

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

Meeting Date:	July 21, 2009	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Department:	Facilities Development & Operations
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I. EXECUTIVE BRIEF

Motion and Title: Staff requests Board direction: on a request by the Mayfair House Association to obtain an Encroachment License Agreement for encroachments on the Old Ocean Boulevard right-of-way without charge.

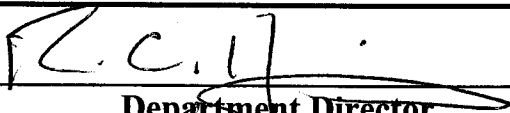
Summary: The right-of-way for Old Ocean Boulevard runs along the dune and beach from Sloans Curve in Palm Beach south to Ocean Avenue at the Lantana/Boynton line. The Road was washed out in the 50's, condominiums were constructed in the 70's and 80's which encroached into the right-of-way and in the early 90's the County attempted to reassert control over the north end right-of-way in South Palm Beach by requiring the encroaching property owners to enter into encroachment permit agreements and pay fees equal to 10% of the appraised value of the land encroached upon. The property owners strenuously objected to the program and agreements were reached only with those property owners with the most extensive encroachments at reduced rates. This is the first property to be addressed in the South section of the right-of-way. The Mayfair House condominium was constructed in 1974. A portion of one condominium tower is 6 feet away from this right-of-way and the pool deck and concrete apron encroaches 10'-15' into the right-of-way. The total area encroached upon is roughly 3,750 s.f. At 10% of assessed value, this would equate to a permit fee of \$75,000. Staff negotiated an Encroachment License Agreement with Mayfair House which, similar to the other agreements, allow the encroachments to remain in place until such time that the County intends to reconstruct a road, which is unlikely to ever occur. The Agreement also gives the County an easement for beach and dune restoration and public access over, but not to, the beach. Staff supports allowing the encroachments to remain, but requires direction as to whether Mayfair House should be charged a fee. The Mayfair House Condominium has through the years suffered extensive damage during Hurricane and other storm events from waves breaking over their seawall. They have obtained permits to reconstruct and elevate their seawall, conditioned upon obtaining this Encroachment Agreement.


(PREM) District 4 (HJF)

CONTINUED ON PAGE 3

Attachments:

- 1. Location Map
- 2. Encroachment License Agreement
- 3. August 18, 1992 Agenda Item 4C-1 discussing history of action taken on the Old Ocean Boulevard issue

Recommended By:		7-14-09
	Department Director	Date

Approved By:		7/17/09
	County Administrator	Date

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 _____ Dept _____ Unit _____ Object _____
Program _____


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

~~X~~ Fiscal Impact is dependent upon whether the Board requires payment of a fee.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

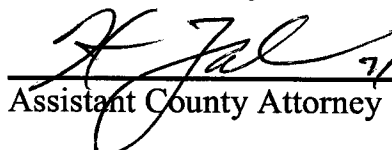


OFMB. *7/16/09*
PM 7-15-09



Contract Development and Control *7/16/09*

B. Legal Sufficiency:



Assistant County Attorney *7/17/09*

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

Background and Policy Issues: Old Ocean Boulevard / S.R. A1A was established in 1912 as a posted and viewed right-of way. It ran along the beach at a time when the beach extended much further. In 1927, the Florida Legislature designated Old Ocean Boulevard as a State Road. In 1943, the Legislature passed the Ocean Boulevard Protective Act, declaring the preservation and protection of Old Ocean Boulevard to be a County purpose and authorizing the Board of County Commissioners to take any steps it deemed advisable to protect Ocean Boulevard. In the early 50's, Old Ocean Boulevard was severely damaged by storms. Eventually, Ocean Boulevard was reconstructed to the west in its existing location. In 1968, the State disclaimed its interest in Old Ocean Boulevard. In 1991, at the request of the County, the State quit claimed its interest in Old Ocean Boulevard to the County.

The right-of-way extends from Sloans Curve in Palm Beach south to Ocean Avenue at the Lantana/Boynton line. The right-of-way has not been used for a road since the 1950's. In the 70's and 80's, developers constructed condominiums along the beach, with a substantial number of the developments encroaching into the right-of-way. The developers sold all the units and turned over control of the condominium associations to the unit owners. The unit owners did not create the encroachments, but do not want to lose the pool decks, seawalls, dune crossovers and other improvements constructed within the right-of-way.

