

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date:	January 13, 2015	(X) Consent	() Regular
		() Workshop	() Public Hearing
Department			
Submitted By:	<u>Environmental Resources Management</u>		
Submitted For:	<u>Environmental Resources Management</u>		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

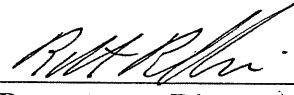
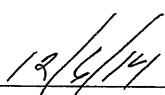
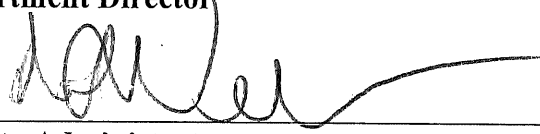
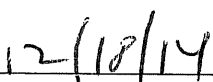
- A) **Receive and file** a notification of termination to the City of Riviera Beach (City) terminating Interlocal Agreement (R2008-2220) with the City for the Singer Island Erosion Control Project for lack of purpose; and
- B) **Rescind** an Interlocal Agreement for the Singer Island Erosion Control Project with the City of Riviera Beach (R2008-2220).

Summary: On December 2, 2008, The Board of County Commissioners (BCC) executed an Interlocal Agreement (Agreement) with the City of Riviera Beach (City) for a 20% cost share of eligible project costs up to \$7,020,000 for the Singer Island Erosion Control Project. Due to an absence of consensus on a permissible design among State and Federal agencies, on March 22, 2011 the BCC voted to discontinue efforts to pursue a permit. As a result, on March 11, 2014 the BCC authorized the County Administrator or his designee to terminate the Agreement for lack of purpose. Receipt of final payment was required prior to contract termination. Palm Beach County has received final payment from the City. District 1 (SF)

Background and Justification: A notification of termination was sent to the City on June 10, 2014. Per paragraph 10B, of the Agreement, the termination is effective ninety (90) days from the notification and upon payment of all costs incurred and due. Palm Beach County received final payment from the City on September 26, 2014 and the termination of the Interlocal Agreement was effective on that date.

Attachments:

1. Notice of Termination
2. Interlocal Agreement (R2008-2220)

Recommended by:		
	Department Director	Date
Approved by:		
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X
 Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
 Program _____

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

No Fiscal Impact

C. Department Fiscal Review:

JP

III. REVIEW COMMENTS

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

[Signature] *12/10/14*
 OFMB *KW* *AR*
12/9 *12/9/14*
[Signature] *12/11/14*
 Contract Development and Control
12.15-14 *[Signature]*

B. Legal Sufficiency:

[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

R2008-2220



Department of Environmental
Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743
(561) 233-2400
FAX: (561) 233-2414
www.pbcgov.org/erm

Palm Beach County
Board of County
Commissioners

Priscilla A. Taylor, Mayor
Paulette Burdick, Vice Mayor
Hal R. Valeche
Shelley Vana
Steven L. Abrams
Mary Lou Berger
Jess R. Santamaria

County Administrator
Robert Weisman

"An Equal Opportunity
Affirmative Action Employer"

June 10, 2014

Ms. Ruth Jones, City Manager
City of Riviera Beach
Riviera Beach Municipal Complex
600 West Blue Heron Blvd.
Riviera Beach, FL 33404

Dear Ms. Jones:

**SUBJECT: TERMINATION OF SINGER ISLAND ECP INTERLOCAL
AGREEMENT AND FINAL BILLING**

On December 2, 2008, the Board of County Commissioners (BCC) executed an Interlocal Agreement (Agreement) with the City of Riviera Beach for a 20% cost share of eligible project costs associated with the Singer Island Erosion Control Project. Due to an absence of consensus on a permissible design among State and Federal agencies, the BCC voted to discontinue efforts to pursue a permit. As a result, on March 11, 2014 the BCC authorized the termination of the Interlocal Agreement for lack of purpose. Per paragraph 10B of the Agreement, the termination is effective September 8, 2014, which is ninety (90) days from this notification and upon payment of all costs incurred and due.

