

## **AGENDA ITEM SUMMARY**

( ) Public Hearing

## Environmental Resources Management

## Date \_\_\_\_\_

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	<u>\$216,758</u>	_____	_____	_____
External Revenues	_____	<u>(\$43,351)</u>	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	<u>\$173,407</u>	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____ No <u>X</u>				
Budget Account No.:	Fund	Department	Unit	Object	

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

Interlocal Agreement for EIS: The County will reimburse the Town of Palm Beach 38.6% (\$216,757.50) of costs associated with the Project. The remaining portion of the Project (61.4%) will be funded by the Town of Palm Beach. The Town of South Palm Beach will reimburse the County 20% of the local costs for the EIS (\$43,351) under a current Interlocal Agreement signed on May 15, 2007 (R2007-0796).

The County's tasks outlined in the Interlocal Agreement (BMA) are activities that the County already performs as part of permit required monitoring. There are no new costs involved with the Interlocal Agreement for the BMA or the BMA itself.

**C. Department Fiscal Review:**

*JP*

**III. REVIEW COMMENTS**

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

*N. Diaz 7/24/2013*  
*Dr. J. Jacobson 7/26/13*  
OFMB *7/23/13* Contract Development and Control  
*7-26-13*

**B. Legal Sufficiency:**

*[Signature]*  
Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
Department Director

(continued from Page 1)

The BMA is an agreement intended to coordinate and facilitate flexible permitting for beach management and to achieve net ecosystem benefits and related public objectives for the area. The Agreement Area is generally defined by the boundaries of the coastal cell located within the coastal system of Palm Beach Island.

The BMA Interlocal Agreement provides for administration and funding of the BMA monitoring and mitigation requirements by the Town with specific data collection by the County.

District 4 (SF)

**Background and Justification:** In September 2009, the BCC approved an Interlocal Agreement (R2009-1522) with the Town to cost-share on an EIS for a proposed breakwater project. Following the direction to end the evaluation of the breakwater project, the County and the Town developed separate erosion control projects for the project areas. As the currently proposed projects are adjacent to one another, the ACOE is requiring a joint EIS to evaluate the potential environmental, historic, and economic impacts of the projects.

Completion of an EIS by the ACOE is required under the National Environmental Policy Act (NEPA). To facilitate the document's completion, a third party contractor (TPC) as selected by the ACOE will write EIS. The ACOE requires that the Town, County, and TPC (Coastal Planning & Engineering) sign a Letter of Agreement (LOA) prior to the EIS being initiated. The LOA identifies the conditions and procedures to be followed by all parties in the preparation of the EIS.

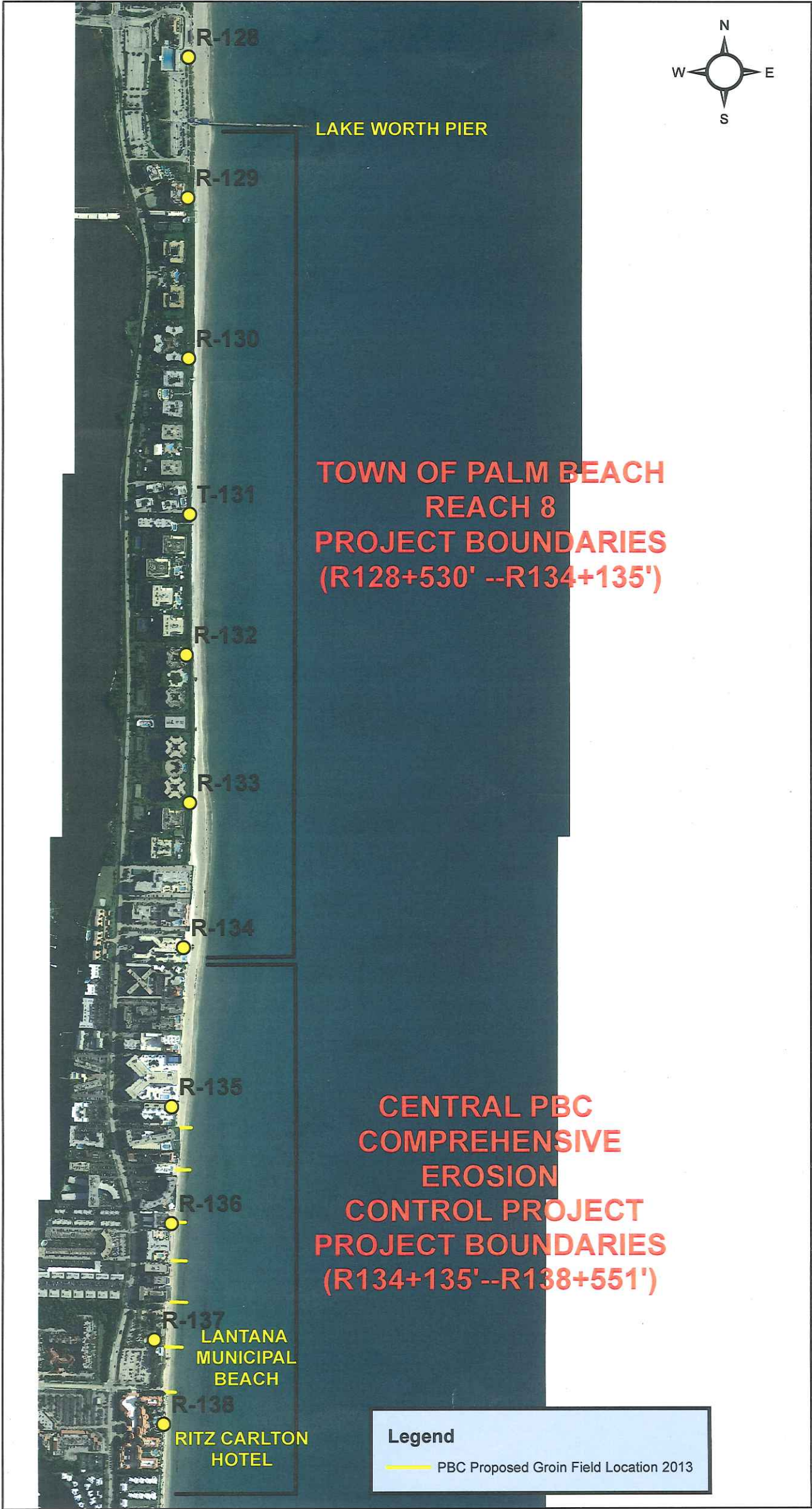
The first FDEP Bureau of Beaches & Coastal Systems Palm Beach Island Beach Management Agreement (BMA) Pilot Project meeting occurred in May 2012. The intent of the Project is to develop a new approach to managing current beach management efforts. Currently, most beach projects are evaluated and permitted on a project-by-project basis. FDEP agreed to develop a cooperative agreement that would manage and permit stretches of shoreline as a region. The first region identified was the 15.7 miles of shoreline extending from the Lake Worth/Palm Beach Inlet to the South Lake Worth Inlet. This stretch of shoreline crosses multiple municipal boundaries and includes numerous stakeholder groups who worked together collaboratively over the past year to identify and assess the region's beach management needs including inlet maintenance, environmental concerns, cost-sharing opportunities as well as monitoring, mitigation, and permitting requirements.

Within the 15.7 miles of BMA cell, 12.1 miles is within the jurisdictional boundary of the Town of Palm Beach. The remaining shoreline (4.6 miles) falls within the jurisdictional boundaries of four municipalities including the City of Lake Worth, Town of South Palm Beach, Town of Lantana, and Town of Manalapan. The County's Central Palm Beach County Comprehensive Erosion Control Project falls within the BMA cell and includes three municipalities' shorelines.

The Interlocal Agreement between the Town and County for implementation of the cell-wide obligations and commitments outlined within the BMA document does not contain a cost-sharing component. The tasks outlined within the Interlocal Agreement to be completed by the County are activities that the County already performs on a yearly basis as part of the County's routine physical and environmental monitoring.

EIS PROJECT LOCATION

ATTACHMENT 1



INTERLOCAL AGREEMENT BETWEEN PALM BEACH  
COUNTY AND THE TOWN OF PALM BEACH

THIS AGREEMENT is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 2013, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "County") and the TOWN OF PALM BEACH (the "Town"), a municipal corporation in the State of Florida, each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes.

WITNESSETH:

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the Town is empowered to exercise any governmental, corporate, and proprietary power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners is empowered to establish and administer programs of beach erosion control and to enter into agreements with other governmental agencies within or outside the boundaries of the County for joint performance, or performance of one unit on behalf of the other, of any of either governmental entity's authorized functions; and

WHEREAS, the Town is the local sponsor for the Reach 8 South End Palm Beach Restoration Project, a project to place sand in the Town's municipal limits within an area designated as Reach 8, where Reach 8 consists of approximately 6,970 linear feet of shoreline extending from the Lake Worth Pier to the southerly limits of the Town of Palm Beach; and

WHEREAS, the County is the local sponsor for the Central Palm Beach County Comprehensive Erosion Control Project, a project to design and permit a shoreline protection solution including shoreline stabilizing structures and dune fill in an area which consists of approximately 4,378 lineal feet of shoreline extending from the southerly limits of the Town of Palm Beach to the south property line of the Ritz Carlton Hotel; and



WHEREAS, Both the County and the Town are required to prepare an Environmental Impact Statement (EIS), for their respective projects; and

WHEREAS, It is the mutual desire of both the County and the Town to combine their resources and recognize the cost efficiency of performing one EIS for the entire shoreline length by including within the EIS both projects defined above so as to incorporate within the EIS a total linear shoreline of approximately 11,348 feet; and

WHEREAS, the County and the Town desire to establish their respective roles in the Project to make the most efficient use of their respective resources.

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

1. Purpose of the Agreement. The purpose of this Agreement, due to the multi-jurisdictional nature of the EIS and the significant savings possible because of economies of scale, is to provide a mechanism for the Town to include in the EIS for the Reach 8 South End Palm Beach Restoration Project an additional approximate 4,378 feet of lineal shoreline located within the jurisdictional limits of the Town of South Palm Beach, Town of Lantana, and Town of Manalapan, so as to define a study area of approximately 11,348 feet of linear shoreline in Reaches 8, 9, and 10 (the "Project").

2. Services Required. The Project entails the successful completion of an Environmental Impact Statement at a consultant proposed cost of \$561,548.00.

3. Cost Sharing and Payments. The Town agrees to provide funding for the EIS in anticipation of a 38.6% reimbursement from the County, which represents the County's proportionate share of the linear shoreline contained within the Project. The County shall reimburse Town quarterly for the County's 38.6% share of Project costs incurred by the consultant retained by the Town upon presentation from the Town of an itemized statement identifying the Project and costs incurred, along with a progress report and update in writing related to the status of work completed to date. The Town shall provide any further documentation deemed necessary by the County. Invoices received from the Town shall be reviewed by the Department of Environmental Resources Management and upon approval shall be sent to the County's Finance Department for final approval and payment. Invoices will normally be paid within forty-five (45) days of receipt. All statements to the County and payments to the Town shall be submitted at the addresses provided in paragraph 9. If a dispute arises concerning any statement, the County shall pay any amount not in dispute and shall immediately notify the Town's Representative in writing of the amount of and reason for the disputed payment due.

4. Termination. The parties agree that in the event that either party for any reason determines, at either party's sole discretion, that it wishes to terminate this Agreement, the party may, in its sole discretion, terminate this Agreement following a thirty (30) day written notice to the other party. If the County terminates this Agreement

after the Town has entered into a contract with a consultant for completion of the Project, the County shall have no further obligation hereunder other than to reimburse the Town for the 38.6% costs spent on the Project up to the date of termination of this Agreement.

5. Consultant Management. The Town shall retain and manage any consultants necessary to complete the Project. The Town shall keep the County informed of the progress of the Project and, to that end, shall schedule regular meetings between staffs of both parties and the consultant(s). The Town shall timely provide the County with the opportunity to review and comment on all scopes of work, proposals, and deliverables associated with the Project prior to acceptance and payment by the Town and shall in good faith use best efforts to incorporate any changes to the scopes of work, proposals, and deliverables requested by the County.

6. Term. The term of this Agreement shall commence upon execution by both parties and shall terminate upon completion of the Project and payment of all Project costs, unless terminated earlier as provided herein. Notwithstanding, work conducted on this Project by the Town and its consultant(s) beginning on or after July 9, 2013 shall be eligible for reimbursement by the County.

7. Funding. Notwithstanding any other provision herein, the County's obligation to pay under this Agreement is contingent upon appropriation for its purpose by its Board of County Commissioners in its annual fiscal year budget and the Town's obligation to pay under this Agreement is contingent upon an appropriation for its purpose by its Town Council in its annual fiscal year budget.

8. Party Representatives. The County's representative/contract monitor during the term of this Agreement shall be the Director of the Department of Environmental Resources Management whose telephone number is (561) 233-2400.

The Town's representative/contract monitor during the term of this Agreement shall be the Town Manager, whose telephone number is (561)838-5400.

9. Notices. All notices required under this Agreement shall be delivered in writing by certified mail, return receipt requested, facsimile with delivery confirmation or hand delivery to:

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

Town Manager  
Town of Palm Beach  
360 South County Road  
Palm Beach, FL 33480  
Facsimile:

Notices shall be deemed delivered upon receipt. Any change in the address/facsimile where notices are to be delivered shall be provided in writing and shall be effective five days after receipt.

10. Default and Opportunity to Cure. The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default thirty (30) days written notice to cure said default before exercising any of its rights as provided for in this Agreement. If the defaulting party fails to correct the default within this time, unless otherwise agreed by the parties, the party not in default may terminate the Agreement at the expiration of the thirty (30) day time period. In the event of a default by the County, the County shall pay the Town for all costs incurred and work performed on the Project through the date of termination.

11. Delegation. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, County, or municipal officers.

12. Recording. A copy of this Agreement shall be recorded and filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

13. Liability. The parties to this Agreement and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Section 768.28, Florida Statutes.

14. Indemnification. Each party agrees to protect, defend, reimburse, indemnify and hold the other party, its agents, employees and elected officers, free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault whether active or passive of the party, or anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. Each party's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the other party, its respective agents, servants, employees or officers, nor shall the liability limits set forth in 768.28, Florida Statutes, be waived.

15. Insurance. Each party shall maintain a fully funded program of self-insurance pursuant to Section 768.28 Florida Statutes. Each party agrees to require any consultant performing work on the Project to maintain adequate insurance coverage, naming both the Town and County as an additional insured and providing that the consultant shall save, defend and hold harmless the Town and the County from any and all suits, actions, claims, demands, liabilities, interests, attorneys' fees,



costs and expenses of whatsoever kind or nature arising or occasioned or contributed to in whole or in part by reason of any act, omission, fault or negligence of the consultant.

16. Equal Opportunity. The County and the Town agree that no person shall, on the grounds of age, race, color, sex, national origin, ancestry, disability, religion, ancestry, marital status, familial status, sexual orientation or gender identity and 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.

17. Severability. In the event that any section, paragraph, sentence, clause, or provisions hereof is 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.

18. Waiver of Breach. The failure to insist on strict performance of or the waiver of any covenant, condition, or provision of this Agreement by any party shall not relieve the other party from performing any other obligation strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

19. Entirety of Agreement. The TOWN and COUNTY agree that this Agreement, together with any attached exhibits, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms or obligations in the Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

20. Independent Contractor. Each party recognizes that it is an independent contractor and not an agent or servant of the other party. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.

