

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

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Meeting Date: December 19, 2006 (X) Consent () Regular
() Workshop () Public Hearing

Department

Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

A) a waiver of County policy that prohibits the County from paying State costs and attorney's fees in a dispute; and,

B) a Sovereign Submerged Lands Easement (Easement) granted by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida for offshore sand borrow area for the Ocean Ridge Shore Protection Project, effective September 19, 2005.

Summary: The first renourishment of the Ocean Ridge Shore Protection Project was completed on December 5, 2005. Use of sand from State waters required an Easement. The Easement is subject to the terms of the Florida Department of Environmental Protection (FDEP) Consolidated Joint Coastal Permit (JCP), which expires September 19, 2015. The Easement requires that the County pay the State costs of dispute resolution or any related attorney's fees. Although this language is not consistent with County policy outlined in Section Y of PPM CW-F-049, Contract Development and Contract Responsibility, staff recommends that the Board waive this policy and approve this Easement since the project is complete. District 4 (SF)

Background and Justification: On September 19, 2005, FDEP granted a JCP to the U.S. Army Corps of Engineers (USACE) for project construction. The USACE provided Federal funding for the portion of the beach lost to the 2004 hurricanes through a Cooperation Agreement (R2005-0336), and therefore, was required by Federal emergency funding legislation to provide project management. The non-Federal portion of the project required cooperation from the County through a Project Cooperation Agreement (R2005-1823), including County participation in acquiring easements, monitoring, and mitigation.

The USACE bid the construction contract before October 1, 2005 to preserve its Federal funding. There was insufficient time for Board approval of the Easement prior to bidding. Therefore, the USACE declared navigational servitude on the offshore borrow area, bypassing the Corps' need for the Easement. FDEP still requires the County, as the local sponsor, to obtain the Easement.

Attachments:

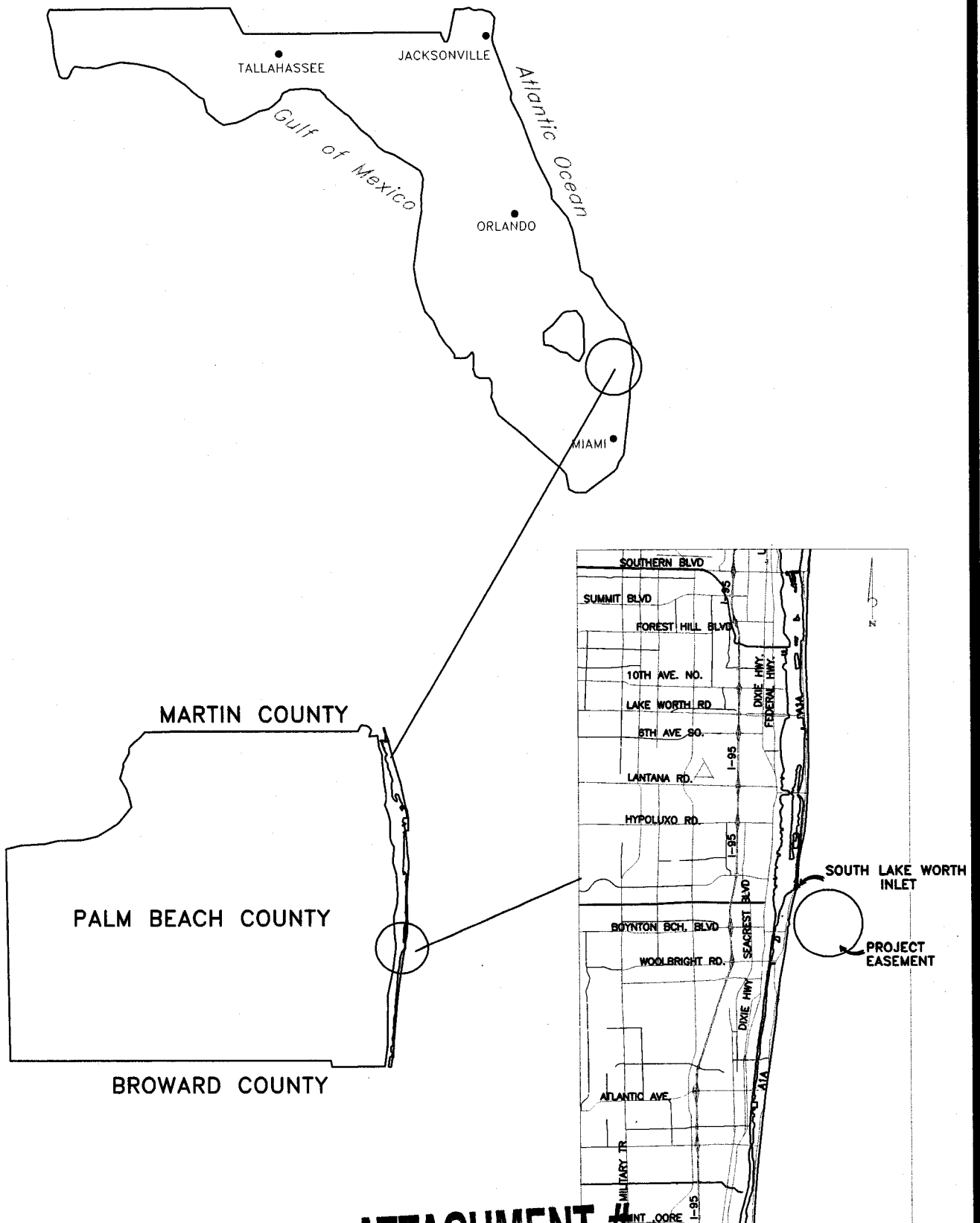
- 1. Location Sketch
- 2. Sovereign Submerged Lands Easement

