

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	August 23, 2022	(X) Consent	() Regular
		() Workshop	() Public Hearing
Department:	<u>Environmental Resources Management</u>		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

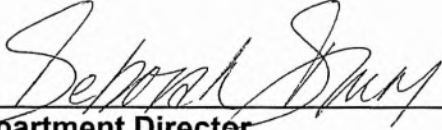
A) approve Material Removal Agreement (Agreement) between Palm Beach County and Port of Palm Beach (Port) for the removal of up to 300,000 cubic yards of spoil material from the Port of Palm Beach Dredge Material Management Area (Port DMMA), commencing upon execution and terminating December 31, 2025; and

B) authorize the County Administrator, or designee, to sign all future time extensions, task assignments, 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: This Agreement provides for the beneficial reuse of dredge material from the Port DMMA on Peanut Island to construct Bonefish Cove. Bonefish Cove is a Lake Worth Lagoon restoration project that will be constructed in partnership with the U.S. Army Corps of Engineers (USACE), with the County as the local sponsor. The budget for the estimated \$11,815,000 project was set upon execution of the Project Partnership Agreement (PPA) with the USACE (R2019-1177). The construction of the Bonefish Cove Project would not be possible without this partnership and Agreement with the Port to utilize and repurpose their dredge material. **There is no cost to the County.**
Districts 1, 2, 4, 7 (SS)

Background and Justification: The federal PPA and this local Agreement with the Port will facilitate the construction of a 40 acre restoration project in the Lake Worth Lagoon that will provide seagrass, mangrove, oyster, and shorebird nesting habitats.

Attachment:
1. Agreement

Recommended by:		7-8-22	SAS 7/6/22
	Department Director	Date	
Approved by:		7/18/22	
	Assistant County Administrator	Date	

Attachment 1

MATERIAL REMOVAL AGREEMENT

THIS MATERIAL REMOVAL AGREEMENT (“Agreement”) dated as of this ____ day of _____, 2022 (“Effective Date”) by and between PORT OF PALM BEACH, an independent special district of the State of Florida, hereinafter referred to as “PORT,” and PALM BEACH COUNTY, FLORIDA a political subdivision of the State of Florida, hereinafter referred to as “COUNTY.”

RECITALS

- A. PORT is the owner of a parcel of land located in Palm Beach County, Florida and known as “Port of Palm Beach Dredge Material Management Area” (“PORT DMMA” or “Premises”), as more particularly described in Exhibit A attached hereto and made a part hereof by reference.
- B. COUNTY is a political subdivision of the State of Florida. PORT is an independent special district.
- C. COUNTY desires to obtain fill material from PORT DMMA for exclusive use in an environmental restoration project in the Lake Worth Lagoon (the “Project”), more particularly described in Exhibit B.
- D. COUNTY has requested the PORT to allow the COUNTY to remove spoil material, in specified areas and in a specified manner, from the Premises for use in the Project.
- E. PORT has determined that it will benefit the PORT to allow the COUNTY to remove spoil material from the Premises to create additional capacity for future dredging events for PORT projects.

WITNESSESTH

Therefore, in consideration of the terms below, the sufficiency of which is mutually acknowledged, PORT and COUNTY agree that:

1. INCORPORATION OF RECITALS:

The foregoing recitals are true, correct and incorporated herein by reference.

2. TERM:

The Agreement shall commence on the Effective Date and terminate on December 31, 2025 unless extended by an amendment approved by both parties.

3. CONSENT TO REMOVAL OF SPOIL MATERIAL, USE OF PREMISES, AND CONDUCT OF BUSINESS:

- a) PORT hereby consents to the removal of spoil material by the County from PORT DMMA exclusively for use in the Project.
- b) PORT makes no representations, warranties, or statements regarding the quality, condition, usefulness or any other statement concerning the condition of the spoil material within the Premises. COUNTY has full responsibility to conduct any necessary testing or analysis of the materials within the Premises.
- c) Prior to the removal of any spoil material from the Premises, the COUNTY shall submit a detailed spoil material removal plan ("Plan") to the PORT for review and written approval by the PORT Engineer prior to undertaking any removal activities.
- d) The Plan shall require, at a minimum, that the integrity of the loading facility, roadways, fences, gates and other facilities are not compromised; that material shall not be removed below an elevation of +3 feet NGVD; and where and how the spoil removal area will be re-graded and smoothed out upon completion of spoil removal. The COUNTY and its contractors shall comply with the Plan at all times.
- e) COUNTY and its authorized contractor shall occupy and use the Premises solely for the removal of spoil material for use in the Project (hereinafter the "Permitted Use"). COUNTY shall not use the Premises or construct other improvements thereupon except as specifically provided above without PORT's prior written consent.
- f) PORT shall permit COUNTY to remove spoil material, free of any charge, fee or other payment.
- g) COUNTY shall be permitted to remove up to 300,000 cubic yards of spoil material from the PORT DMMA.
- h) Removal activities shall be limited to the hours of ___ 7:00 a.m. ___ and ___ 6:00 p.m. ___, Monday through Saturday, excluding holidays.
- i) COUNTY and its authorized contractor shall, at COUNTY's sole expense, comply with all laws, ordinances and regulations of the United States, State of Florida and the County of Palm Beach and any other applicable governmental entities, including, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of the Premises. Neither the COUNTY nor its contractors shall make any use of the Premises which shall become a nuisance.
- j) Neither County nor its contractors shall interfere with deposit of additional spoils in the PORT DDMA. COUNTY and its contractors shall cease operations in a reasonable