21. Enforcement Costs. Except as otherwise provided herein, any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties. This provision pertains only to the parties to the Agreement.

22. Maintenance of Records. The parties shall maintain, in accordance with generally-accepted governmental auditing standards, all financial and nonfinancial

records and reports directly or indirectly related to the negotiation or performance of this Agreement or any amendment hereto, including supporting documentation for any service rates, expenses, research or reports. The parties shall have the right to examine in accordance with generally-accepted governmental auditing standards all records directly or indirectly related to this Agreement or any amendment hereto. Such examination may be made only upon reasonable notice, time and place. In the event the parties should become involved in a legal dispute with a third party arising from performance under this Agreement or any amendment hereto, the parties shall extend the period of maintenance for all records relating to this Agreement or any amendment hereto until the final disposition of the legal dispute, and all such records shall be made readily available to the other party.

23. Governing Law and Venue. The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Fifteenth Judicial Circuit Court for claims under state law and in the Southern District of Florida for any claims that are justiciable in federal court.

24. Third Parties. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the City.

25. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document 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.

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

27. Palm Beach County Office of the 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 any party contracting with the COUNTY and its officers, agents, employees and lobbyists in order to ensure compliance with contract 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.

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Mayor of Palm Beach County and the seal of Board of County Commissioners to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board; and the Town of Palm Beach has caused this Agreement to be signed in its corporate name by its Mayor and its corporate seal to be affixed hereto, attested by its Town Clerk, the date and year first above written.

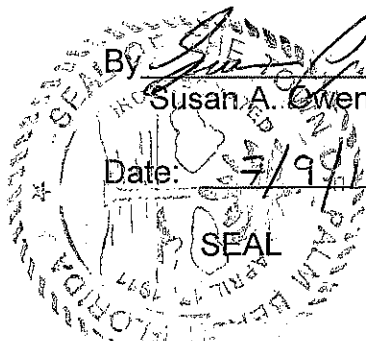
**TOWN OF PALM BEACH, FLORIDA**

By Gail L. Coniglio  
Gail L. Coniglio, Mayor

ATTEST:

By Susan A. Owens  
Susan A. Owens, Town Clerk

Date: 7/9/13



APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By John C. Randolph  
John C. Randolph, Town Attorney

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

By \_\_\_\_\_  
Steven L. Abrams, Mayor

ATTEST:

Sharon R. Bock, Clerk and Comptroller

By \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

SEAL

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By Assistant County Attorney  
Assistant County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS

By Robert Robbins  
Robert Robbins, Director

ATTACHMENT 3

**LETTER OF AGREEMENT  
AMONG  
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT,  
THE TOWN OF PALM BEACH,  
PALM BEACH COUNTY  
AND  
COASTAL PLANNING & ENGINEERING, INC., A CB&I COMPANY  
FOR THE  
REACHES 8, 9, AND 10 SHORELINE STABILIZATION**

THIS LETTER of AGREEMENT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the U.S. Army Corps of Engineers, Jacksonville District, (the "Corps"), The Town of Palm Beach, a municipal corporation in the State of Florida, (the "Town"), Palm Beach County, a political subdivision of the State of Florida (the "County"), and Coastal Planning & Engineering, Inc., a Florida corporation ("TPC").

**1. BACKGROUND:** The Town of Palm Beach, is pursuing authorization from the U.S. Army Corps of Engineers, Jacksonville District, under the provisions of Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act for nourishment within Reach 8 between DEP monuments R-128+530' and R-134+135'. Issuance of Department of the Army (DA) permits under Section 7 for these activities would constitute a "Major" Federal Action under the National Environmental Policy Act of 1969 (NEPA). Palm Beach County has also submitted design documents to seek authorization for the construction of breakwaters and groins with sand placement between DEP monuments R-117 and R-148, later reduced to between R-132 and R-148), which had subsequently been withdrawn.

The proposed beach nourishment projects within the Town and central Palm Beach County received extensive public comment and review due to the interest shown by nongovernment organizations, local, state, and federal agencies, and the general public. Given the size of the project area, the lack of previous beach nourishments, and the amount of hardbottom in the area, the Corps has determined that the impacts of the proposed projects should be considered in one impact statement as connected actions and that the impacts of those actions may be significant. Because the Corps has determined that these two proposed actions together with other past, present, and reasonably foreseeable future actions may significantly affect the quality of the human environment, the Corps will accordingly prepare an EIS to evaluate the significant cumulative impacts of the two proposed shoreline stabilization projects and their alternatives.

The EIS must comply with all provisions of the NEPA, Council on Environmental Quality (CEQ) regulations (40 C.F.R. Part 1500-1508), and CEQ guidance (see <http://ceq.hss.doe.gov/nepa/nepanet.htm>). In particular, the EIS must comply with the Corps Regulatory Program's NEPA Implementation Procedures at 33 C.F.R. Part 325, Appendix B. The EIS shall disclose and analyze all significant environmental impacts of the proposed project as required by NEPA. A reasonable range of alternatives shall be developed and analyzed, based on issues raised by agency and public scoping. The EIS shall address the Public Interest Review requirements (33 C.F.R. 320.4) of the Corps' Regulatory Program Regulations (33 C.F.R. Parts 320-330), as well as the factual requirements of the

the respective parties in the preparation of the EIS for shoreline stabilization in Reaches 8 and 9. This LOA defines the conditions and procedures to be followed in preparing and completing the EIS within the scope of the attached Statement of Work for Preparation of an Environmental Impact Statement for Reaches 8, 9, and 10 Shoreline Stabilization [hereinafter, SOW]. Among other things, the LOA will also identify communications strategies and protocols to ensure there is no conflict of interest relative to the formulation of the EIS to maintain the public's faith in the integrity of the process.

**3. LEAD AGENCY AND DECISION:** The Corps shall be the "Lead Agency" pursuant to 40 C.F.R. 1501.5(c) and shall supervise the preparation of the EIS. The Corps is responsible for ensuring compliance with all requirements of NEPA and applicable regulations. The Corps shall ensure that all significant environmental issues and impacts, and reasonable alternatives and their impacts, are addressed in the EIS to the extent mandated by NEPA and applicable regulations and shall be ultimately responsible for the scope and content of the EIS. The Corps shall also be responsible for ensuring that the TPC completes all tasks consistent with the SOW. The Corps shall determine whether or not to grant authorization pursuant to Section 404 of Clean Water Act (33 U.S.C. 1344) for shoreline stabilization impacting waters of the United States. .

**4. COOPERATING AGENCY DECISIONS:** The Corps is not aware of any potential Cooperating Agencies, pursuant to 40 C.F.R. 1501.6, for the proposed project. If Cooperating Agencies are identified, the EIS will address the requirements of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible, consistent with the responsibility of the Lead Agency.

**5. RESPONSIBILITIES:** The EIS is being prepared under a TPC arrangement, pursuant to 40 C.F.R. § 1506.5(c). The TPC and associated subcontractors are subject to the supervision and control of the Corps. Although The Town of Palm Beach is responsible for paying the TPC consistent with the terms and conditions of this LOA, the SOW, and any other applicable contractual obligation, they have no supervision or control over the TPC in the preparation of the EIS. Payment of the TPC and associated subcontractors shall be as set forth in a separate contractual agreement between the TPC and The Town.

In order to prevent any bias or potential appearance of influence by The Town **and** their contractors in the formulation of the EIS and to ensure and maintain the integrity of the NEPA and 404 review process, general provisions of this LOA and communication protocols are specified below. These are not intended to be so restrictive as to eliminate all efficiency from the information exchange process. The following is not an all-inclusive list of communication limitations and documentation procedures, but they set forth policies and practices that need to be complied with to preserve the integrity of the Federal decision-making process. Tracking and accurate documentation, as well as common sense decisions, will play a major role in their implementation. It is also recognized that a learning process will likely occur and revisions to this LOA may be necessary.

General provisions of the LOA include:

The EIS will be prepared by the TPC under supervision and direction from the Corps. The principals and all subcontractors to be involved in preparing the EIS will be evaluated for expertise and must be accepted and approved by the Corps. The list of

approved principals and subcontractors at the time of execution of this LOA includes Coastal Planning and Engineering Inc., A CB&I Company. Changes in principals and subcontractors used in the analysis must comply with NEPA guidelines on the use of third party contractors.

The TPC will report directly to the designated Corps representative, the Corps Project Manager.

Although the TPC will be paid by The Town, the TPC is obligated to follow the directions of Corps. Neither the Town nor the County will direct the TPC in the modification or inclusion of any data, evaluations, or other materials pertinent to the preparation of the EIS. The Corps shall make the final determination on the inclusion or deletion of any material in the EIS. The Corps is ultimately responsible for ensuring compliance with requirements of NEPA.

The TPC, under the sole direction of the Corps and to the Corps' satisfaction, is responsible for successfully completing the tasks identified in the SOW. As provided in the SOW, the Corps will contact the Town before authorizing a modification, addition, or deletion of any task in preparation of the EIS (i.e. work that would require a modification to the Statement of Work).

The requirements of 40 C.F.R. § 1506.5 (c), relating to conflicts of interest must be followed. The TPC cannot have financial or economic interest in the outcome of the EIS. A copy of the executed Disclosure Statement is attached to this LOA.

The Town agrees to enter into a consulting contract, or similar instrument, with the TPC that is consistent with the terms of this LOA. The Town agrees to pay the TPC for all services rendered in the preparation of the EIS consistent with the terms and conditions of this LOA, the SOW, and any other applicable contractual obligation. TPC agrees that the Corps is not obligated in any manner to pay for the services rendered by the TPC relating to the EIS.

The Corps recognizes that the Town and the County have a separate interlocal agreement and that the Town will be acting as the main contact for the EIS. Any limitation on this document placed on the Town is also intended to apply to the County.

The TPC will have the primary responsibility for writing and completing revisions to the EIS, Draft EIS (DEIS), Preliminary Final EIS (PFEIS) and Final EIS (FEIS). The Corps will review, approve or reject any information in the EIS documents, and decide on any changes to the EIS documents during all stages of preparation.

The Town or the County may be given the opportunity to comment on sections or chapters of the EIS during the EIS preparation. Any applicant review of draft sections of the EIS will be intended to assure accuracy of data and will be at the sole discretion of the Corps. Comments from The Town or the County will be provided in a timely manner to the Corps for consideration and shall be included or modified at the discretion of the Corps.

Not less than 30 days after the FEIS is filed with USEPA, the Corps will prepare a Record of Decision (ROD) and shall render a decision on affected Section 404 DA permit applications, as applicable.



The Corps will utilize its Project Management Business Process in conducting the EIS process.

Communication protocols to be followed include:

- a. Only the Corps will provide instructions and guidance to the TPC relative to the preparation of the EIS, impact assessments, data interpretation, and conclusions. These are the sole responsibility of the Corps and the third-party contractor. The TPC may neither directly take nor request direction from the Town or the County on any aspect of the EIS preparation.
- b. Direct contact between the TPC and the Town or the County may occur. However, contact when related to content or substance of the EIS will be with the knowledge of the Corps and limited to clarification of applicant prepared information, technical reports, and/or responses to comments that are related to Town's area of expertise, or responses from The Town to the TPC in relation to technical reports, analyses, or work items prepared under the SOW. The Corps PM shall be copied on any emails or invited to any telephone conferences/meetings.
- c. Any documents, reviews, discussions and decisions that involve scope of work, change orders, schedule, procedures, content, or process must involve the project managers, or their respective authorized representatives, identified in paragraph 6 of this LOA ("Project Managers").
- d. Any communication, contact, coordination, meetings, document review or consultation between the TPC and The Town or the County must be documented through e-mail, memoranda, conversation records, or other notes, as appropriate. This documentation is the responsibility of the TPC and is to be compiled in the administrative record with dated copies provided to the Corps and the Town. Prior to initial contacts between the TPC and The Town occurring, the Corps Project Managers must be notified.
- e. Work products prepared by the TPC will be submitted directly to the Corps. To protect the deliberative process, the Corps will determine the appropriateness and timing of release of any work products to The Town or the County. The Town or the County will supply various work products for the preparation of the EIS as described in the SOW for the TPC.

**6. PROJECT MANAGERS:** For the purposes of coordinating the responsibilities of the parties for the preparation of an EIS for the projects:

a. Applicant/Owner designates:

Robert Weber  
Coastal Coordinator  
Town of Palm Beach Public Works Department  
Post Office Box 2029  
Palm Beach, Florida 33480-2029  
Phone: (561) 838-5440  
Facsimile: (561) 835-4691

Robert Robbins  
Director  
Environmental Resources Management  
Palm Beach County  
2300 N Jog Road, 4th floor  
West Palm Beach, FL 33411  
Phone: (561) 233-2454  
[rrobbins@pbcgov.org](mailto:rrobbins@pbcgov.org)

b. Third Party Contractor designates:

Thomas Pierro, P.E.  
Vice President  
Coastal Planning & Engineering, Inc.  
A CB&I Company  
2481 Nw Boca Raton Blvd.  
Boca Raton, FL 33431  
Phone: (561) 391-8102  
Facsimile: (561) 391-9116

c. U.S. Army Corps of Engineers Project Manager:

Garett Lips  
U.S. Army Corps of Engineers  
4400 PGA Blvd., Suite 500  
Palm Beach Gardens, FL 33410  
Phone: (561) 472-3519  
Facsimile: (561) 626-6971

**7. NON-FUND OBLIGATING DOCUMENT:** This LOA is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or a transfer of anything of value between parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This LOA does not provide

such authority. Specifically, this LOA does not establish authority for noncompetitive award to a subcontractor of any other contract or agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

**8. EXPIRATION:** This LOA shall be in effect for a period of three years from the executed date and shall terminate at the end of that time unless otherwise modified, formally cancelled, or renewed by the parties.

**9. MODIFICATION AND AMENDMENT:** This LOA may be modified or amended, in writing, by mutual agreement of the parties. In considering any such modifications or amendments, all parties to this agreement will make a good-faith effort to adhere to the schedule established in the SOW and to propose modifications only when necessary to meet the provisions of the NEPA and all corresponding implementing regulations. All parties recognize and agree that time is of the essence.

**10. TERMINATION:** The Town or the Corps, in writing, may terminate the instrument in whole or in part, at any time before the date of expiration, with 30 days written notice.

**11. PARTICIPATION IN SIMILAR ACTIVITIES:** This instrument in no way restricts the Corps from participating in similar activities with other public or private agencies, organizations, and individuals.

**12. EFFECTIVE DATE:** This Memorandum shall be effective as of July \_\_, 2013.

U.S. Army Corps of Engineers

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Donald W. Kinard  
Chief, Regulatory Division

Coastal Planning & Engineering, Inc.  
A CB&I Company

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Thomas Pierro  
Vice-President

Town of Palm Beach

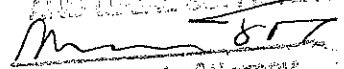
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Peter B. Elwell  
Town Manager

Palm Beach County

---

Steven L. Abrams  
Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY   
County Attorney

ATTACHMENT 4

INTERLOCAL AGREEMENT BETWEEN PALM BEACH  
COUNTY AND THE TOWN OF PALM BEACH

THIS AGREEMENT is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_ 2013, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "County") and the TOWN OF PALM BEACH (the "Town"), a municipal corporation in the State of Florida, each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes, and hereinafter referred to collectively as the parties..

