agreement.
2. Powerpoint with map indicating the location of all Billboards associated with this Proposal and current photos of all Billboards Associated with this Proposal.



Craig M. Coffey
County Administrator

BILLBOARD ACQUISITION & TRANSFER AGREEMENT

THIS AGREEMENT made and entered into this 3rd day of June 2013, by and between Cullis Real Estate Solutions, L.L.C., a Florida limited liability company, hereinafter referred to as "Seller" and the Flagler County Board of County Commissioners, a political subdivision of the State of Florida, hereinafter referred to as "Buyer").

WITNESSETH:

WHEREAS, Seller intends to purchase up to fourteen (14) outdoor advertising display structures on State Road A1A and Interstate 95 to include any real property interest upon which the Billboards are located (the "Land"), and the associated access and maintenance easements, and the licenses and permits necessary for the ownership and operation of the Billboards (the Billboards, Land, easements and permits are referred to collectively as the "Billboard Assets"); and

WHEREAS, upon acquiring the Billboard Assets, Seller desires to sell, transfer, assign and convey the majority of Billboard Assets (11 billboards as shown in Exhibit "A") to Buyer, subject to the terms, provisions and conditions of this Agreement; and

WHEREAS, the Buyer desires to acquire the Billboard Assets shown in Exhibit "A" from the Seller, subject to the terms, provisions and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Purchase. Seller hereby agrees to sell, transfer, assign and deliver and Buyer agrees to buy, on the Closing Date, subject to the terms and conditions set forth herein, the Billboard Assets free and clear of all debts, liens, encumbrances or other liabilities and with full right and privilege of use, over, upon and across the Land for the purpose of erecting, maintaining, repairing, leasing and replacing the Billboards, including the right of pedestrian and/or vehicular egress and ingress in order to allow Buyer and its agents to have access to the Land.

2. Price. Buyer's purchase price for the Billboard Assets is set forth with specificity on Exhibit "A" and in no event shall the purchase price exceed the total sum of \$140,000.00.

3. Billboard Assets. The phrase "Billboard Assets" as used herein means all right, title and interest in and to all of the following:

- a. The Billboards described on Exhibit "A" to include any deed or land interest the Billboard may have; and

- b. A perpetual access easement necessary for the construction, maintenance, repair and replacement of the Billboards and supporting structures, including electrical service, catwalk and lights over, upon, under and above the Land or an equivalent instrument acceptable to Buyer, such as an FDOT permit for a billboard within an FDOT right of way, that provides the same rights; and
- c. All licenses and permits necessary for the ownership and operation of the Billboards.

4. Permits. Seller shall deliver to Buyer copies of all existing licenses and permits obtained by Seller for the ownership and operation of the Billboards. The Buyer shall be responsible during the Due Diligence Period described below for investigating and ensuring that the licenses and permits delivered by the Seller to the Buyer constitute all licenses and permits necessary for the ownership and operation of the Billboards. With the timely cooperation of Seller, Buyer shall be responsible for taking all action required by the applicable governmental authorities for the assignment or other transfer of the licenses and permits to the Buyer at the time of Closing. Seller covenants and agrees to execute and deliver to Buyer at the time of Closing any and all documents which may reasonably be required for the assignment or other transfer of the licenses and permits to Buyer. Buyer acknowledges specifically that the Billboards may be considered nonconforming signs under the applicable laws, rules and regulations. Subject to the provisions of Section 7 hereof, Buyer shall be responsible for any actions which may be required by the governmental authorities having jurisdiction regarding the continued presence and use of the Billboards, if any.