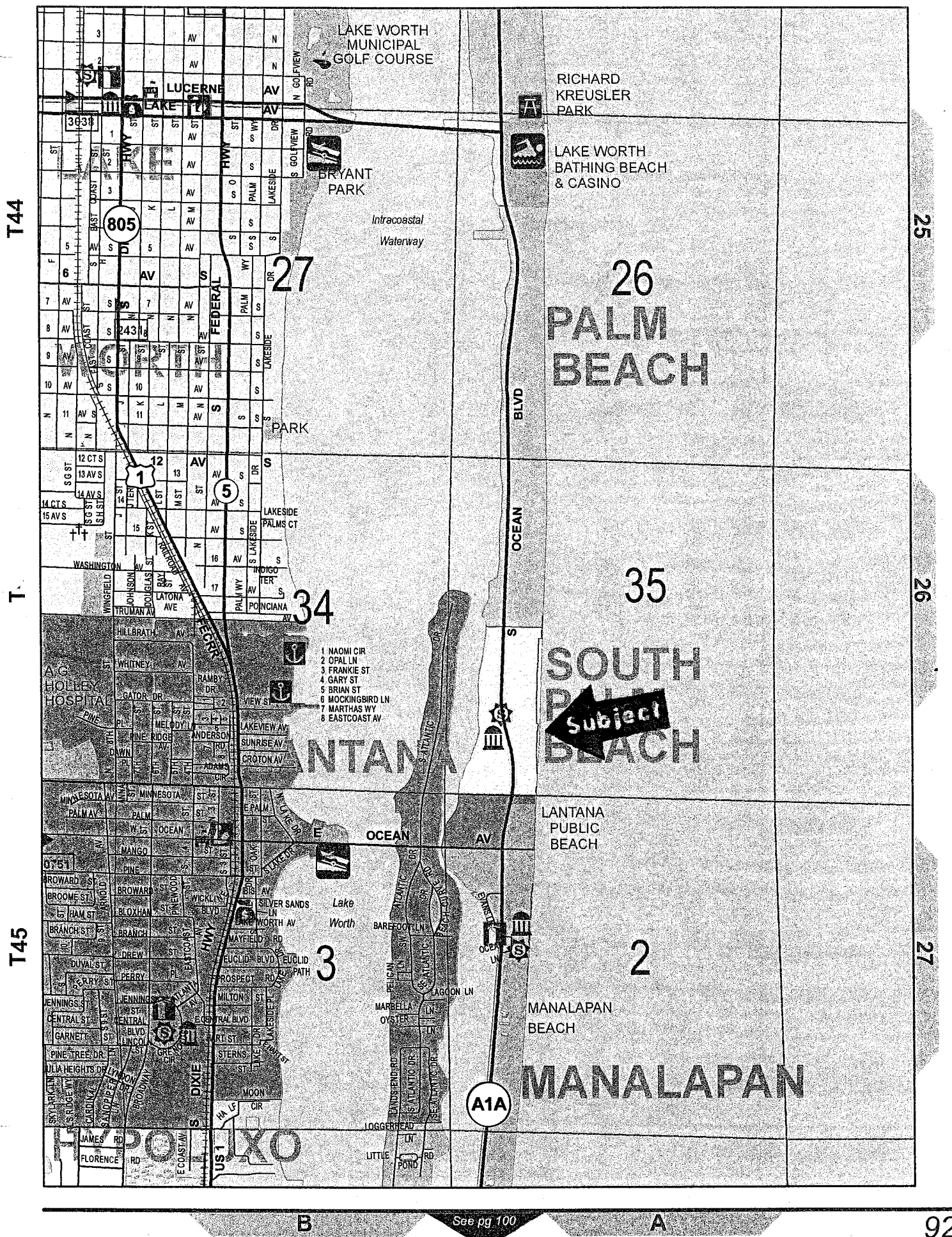
The issue of encroachment into the right-of-way was a hot topic in the early 90's as former County Commissioner Bill Medlin waged a campaign against the encroaching property owners. Essentially, he claimed that the property owners were encroaching upon the public beach and limiting access to the beach. In one sense, the Developers who constructed condominiums, hotels and other projects along the stretch of beach were able to construct closer to the beach and did construct improvements in the right-of-way, thereby theoretically limiting the public's use of the beach and dune within the right-of-way. On the other hand, at the time they constructed those improvements the road had not been used for 20 or 30 years and Ocean Boulevard had already been relocated to the west. Many of the property owners owned on both sides of the right-of-way, and had the road been formally abandoned, the property owners would have received title to the right-of-way. The developers did not by their actions limit the public's access to the beach, (as opposed to use of the right-of-way), as public access was already limited by the inability to get to the beach without crossing over private property. The current owners, the Condominium Associations, did not create the encroachments, but they are benefitting from them. As a practical matter, the road will never be rebuilt and there will never be any opportunity to increase public access to the beach and the portions of the right-of-way encroached upon.

Previously, the County entered into Encroachment Permit Agreements with property owners along the northern portion of the right-of-way. The Sea Lord Hotel paid a lump sum fee of \$45,000 and the Ambassador Hotel paid a fee of \$16,000. Various other property owners with minimal encroachments were not charged. Staff is concerned with remaining consistent with treatment of other property owners.

This is the first encroachment into the southern portion of the right-of-way which has risen to this point. The seawall at the Mayfair House Condominium is at the lowest elevation of any of the condominiums along the southern stretch of the right-of-way. The Mayfair House has suffered significant damage during major storm events from ocean waves topping their seawall. There is hardly any beach remaining in front of their seawall and it is feared that if they do not raise the seawall waves will breach it and destroy the entire beach front building, as well as endangering adjoining properties and flooding and/or washing out Ocean Boulevard. There is also a potential adverse impact upon ad valorem tax revenue if the improvements were damaged by storms. The Mayfair House was assessed at roughly \$57,000,000 in 2008. The Mayfair House has obtained permits to reinforce and elevate their seawall conditioned upon obtaining this Encroachment License Agreement. The seawall will extend an additional 2.5 feet eastward into the right-of-way. Staff agrees that raising the Mayfair House's seawall is a public safety issue.

