

Add-On

Agenda Item #:

5 H-1

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: May 19, 2009

[] Consent [X] Regular
[] Public Hearing

Department

Submitted By: COUNTY ATTORNEY
Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: a) adopt a Resolution declaring that significant legal rights will be impaired if Palm Beach County is required to complete intergovernmental conflict resolution procedures with Town of Highland Beach prior to court proceedings, and b) direct staff to initiate litigation, as appropriate to resolve the County's conflict with the Town of Highland Beach over the Town's special exception approval for the proposed Cam D. Milani park, and c) direct staff to initiate intergovernmental conflict resolution procedures during the pendency of litigation.

Summary: On April 27, 2009, the Town of Highland Beach's Town Commission voted to adopt a resolution granting a special exception approval for the County's proposed Cam D. Milani park. Five of the 43 Conditions of Approval contained within the special exception approval, Conditions #5, 6, 10, 14, and 43, violate the essential requirements of law, constitute unlawful delegations of authority, are unconstitutionally vague, are not supported by record evidence, and are arbitrary and capricious. Condition 5 requires the County to install a fence on the beach to the mean high water line, even though the State of Florida has a policy to discourage encumbrances on the beach due to adverse effects on sea turtles. Condition 6 provides the Town with unbridled veto power over the County's choice of archaeological consultant, even though the County has to pay for a separate Town archaeological consultant as part of the permit review requirements. Condition 10 requires the County to apply for historic designation from the National Register of Historic Places within one year of the adoption of the Resolution, rather than at the completion of the park, which causes the County additional expense with no benefit to the Town. Condition 14 requires the County to enter into a Memorandum of Agreement with the State Historic Preservation Officer and various Indian tribes, even though the SHPO has said the MOA is unnecessary and the Indian tribes have been unresponsive during the application process. Condition 43 makes a material change to the site plan by replacing a decorative fence with a wall, causing internal inconsistency within the Conditions of Approval. Staff proposes that the Board of County Commissioners adopt a resolution that will declare that significant legal rights will be impaired if Palm Beach County is required to complete intergovernmental conflict resolution procedures with the Town of Highland Beach arising from the conditions of approval prior to court proceedings, will authorize litigation, and will authorize the commencement of intergovernmental conflict resolution procedures during the pendency of litigation.
District 4 (ATP)

(Continued on Page 3)

Attachments:

1. Resolution

Recommended by:

County Attorney

Date

Approved by:

N/A

5/13/09

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u> X </u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No _____		
Budget Account No.:	Fund _____	Department _____	Unit _____		
Object _____					

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

★ Fiscal impact is indeterminable at this time.

[Signature] 5.13.09
OFMB [Signature] SP CN 5/13/09
5/13/09 5/13/09

[Signature] 5/13/09
Contract Development and Control

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Policy Issues: The County applied for a special exception application to the Town of Highland Beach on December 19, 2001 for the proposed Cam D. Milani Park, to provide beach access for residents of Palm Beach County. At the conclusion of litigation with the former owner, the County re-activated the prior application through a time updated submittal on September 11, 2007. On March 4, 2008, the Town's Building Official confirmed that the County's application met the nineteen code requirements for issuance of the special exception application. The application was referred to the Town's Planning Board, which heard the matter at three workshops and a public hearing conducted over three days. At the completion of the public hearing, the Planning Board recommended approval of the special exception application to the Town Commission. The Planning Board also submitted 31 recommended conditions of approval.

The Town of Highland Beach's Town Commission held public hearings on the Special Exception application on November 4, 2008, December 2, 2008, January 6, 2009, and April 27, 2009. At the conclusion of the hearings, the Town Commission voted to approve the County's special exception application with 43 Conditions of Approval. Four of the 43 Conditions of Approval are objectionable. Condition of Approval # 5 requires the County to install a fence or railing on the beach to the mean high water line, in order to create a demarcation between public and private beach property. The County has been advised by the Florida Fish and Wildlife Commission and the Florida Department of Environmental Protection that State policy is to discourage encumbrances, including fences, due to adverse impacts to sea turtles. Consequently, the County expects that required state permits will not be obtainable and asked the Town Commission to modify the Condition of Approval, so that the County's inability to obtain state permits for the fence or railing did not constitute a violation of the Condition of Approval; the Town Commission expressly refused.

Condition of Approval #6 requires the County to retain one or more Registered Professional Archaeologists that are agreeable to the Town to perform specified archaeological work on the Project. During negotiations, Town staff indicated that Condition of Approval #6 was intended to prevent the County's current archaeological expert, Bob Carr, from performing work on the Project, because Town staff believed Bob Carr was biased in favor of the County. At the public hearing, the County objected to Condition of Approval #6 and the implication that Bob Carr would not be allowed to continue work on the Project, and pointed out that the record contained no evidence supporting the Town staff's allegation of bias against Bob Carr. The Town Commission refused the County's request that the Condition of Approval, at the very least, be modified to include objective criteria for determining whether a Professional Archaeologist would be considered "agreeable to the Town."

Condition of Approval #10 requires the County to apply for designation of the park as a historic site on the National Register of Historic Places within one year of the adoption of the Resolution. While national historic site designation provides no additional protection for the archaeological resources contained on the site, County staff agreed to seek designation once the park was complete. The Condition of Approval requirement that designation be sought within one year of the adoption of the Resolution, rather than after completion of the park, places additional expense on the County without providing any additional benefit to the Town.

Condition of Approval #14 requires the County to enter into a Memorandum of Agreement ("MOA") with the State Historic Preservation Officer ("SHPO"), the Miccosukee, the Seminole Tribe of Florida, the Seminole Nation of Oklahoma, and the Town of Highland Beach, regarding "what steps will be taken to protect the Subject Property during its development," and includes a specific form and content for the MOA. The County objected to the requirement that the County enter a MOA, because the SHPO had already advised the County that a MOA was not required by the State and because some of the specified Indian Tribes were not responsive to the County's requests for input on the Project and, therefore, the County feared that it would not be able to secure the participation of the identified parties in an MOA. The County also objected to the

requirement for a MOA because it gave essentially veto power over the Special Exception approval to third parties and because the form and content of the MOA simply iterated the conditions of approval already contained in the Special Exception. The Town Commission refused the County's request to include language in the Condition of Approval to clarify that failure on the part of the SHPO or on the part of the Indian Tribes to negotiate or agree to a MOA would not be considered a breach of Condition of Approval #14 on the part of the County.