WITNESSETH:

WHEREAS, Section 163.01, Florida Statutes, known as the "Florida Interlocal Cooperation Act of 1969" authorizes local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities that will harmonize geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, Part I of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the Town is empowered to exercise any governmental, corporate, and proprietary power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, pursuant to Chapter 125.01, Florida Statutes, the Board of County Commissioners is empowered to establish and administer programs of beach erosion control and to enter into agreements with other governmental agencies within or outside the boundaries of the County for joint performance, or performance of one unit on behalf of the other, of any of either governmental entity's authorized functions; and

WHEREAS, the State of Florida Department of Environmental Protection (the "FDEP") has coordinated beach management activities for Palm Beach Island, through a Beach Management Agreement (BMA) pursuant to the authority in Sections 161.101, 403.061, and 403.0752, Florida Statutes, for the primary goal of defining mutually agreeable methods for coastal erosion control, natural community protection, and monitoring protocols in pursuit of regional management for the coastal system between the Lake Worth Inlet and the South Lake Worth Inlet; and

WHEREAS, the shore-parallel length of Palm Beach Island is approximately 15.70 miles, of which 12.1 miles is within the jurisdictional boundary of the Town of Palm Beach and 4.60 miles is within the jurisdictional boundaries of the City of Lake Worth, Town of South Palm Beach, Town of Lantana, and Town of Manalapan; and

WHEREAS, the Town of Palm Beach shoreline represents 92.8% (12.10 miles) of the critically eroded shoreline of Palm Beach Island (13.03 miles); and

WHEREAS, the Town and the County are participants of the BMA, which is adopted and incorporated herein as may be amended from time to time as Exhibit 1; and.

WHEREAS, this Agreement outlines each party's obligations and commitments under the BMA.

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

1. Purpose of the Agreement. The purpose of this Agreement, due to the multi-jurisdictional nature of the BMA, is to provide a mechanism for the Town and the County to implement the cell-wide obligations and commitments of the BMA.

2. Responsibilities of the Parties. The Town shall administer and fund the annual cell-wide monitoring and mitigation plans, as described in the BMA and shall be solely responsible to comply with all requirements of the BMA, with the exception of the following elements, which shall be provided to the Town by the County:

- 2.1. Annual bathymetric and topographic cross-section profile lines of R-135 through R-151 (17 total) within thirty (30) calendar days following completion of fieldwork. The physical monitoring surveys are to be completed within the July and August window, weather permitting, and;
- 2.2. Island-wide rectified digital aerial photography, flown in the summer (July or August months, weather permitting) within thirty (30) days of aerial photography sortie, and;
- 2.3. Island-wide digitization of exposed hardbottom from summer aerial photography (July or August months, weather permitting) within sixty (60) days of aerial photography sortie.

3. Cost Sharing and Payments. There is no cost sharing component to this Agreement.

4. Termination. The parties agree that in the event that either party for any reason determines, at either party's sole discretion, that it wishes to terminate this

Agreement, the party may, in its sole discretion, terminate this Agreement following a thirty (30) day written notice to the other party.

5. Term. The term of this Agreement shall commence upon execution by both parties and shall be perpetual, consistent with the terms of the BMA.

6. Funding. Notwithstanding any other provision herein, the County's obligation to perform its obligations under this Agreement is contingent upon appropriation for its purpose by its Board of County Commissioners in its annual fiscal year budget and the Town's obligation to perform its obligations under this Agreement is contingent upon an appropriation for its purpose by its Town Council in its annual fiscal year budget.

7. Party Representatives. The County's representative/contract monitor during the term of this Agreement shall be the Director of the Department of Environmental Resources Management whose telephone number is (561) 233-2400.

The Town's representative/contract monitor during the term of this Agreement shall be the Town Manager, whose telephone number is (561)838-5400.

8. Notices. All notices required under this Agreement shall be delivered in writing by certified mail, return receipt requested, facsimile with delivery confirmation or hand delivery to:

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

Town Manager  
Town of Palm Beach  
360 South County Road  
Palm Beach, FL 33480  
Facsimile:

Notices shall be deemed delivered upon receipt. Any change in the address/facsimile where notices are to be delivered shall be provided in writing and shall be effective five days after receipt.

9. Default and Opportunity to Cure. The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party in default thirty (30) days written notice to cure said default before exercising any of its rights as provided for in this Agreement. If the defaulting party fails to correct the default within this time, unless otherwise agreed by the parties, the party not in default may terminate the Agreement at the expiration of the thirty (30) day time period.

10. Remedies. No remedy herein conferred upon any Party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative



and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any Party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

11. Compliance with Laws. The Parties and their employees, subcontractors, or assigns, if any, shall comply with all applicable federal, state, and local laws and regulations relating to performance of this Agreement.

12. Delegation. Nothing contained herein shall be deemed to authorize the delegation of the constitutional or statutory duties of state, County, or municipal officers.

13. Recording. A copy of this Agreement shall be recorded and filed with the Clerk of the Circuit Court in and for Palm Beach County, Florida.

14. Liability. Each party to this Agreement and its respective officers and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by either party, pursuant to Section 768.28, Florida Statutes.

15. Indemnification. Each party agrees to protect, defend, reimburse, indemnify and hold the other party, its agents, employees and elected officers, free and harmless at all times from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature whether arising in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission or fault whether active or passive of the party, or anyone acting under its direction or control, or on its behalf in connection with or incident to the performance of this Agreement. Each party's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law but in no event shall they apply to liability caused by the negligence or willful misconduct of the other party, its respective agents, servants, employees or officers, nor shall the liability limits set forth in 768.28, Florida Statutes, be waived.

16. Insurance. Each party shall maintain a fully funded program of self-insurance pursuant to Section 768.28 Florida Statutes. Each party agrees to require any consultant performing work on the Project to maintain adequate insurance coverage, naming both the Town and County as an additional insured and providing that the consultant shall save, defend and hold harmless the Town and the County from any and all suits, actions, claims, demands, liabilities, interests, attorneys' fees, costs and expenses of whatsoever kind or nature arising or occasioned or contributed to in whole or in part by reason of any act, omission, fault or negligence of the consultant.

17. Equal Opportunity. The County and the Town agree that no person shall, on the grounds of age, race, color, sex, national origin, ancestry, disability, religion, marital status, familial status, sexual orientation or gender identity and 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.

18. Severability. In the event that any section, paragraph, sentence, clause, or provisions hereof is 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.

19. Waiver of Breach. The failure to insist on strict performance of or the waiver of any covenant, condition, or provision of this Agreement by any party shall not relieve the other party from performing any other obligation strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

20. Entirety of Agreement. The Town and County agree that this Agreement, together with any attached exhibits, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms or obligations in the Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

21. Independent Contractor. Each party recognizes that it is an independent contractor and not an agent or servant of the other party. No person employed by any party to this Agreement shall, in connection with the performance of this Agreement or any services or functions contemplated hereunder, at any time, be considered the employee of the other party, nor shall an employee claim any right in or entitlement to any pension, worker's compensation benefit, unemployment compensation, civil service, or other employee rights or privileges granted by operation of law, except through and against the entity by whom they are employed.

22. Enforcement Costs. Except as otherwise provided herein, any costs or expenses (including reasonable attorney's fees) associated with the enforcement of the terms and/or conditions of this Agreement shall be borne by the respective parties. This provision pertains only to the parties to the Agreement.

23. Maintenance of Records. The parties shall maintain, in accordance with generally-accepted governmental auditing standards, all financial and nonfinancial records and reports directly or indirectly related to the negotiation or performance of this Agreement or any amendment hereto, including supporting documentation for any service rates, expenses, research or reports. The parties shall have the right to examine in accordance with generally-accepted governmental auditing standards all records directly or indirectly related to this Agreement or any amendment hereto. Such examination may be made only upon reasonable notice, time and place. In the event

the parties should become involved in a legal dispute with a third party arising from performance under this Agreement or any amendment hereto, the parties shall extend the period of maintenance for all records relating to this Agreement or any amendment hereto until the final disposition of the legal dispute, and all such records shall be made readily available to the other party.

24. Public Access to Records. The Parties shall allow public access to all documents and materials related to this Agreement in accordance with Chapter 119, Florida Statutes, and related statutes. Should either Party assert any exemption to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive relief or other relief provided by law, shall be upon the Party asserting the exemption.

25. Governing Law and Venue. The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Fifteenth Judicial Circuit Court for claims under state law and in the Southern District of Florida for any claims that are justiciable in federal court.

26. Third Parties. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employee of the County and/or the Town.

27. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in drafting this document 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.

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

29. Palm Beach County Office of the 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 any party contracting with the County and its officers, agents, employees and lobbyists in order to ensure compliance with contract 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.

IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Mayor of Palm Beach County and the seal of Board of County Commissioners to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board; and the Town of Palm Beach has caused this Agreement to be signed in its corporate name by its Mayor and its corporate seal to be affixed hereto, attested by its Town Clerk, the date and year first above written.

**TOWN OF PALM BEACH, FLORIDA**

By \_\_\_\_\_  
Gail L. Coniglio, Mayor

ATTEST:

By \_\_\_\_\_  
Susan A. Owens, Town Clerk

Date: \_\_\_\_\_

SEAL

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By \_\_\_\_\_  
John C. Randolph, Town Attorney

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

By \_\_\_\_\_  
Steven L. Abrams, Mayor

ATTEST:  
Sharon R. Bock, Clerk and Comptroller

By \_\_\_\_\_  
Deputy Clerk

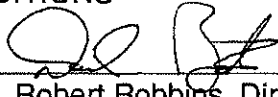
Date: \_\_\_\_\_

SEAL

APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:

By \_\_\_\_\_  
Assistant County Attorney

APPROVED AS TO TERMS AND  
CONDITIONS

By  \_\_\_\_\_  
Robert Robbins, Director

ATTACHMENT 5

Palm Beach Island Beach Management Agreement

Florida Department of Environmental Protection



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#### **A) Threshold and Procedural Matters**

1. The Town of Palm Beach, Palm Beach County (Participants or BMA Participants) and the State of Florida Department of Environmental Protection (DEP or Department) and the Florida Fish and Wildlife Conservation Commission (FWC) have agreed to enter into this Palm Beach Island Beach Management Agreement (Agreement or BMA) to coordinate beach management activities within the Agreement Area defined in Article C.
2. This Agreement, including attachments and Appendices (collectively Agreement or BMA), is entered into pursuant to the authority in sections 161.101, 403.061, and 403.0752, Florida Statutes (F.S.). This Agreement is binding on all BMA Participants. Department approvals issued pursuant to the Agreement will be subject to public notice, administrative hearing and decision-making procedures, and include points of entry for third parties at the time of Agreement and at Individual Project Approval (IPA), as set forth in the applicable provisions of state law and this Agreement.
3. The BMA process established herein coordinates the regulatory responsibilities of the Department with other state and federal agencies, and with the interests of the BMA Participants and the public in a streamlined program to protect the environment and to provide net ecosystem benefits pursuant to subsection 403.0752(2)(a), F.S.
4. This Agreement is intended to coordinate and facilitate flexible permitting for beach management and to achieve net ecosystem benefits and related public objectives for the area. The BMA Participants and the Department acknowledge that the Agreement and the procedures and conditions for IPA set forth herein meet the substantive regulatory and proprietary criteria of Chapter 161, Chapter 253, Part IV Chapter 373, and Chapter 403, F.S., and the BMA Participants have provided reasonable assurance that the objectives and requirements of subsections 403.0752(1), (2), (3), and (4), F.S., are met.
5. The Agreement's approach to authorizing projects and activities is centered on regional management of the coastal system rather than the conventional project-by-project permitting process. For this reason, the BMA will improve comprehensive coastal management and result in a net ecosystem benefits to the coastal system through cell-wide monitoring of resources, improved inlet bypassing, and efficient use of beach quality sand. In addition, the Agreement is expected to generate a more cost-effective and efficient permitting process that will reduce the BMA Participants' costs, time delays, and permitting uncertainty.

6. Subsection 403.0752(2), F.S., provides that the Department and regulated entities may enter into management agreements when the Department determines that:

- a. Implementation of such an Agreement meets all the applicable standards and criteria, so that there is a net ecosystem benefit to the subject ecosystem more favorable than operation under applicable rules;
- b. Entry into such an Agreement will not interfere with the Department's obligations under any federally delegated or approved program;
- c. Implementation of the agreement will result in a reduction in overall risks to human health and the environment as compared to activities conducted in the absence of the Agreement; and
- d. The regulated entity has certified to the Department that it has in place internal environmental management systems or alternative internal controls sufficient to implement this Agreement.

The Department has determined that the requirements of subsection 403.0752(2), F.S., will be satisfied through implementation of this Agreement.

#### **B) Agreement Overview**

The primary goal of the BMA is to define mutually agreeable methods among the Department, local municipalities, and stakeholders for coastal erosion control, natural community protection, and monitoring protocols in pursuit of regional management of Palm Beach Island's coastal system, while providing net ecosystem benefits to the cell. Currently, beach erosion control and inlet management activities are regulated, project by project, through the Department's Joint Coastal Permitting (JCP) Program. Beach erosion control activities, such as beach restoration and nourishment projects, require three forms of authorization: coastal construction permits (Chapter 161, F.S.), environmental resource permits (Part IV Chapter 373, F.S.), and proprietary authorization to use sovereign submerged lands (Chapters 253 and 258, F.S.). The JCP consolidates these authorizations into one permit and also serves as the final determination of consistency with Florida's Coastal Zone Management Program (CZM) and water quality certification under the Clean Water Act.

The BMA Participants and Department initiated the Agreement to improve techniques for managing the sand resources and beach erosion within the Palm Beach Island coastal cell

(Agreement Area) defined in Article C. (See map in Article C for a general depiction of the area.) A primary goal of the Agreement is to develop a coordinated, long-term process that facilitates predictable approval of qualifying coastal erosion control and inlet management activities described herein. Ultimately, the Agreement is intended to facilitate regional management of the Palm Beach Island coastal cell through mutually agreeable methods for coastal erosion control, coastal ecosystem protection, and monitoring protocols.

This Agreement addresses State regulatory and proprietary approvals for managing the sand resources and beach erosion within the Agreement Area. It sets forth the procedures and criteria to be followed by the Department, the Florida Fish and Wildlife Conservation Commission (FWC), and the BMA Participants for pre-application meetings and application submittal, review and approval for individual projects within the Agreement Area, as well as coordination with federal agencies and notice to the public. The Agreement also sets forth annual cell-wide requirements for the BMA Participants to monitor the movement of sand, sea turtle nesting, shorebird nesting, and exposure and burial of hardbottom and to perform aerial surveys.

Department staff reviewed the projects specifically described in Article D of the Agreement to determine consistency with the substantive requirements of Chapter 161, Chapter 253, Part IV Chapter 373, and Chapter 403, F.S., and their implementing rules, and for dune restoration, Chapter 161, F.S., and its implementing rules. This review determined that cell-wide management of sand resources and beach erosion would result in net ecosystem benefits.

Prior to construction, individual projects must demonstrate compliance with the conditions of this Agreement under the IPA process set forth in Articles H & I. When conducted pursuant to the conditions of this Agreement, those projects and activities will meet or exceed the applicable substantive criteria of Chapter 161, Chapter 253, Part IV Chapter 373, and Chapter 403, F.S., and their implementing rules. This Agreement also constitutes certification of compliance with state water quality standards under Section 401 of the Clean Water Act, 33 U.S.C., and a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act (CZMA).

### **C) Description of Agreement Area**

1. The Agreement Area is generally defined by the boundaries of the coastal cell located within the coastal system of Palm Beach Island, encompassing 15.7 miles of Atlantic Ocean

shoreline, and covering 34.5% of the Palm Beach County Shoreline. The approximate shoreline length and critically eroded shoreline length for each municipality within the Agreement Area are summarized in Table 1. Critical erosion shoreline lengths are also depicted in Figure 1 below.