amount of time if required by PORT in connection with deposit of additional spoils. PORT will give COUNTY reasonable notice, but not less than 30 days, of PORT's intent to deposit additional spoils in the DMMA.

- k) Upon completion of removal activities at the Premises, COUNTY or its contractor shall provide written notice of same to PORT.

4. COUNTY'S FIXTURES AND ALTERATIONS:

- a) COUNTY agrees that it will not make any alterations (whether structural or otherwise), improvements or additions to the Premises, without first obtaining the written consent of PORT.
- b) In addition to the above, COUNTY shall also procure from the appropriate governmental agencies all necessary permits and authorizations before proceeding with any alteration, repair or improvement, and shall at all times comply with such permits and all conditions thereof, all at COUNTY's expense.

5. ASSIGNMENT:

- a) COUNTY shall not voluntarily, involuntarily, or by operation of law, assign, transfer, mortgage or otherwise encumber (herein collectively referred to as an "assignment") this Agreement or any interest of COUNTY herein, in whole or in part, nor permit the Premises or any part thereof to be used or occupied by others, without the prior written consent of PORT in each and every instance, which may be unreasonably and arbitrarily withheld. The consent of PORT to any assignment shall not constitute a waiver of the necessity for such consent to any subsequent assignment. If this Agreement or any interest of COUNTY herein be assigned or if the whole or any part of the Premises be used or occupied by others after having obtained PORT's prior written consent thereto, COUNTY shall nevertheless remain fully liable for the full performance of all obligations under this Agreement to be performed by COUNTY and COUNTY shall not be released therefrom in any manner.
- b) Should COUNTY, in violation of the provisions of this Paragraph, assign this Agreement, or allow the Premises to be used or occupied by others without obtaining PORT's prior written consent, then such assignment or occupancy shall be null and void and of no force and effect. Such act on the part of COUNTY shall be deemed a default of COUNTY entitling PORT to exercise any of the rights and remedies therefor as set forth herein.

6. LIENS:

- a) Mechanics' or Materialmen's Liens: COUNTY shall not cause any liens of mechanics, laborers or materialmen to stand against the Premises for any labor or material furnished or claimed to have been furnished to COUNTY in connection with any work of any character performed or claimed to have been performed on the Premises, by or at the direction of COUNTY.
- b) If the Premises or any part thereof, or COUNTY's interest therein, becomes subject to any suppliers, vendors, mechanics, laborers, materialmen's or other lien, encumbrance or charge (collectively hereinafter called a "lien"), other than a lien caused by the actions of the PORT, COUNTY shall promptly notify PORT of the filing or the threatened filing of any such lien. COUNTY shall promptly cause the lien to be satisfied or transferred to other security.

7. LIABILITY, SOVEREIGN IMMUNITY, AND INDEMNIFICATION:

- a) As consideration for the making of this Agreement and in light of the fact that COUNTY has had the opportunity to make such inspections and tests on the Premises as COUNTY has deemed necessary, COUNTY accepts the Premises in its "As-Is Condition."
- b) Each party shall be liable for its own actions and negligence and, to the extent permitted by law, the COUNTY shall indemnify, defend and hold harmless the PORT against any actions, claims or damages arising out of the COUNTY'S negligence in connection with this Agreement, and the PORT shall indemnify, defend and hold harmless the County against any actions, claims, or damages arising out of the PORT negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the sovereign immunity limits set forth in Florida Statutes, Section 768.28, 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.
- c) COUNTY shall be solely responsible for the payment of any fines or administrative penalties assessed and any remedial or mitigation actions required due to or arising out of any violation or alleged violation by COUNTY or COUNTY's employees, agents or contractors of laws, ordinances and regulations of any governmental entity with jurisdiction, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of the Premises.
- d) The provisions of this section shall survive the termination of this Agreement.

8. INSURANCE:

COUNTY is a political sub-division of the State of Florida subject to the limitations of Florida Statutes 768.28 as amended. COUNTY shall maintain a fiscally prudent liability program with regard to its obligations under this Agreement, and provide evidence of coverage to PORT upon request. COUNTY shall notify PORT within thirty (30) days of any change in its insurance status. Nothing herein shall serve as a waiver of sovereign immunity.