Condition of Approval #43 requires the County to replace a planned 6 foot high vinyl fence with a 6 foot high concrete decorative wall on the western property line. The County objected to the replacement of the vinyl fence with a concrete decorative wall, because the County had included the vinyl fence after consultation with the neighboring condominium association at the direction of the Planning Board. The County also objected to Condition #43, because replacement of the vinyl fence with the concrete wall renders the Special Exception an approval without a final site plan in violation of the Town's Code and causes design and engineering difficulties with the site plan that conflict with other Conditions of Approval requirements contained within the Special Exception.

In light of the foregoing, staff requests that the Board pass a resolution initiating inter-governmental dispute resolution procedures, pursuant to Chapter 164, Florida Statutes, to find that significant legal rights will be compromised if the County does not initiate litigation prior to the completion of the inter-governmental dispute resolution procedures, and to direct staff to both initiate litigation and commence the intergovernmental dispute resolution procedures, as needed, to timely resolve this dispute.

RESOLUTION NO. R-2009-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, DECLARING ITS INTENT TO INITIATE INTERGOVERNMENTAL CONFLICT RESOLUTION PROCEDURES WITH THE TOWN OF HIGHLAND BEACH TO RESOLVE CONFLICT OVER THE TOWN OF HIGHLAND BEACH'S APPROVAL WITH CONDITIONS OF A SPECIAL EXCEPTION PERMIT TO CONSTRUCT PALM BEACH COUNTY CAM D. MILANI PARK (RESOLUTION NO. 009-4(R)).

WHEREAS, Palm Beach County submitted a special exception application to the Town of Highland Beach on December 19, 2001, to obtain a special exception approval for the location of a proposed County park – Palm Beach County Cam D. Milani Park; and

WHEREAS, Palm Beach County re-activated its application on September 11, 2007, after litigation with the former owner was resolved and an updated application package could be prepared; and

WHEREAS, the Town of Highland Beach Building Official issued a May 28, 2008, memo, concluding that the special exception application meets the nineteen (19) standards identified in the Town of Highland Beach Land Development Code Chapter 30-67, Table 30-4, Permitted Uses, Additional Standards, Item (9); and

WHEREAS, the Town of Highland Beach's Planning Board considered the special exception at three workshop meetings on February 13, 2008, March 12, 2008, and April 9, 2008, and a public hearing conducted over three days on May 14, 2008, May 28, 2008, and June 4, 2008; and

WHEREAS, the Town of Highland Beach's Planning Board recommended to the Town of Highland Beach's Town Council that the application be approved and recommended conditions of approval; and

WHEREAS, the Town of Highland Beach's Town Commission held public hearings on the application on November 4, 2008, December 2, 2008, January 6, 2009, and April 27, 2009;

WHEREAS, on April 27, 2009, the Town of Highland Beach's Town Commission voted to adopt Resolution No. 09-004R which approved the special exception

application with 43 Conditions of Approval, a true and correct copy of which is attached hereto as Exhibit A; and

WHEREAS, Condition of Approval # 5 requires the County to install a fence or railing on the beach to the mean high water line, in order to create a demarcation between public and private beach property; and

WHEREAS, the County objected to Condition of Approval #5 at the April 27, 2009 hearing, because the Town Code requires that a permit be obtained for this construction and the County has been informed by the permitting agencies, the Florida Fish and Wildlife Commission and Florida Department of Environmental Protection that any type of encumbrances, including fences on the beach are discouraged due to adverse impacts to sea turtles; and

WHEREAS, the Town of Highland Beach's Town Commission refused the County's request to clarify that the County would not be held in violation of Condition of Approval #5 if the Florida Fish and Wildlife Commission or the Florida Department of Environmental Protection refused to permit construction of a fence or railing on the beach; and

WHEREAS, Condition of Approval #5 is pre-empted by state regulations and permitting criteria, violates the essential requirements of the law, is not supported by competent substantial evidence, and is arbitrary and capricious; and

WHEREAS, Condition of Approval #6 requires the County to retain one or more Registered Professional Archaeologists that are agreeable to the Town to perform specified archaeological work on the Project; and

WHEREAS, the County informed the Town of Highland Beach's Town Commission that Town staff indicated that Condition of Approval #6 was intended to prevent the County's current archaeological expert, Bob Carr, from performing work on the Project, because Town staff believed Bob Carr was biased in favor of the County; and

WHEREAS, the County objected to the implication that Bob Carr would not be allowed to continue work on the Project, and pointed out that the record contained no evidence supporting the Town staff's allegation of bias against Bob Carr; and

WHEREAS, the Town of Highland Beach's Town Commission refused the County's request that the Condition of Approval, at the very least, be modified to include

objective criteria for determining whether a Professional Archaeologist would be considered “agreeable to the Town;” and

WHEREAS, Condition of Approval #6 is not supported by competent substantial evidence, is unconstitutionally vague, constitutes an unlawful delegation of authority to Town staff, violates the essential requirements of the law, and is arbitrary and capricious; and

WHEREAS, Condition of Approval #10 requires the County to seek designation of the park as an historic site from the National Register of Historic Places within one year of the adoption of the Resolution; and

WHEREAS, designation of the park as an historic site does not provide any additional protection to the historic or archaeological resources located on the site; and

WHEREAS, the County agreed to seek designation of the site upon completion of the Project, but objected to the requirement that designation be sought within one year of the adoption of the Resolution, because the one year requirement created additional expense for the County without providing any additional protection for the resources; and

WHEREAS, Condition of Approval #10 is not supported by competent substantial evidence, violates the essential requirements of the law, and is arbitrary and capricious; and

WHEREAS, Condition of Approval #14 requires the County to enter into a Memorandum of Agreement (“MOA”) with the State Historic Preservation Officer (“SHPO”), the Miccosukee, the Seminole Tribe of Florida, the Seminole Nation of Oklahoma, and the Town of Highland Beach, regarding “what steps will be taken to protect the Subject Property during its development,” and includes a specific form and content for the MOA; and