As part of the close-out of the Agreement, the County seeks a final reimbursement of \$131,560.50 as outlined on the enclosed payment summary. This final billing includes an outstanding balance from Reimbursement Request No. 2 submitted on January 30, 2011 in the amount of \$70,549.28 (enclosed). Also included with the payment request are the vendor invoices, proof of payment and County Time Accounting and Billings System (TABS) reports.

If you have any questions, please contact me at (561) 233-2400 or Mr. Michael Stahl at (561) 233-2433.

Sincerely,

Robert Robbins, Director
Department of Environmental Resources Management

RR:MS
Enclosures

R2008.2220

INTERLOCAL AGREEMENT
FOR THE SINGER ISLAND EROSION CONTROL PROJECT
BETWEEN PALM BEACH COUNTY
AND
THE CITY OF RIVIERA BEACH

DEC 02 2008

THIS AGREEMENT is made and entered into on this ____ day of _____, 2008, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida (the "COUNTY") and the CITY OF RIVIERA BEACH, a municipal corporation in the State of Florida, (the "CITY"), each one constituting a public agency as defined in Part I of Chapter 163, Florida Statutes, and both being 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 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, pursuant to Chapter 166, Florida Statutes, the CITY is empowered to exercise any governmental, corporate, and proprietary power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the COUNTY and the CITY intend to make the most efficient use of their powers by cooperating with each other on the Singer Island Erosion Control Project (the "PROJECT") within the municipal limits of the City of Riviera Beach, Florida; and

WHEREAS, the COUNTY and the CITY desire to establish their respective roles in the PROJECT to make the most efficient use of their respective resources; and

WHEREAS, the CITY wishes to cost share with the COUNTY, by reimbursing 20% of the total eligible PROJECT costs (as further described herein) to the COUNTY.

NOW, THEREFORE, in consideration of the mutual covenants, promises and

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ATTACHMENT 2

representations herein, the parties agree as follows:

1. Recitals. The above recitals are true and correct and incorporated herein.
2. Purpose of the Agreement. The purpose of this Agreement is to provide a mechanism for funding the PROJECT, and to set forth the terms, conditions and obligations of each of the respective parties hereto.
3. The PROJECT.
 - A. Description. The PROJECT consists of construction of break water structures as necessary for shoreline protection and erosion control within the boundaries of the City of Riviera Beach as further described in Exhibit A. The PROJECT does not include any dune or beach restoration efforts.
 - B. PROJECT components. PROJECT components include project management, engineering, design, permitting, construction, mitigation, and environmental and project performance monitoring.
4. Term. The term of this Agreement shall be from the date of execution through September 30, 2015, unless otherwise provided herein. Work conducted on this PROJECT by the COUNTY and its consultants/contractors beginning on or after May 3, 2005, and occurring prior to the expiration or termination of this Agreement shall be eligible for reimbursement by the CITY if said work qualifies as an eligible PROJECT costs as defined herein.
5. Funding. The parties agree that the CITY will cost share in the eligible costs for the PROJECT as described in this Agreement. Each party agrees to diligently pursue the approval and procurement of its funding obligation.
6. COUNTY Obligations.
 - A. No later than January 15th of each year, the COUNTY shall submit in writing to the CITY a list of the anticipated PROJECT tasks to be undertaken in the succeeding fiscal year, including estimated costs.
 - B. The COUNTY shall pay all expenses of the PROJECT in anticipation of reimbursement from the Federal and State governments and the CITY.
 - C. Upon the completion of a PROJECT task and payment for said task by the COUNTY, the COUNTY shall submit invoices for reimbursement to the CITY not more frequently than quarterly. For reimbursement to occur, the COUNTY shall submit invoices to the CITY that shall include a reference to this Agreement; identify the task completed under the PROJECT; identify the COUNTY's total expenditure for the task; identify the amount due and payable to the COUNTY; include a copy of each contractor's

invoice; and include a statement certifying that the invoice amount includes only eligible expenses, that said eligible expenses have been incurred by the COUNTY, and that all related contractor(s)' invoices have been paid. Invoices shall be in sufficient detail for pre-audit and post-audit review. The COUNTY shall provide further documentation deemed necessary by the CITY, if requested in writing, within fourteen (14) days of the request.

