

AGENDA ITEM SUMMARY

Department

Submitted For: Engineering and Public Works

10/12/12
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	*	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No _____		
Budget Account No.:	Fund _____	Department _____	Unit _____	Object _____	
	Program _____				

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

* There is no fiscal impact associated with this item.

C. Department Fiscal Review:

[Signature]

III. REVIEW COMMENTS

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

[Signature] 9/28/12
OFMB 9/27/12
9/27/12. CC
Contract Development and Control
10-10-12 *[Signature]* 10/10/12
10-10-12 *[Signature]*

B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director

Return To:
Kimberly Miranda
Palm Beach County
Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743

AGREEMENT AND LICENSE
FOR
PROPERTY ACCESS TO TRIM VEGETATION

THIS AGREEMENT is made this 26th day of September, 2012 between Palm Beach County, a political subdivision of the State of Florida, whose mailing address is 301 North Olive Avenue, West Palm Beach, Florida 33401 ("Grantor"), and Ocean Royale Condominium Association, Inc. of Juno Beach, whose mailing address is 700 Ocean Royale Way, Juno Beach, Florida, 34408, ("Grantee"), both being herein referred to collectively as the "parties", for the sole purpose of providing property access for permit approved trimming of native vegetation.

WHEREAS, the parties recognize and agree that it is in both of their best interests to enter into this trimming agreement to define management of the dune east of Ocean Royale to minimize the impacts from vegetation trimming.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1. Grant of License. Grantor hereby grants, bargains and conveys to the Grantee, its subcontractors, agents and employees, a temporary, non-exclusive License on, over, under, through and across the Property described in Exhibit "A," attached hereto and incorporated herein ("the License Premises") for property access to trim vegetation as provided herein. This instrument is further subject to all Licenses, restrictions, covenants, conditions, limitations and reservations of record, if any. Grantee's use of the License Premises as provided herein shall not interfere with Grantor's ownership and use of the License Premises or right to construct, maintain or improve the beach and dune system or dune walkover on Grantor's Property.

2. Not a Dedication. Nothing herein contained shall be deemed to be a gift to any private authority or any third party, and the License provided herein shall be strictly limited to the purposes expressed herein. Nothing herein contained shall be deemed to give the Grantee or any other persons, other than Grantor, and Grantee and its subcontractors, agents and employees any access rights to the License Premises or access to the beach from the Grantor's property other than as may have existed prior to the date of this Agreement. Grantor hereby reserves the right to the continued free use of the property in a manner not inconsistent with the rights granted herein to Grantee and subject to the terms and conditions of this Agreement.

3. Grantee's Use. The License Premises may be used by Grantee, its subcontractors, agents or employees solely for the purpose of providing property access during and only during periods of maintenance associated with sea grape trimming and exotic species removal.

4. Grantee's Obligations. Grantee shall obtain all local and state permits and approvals required by all applicable governmental entities to perform the acts contemplated herein. Grantee shall safeguard and maintain the License Premises and its immediate environs throughout the term of this Agreement when exercising the rights granted herein. Any damage caused by Grantee or its subcontractors, agents or employees to the License Premises or any property of the Grantor or others located on Grantor's property shall be immediately (in no event later than 30 days) repaired by the Grantee at Grantee's sole expense. Such repair work may include, but is not limited to, replanting sea grapes with vegetation of similar size to that damaged and providing sufficient irrigating for successful reestablishment of such sea grapes to the allowable trimmed height.

Grantee shall provide Grantor with thirty (30) days prior written notification of Grantee's desire to enter onto the License Premises.

Prior to a major trimming event, Grantee shall perform a pre-trim night inspection from the beach to assess existing lighting. If the inspection reveals that exposure of additional lights or indirect illumination will occur due to the trimming, corrective action must be taken prior to the trimming event. Corrective action shall include but is not limited to the Grantee adhering to all applicable sea turtle codes and ordinances in effect during the term of the Agreement. Self monitoring by the Grantee of the number of interior and exterior lights visible from the beach must be conducted once per month on a new moon during sea turtle nesting season. Results of the monitoring shall be sent to Grantee residents and Grantor within 5 days of each monitoring event.