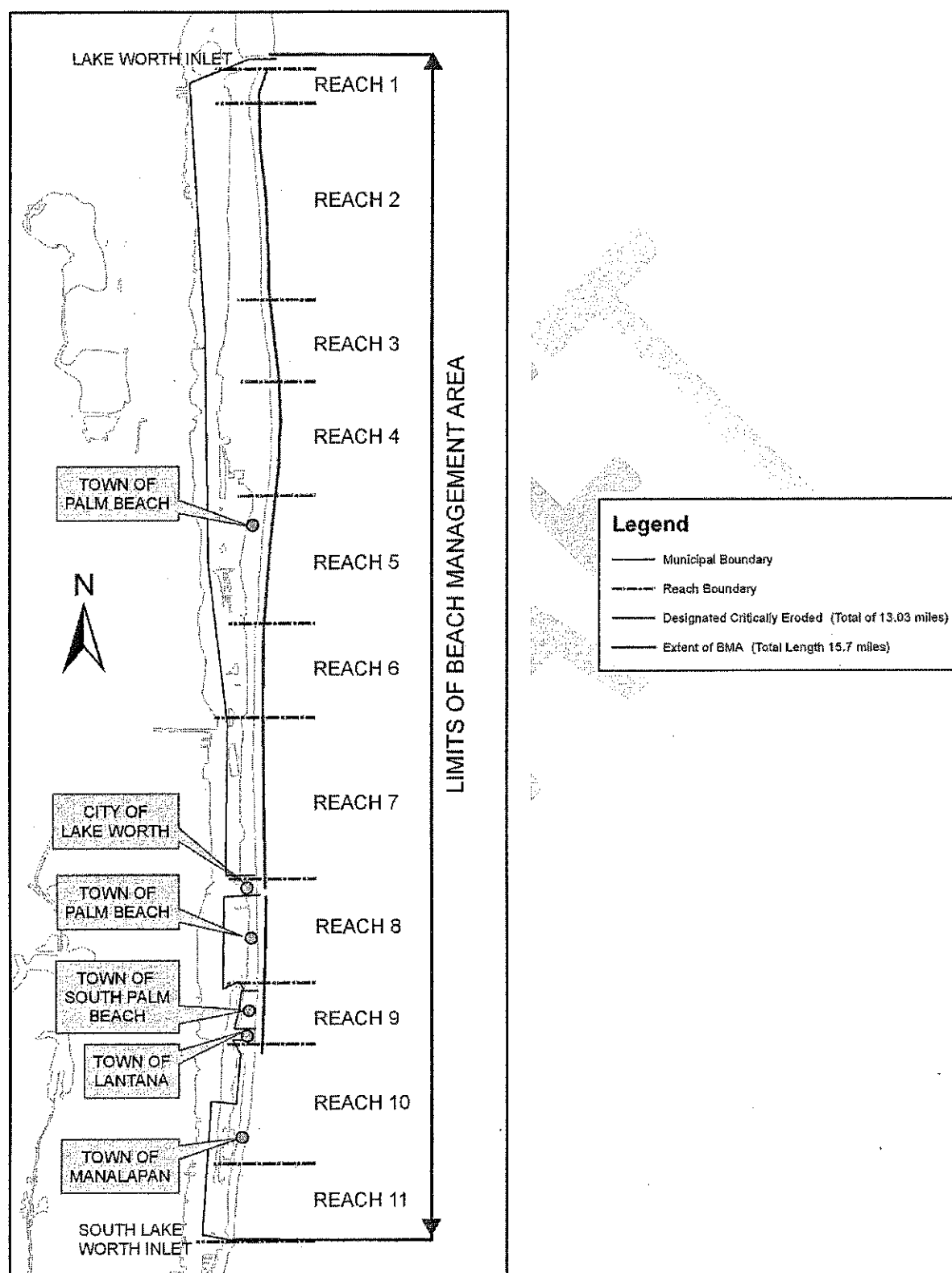
**Table 1: Shoreline Lengths and Critically Eroded Areas for Municipalities within the BMA**

<b>Palm Beach Island BMA Shoreline and % Critical Erosion Shoreline</b>			
<b>Municipality</b>	<b>Shoreline length</b>	<b>Percent of BMA cell</b>	<b>Length of Critically Eroded Beach</b>
Town of Palm Beach	12.10 Miles	77.0	12.10 Miles
City of Lake Worth	0.26 Miles	1.6	0.11 Miles
Town of South Palm Beach	0.53 Miles	3.4	0.53 Miles
Town of Lantana	0.15 Miles	1.0	0.15 Miles
Town of Manalapan	2.66 Miles	17.0	0.14 Miles
<i>BMA Length</i>	<i>15.70 Miles</i>	<i>100</i>	<i>13.03 miles</i>

2. The specific boundaries of the Agreement Area, approximately 5,560 acres, are defined as follows:

- a. On the North at the Sand Transfer Plant located on the Lake Worth Inlet north jetty including the expanded settling basin;
- b. On the East at the -40.0' NAVD 88 contour;
- c. On the West at the landward extent of the crest of the significant dune or a seawall, (whichever occurs first); and,
- d. On the South at an east/west line twenty-five feet north of the extended reach of the intake pipe on the South Lake Worth Inlet Sand Bypass facility on Palm Beach Island in Manalapan.

**Figure 1: Limits of the BMA Area**



### 3. Shoreline Reach Designation

The Town of Palm Beach prepared comprehensive coastal management plans in 1986 and 1998, segmenting the Town's shoreline into "reaches" in order to examine erosion problems and develop engineering plans for areas with similar coastal processes. The reaches remained more or less consistent for the past 25 years, with slight revisions. The 1998 revision expanded the reach concept from the southern limits of the Town to the southern limits of Palm Beach Island. More recently, the Town extended Reach 7 into the northern section of Reach 8, and now includes the Lake Worth Pier. This revision was proposed to reflect the Town's evolving management strategies and is reflected in Table 2.

**Table 2: Shoreline Reach Designation**

**Town of Palm Beach, Coastal Management Plan Location and Project Boundaries**

Reach	Physical Description	DNR Location	Length
1	Lake Worth Inlet	R76 - R78+500' *	2,875'
2	Onondaga Ave to El Mirasol	R78+500' - R90+400' *	13,080'
3	El Mirasol to Via Bethesda (Breakers)	R90+400' - R95	5,710'
4	Via Bethesda to Banyan Road (Mid-Town)	R95 - R102+300'	7,995'
5	Banyan Road to Widener's Curve	R102+300' - R110+100'	8,961'
6	Widener's Curve to Sloan's Curve	R110+100' - R116+500'	6,659'
7	Sloan's Curve to Lake Worth Pier (Phipps Ocean Park and Kresler Park)	R116+500' - R128+530'	12,348'
8	Lake Worth Municipal Beach Pier to South Town Limits	R128+530' - R134+135'	6,970'
9	La Bonne Vie to Lantana Avenue	T134+135' - R137+400'	3,523'
10	Lantana Avenue to Chillingsworth Curve	T137+400' - R145+740'	8,478'
11	Chillingsworth Curve to South Lake Worth Inlet	R145+740' - R151+300'	5,433'

\* For purposes of hardbottom delineation, Reach 1 extended from R76-R78, and Reach 2 extended from R78- R90+400'



#### **D) BMA Projects and Authorized Activities**

This Article defines the projects approved in the BMA, including consistency with the Strategic Beach Management Plan, cell-wide sand specifications, and associated mixing zone variances for beach nourishment.

##### **1. Consistency with Strategic Beach Management Plan for Listed and Future Projects**

The Florida Legislature directs and provides funding to the Department to implement a comprehensive, statewide beach management plan for beach erosion control, beach restoration and beach nourishment, and inlet management activities. In accordance with section 161.161, F.S., the Department develops and maintains this plan for the restoration and maintenance of the state's critically eroded beaches and inlets. The Department last updated and adopted the Strategic Beach Management Plan on May 21, 2008. (A copy may be obtained at <http://www.dep.state.fl.us/beaches/publications/index.htm>). The Department's adopted statewide Strategic Beach Management Plan strategies for the projects listed in Article D are:

- Lake Worth Inlet Maintenance Dredging: bypass an average annual volume of 202,000 cubic yards of sand to the downdrift beaches south of the inlet; place all beach compatible material dredged during channel maintenance on downdrift beaches in areas of greatest need in Reach 1 and 2, and when feasible at the Mid-town and Phipps Ocean Park projects;
- Lake Worth Inlet Sand Transfer Plant: extension of the discharge pipelines to increase bypassing efficiency with discharge points located at the south jetty, and approximately 1,000 feet and 2,500 feet south of the south jetty;
- Mid-Town Beach Nourishment Project: Maintain through monitoring and nourishment using sand from offshore and upland sources;
- Phipps Ocean Park Beach Nourishment Project: Maintain through monitoring and nourishment using sand from offshore and upland sources;
- Dune and Backshore Berm Restoration and Maintenance: Consistent with adopted strategies to maintain nourishment projects.
- Groin rehabilitation: consistent with adopted strategy to maintain nourishments.

Pursuant to Rule 62B-41.008(1) (m), F.A.C., activities proposed for Department approval shall be accompanied by a demonstration of consistency with the adopted statewide Strategic

Beach Management Plan. Based on its evaluation of the projects listed in Article D, the Department determined that the proposed activities are consistent with the strategies in the adopted plan.

***Strategic Beach Management Strategies for Potential Future Projects***

The Department's adopted statewide Strategic Beach Management Plan strategy for proposed activities within the Agreement area that are not included in the projects listed in Article D are:

- Lake Worth Inlet Maintenance Dredging:
  - Reach 1 and 2: limitation of placement area to dry beach or swash zone.
  - Reach 2: extension of the beach placement area for dredged material from the maintenance of the navigation channels at Lake Worth Inlet.
  - Limitation of dredging operations within a half mile radius of the Florida Power and Light Riviera Beach power plant discharge to occur outside of the November 15- March 31 window, as a manatee impact minimization measure.
- Reach 8 South Beaches: construct restoration projects in environmentally suited areas.
- Central Palm Beach County Comprehensive Erosion Control Project (South Palm Beach, Lantana, and Manalapan): Conduct dune restoration where feasible; complete feasibility study to determine environmentally acceptable designs for beach restoration.

The completion of feasibility/design studies and associated environmental impact statements for the Reach 2, Reach 8, and Central Palm Beach projects are consistent with the strategies in the adopted plan.

**2. Cell-Wide Sand Quality Specification**

Rule 62B-41.007(2) (j), F.A.C., requires that sand placed on the beach must be compatible with the sand currently existing on the beach. Fill material must maintain the general character and functionality of the material occurring on the beach. The Department

and the BMA Participants agree that if fill material meets the criteria in Table 3, it will maintain the character and functionality of the material on the beach.

The Department has determined that the fill material identified in Article D-4 meets the criteria in Table 3 and will maintain the general character and functionality of the material occurring on the beaches in the Agreement Area. Therefore, the identified material may be used for placement on the beaches within the Agreement Area. Further, BMA Participants may use any borrow areas or upland sources identified for future projects or sediment placement events, as long as they meet the criteria in Table 3. Each sand placement activity will not exhaust an entire borrow area. Therefore, during the Individual Project Approval process, the BMA Participant proposing to construct a sand placement project will submit all details of the portion of the borrow source to be used for review. This will include computations of volume and composite fill material characteristics of that portion of the borrow area or upland sand source that will be used for the individual project.

The sediment from the borrow area(s) and upland sand source(s) is similar in Munsell color and grain size distribution to the material in the existing coastal system at the beach placement site. The Department and the Participants acknowledge that it is possible that discrete occurrences of non-beach compatible sediments may exist within the permitted borrow area(s) that do not comply with the limiting parameters of Rule 62B-41.007 (2) (j) 1. – 5. F.A.C., or vary in Munsell color from the composite value. The compliance specifications take into account the variability of sediment on the native or existing beach, and are values which may reasonably be attained given what is known about the borrow area sediment. Beach fill material which falls outside of these limits will be considered unacceptable and subject to remediation.

**Table 3: Sediment Compliance Specifications**

<b>Sediment Parameter</b>	<b>Parameter Definition</b>	<b>Compliance Value</b>
Mean grain size	Minimum and maximum values (Using moment method calculation)	0.25 mm to 0.60mm
Max. Silt Content	passing #230 sieve	2%*
Max. Fine Gravel Content**	retained on #4 sieve	5%
Munsell Color Value	moist Value (chroma = 1)	6 or lighter

The beach fill material shall not contain construction debris, toxic material, other foreign matter, coarse gravel or rocks.

*\* Truck-hauled material is expected to have less than 2% silt content.*

*\*\*Shell Content is used as the indicator of fine gravel content for the implementation of quality control/quality assurance procedures.*

Two Sediment Quality Control / Quality Assurance (QC/QA) Plans (see Appendix D) have been developed for the BMA Projects. One covers procedures for the use of an offshore borrow area such as the ones described above. The other plan covers procedures for the use of an upland sand source. The selection of an offshore or upland sand source for beach nourishment and dune restoration and maintenance is at the discretion of the BMA Participants.

### 3. Approved Projects

This Article identifies the projects and activities authorized by this Agreement. Any activities not listed here are not authorized under the BMA, but may be authorized by the conventional permitting procedures, or added to the BMA through amendment. Prior to construction, the Department will review the activities identified below for consistency with the Agreement including proprietary approval and associated mixing zone where necessary, through the IPA procedures as set forth in Articles H and I. The project drawings are provided in Appendix A.

#### a. Lake Worth Inlet Maintenance Dredging

The permitted activity is periodic maintenance dredging by the Army Corps of Engineers (Permit # 0216012-001-JC) of the entire navigation-related complex at Palm Beach Harbor/Lake Worth Inlet. This Agreement authorizes the Town of Palm Beach to

become a co-applicant with the Army Corps of Engineers for the placement of beach quality sand from the dredging activity and to use the sand placement sites identified below. Prior to the use of the sand placement areas outside of Permit # 0216012-001-JC, the Town of Palm Beach must coordinate with the Army Corps of Engineers to modify the permit accordingly. Dredging is authorized for the following specifications:

Location	Depth + Overdredge ( below MLW)	USACE Boundaries* (Approximate)
Settling Basin (Southern)	35 feet + 2 feet	Rge (000 to -100), Stn (32.0 to 37.5)
Extended Settling Basin	35 feet + 2 feet	Rge (-100 to -300), Stn (32.0 to 37.0)
Expanded Settling Basin	35 feet + 2 feet	Rge (-300 to -800), Stn (32.0 to 37.5)
Entrance Channel (Outer)	35 feet + 2 feet	Rge (000 to 400), Stn (25.0 to 30.0)
Entrance Channel (Main)	39 feet + 2 feet	Rge (000 to 400), Stn (30.0 to 47.0)
Entrance Channel (Main)	37 feet + 2 feet	Rge (000 to 400), Stn (47.0 to 56.0)
Inner Channel	33 feet + 2 feet	Rge (000 to 400), Stn (56.0 to 86.0)
Turning Basin (Main)	33 feet + 2 feet	Rge (-140 to 1600), PI Stn (-1.4 to 17.2)
Turning Basin (Northern)	25 feet + 1 foot	Rge (-500 to 150), PI Stn (10.1 to 19.6)

\* Reference from USACE plans. Rge interval = one foot, Stn interval = 100 feet.

