Agenda Item: 3L-2

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	February 4, 2020	(X) Consent () Workshop	()Regular ()Public Hearing
Department:	Environmental Resource		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- **A) approve** an Easement Agreement for Dune Restoration (Agreement) with Martinique 2 Owners' Association, Inc. to facilitate the Singer Island Dune Restoration Project (Project); and
- **B) authorize** the County Administrator, or designee, to sign all future time extensions, certifications, and other forms associated with the Agreement, and any necessary minor amendments that do not substantially change the scope of work, terms, or conditions of the Agreement.

Summary: The Agreement provides construction access for dune restoration and maintenance activities within the Project's Zone 4 shoreline area as depicted on the attached Project Overview Map. The Agreement carries a term of 45 years and replaces a similar easement that expired in November of 2019. The Project includes dune restoration in an area designated by the Florida Department of Environmental Protection 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. There is no cost to the County.

District 1 (SS)

Background and Justification: Since 2001, twelve County-managed dune restoration projects have stabilized the beach for recreation, sea turtle nesting habitat, and storm protection on Singer Island. The shoreline along Singer Island represents some of the highest sea turtle nesting densities in North America. A dune restoration project to repair damages sustained during the passage of Hurricane Irma is currently underway and is expected to reach the area of Martinique Condominium by February 2020.

Attachment(s):

- 1. Easement Agreement for Dune Restoration
- 2. Project Overview Map

	Johnson &	
Recommended by:		1-6-2020
	Department Director	Date
Approved by:	- John	1113/2020
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	S	2019	2020	2021	2022		2023			
Capital Exp	enditures				 	_				
Operating C	Costs					_				
External Re	venues	VOIDAGE STATE STAT		***************************************		_	and the second s			
Program Inc	come (County	r)				_	Marie Control of the			
In-Kind Mat	ch (County)					_				
NET FISCA	L IMPACT					_				
# ADDITION POSITIONS	IAL FTE 6 (Cumulative)			***************************************	_				
Is Item Inclu	uded in Curre	nt Budget?	Yes _		No	X				
Does this it	em include th	e use of fede	eral funds?	Yes	No	Χ				
Budget Acc	ount No.:									
Fund	_Department _	Unit	Object_	Progr	am					
В.	B. Recommended Sources of Funds/Summary of Fiscal Impact: There is no fiscal impact associated with this item.									
C.	Department			-						
		III. REVII	EW COMMEN	NTS						
A.	OFMB Fisca	l and /or Cor	itract Dev. ar	nd Control C	ommen	ıts:				
(OFMB)	1/1/2020	Tg Contr	act Develop	Moliment &	Contro	Ll/2020 			
В.	Legal Suffici	> y	(13/20	1140000	, , , ,	`				
	Assistant Co	-								
C.	Other Depar	unent Keviel	v:							
	Department	Director	··········							

ATTACHMENT 1

Return to: Chris Carstens, Environmental Analyst Palm Beach County Department of Environmental Resources Management 2300 North Jog Road, 4th Floor West Palm Beach, FL 33411-2743 (561) 233-2400

EASEMENT AGREEMENT FOR DUNE RESTORATION

THIS EASEMENT AGREEMENT is made this Z day of January, 2020 (the "Easement Agreement") between Martinique 2 Owners' Association, Inc., whose mailing address is 4100 N Ocean Drive, Suite 102, Singer Island, FL 33404 (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), for the limited purpose of Grantor granting a limited easement to Grantee, as more particularly described herein, so as to participate in the Singer Island Dune Restoration Project (the Project).

NOW THEREFORE in consideration of the mutual benefits to be derived from the Project, the receipt and sufficiency of which is hereby agreed to and acknowledged by the parties herein and subject to the conditions and for the purposes hereafter stated, Grantor grants to Grantee the limited easement as set forth below.

- 1. <u>Recitals.</u> The above referenced recitals are incorporated by reference herein as if more particularly set forth below.
- 2. <u>Purpose.</u> The purpose of the Project is to restore and maintain the vegetated dune and that portion of the sandy beach west of Mean High Water as more particularly described and shown in attached Exhibit A (labeled the "Area of Easement"). The Project is in furtherance of the general purpose of the Dennis L. Jones Beach and Shore Preservation Act (Chapter 161, Parts I and II, Florida Statutes), which states in part "Because beach erosion is a serious menace to the economy and general welfare of the people of this state... it is hereby declared to be a necessary governmental responsibility to properly manage and protect Florida beaches... and that the Legislature make provision for beach restoration and nourishment projects..."