A major trimming event is permitted once per year and shall occur only outside of sea turtle nesting season (November 1 – February 28). Minor trimming events (< 1 foot vertical reduction) for maintenance of trimmed height can occur at any time.

The Grantee shall remove all existing exotic vegetation (Category I species as defined by the Exotic Pest Plant Council) located within the License Premises during each trimming event. Trimming must be performed in compliance with the Tree Care Industry Association ANSI A300 Standards for Crown Reduction Pruning by an experienced vendor who is knowledgeable of proper trimming techniques.

Trimming heights shall not be any lower than 6 feet on the north 90 feet of dune, shall transition evenly on an upward slope from 6 feet to 10 feet on the central 180 feet of dune, and be no lower than 10 feet on the south 180 feet of dune. Grantee shall ensure that all trim heights will be measured from the sidewalk and that PVC reference markers are installed to mark minimum trim heights. The trimming Plan is set out in Exhibit "A", attached hereto and incorporated herein.

Prior to each nesting season after 2013, it is the responsibility of Grantee to verify that daily disorientation data will be collected (documented) for the season within the disorientation evaluation area described in Exhibit "B" by a Florida Fish & Wildlife Conservation Commission (FWC) marine turtle permit-holder. The Grantor will collect the disorientation data through 2013 under current permit obligations. Beginning in 2014, the Grantee shall be responsible for collection of disorientation data.

Grantee shall arrange for a qualified consultant, who holds an FWC permit, to document disorientation. Disorientation data will be collected daily during the sea turtle nesting season within the disorientation evaluation area described in Exhibit "B". Following the conclusion of each sea turtle nesting season, Grantee must present to the Grantor an evaluation of annual disorientation totals for the disorientation evaluation area. Notwithstanding the foregoing, beginning in 2014, if the Grantor or its designee intends to collect disorientation data in the disorientation evaluation area during any particular nesting season, the Grantor may waive in writing Grantee's responsibility to collect such data for that season.

If the Grantor reasonably determines that trimming events are increasing sea turtle disorientation, it shall so advise Grantee and the parties will in good faith attempt to work out a resolution to the problem. If the parties are unable to resolve the disorientation problem, the Grantor may immediately give notice of termination of this Agreement.

Grantee acknowledges and agrees that Grantor may at its own expense have a representative on-site observing the activities of Grantee during trimming and in the event Grantee, its agents, employees or subcontractors are violating the terms of this Agreement, such Grantor representative shall have the right to stop the work in progress, and Grantee shall hold Grantor harmless from such work stoppage. Grantee is solely responsible to pay for all costs related to sea grape trimming, exotic species removal and any corrective action in the event that the terms of this Agreement are violated.

5. Term. This Agreement shall be effective upon execution by both parties and shall continue for five (5) years from the date of execution, unless earlier terminated as provided herein. After the initial five year term, the parties shall in good faith evaluate whether the Agreement has had a detrimental effect on sea turtles and, if not, whether it should be extended. At that time, the parties may decide to extend the Agreement for an additional period of time to be agreed upon by the parties.

6. Termination. If any party fails to fulfill its obligations under this Agreement in a timely and proper manner, any other party may give written notice of such deficiency. The party in default shall correct the deficiency in the time period specified by the non-defaulting party. If the defaulting party fails to correct the deficiency within the time period specified by the non-defaulting party, the non-defaulting party shall have the option to terminate this Agreement upon notice to the defaulting party.

This Agreement may be terminated for convenience of a party by either party giving



ninety (90) days written notice to the other party.