Dredged material will be placed within the beach-nearshore template. The berm will have an elevation of approximately +8.7 feet (MLW), with a 1V:20H seaward slope.

Placement of material may begin immediately south of the south jetty, and proceed in a southerly direction approximately 3,450 feet near FDEP reference monument R-79. If the authorized beach placement area immediately south of the Lake Worth Inlet is filled, then beach-quality sand may be placed within the Mid-Town Beach or the Phipps Ocean Park nourishment template. Within the entrance channel (between USACE Stations 25.0

and 56.0), shoals of less than 5,000 cubic yards may be transferred to deeper parts of the channel to temporarily alleviate navigational hazards. The construction activity will adhere to a Sediment Quality Control/Quality Assurance Plan that was approved by the Department on July 20, 2006. This Sediment QA/QC Plan is incorporated into the agreement by reference.

b. Lake Worth Inlet Sand Transfer Plant

The Department authorizes improvements to the sand transfer plant owned by the Town of Palm Beach at Lake Worth Inlet. The Department also authorizes the operation and maintenance of the sand transfer plant.

Construction improvements include a new pump house facility immediately adjacent to the existing bypass plant on the north jetty of the Lake Worth Inlet and the construction of an additional discharge pipeline. The new facility will house a booster pump for an additional pipeline to transport material from the north jetty approximately 4,500 feet south to an alternate discharge point near R-79 within Reach 2 in the Town of Palm Beach (Figure 2). The Department authorizes the new pipeline to be directionally drilled beneath the inlet channel and remain below the sea bottom until it reaches a beach discharge structure anchored to pilings and enclosed in architectural formwork on the beach.

During the operation phase, the Department authorizes the bypassing of approximately 162,000 cubic yards of beach-quality sand per year to the beach on the south side of the inlet. Material discharge rates from the bypassing plant will be less than 5,000 cubic yards per day and on an intermittent basis as coastal littoral transport processes move sand to the intake pipe of the bypassing plant on the north jetty. The Town of Palm Beach will utilize the two discharge pipelines as needed to maintain the beach in Reach 1 and Reach 2, and protect the shore-based discharge pipeline structure located immediately south of the inlet.

**Figure 2: Sand Transfer Map – Second Discharge Location**



**c. Mid-Town Beach Nourishment Project**

The Department authorizes periodic beach nourishment to maintain the beach restoration project located in the central portion of the Town of Palm Beach between DEP Reference Monuments R-89 and R-102 (Reaches 3 and 4), and maintenance repairs to the eleven existing groins. In conjunction with this activity, the Department authorizes the construction and maintenance of one additional groin located at R-99.3 (Figure 3).

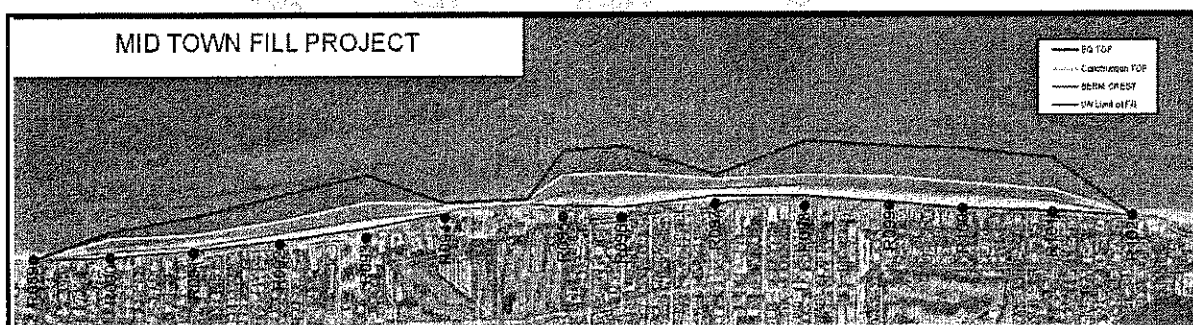
The beach fill design consists of a 25-foot wide design berm plus advance beach nourishment placed seaward of the design berm at an elevation of +9 feet NGVD for an average construction berm width of 180 feet. The beach construction berm is designed to a 1V:10H (vertical; horizontal) slope. The volumetric amount will be based on existing site conditions at the time of construction, but will not exceed the permitted template.

The Department authorizes the Town of Palm Beach to obtain beach compatible sand from offshore borrow areas as outlined in Article D-4. Alternatively, the Town of Palm Beach may obtain beach compatible sand from an approved upland source consistent with the cell-wide sand specifications outlined in Article D-2 and truck-hauled to the beach through designated beach maintenance access sites. If beach compatible sand

becomes available from the maintenance dredging of Lake Worth Inlet by the U.S. Army Corps of Engineers described in Article D-3.a., it may also be used as fill material for the portion of this beach template located between reference monuments R-95+108 feet and R-101.4.

The Department authorizes repairs and maintenance to the eleven groins constructed in conjunction with the 1995 beach restoration (DEP File # 50-273953-9 and DBS9A0352-PB) not to exceed the parameters of the original design as shown in the approved plans and specifications. The groins are spaced approximately 325 feet apart on average and vary in length from 88 feet to 167 feet with a crest elevation at +6.0 feet NGVD, toe at approximately -1.0 feet NGVD at the landward end and approximately -4.0 feet at the seaward end. In addition, the construction and maintenance of one additional groin is authorized near the south limits of the project area at Department Reference Monument R-99.3. The authorized groin will be 98 feet long in the shore-normal direction and 12 feet wide at the crest. The sand placement described above will completely cover the groin.

**Figure 3: Mid Town Project Map**



d. Phipps Ocean Park Beach Nourishment Project

The Department authorizes periodic beach nourishment to maintain the beach restoration project located in the south portion of the Town of Palm Beach (Reach 7) between the Department Reference Monuments R-119 and R-125 and periodic placement of sand to maintain the restored dune in the northern portion of Reach 7, from R-116 to R-119 (Figure 4). In addition, the Department authorizes beach restoration and periodic beach nourishment between monument R-125 and the northern boundary of the Lake Worth Municipal Park at monument R-127 (northern segment of Reach 8). Construction



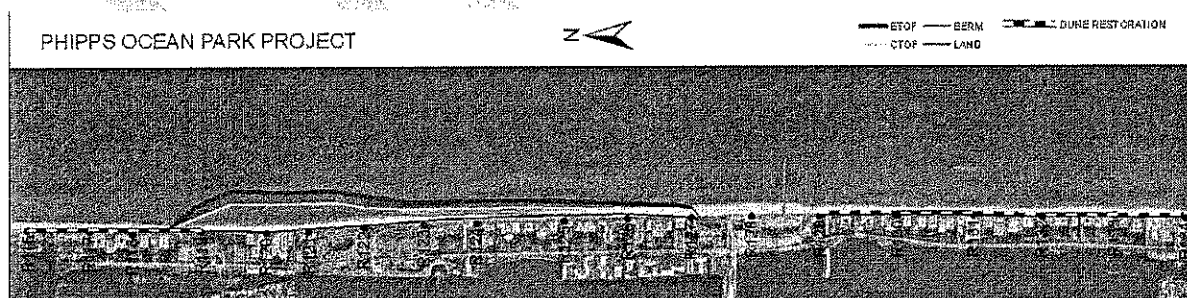
and maintenance of these three contiguous segments may be conducted separately or together and material may be stockpiled on the berm between R-119 and R-126 to replenish the restored dune.

The beach fill design from R-119 to R-127, consists of a +9 feet NGVD berm elevation with an average construction berm width varying from 190 feet to 455 feet. The restored dune has a typical crest width of 25 feet at an elevation of +16 feet NGVD, with a 1V:3H slope down to the beach berm, except north of R-119 where the dune crest is +10 feet. The volumetric amount will be based on existing site conditions at the time of construction, but will not exceed the permitted template.

The Department authorizes the Town of Palm Beach to obtain beach compatible sand from an offshore borrow areas outlined in Article D-4, or any offshore source consistent with the cell-wide sand specifications in Article D-2. Alternatively, the Town of Palm Beach may obtain beach compatible sand from an approved upland source consistent with the cell-wide sand specifications outlined in Article D-2 and truck-hauled to the beach through designated beach maintenance access sites.

The Phipps Ocean Park beach nourishment project includes periodic dune restoration south of the Lake Worth Pier in Reach 8. The dune-only portion, from R-129 to R-134 (within Reach 8), will be constructed to an elevation of +10 feet NAVD with a 1V:3H slope.

**Figure 4: Phipps Ocean Park Project Map**



e. Palm Beach Groin Rehabilitation

The BMA authorizes repair, rehabilitation, or removal of existing groins within the Reaches 2, 4, 5, and 6, as described in the 2011 Coastal Structures Plan for the Town of Palm Beach. The adaptive management strategy for this authorization includes revising the list of groins needing repair, rehabilitation, or removal, and updating the table below (Table 4).

**Table 4: Groin Repair, Rehabilitation, or Removal List**

Location	Structure ID	Activity
Reach 2 R-88	G73655	Retain and Repair
Reach 2 R-88+875	G72800	Retain and Repair
Reach 2 R-89+325	G72426	Retain and Repair
Reach 2 R-89+850	G71894	Remove
Reach 2 R-90+50	G71633	Retain and Repair
Reach 4 "North"R-100+225	G59940	Retain and Repair
Reach 4 "North"R-100+1150	G59002	Retain and Repair
Reach 5 "South"R108+650	G50601	Retain and Repair
Reach 5 "South"R108+1000	G50249	Retain and Repair
Reach 5 "South"R109+175	G49866	Retain and Repair
Reach 6 R-114+150	A44411	Remove

f. Dune and Backshore Berm Restoration and Maintenance

The Department authorizes the BMA Participants to construct artificial dunes within the Agreement Area as described below. Artificial dunes constructed in the Agreement Area are intended to protect upland properties and to protect and enhance habitat. The Department identified segments of shoreline within the Agreement Area with conditions suitable for the construction of sustainable dune features and developed procedures the BMA Participants must follow to construct dunes on those shorelines. Implementation of this Article will not only meet the goals stated above, but also provide more efficient and predictable permitting of artificial dunes in the Agreement Area.

The Department identified four dune conditions, permissible by the BMA, based on aerial and visual inspection of existing dunes, armoring, beach widths and elevations

within the Agreement Area (Figures 5 and 6). These areas are identified in Appendix A-4. Condition 1 is excellent for dune restoration projects, having a wide and elevated back beach berm. Condition 1 shorelines contain the island's best existing dune features. Condition 2 is good or appropriate for dune projects, having a sufficiently wide back beach berm on which fill can be placed. These shorelines are often steep and armored and, for this reason, the sustainability of the dune feature is lower. Condition 2 dunes could be considered sacrificial, meaning dunes constructed in these locations will likely provide temporary relief from coastal erosion until persistent wave activity transports material from the template. Condition 3 is poor for dunes, as constructed dunes are likely not sustainable and are subject to erosion from high frequency storms. Condition 4 includes the dune and backshore berm designs for the Mid-Town and Phipps Ocean Park beach nourishment projects.

The BMA Participant may use an offshore borrow area to obtain beach compatible sand that is stockpiled during beach nourishment and then transported to the dune restoration site. Alternatively, beach compatible sand may be obtained from an approved upland sand source consistent with Article D-2. This would allow the placement of artificial dunes in new locations or the restriction of dune placement in others. Changes in areas authorized for dune placement will require a formal amendment of the agreement.

BMA Participants wishing to construct a dune must meet the criteria set forth in Appendix D, and submit the information required in Appendix F-1. Before constructing a dune, the BMA Participant must follow the authorization procedures in Article I.