- D. The COUNTY shall maintain adequate records to justify all charges, expenses and costs represented by the invoice amounts for at least three (3) years after completion of the PROJECT or termination of the Agreement, whichever occurs last. The CITY shall have access to all books, records, and documents related to the PROJECT as required in this paragraph for purposes of inspection or audit during normal business hours.
- E. The COUNTY may submit requests for Federal and State funding assistance, shall provide a copy of any such submittal to the CITY, and shall seek the CITY's support of the COUNTY's requests for said funding assistance.
- F. The COUNTY shall provide the CITY with copies of all contracts, plans and specifications. The COUNTY shall invite the CITY to pre-bid and pre-construction meetings.
- G. The COUNTY shall provide the CITY with a copy of the PROJECT schedule and all revisions thereto.
- H. The COUNTY shall prepare and submit any and all applications for State and Federal permits required for the PROJECT and provide a copy thereof to the CITY.
- I. The COUNTY shall be responsible for management, design, construction and monitoring of the PROJECT.
- J. The COUNTY shall secure competitive bids by advertisement for work to be performed by contractors in accordance with the COUNTY Purchasing Ordinance.
- K. Notwithstanding any other provision herein, the COUNTY's obligation to perform under this Agreement is contingent upon an appropriation for its purpose by its Board in its annual fiscal year budget during the term of this Agreement.

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CITY Obligations.

- A. The CITY shall cost share with the COUNTY on a reimbursement basis. Cost sharing responsibility shall be limited to twenty percent (20%) of the eligible PROJECT costs paid for by the COUNTY. Funding received from Federal, State or other local governments for the PROJECT shall not be utilized to determine the eligible PROJECT costs.
- B. The CITY shall appropriate adequate funds to cover the CITY's share of the eligible PROJECT costs, which are estimated to be Six Million Dollars (\$6,000,000) and which shall not exceed Six Million Dollars (\$6,000,000) plus a 17% contingency without amendment to this Agreement. City staff shall notify City Council if the 17% contingency is necessary. This notification is for informational purposes only, as the expenditure of the 17% contingency is hereby approved. Eligible PROJECT costs are limited to: project management, engineering, design, permitting, construction, mitigation, and environmental and project performance monitoring paid for or completed by the COUNTY. The amount of funding by the CITY will depend upon the physical condition of the PROJECT area, which the parties acknowledge will change based on weather events or other events beyond of the control of the parties. Therefore, each year, the CITY shall draft a yearly funding memorandum that corresponds to the PROJECT tasks to be completed by the COUNTY in that fiscal year as provided in paragraph 6.A. above. The yearly funding memorandum shall include a list of the anticipated PROJECT tasks, estimated costs for each task, and a commitment to include the funding request in the proposed budget for that fiscal year. The County shall provide the information needed to complete the funding memorandum at least sixty (60) days prior to the submission of the funding memorandum.
- C. The CITY shall submit to the COUNTY a memorandum of commitment indicating that the CITY has appropriated the required funds that the COUNTY requests in the next year's budget.
- D. Invoices received from the COUNTY will be reviewed and approved by the CITY to insure that expenditures have been made in conformity with this Agreement and will be sent to the CITY's Finance Department for final approval and payment. Invoices will normally be paid by the CITY within thirty (30) days following said approval by the Finance Department. In no event shall the CITY provide advance funding to the COUNTY. All payments made to the COUNTY shall be by check made payable to the Palm Beach County Board of County Commissioners and shall be clearly marked to identify the PROJECT. Payments shall be submitted to the Palm Beach County Department of Environmental Resources Management at the address provided for Notices in Section 9.

E. Notwithstanding any other provision herein, the CITY's obligation to pay under this Agreement is contingent upon an appropriation for its purpose by its Council in its annual fiscal year budget during the term of this Agreement.

8. Party Representatives.

A. 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.

B. The CITY'S representative/contract monitor during the term of this Agreement shall be the CITY Manager, whose telephone number is (561) 845-4000.

9. Notices. All formal notices, which may be or are required to be given by either the CITY or the COUNTY under this Agreement shall be properly given only if made in writing and sent by hand delivery or certified or registered mail, postage prepaid, return receipt requested, with all delivery charges paid by the sender and addressed to the party's Representative identified above in Section 8, at the below cited address. A copy of all such notice shall also be sent to the following counsel by U.S. Mail. Should any party change its address, written notice of such new address shall promptly be sent to the other party.