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Recommended by: Richard Eubank 12/15/06
Department Director Date

Approved by: [Signature] 12/14/06
County Administrator Date

OCEAN RIDGE SHORE PROTECTION PROJECT
SUBMERGED LANDSEASEMENT
LOCATION MAP



This Instrument Prepared By:
Brent Branning
Recurring Revenue Section
Bureau of Public Land Administration
3900 Commonwealth Boulevard
Mail Station No. 125
Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA

SOVEREIGN SUBMERGED LANDS EASEMENT

NO. 40634
BOT FILE NO. 500231086
PA NO. 0244200-001-JC

THIS EASEMENT is hereby granted by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Grantor.

WITNESSETH: That for the faithful and timely performance of and compliance with the terms and conditions stated herein, the Grantor does hereby grant to Palm Beach County, Florida, hereinafter referred to as the Grantee, a nonexclusive easement on, under and across the sovereign lands, if any, contained in the following legal description:

A parcel of submerged land in Section 22,
Township 45 South, Range 43 East, in the Atlantic Ocean,
Palm Beach County, as is more particularly described
and shown on Attachment A, dated July 29, 2005.

TO HAVE THE USE OF the hereinabove described premises from September 19, 2005, the effective date of this easement. The terms and conditions of and for which this easement is granted are as follows:

1. **USE OF PROPERTY:** The above described parcel of land shall be used solely for an offshore sand borrow area for the Ocean Ridge Federal Beach Nourishment Project and Grantee shall not engage in any activity except as described in the Department of Environmental Protection, Consolidated Joint Coastal Permit No. 0244200-001-JC, dated September 19, 2005, incorporated herein and made a part of this easement by reference. All of the foregoing subject to the remaining conditions of this Easement.

2. **EASEMENT CONSIDERATION:** In the event the Grantor amends its rules related to fees and the amended rules provide the Grantee will be charged a fee or an increased fee for this activity, the Grantee agrees to pay all charges required by such amended rules within 90 days of the date the amended rules become effective or by a date provided by an invoice from the Department, whichever is later. All fees charged under this provision shall be prospective in nature; i.e. they shall begin to accrue on the date that the amended rules become effective.

