Agenda Item: 3L3

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: Department	September 22, 2015	(X) Consent () Workshop	() Regular () Public Hearing
	Submitted By: Environmental Submitted For: Environmental		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- **A)** A Temporary Easement Agreement for Construction Access (Agreement) with KT 5000 LLC to facilitate the Singer Island Dune Restoration Project in Zone 4; and
- B) Budget Transfer of \$120,000 in the Beach Improvement Fund (3652) from the Juno Beach Shore Protection (M028) to the Coral Cove Dune Restoration (M040), Delray Beach Shore Protection (M041), Central Boca Shore Protection (M051), Palm Beach Midtown Shore Protection (M034) and to the Shoreline Protection Program Activities (M100) project accounts.

Summary: The Singer Island Shore Protection Project includes dune restoration in an area designated by the Florida Department of Environmental Protection (DEP) as "critically eroded". Dune restoration reconstructs past dune profiles and stabilizes the sand with native dune vegetation. Easement agreements are required for construction access to the beach and dune areas within the project limits. This Agreement will be used for a one-time dune restoration while the subject property is being redeveloped. Plans for a long term easement agreement following anticipated construction are being incorporated into redevelopment plans for this property.

This item will establish budget required to provide accounting for anticipated costs and staff time spent on regionalized monitoring of beach and dune projects and other non project-specific staff time. Regional monitoring efforts include digital aerial photography and beach surveys. <u>District 1</u> (SF)

Background and Justification: Since 2001, ten dune restoration projects have provided beach stabilization for recreation, habitat and storm protection on Singer Island. The Zone 4 area of the Project was not restored this past year due to a permit challenge, which has been resolved. (**Continued on page 3**)

Attachments:

- 1. KT 5000 LLC Construction Access Easement
- 2. Singer Island Dune Restoration Zone 4 Map
- 3. Budget Transfer

Recommended by:	AMAMA	8/28/15
	Department Director	Daté
Approved by:	Make	9/11/15
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	**************************************		4		-
Operating Costs	\$120,000	***************************************			
External Revenues					
Program Income (County)		-	-	
In-Kind Match (County)				-	
NET FISCAL IMPACT	\$120,000				
# ADDITIONAL FTE POSITIONS (Cumulative	e)				
Is Item Included in Curre	nt Budget?	Yes		NoX	_
Budget Account No.:	Fund			Objec	
A. OFMB Fisca OFMB Sign OF	Fiscal Review III. REV I and /or Con		ENTS Control Co	mments:	1918/15
C. Other Depart	tment Review	:			
Department]	 Director	-			

Continued from pg 1

Background and Justification: Plans to restore the Zone 4 dune during January-February 2016 using the Agreement with KT 5000 LLC will reduce the overall project cost and simplify logistics when compared with the existing construction access.

Regionalized monitoring provides data necessary to study impacts of the Shoreline Protection Program to the entire county coastline. Efforts funded by this account also include technical assistance provided by staff to local communities and coastal property owners in assessing and managing the effects of storm impacts.

Return To: Michael Stahl, Environmental Program Supervisor Palm Beach County Environmental Resources Management 2300 North Jog Road, 4th Floor West Palm Beach, FL 33411-2743

TEMPORARY EASEMENT AGREEMENT FOR CONSTRUCTION ACCESS

THIS EASEMENT AGREEMENT is made this \(\frac{\sqrt{\text{T}}}{\text{\text{day}}} \) day of \(\frac{\sqrt{\text{\text{Cost}}}}{\text{\text{cost}}} \), 2015 between KT 5000 LLC, a Florida limited liability company, whose mailing address is 701 South Olive Avenue, Suite 104, West Palm Beach, FL 33401 ("Grantor"), and Palm Beach County, a political subdivision of the State of Florida, whose mailing address is 301 North Olive Avenue, West Palm Beach, Florida 33401, ("Grantee"), both being herein referred to collectively as the "parties", for the sole purpose of providing construction access for the SINGER ISLAND SHORE PROTECTION PROJECT ("the Project").

- 1. Grant of Easement. In consideration of the mutual benefits to be derived from the Project, the sufficiency of which is hereby acknowledged by the parties, the Grantor hereby grants, bargains and conveys to the Grantee, its subcontractors, agents and employees, a temporary, non-exclusive easement on, over, under, through and across the Property described in Exhibit "A," attached hereto and incorporated herein ("the Easement Premises") for construction access purposes. This instrument is further subject to all easements, restrictions, covenants, conditions, limitations and reservations of record, if any. Grantee's use of the Easement Premises as provided herein shall not interfere with Grantor's right to construct or improve a sea wall on Grantor's Property.
- 2. <u>Not a Public Dedication.</u> Nothing herein contained shall be deemed to be a gift to any public authority or any third party, and this Easement shall be strictly limited to and for the temporary limited purposes expressed herein. Nothing herein contained shall be deemed to give the public or any other persons, other than Grantor, Grantor's successors, assigns, officers, directors, partners, contractors, tenants, lessees, mortgagee, agents, employees, guests, customers, invitees members and Grantee and its subcontractors, agents and employees any access rights to the Easement Premises or access to the beach from the Grantor's property other than as may have existed prior to the date of this Agreement. Grantor hereby reserves the right to the continued free use of the property in a manner not inconsistent with the rights granted herein to Grantee and subject to the terms and conditions of this Agreement.
- 3. <u>Grantee's Use.</u> The Easement Premises may be used by Grantee, its subcontractors, agents or employees solely for the purpose of providing access during and only during periods of construction or maintenance associated with the Project. The parties acknowledge that it may be necessary to remove obstructions from the Easement Premises and this may include removing vegetation, pruning vegetation, and removing fencing or any other obstacles within the Easement Premises.
- 4. Grantee's Obligations. Grantee shall obtain all permits and approvals required by all applicable governmental entities in order to perform the acts contemplated herein. Grantee shall safeguard and maintain the Easement Premises and its immediate environs throughout the term of the Project. Any damage caused by Grantee or its agents or employees to the surface or subsurface portion of the Easement Premises or any property of the Grantor or others located therein shall be repaired by the Grantee in a workmanlike manner excluding any concrete block surfaces or pavers installed by the Grantor. Such repair work may include, but is not limited to, placing sod on the easement area and re-routing any existing irrigation lines. Grantee will use best efforts to restore the easement area no later than three months after the completion of each Project event requiring construction access. Generally, dune restoration work associated with the Project will commence on or about November 1st through February 28th of the following year; construction access will be required during that period.

Grantee shall provide Grantor with ten (10) days prior written notification of Grantee's desire to

enter onto the Easement Premises.

- 5. <u>Grantor's Obligations.</u> Grantor shall not commit any act that would interfere with or impede the rights granted to Grantee, its subcontractors, agents or employees under this Agreement.
- 6. <u>Term.</u> This Agreement shall be effective upon execution by both parties and shall continue through the completion of one (1) dune restoration project, except as set forth in Section 7 below. The rights and Easement granted herein shall automatically terminate thirty (30) days from the date of final completion of the project or at such time that an alternate easement area located on the property is provided for the project; whichever is earlier. Either party may thereafter record a memorandum or notice of termination.
- 7. <u>Termination For Cause.</u> This Agreement may be terminated by Grantor upon sixty (60) days prior written notice to Grantee if the Grantee fails to perform in accordance with this Agreement through no fault of the Grantor. Upon the termination of this Agreement due to any of these events either party may record a release of easement in the public records.
- 8. <u>Subordination of Rights.</u> The Easement hereby granted is subject and subordinate to: (i) the easements granted in and by any Declaration recorded or to be recorded by Grantor and any such amendments to the Declaration hereinafter enacted; and (ii) Grantor's right to enter and work upon the Easement Premises.
- 9. <u>Insurance</u>. Without waiving the right to sovereign immunity as provided by S.768.28 F.S., the Grantee acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. Grantee's subcontractors using the Easement Premises for construction access purposes shall at all times maintain insurance coverage at or above the coverage required by the Grantee.
- 10. <u>Indemnification</u>. Grantee acknowledges the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28 and acknowledges that such statute permits actions at law against the Grantee to recover damages in tort for money damages up to the amounts set forth in such statute for injury or loss of property, personal injury, or death caused by the negligence or wrongful act or omission of an employee of Grantee while acting within the scope of the employee's office or employment under circumstances in which Grantee, if a private person, would be liable under the general laws of this State.
- 11. <u>Grantor's Representations.</u> Grantor represents and warrants that Grantor is the lawful owner of and has good and marketable legal title to the Easement Premises; Grantor has the full right, power and authority to grant this Easement and all other rights granted hereunder to Grantee and that Grantor has disclosed the location and terms of all other known easements that may affect the Easement Premises. If any person shall seek to set aside this Easement or to nullify the rights granted hereunder based upon an alleged superior right in the Easement Premises, then Grantor shall, upon Grantee's request and at Grantor's expense, take any action reasonably necessary to secure to Grantee the rights and interest granted hereunder.
- 12. <u>Authority to Execute This Agreement.</u> Any person executing this Agreement and representing Grantor hereby warrants and represents that he or she has received all corporate authorization necessary to bind Grantor to the terms of this Agreement. Any person executing this Agreement and representing Grantee hereby warrants and represents that he or she has received all governmental authorization necessary to bind Grantee to the terms of this Agreement.
- 13. <u>Assignment.</u> The County may assign the Agreement to another governmental entity for the purpose of restoring and maintaining the vegetated dune and the sandy beach in accordance with this Agreement.
- 14. <u>Prohibited Acts by Grantee.</u> With the sole exception of the Easement Premises, Grantee shall not enter on, over, under, through or across any other portion of Grantor's property for access to or to do work on the Easement Premises. Grantee shall promptly and at Grantee's expense repair or replace any unauthorized portion of Grantor's property damaged or destroyed

and/or impairment thereto caused by Grantee during the course of Grantee's work. Grantee shall not plant or erect anything upon the dune which shall unreasonably interfere with Grantor's use of any portion of Grantor's Non-Easement Premises. Unless otherwise authorized by the Grantor, the Grantee shall perform work on the Easement Premises only on weekdays, between 7:00 a.m. and 5:00 p.m. Grantee shall promptly remove, on a daily basis, any unauthorized debris resulting from Grantee's work on the Easement Premises.

- 15. <u>Impending Damage</u>. Nothing herein shall prevent Grantor from reasonably protecting their property including the dune and Easement Premises from impending damage or loss due to wind, seas, storms or other forces of nature in the event that Grantee is unwilling or unable to undertake such actions for any reason including lack of funding.
- 16. Governing Law and Venue. Any action to enforce this Agreement shall be brought in Palm Beach County, Florida. This Agreement shall be governed by the laws of the State of Florida.
- 17. <u>Modification</u>. This instrument shall not be modified except by written agreement signed by Grantor and Grantee.
- 18. <u>Binding Effect.</u> The covenants contained in this instrument, including all benefits and burdens, are not personal, but shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, transferees, successors and assigns.
- 19. <u>No Joint Venture.</u> Nothing in this instrument shall be construed to make the parties hereto partners or joint venturers or render them liable for the debts or obligations of the other.
- 20. <u>Recordation</u>. This instrument shall be recorded in the Public Records of Palm Beach County, Florida
- 21. <u>Vacation of Easement</u>. In the event of a termination of this Easement Agreement as set forth in Paragraph 6 or 7 above, Grantee, its successors or assigns, shall vacate said easement or relevant part thereof.

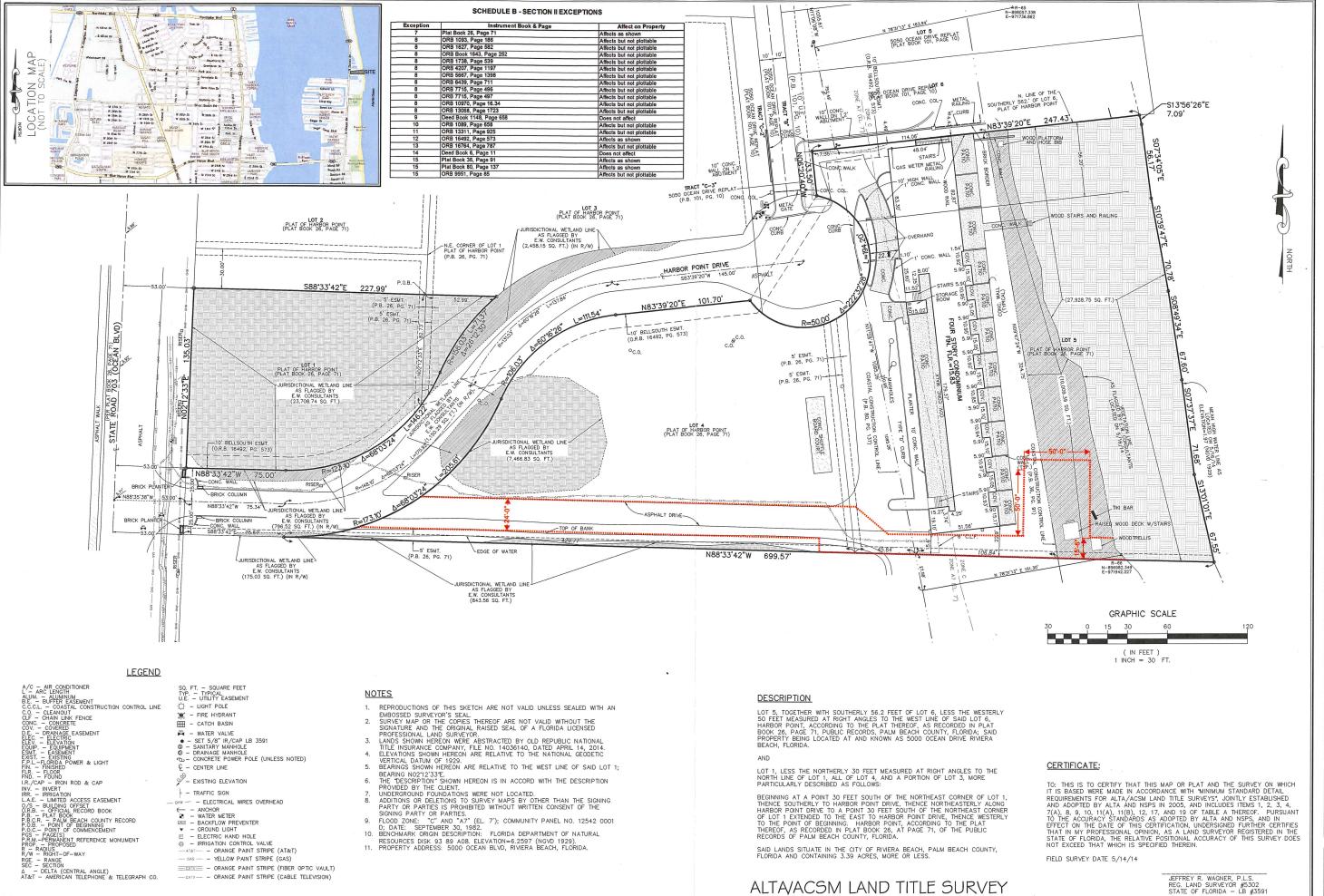
(The remainder of this page left blank intentionally)

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

Signed, Sealed and Delivered GRANTOR:

KT 5000 LLC, a Florida limited liability company

in the presence of:	KT 5000 LLC, a Florida limited liability			
\mathcal{L}	company			
	(Pyr			
Witness	By:			
Lindeny Peller	DAMES BOYCE			
Name – Typed or Printed	Name – Typed or Printed			
AND				
<u>Alt R</u>	1500000 SIGNATURE			
Witness	Title			
EDUADOU KOSPINET				
Name – Typed or Printed				
STATE OF ELODIDA				
STATE OF FLORIDA COUNTY OF PALM BEACH				
	-16 A L-			
The foregoing instrument was acknowledged befor	e me this 14 day of August, 2015 by			
James Boyce , as Authorized Sig	natory of KT 5000 LLC, a Florida limited			
liability company and who is <u>personally known</u> to identification.	me or who produced as			
1.	•			
Witness my hand and official seal this da	ay of August 2015.			
MINIMINIAN AREA MAREA				
MSSION C	N. C.			
\$ 15 may 26, 27 75 1	Notary Public, State of Florida			
* * * * * * * * * * * * * * * * * * *	Clarissa A Martinez			
FFF 176021				
PUBLIC STATE OF THE STATE OF TH	Printed Name:			
M. Commission P. 12/6/19	FE 128 (27			
My Commission Expires: $2/26/19$	Notary Commission Number			
	rotally Commission rumber			
ATTEST:	GRANTEE:			
CHADON D. DOCK, CLEDY				
SHARON R. BOCK, CLERK AND COMPTROLLER	PALM BEACH COUNTY, FLORIDA			
AND COMI INOLLER	BY ITS BOARD OF COUNTY COMMISSIONERS			
	COMMISSIONERS			
R _V	D			
By:	By:Shelley Vana, Mayor			
CIOIN	Sheney Valla, Mayor			
APPROVED AS TO LEGAL FORM	APPROVED AS TO TERMS AND			
AND SUFFICIENCY	CONDITIONS			
Ву: 57	De BUNTALL			
Assistant County Attorney	Robert Robbins, Director			
	recorr recounts, Director			



IONS DATE BY

LFIELD & WHEELER, INC.

CIVIL ENGINEERING

LANDSCAFE ARCHITECTURE - SURVEYING
7900 CLADES RADA - SUITE 109

BOCA RATON, FLORIDA 33434

PHONE (56):732-1991 / FAX (56):750-1452

HARBOR POINT ALTA/ACSM LAND TITLE SURVEY

DATE 5-14-14

DRAWN BY RW

F.B./ PG. ELEC.

SCALE 1" = 30'

JOB # 6754
SHT.NO.

OF 1 SHEETS



2015 - 1062

BOARD OF COUNTY COMMISSIONERS PALM BEACH COUNTY, FLORIDA

BUDGET TRANSFER

FUND 3652 Beach Improvement Fund

ACCOUNT NAME AND NUMBER	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENC/EXP	REMAINING BALANCE
Appropriations	-						
381-M028-Juno Beach Shore Protection 4630 Beach Dune Restore Renourish	1,427,606	733,539	0	120,000	613,539	0	613,539
381-M034-Palm Beach Midtown Shore P 4630 Beach Dune Restore Renourish	0	0	50,000	0	50,000	. 0	50,000
381-M100-Shoreline Protection Program 4630 Beach Dune Restore Renourish	18,670	0	50,000	0	50,000	0	50,000
381-M041 Delray Beach Shore Protection 4630 Beach Dune Restore Renourish	216,404	117	8,000	. 0	8,117	0	8,117
381-M040-Coral Cove Dune Restoration 4630 Beach Dune Restore Renourish	216,873	373	6,000	0	6,373	0	6,373
381-M051-Central Boca Shore Protection 4630 Beach Dune Restore Renourish	348,001	1	6,000	0	6,001	0	6,001
			120,000	120,000			

Environmental Resources
Management

INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

Signatures & Dates

BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF

September 22, 2015

Deputy Clerk to the Board of County Commissioners