Palm Beach County Department of Environmental Resources Management 2300 North Jog Road, 4 th Floor West Palm Beach, FL 33411-2743	City Manager City of Riviera Beach 600 W. Blue Heron Blvd. City of Riviera Beach, FL 33404	Palm Beach County Attorney's Office 301 North Olive Avenue 6 th floor West Palm Beach, FL 33401
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10. Default and Termination.

A. If a party fails to fulfill its obligations under this Agreement in a timely and proper manner, the party not in default shall have the right to terminate this Agreement by giving written notice of any deficiency and its intent to terminate. The party in default shall then have thirty (30) days from receipt of notice to correct the stated deficiency. If the defaulting party fails to correct the deficiency within this time and unless otherwise agreed by the parties, this Agreement shall terminate at the expiration of the thirty (30) day time period. If the Agreement is terminated before the Project is complete due to a default by the CITY, the CITY shall pay all costs incurred and due under the terms of this Agreement up to and including the date of termination.

B. Either party may terminate this Agreement at any time for convenience

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upon ninety (90) calendar days prior written notice to the other party and upon payment of all costs incurred and due under the terms of this Agreement as up to and including 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. Filed. A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.
13. Amendments. This Agreement may only be amended by written Agreement executed by the parties hereto with the same formality used to execute this Agreement.
14. Indemnification. Each party shall be liable for its own actions and negligence, and to the extent permitted under Section 768.28, Florida Statutes, the COUNTY shall indemnify, defend and hold harmless the CITY against any actions, claims, or damages arising out of the COUNTY's negligence in connection with this Agreement, and the CITY shall indemnify, defend and hold harmless the COUNTY against any actions, claims or damages arising out the CITY's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions. This Indemnification provision shall survive the expiration or termination of this Agreement.
15. Insurance. The parties shall maintain a fully funded insurance or self-insurance program pursuant to Section 768.28, Florida Statutes. The COUNTY agrees to require any contractor performing work on the PROJECT to maintain adequate insurance coverage, naming both the CITY and COUNTY as additional insured. When requested, either party shall provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the other party agrees to recognize as acceptable for the above mentioned coverages. Compliance with the foregoing requirements shall not relieve either party of its liability and obligations under the Agreement or any amendments hereto.
16. Equal Opportunity. The COUNTY and the CITY agree that no person shall, on the grounds of age, race, color, sex, national origin, disability, religion, ancestry, marital status, or sexual orientation be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of the Agreement.
17. Severability. In the event that any section, paragraph, sentence, clause, or provision 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. It is hereby agreed to by the parties that no waiver or breach of any of the covenants or provisions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant or provision.
19. Disputes. Disputes under this Agreement may be resolved by the parties' Representatives named in Paragraph 8. If the Representatives are unable to reach a resolution, the parties may select a mediator mutually acceptable to both parties to conduct a mediation of the issues involved and make a recommendation to both parties. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that the mediator's fees and costs shall be paid in equal amounts by each party.
20. Independent Contractor. The COUNTY recognizes that it is an independent contractor and not an agent or servant of the CITY. 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. Remedies. This Agreement shall be construed by and governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. 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.
23. Captions. The captions and section designations herein set forth are for convenience only and shall have no substantive meaning.
24. 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.

25. Incorporation by Reference. Exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.
27. Entirety of Agreement. The CITY 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.

[THE REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

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IN WITNESS WHEREOF, the County of Palm Beach, Florida has caused this Agreement to be signed by the Chairperson of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board, and the City of Riviera 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 City Clerk, the date and year first above written.