3. **WARRANTY OF TITLE/GUARANTEED SUITABILITY OF USE OF LAND:** Grantor neither warrants title to the lands described herein nor guarantees the suitability of any of the lands for any particular use.

4. **RIGHTS GRANTED:** The rights hereby granted shall be subject to any and all prior rights of the United States and any and all prior grants by the Grantor in and to the submerged lands situated within the limits of this easement.

5. **DAMAGE TO EASEMENT PROPERTY AND INTERFERENCE WITH PUBLIC AND PRIVATE RIGHTS:** Grantee shall not damage the easement lands or unduly interfere with public or private rights therein.

6. **GRANTOR'S RIGHT TO GRANT COMPATIBLE USES OF THE EASEMENT PROPERTY:** This easement is nonexclusive, and the Grantor, or its duly authorized agent, shall retain the right to enter the property or to engage in management activities not inconsistent with the use herein provided for and shall retain the right to grant compatible uses of the property to third parties during the term of this easement.

7. **RIGHT TO INSPECT:** Grantor, or its duly authorized agent, shall have the right at any time to inspect the works and operations of the Grantee in any matter pertaining to this easement.

8. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: The Grantee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

9. VENUE: Grantee waives venue as to any litigation arising from matters relating to this easement and any such litigation between Grantor and Grantee shall be initiated and maintained only in Leon County, Florida.

10. ASSIGNMENT OF EASEMENT: This easement shall not be assigned or otherwise transferred without prior written consent of the Grantor or its duly authorized agent and which consent shall not be unreasonably withheld. Any assignment or other transfer without prior written consent of the Grantor shall be null and void and without legal effect.

11. TERMINATION: The Grantee, by acceptance of this easement, binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Grantee, its successors and assigns. In the event the Grantee fails or refuses to comply with the provisions and conditions herein set forth or in the event the Grantee violates any of the provisions and conditions herein, this easement may be terminated by the Grantor upon 30 days written notice to Grantee. If terminated, all of the above-described parcel of land shall revert to the Grantor. All costs, including attorneys' fees, incurred by the Grantor to enforce the provisions of this easement shall be paid by the Grantee. All notices required to be given to Grantee by this easement or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

Palm Beach County Environmental Resources Management
c/o Richard E. Walesky, Director
2300 North Jog Road, 4th Floor
West Palm Beach, Florida 33411-2743

The Grantee agrees to notify the Grantor by certified mail of any changes to this address at least ten (10) days before the change is effective.

12. TAXES AND ASSESSMENTS: The Grantee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this easement which result from the grant of this easement or the activities of Grantee hereunder.

13. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Grantee does not remove said structures and equipment occupying and erected upon the premises after expiration or cancellation of this easement, such structures and equipment will be deemed forfeited to the Grantor, and the Grantor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Grantee at the address specified in Item 11 or at such address on record as provided to the Grantor by the Grantee. However, such remedy shall be in addition to all other remedies available to Grantor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

14. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Grantor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Grantor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