WHEREAS, the County objected to the requirement that the County enter a MOA, because the SHPO had already advised the County that a MOA was not required by the State and because some of the specified Indian Tribes were not responsive to the County’s requests for input on the project and, therefore, the County feared that it would not be able to secure the participation of the identified parties in an MOA; and

WHEREAS, the County also objected to the requirement for a MOA because it gave essentially veto power over the Special Exception approval to third parties and because the

form and content of the MOA simply iterated the conditions of approval already contained in the Special Exception; and

WHEREAS, the Town of Highland Beach's Town Commission refused the County's request to include language in the Condition of Approval to clarify that failure on the part of the SHPO or on the part of the Indian Tribes to negotiate or agree to a MOA would not be considered a breach of Condition of Approval #14 on the part of the County; and

WHEREAS, Condition of Approval #14 is not supported by competent substantial evidence, constitutes an unlawful delegation of veto power to the specified Indian Tribes and State Historic Preservation Officer, is unconstitutionally vague, violates the essential requirements of the law, and is arbitrary and capricious; and

WHEREAS, Condition of Approval #43 required the County to replace a 6 foot high vinyl fence with a 6 foot high concrete decorative wall on the western property line; and

WHEREAS, the County objected to the replacement of the vinyl fence with a concrete decorative wall, because the County had included the vinyl fence after consultation with the neighboring condominium association at the direction of the Planning Board; and

WHEREAS, the County also objected to Condition #43, because replacement of the vinyl fence with the concrete wall renders the Special Exception an approval without a final site plan in violation of the Town's Code and causes design and engineering difficulties with the site plan that conflict with other Conditions of Approval contained within the Special Exception;

WHEREAS, Condition of Approval #43 is not supported by competent substantial evidence, is unconstitutionally vague, violates the essential requirements of the law, and is arbitrary and capricious; and

WHEREAS, the Town of Highland Beach's unlawful Conditions of Approval render the Development Order meaningless, denies the taxpayers of Palm Beach County access to publicly owned lands and the natural resources of the County, wastes money and resources of the County, and impairs the County's rights as a sovereign entity and as a land-owner; and

WHEREAS, Section 164.1052, Florida Statutes (2009), requires the passage of a resolution, declaring the local government's intent to initiate government conflict resolution procedures.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

1. The recitals above are true and correct and form a part of this Resolution.
2. It is the intent of the Board of County Commissioners of Palm Beach County to initiate intergovernmental conflict resolution procedures, pursuant to Chapter 164, Florida Statutes (2009), to resolve the conflict over the unlawful Conditions of Approval imposed on the Special Exception adopted in Town of Highland Beach Resolution Number 09-004 R.
3. Pursuant to Section 164.1052(1), Florida Statutes (2009), the County will send to the Town of Highland Beach, within five days of the passage of this Resolution, a certified copy of the Resolution and a letter stating the nature of the conflict, the reason for initiating the conflict resolution process, the proposed date and location for the conflict assessment meeting, and suggestions regarding the officials who should be present at the conflict assessment meeting.
4. This Board finds that "significant legal rights will be compromised if a court proceeding does not take place before the provisions of this act are complied with."

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner John F. Koons, Chairperson
Commissioner Burt Aaronson, Vice Chairperson
Commissioner Karen Marcus
Commissioner Shelley Vanna
Commissioner Steven L. Abrams
Commissioner Jess R. Santamaria

The Chairperson thereupon declared the Resolution duly passed and adopted this

_____ day of _____, 2009.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
Assistant County Attorney

I CERTIFY THAT THIS IS A TRUE COPY OF THE RECORDS OF THE TOWN OF HIGHLAND BEACH, FL.
ATTEST: BEVERLY M. BROWN, TOWN CLERK

RESOLUTION NO. 09-004 R

**A RESOLUTION OF THE TOWN OF HIGHLAND BEACH, FLORIDA,
CONCERNING THE SPECIAL EXCEPTION APPLICATION OF PALM
BEACH COUNTY FOR DEVELOPMENT OF MILANI PARK**

WHEREAS, Palm Beach County has submitted an application for Special Exception use for the proposed Milani Park under the Town's Special Exception procedure identified in Section 30-36 of the Town Code; and,

WHEREAS, the Town Planning Board held several public hearings as required by Section 30-36; and, on June 19, 2008 submitted its advisory recommendation for the Special Exception application with conditions of approval to the Town Commission; and,

WHEREAS, the Town Commission has held a number of public hearings on the County application for Special Exception; and,

WHEREAS, the Town Commission has considered the Special Exception Use Application for the property legally described in the attached Exhibit A, which is incorporated herein, (the subject property),

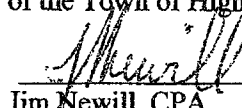
**NOW THEREFORE BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN
OF HIGHLAND BEACH, FLORIDA**


Section 1: Findings:

1. The Town Commission is empowered to grant special exceptions.
2. The application is consistent with applicable comprehensive plan and zoning code requirements.

Section 2: In furtherance of the foregoing findings the Town approves the aforesaid Special Exception use subject to the 43 Conditions of Approval attached to this Resolution.

DONE AND ADOPTED by the Town Commission of the Town of Highland Beach, Florida, this 27th day of April, 2009.


Jim Newill, CPA
Mayor

ATTEST:

Beverly M. Brown, MMC
Town Clerk

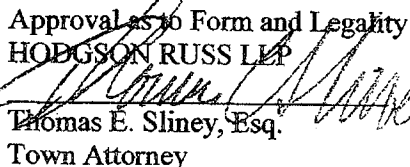
Approval as to Form and Legality
HODGSON RUSS LLP

Thomas E. Sliney, Esq.
Town Attorney



EXHIBIT A

PARCEL "A"

That part of the South 122.265 feet of the North 244.52 feet of the South 867.0 feet of the North Half of Government Lot 1, Section 9, Township 47 South, range 43 East, lying between the Atlantic Ocean and the right-of-way of State Road 140 (A-1-A), Highland Beach, Palm Beach County, Florida.