7. Notices. All formal notices between the Parties shall be deemed received if sent by certified mail, return receipt requested, or facsimile with confirmation receipt to the Parties' Representatives set forth below:

Grantor:
Director
Palm Beach County Department of Environmental Resources Management
2300 North Jog Road 4th floor
West Palm Beach, FL 33411
Facsimile: 561-233-2414

Grantee:
President
Ocean Royale Condominium Association, Inc.
700 Ocean Royale Way
Juno Beach, FL 33408
Facsimile:

8. Insurance.

Grantee and its subcontractors, agents or vendors who actually perform the vegetation trimming work provided for herein shall maintain the insurance provided for herein below, which shall cover Grantee's performance under this Agreement.

Grantee agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as GRANTOR's review or acceptance of insurance maintained by Grantee is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Grantee under this contract. In addition, Grantee agrees to notify GRANTOR of any cancellation, non-renewal or material change taking place during the life of this Agreement.

Commercial General Liability Grantee agrees to maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement(s) excluding nor limiting Premises/Operations, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis.

Additional Insured Grantee agrees to endorse COUNTY as an Additional Insured with a CG2026 Additional Insured or its equivalent – Designated Person or Organization endorsement to the Commercial General Liability. The additional insured shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents. Coverage shall be provided on a primary basis.

Waiver of Subrogation Grantee hereby waives any and all rights of Subrogation against the GRANTOR, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Grantee shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should Grantee enter into such an agreement on a pre-loss basis.

Certificate(s) of Insurance Grantee agrees to provide GRANTOR a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. In addition, Grantee agrees to notify GRANTOR of any cancellation, non-renewal or material change taking place during the life of this contract. The Certificate Holder address shall read:

PALM BEACH COUNTY

Director
Palm Beach County Department of Environmental Resources Management
2300 North Jog Road 4th floor
West Palm Beach, FL 33411
Facsimile: 561-233-2414

In addition to the requirements above, the following requirements apply to the vendor(s) / subcontractors who will be doing the work.

Business Automobile Liability Grantee agrees to maintain Business Automobile Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Grantee does not own automobiles, Grantee agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

Worker's Compensation Insurance & Employers Liability Grantee agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. Coverage shall be provided on a primary basis.

Additional Insured Grantee agrees to endorse GRANTOR as an Additional Insured with a CG2026 Additional Insured or its equivalent – Designated Person or Organization endorsement to the Commercial General Liability. The additional insured shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents. Coverage shall be provided on a primary basis.

Waiver of Subrogation Grantee hereby waives any and all rights of Subrogation against the GRANTOR, its officers, employees and agents for each required policy.

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When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Grantee shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should Grantee enter into such an agreement on a pre-loss basis.

Umbrella or Excess Liability. Grantee may satisfy the minimum liability limits required above for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for the Commercial General Liability and Business Auto Liability. Grantee agrees to endorse GRANTOR as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a pure/true "Follow-Form" basis.

Right to Review GRANTOR reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, the GRANTOR reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operating legally.

9. **Indemnification.** Grantee shall protect, defend, reimburse, indemnify and hold GRANTOR, its agents, employees and elected officials harmless from and against any and all claims, liability, loss, expense, cost, damages, or causes of action of every kind or character, including attorneys' fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of Grantee's performance of the terms of this Agreement or due to the acts or omissions of Grantee.

The Grantor shall not be not responsible for the accidental take of any sea turtle(s) due to the trimming of vegetation by Grantee pursuant to this Agreement, and Grantee shall assume full responsibility and liability for any and all impacts to sea turtles.

10. **Non-Discrimination.** Grantor and Grantee agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, or gender identity or expression be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of this Agreement.

11. **Grantor's Representations.** Grantor represents and warrants that Grantor is the lawful owner of and has good and marketable legal title to the License Premises. Grantor has the full right, power and authority to grant an License and all other rights granted hereunder to Grantee.



12. Authority to Execute This Agreement. Any person executing this Agreement and representing Grantor hereby warrants and represents that he or she has received all governmental authorization necessary to bind Grantor to the terms of this Agreement. Any person executing this Agreement and representing Grantee hereby warrants and represents that he or she has received all corporate authorization necessary to bind Grantee to the terms of this Agreement.

