

# TOWN OF PALM BEACH

Information for Town Council Meeting on: March 8, 2022

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TO: Mayor and Town Council

VIA: Kirk W. Blouin, Town Manager

FROM: H. Paul Brazil, P.E., Director of Public Works

RE: Authorize the Town Manager to Execute a Restrictive Covenant with the Florida Department of Environmental Protection for Town Marina Waste Oil Tank Closure  
**Resolution No. 033-2022**

DATE: February 17, 2022

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## **STAFF RECOMMENDATION**

Town staff requests that Town Council authorize the Town Manager to execute a Restrictive Covenant with the Florida Department of Environmental Protection (FDEP) for the Town Marina Waste Oil Tank Closure, and approve Resolution No. 033-2022.

## **GENERAL INFORMATION**

During the planning and design of the Town Marina Project, environmental surveys were performed. One of those surveys was an assessment of the waste oil storage tank used by the Town Docks staff. That above-ground storage tank (AST) had a secondary containment structure but that was found to have failed and after notifying FDEP in November 2019, an assessment of soil and groundwater was conducted in the vicinity of the former AST location. The Town hired Kimley-Horn and Associates, Inc. and SCS Engineers to conduct that assessment and to prepare a scope of services for any resulting remediation required. Initial results indicated that there were detected petroleum impacts in both the soil and groundwater exceeding cleanup standards. The soil sample had exceedances of arsenic, total recoverable petroleum hydrocarbons, and benzo(a)pyrene. The groundwater sample had exceedances of lead and dieldrin.

Plans and specifications were developed to have the contaminated soil and groundwater removed, and subsequent remedial activities were performed by Cliff Berry Inc. in March/April 2020 to excavate and dispose of contaminated soil and groundwater. Subsequent soil and groundwater samples were taken after removal of the contaminated material, and results showed that soil was not identified in excess of the applicable cleanup target level (CTL). Clean fill was placed in the excavation. Sampling of groundwater confirmed that levels of lead and dieldrin were below the applicable CTLs. FDEP reviewed the assessment and remediation results, and requested that additional delineation samples be collected and analyzed for polycyclic aromatic hydrocarbons (PAH) to delineate the potential impact of the AST on the surrounding soil. Additional soil samples were collected in October/November 2020. Based on the sample results, the removal of an additional quantity of soil was required. In cases where it is impractical to remove all the contaminated soils, the FDEP allows the upper two (2) feet of contaminated soil to be removed and replaced with clean soil that then serves as a protective soil cap, or “engineering control”. The proposed recommendation is to record a declaration of restrictive covenant (DRC) for a clean soil cap to act as an engineering control.

The Restrictive Covenant will have to be recorded on the property to protect the integrity of the engineering control over the contaminated portion of the site in the long term. This portion of the site is referred to as the “Restricted Property” within the language of the DRC. The restriction will reduce or eliminate the risk of exposure of users or occupants of the Restricted Property and the environment to the contaminants. The Town’s engineering consultant, Kimley-Horn and Associates, Inc. and SCS Engineers, along with legal assistance from Jones, Foster, P.A., the Town’s legal counsel, prepared the supporting documentation which will allow the site to be brought to conditional closure. The DRC has also been reviewed and preliminarily approved by the FDEP. The precedent exists for this process, since the Town previously recorded a similar Restrictive Covenant as part of the environmental remediation work performed at Phipps Ocean Park (A-39 location) back in 2015.

### **FUNDING/FISCAL IMPACT**

Any funding associated with the remediation and closure of this project is contained within the Risk Fund Reserve for Catastrophic Exposures/Emergencies.

### **TOWN ATTORNEY REVIEW**

This covenant has been prepared by attorneys at Jones, Foster, P.A., and has been reviewed by the Town Attorney for legal form and sufficiency.

Attachment

cc: Eric Brown, P.E., Assistant Director of Public Works  
Patricia Strayer, P.E. Town Engineer  
Jason Debrincat, P.E., Senior Project Engineer  
Dean Mealy, Purchasing Manager  
Karen Temme, Risk Manager