A parcel of land in the South 622.48 feet of the North Half of Government Lot 1, in Section 9, Township 47 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Beginning at the intersection of the East right-of-way line of State Road A-1-A with a line parallel with and 394.97 feet Northerly from (measured at right angles to), the South line of the North Half of said Government Lot 1; said point of intersection being the Point of Beginning and the Southwest corner of the herein described parcel of land; said Point of Beginning also being the arc of a curve concave to the East and having a radius of 28,597.90 feet; thence Easterly, making an angle of deflection to the South, from said parallel line, of 12°08', a distance of 233.8 feet more or less to the mean high water line of the Atlantic Ocean; thence Northerly along the mean high water line of the Atlantic Ocean a distance of 298.00 feet more or less to an intersection with the North line of the said South 622.48 feet of the North Half of Government Lot 1, thence Westerly along said North Line of the South 622.48 feet a distance of 315.9 feet, more or less, to an intersection with the Easterly right-of-way line of State Road A-1-A, said point of intersection being in the arc of a curve concave to the East and having a radius of 28,597.90 feet; thence Southerly along said East right-of-way line and along the arc of said curve, a distance of 228.12 feet more or less to the Point of Beginning.

PARCEL "B"

A parcel of land in the North half of Government Lot 1, Section 9, Township 47 South, Range 43 East, Palm Beach County, Florida.

Beginning at the intersection of the West right-of-way line of State Road A-1-A and a line parallel with and 300 feet northerly from (measured at right angles to) the South line of the North half of said Government Lot 1, said point of intersection being the Point of Beginning and southeast corner of the herein described parcel of land, said Point of Beginning also being in the arc of a curve concave to the East and having a radius of 28,697.90 feet; thence, northerly, along the West right-of-way line of State Road A-1-A and along the arc of said curve, a distance of 446.53 feet to the North line of the South 122.265 feet of the North 244.52 feet of the South 867.00 feet of the North 1/2 of Government Lot 1, thence North 89°34'30" West 232.55 feet; thence, South 11°29'05" West 71.17 feet; thence, South 14°58'33" West 387.33 feet to a point in a line parallel with and 300.00 feet northerly from (measured at right angles to) the South line of the North half of said Government Lot 1; thence, South 89°34'30" East 303.72 to the Point of Beginning.

Containing 2.712 Acres, more or less

I CERTIFY THAT THIS IS A TRUE COPY OF THE RECORDS OF THE TOWN OF HIGHLAND BEACH, FL.

ATTEST: BEVERLY M. BROWN, TOWN CLERK

**Town of Highland Beach
Milani Park Special Exception Use
Conditions of Approval**

As approved by the Town Commission on April 27, 2009

1. The conditions of approval for development of Milani Park (hereinafter the "Subject Property") herein shall apply to Palm Beach County (the County), its successors and assigns.
2. The County shall comply with Section 30-12 of the Town Code, entitled "Payment for Outside experts by reimbursing the Town for all costs the Town has incurred to date from its hiring of experts, no later than thirty (30) days after receipt of the invoice and supporting documentation, and subject to any resolution regarding the reasonableness of fees. Any additional costs shall be paid by the County prior to issuance of the first building permit authorizing development of the Subject Property.
3. Following the approval of the Special Exception Resolution and in advance of submitting for any building permit, except those required to construct the improvements identified in Conditions 20 and 24, the County shall submit a consolidated package which shall include a Final Site Plan, engineering construction plans, architectural plans (floor plans and elevations), and other documents, drawings, and permits received from outside agencies that are required by the conditions contained in the granting Resolution and are necessary to initiate clearing and construction on the Subject Property. This consolidated package shall also include that documentation which is necessary to demonstrate the County's compliance with all of the conditions of approval contained in the Resolution. These plans and documents shall be collectively referred to hereinafter as "the Compliance Package". The Compliance Package shall be subject to the Town's review to confirm compliance with the conditions and other permitting requirements.
4. As part of the Compliance Package and prior to the issuance of any building permits, except those required to construct the improvements identified in Conditions 20 and 24, the County shall submit a revised Park Management Plan for the subject property which shall be subject to the Town's review to confirm compliance with the subsections contained within this condition. The revised Park Management Plan shall:
 - a. set forth the County's intended delivery of public safety services to the subject property including lifeguards, park rangers and gatehouse attendants;

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**Town of Highland Beach
Milani Park Special Exception Use
Conditions of Approval**

As approved by the Town Commission on April 27, 2009

b. require the County to retain one or more registered professional archeologists (hereinafter "the archeologists") as also identified in Condition #6 herein to address the planning, construction and maintenance measures to protect the archaeological resources on the East Parcel (Parcel "A"). These measures shall be incorporated into the revised Park Management Plan. The Archaeologists shall be on the Subject Property at all times during clearing and construction of the East Parcel (Parcel "A") for the park and its improvements to monitor and inspect the activities of the County's contractors, employees and consultants;

c. indicate how the County proposes to continually restore and maintain a functioning foredune;

d. indicate that signage will be installed at the base of the dune stating that beach goers are to keep off the vegetated dune area, not disturb the vegetation and that recreational beach activity shall be monitored within an area which is 10 feet from the leading edge of the foredune to minimize degradation;


e. identify how endangered, threatened or species of special concern (in particular the Green Herons and Sea Turtles which were observed on the Site) will be protected before and after development of the Subject Property;

f. set forth the County's plan for protecting sea turtle nests from recreational beach users;

g. document how Palm Beach County shall comply with the Management Plan included in the reviewing agencies' permit(s) for monitoring and maintenance of the Mangrove Swamp on the West Parcel (Parcel "B");

h. indicate how all exotic vegetation will initially be removed, and thereafter how the subject property will be monitored and maintained to protect its environmental integrity;

i. document the plans for the collection and disposal of trash and debris from the beach recreation area. Waste collection shall occur a minimum of three times per week;

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j. set forth how maintenance of the subject property will be done, including but not limited to the parking lot, a guard in the guard house, cleaning of the restrooms, and cleaning the beach. Maintenance shall be performed by Palm Beach County; and

k. include an on-going training program for park staff for archaeological sensitivity for the Site.