5. Representations. As a material inducement to Buyer to enter into this Agreement, Seller makes the following representations, covenants and warranties:

a. Seller is a limited liability Florida corporation, validly existing and in good standing under the laws of Florida. Seller has all requisite power and authority to execute and deliver this Agreement and the documents contemplated hereby and to perform and to comply with all the terms, covenants, and conditions to be performed and complied with by Seller hereunder.

b. The execution, delivery and performance of this Agreement by Seller have been duly authorized by all necessary actions on the part of the Seller. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

c. The execution, delivery and performance by Seller of this Agreement and the documents contemplated hereby (i) do not require the consent of any third party; (ii) will not conflict with the Articles of Incorporation or By-Laws of Seller; (iii) will not conflict with, result in breach of, or constitute a default under any law,

judgment, order, injunction, regulation or ruling of any court or governmental instrumentality; or (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of any agreement, instrument, license or permit to which Seller is a party or by which Seller may be bound, that may impair Buyer's ability to acquire or operate the Billboard Assets.

d. No representations or warranty made by Seller in this Agreement or in any certificate or other document or writing furnished by Seller pursuant hereto contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact that is required to make any statement made hereunder not misleading.

e. Seller will acquire good and marketable title to the Billboard Assets free and clear of all liens and encumbrances. Immediately after consummation of the transactions contemplated herein, Buyer will be entitled to use the Billboard Assets free and clear of all liens and encumbrances.

f. Neither Seller, nor any shareholder, employee, or agent of Seller have incurred any obligation for any finder's, broker's or agent's fee in connection with the transactions contemplated herein and Seller shall not make Buyer responsible for any such fees and shall indemnify Buyer for any such fees.

g. Seller will acquire good title to the Billboards and the Billboards shall not be subject to any security interest, mortgage, pledge, conditional sales agreement or other lien or encumbrances.

h. Seller has complied with all laws, rules, and regulations of all federal, state and local governments concerning the environment, public health and safety and no complaint, charge or notice has been filed or commenced against Seller in connection with its ownership or operation of the Billboard Assets alleging any failure to comply with any such law, rule or regulation.

i. Seller warrants that the Billboards are constructed within the boundaries of the Land and the Land has access to and from a public road.

j. Seller is aware of no structural or latent defects in any of the Billboard Assets except as may be identified in Exhibit B.

6. Due Diligence Period. Upon notification by the Seller to the Buyer that Seller has acquired the Billboard Assets, and upon delivery of the licenses and permits provided for under Section 4 hereof, the Buyer shall have forty-five days (45) thereafter to inspect the Billboard Assets and to conduct such other inspections or investigations to confirm the feasibility and suitability of the Billboard Assets for Buyer's purposes. If

Buyer is dissatisfied with the results of such inspections and investigations for any reason, then Buyer in its sole discretion shall be entitled to terminate this Agreement with respect to those Billboard Assets. Seller shall permit the Buyer and Buyer's authorized representatives full access to, and make available for inspection, all of the Billboard Assets and to furnish Buyer all documents, records, and information with respect to the Billboard Assets as Buyer and its representatives may reasonably request, all for the purpose of permitting Buyer to become familiar with the Billboard Assets. In connection therewith, the Buyer, its agents and representatives shall have the right of access to the Billboard Assets for purposes of conducting surveys, investigations, studies and inspections as the Buyer deems desirable, providing that all of the same shall be conducted at the Buyer's expense.

7. Advertising Leases and Management Agreements. The Buyer acknowledges that Seller may have advertising and management agreements in place for the Billboards prior to closing. In such event, the Seller may continue to advertise on the Billboards shown in Sections 1 and 2 of Exhibit A for a period not to exceed 36 months from the Closing Date and the Billboards shown in Section 3 until August 1, 2013. During the period of the advertising lease, the Seller shall be responsible for the payment of any taxes, fees and costs of any kind associated with the operation (including the leasing) of the Billboards. Seller shall be responsible for compliance with any requirements of FDOT regulations or FDOT permits during this time period of leasing, including costs resulting therefrom. Seller or Seller's agents shall ensure that no advertising or management obligations extend past 36 months from the Closing Date. Buyer reserves the right to extend any such leases after the leases are set to expire in its sole discretion, either with the then lessee on the same or modified terms or with a new lessee.