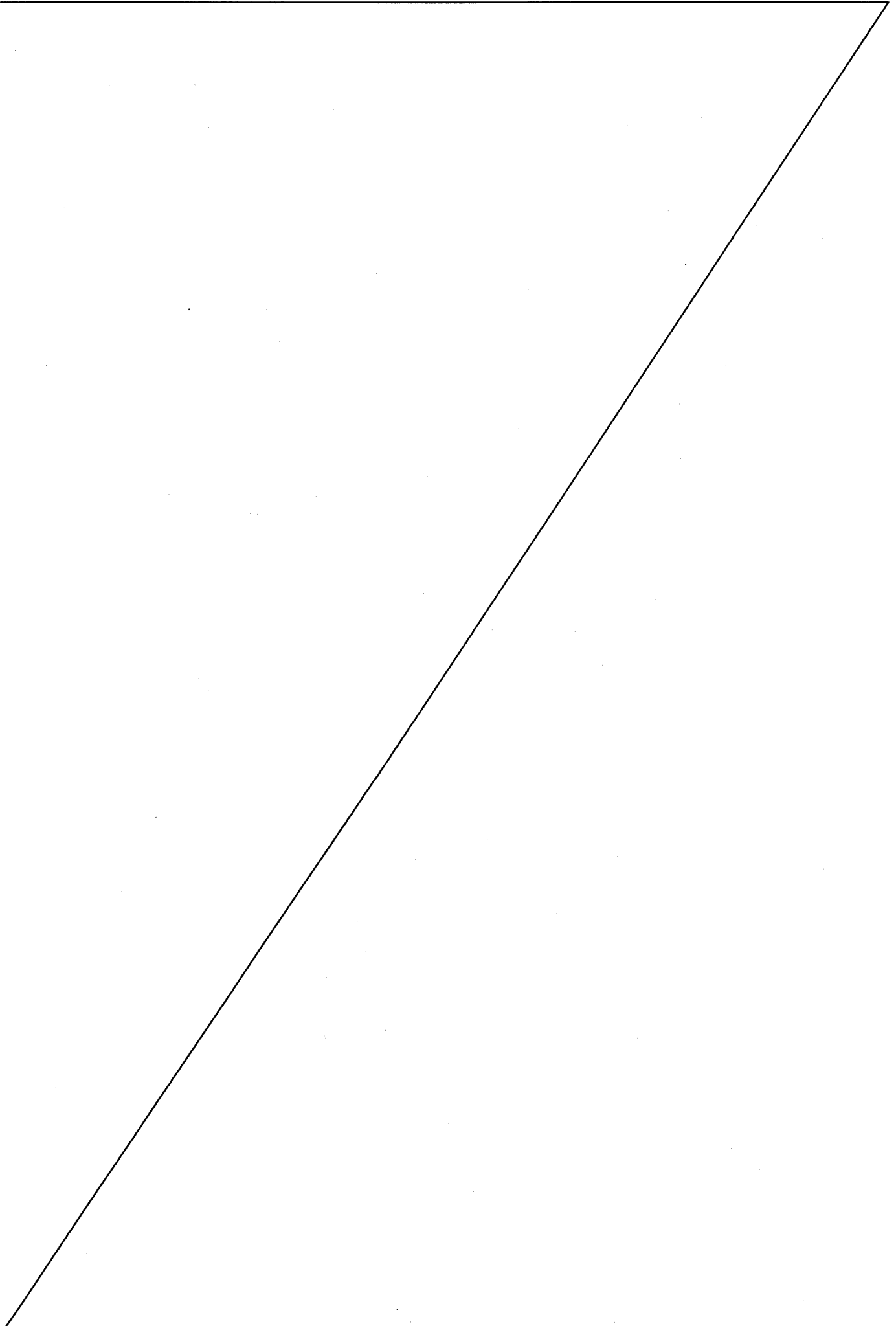
15. RECORDATION OF EASEMENT: The Grantee, at its own expense, shall record this fully executed easement in its entirety in the public records of the county within which the easement site is located within fourteen (14) days after receipt, and shall provide to the Grantor within ten (10) days following the recordation a copy of the recorded easement in its entirety which contains the O.R. Book and pages at which the easement is recorded.

16. AMENDMENT/MODIFICATIONS: This easement is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this easement must be in writing and must be accepted, acknowledged and executed by the Grantee and Grantor.