5. As part of the Compliance Package, the County shall submit a drawing indicating the type of demarcation fencing or railing (which may include notices or signs attached thereto identifying adjacent private property) which it proposes to install on the beach to create delineation between public and privately owned properties along the northern and southern property lines to the mean high water line for the East Parcel (Parcel "A"). The placement of the demarcation fencing or railing shall be subject to the County obtaining permits from the appropriate authorities.
6. The County shall retain one or more Registered Professional Archaeologists (hereinafter "the Archaeologists"), who are members or meet the standards of the Register of Professional Archeologists (ROPA) agreeable to the County and the Town, who will work toward the development of the Park Management Plan to address the planning, construction and maintenance measures to protect the archaeological resources on the Subject Property. These measures shall be incorporated into the Park Management Plan for the subject property as required in #4b, above. The Archaeologists shall be on the Archaeological Site (the East Parcel - Parcel "A") at all times during clearing and construction to monitor and inspect the activities of the County's contractors, employees and consultants.
7. Prior to the issuance of any clearing, excavation or other permits necessary to fill the East Parcel (Parcel "A") of the subject property the Archaeologists shall be consulted in regard to planning and monitoring all removal of vegetation, structures and features. Native vegetation shall be left in place so as to avoid any disturbance to the midden.
8. The County shall use materials devoid of cultural resources and contaminants (hereinafter "the Fill") and shall place same over any area to be developed, including but not limited to, areas where boardwalks and pedestrian walkways, kiosks, restrooms and/or lifeguard buildings are located. The Fill shall be in sufficient quantities to bury and preserve archaeological resources. The placement of the Fill shall be done at the direction of the Archaeologists.

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9. The Site shall be interpreted. The Archaeologists shall consult with the State Historic Preservation Officer (SHPO), and offer the opportunity to comment to the Miccosukee and Seminole Tribes, to develop text, concepts, and recommendations for interpretative signage which shall be located on the eastern parcel. The signage shall, focus on (1) the Jeaga, Ais, Tequesta, Miccosukee, Creeks and Seminole Tribes; (2) Spanish, British and other European and Japanese Yamato Colony's presence in Palm Beach County or whatever is deemed most appropriate by the SHPO and Tribes.
10. Within one (1) year of the adoption of the Resolution, the County shall apply for National Register of Historic Places (NRHP) designation of the Site. Immediately upon receipt of the NRHP determination the County shall provide evidence of its receipt of the determination to the Town. If the Site is nominated, Palm Beach County will agree to accept the nomination.
11. No clearing (except for hand removal of exotic vegetation) shall occur on the East Parcel (Parcel "A").
12. Prior to the issuance of any building permit, except those required to construct the improvements identified in Conditions 20 and 24, those structural features which remain on the East Parcel (Parcel "A") from the former Weir homestead, and that are determined by the Town Building Official to be structurally unstable or unsafe, shall be removed from the East Parcel (Parcel "A") unless, in the opinion of the Town Building Official and the Archaeologists, their removal would destabilize the archeological site, expose artifacts, promote erosion, disturb human remains, or otherwise be adverse to the preservation of the archeological site. Unstable or unsafe structural features shall be tested if required to determine their integrity, and their removal monitored by the Archaeologists. In the event that a structural feature is determined by the Town Building Official to be structurally unstable or unsafe, and removal would destabilize the archeological site, the County shall not remove the structural feature, but shall secure the structural feature to the satisfaction of the Building Official.

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Milani Park Special Exception Use
Conditions of Approval**

As approved by the Town Commission on April 27, 2009

I CERTIFY THAT THIS IS A TRUE COPY OF THE RECORDS OF THE TOWN OF HIGHLAND BEACH, FL.


ATTEST, BEVERLY M. BROWN, TOWN CLERK

13. Prior to the issuance of any building permit, except those required to construct the improvements identified in Conditions 20 and 24, the Archaeologists identified in condition #6 shall undertake a Cultural Resource Assessment Survey (CRAS) (also known as a Phase I Survey) in compliance with 1A-46.001 FAC and the Florida Division of Historical Resources "Cultural Resource Management Standards & Operations Manual" to recover information present at the Archeological Site so as to expand the understanding of the Site's significance to Florida's past, its first inhabitants, and explorers, as well as its early European and Japanese settlers. The County shall submit the assessment to the Town as part of the Compliance Package.
14. The County shall enter into a Memorandum of Agreement with the SHPO, the Miccosukee, the Seminole Tribe of Florida, the Seminole Nation of Oklahoma, and the Town of Highland Beach regarding what steps will be taken to protect the Subject Property during its development. The Memorandum of Agreement shall generally be in the form of and include the content of the attached Exhibit "A".
15. As part of the Compliance Package, the County shall submit its engineering and construction plans and drawings showing that the restroom and lifeguard building will be located entirely within the "footprint" of the remnants of the swimming pool and any existing concrete deck poured over existing footers. In the event the restroom/lifeguard building cannot be located entirely within the footprint of the swimming pool and deck, Palm Beach County may alter the footprint of the building upon proof to the Town in consultation with the SHPO that any encroachment of the proposed building will not displace or disturb archaeological resources or human remains. If in the opinion of the Town in consultation with the SHPO this can not be accomplished, the County shall relocate this structure to the West Parcel (Parcel "B").
16. As a result of the Cultural Resource Assessment Survey (CRAS) identified in condition # 13 above, and as part of the Compliance Package and prior to the issuance of any building permits, except those required to construct the improvements identified in Conditions 20 and 24, the County shall identify the routes of any and all utility lines, sidewalks, walkways, boardwalks and/or facilities that may impact any archaeological deposits or human remains. Once the routes have been determined and permits applied for and obtained, the routes shall be excavated by hand.
17. The stormwater system shall be designed such that there is no impact to facilities in a 5 year 24 hour storm event.

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18. As part of the Compliance Package the County shall submit copies of all applications submitted and permits received from DEP/ACOE regarding the development of the subject property.
19. As part of the Compliance Package, the Landscape Plans shall provide for plantings within the 25' wetland buffer between the paved parking area and the Mangrove Swamp on the West Parcel (Parcel "B"). The landscaping shall be subject to the Town's review and approval for plant material selection that is consistent with wetland species and character.
20. Within one hundred-eighty (180) days of the adoption date of the Resolution approving the Special Exception use, the County shall prepare a perimeter landscaping plan for the western and southern perimeters of the West Parcel (Parcel "B") consistent with the conceptual landscape plans submitted as part of the Special Exception application, and as outlined in Condition #43 contained herein. The perimeter landscaping plan, once approved by the Town, shall be installed within an additional 90 days.
21. The County shall provide for the following improvements at the entrance to the parking lot, west of AIA on the subject property:
 - a. Re-stripe AIA to provide a left hand turn lane south approach at the entrance to the parking lot.
 - b. A minimum four car stacking distance to the payment window at the guard house.