Should COUNTY contract with a third-party to perform any service related to this Agreement, COUNTY shall require the third-party to provide the following minimum insurance:

- a) Commercial General Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence. Such policy shall be endorsed to include COUNTY and PORT as Additional Insureds.
- b) Business Automobile Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence.
- c) Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability.

When requested, the COUNTY shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance.

9. REPAIRS AND MAINTENANCE OF PREMISES:

- a) COUNTY shall at all times at its sole cost and expense keep and maintain the Premises in good order and condition.
- b) COUNTY will repair promptly at its own expense any damage to the Premises caused by bringing into the Premises any property or equipment for COUNTY's use, or by the installation or removal of such property or equipment, regardless of fault or by whom such damage shall be caused.
- c) COUNTY, at COUNTY's sole cost, shall completely remove COUNTY's Project Materials and equipment from the Premises and properly dispose or reuse the same not later than December 31, 2025.
- d) In the event COUNTY defaults in the performance of any of its obligations under this section, PORT, in addition to PORT's other remedies under this Agreement, at law or in equity, may, but shall not be obligated to, cure such default, following reasonable notice and opportunity for COUNTY to cure such default on behalf of COUNTY and

COUNTY shall reimburse PORT upon demand for any sums paid or costs incurred curing such default.

- e) COUNTY shall regrade and refurbish the Premises upon completion of the material removal activities.
- f) The provisions of this Section 9 shall survive the termination of this Agreement.

10. EVENTS OF DEFAULT:

The following shall constitute events of Default:

- a) COUNTY's failure to pay any sum of money due hereunder that continues for three (3) days after the date of notice from PORT to COUNTY;
- b) COUNTY's failure to perform any of the other covenants of this Agreement where such failure to perform continues for the period of fifteen (15) days after notice from PORT to COUNTY specifying the nature of said failure to perform; or,
- c) COUNTY's failure to perform any of the other covenants of this Agreement of such a nature that the same cannot be reasonably cured or remedied within said fifteen (15) day period, if COUNTY shall not in good faith have commenced the curing or remedying of such failure to perform within such fifteen (15) day period and shall not thereafter diligently proceed therewith to completion.

11. REMEDIES IN EVENT OF DEFAULT AND VENUE:

- a) This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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, 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.
- b) 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.

12. NOTICES:

Each notice, correspondence, document or other communication (collectively, "Notice")

required or permitted hereunder shall be in writing and shall be delivered either by personal delivery (including delivery by services such as Federal Express) or by depositing it with the United States Postal Service or any official successor thereto, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party as follows:

If to COUNTY: Palm Beach County
Department of Environmental Resources Management
2300 North Jog Road, 4th Floor
West Palm Beach, FL 33411
Attention: Department Director

With copy to: Palm Beach County
County Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401.
Attention: Scott A. Stone, Esq.

If to PORT: Port of Palm Beach
One East 11th Street, Suite 600
Riviera Beach, Florida 33404
Attention: Executive Director

With a copy to: John J. Fumero, Esq.
Nason Yeager Gerson Harris & Fumero, P.A.
750 Park of Commerce Blvd, Suite 210
Boca Raton, FL 33487

Except as provided herein to the contrary, Notice shall be deemed delivered at the time of personal delivery, or, if mailed, on the third mail delivery day after the day of mailing as provided above, and the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date it is personally delivered or, if mailed, the date of receipt so deemed. In addition, the inability of the United States Postal Service to deliver because of a change of address of the party of which no Notice was given to the other party shall be deemed to be the receipt of the Notice sent. Changes of address and persons to whom Notice shall be addressed shall be made by Notice hereunder.

13. MISCELLANEOUS:


- a) COUNTY has inspected the Premises, is familiar with the present condition of the Premises, and takes said Premises in "As-Is" condition.
- b) The failure of PORT or COUNTY to take any action against the other for violation of any of the terms of the Agreement shall not prevent a subsequent act of a similar nature from being a violation of the Agreement.

- c) This Agreement fully and completely expresses all agreements and understandings of the parties hereto. Furthermore, this Agreement shall be binding upon and shall inure to the benefit of the respective heirs, successors, assigns and legal representatives of the parties hereto and shall not be changed or terminated unless in writing and signed by the parties hereto.
- d) COUNTY shall not change or install additional locks on any gates without PORT's express written consent. In the event COUNTY changes or installs additional locks, COUNTY shall provide PORT with duplicate keys therefor at COUNTY's expense.
- e) If any term or condition of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of the terms and conditions of this Agreement shall not be affected thereby, and this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- f) This Agreement may be executed in counterparts, all of which taken together shall be deemed an original, with a facsimile and/or an e-mail signature serving as an original thereof.
- g) Each party represents and warrants to the other that: (a) it is duly authorized and competent to execute this Agreement; (b) it has all necessary power and authority to enter into this Agreement and to perform the agreements contained in this Agreement; and (c) the person signing this Agreement on behalf of such party is authorized to execute and deliver this Agreement on behalf of such party.
- h) COUNTY'S performance and obligation to pay under this contract is contingent on an annual appropriation by the Board of County Commissioners.