17. ACOE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Grantee shall obtain the U.S. Army Corps of Engineers (COE) permit if it is required by the COE. Any modifications to the construction and/or activities authorized herein that may be required by the COE shall require consideration by and the prior written approval of the Grantor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

18. ADDITIONAL STRUCTURES OR ACTIVITIES/EMERGENCY STRUCTURAL REPAIRS: No additional structures shall be erected and/or activities undertaken, including but not limited to, dredging, relocation/realignment or major repairs or renovations made to authorized structures, on, in or over sovereignty, submerged lands without the prior written consent from the Grantor, with the exception of emergency repairs. Unless specifically authorized in writing by the Grantor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Grantee to administrative fines under Chapter 18-14, Florida Administrative Code. If emergency repairs are required to be undertaken in the interests of public health, safety or welfare, the Grantee shall notify the Grantor of such repairs as quickly as is practicable; provided, however, that such emergency activities shall not exceed the activities authorized by this easement.

19. UPLAND RIPARIAN PROPERTY INTEREST: During the term of this easement, Grantee must have satisfactory evidence of sufficient upland interest as defined in Rule 18-21.003, Florida Administrative Code, to the extent required by paragraph 18-21.004(3)(b), Florida Administrative Code, in order to conduct the activity described in this easement. If at any time during the term of this easement, Grantee fails to comply with this requirement, use of sovereignty, submerged lands described in this easement shall immediately cease and this easement shall terminate and title to this easement shall revert to and vest in the Grantor immediately and automatically.



WITNESSES:

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE
OF FLORIDA

Original Signature _____

(SEAL)

Print/Type Name of Witness _____

BY: _____

Dale Adams, Operations and Management Consultant
Manager, Bureau of Public Land Administration,
Division of State Lands, Department of Environmental
Protection, as agent for and on behalf of the Board of Trustees of
the Internal Improvement Trust Fund of the State of Florida

Original Signature _____

Print/Type Name of Witness _____

"GRANTOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by
Dale Adams, Operations and Management Consultant Manager, Bureau of Public Land Administration, Division of State Lands,
Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust
Fund of the State of Florida. He is personally known to me.

APPROVED AS TO FORM AND LEGALITY:

Notary Public, State of Florida

DEP Attorney _____

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No. _____

WITNESSES:

Palm Beach County, Florida (SEAL)
by its Board of County Commissioners

Original Signature _____

BY: _____

Original Signature of Executing Authority

Typed/Printed Name of Witness _____

~~Tony Masilotti~~ Addie L. Greene
Typed/Printed Name of Executing Authority

Original Signature _____

~~Chairman~~ Chairperson
Title of Executing Authority

Typed/Printed Name of Witness _____

"GRANTEE"

STATE OF _____

Richard E. ...
**APPROVED AS TO TERMS
AND CONDITIONS.**

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by
~~Tony Masilotti as Chairman~~ for and on behalf of the Board of County Commissioners of Palm Beach County, Florida She is
personally known to me or who has produced _____, as identification.