8. Closing Expenses. All normal and customarily pro-ratable items, including without limitation, real estate taxes and assessments, personal property taxes and assessments, and utility bills shall be prorated as of the Closing Date, except to such extent as to account for any extended lease terms after Closing by Seller in order for Seller to comply with Seller's continued obligations for taxes, fees and costs under Section 7 hereof. Seller shall be charged and credited for all of the same up to such date(s) of the respective lease terminations and Buyer being charged and credited for the same on and after such date(s). If the actual amounts to be prorated are not known at the time of Closing, the prorations shall be made on the basis of the best evidence then available, and thereafter, when actual figures are received, a cash settlement shall be made between Seller and Buyer. Seller and Buyer shall be responsible one-half each for the costs of the following: the premium for an owner's title insurance policy insuring Buyer's interest in all real estate interests to be transferred hereunder, all recording costs arising in connection with the transaction contemplated herein with the following exceptions: recording costs for title corrective documents which shall be

Seller's obligation and all Florida documentary stamp taxes or other transfer or sales taxes arising in connection with any deed, conveyance, or assignment relating to the Billboard Assets.

9. Closing. The closing hereunder shall occur at the County offices. Ten working days prior to closing, the Seller shall deliver the following documents to the Buyer:

- a. Duly executed Easements;
- b. Warranty Bill of Sale;
- c. Assignments of permits and other transfer documents which shall be sufficient to vest and fully warrant good and marketable title to the Billboard Assets in the name of Buyer, free and clear of all mortgages, liens, restrictions, encumbrances and obligations;
- d. All original permits;
- e. Any other documents, warranties, certificates reasonably requested by the Buyer in order to consummate the transactions contemplated by this Agreement and to fully vest in the Buyer the ownership of the Billboard Assets from and after the Closing.

10. General Provisions.

a. **Further Documentation**. The parties agree that at any time following a request by the other party, each shall execute and deliver to the other party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of either party hereunder and the consummation of the transaction contemplated hereby. The obligations of Seller and Buyer pursuant to this Section shall survive the Closing hereunder.

b. **Assignment**. This Agreement may be assigned by Buyer to another government entity, in which event Buyer will provide written notice of assignment to Seller. Seller may not assign this Agreement without the prior written consent of Buyer.

c. **Severability**. If any of the provisions of this Agreement are deemed to be unenforceable and the unenforceability of said provisions does not adversely affect the purpose and intent of this Agreement, the enforceability of the remaining provisions of this Agreement shall not be affected.

d. **Waiver**. Failure of Buyer to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.

e. **Counterparts.** This Agreement may be executed in one or more counterparts, but all such counterparts, when duly executed, shall constitute one and the same Agreement.

f. **Addendum.** Any addendum attached hereto that is signed by the parties shall be deemed a part of this Agreement.

g. **Notice.** Whenever either party desires or is required to give notice unto the other, it must be given by written notice, and either delivered personally, transmitted via facsimile transmission, mailed postage prepaid, certified mail, or sent by overnight courier to the appropriate address indicated on the first page of this Agreement, or such other address as is designated in writing by a party to this Agreement. A copy of any notice given to Buyer shall be given to the following representatives of the Buyer: County Administrator at 1769 E. Moody Blvd., Bldg. 2, Bunnell, Florida 32110, and also to County Attorney at 1769 E. Moody Blvd., Bldg. #2, Bunnell, Florida 32110. A copy of any notice given to Seller shall be given to the following representatives of the Seller: Mr. Jim Cullis, Cullis Real Estate Solutions, LLC at 7 Sandpiper Court Palm Coast, FL 32137.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement, to become effective as of the date and year first above written.

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SELLER:

Cullis Real Estate Solutions

By: _____

Date: _____

Witness

Print Name: _____

Witness

Print Name: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by [insert name and title] _____, on behalf of Cullis Real Estate L.L.C., a Florida limited liability company. Such person(s) (Notary Public must check applicable box):

is/are personally known to me.

produced a current driver license(s).

produced _____ as identification.

(NOTARY PUBLIC SEAL)

Notary Public

Commission No.: _____

My Commission Expires: _____

BUYER:

**FLAGLER COUNTY BOARD
OF COUNTY COMMISSIONERS**

By: _____

Nate McLaughlin, **Chairman**

ATTEST:

Gail Wadsworth, Clerk and
Ex Officio Clerk to the Board

APPROVED AS TO FORM:

Albert J. Hadeed, County Attorney

Exhibit A

1. AIA Billboards (full size) - Panel #5960, 5959, 5972, 5971

Purchase Price: \$12,500.00 Each

Closing Date: Within 90 days after Seller acquires title to the Billboard Assets.