B

A



LOCATION MAP

ATTACHMENT #1

PREPARED BY AND RETURN TO:
Howard J. Falcon, III
Senior Assistant County Attorney
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

**ENCROACHMENT LICENSE AGREEMENT AND EASEMENT
FOR DUNE RESTORATION AND PUBLIC ACCESS**

THIS AGREEMENT made and entered into _____ by and between
PALM BEACH COUNTY, a political subdivision of the State of Florida, whose address is 2633
Vista Parkway, West Palm Beach, Florida 33411 ("County") and MAYFAIR HOUSE
ASSOCIATION, INC., a Florida non-profit corporation, whose address is 3589 S. Ocean
Boulevard, Palm Beach, Florida 33480 ("Mayfair").

W I T N E S S E T H:

WHEREAS, County controls and has legal jurisdiction over a portion of that certain public
road right of way in Palm Beach County Florida, commonly known as Ocean Boulevard and Old
Ocean Boulevard, legally described in Exhibit "A", and partially depicted upon the survey sheet
attached hereto as Exhibit "B" (the "Right of Way"); and

WHEREAS, Mayfair is the owner of certain real property abutting the County's Right of
Way, which property is legally described in Exhibit "C" attached hereto (the "Benefited
Property"); and

WHEREAS, Mayfair has erected certain improvements, including a seawall, which
encroach upon the County's Right of Way, which improvements are reflected in the survey sheet
attached as Exhibit "B"; and

ATTACHMENT # 2

WHEREAS, Mayfair has requested that County allow Mayfair's encroachments to remain in place and that County allow Mayfair to reconstruct the seawall in order to protect improvements to the Benefited Property and the adjoining properties and to facilitate beach renourishment in the area; and

WHEREAS, County has agreed to permit Mayfair's improvements within the Right of Way to remain within the Right of Way and to allow Mayfair to reconstruct the seawall upon the terms and conditions hereinafter set forth in exchange for Mayfair's granting County an easement for beach renourishment and public use of the sandy beach area lying seaward of the Benefited Property.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference.

2. Title/Jurisdiction. Mayfair acknowledges that County controls and has lawful jurisdiction over the Right of Way and Mayfair agrees that it shall not unreasonably challenge County's jurisdiction or control of the Right of Way.

3. Grant of License. County hereby grants Mayfair a license to (i) retain the improvements which encroach upon the Right of Way as reflected in the survey attached as Exhibit "B", with the exception of floodlights, if any, which Mayfair shall remove within thirty (30) days of the date hereof and (ii) reconstruct the seawall in accordance with the plans attached hereto as Exhibit "D" (the "Seawall Plans"). The encroaching improvements (including the reconstructed seawall) shall be permitted to remain in their existing location until such time as County shall

require said Right of Way for development of a roadway.

4. No Further Improvements. Except as provided herein, Mayfair shall not construct any further improvements within or affecting the Right of Way without the prior written consent of County, evidenced by an amendment to this Agreement, which consent may be granted or withheld in the sole and absolute discretion of the County. However, Mayfair may maintain, repair and reconstruct the existing improvements and the seawall improvements permitted hereby, without having to obtain consent of County.

5. Compliance with Laws. Mayfair shall comply with all state, County and municipal ordinances with respect to the encroaching improvements (including the reconstructed seawall). In addition, Mayfair acknowledges that the County's Sea Turtle Protection Ordinance 87-13, and Coastal Protection Ordinance 90-2 apply to all improvements and activities within the Right of Way and agrees to comply with all terms and conditions thereof.

6. Default. In the event Mayfair fails to comply with any of the terms and conditions of this Agreement, County shall furnish written notice to Mayfair of the breach and provide Mayfair ninety (90) days to cure such breach. If Mayfair does not timely cure the breach, County may revoke this Agreement, whereupon Mayfair shall immediately cease all activities within the Right of Way and shall remove all encroaching improvements (including the reconstructed seawall) within one hundred and eighty (180) days thereafter.

7. Indemnification. Mayfair shall indemnify, defend and hold harmless County from and against any and all claims, suits, proceedings or other actions threatened and/or commenced which arise out of or are in any matter related to the encroaching improvements (including the reconstructed seawall) and/or any activities of Mayfair conducted within the Right of Way, and all

judgments, costs, expenses and liabilities entered thereon or incurred in connection therewith.

8. Insurance. Mayfair shall provide, maintain and keep in full force and effect General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit bodily injury and property damage liability coverage. The amount of the insurance required hereby shall be increased every ten (10) years by the increase in the Consumer Price Index over such ten (10) year period. The General Liability policy shall include coverage for the Right of Way Area and Broad Form Property Damage Liability coverages. The insurance policies required hereunder shall name the County as Additional Insured. Such insurance shall be issued by an insurance company licensed to do business in the State of Florida and approved by the County. A Certificate of Insurance evidencing such insurance coverage shall be provided to County prior to execution hereof by County. Such Certificate shall require at least thirty (30) days prior notice of cancellation or adverse material change in coverage. In no event shall the limits of said insurance policies be considered as limiting the liability of Mayfair under this Agreement. Furthermore, Mayfair shall and hereby does hold County harmless from any loss or damage incurred or suffered by County due to Mayfair's failure to maintain such insurance.

9. Rights Appurtenant. The rights granted to Mayfair by County hereunder are appurtenant to the Benefited Property and may not be separated from such property, nor assigned separately therefrom, and shall run with the land, and bind and encumber the Benefited Property and Mayfair's successors and assigns.