Figure 5: Current Cell-Wide Dune Conditions - North

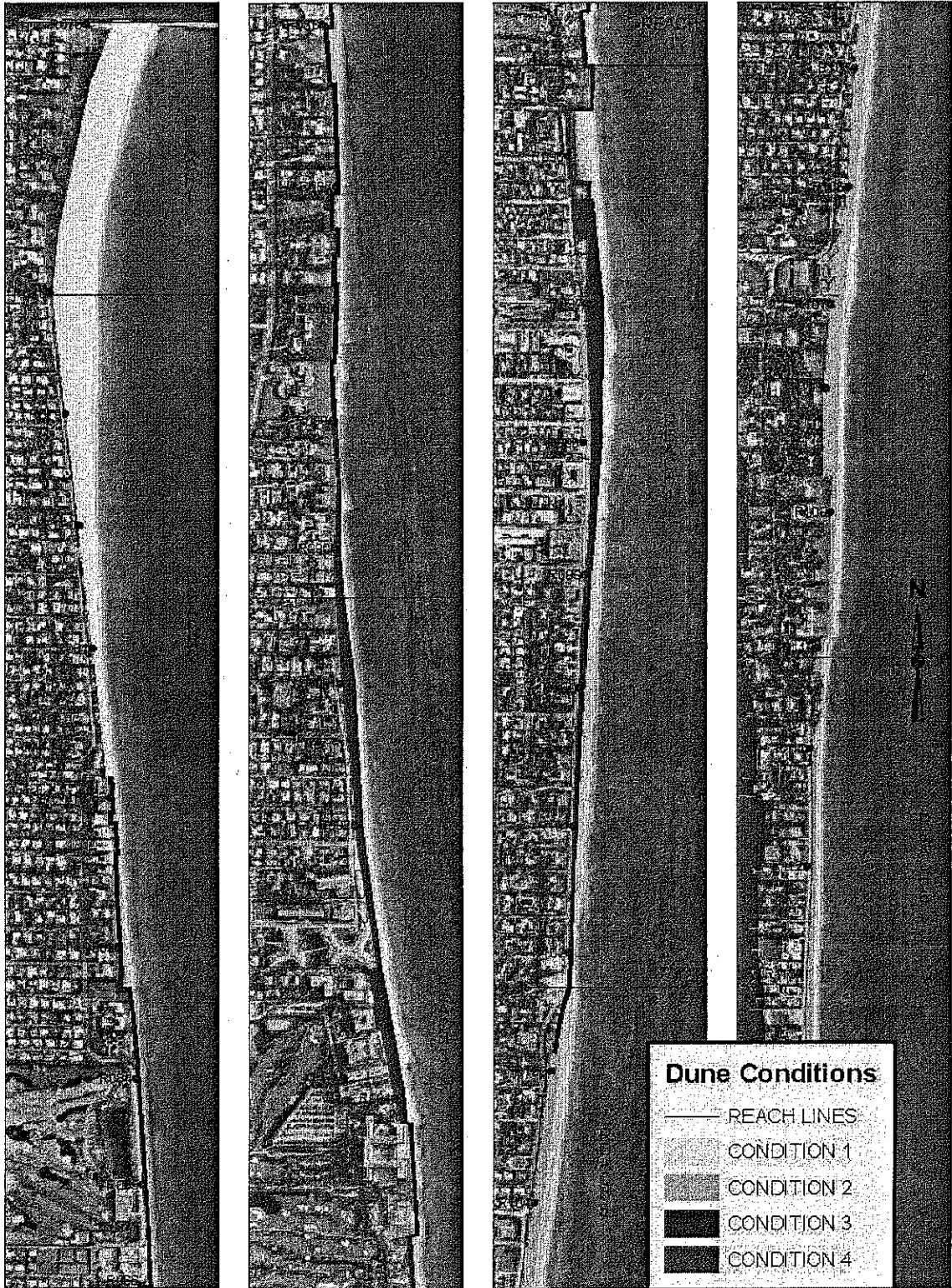
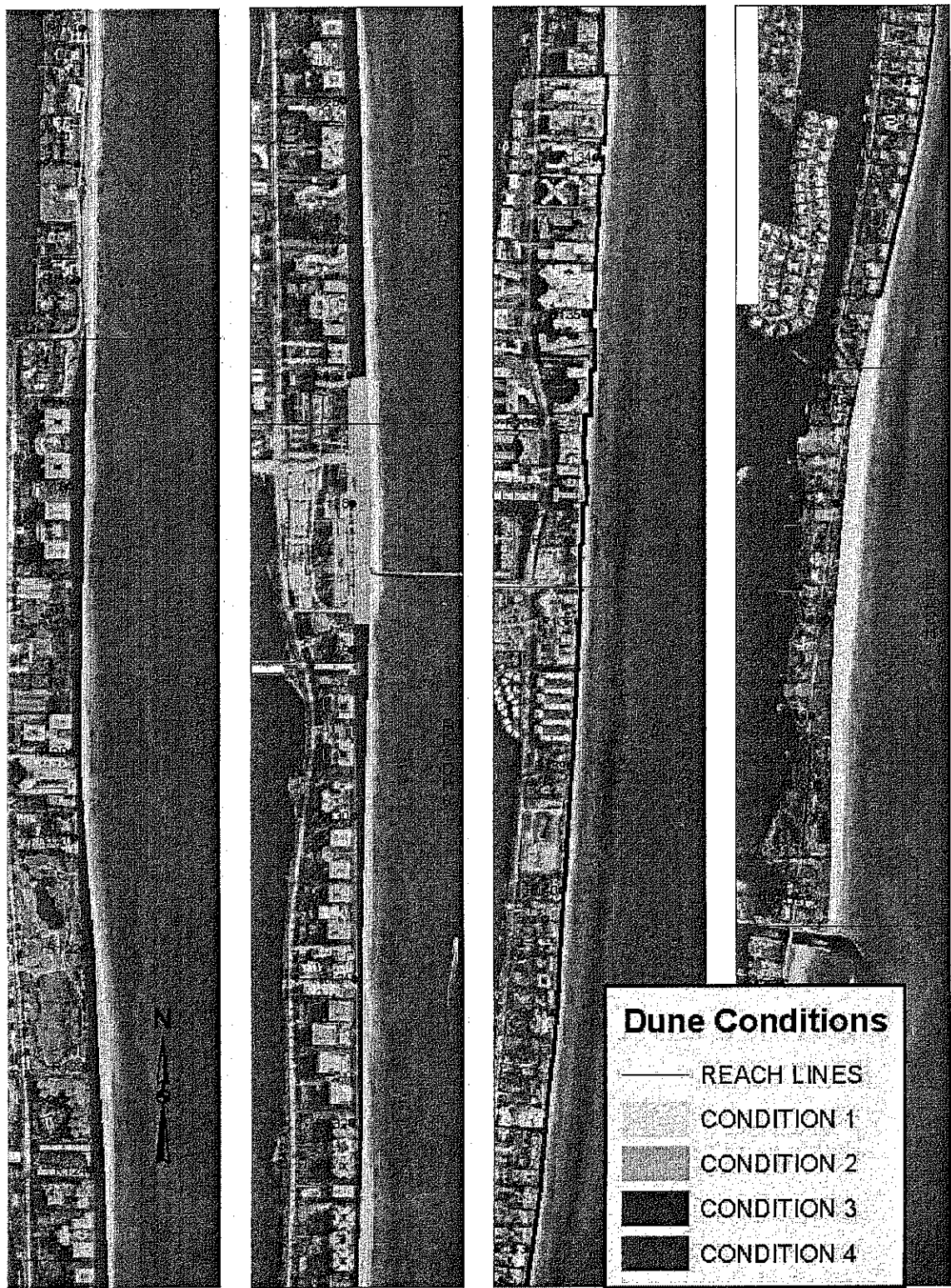


Figure 6: Current Cell-Wide Dune Conditions - South





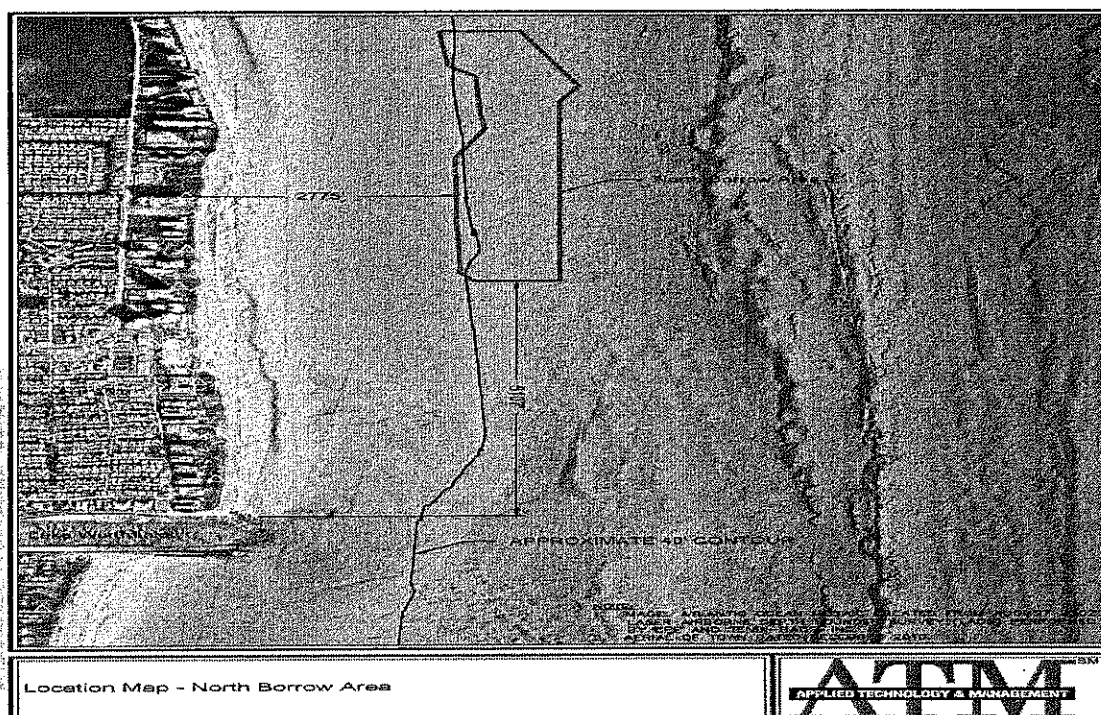
#### 4. Approved Offshore Borrow Areas

Based upon the information and analysis provided by the applicant, the material to be excavated from the proposed borrow areas for placement in the beach project areas is expected to maintain the general character and functionality of the material occurring on the beach and in the adjacent dune and coastal system with Rule 62B41.007(2)(j), F.A.C.

##### a. North Borrow Area 1 (NBA1)

North Borrow Area 1 is a southward extension of the borrow area used for the 2009 Juno Beach Restoration Project and is located 1 to 2 miles north of Lake Worth Inlet in water depths between 40 and 60 feet approximately 2,500 feet offshore of Singer Island (north of the Agreement Area; Figure 7). The coarsest material within this borrow area occurs along the offshore boundary. In general, the coarser material is a subsurface layer 5-10 feet thick under several feet of fine sand. The estimated 2.8 million cubic yards of material within NBA1 is based on a nominal cut thickness of 15 feet. Core composite values range from 0.25 to 0.31 mm with a composite value for NBA1 of 0.276 mm and silt content of less than 2%. Based on the data provided, the selected regions of the North Borrow Area 1 contain beach compatible material.

**Figure 7: Location Map North Borrow Area**



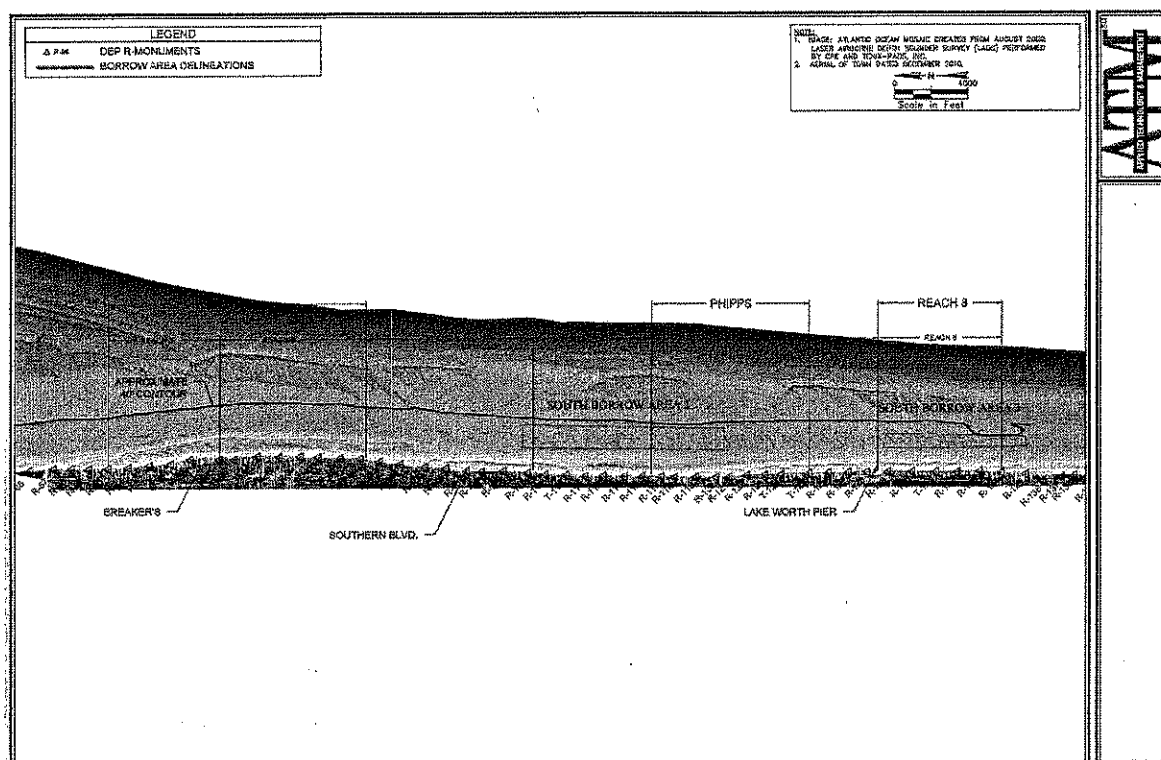
b. South Borrow Area 2 (SBA2)

South Borrow Area 2 is adjacent to Reach 7 and Phipps Ocean Park between R-110 and R-120 in water depths of 24-36 feet between the first and second reef (Figure 8). The estimated volume of 1.68 million cubic yards is based on a nominal cut thickness of 10 feet. The cores collected show a mix fine sand and shell fragments. Some of the cores contain coral or rock fragments. Although a few scattered rock fragments were found in the cores, the occurrence of the rock fragments was not extensive enough to identify continuous lenses or layers of rock rubble. Core composite values range from 0.21 to 0.36 mm with a composite value for SBA2 of 0.29 mm and silt content of approximately 1%.

c. South Borrow Area 3 (SBA3)

South Borrow Area 3 is adjacent to Reach 8 from Lake Worth Pier (South of R-128) to the city limits of the Town of Palm Beach (R-134) in water depths of 20-35 feet (Figure 8). SBA3 is located landward of Borrow Area III (R-127 to R-130) and immediately adjacent to Borrow Area IV (R-132 to S of R-134) used for Phipps Ocean Park permit. SBA3 is same location as Borrow Area V proposed for Reach 8, only with slightly modified boundaries. The estimated volume of 1.83 million cubic yards is based on a nominal cut depth of greater than 10 feet. The cores show a mix of fine sand and shell fragments, and some contain rock and coral fragments. Core composite values range from 0.17 to 0.33 mm with a composite value for SBA3 of 0.25 mm and silt content of approximately 1%. Based on the data provided, the majority of the South Borrow Area 3 study area contains beach compatible material.

**Figure 8: Location Map South Borrow Areas**



## 5. Approved Mixing Zones

The Department hereby grants the BMA Participants a temporary mixing zone for each of the two beach nourishment projects. A mixing zone of 150 meters offshore and downdrift is authorized for the Mid-Town beach nourishment activities. A mixing zone of 1000 meters downdrift and 300 meters offshore for the nearshore and beach placement site for the Phipps Ocean Park Project beach nourishment activity is authorized. This mixing zone shall only be valid during the construction activities authorized in this Agreement. BMA Participants must monitor the turbidity plume as described more fully in Appendix D.

## E) BMA Participant & Regulatory Agency Commitments

1. The BMA Participants agree to the following commitments:
  - a. This Agreement is the sole mechanism to be used by the BMA Participants to obtain authorization to conduct the specific activities set forth in Article D within the Agreement Area. Changes to the specific activities or other deviations from the terms of the



Agreement may require amendment of the Agreement as determined by the criteria set forth in Article N. Permits within the Agreement Area previously issued by the Department to the BMA Participants remain valid until the expiration date. However, in the event permit conditions of existing permits conflict with the BMA permit conditions in Appendix D, the BMA permit conditions shall prevail.

b. By signing this BMA, each Participant has certified to the Department that it has in place internal environmental management systems or alternative internal controls sufficient to implement this Agreement.

c. The BMA Participants agree to administer the cell-wide monitoring and mitigation plans (for any new projects with impacts), as described in Appendix B.

d. The BMA Participants agree to fund the required cell-wide monitoring annually. Any funding strategies are allowable if agreed upon by the Participants.

e. The BMA Participants agree to annually report to the Department the amount of money spent to perform the projects identified in the Agreement and to comply with conditions of the Agreement.

f. The Town of Palm Beach agrees to reduce stormwater discharge onto the beach and dune system as described fully in Article F. Data from this effort shall be submitted to the Department on an annual basis no later than November 30 each calendar year until the 67 outfalls identified in Article F-4 are removed.

2. The Regulatory Agencies signing this Agreement agree to the following commitments:

a. Florida Department of Environmental Protection

- i. Uphold the procedures of this BMA;
- ii. Post annual cell-wide data and reports on the agency's website and send notification to interested parties;
- iii. Host annual meeting with State and Federal Regulatory Agencies for data review and adaptive management updates;
- iv. Host annual meeting with Participants and stakeholders to present the data collected from the monitoring effort; and,
- v. Conduct the 5-year cell-wide hardbottom monitoring cell-wide review, referenced in Appendix B. Additionally, conduct post project regulatory review of Mid-Town 3-5 years following each nourishment event.