13. Non-Assignability. This Agreement shall not be assignable by either party without the prior written consent of the other and any attempted assignment in derogation of such prohibition shall be null and void.

14. Prohibited Acts by Grantee. With the sole exception of the License Premises, Grantee shall not enter on, over, under, through or across any other portion of Grantor's property for access to or to do work on the License Premises. Grantee shall promptly and at Grantee's sole expense repair or replace any unauthorized portion of Grantor's property damaged or destroyed and/or impairment thereto caused by Grantee. Unless otherwise authorized by the Grantor, the Grantee shall perform work on the License Premises only on weekdays, between 8:00 a.m. and 5:00 p.m. Grantee shall promptly remove, on a daily basis, any debris and large branches from major trimming events resulting from Grantee's work on the License Premises. Vegetation trimmings from minor events shall remain in the dune.

15. Governing Law and Venue. Any action to enforce this Agreement shall be brought in Palm Beach County, Florida. This Agreement shall be governed by the laws of the State of Florida.

16. Good Faith and Fair Dealing. The Parties shall at all times deal with each other fairly and in good faith.

17. Modification. This instrument shall not be modified except by written agreement signed by Grantor and Grantee.

18. Binding Effect. The covenants contained in this instrument, including all benefits and burdens, are not personal, but shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, transferees, successors and assigns.

19. No Joint Venture. Nothing in this instrument shall be construed to make the parties hereto partners or joint venturers or render either party liable for the debts or obligations of the other.

20. Vacation Of License. In the event of a termination of this License Agreement as set forth in Paragraph 5 or 6 above, Grantee, its successors or assigns, shall vacate said License Premises or relevant part thereof.



21. Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Grantee, its officers, agents, employees, and lobbyists in order to ensure compliance with agreement requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

22. Construction. As used herein, the term Grantee includes subcontractors, agents, vendors and employees of the Grantee.

23. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.

(The remainder of this page left blank intentionally)

IN WITNESS WHEREOF, Grantor and Grantee have set hereto their hand and seals on the day and year first above set forth.

ATTEST:

Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Shelley Vana, Chair

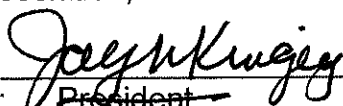
Approved as to Form and Legal Sufficiency