The County shall not prevent access to the residential properties east of AIA, south of the subject property, by extending the northbound left hand turn lane into the park's parking lot, such that vehicles traveling south on AIA will not be able to legally enter the driveway of these two residential properties. The County shall notify these two property owners of the restriping of AIA and the proposed left hand turn lane south of the entrance to the parking lot. These property owners shall be provided notice of any FDOT meetings or applications regarding the park's turn lane or any effect to their current ingress/egress at their properties.

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22. As part of the Compliance Package and prior to the issuance of any building permits, except those required to construct the improvements identified in Conditions 20 and 24, the County shall submit an executed true and correct copy of the permit for the subject property from the United States Army Corp of Engineers (ACOE) and/or the Florida Department of Environmental Protection (FDEP). The ACOE permit application shall include an updated Jurisdictional Wetland Determination.
23. As part of the Compliance Package, the County shall provide the Town with a Phase 1 Environmental Assessment for the West Parcel (Parcel "B"). If the Phase 1 Assessment indicates possible contamination, a Phase 2 Environmental Assessment that addresses soil and/or groundwater quality beneath the parcel will be provided. The documentation shall be subject to the review of the Town for compliance with conditions in the granting Resolution. If it is determined that there are contaminants that need to be remediated, the affected soil or groundwater shall be managed in accordance with the recommendations of the Phase 2 Environmental Assessment and the applicable regulatory requirements.
24. Within one hundred-eighty (180) days of the adoption date of the Resolution, the County shall submit an application to the reviewing agencies requesting to remove all exotic vegetation within the Mangrove Swamp on the West Parcel (Parcel "B"). The environmental quality of this area shall be enhanced by replanting the area to comply with the restoration plan approved by the reviewing agencies as part of the permit.
25. As part of the Compliance Package and prior to the issuance of any building permits, except those required to construct the improvements identified in Conditions 20 and 24, the County shall submit a Conservation Easement in favor of the Town for the area encompassing the Mangrove Swamp. The form of the easement shall be subject to the review and approval of the Town Attorney. Once approved, the County shall record the Conservation Easement and provide the Town with a certified copy of same with the recording information thereon.
26. The County shall comply with the Town's Sea Turtle Protection Ordinance.
27. Beach cleaning by mechanical means shall be limited during sea turtle nesting season in accordance with Chapter 161, Florida Statutes.

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28. All exotic vegetation to be removed from the East Parcel (Parcel "A") shall be hand cleared. Replanting will occur only in those areas where existing native vegetation will not re-establish within a reasonable time. The Archaeologists shall be on the Site during both the clearing and replanting of the vegetation to continuously monitor and inspect the areas being cleared and replanted. If during either the clearing or replanting any significant archaeological materials or features are encountered, the Archaeologists shall immediately notify the Town and the SHPO and cease further work until any and all materials or features have been documented to the satisfaction of the Town and the SHPO. If any human remains are uncovered while either clearing or replanting, then the provisions of Section 872.05, Florida Statutes shall be followed and implemented without delay.
29. In the event an underground storage tank should still be present on the Subject Property, the County shall notify the Town and appropriate environmental agencies; and manage it in accordance with Chapter 62-761, F.A.C.
30. As part of the Compliance Package and prior to the issuance of any development permits, the County shall identify the exact location of any utility lines to be located on site. If the County proposes to locate any utility lines in areas which would require excavation the County shall as part of its Park Management Plan identify any protected vegetation that will be adversely affected and, if appropriate identify any mitigation proposed as a result thereof.
31. The County shall construct all facilities using strategies identified in a recognized green building standard, and in particular, construction shall be consistent with 255.252 FSS and 255.253 FSS.
32. As part of the Compliance Package the County shall submit the FDOT's Vehicular Access Connection (VAC) letter supporting the design of the proposed vehicular and pedestrian access configuration shown on the site plan.
33. The parking lot area west of AIA, (Parcel "B") shall be operated from sunrise to sunset, and shall be gated to prevent vehicular traffic from entering the parking lot before or after the park's hours of operation. The Compliance Package shall depict how pedestrian access is restricted. As for the property east of AIA, (Parcel "A") the site plan shall reflect that all pedestrian access points to and from AIA have pedestrian gates.

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34. No commercial retail uses, including concession stands, are permitted on the Subject Property.
35. A minimum fee of \$4.00 per day or \$6.00 per weekend day shall be charged for parking. This fee may be adjusted at the discretion of Palm Beach County.
36. During the hours of park operation, an attendant shall staff the guardhouse in the parking lot.
37. The park shall only be open from dawn to dusk, including the parking lot.
38. No commercial vehicles or commercial trucks shall be permitted in the parking lot. Authorized vehicles performing park maintenance are exempt from this restriction.
39. Palm Beach County shall provide security patrols during park operating hours and the Palm Beach County Sheriffs Office, Parks Enforcement Unit shall respond to calls 24 hours per day / 7 days per week.
40. The County shall monitor and address any vehicles remaining in the parking lot after the park closes as follows:
 - a. The gate will be locked if no vehicles remain. If a vehicle remains, the Park Ranger will provide a 15-30 minute grace period until the gate is locked.
 - b. If there is a vehicle remaining in the lot after the gate is locked, a Park Ranger shall place a sticker with a phone number on it for the visitor to call so the Park Ranger can come back and unlock the gate for the visitor to leave.
41. The parking lot perimeter that is surrounded by a wall or fence shall have locked gates, secured from dusk to dawn.
42. No pets shall be permitted on either parcel in the park.
43. The perimeter landscaping plan for the western perimeter of the West Parcel (Parcel "B") called for in condition #20 shall include a 6' high (above grade) concrete decorative wall rather than a 6' high (above grade) opaque vinyl fence for the western property line of the West Parcel (Parcel "B") as originally proposed in the Conceptual Landscape Plan dated October 16, 2008.