- vi. Every five years the Department shall hold a public information-gathering forum to report on data collected to date through the BMA process and receive public comment on whether there is cause for the Agreement to be modified or terminated. Notice of such forum shall be published the Department's BMA Website (<http://www.dep.state.fl.us/beaches/pb-bma/index.htm>) and the Florida Administrative Register at least thirty (30) days prior to the forum. Notice shall also be provided to the FWC, NMFS, USACE, FWS, and BMA Participants.
- b. Florida Fish and Wildlife Conservation Commission (FWC)
  - i. By signing this document, the FWC does not abrogate its responsibilities under the Florida Constitution, Florida Statutes and Administrative Code Rules, for oversight and protection of public trust resources;
  - ii. The FWC agrees that it has conducted all the necessary evaluation to state that each activity approved in this Agreement in Article D is consistent with Florida's Coastal Zone Management Program and will not adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
  - iii. The FWC agrees to review the annual turtle monitoring data and oversee the turtle monitoring protocols in the agreement;
  - iv. The FWC agrees that additional review is necessary for new projects or amendments to the BMA that would affect wildlife;
  - v. The FWC agrees that additional evaluation of impacts to fish and wildlife and consideration of adaptive management options are necessary in the event that physical and biological monitoring reveals unanticipated impacts, or if additional species are listed in the Florida Administrative Code;
  - vi. The FWC agrees to provide appropriate representatives to participate in informal pre-application review meetings and Application Review Meetings identified in Article H; and,
  - vii. The FWC agrees to conform to the timeframes set forth in this Agreement for IPAs, Article H and I.
- 3. Regulatory agencies indicate their support of the BMA through submittal of a non-binding support letter. These regulatory agencies include: U.S. Army Corps of Engineers,

Regulatory Branch; and National Marine Fisheries Service (NMFS). The support letter indicates agreement with the following items:

- i. Agree to use the same project-related regulatory data collected through the Cell-Wide Hardbottom and Marine Turtle Monitoring Plans to perform their own independent permit evaluations.
- ii. Agree to provide appropriate representatives to participate in informal pre-application review meetings and Application Review Meetings identified in Article H.
- iii. Agree to conform to the timeframes set forth in this Agreement for IPAs, Article H.

#### **F) Net Ecosystem Benefits**

The Department determines and the BMA Participants acknowledge that the requirement to provide net ecosystem benefits to the Agreement Area more favorable than those that would be provided under current regulations. Net ecosystem benefits will be satisfied through implementation of this Agreement. The Department and BMA Participants agree that implementation of the Agreement will result in the following net ecosystem benefits:

##### **1. Improved Inlet Management**

The BMA Participants agree to improve the transport of beach quality sand across Lake Worth Inlet onto the eroding beaches located on the northern portion of Palm Beach Island. The Florida Legislature recognizes that inlets interrupt or alter the natural drift of beach-quality sand resources. Fla. Stat. § 161.141(2). Accordingly, the Legislature found that it is in the public interest to replicate the natural drift of sand which is interrupted or altered by inlets.

The BMA Participants will collaboratively manage the sand placement from the inlet maintenance dredging conducted by the U.S. Army Corps of Engineers in order to better service the downdrift beaches in need of bypassed material, and lead to more efficient and effective sand management. The groins in the BMA cell will also be rehabilitated in order to stabilize the beaches and maximize the amount of placed sand retained on erosive beaches.

The BMA Participants will assess the best inlet and groin management options to better maintain the bypassing effort to the south of the inlet.

This is a Net Ecosystem Benefit because while the Town of Palm Beach is currently achieving its annual bypassing goals, maximum effectiveness of this bypassing is not being achieved. The BMA Participants are implementing a solution that will improve the stability of the beach dune system through more effective bypassing.

The Town of Palm Beach may provide additional net ecosystem benefits through improvements of the sand transfer plan. Currently there is a sand transfer plant located on the northern jetty of the Lake Worth Inlet operated by the Town of Palm Beach. This sand transfer plant hydraulically pumps sand from the wide southern portion of Town of Palm Beach Shores onto the eroding northern portion of Palm Beach Island. While this effort has provided some relief to the northern eroding portion of Palm Beach Island, its function has not been completely successful. Currently, beach quality sand from north of the inlet is only placed in Reach 1 at R-76. This sand tends to build up in this location and not continue its flow to the south because the inlet navigation improvements shelter this location from waves and reduces littoral sediment transport. Despite sand bypassing from the transfer plant, historical physical monitoring documents accretion of beaches in Reach 1 and generally eroded beach conditions in Reach 2.

The Town of Palm Beach has been authorized to construct a new pump house facility immediately adjacent to the existing bypass plant on the north jetty of the Lake Worth Inlet and to construct an additional discharge pipeline. The new facility will house a booster pump for an additional pipeline to transport material from the north jetty approximately 4,500 feet south to an alternate discharge point near R-79 within Reach 2 in the Town of Palm Beach where sand is expected to continue its natural sand transport south. The improved sand transfer plant will result in fewer operational delays, as well as a greater area to bypass sand, thereby maximizing operational efficiency. These improvements will enhance the ability of the Town to transfer sand to the eroded beach and better replicate the littoral transport of sand from north to south.

## 2. Cell-Wide Biological Hardbottom and Physical Monitoring

The BMA Participants agree to implement annual cell-wide physical and biological monitoring of submerged hardbottom and a regular reporting of such findings. The BMA Participants will follow agreed upon standard methodologies for data collection and analyses as described in Appendix B. The monitoring plans will meet the state and federal regulatory requirements for approved projects. These monitoring will also create a Net Ecosystem Benefit by obtaining a more complete cell-wide understanding of hardbottom and sediment variability.

Implementation of this plan will result in more efficient and cost-effective management of hardbottom within the Agreement Area. Joint Coastal Permits issued through the Department have typically required collection of physical and biological monitoring data within the immediate area of the permitted project. By implementing cell-wide monitoring, the BMA Participants and the Department will monitor the entire cell and gain a consistent and comprehensive assessment of project performance, as well as a better understanding of natural variation in the cell. The cell-wide biological monitoring will include specific transects typically utilized to determine project impacts within the monitoring program. However, the cell-wide monitoring and reporting program will also establish predictable and systematic data collection methodologies over the entire cell and improve the evaluation of coastal resources over the long-term. With this information, the BMA Participants and the Department will be able to adaptively manage the resources in the Agreement Area. The cell-wide approach will advance understanding of coastal ecosystems in general and improve the quality of recommendations to enhance protection strategies for hardbottom and marine turtle nesting habitats and other resources in this area and in other areas in the future.

The cell-wide physical and biological monitoring program will be implemented as described in Appendix B1 and B3. Any deviation, other than those described in the adaptive management section, from this methodology must be approved in advance through a formal amendment of the Agreement.

## 3. Cell-Wide Sea Turtle Monitoring

The BMA Participants agree to implement cell-wide monitoring of sea turtle nesting beaches on Palm Beach Island as part of the Agreement. The monitoring plans will meet the

state and federal regulatory requirements for approved projects. This monitoring will also create a Net Ecosystem Benefit by obtaining a more complete cell-wide understanding variability of sea turtle nesting. Implementation of this plan will result in more defensible, efficient, and cost-effective management of sea turtles within the Agreement Area. Joint Coastal Permits issued by the Department have typically required collection of sea turtle monitoring data within the immediate area of the permitted project. The monitoring agreed to in this plan will enable assessment of changes on project beaches relative to changes in nesting of sea turtles on an island-wide scale.

Placement of sand on the shoreline, either through dune restoration or nourishment, during beach management activities results in obvious alterations to the nesting substrate in the project area. However, it is unclear whether these observed changes in sea turtle nesting behavior affect overall reproductive success across the broader landscape that includes the project site. Monitoring sea turtle nesting behavior on an island-wide basis in addition to project-specific monitoring offers an opportunity to assess the influence of beach management activities across a broader spatial and temporal scale within a framework that includes fluctuations in sea turtle nesting that may occur independent of beach management activities.

Direct impacts to marine turtles, their nests, and hatchlings during construction such as avoidance of illuminated work areas and disorientation of adults and hatchlings from adjacent beaches to lights at the construction site are typically limited in space and time. Indirect impacts that occur over longer time periods due to the design and composition of beach and dune fill, such as changes in profile and sediment composition must also be identified and minimized to the degree practicable. Such impacts persist, and have the ability to negatively impact nesting for several years after project construction. While decreases in nesting and reproductive success are anticipated during and after project construction due to engineered changes in the beach, monitoring focused within the project and on immediately adjacent beaches may miss or mask other pervasive fluctuations in nesting that occur on an island-wide basis independent of the project.

Cell-wide monitoring will better assess the spatial and temporal extent of sea turtle response to beach management activities, and will help isolate possible root causes of observed behaviors and identify the impact of spatially and temporally isolated beach

management activities on overall utilization of the Island by nesting sea turtles. With this information, the BMA Participants and the Department will be able to adaptively manage nesting habitat of sea turtles in the Agreement Area.

The cell-wide sea turtle monitoring program will be implemented as described in Appendix B-2. Any deviation from this methodology must be approved in advance through a formal amendment of the Agreement.

#### 4. Outfalls Removal

Constructed many years ago, prior to the modern environmental regulations, there are many private and public surface water runoff outfalls and discharges that currently direct stormwater onto the beach and dune system. The Town of Palm Beach identified 67 public outfalls/discharges (Appendix G) with a total annual output of 28.5 acre-feet (9.2 million gallons per year). Water discharges can cause scour/erosion of the adjacent beach and dune system, and may affect water quality and negatively influence sea turtle nests on the beach or natural resources in the nearshore.

The Town of Palm Beach will implement a long-term program to redirect surface runoff. The long-term program will include a phased capital improvement effort to improve the Town of Palm Beach's beach and dune system. Of the 67 identified discharges, 56 are located along the North Ocean Boulevard seawall adjacent to the Palm Beach Country Club. The North Ocean Boulevard seawall is scheduled for replacement in 2014. The outfalls will be eliminated from the seawall. Modifications to the remaining 11 discharges, located within Reaches 2 through 6, will include a ten year program to upgrade, remove or divert those outfalls. Within ten years of the effective date of this Agreement, the Town of Palm Beach will have removed all 67 public outfall/discharges.

Further, there are approximately 103 outfalls/discharges located within the Town of Palm Beach that are located on private property. Town of Palm Beach staff will implement an annual education campaign targeting all residents with outfalls/discharges on the beach and dune system to consider actions to reduce or eliminate any influences. As redevelopment occurs on properties with such outfalls/discharges, the Town of Palm Beach will require owners and Palm Beach County will encourage owners to meet the State's standard of refraining from discharging onto the beach and dune system.

### **G) Avoidance, Minimization and Mitigation**

Based on its evaluation of the projects listed in Article D, the Department determined that the Town of Palm Beach has avoided and minimized impacts resulting from the projects to the greatest extent practicable. Further, the Department does not anticipate direct or secondary impacts associated with the listed projects beyond those impacts that have occurred and have been or are being mitigated for in previously permitted projects. Of the projects approved at the signing of the BMA, only the Mid-Town Project would have project-associated regulatory transects established to verify the prediction of no impact (see Appendix B-1). The Phipps Project and the discharge pipe extension have no associated "project specific transects" required for reasonable assurance.

If new projects are implemented in the Agreement Area that have impacts which have not already been permitted, the BMA Participants and the Department agree to mitigate those impacts by implementing the procedures in the Palm Beach Island Beach Management Agreement Hardbottom Mitigation Plan (Appendix B-1-C). Anticipated direct hardbottom impacts (direct burial within the equilibrium toe of fill) will be mitigated for by the creation of a functionally equivalent artificial reef. Mitigation will be at a 1:1.5 ratio of hardbottom buried to artificial reef created. If the mitigation is performed ahead of impacts, the ratio will be lowered to 1:1 hardbottom buried to artificial reef created. The created reef will be representative of the hardbottom type impacted (i.e., reef material and location, water depth, relief). Unanticipated hardbottom impacts (e.g., direct burial, temporal loss, community degradation, or recruitment loss) from these projects will be recorded through biological monitoring and handled through compliance and enforcement.

### **H) Individual Project Approval Process for In-Water Activities**

A BMA Participant proposing to construct a project approved in the BMA must obtain an Individual Project Approval (IPA) from the Department prior to commencement of any construction activity for the projects approved in Article D.3.a. through e. (Lake Worth Inlet Sand Transfer Plant, Midtown Beach Nourishment Project, and Phipps Ocean Park Beach Nourishment Project, Groin Rehabilitation). The procedure outlined below is intended to confirm that the project the BMA Participant is prepared to commence remains consistent with this Agreement.



IPAs for in-water activities, activities in Article D.3.a.through e. authorized by this Agreement, shall be conducted in compliance with Chapter 62B-49, F.A.C., including all procedures contained therein, except as those procedures are modified in this Article.

#### 1. Informal Pre-Application Process

A BMA Participant proposing to construct a project may request an informal pre-application meeting with the Department to discuss a project on the list of activities approved in Article D and clarify any necessary procedural and substantive criteria of the Agreement, including the provisions of Chapter 62B-49, F.A.C. Representatives from FWC, USFWS, NMFS, and the U.S. Army Corps of Engineers (Corps) will be invited to the pre-application meeting. The BMA Participant proposing to construct a project agrees to provide sufficient information on any procedural or substantive criteria that needs clarification. The pre-application meeting does not commence the formal review of an IPA application. Pre-application meetings may be scheduled as needed.

#### 2. Formal Individual Project Review

To commence the review of an application for an IPA, the BMA Participant proposing to construct a project approved under the BMA agrees to prepare an application using all of the information identified in the Individual Project Approval Checklist (Appendix F-2). Upon receipt of the application, the Department will schedule an Application Review Meeting to occur two (2) weeks after receipt of the application. A processing fee shall accompany each application in an amount consistent with the fee schedule set forth in Rule 62B-49.006, F.A.C., with the exception that BMA Participant proposing to construct a project will only be required to pay 50% of the fees required under rules 62B-41.0085(3)(a),(b), and (c), F.A.C. (rigid coastal structures, beach restoration, and construction and maintenance of inlets respectively), which are incorporated by rule 62B-49.006(1), F.A.C., and attached in F-3.

The Department will invite representatives from the FWC, USFWS, NMFS and Corps to the Application Review Meeting. The application shall be considered to be in draft form until the day of the meeting, at which time the formal review of the application shall commence and all times limits set forth in this Article shall begin.

The Department will send a Sufficiency Review Letter to the BMA Participant proposing to construct a project within seven (7) days of the Application Review Meeting. The Sufficiency Review Letter will indicate whether the application is complete or ask the BMA Participant to resolve any errors or omissions that render the application incomplete. If the BMA Participant provides a response to complete the application, the Department will provide a Sufficiency Review Letter with 30 days of receipt of the response. If the BMA Participant fails to respond within 60 days to a Sufficiency Review Letter that indicates the application is not complete, the Department will deny the application.

Upon receipt of the complete application for IPA, including resolution items in the Sufficiency Review Letter, the Department will have 60 days to review the completed application for compliance with the terms of this Agreement. The review shall also consider the Applicant's history of compliance with previously issued permits and IPAs granted under this Agreement as a factor in determining if reasonable assurance has been provided that the terms of the Agreement as applied in the IPA will be met. A history of non-compliance with previously issued permits, IPAs, or failure to comply with cell-wide commitments in this Agreement may serve as the basis for project denial, modification, or the addition of specific conditions, based on the nature, severity, and extent of the non-compliance.

If the application provides reasonable assurance that the project complies with the terms of this Agreement, the Department shall approve the individual project, provide proprietary authorization, and any necessary mixing zone by issuing an Individual Project Approval Letter. Such approvals will include general conditions as set forth in Chapter 62B-49, F.A.C., and included in Appendix C and specific conditions applicable to all projects as set forth in Appendix D. If the application does not provide reasonable assurance that the project complies with the terms of the Agreement, and the BMA Participant does not withdraw or change the application, the Department will deny the application. Each letter will include a point of entry for challenging the agency action. Denial of the application does not prejudice the BMA Participant to propose a project that is consistent with the Agreement or submitting an application pursuant to Chapter 62B-49, F.A.C.