10. Grant of Easement. In consideration of the license granted herein to Mayfair by County, Mayfair does hereby grant to County, its successors and assigns, a perpetual, non-exclusive easement, in, on, over, under, through and across the real property lying seaward of

the reconstructed seawall to the waters of the Atlantic Ocean for the purpose of periodic beach restoration and for use by the public of the sandy beach area as the same may exist from time to time (the 'Easement Premises'). The parties acknowledge that nothing contained in this Agreement shall provide public access to the beach from the Benefited Property other than as may have existed prior to the date of this Agreement. The parties acknowledge that it is the intent of the parties that members of the public shall have use of the sandy beach for recreational purposes if access is available from adjoining beach areas. The County acknowledges that other than during preparation for and work on beach renourishment and dune restoration as authorized herein, it will not unreasonably impede or restrict Mayfair's access to the beach or ocean, whether by steps from the east wall or by inbuilt concrete steps at the east end of the south wall, as shown in Plan C (Exhibit D).

11. County's Use. The parties acknowledge that maintenance of the dune and beach may include removal of incompatible soils, exotic vegetation and other materials; grading and filling using compatible sand; installation of vegetation and temporary fencing, not to extend more than twenty-five (25%) percent of the area from the reconstructed seawall eastward to the erosion control line; and other tasks necessary to restore and maintain the beach and dune on the Easement Premises. Any temporary fencing installed by County shall not bar or impede use by Mayfair's members of Mayfair's private dune walkover and/or recreation deck or impede such members' access to the beach. County agrees that any dune will not exceed nine (9) feet NAVD.

12. Access. For the purpose of carrying out any right granted herein, County shall have a reasonably necessary right of ingress and egress to the Easement Premises only from the beach

(easterly) side, but not from the Ocean Boulevard (west) side or any part of the Mayfair's property that is not part of the Easement Premises.

13. Mayfair's Obligations. Mayfair shall not commit any act that would interfere with or impede the rights granted to County, its subcontractors, agents or employees under this Agreement. Acts which would interfere with said rights include, but are not limited to: hindering reasonable ingress and egress to the Easement Premises from the east, north or south; removing any of the sand or native vegetation present or later installed by County pursuant to the terms hereof; or placing any material or substance in or around the Easement Premises which may damage the structure or appearance of the restored beach, dune, or vegetation.

14. Subordination of Rights. The easement hereby granted is subject and subordinate to:

- (i) the easements granted to Mayfair's members in and by Mayfair's declaration now in effect ; and
- (ii) Mayfair's right to enter and do all work upon the Easement Premises as shall be reasonably required to maintain, repair or replace Mayfair's private dune walkover.

15. Mayfair's Representations. To the best of Mayfair's knowledge and subject to easements, claims and matters of public record, Mayfair has the full right, power and authority to grant this easement to County and all other rights granted hereunder to County, and that Mayfair has disclosed to County the location and terms of all other known easements that may affect the Easement Premises. If any person shall seek to set aside this easement or to nullify the rights granted to County hereunder based upon an alleged superior right in the Easement Premises, then Mayfair shall, upon County's request and at Mayfair's expense, take any action reasonably necessary to secure to County the rights and interest granted hereunder.

16. Authority to Execute This Agreement. Any person executing this Agreement and representing Mayfair hereby warrants and represents that he or she has received all corporate, association, or entity authorization necessary to bind Mayfair to the terms of this Agreement. Any person executing this Agreement and representing County hereby warrants and represents that he or she has received all governmental authorization necessary to bind County to the terms of this Agreement.

17. Prohibited Acts by County. With the sole exception of the Easement Premises, County shall not enter on, over, under, through or across any other portion of the Benefited Property for access to or to do work on the Easement Premises. County shall promptly and at County's expense repair or replace any portion of the Benefited Property and/or the Mayfair's private walkover damaged or destroyed by County during the course of County's work.

18. Mayfair's Right to Prune. Mayfair shall comply with current Florida State Department of Environmental Protection dune vegetation pruning guidelines or regulations as may be in effect during the term of this Agreement, and Palm Beach County's Guidelines for Beach and Dune Management as may be in effect during the term of this Agreement, which are hereby incorporated and made a part hereof. Mayfair shall be responsible for ensuring compliance with County ordinances, and state and federal laws regulating coastal lighting in response to possible impacts on sea turtle nesting.

19. Impending Damage. Nothing herein shall prevent Mayfair from reasonably protecting their property including the dune and Easement Premises from impending damage or loss due to wind, seas, storms or other forces of nature in the event that County is unwilling or unable to undertake such actions for any reason including lack of funding.

20. Miscellaneous. This Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of Florida. Venue in any action, suit or proceeding in connection with this Agreement shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

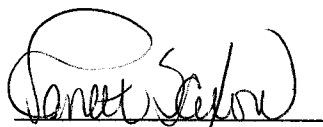
No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document so as to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

This Agreement contains the entire understanding and agreement of the parties with respect to the subject matter hereof. No amendment shall be effective unless the same is in writing and signed by all parties.

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IN WITNESS WHEREOF, the parties have caused this Encroachment License Agreement and Easement to be executed as of the date first set forth above.