R2008 2220 DEC 02 2008

CITY OF RIVIERA BEACH,
FLORIDA

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: Thomas A. Masters
Thomas Masters, Mayor

By: John F. Koons
John F. Koons, Chairman

ATTEST:
Carrie E. Ward

By: Carrie E. Ward
City Clerk

Date: 10/1/2008

(Seal)

ATTEST:
Sharon R. Bock, Clerk & Comptroller

By: Sharon R. Bock
Deputy Clerk

Date: DEC 02 2008

(Seal)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Pamala H. Ryan
Pamala H. Ryan, City Attorney

Date: 9/24/08

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: Richard E. Walesky
Assistant County Attorney

APPROVED AS TO TERMS
AND CONDITIONS

By: Richard E. Walesky
Richard E. Walesky, Director
Dept. of Env. Resources Management

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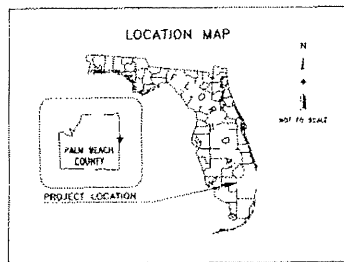
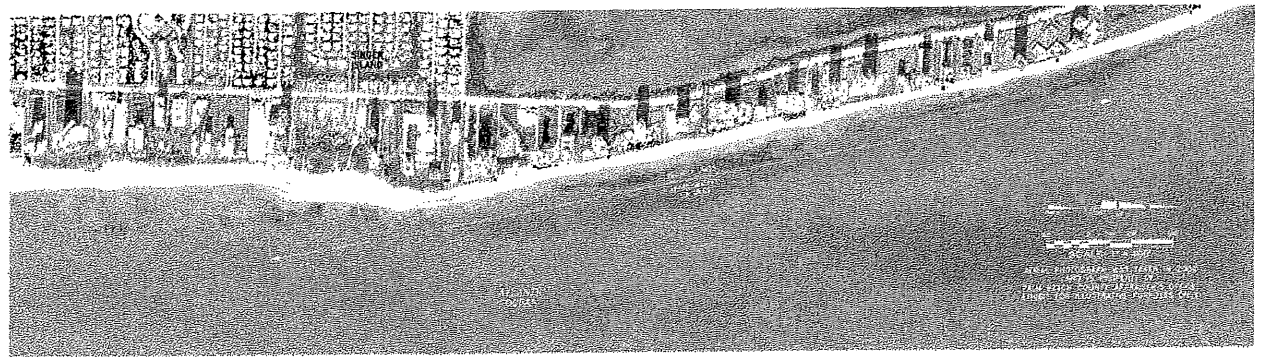
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SINGER ISLAND,
PALM BEACH COUNTY, FLORIDA
EROSION CONTROL
PROJECT