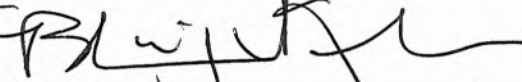
IN WITNESS WHEREOF, the parties hereto have set forth their hands and seals on the year and date aforesaid.

APPROVED TO FORM AND
LEGAL SUFFICIENCY:

AS TO LANDLORD:
PORT OF PALM BEACH



John J. Fumero, Esq., General Counsel



Blair Cilkin, Chair

DATED: 04-21-22

DATED: 04/21/22

ATTEST:
Joseph Abruzzo
Clerk of the Circuit Court & Comptroller
Palm Beach County

AS TO COUNTY:
Palm Beach County, a political subdivision of the
State of Florida

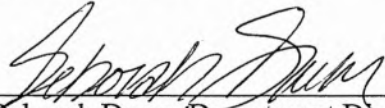
BY: _____
DEPUTY CLERK

BY: _____
NAME: Robert S. Weinroth
TITLE: MAYOR
DATED: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO TERMS
AND CONDITIONS:

BY: _____
Scott A. Stone
Assistant County Attorney

BY: 

Deborah Drum, Department Director
Environmental Resources Management

DATED: _____

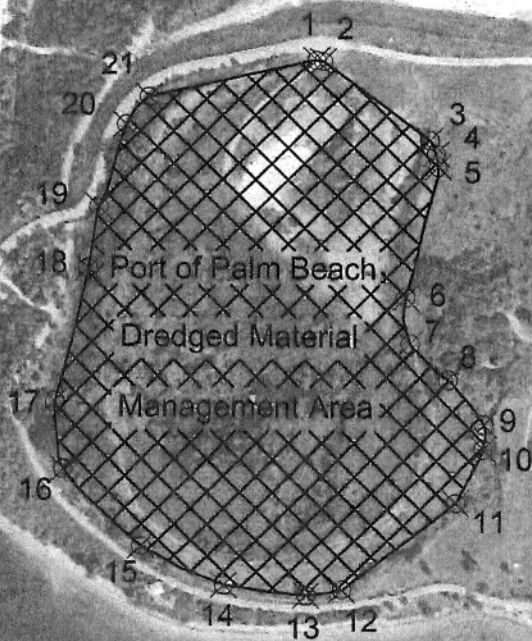
DATED: 7/7/22

EXHIBIT A

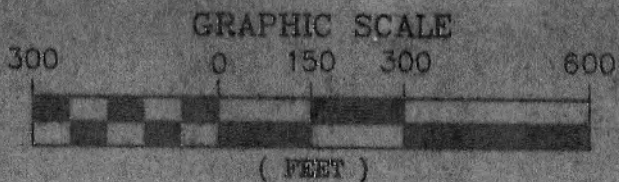
PORT OF PALM BEACH
DREDGED MATERIAL MANAGEMENT AREA

FILL EXCAVATION SITE

Peanut Island



Point	Easting	Northing
1	966970.4	887838.5
2	966981.2	887836.5
3	967153.6	887706.3
4	967163.8	887683.6
5	967166.9	887662.6
6	967114.2	887448.8
7	967120.9	887374.6
8	967182.5	887318.6
9	967240.1	887247.7
10	967239.2	887208.3
11	967194.5	887120.2
12	967010.6	886974.4
13	966952.4	886965.2
14	966819.1	886981.8
15	966685.0	887046.3
16	966559.4	887172.7
17	966545.5	887280.8
18	966600.2	887493.5
19	966617.2	887593.5
20	966662.6	887730.1
21	966698.9	887776.1



Note:
Horizontal coordinates are referenced to the North American Datum of 1983, Florida State Plane, East Zone 0901 (NAD83).