By:  _____
Assistant County Attorney

Approved as to Terms and Conditions

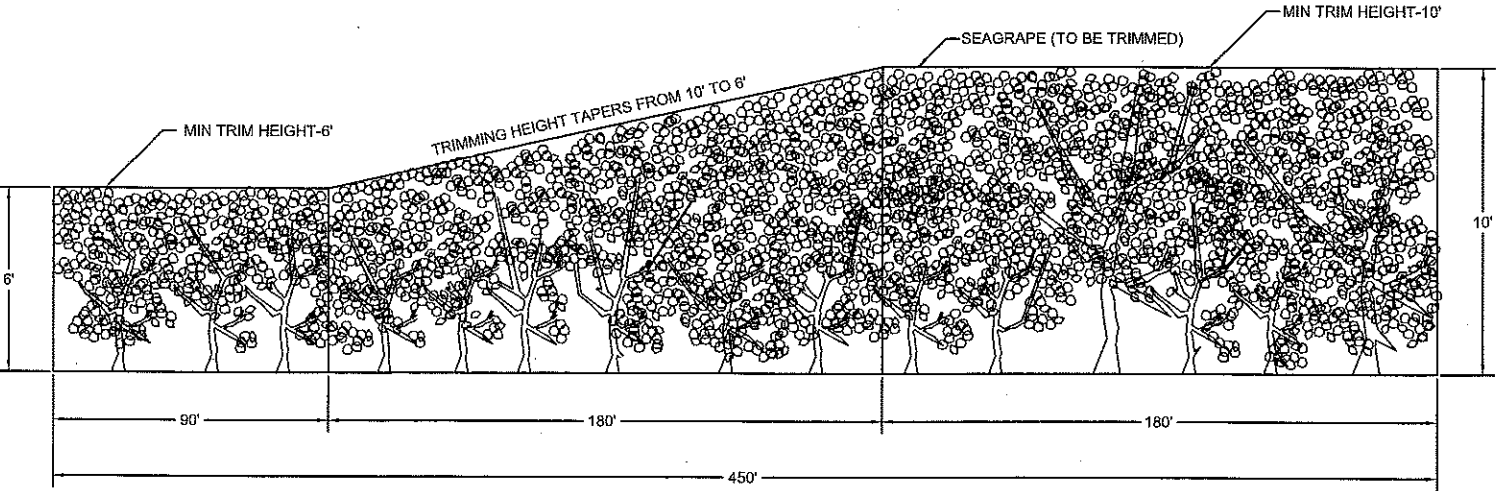
By:  _____
Department Director

Ocean Royale Condominium
Association, Inc. of Juno Beach

By:  _____
President
Treasurer

ELEVATION A

(VIEW LOOKING EAST ACROSS A1A FROM THE OCEAN ROYALE CONDO)

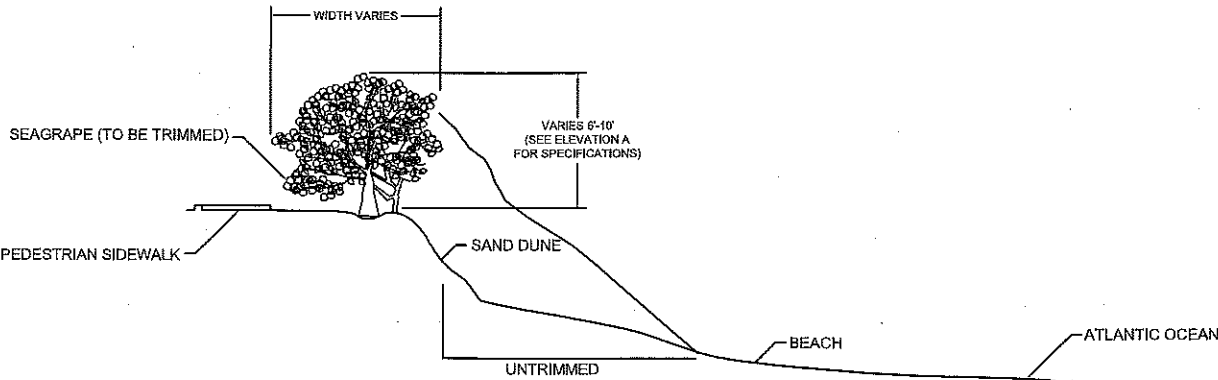


VERTICAL SCALE 1:6
HORIZONTAL SCALE 1:60



ELEVATION B

(VIEW LOOKING NORTH DOWN A1A DIRECTLY EAST OF THE OCEAN ROYALE CONDO)



NOT TO SCALE

PALM BEACH COUNTY
DEPARTMENT OF
ENVIRONMENTAL RESOURCES MANAGEMENT
2300 NORTH JOG ROAD, 4TH FLOOR
WEST PALM BEACH, FLORIDA
(561) 233-2400