WITNESS:

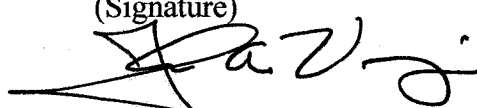

(Witness Signature)

Janet Saxon
(Print Witness Name)


(Witness Signature)

Carleen Kent
(Print Witness Name)

MAYFAIR HOUSE ASSOCIATIONS,
INC.

(Signature)

(Print Signatory's Name)

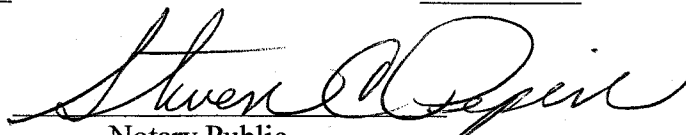
JOHN A. VIVENZIO

STATE OF FLORIDA]

SS:

COUNTY OF PALM BEACH]

The foregoing document was acknowledged before me this 11 day of June, 2009, by John Vivenzio, who is personally known to me OR who produced SELF as identification and who did _____ take an oath.


Notary Public

Steven C. Pepin
Print Notary Name



NOTARY PUBLIC
State of Florida at Large

My Commission Expires:

9 12-14-2012

ATTEST:
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, a political
subdivision of the State of Florida


By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By:  _____
Department Director

G:\wpdata\Gengovt\Hfalcon\Agreements\Mayfair Encroachment License Agreement and Easement.06-10-09

That part of Old State Road A-1-A (140) lying Easterly of the present and now existing State Road A-1-A over, through and across the following parcels of land:

That part of Government Lot 1, Section 2, Township 45 South, Range 43 East lying North of Lantana Road:

AND: Government Lots 1 and 2, Section 35, Township 44 South, Range 43 East;

AND: Government Lots 1 and 2, Section 26, Township 44 South, Range 43 East.

AND: Government Lots 1 and 2 excepting therefrom the North 2500 feet of said Government Lot 1, Section 29, Township 43 South, Range 43 East.

AND: Lots 111 to 152 inclusive and that part of Lot 110 lying South of the present and now existing State Road A-1-A, (said Old A-1-A shown as Ocean Boulevard, 30 feet in width) according to the Plat of Palm Beach Estates recorded in Plat Book 8, Page 3 of the Public Records of Palm Beach County, Florida, in Sections 11, 14 and 23, Township 44 South, Range 43 East.

All of the above as shown on the right of way map for Section 93080-2111, State Road A-1-A and recorded in State and County Road Plat Book 1, pages 84 to 92 inclusive.

**RECORDER'S MEMO: Legibility
of Writing, Typing or Printing
unsatisfactory in this document
when received.**

RECORD VERIFIED
PALM BEACH COUNTY, FLA
CLERK CIRCUIT COURT

Exhibit "A"



CERTIFICATION:
I HEREBY ATTEST that the s

This is now



RECORDER'S MEMO: Legibility of Writing, Typing or Printing unsatisfactory in this document when received.

Exhibit "C"