2. AIA Boards (reduced size) - Panel #5966, 5965, 5964, 5962

Purchase Price: \$7,500.00 Each

Closing Date: Within 90 days after Seller acquires title to the Billboard Assets.

3. AIA Boards Panel # 5958 (lg) & 5963 (sm)

Purchase Price: \$0.00 Each

Closing Date: Within 90 days after Seller acquires title to the Billboard Assets but not later than August 1, 2013 unless Buyer agrees to a later time.

4. I-95 Board (full size) – Panel #5970

Purchase Price: \$60,000 contingent upon approval by the State for use by the County for County promotional purposes, with Seller obtaining a property interest in Panel #5970 for and in the name of the County at Seller's sole cost and expense, meeting any applicable State requirement and the terms of the Agreement, with the Panel available for immediate use by the County.

Alternative Purchase Price: If the contingencies above cannot be met the purchase price shall be reduced to \$20,000 as is, with no permits or property interest except right of County to access and to remove the structure.

Closing Date: Within 90 days after the Seller acquires title to the Billboard Assets.



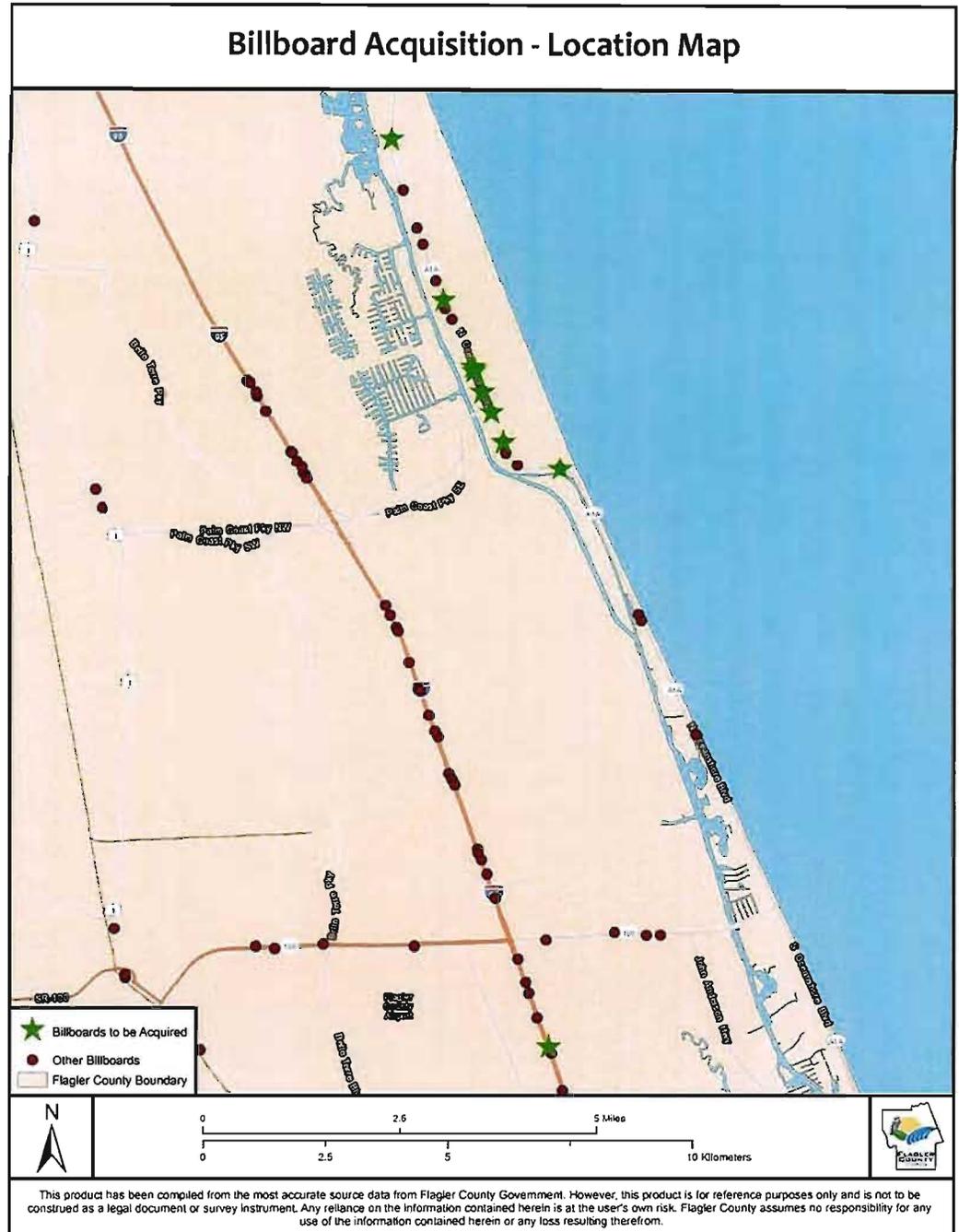
A1A/I-95 BILLBOARD ACQUISITION

June 3, 2013

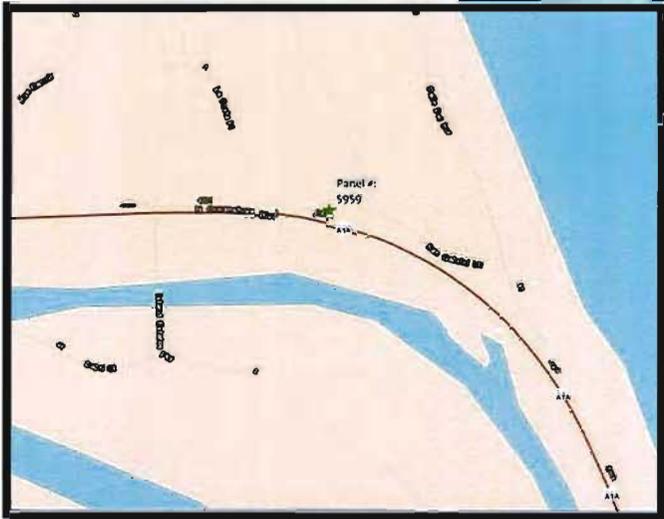
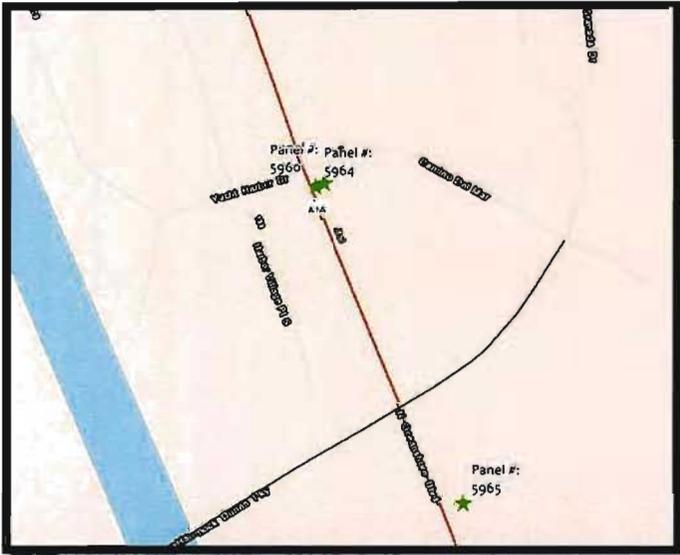
Board of County Commissioners Workshop