The letter will also include a public notice of the agency action that the BMA Participant proposing to construct a project shall publish in a newspaper of general circulation in Palm Beach County, which publication shall be accomplished in the same manner as provided in

Rule 62-110.106(5), F.A.C. The Department will post notice of its agency action on its website (<http://www.dep.state.fl.us/beaches/pb-bma/index.htm>).

The Department and the BMA Participant proposing to construct a project may agree during any individual project review process to waive the time limits set forth in this Article. Such an agreement must be memorialized in a separate written agreement document between the Department and the BMA Participant who is waiving the time frame.

#### **I) Individual Project Approval Process for Dune Construction**

The BMA Participant wishing to construct a dune project must obtain an Individual Project Approval (IPA) from the Department prior to commencement of any construction activity for the projects approved in Article D, activity 4. (dune construction). The procedure outlined below is intended to confirm that the project the BMA Participant proposing to construct a dune is prepared to commence remains consistent with this Agreement.

IPA for Dune Construction, activity 4. in Article D authorized by this Agreement shall be conducted in compliance with Chapter 62B-33, F.A.C., including all procedures contained therein, except as those procedures are modified in this Article.

##### **1. Project Review and Approval**

BMA Participants wishing to construct artificial dunes under this Agreement must meet the design criteria in Appendix D. Prior to construction of an artificial dune, the BMA Participant proposing to construct a dune shall contact the Department to schedule a meeting on site with the Department's Field Inspector. At the meeting the BMA Participant shall provide the Department Field Inspector with a Dune and Backshore Berm Restoration and Maintenance Checklist (Appendix F-1) and items required by the Checklist, including a sample from the proposed sand source.

If the application provides reasonable assurance that the project complies with the terms of this Agreement, the Department Field Inspector shall approve the individual project by issuing an Individual Project Approval Letter. Such approvals will include general conditions as set forth in Chapter 62B-33, F.A.C., and specific conditions applicable to all dune construction projects as set forth in Appendix D. The letter of approval shall include a point of entry for challenging the agency action at the meeting. Such approval shall be

posted conspicuously during construction of the artificial dune. The Department will post notice of its agency action on its website (<http://www.dep.state.fl.us/beaches/pb-bma/index.htm>).

The Department shall deny proposed individual projects not meeting terms of this Agreement at the meeting. This denial does not prejudice the applicant to propose a new dune design that will meet the design criteria in Appendices D and F-1 or submitting an application the Tallahassee Office of the Department of Environmental Protection, Division of Water Resource Management for an alternate dune construction design pursuant to Chapter 62B-33, F.A.C.

#### **J) Preservation of Third Party Rights**

This Agreement is not intended to alter or modify the rights of third parties to challenge agency actions. Execution or formal amendment of this Agreement constitutes agency action. Any Florida corporation not for profit which meets the requirements of subsection 403.412(6), F.S., and any person whose substantial interests will be determined or affected by the Agreement may petition the Department for a formal administrative hearing pursuant to section 120.569 or 120.57, F.S., as set forth in the attached Notice of Rights, to challenge the provisions of this Agreement.

If the Department proposes to issue an IPA pursuant to Article H or I of this Agreement, any Florida corporation not for profit which meets the requirements of subsection 403.412(6), F.S., and any person whose substantial interests will be determined or affected by IPA under the Agreement may petition DEP for a formal administrative hearing pursuant to section 120.569 or 120.57, F.S., as set forth in the Notice of Rights attached to the IPA. The scope of a challenge to an IPA or denial is limited to whether the agency action complies with this Agreement and any agency action outside the approvals of this Agreement taken in the IPA. Agency action previously subject to challenge or administrative review will not be subject to challenge at the time of IPA.

#### **K) Term of Agreement**

This Agreement shall be perpetual, unless modified according to Article N or terminated according to Article P.

Every five (5) years starting from the effective date of the Agreement, the Department, FWC, and BMA Participants will evaluate the Agreement to determine if amendments are necessary to facilitate its goals. All such amendments will be subject to the requirements of Article N. Every five years the Department shall hold a public information-gathering forum to report on data collected to date through the BMA process and receive public comment on whether there is cause for the Agreement to be modified or terminated. Notice of such forum shall be published the Department's BMA Website (<http://www.dep.state.fl.us/beaches/pb-bma/index.htm>) and the Florida Administrative Register at least thirty (30) days prior to the forum. Notice shall also be provided to the FWC, NMFS, USACE, FWS, and BMA Participants.

**L) Effective Date**

The effective date of this Agreement shall be the date on which the last entity identified as a signatory on the signature page below executed the Agreement:

**M) Notices**

1. Any notices between the BMA Participants and the Department shall be considered delivered when sent via email with a "read receipt notification" or posted by Certified Mail, return receipt requested, overnight courier service, delivered in person to the Project Managers at the addresses below.
2. Any and all notices shall be delivered to the parties at the following addresses:

**BMA PARTICIPANTS**

**Town of Palm Beach**

Public Works Department  
Post Office Box 2029  
Palm Beach, Florida 33480-2029

**DEPARTMENT**

Department of Environmental Protection  
Division of Water Resource Management  
3900 Commonwealth Blvd., MS 300  
Tallahassee, Florida 32399-3000  
(850) 488-7708

Palm Beach County

Department of Environmental  
Resource Management

2300 North Jog Rd.

West palm Beach FL, 33411-  
2741

FWC

Florida Fish and Wildlife Conservation  
Commission

620 South Meridian Street

Tallahassee, Florida 32399-1600

Any changes to the contact information above must be provided in writing; however, such change does not have to be a formal amendment to this Agreement.

**N) Amendments and Updates**

1. This Agreement represents the entire Agreement between the Department, FWC, and the BMA Participants. Any substantial alterations, variations, changes, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by the Department, FWC, and each of the BMA Participants hereto, and attached to the original of this Agreement, unless otherwise provided herein. This Agreement may be modified at any time by written amendment approved by the Department, FWC, and all BMA Participants. Amendments must be consistent with the provisions of sections 403.075 and 403.0752, F.S. Such amendments must also meet the noticing requirements of subsection 403.0752(8), F.S. Notice of such amendments shall be published the Department's BMA Website (<http://www.dep.state.fl.us/beaches/pb-bma/index.htm>), in a newspaper of general circulation in Palm Beach County, and the Florida Administrative Register at least thirty (30) days prior to the agency action.

- a. Substantial alterations, variations, changes, modifications, or waivers include, but are not limited to:
  - i. Addition of new projects into the Agreement;
  - ii. Changing the location of existing projects such that additional impacts are anticipated;
  - iii. Changing project approval procedures or criteria for issuance;
  - iv. Changing monitoring or mitigation requirements necessitated by the discovery of additional impacts;

v. Changing or eliminating net ecosystem benefits.

b. The following items are not considered substantial alterations, variations, changes, modifications, or waivers and do not require written and signed amendment of the Agreement:

- i. Addition of supporting documentation;
- ii. Changes made pursuant to a federal environmental permit or authorization;
- iii. Revision of an individual project that does not require a substantial alteration of the project authorized in Article D of this Agreement;
- iv. Changes to the project that reduce the potential for adverse impacts to the coastal system;
- v. Changes to a monitoring plan that better captures project impacts;
- vi. Changes to interlocal funding strategies; and
- vii. Changes through adaptive management strategies that do not increase the potential for adverse impacts or lower reasonable assurance provided by the BMA Participants for the permitted projects.

2. Formal amendment under this section is required in the event a BMA Participant wishes to add a new project to the Agreement.

a. Prior to adding a new project, the Department shall hold a public information-gathering forum to receive public comment on the proposed additional project. Notice of such forum shall be published on the Department's BMA Website (<http://www.dep.state.fl.us/beaches/pb-bma/index.htm>) and the Florida Administrative Register at least thirty (30) days prior to the forum. Notice shall also be provided to the FWC, NMFS, USACE, USFWS, and BMA Participants.

b. The BMA Participant proposing the new project shall:

- i. Identify potential adverse impacts to the coastal system;
- ii. Demonstrate that the proposed project is consistent with the Agreement;
- iii. Demonstrate that the proposed project will not detract from the net ecosystem benefits;
- iv. Demonstrate how the proposed project will coordinate with existing projects;
- v. Propose any additional mitigation that would be required under this Agreement; and

- vi. Meet all substantive regulatory criteria

### 3. Adaptive Management Plan

The Department and BMA Participants agree to adaptively manage the projects in the Agreement Area, using a similar approach as described by the U. S. Department of the Interior. The Department of the Interior recognizes the importance of natural variability and uses adaptive management to promote flexible decision making based on an iterative learning process. For the purposes of the BMA, adaptive management will be a means to improve effective decision-making and enhance protection of coastal resources. The Department and the BMA Participants agree to adaptively manage by annually:

- a. Determining compliance with terms of the agreement;
- b. Reviewing monitoring data and survey methods with the assistance of the academic community to implement adjustments to improve the monitoring plans and add scientific rigor;
- c. Reviewing project performance to determine if adjustments to the project design are necessary to improve upland protection, address sea level rise (Williams, B. K., R. C. Szaro, and C. D. Shapiro, 2009. *Adaptive Management: The U.S. Department of the Interior Technical Guide*. Adaptive Management Working Group, U.S. Department of the Interior, Washington, DC.), and reduce environmental impacts;
- d. Responding to new concerns (if any) of BMA Participants or supporters and adjusting the monitoring and mitigation plans accordingly;
- e. Reviewing innovative technologies and new research studies or methodologies for possible impact on the BMA goals, policies, and procedures;
- f. Obtaining or requesting third party review of annual monitoring data collected under the BMA;
- g. Reviewing any new State and / or Federally listed species and critical habitat areas, and updating any regulatory required protection and minimization measures; and
- h. Conducting an annual poll (i.e. from turtle monitoring personnel) to determine if any nesting birds or bird colonies have been discovered within the cell. Notification of poll results shall be sent to FWC for evaluation.



The Town of Palm Beach will update the list of groins to be repaired, rehabilitated, or removed every 5 years for groins in Reaches 2-6. This will be incorporated as necessary.

The dune condition areas identified in Article D.3 may change over time. An updated dune table will be provided every 5 years as an adaptive management strategy.

#### **O) Emergency Situations**

If a force majeure occurs that causes delays or the reasonable likelihood of delay in the fulfillment of the requirements of this Agreement, the affected BMA Participant shall promptly notify the Department orally. Within seven (7) days, the BMA Participant shall notify the Department and FWC in writing of the anticipated length and cause of the delay, the measures taken or to be taken to minimize the delay and the BMA Participant's intended timetable for implementation of such measures. If the parties agree that the delay or anticipated delay was caused, or will be caused by a force majeure, the Department may, at its discretion, extend the time for performance under this Agreement for a period of time equal to the delay resulting from the force majeure upon execution of an amendment to this Agreement. Such agreement shall be confirmed by letter from the Department accepting, or if necessary, modifying the extension. A force majeure is an act of God, strike, lockout, or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, flood, explosion, failure to receive timely necessary third party approvals, and any other cause, whether of the kind specifically enumerated herein or otherwise, that is not reasonably within the control of the BMA Participant and/or the Department. Failure to perform by the BMA Participant's consultant(s) or subcontractor(s) shall not constitute a force majeure event.

New coastal construction projects in response to emergency will require separate authorization.

#### **P) Termination/Exit**

##### **1. Department Termination**

The Department may terminate or request renegotiation of this Agreement with any individual BMA Participant by giving thirty (30) days prior written notice to the BMA Participant if the Department demonstrates that:

- a. There has been a material change in conditions which existed at the time of the original Agreement such that the intended net ecosystem benefits are not being, or may not reasonably be expected to be, achieved through continuation of the Agreement.
- b. The BMA Participant refused to allow public access to all documents, papers, letters, or other material made or received by the BMA Participant in conjunction with this Agreement, unless the records are exempt from S. 24(a) of Article I of the State Constitution and S. 119.07(1), Florida Statutes.
- c. The BMA Participant is in material breach of the terms of the Agreement.

2. Nothing in this paragraph shall preclude the Department from taking appropriate enforcement action in lieu of or in combination with termination of the Agreement for violations of this Agreement or any IPA issued hereunder.

### 3. BMA Participant Termination

A BMA Participant or FWC may terminate its individual obligation under this Agreement for any reason by giving thirty (30) days prior written notice to the DEP and other BMA Participants as provided in Article M, provided that the mitigation commitments identified in the IPAs are fulfilled or agreements are entered into to ensure fulfillment.

Upon termination of the Agreement or termination by an individual BMA Participant, previously issued project approvals shall remain in effect for the duration of such approval. The authorized projects will transition to the typical permit expiration date, beginning from the execution of the IPA for that particular project. For the projects initially authorized by the BMA, this would equal to a 5-year permit for the Sand Transfer Plant, 5-year permits for groin rehabilitations, a 10-year permit for the Mid-Town Nourishment Project, and a 15-year permit for the Phipps Ocean Park. BMA Participants holding such IPAs shall continue to be subject to the General and Specific Conditions (Appendices C and D) included in the IPAs for the permitted life of the project. Individual BMA Participants who elect to terminate under this Article may not utilize the permitting procedures found in Article H and I of this Agreement.

Following the exit of any one BMA Participants, the remaining BMA Participants and the Department must meet to determine if changes to the Agreement are necessary to ensure compliance with the terms of the Agreement that the Net Ecosystem benefits described in

Article F can continue to be achieved. Such changes may require formal amendment of the Agreement.

**Q) Venue and Severability**

This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any action hereon or in connection herewith shall be brought in Palm Beach County, Florida.

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R) Signatures

IN WITNESS THEREOF, the parties, by and through the undersigned duly authorized representatives, have executed this Agreement on the dates set forth below.

\_\_\_\_\_  
Gail L. Coniglio  
Mayor, Town of Palm Beach  
Date: \_\_\_\_\_

\_\_\_\_\_  
Steven L. Abrams  
Mayor, Palm Beach County  
Date: \_\_\_\_\_

\_\_\_\_\_  
Jeff Littlejohn  
Deputy Secretary of Regulatory Programs  
Florida Department of Environmental  
Protection  
Date: \_\_\_\_\_

\_\_\_\_\_  
Gregg Holder  
Assistant Executive Director  
Florida Fish & Wildlife Conservation  
Commission  
Date: \_\_\_\_\_

2014-

0001


BGEX - 381 - 072213\*1829  
BGRV - 381 - 072213\*619

BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA

BUDGET AMENDMENT  
Fund 3652 Beach Improvement Fund

ACCOUNT NAME AND NUMBER		ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED ENCUMBERED BUDGET / Expended	REMAINING BALANCE
<u>REVENUES</u>							
381-M044 S Palm Beach	6994 Municipal Participation	0	0	43,351	0	43,351	43,351
TOTAL RECEIPTS & BALANCES		30,794,479	30,794,479	43,351	0	30,837,830	
<u>EXPENDITURES</u>							
381-M044 S Palm Beach	4630 - Beach/Dune/Renourish	724,974	724,974		173,407	551,567	551,567
381-M044 S Palm Beach	8101 Contributions Other Govts	0	0	216,758	0	216,758	216,758
TOTAL APPROPRIATIONS & EXPENDITURES		30,794,479	30,794,479	216,758	173,407	30,837,830	

Environmental Resources  
Management  
\_\_\_\_\_  
INITIATING DEPARTMENT/DIVISION  
Administration/Budget Department Approval  
OFMB Department - Posted

Signatures & Dates  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
7/24/2013

BY BOARD OF COUNTY COMMISSIONERS  
AT MEETING OF  
\_\_\_\_\_  
August 13, 2013  
\_\_\_\_\_  
Deputy Clerk to the  
Board of County Commissioners