NOT FOR CONSTRUCTION
FOR REGULATORY REVIEW ONLY

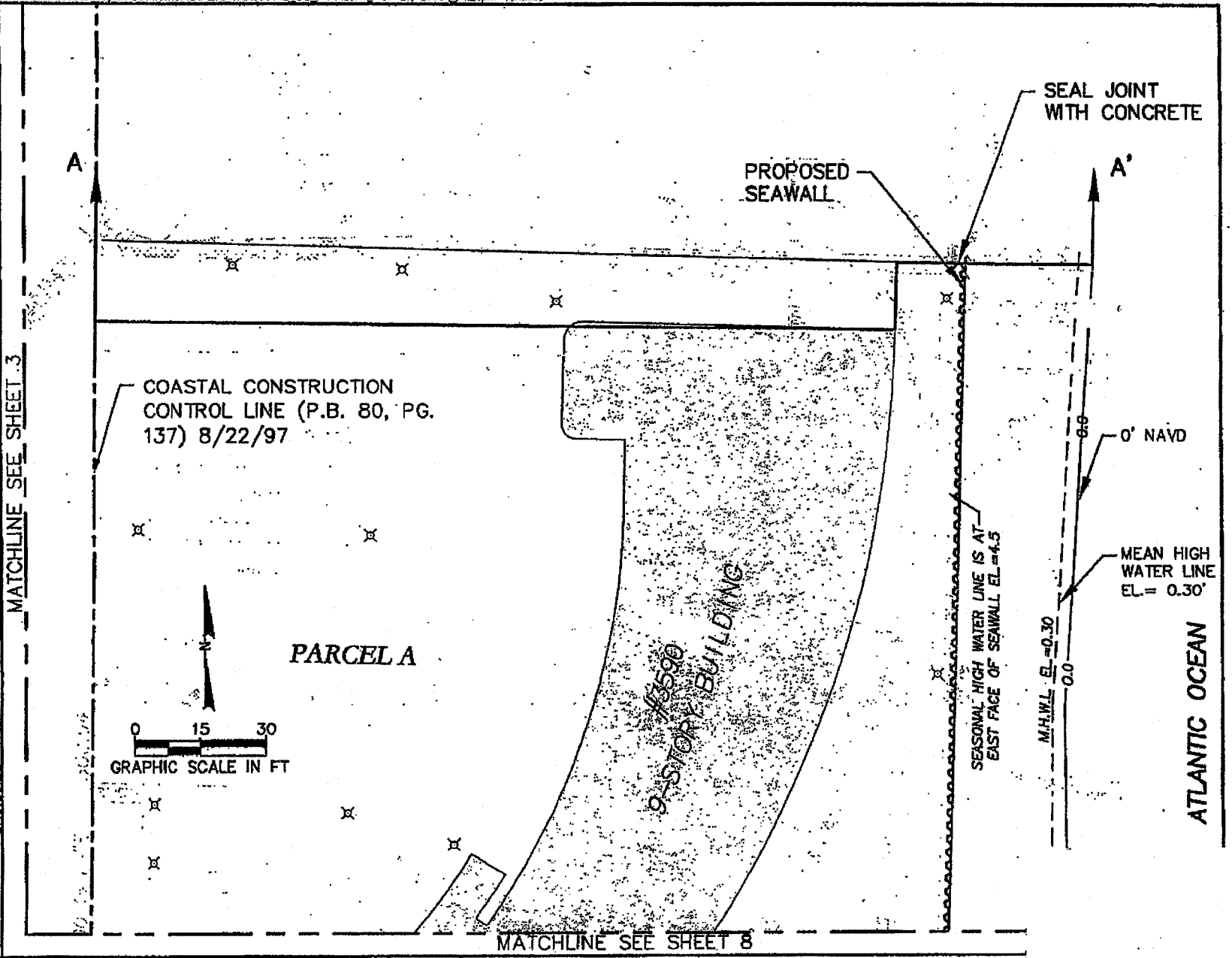
Handwritten signature

7/22/08

Exhibit "D"

DATE	BY	REVISIONS
		DESCRIPTION

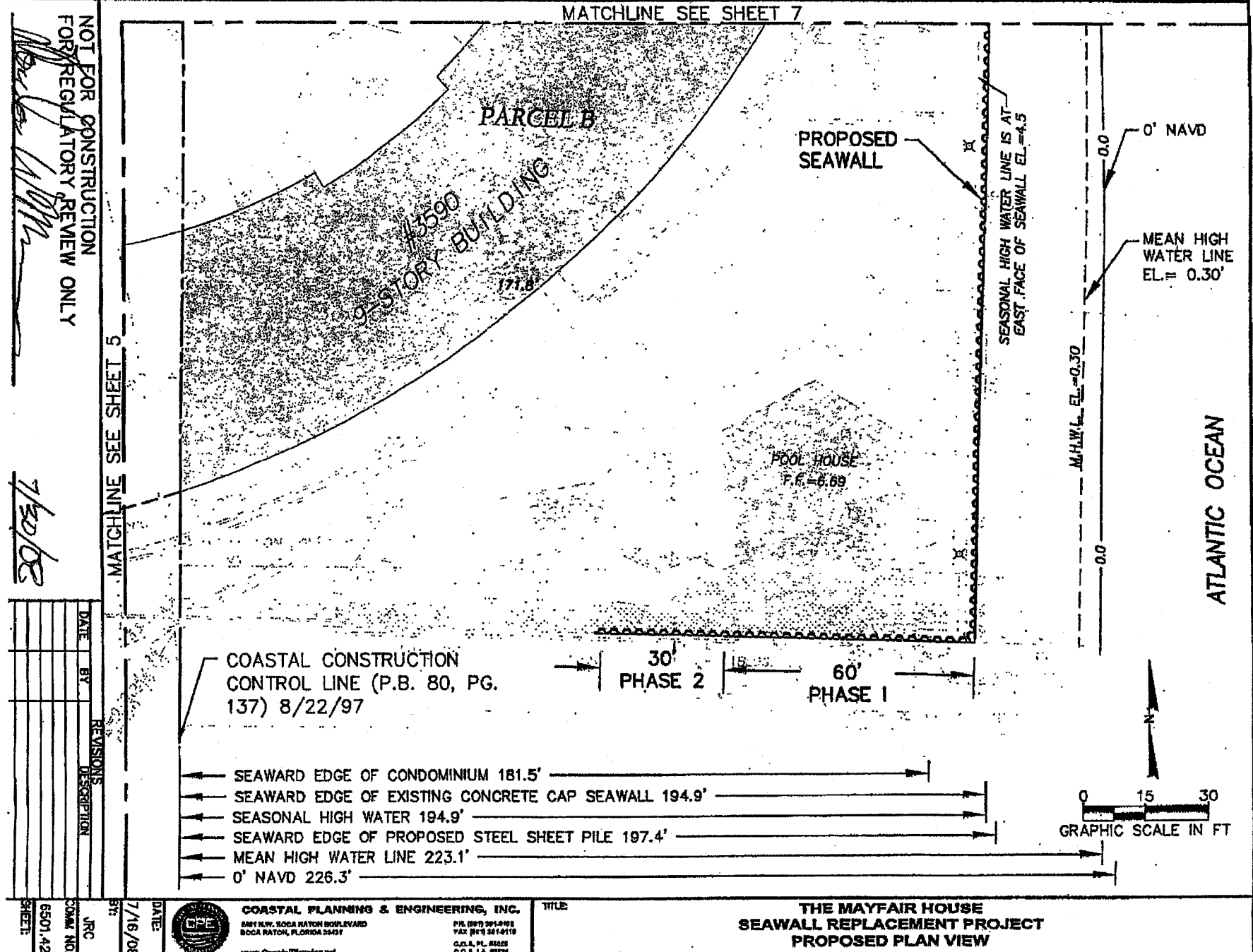
DATE: 7/16/08
BY: JRC
CCL NO.: 6501.42
SHEET: 1