1 SHEET	EXHIBIT A PORT OF PALM BEACH DMMA EXCAVATION AREA	SCALE	Issue: Allotted Approved: 08 Drawn: 02 Checked: 01 Date: 08/22 Field Book No:	No.	Revision	By:	Date:
	1		08/22	01	01	01	01

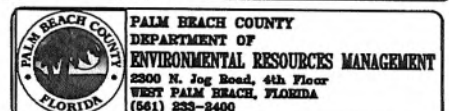
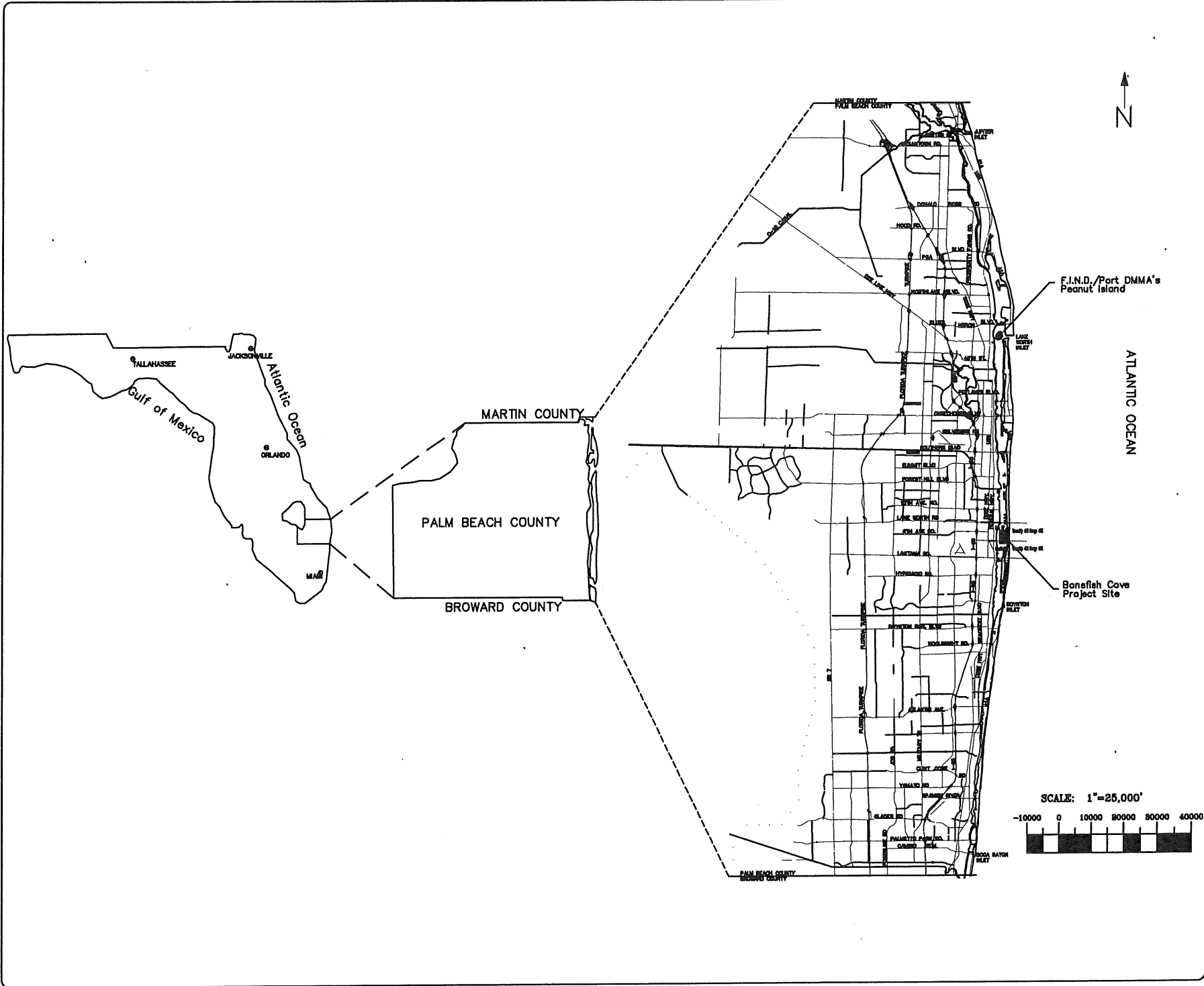



Exhibit B.

Lake Worth Lagoon Environmental Restoration
Project

“Bonefish Cove”



PALM BEACH COUNTY
 DEPARTMENT OF
 ENVIRONMENTAL RESOURCES MANAGEMENT
 2500 N. U.S. HWY. 1, SUITE 200, WEST PALM BEACH, FLORIDA
 (561) 833-9400








Number	11
Scale	AS NOTED
Approved	CF
Checked	DOC
Date	2/18

SEAL

Project: LWL CAP 1195 Project
 Bonfish Cove Estimation Project
 Location and Vicinity Map

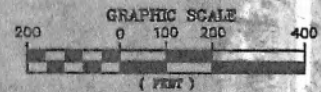
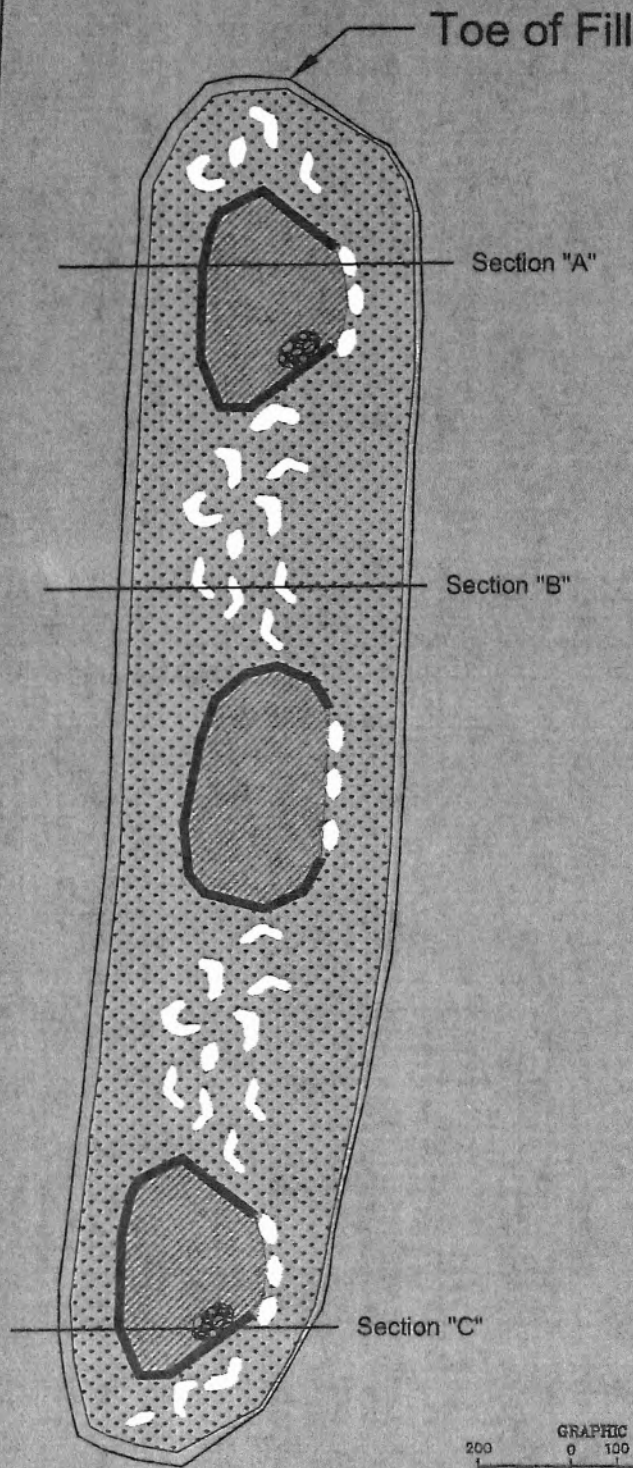
Sheet: 1
 of: 1