EXAMPLE-

Final document may be prepared by Palm Beach County Attorney in consultation with the Florida SHPO, the Town of Highland Beach, tribal representatives, other interested parties, and federal agencies

MEMORANDUM OF AGREEMENT

AMONG

THE TOWN OF HIGHLAND BEACH

AND

PALM BEACH COUNTY

AND

THE FLORIDA STATE HISTORIC PRESERVATION OFFICER

**CONCERNING THE MITIGATION OF ADVERSE EFFECTS ARISING FROM THE
USE OF PROPERTY ARISING FROM CONSTRUCTION ACTIVITIES**

MILANI PARK

PALM BEACH COUNTY, FLORIDA

WHEREAS Palm Beach County, a County of the State of Florida, owns, uses, and controls the land comprising of ___ acres within the Town of Highland Beach, for the planned purposes of constructing a park and related activities; **AND,**

WHEREAS Palm Beach County, plans an Undertaking, the use of land for public access containing a portion of archaeological site 8PB9636: *The Spanish River Midden and Mound Group*, and it has been determined that the project will have adverse effects on cultural resources eligible for listing on the National Register of Historic Places (NRHP); **AND**

WHEREAS Palm Beach County has consulted with the Florida State Historic Preservation Officer (SHPO) pursuant to 36 CFR, Part 800, or other regulations implementing Section 106 of the NHPA; **AND,**

THEREFORE, Palm Beach County, other signatories, and the Florida SHPO agree that the preparation of the property containing the above mentioned archaeological site prior to construction will be implemented in accordance with the following stipulations:

I. STIPULATIONS

A. Palm Beach County has provided to the Signatories the supporting documents as listed in Attachment 1 [*Required documents to be specified*]. The Signatories hereby acknowledge that they, and each of them, have relied upon the factual representations set forth in each of the supporting documents.

B. The undertaking shall proceed in accordance with the final design and specifications, listed in Attachment 2 [*Comprehensive Research Design to be completed*], previously reviewed, commented upon, and approved by the Signatories.

C. Palm Beach County stipulates the following:

1. Palm Beach County shall retain one or more Registered Professional Archaeologists, agreeable to the County and the Town, who will work with Palm Beach County toward the development of a Park Management Plan to address the planning, construction and maintenance measures to protect the archaeological resources on site.
2. As regards the possibility of inadvertent finds of cultural materials: The archaeologist or archaeologists, shall be on site **at all times** during clearing and construction for the park and its improvements to monitor and inspect the activities of the County's contractors, employees and consultants, prior to park opening.
3. Prior to the issuance of any clearing, excavation or other permits necessary to fill the site, an archaeologist shall be consulted in regard to planning and monitoring all removal of vegetation, structures and features. Native vegetation shall be left in place so as to avoid any disturbance to the midden.
4. The County shall use materials devoid of cultural resources or contaminants (hereinafter "the Fill") and shall be placed over any area to be developed, including but not limited to areas where boardwalks, pedestrian walkways, kiosks, restrooms and/or lifeguard buildings are located. The fill shall be in sufficient quantities to bury and preserve aboriginal resources. The placement of the clean fill shall be done at the direction of the archaeologist or archaeologists retained by the County.
5. The site shall be interpreted. The archaeologists shall consult with the State Historic Preservation Officer (SHPO) and offer the opportunity to comment to the Miccosukee and Seminole Tribes and develop text, concepts and recommendations for interpretative signage that shall be located on the eastern parcel. The signage shall, at a minimum, focus on (1) the Jeaga, Ais, Tequesta, Miccosukee, Creeks and Seminole Tribes; (2) Spanish, British and other European presence in Palm Beach County and the Japanese Yamato Colony.
6. Within one (1) year of the adoption of the Special Exception Resolution, the County shall apply for National Register of Historic Places (NRHP) designation of the Site. Immediately upon receipt of the NRHP determination, the County shall provide evidence of its receipt of the determination to the Town. If the site is nominated, Palm Beach County will agree to accept the nomination.
7. No clearing (except for hand removal of exotic vegetation) or ground disturbance shall occur on the East Parcel (Parcel "A").
8. Prior to the issuance of any building permit, those structural features which remain on the East Parcel (Parcel "A") from the former Weir homestead, and that are determined by the Town Building Official to be structurally unstable or unsafe, shall be removed from the East Parcel (Parcel "A") unless, in the opinion of the Town Building Official and the Archaeologists, their removal would destabilize the archaeological site, expose artifacts, promote erosion, disturb human remains, or otherwise be adverse to the preservation of the archaeological site. Unstable or unsafe structural features shall be tested if required to determine their integrity, and their removal monitored by the Archaeologists. In the event that a structural feature is determined by the Town Building Official to be structurally unstable or unsafe, and removal would destabilize the archaeological site, the County shall not remove the structural feature, but shall secure the structural feature to the satisfaction of the Building Official.
9. Prior to the issuance of any building permit the Archaeologists identified in stipulation #1 shall undertake a Cultural Resource Assessment Survey (CRAS) (also known as a Phase I Survey) to recover information present at the Archaeological Site