COASTAL PLANNING & ENGINEERING, INC.
2401 N.W. BOCA RATON BOULEVARD
BOCA RATON, FLORIDA 33431
TEL: 561.391.8100
FAX: 561.391.8110
C.O.G.A. # 20030
C.O.G.A. LA #2021

TITLE

THE MAYFAIR HOUSE
SEAWALL REPLACEMENT PROJECT
PROPOSED PLAN VIEW



DIRECTION:

- 1) Bring back permits on 9/22/92
- 2) Include notice provision
- 3) Review evidence of fair market value
- 4) Explore possibility of improvement by providing a more specific definition of "public use"

Agenda Item # **4C1**

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS

R-L 6-0

AGENDA ITEM SUMMARY

MEETING DATE: 8/18/92 ☐ Consent ☒ Regular
 Department ☐ Ordinance ☐ Public Hearing
 COUNTY ATTORNEY'S OFFICE ☐ Workshop

I. EXECUTIVE BRIEF

A. Motion and Title: STAFF REQUESTS BOARD DIRECTION with respect to the proposed Encroachment Permit Agreements for the Old Ocean Blvd/A-1-A right of way.

B. Summary: On July 21, 1992 the Board directed the County Attorney and PREM to continue to negotiate with the owners of properties with encroachments in the Right of Way and to return at the August 18 Board meeting with executed Permit Agreements and a report as to which property owners refused to sign such permits; for the Board's consideration of further action. As of this date, only 7 of the 18 property owners have signed permits. Staff believes it has reached agreement with the remaining property owners on all but two issues: 1) the use for which the County can regain possession of the Right of Way and require the encroachments to be removed; and 2) the amount of the annual permit fee. Staff has developed three options for resolution of this matter which are discussed in more detail in the Background and Policy Issue section. Board direction is requested with respect to the terms of the Permit Agreement and what action should be taken in the event the property owners fail to sign the Permit Agreements containing the terms approved by the Board. The County Attorney's Office is prepared to file suit immediately upon receiving such direction from the Board.

C. Background and Policy Issues: Staff has been attempting to implement previous Board direction requiring property owners with encroachments upon the Ocean Blvd/A-1-A Right of Way to obtain permits and pay an annual fee for active encroachments which extend the usable area of their property into the Right of Way. The majority of the property owners have not cooperated with Staff's previous attempts to implement said policy, until the Board on July 21, 1992 directed the County Attorney to negotiate a settlement by August 18th, and failing same, the Board indicated its desire to commence litigation to resolve this matter. Since the July 21, Board meeting, Staff has had several discussions with a number of the property owners with respect to changes in language of the Permit Agreements.

****CONTINUED****

- D. Attachments:**
- Form of Permit Agreements
 - Active
 - Passive
 - Palm Worth & Hilton Hotel

APPROVED

BY BOARD OF COUNTY COMMISSIONERS

AT MEETING OF 8/18/92

[Signature]

D.C.

MINUTES & RECORDS SECTION

Recommended by: _____ Date: 8/18/92
 Department Director

Approved by: _____ Date: _____
 Assistant County Administrator

BOOK 1234 PAGE 414

4C 1

AUG 18 1992

ATTACHMENT #3

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	19__	19__	19__	19__	19__
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Operating Revenues	_____	_____	_____	_____	_____
Is Item Included In Current Budget:	Yes		No		
Budget Account No.:	Fund _____	Agency _____	Org. _____	Object _____	
Reporting Category _____					

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

III REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Administration Comments:

From the information provided, OFMB cannot determine:
 1) the appraised value of the property in question;
 2) the difference between "active" and "passive" use; and
 3) the amount of revenues that may be realized.

Steven Bordelon 8/14/92 Jim J. Gowlon
 OFMB Contract Administration
 THE BCC, ACCORDING TO PREM, HAS PREVIOUSLY ADDRESSED SOME OF THE ISSUES
 RAISED UNDER OFMB COMMENTS REGARDING VALUE
 AND USE.

B. Legal Sufficiency:

Maurice Tull
 Assistant County Attorney

Contract Administration concurs with the
 use of the ~~the~~ proposed Permit Agreements.
 However, without being furnished with
 executed agreements we cannot
 pass judgment on any specific
 agreement.

C. Other Department Review:

PREM has prepared this item in conjunction with the County Attorney's
 Office and is in agreement with the information and recommendations
 contained herein.

R.C. 12
 Department Director

BOOK 1234 PAGE 415

This summary is not to be used as a basis for payment.

40 1
 AUG 18 1992

Background and Policy Issues:

As currently drafted, the Permit Agreements provide that: 1) the Permittees acknowledge County jurisdiction over, but not ownership of, the Right of Way; 2) the encroachments will be permitted to remain until the County rebuilds Ocean Blvd. or requires the Right of Way for other public purposes; 3) No commercial activities shall be permitted in the Right of Way without County's consent and payment of an additional fee; 4) no further improvements shall be constructed within the Right of Way; 5) the Permittees with active encroachments shall pay an annual fee of 10% of appraised value, such fee to be adjusted every three years; and 6) the Permittees have the option of providing alternate beach access and/or parking upon such terms as County may agree to in lieu of payment of the fees.