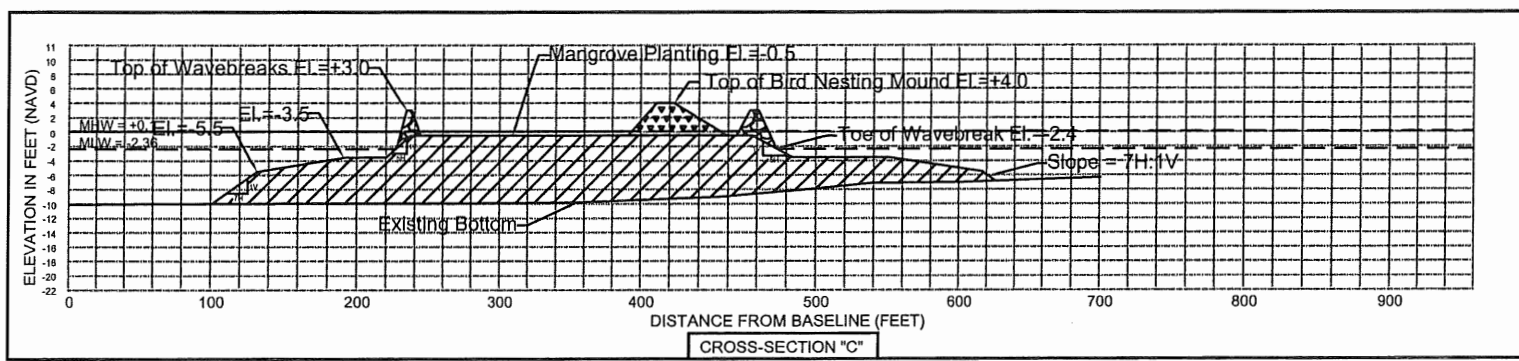
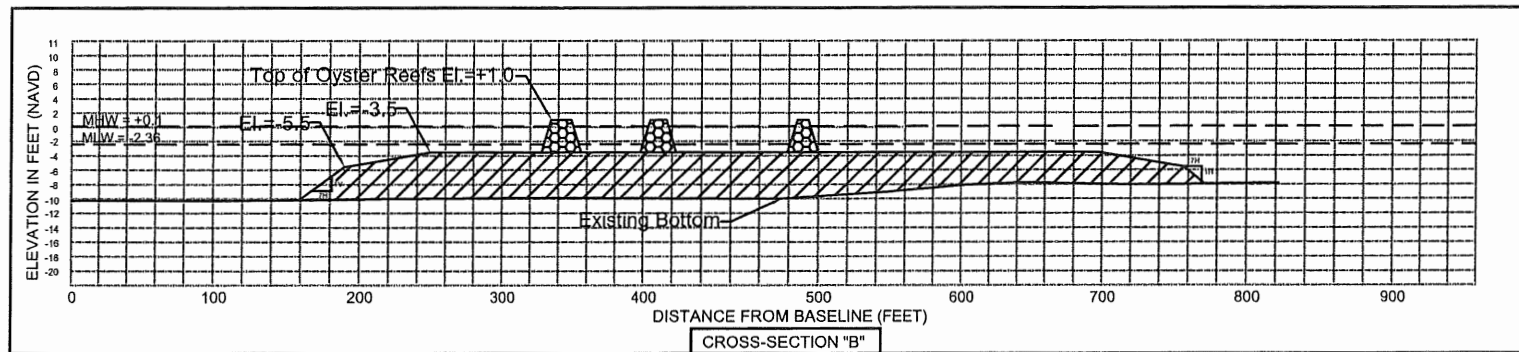
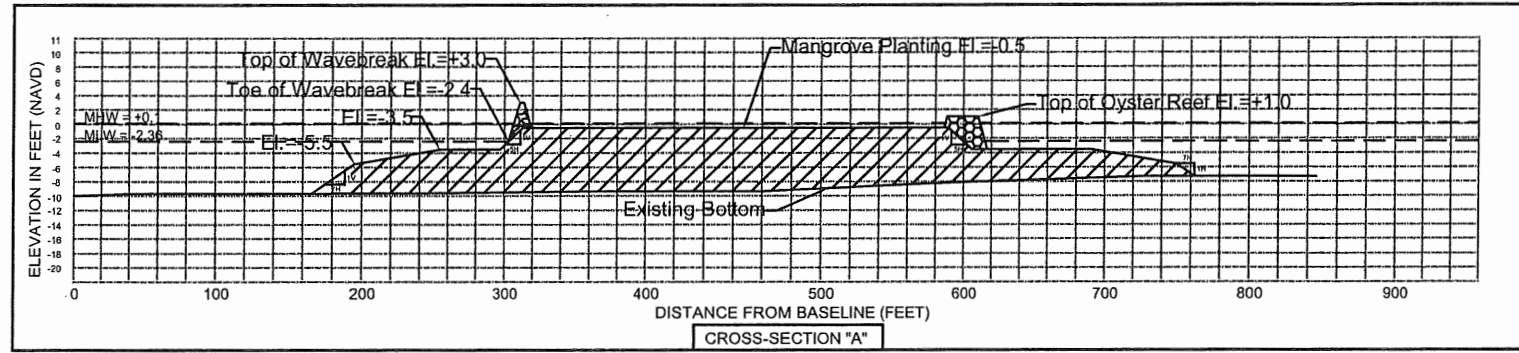
LEGEND

- Approximate Toe Of Fill (40.2 ac.)
- -0.5 Ft. Contour Line
- -3.5 Ft. Contour Line
- -5.5 Ft. Contour Line
-  Mangrove Islands (7.8 ac.)
-  Oyster Reef (1.7 ac)
-  Potential SAV (35.0 ac.)
-  Riprap Wavebreak (1.1 ac.)
-  Bird Nesting Mound (0.2 ac)

- Notes:**
- 1) Proposed elevations are referenced to the North American Vertical Datum of 1988, 1990 adjustment (NAVD88).
 - 2) Mean High Water = +0.10 NAVD88.
 - 3) Mean Low Water = -2.36 NAVD88.
 - 4) Fill quantity = approx. 375,000 cu. yds.
 - 5) Wavebreak rock quantity = approx. 6,469 tons.
 - 6) Oyster reef rock quantity = approx. 12,423 tons.
 - 7) Bird mound rock quantity = approx. 672 tons
 - 8) See drawing 2 for cross-sections.