- so as to expand the understanding of the Site's significance to Florida's past, its first inhabitants, and explorers, as well as its early European and Japanese settlers, as well as reduce the need for more extensive monitoring and to reduce future costs. The County shall submit the assessment to the Town as part of the Compliance Package.
10. As part of the Compliance Package, the County shall submit its engineering and construction plans and drawings showing that the restroom and lifeguard building will be located entirely within the "footprint" of the remnants of the swimming pool and any existing concrete deck poured over existing footers. In the event the restroom/lifeguard building cannot be located entirely within the footprint of the swimming pool and deck, Palm Beach County may alter the footprint of the building upon proof to the Town in consultation with the SHPO that any encroachment of the proposed building will not displace or disturb archaeological resources or human remains. If in the opinion of the Town in consultation with the SHPO this cannot be accomplished, the County shall relocate this structure to the West Parcel (Parcel "B").
 11. As a result of the Cultural Resource Assessment Survey (CRAS) identified in stipulation #9 above, and as part of the Compliance Package and prior to the issuance of any building permits, the County shall identify the routes of any all utility lines, sidewalks, walkways, boardwalks and/or facilities that may impact any archaeological deposits or human remains. Once the routes have been determined and permits applied for and obtained, the routes shall be excavated by hand.
 12. All exotic vegetation to be removed from the East Parcel (Parcel "A") shall be hand cleared. Replanting will occur only in those areas where existing native vegetation will not re-establish within a reasonable time. The Archaeologists shall be on the Site during both the clearing and replanting of the vegetation to continuously monitor and inspect the areas being cleared and replanted. If during either the clearing or replanting any significant archaeological materials or features are encountered, the Archaeologists shall immediately notify the Town and the SHPO and cease further work until any and all materials or features have been documented to the satisfaction of the Town and the SHPO. If any human remains are uncovered while either clearing or replanting, then the provisions of Section 872.05, Florida Statutes shall be followed and implemented without delay.
 13. The archaeological site 8PB9636: *The Spanish River Midden and Mound Group* is scheduled for impact due to planned construction activities. If determined necessary by the SHPO to mitigate the adverse impact of construction, heavy traffic and service vehicles, the Florida SHPO, Palm Beach County, and the Town of Highland Beach may agree, according to Part 800.6(b)(1)(iv) that a data recovery investigation be planned that will consist of an agreed amount of excavation by the parties, as recommended and approved by the SHPO. The SHPO shall approve all research designs and planned methodology.
 14. Any future use of this site requiring ground disturbance shall be considered to be a separate Undertaking, and subject to separate consultations with the Signatories.
 15. An unanticipated finds plan has been developed for this Site. This document conforms to Chapter 872.05 (Offenses Concerning Dead Bodies and Graves/Unmarked Burials) of the *Florida Statutes* with regard to analysis and disposition of the skeletal material.
 16. Constant site security will be maintained during all testing and construction activities.
 17. Palm Beach County will inform Indian tribes that may attach religious or cultural importance to properties in the project area.
 18. The ACHP will be given the opportunity to be a participant in the resolution of adverse effects but may decline under Part 800.6(a)(1)(iii).

II. Monitoring and Construction Documentation

- A. Palm Beach County will ensure that appropriate construction documentation, including drawings or plans, are maintained and retained, and that the Signatories will have full access to review these documents as desired.
- B. Palm Beach County will ensure that archaeological field notes, drawings, and photographs are prepared by a professional archaeologist and will be maintained and retained, and the Signatories will have full access to review these documents as desired.
- C. Any Signatory may arrange with Palm Beach County review(s) of construction/monitoring documentation in a manner amenable to both parties.

III. Personnel and Documentation Standards

- A. Palm Beach County will ensure that all cultural resource investigations implemented under this MOA shall be conducted by or under the direct supervision of a person or persons meeting the Secretary of the Interior's draft Qualification Standards for archaeology or history (*Federal Register* 20 June 1997, v.62, n.119).
- B. Palm Beach County will ensure that all cultural resource investigations implemented under this MOA shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology or Historic Preservation (*Federal Register* 29 September 1983, v.48, n.190), and take into consideration the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (1999), as well as the Standards and Guidelines of the Florida Division of Historical Preservation (2004).

IV. Confidentiality

- A. The parties to this MOA shall ensure that all actions and documentation prescribed by this MOA are consistent with *Chapter 267.135* exemption from Florida Sunshine Law under state regulations, and Section 304 of the NHPA, relating to the disclosure of archaeological site information.

V. Dispute Resolution

- A. Should any Signatory object to any actions in relation to the Undertaking, then Palm Beach County will inform the other Signatory parties of the objection and provide them with the opportunity to comment. The Signatories agree to respond within three days from receipt of notification. Palm Beach County will seek to resolve the dispute with Signatory parties. Should Palm Beach County be unable to resolve the conflict/dispute through consultation, the Advisory Council on Historic Preservation (ACHP) will be invited to provide its comments as they might pertain only to the subject of the dispute/conflict. Palm Beach County shall take any ACHP comments into account and shall provide documentation of its decision to the ACHP and the Signatory parties. The responsibility of the Signatory parties to carry out all actions under this Memorandum of Agreement (MOA) that are not the subject of the dispute shall remain unchanged.
- B. All official notifications required in paragraph A shall be in writing. All communication shall occur in a manner agreeable to each of the parties.

VI. Amendments

- A. If any of the Signatories believe that an amendment to the terms of this MOA is required, that Signatory immediately shall notify the other Signatories and request consultation. The process of amending the MOA shall be the same as that exercised in creating this original MOA.
- B. In the event of any change(s) to the Undertaking that require new or increased ground-disturbing activity, Palm Beach County will inform the Signatories of the proposed change(s) and provide them with the opportunity to comment. The Signatories agree to respond within five days after receipt. Palm Beach County will consider all the comments and decide whether to proceed with the proposed change(s). Disputes regarding the proposed change(s) will be handled in accordance with Section V, "Dispute Resolution," above.

VII. Anti-Deficiency

- A. If Palm Beach County cannot perform any obligation set forth in this MOA, the Signatories intend the remainder of the MOA to be executed. Any obligation under the MOA that cannot be performed within five years due to financial insolvency must be renegotiated among the Signatories.

VIII. Termination, Extension or Withdrawal

- A. This MOA shall be in effect for the duration of the Undertaking. Upon completion of the Undertaking, this MOA shall terminate. At the request of the Signatories, this MOA may be reviewed for possible extension at any time.
- B. Any Signatory may withdraw from this Agreement. The Signatories are encouraged to offer 30 days' written notification to the other Signatories.

IX. Execution

Execution of this MOA is evidence that Palm Beach County has afforded the SHPO and the ACHP an opportunity to comment on the Undertaking, and has satisfied the requirements of Section 106 of the *National Historic Preservation Act of 1966*, as amended.

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FOR PALM BEACH COUNTY:

Chair, County Commission

Date:

FOR THE TOWN OF HIGHLAND BEACH:

Mayor, Town Commission

Date:

FLORIDA STATE HISTORIC PRESERVATION OFFICER:

Fredrick Gaske, Florida State Historic Preservation Officer

Date:

ACCEPTED FOR TRIBAL REPRESENTATIVES: [may be one or more, or none]

Tribal THPO

Date:

ACCEPTED FOR THE ADVISORY COUNCIL ON HISTORIC PRESERVATION:

Executive Director, Advisory Council on Historic Preservation

Date: