

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

Meeting Date: July 11, 2017	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
Department	<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
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) adopt** a resolution authorizing the Clerk of the Board to disburse \$160,000 from the Vessel Registration Fee Trust Fund as settlement in a previously approved Agreement (R2015-1368) with Holy Trinity Episcopal Church of West Palm Beach, Inc. and Holy Trinity Properties, Inc.
- B) approve** a Budget Transfer of \$160,000 in the Environmental Enhancement Non Specific Fund (1225) from reserves to allow for payment.

Summary: Holy Trinity Episcopal Church of West Palm Beach, Inc., and Holy Trinity Properties, Inc., (Holy Trinity) sued the County and the City of West Palm Beach (City) alleging that the County inversely condemned Holy Trinity's riparian rights by installing the South Cove restoration project in Lake Worth Lagoon. The parties reached a settlement agreement (Agreement) which was approved by the Board of County Commissioners (BCC) on October 6, 2015. Under the Agreement, Holy Trinity would dismiss its pending lawsuit after the following actions occur: 1) the County obtains, on behalf of Holy Trinity, state and federal permits for a forty-slip boat dock; 2) the City reviews and approves the dock permit applications, including review for compliance with City zoning and building regulations; 3) the County pays Holy Trinity one hundred sixty-thousand dollars (\$160,000) and 4) the City pays Holy Trinity sixty-five thousand dollars (\$65,000), both payments which are intended to offset Holy Trinity's legal expenses.

The County has now obtained the requisite state and federal permits for a 40-slip dock on behalf of Holy Trinity. The agenda item which originally approved the Agreement (R2015-1368) also specified that "[t]he required resolution and budget transfer will be presented to the Board prior to payment". Payment of the identified amount will have completed the County's obligation under the Settlement Agreement. District 7 (AP)

(continued on page 3)

Attachments:

- 1. Resolution
- 2. Budget Transfer

Recommended by:



Department Director



Date

Approved by:



Deputy County Administrator



Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$160,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$160,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No X

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
Reporting Category _____

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

C. Departmental Fiscal Review: S. Neary

III. REVIEW COMMENTS

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

[Signature] 6/11/17
OFMB 21 6/11/17 6/11/17

[Signature] 6/27/17
Contract Development and Control 6/27/17

B. Legal Sufficiency:
[Signature] 6/29/17
Senior Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Justification: (continued from page 1)

Holy Trinity Episcopal Church of West Palm Beach, Inc., and Holy Trinity Properties, Inc., (hereinafter collectively referred to as “Holy Trinity”) sued Palm Beach County (“the County”) and the City of West Palm Beach (“the City”) in a lawsuit styled *Holy Trinity Episcopal Church of West Palm Beach, Inc., et. al. v. Palm Beach County, et. al.*, (“the Lawsuit”), alleging that the County inversely condemned Holy Trinity’s riparian rights by installing the South Cove restoration project in the waters off of Flagler Boulevard in downtown West Palm Beach.

Holy Trinity also alleged that the City breached a contract between the church and the City wherein the City agreed to protect the riparian rights of the church from impairment. Holy Trinity claimed that the restoration project impaired its right to an unobstructed view of the water, and impaired Holy Trinity’s right to build a dock within its area of riparian interest. Holy Trinity claimed that it has suffered \$2.4 million in damages as a result of the alleged impairment of its riparian rights. Holy Trinity also alleged that it had incurred approximately one hundred sixty thousand dollars (\$160,000) in expert and attorney’s fees and costs.

The parties attended mediation on August 24, 2015, and agreed to a Settlement Agreement, contingent upon the approval of the Board of County Commissioners, the City’s Commission, and Holy Trinity’s Vestry and Diocese of South Florida Property and Loan Committee. Under the Settlement Agreement, Holy Trinity would acknowledge the County’s right to attach its boardwalk to the City’s seawall, would execute a release on behalf of the City and the County, and would dismiss its pending lawsuit with prejudice. In exchange, the County would apply for and obtain at its own expense on behalf of Holy Trinity a dock permit from the Army Corps of Engineers and the Florida Department of Environmental Protection or the South Florida Water Management District, as applicable. The dock permit would allow for at least ten slips that would accommodate forty-foot boats and at least 30 additional slips for boats ranging in size from twenty-five feet to forty feet. The City agreed to support the dock permit application, once the application had been reviewed for compliance with zoning and building regulations, and agreed to allow connection of the dock to its seawall. The County would also pay Holy Trinity one hundred sixty thousand dollars (\$160,000), and the City would pay Holy Trinity sixty-five thousand dollars (\$65,000), for a total settlement amount of two hundred twenty-five thousand dollars (\$225,000). The Board approved the Settlement Agreement at a public meeting on October 6, 2015.

Since that time, both the Florida Department of Environmental Protection and the Army Corps of Engineers have issued their respective permits to Holy Trinity Episcopal Church of West Palm Beach, Inc. regarding the dock. The Florida Department of Environmental Protection issued on or about September 30, 2016, its Environmental Resource Permit and Lease to Use Sovereignty Submerged Lands. On or about May 19, 2017, the Army Corps of Engineers issued its Department of the Army Permit.

Now that the above permits have been issued, the County is required to pay Holy Trinity Episcopal Church of West Palm Beach, Inc. \$160,000.00 as set forth in the August 24, 2015, Mediated Settlement Agreement as well as in the October 6, 2015, Agenda Item Summary for Item 3.D.1. Staff recommends payment of the \$160,000.00 to Holy Trinity Episcopal Church of West Palm Beach, Inc.

RESOLUTION NO. 2017-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA TO AUTHORIZE THE CLERK OF THE COURT TO DISBURSE VESSEL REGISTRATION FEE TRUST FUNDS AS PAYMENT IN SETTLEMENT WITH HOLY TRINITY EPISCOPAL CHURCH OF WEST PALM BEACH, INC. AND HOLY TRINITY PROPERTIES, INC.

WHEREAS, Palm Beach County enacted the Vessel Registration Fee Ordinance, No-88-40 which began collecting fees June 1, 1989; and

WHEREAS, The Vessel Registration Fee Ordinance was the primary funding source for a Lake Worth Lagoon restoration project known as South Cove Restoration; and

WHEREAS, Holy Trinity Episcopal Church of West Palm Beach, Inc. and Holy Trinity Properties, Inc. ("Holy Trinity") sued Palm Beach County and the City of West Palm Beach alleging that the South Cove Restoration project inversely condemned its property along Flagler drive; and

WHEREAS, On October 6, 2015 the Palm Beach County Board of County Commissioners entered into a mediated settlement agreement (Agreement) which stipulated, among other items, that if the County could obtain the necessary state and federal permits for a boat dock on behalf Holy Trinity, and if the County and City would jointly offset a portion of Holy Trinity's legal fees and expenses then Holy Trinity would dismiss its suit against the County and City; and

WHEREAS, County staff have now secured both the state and federal dock permits as is prescribed in the Agreement; and

WHEREAS, the Director of Environmental Resources Management recommends that the Board of County Commissioners authorize the Clerk of the Court to disburse Vessel Registration Fee Trust Fund monies in the amount of \$160,000 as settlement in this matter.

(Remaining portion of this page has been intentionally left blank.)

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, THAT:

Section 1: The foregoing recitals are hereby adopted and ratified.

Section 2: The Board of County Commissioners hereby authorizes the Clerk of the Court to disburse Vessel Registration Fee Trust Fund monies in the amount of \$160,000 as settlement in this matter.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Paulette Burdick, Mayor	_____
Commissioner Melissa McKinlay, Vice Mayor	_____
Commissioner Hal R. Valeche	_____
Commissioner Dave Kerner	_____
Commissioner Steven L. Abrams	_____
Commissioner Mary Lou Berger	_____
Commissioner Mack Bernard	_____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2017.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

Sharon R. Bock, Clerk & Comptroller

By _____
Assistant County Attorney

By _____
Deputy Clerk

2017 -

BGEX - 053017*1362

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

BUDGET TRANSFER
FUND 1225 Environmental Enhancement -Non-Specific

ACCOUNT NAME AND NUMBER		ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	ENC/EXP 5/30/2017	REMAINING BALANCE
<u>Appropriations</u>								
<u>South Cove</u>								
380-3073	4905 Legal Settlement	0	0	160,000	0	160,000	0	160,000
<u>Reserve -Non-Specific Projects</u>								
380-3893	9902 Operating Reserves	1,871,247	1,617,260		160,000	1,457,260	0	1,457,260
				160,000	160,000			

Environmental Resources
Management

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

Signatures & Dates



BY BOARD OF COUNTY COMMISSIONERS
AT MEETING OF

July 11, 2017

Deputy Clerk to the
Board of County Commissioners