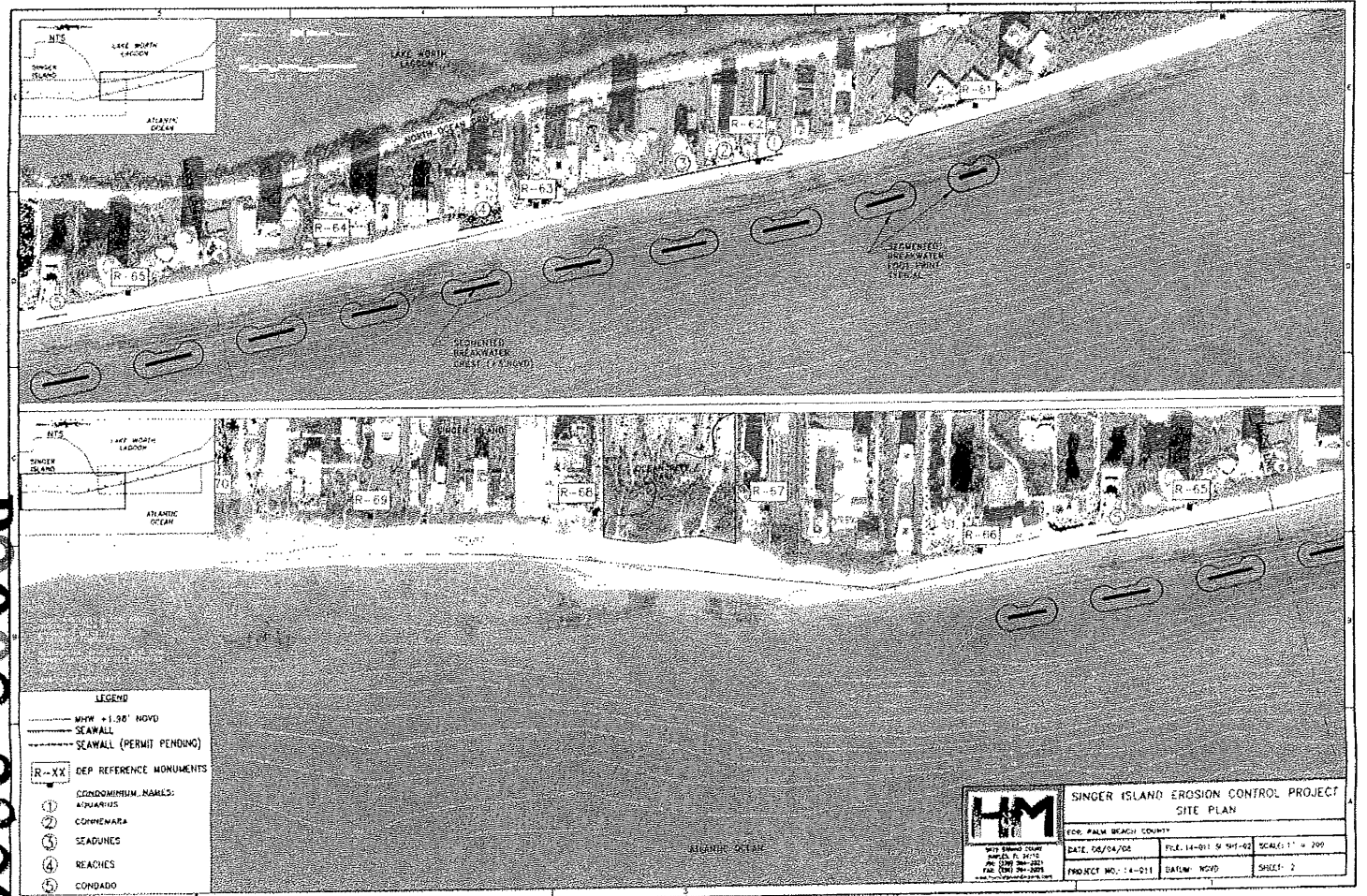
- SHEET INDEX
1. COVER SHEET AND LOCATION MAP
 2. PROJECT SITE PLAN
 3. SEGMENTED BREAKWATER PLAN VIEW
W/ TYPICAL SECTION & DETAILS
 5. VESSEL CORRIDOR



- NOTES:
1. THESE PLANS COMPLY WITH THE DESIGN STANDARDS ESTABLISHED BY CHAPTER 400-41, FLORIDA ADMINISTRATIVE CODE.
 2. PLAN DIMENSIONS AND ELEVATIONS HEREIN ARE IN FEET AND INCHES BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE.
 3. THESE CONSTRUCTION DRAWINGS SHALL NOT BE CONSIDERED VALID FOR CONSTRUCTION PURPOSES UNLESS SIGNED AND SEALED BY EITHER:
BRETT D. MOORE, P.E. #23259
KENNETH A. JUNGSTON, P.E. #23326