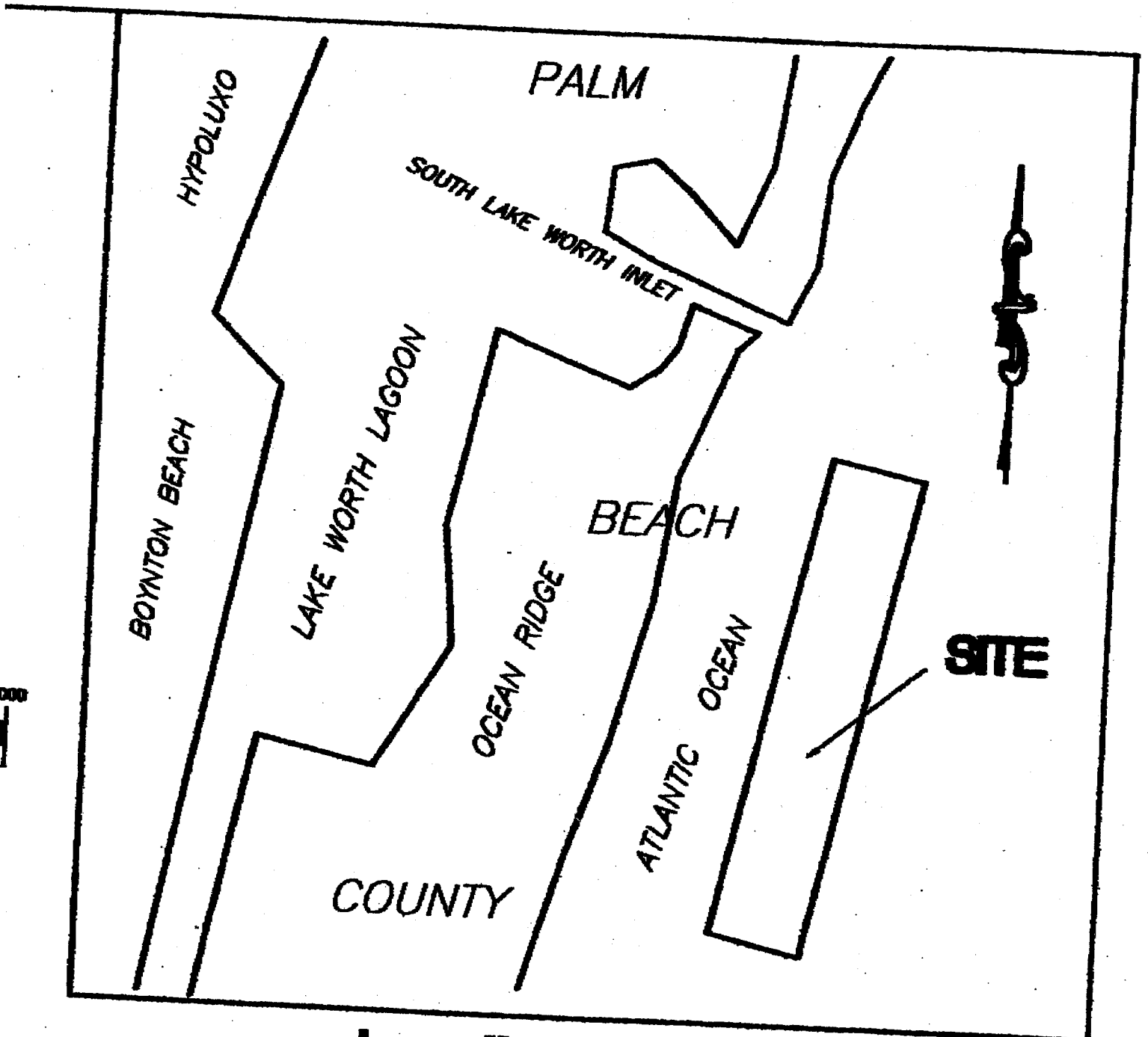
My Commission Expires: _____

Notary Public, State of _____

Commission/Serial No. _____

Printed, Typed or Stamped Name

Addie L. Greene as Chairperson



Location Sketch
(NOT TO SCALE)

RECEIVED

1990 ADJUSTMENT
VITAL PROTECTION

AUG 16 2005

**NOTIFICATION
ANDS EASEMENT**

**BUREAU OF BEACH
AND COASTAL SYSTEMS**

IN THE WATERS OF THE ATLANTIC OCEAN,
TOWNSHIP 45 SOUTH, RANGE 43 EAST, PALM BEACH
COUNTY, FLORIDA, THE FOLLOWING IS THE DESCRIPTION OF THE EASEMENT:

MENTIONED IN THE
DEED NO. 1983-1990
EASEMENT NO. 40634

IT IS HEREBY
RETURNED TO THE
COUNTY CLERK
1983, 1990

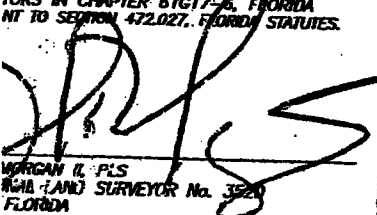
LEGAL DESCRIPTION PROPOSED SUBMERGED LANDS EASEMENT

BUREAU
AND CO.

A PARCEL OF SOVEREIGN SUBMERGED LAND LYING WITHIN THE WATERS OF THE ATLANTIC OCEAN, SAID PARCEL BEING ADJACENT TO SECTION 22, TOWNSHIP 45 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION MONUMENT "HAULOVER-1991" HAVING COORDINATES OF NORTHING 800221.20 AND EASTING 967564.70 REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT (NAD83/90); PROCEED S.89°10'27"E. INTO THE WATERS OF THE ATLANTIC OCEAN, A DISTANCE OF 2372.55 FEET TO THE POINT OF BEGINNING (NORTHING OF 800187 FEET AND EASTING OF 969937 FEET (NAD83/90); THENCE N.12°20'11"E., A DISTANCE OF 3875.48 FEET TO A POINT HAVING A NORTHING OF 803973 FEET AND EASTING OF 970765 FEET (NAD83/90) AND BEING 1889.94 FEET DISTANT FROM FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION MONUMENT "HAULOVER 1929 NO.3 1970" (NORTHING OF 805143.86 FEET AND EASTING OF 969281.44 FEET (NAD83/90) ALONG A BEARING OF S.51°43'07"E.; THENCE S.77°35'44"E., A DISTANCE OF 749.50 FEET; THENCE S.12°19'30"W., A DISTANCE OF 3874.29 FEET; THENCE N.77°41'12"W., A DISTANCE OF 750.26 FEET TO THE POINT OF BEGINNING. CONTAINING 66.71 ACRES, PLUS OR MINUS.

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND MEETS THE MINIMUM REQUIREMENTS SET FORTH BY THE FLORIDA BOARD OF SURVEYORS IN CHAPTER 61G17-6, FLORIDA STATUTES, AND TO SECTION 472.027, FLORIDA STATUTES.

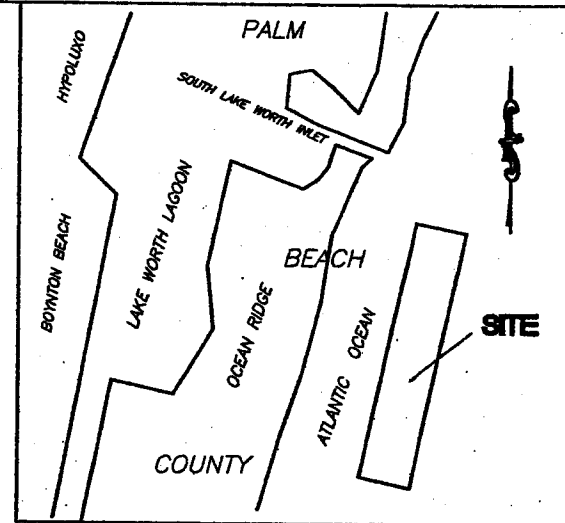
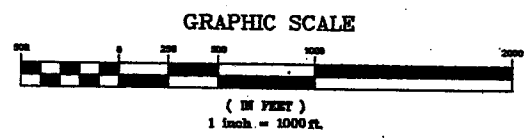


A Sketch of Description for Palm Beach County of Proposed Submerged Lands Easement Palm Beach County, Florida				COM
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				D
				7/2
<small>DRAWN BY</small> P.C.V.	<small>CHECKED BY</small> J.R.M.	<small>FIELD BOOK</small> N/A	<small>DATE OF SURVEY</small> N/A	SHEET

FDEP MONUMENT
 "HAULOVER 1929 NO.3 1970"
 N. 805143.86 (NAD 83/90)
 E. 969281.44

NOTES:

1. THIS IS NOT A FIELD SURVEY
2. COORDINATES AND BEARINGS SHOWN HEREIN ARE REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT.
3. NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.