The project is consistent with the Palm Beach County Comprehensive Plan, Coastal Management Element, Objective 1.2 Shoreline Protection, which states that "Palm Beach County shall protect, enhance and restore the beaches and dunes through implementation and maintenance of the Palm Beach County Shoreline Protection Plan" and more specifically Policy 1.2-e, which states that "The County shall continue to reestablish damaged dunes and eroded beaches where possible to promote the enhancement of these resources and reduce damage resulting from storms."

- 3. <u>Grant of Easement.</u> Grantor hereby grants, bargains and conveys to Grantee a limited easement on, over, under, through and across the Area of Easement for the limited purpose described in paragraph 5 below.
- 4. <u>Not A Public Dedication.</u> Grantor hereby specifically reserves the right to the continued use and full control of the Area of Easement in a manner not inconsistent with the rights granted herein to Grantee and subject to the terms and conditions hereinafter set forth.

Nothing herein shall be deemed a gift or dedication to or for the general public and the easement granted hereby shall be strictly limited to and for the temporary limited purposes expressed herein. Grantee acknowledges that it had no such access right prior to this Easement Agreement.

It is specifically understood that nothing contained in this Agreement shall be deemed to give the public or any other persons, other than Grantor, Grantor's members and Grantee any access rights to the vegetated dune portion of the Area of Easement or any other property of the Grantor. The parties acknowledge that nothing contained in this Easement Agreement shall provide public access to the beach from the Grantor's property other than as may have existed prior to the date of

this Easement Agreement. The parties acknowledge that members of the public shall have use of the sandy beach for recreational purposes if access is available from adjoining beach areas.

5. <u>Grantee's Use.</u> The Area of Easement may be used by Grantee, its contractors, agents or employees solely for the purpose of restoration and maintenance of the Grantor's dune. The parties acknowledge that maintenance of the dune may include removal of incompatible soils, exotic vegetation and other materials; grading and filling using compatible sand; installation of vegetation and temporary fencing; and other tasks necessary to restore and maintain the dune on the Area of Easement.

Any temporary fencing installed by Grantee shall not bar or impede use by Grantor's members of Grantor's private dune walkover and/or recreation deck or impede such members' existing access to the beach.

- 6. <u>Access.</u> For the purpose of carrying out any right granted herein, Grantee shall have a reasonably necessary right of ingress and egress to the Area of Easement only from the beach (easterly) side, but not from the Beach Road (west) side or any part of the Grantor's property that is not part of the Area of Easement.
- 7. <u>Term.</u> This Agreement shall be effective upon execution by both parties and shall continue for forty-five (45) years. The rights and easement granted herein shall automatically terminate forty-five (45) years from the date of its commencement. Either party may thereafter record a release of easement in the public records.
- 8. Termination For Cause. This Agreement shall terminate prior to the expiration of forty-five (45) years upon Grantee's failure, within three (3) years from the date of execution of this Easement Agreement by both parties, to complete the initial dune restoration work on the Area of Easement. Also, if a party fails to fulfill its obligations under this Easement Agreement, the other party shall have the right to terminate this Easement Agreement by giving written notice of any deficiency and its intent to terminate. The party in default shall then have sixty (60) days from receipt of the notice to correct the stated deficiency. If the defaulting party fails to correct the deficiency within this time, unless otherwise agreed by the parties, this Easement Agreement shall terminate at the expiration of the sixty (60) day time period. Upon the termination of this Easement Agreement due to any of the foregoing events, either party may record a release of easement in the public records.
- 9. <u>Grantee's Obligations.</u> Grantee shall perform dune restoration throughout the term of this Easement Agreement and shall maintain the condition of the Area of Easement as it exists upon completion of the initial dune restoration, subject to weather conditions, permit conditions, access availability, beach berm elevation and annual appropriations available to Grantee.
- 10. Grantor's Obligations. Grantor shall not commit any act that would interfere with or impede the rights granted to Grantee, its subcontractors, agents or employees under this Easement Agreement. Acts which would interfere with said rights include, but are not limited to: Hindering reasonable ingress and egress to the Area of Easement; removing any of the sand or native vegetation present or later installed by Grantee pursuant to the terms hereof; or placing any material or substance in or around the Area of Easement which may damage the structure or appearance of the beach, dune, or vegetation from its restored condition. Grantor specifically understands and agrees that based upon the rights granted by this Easement Agreement, significant sums of money will be expended by the County and the State of Florida for the purpose of this dune restoration project.
- 11. <u>Subordination of Rights.</u> The easement hereby granted is subject and subordinate to Grantor's right to enter and do all work upon the Area of Easement as shall be reasonably required to maintain, repair or replace Grantor's private dune walkover.
- 12. <u>Grantor's Representations.</u> Grantor represents that Grantor is the lawful owner of and has good and marketable legal title to the Area of Easement, that to the best of Grantor's knowledge and subject to easements, claims and matters of public record, Grantor has the full right, power and authority to enter into this Easement Agreement and that Grantor has disclosed the location and terms of all other known easements that may affect the Area of Easement. 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 Area of Easement, 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.