Staff believes that there are two major points of disagreement with the permit Agreements as currently drafted: 1) the right of the County to require removal of the encroachments in the event the County desires to utilize the Right of Way for "other public purposes", not related to the rebuilding of Ocean Boulevard; and 2) the amount of the permit fees. The property owners essentially will agree to remove the encroachments if the County desires to rebuild Ocean Blvd., but not for some undefined "other public purpose". In addition, the property owners believe the appraised value upon which the permit fee was based is too high, but have not been specific as to the basis for that assertion, claiming that they have consulted with appraisers but have not had time to prepare a final report on that issue.

Staff suggests that there are three options for resolving the issue of use of the Right of Way: 1) agree that the encroachments will be allowed to remain until Ocean Blvd is rebuilt, 2) require that the encroachments be removed in the event Ocean Blvd is rebuilt and litigate the issue of whether the County has the legal authority to require removal of the encroachments for some other public purpose at some point in the future when such a different use is determined to be feasible; or 3) require execution of the Permit Agreements as currently drafted and litigate the issue with those property owners who refuse to sign. The County Attorney's Office is prepared to file suit immediately upon receiving such direction from the Board.

Options 1 and 2 both limit the practical ability of the County to develop such previously contemplated public access ways as a boardwalk. However, previous staff investigations indicated that it would be extremely difficult, if not impossible, to obtain regulatory permits for the construction of such a boardwalk. Staff is requesting Board direction on which option, if any, the Board wishes to pursue.

With respect to the amount of the permit fee, Staff has not been presented with any detailed information supporting the property owner's position that the fees are too high. Staff has reviewed the basis for the calculation of the fees and believes that it is both supportable and reasonable. In response to previous comments by Board members that the fees were too low, Staff recommended that the fees remain as proposed in an effort to avoid litigation. At this point Staff is not prepared to recommend a reduction in the permit fees, but is willing to review any documentation which the property owners may submit in support of their claim for a reduction in the fees should the Board afford the property owners additional time in which to submit such documentation.

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The following is a list of the Property Owners who have been asked to sign Permit Agreements and those who have either signed the Agreements or have failed or refused to do so.

Property Owner	Type of encroachment and Annual Fees	Signed Permit yes/no
Palm Worth	Active \$10,778.95 (waived)	yes
The Palm Beach Hilton	Active 927.00 (waived)	no
The Ocean Grand Hotel	Passive -0-	no
Ambassador II	Passive -0-	no
Sutton Place	Passive -0-	yes
The Ambassador South	Active 4,629.85	no
The 2770 S. Ocean Blvd. Condo.	Passive -0-	yes
The Ambassador Hotel Coop	Active 3,154.37	no
Beach Point Condominium	Active (Floodlights) -0-	no
The 2600 Condominium	Active (Floodlights) -0-	no
Palm Beach Stratford	Passive	yes
The Sea Lord Hotel	Active 10,300.00	no
Harbor House	Active 35,535.00	no
The Reef Condominium	Active (Floodlights) -0-	yes
Town of Palm Beach (Phipps Park)	Passive -0-	no
The 2100 Condos at Sloan's Curve	Passive -0-	yes
The 2000 Condos Sloan's Curve	Passive -0-	yes
Residences at Sloans Curve	Passive -0-	no

Two of the property owners, Palm Worth, Inc. and the Hilton Hotel, have presented evidence that the County previously permitted the construction of the encroachments and authorized such encroachments to remain until such time the County rebuilt Ocean Boulevard. Although the encroachments are classified as active, Staff believes it is advisable from a legal perspective to honor such agreements and allow the encroachments to remain until Ocean Boulevard is rebuilt without payment of an annual fee. The property owners are willing, however, to sign the permit agreement utilized for passive encroachments and agree to all other terms and conditions thereof.

In addition, in an attempt to settle this matter, Staff has agreed to a number of the changes which were suggested by the property owners who have as yet failed to sign Permit Agreements. Prior to this time, a number of the other property owners have signed and returned the Permit Agreements. Staff believes that if the Board approves the suggested changes to the Permit Agreements as contained in the attached forms, the property owners who have previously cooperated with the County should also receive the benefit of these changes. As such, Staff is recommending that the new form of Permit Agreements be mailed to all affected property owners, such that there will be a uniform policy throughout. If this recommendation is approved by the Board, Staff would then bring back revised executed Permit Agreements for approval by the Board at a subsequent meeting.

Furthermore, the Permit Agreements include a provision allowing the property owners to provide alternate beach access and/or parking in lieu of paying the permit fees. Only the Sea Lord has approached the County to pursue this option. The Sea Lord has a separate lot which could be utilized to provide up to fifteen parking spaces for use by the public. Staff has prepared a conceptual layout of the proposed parking lot, but has not had sufficient time to work out the details with the Sea Lord. With respect to the Sea Lord only, Staff suggests that the Board require the Sea Lord to execute the Permit Agreement with the understanding that the Sea Lord be allowed to provide parking in lieu of the permit fee.

Finally, Staff requires Board direction on further action, if any, to be taken against those property owners who refuse to sign Permit Agreements developed in accordance with the foregoing.

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