Background

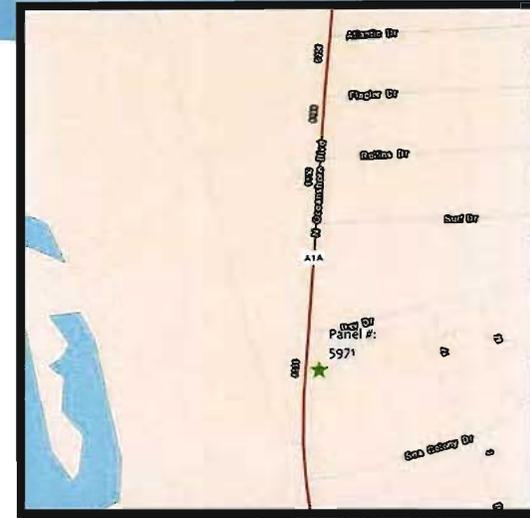
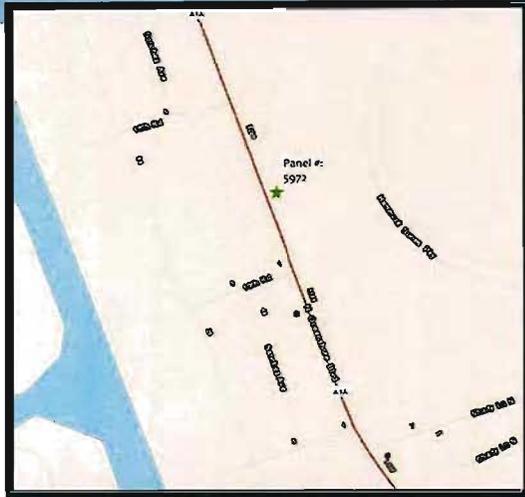
- We have the opportunity to acquire 10 billboards along State Road A1A and one on I-95
- Billboards would come with all associated “assets”
 - ▣ Land, easements, licenses and permits, etc.
- County would “buy down” the purchase price in exchange for 3 years of advertising revenue



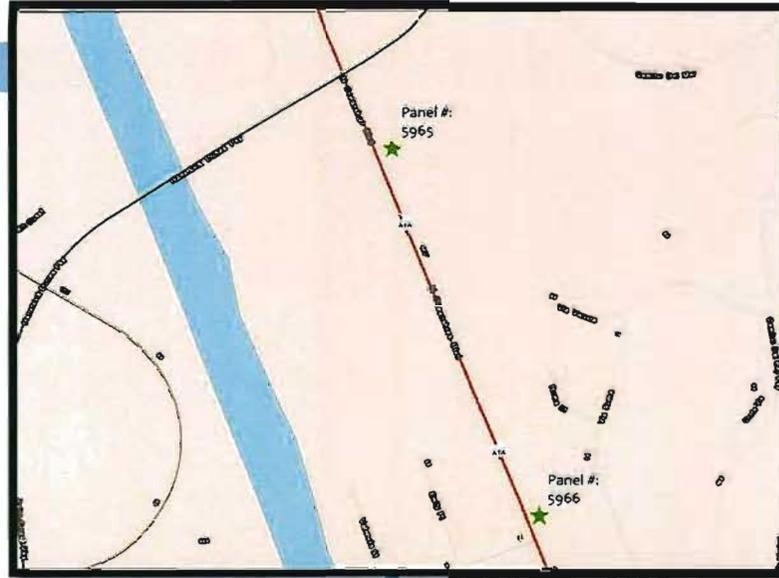
A1A – Large Billboards - \$12,500/ea



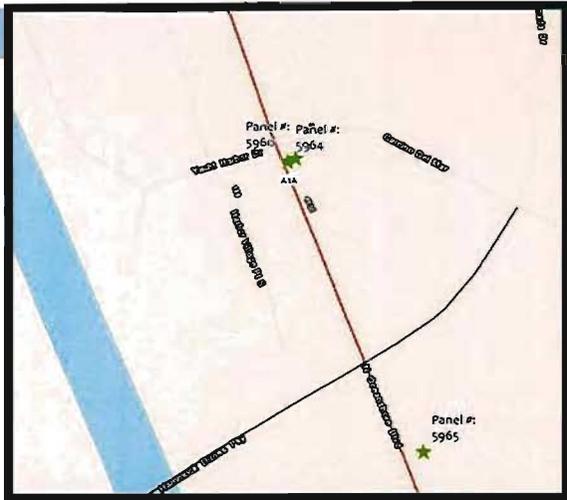
A1A – Large Billboards - \$12,500/ea



A1A – Small Billboards - \$7,500/ea



A1A – Small Billboards - \$7,500/ea



A1A – Additional Billboards – No Cost