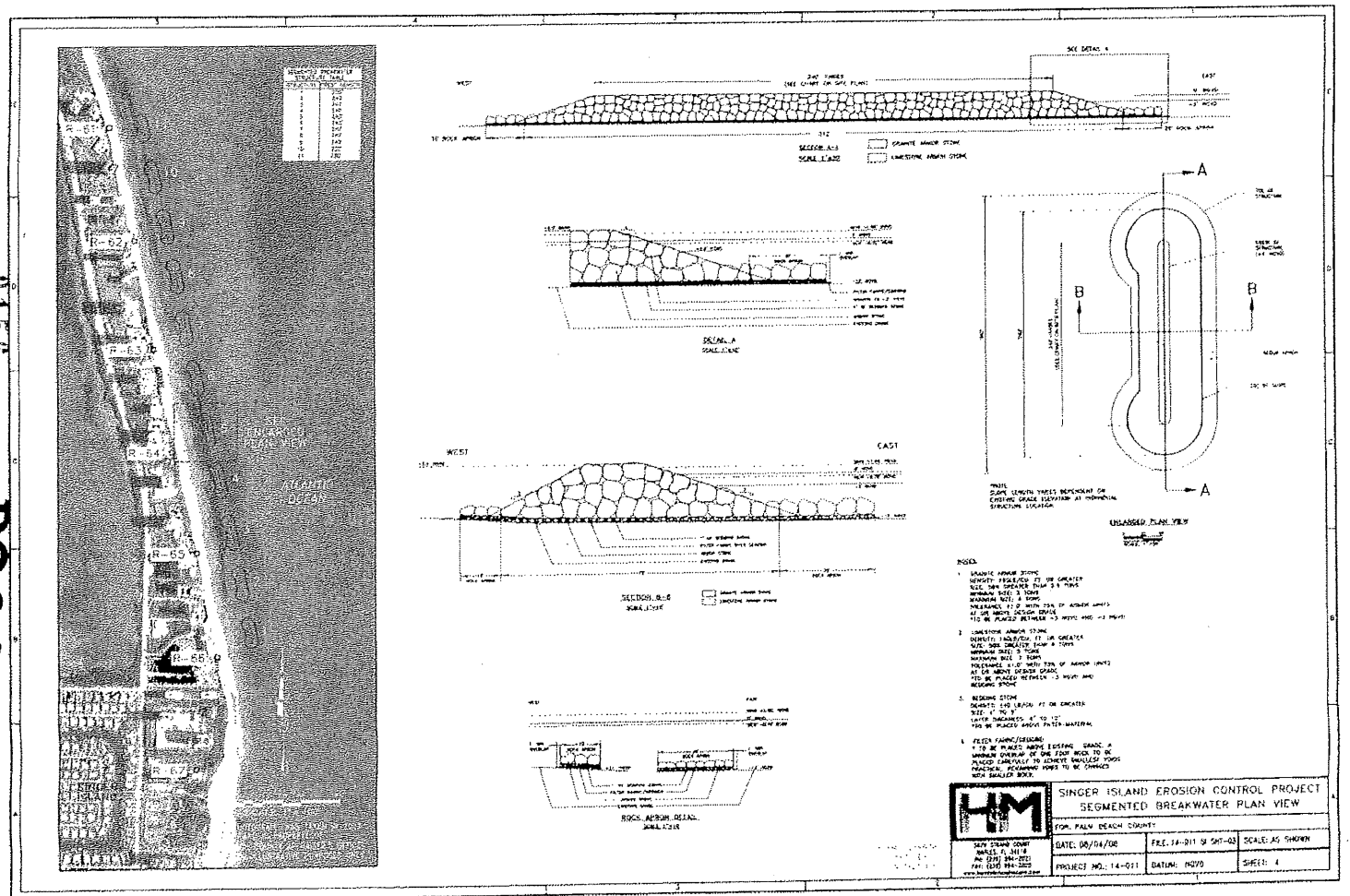
SINGER ISLAND EROSION CONTROL PROJECT COVER SHEET AND LOCATION MAP			
FOR PALM BEACH COUNTY			
DATE: 08/04/08	FILE: 14-011 31 SHEET-01	SCALE: 1" = 400'	
PROJECT NO.: 14-011	DATE: NOV08	SHEET: 1	

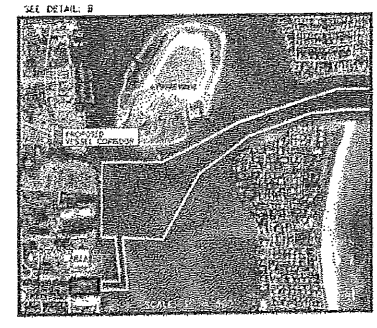
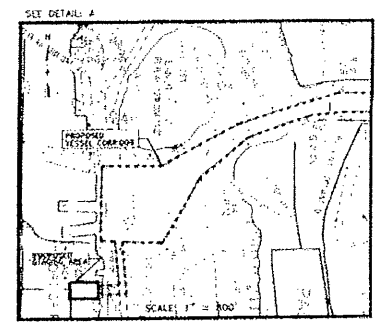
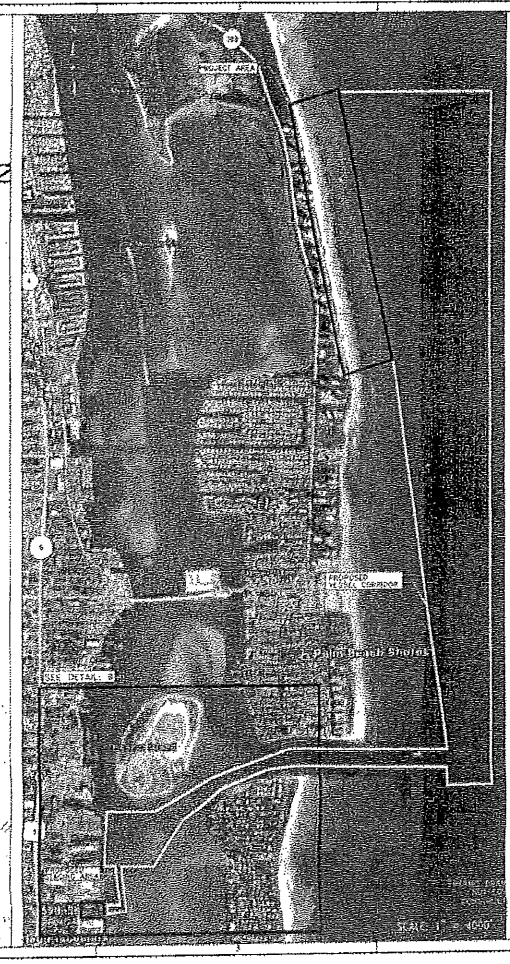
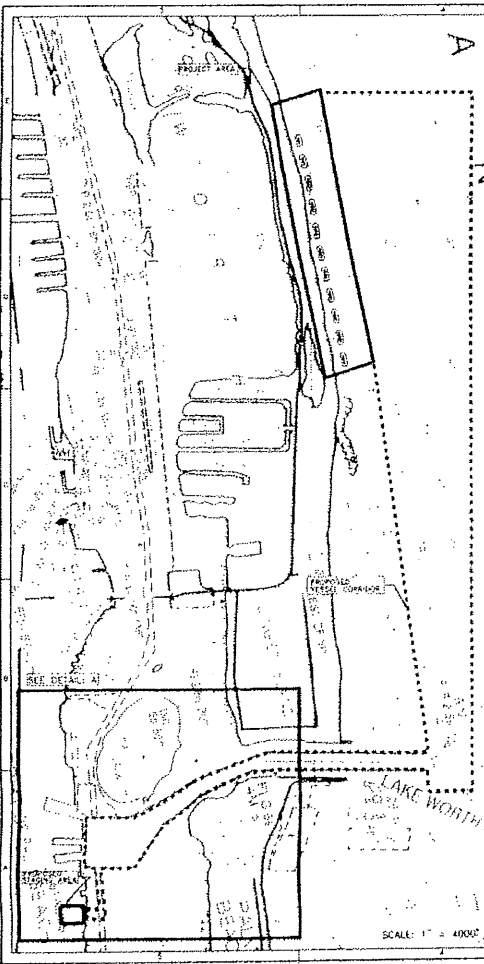
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P2008 2220





- NOTES
1. MAPSICAL CHART OBTAINED FROM NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA) FIRST 1011 (1974). SHOULD ONLY BE USED FOR GENERALITY PURPOSES ONLY.
 2. AERIAL PHOTOGRAPHY OBTAINED FROM EROSION CONTROL (EC) BE USED FOR ILLUSTRATIVE PURPOSES ONLY. DATE OF AERIAL UNKNOWN.
 3. PROPOSED STAGING AREA LIMITS ARE APPROXIMATE.

	SINGER ISLAND EROSION CONTROL PROJECT		
	VESSEL CORRIDOR		
DATE: 02/24/09	FILE: 14-011 V. 001-001	SCALE: AS SHOWN	
PROJECT NO. 14-011	DATUM: NAD83	SHEET: 3	

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R2008 2220