- 13. <u>Authority to Execute This Agreement.</u> Any person executing this Easement Agreement and representing Grantor hereby warrants and represents that he or she has received all corporate, association, or entity authorization necessary to bind Grantor to the terms of this Easement Agreement. Any person executing this Easement 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 Easement Agreement.
- 14. <u>Assignment.</u> The County may assign this Easement Agreement to another governmental entity for the purpose of restoring and maintaining the vegetated dune and the sandy beach in accordance with this Easement Agreement.
- 15. <u>Prohibited Acts by Grantee.</u> With the sole exception of the Area of Easement, 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 Area of Easement. Grantee shall promptly and at Grantee's expense repair or replace any portion of Grantor's property and/or the Grantor's private walkover damaged or destroyed 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 other property and/or Grantor's private walkover.
- 16. <u>Grantor's Right to Prune.</u> Grantor shall have the right at any time, but not the obligation, to prune the sea grapes on the Area of Easement at the Grantor's expense. Grantor shall comply with current Florida State Department of Environmental Protection dune vegetation pruning guidelines or regulations as may be in effect during the term of this Easement Agreement, and Palm Beach County's Guidelines for Beach and Dune Management as may be in effect during the term of this Easement Agreement, which are hereby incorporated and made a part hereof. Grantor shall be responsible for ensuring compliance with County ordinances, and state and federal laws regulating coastal lighting in response to possible impacts on sea turtle nesting.
- 17. Indemnification. 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.
- 18. <u>Impending Damage.</u> Nothing herein shall prevent Grantor from reasonably protecting their property including the dune and Area of Easement 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.
- 19. <u>Governing Law and Venue</u>. Any action to enforce this Easement Agreement shall be brought in Palm Beach County, Florida. This Easement Agreement shall be governed by the laws of the State of Florida.
- 20. <u>Severability</u>. If any provision of this Easement Agreement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement Agreement shall not be affected thereby, as long as the purpose of this Easement Agreement is protected.
- 21. <u>Amendment</u>. This Easement Agreement may be amended, altered, released or revoked only by written agreement between the parties hereto and their assigns or successors, which shall be recorded in the public records of Palm Beach County.
- 22. <u>Notices</u>. All notices required in this Easement Agreement shall be sent certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the Grantee, notices shall be addressed to:

Palm Beach County
Director, Palm Beach County Department of Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411-2743

With a Copy to:

Palm Beach County Attorney's Office Environmental Resources Management Attorney 301 North Olive Ave. West Palm Beach, Florida 33401

If sent to Grantor, notices shall be addressed to:

4100 North Ocean Drive Suite 102 Singer Island, FL 33404

Should either party change its address, written notice of such new address shall promptly be sent to the other party and shall be effective upon receipt.

23. <u>Entire Agreement</u>. This Easement Agreement including the Exhibits hereto constitutes the entire agreement and supersedes all prior agreements and understandings, oral and written, between the parties with respect to the subject matter hereof.