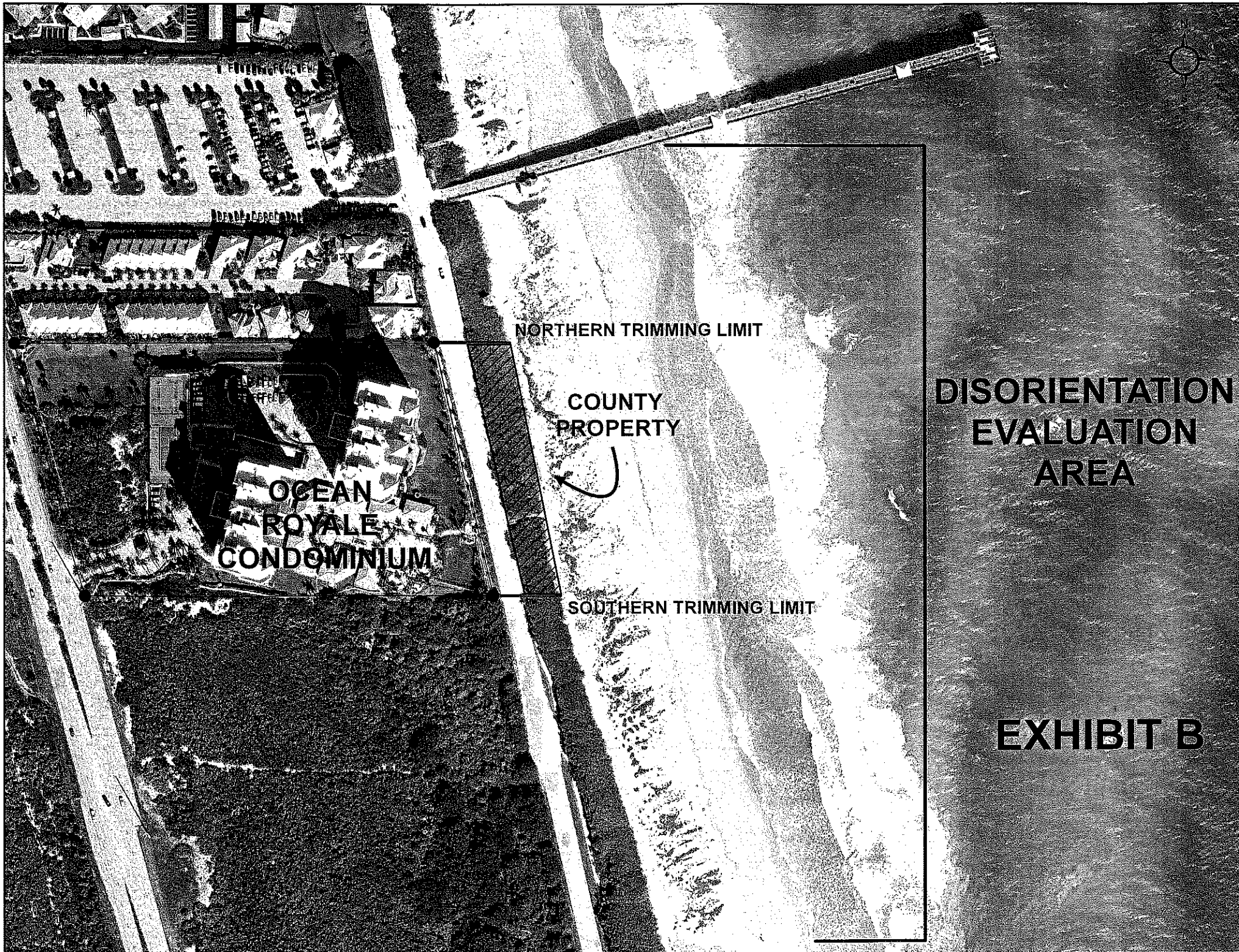
Scale:	AS NOTED
Approved:	PD
Drawn:	RB
Checked:	CT
Date:	7/12

SEAL

Project:
SEAGRAPE TRIMMING EAST OF
OCEAN ROYALE CONDO
JUNG BEACH, FLORIDA

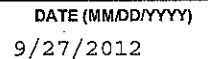
Sheet:
EXHIBIT A

ATTACHMENT 2



Attachment 3

EXHIBIT B



The ACORD name and logo are registered marks of ACORD

POLICY NUMBER: LB 007 6262

COMMERCIAL GENERAL LIABILITY
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - DESIGNATED
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)

Palm Beach County Board of County Commissioners, a Political Subdivision of
the State of Florida, its Officers, Employees and Agents

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.