Legend :

P.O.C. = POINT OF COMMENCEMENT
 P.O.B. = POINT OF BEGINNING
 NAD83/90 = NORTH AMERICAN DATUM 1983, 1990 ADJUSTMENT
 FDEP = FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

RECEIVED

AUG 16 2005

LEGAL DESCRIPTION
PROPOSED SUBMERGED LANDS EASEMENT BUREAU OF BEACHES AND COASTAL SYSTEMS

A PARCEL OF SOVEREIGN SUBMERGED LAND LYING WITHIN THE WATERS OF THE ATLANTIC OCEAN, SAID PARCEL BEING ADJACENT TO SECTION 22, TOWNSHIP 45 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION MONUMENT "HAULOVER-B 1991" HAVING COORDINATES OF NORTHING 800221.20 AND EASTING 967564.70 REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT (NAD83/90); PROCEED S.89°10'27"E. INTO THE WATERS OF THE ATLANTIC OCEAN, A DISTANCE OF 2372.55 FEET TO THE POINT OF BEGINNING (NORTHING OF 800187 FEET AND EASTING OF 969937 FEET (NAD83/90); THENCE N.12°20'11"E., A DISTANCE OF 3875.48 FEET TO A POINT HAVING A NORTHING OF 803973 FEET AND EASTING OF 970765 FEET (NAD83/90) AND BEING 1889.94 FEET DISTANT FROM FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION MONUMENT "HAULOVER 1929 NO.3 1970" (NORTHING OF 805143.86 FEET AND EASTING OF 969281.44 FEET (NAD83/90) ALONG A BEARING OF S.51°43'07"E.; THENCE S.77°35'44"E., A DISTANCE OF 749.50 FEET; THENCE S.12°19'30"W., A DISTANCE OF 3874.29 FEET; THENCE N.77°41'12"W., A DISTANCE OF 750.26 FEET TO THE POINT OF BEGINNING. CONTAINING 66.71 ACRES, PLUS OR MINUS.

Attachment A
 Page 7 of 7 Pages
 Easement NO. 40634

P.O.C.
 PROPOSED SUBMERGED LANDS EASEMENT
 FDEP MONUMENT "HAULOVER-B 1991"
 N. 800221.20 (NAD 83/90)
 E. 967564.70

S.89°10'27"E.
 2372.55'

P.O.B.
 PROPOSED SUBMERGED LANDS EASEMENT
 N. 800187 (NAD 83/90)
 E. 969937

N. 800027 (NAD 83/90)
 E. 970670.

CERTIFICATE OF AUTHORIZATION (LB) NO. 4298

MORGAN & EKLUND, INC.

PROFESSIONAL SURVEY CONSULTANTS

8745 U.S. HIGHWAY 1
 P.O. BOX 1420
 WABASSO, FL 32970
 PHONE: (772) 388-5384
 FAX: (772) 388-3165

1500 S.E. 3RD COURT
 SUITE 110
 DEERFIELD BEACH, FL 33441
 PHONE: (954) 421-6882
 FAX: (954) 421-0451

CERTIFICATE OF SURVEYOR - I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS IN ACCORDANCE WITH A RECENT FIELD SURVEY MADE UNDER MY DIRECTION AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 51G17-1, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

[Signature]
 JOHN A. MORGAN, P.L.S.
 PROFESSIONAL LAND SURVEYOR No. 3388
 STATE OF FLORIDA

A Sketch of Description
 for Palm Beach County
 of Proposed Submerged Lands Easement
 Palm Beach County, Florida

DRAWN BY
 P.C.V.

CHECKED BY
 J.R.M.

FIELD BOOK
 N/A
 PAGE NO.

DATE OF SURVEY
 N/A

COMMISSION NO.
 5320.30
 SCALE
 1" = 1000'
 DATE
 7/29/05
 SHEET 1 OF 1