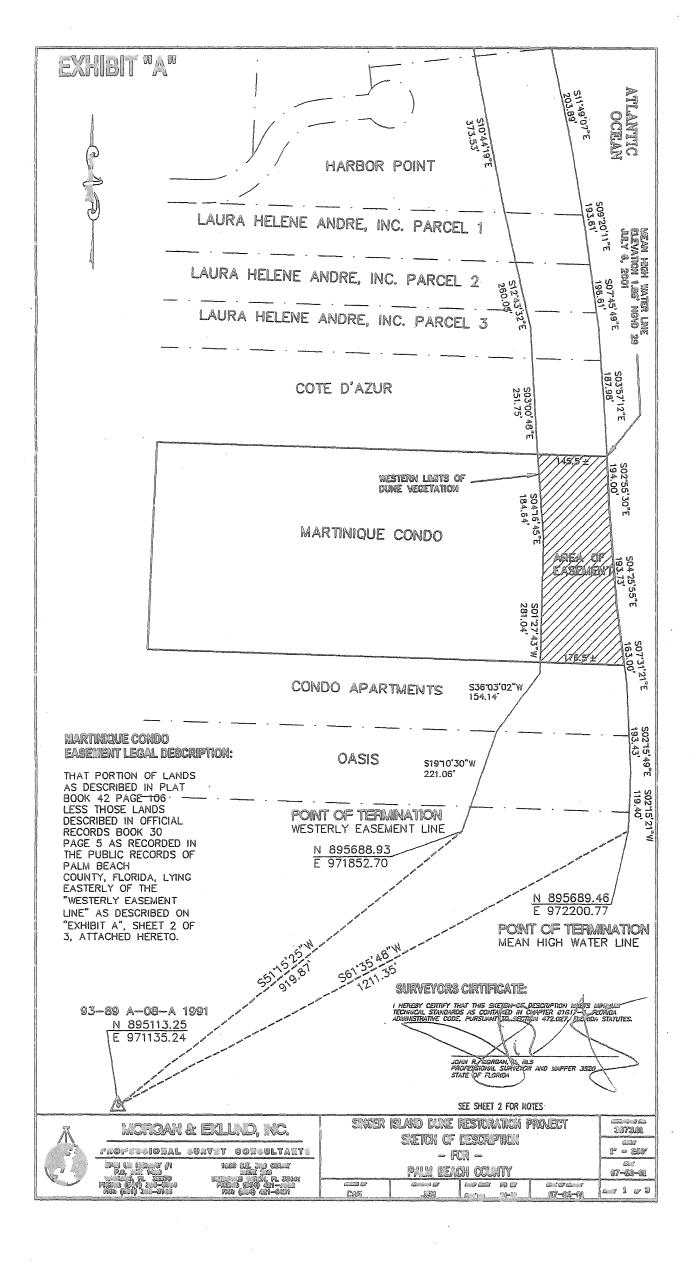
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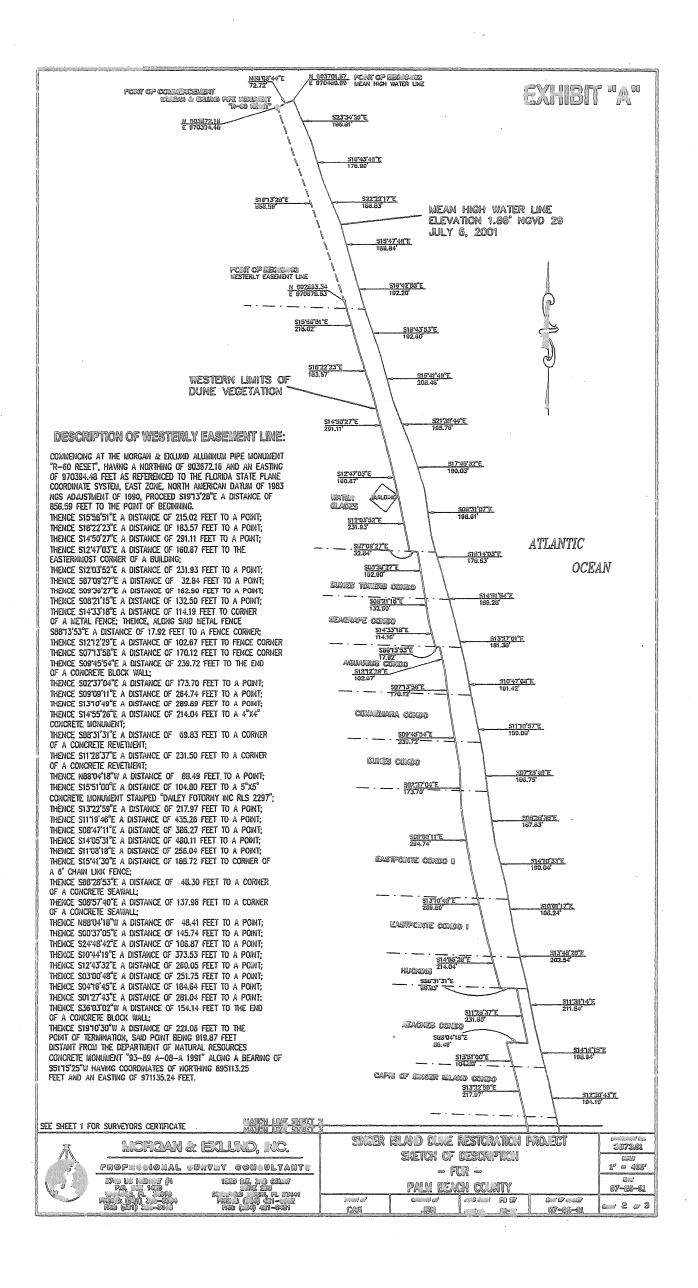
IN WITNESS WHEREOF, Grantor and Grantee have set hereto their hand and seals on the day and year first above set forth. Signed, Sealed and Delivered **GRANTOR:** in the presence of: MARTINIQUE 2 OWNERS' ASSOCIATION, INC. Name - Typed or Printed **President** lessica Poli Name - Typed or Printed STATE OF FLORIDA COUNTY OF PALM BEACH The foregoing instrument was acknowledged before me this 2nd day of 2020 by Compe as President, by means of physical presence or □ online notarization. Witness my hand and official seal this 2nd day of 2020. Notany Public State of Florida Jennifer M Druc Jenniier in Drucs My Commission GG 024946 Expires 08/25/2020 My Commission Expires: 8/25/7020 Notary Commission Number **GRANTEE:** ATTEST: SHARON R. BOCK, CLERK PALM BEACH COUNTY, FLORIDA AND COMPTROLLER BY ITS BOARD OF COUNTY **COMMISSIONERS** By: By: Clerk Dave Kerner, Mayor APPROVED AS TO LEGAL FORM APPROVED AS TO TERMS AND CONDITIONS AND SUFFICIENCY