ICW CHANNEL

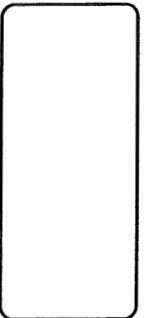




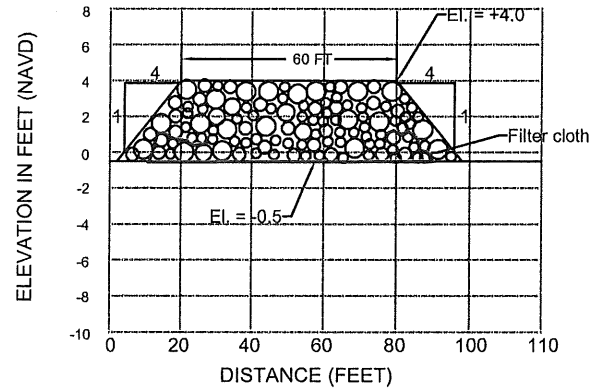
Notes:

- 1) All elevations are referenced to the North American Vertical Datum of 1988 (NAVD).
- 2) All horizontal distances in feet.
- 3) MHW = +0.10 NAVD, MLW = -2.36 NAVD.
- 4) Wavebreak crest widths = 4 feet.
- 5) See Drawing 1 for section locations.
- 6) Eastern IWW ROW is 150 feet west of Baseline.

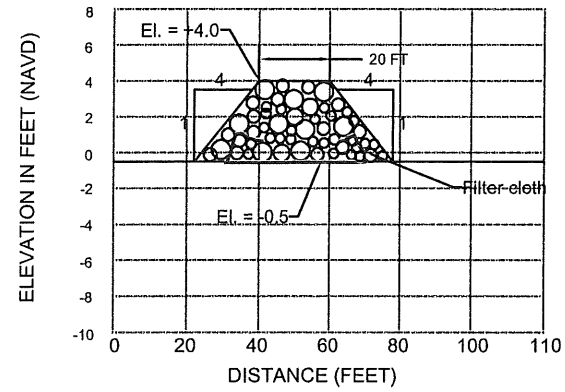
-  Riprap Wavebreak (Type A riprap, 1' to 3' limestone boulders)
-  Oyster Reef (Type B riprap, 9" to 18" limestone rock)
-  Fill Area
-  Bird Nesting Berm (Bedding stone, 4" to 9" limestone rock)



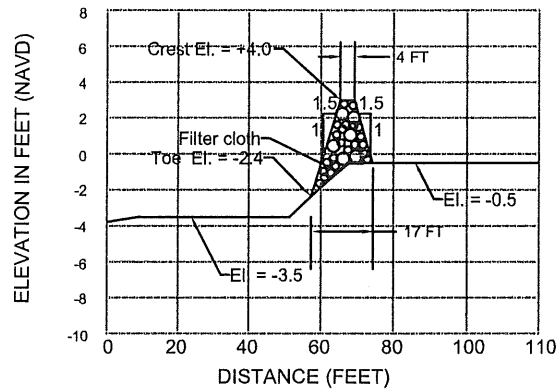
T:\current\projects\Corps 1135 Project\Project Alternatives\Bonefish\Bonefish Cove\Design Plans\Ninth Iteration\Typical Sections\rock Details 11/15/2021 1:54:44 PM



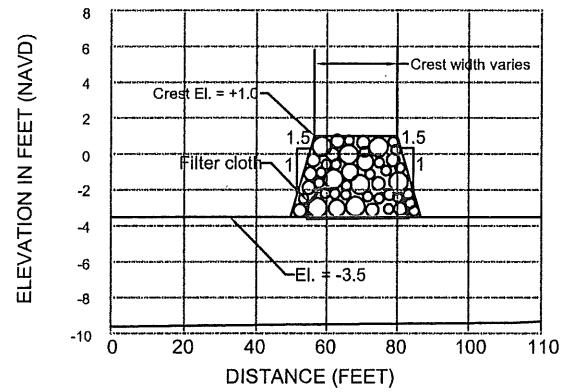
BIRD MOUND DETAIL (LENGTH)



BIRD MOUND DETAIL (WIDTH)



WAVEBREAK DETAIL



OYSTER REEF DETAIL

Notes:

- 1) All elevations are referenced to the North American Vertical Datum of 1988 (NAVD).
- 2) All horizontal distances in feet.
- 3) Riprap wavebreak material = Type A riprap, 1' to 3' limestone boulders
- 4) Oyster reef material = Type B riprap, 9" to 18" limestone rock.
- 5) Bird nesting mound material = Bedding stone, 4" to 9" limestone rock.
- 6) Filter cloth = Mirafi XXX or equivalent.

PALM BEACH COUNTY
DEPARTMENT OF
ENVIRONMENTAL RESOURCES MANAGEMENT
2300 NORTH JOG ROAD, 4th FLOOR
WEST PALM BEACH, FL 33411-2743
(561) 233-2400



BONEFISH COVE RESTORATION
ROCK DETAILS

Scale: AS NOTED
Date: 3/05/2021
Sheet: 3 OF 3