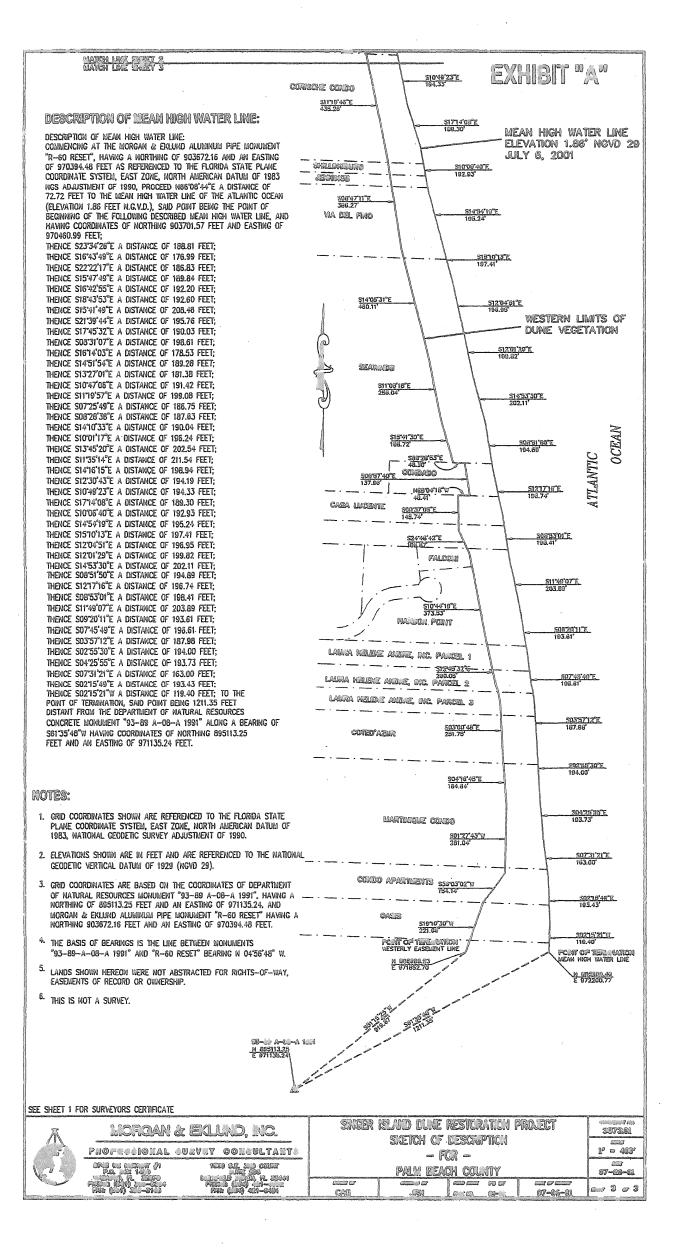
Deborah Drum, Director

By:

Assistant County Attorney







ATTACHMENT 2

