# TOWN OF PALM BEACH

# Information for Town Council Meeting on: January 14, 2025

TO: Mayor and Town Council

VIA: Kirk W. Blouin, Town Manager

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

RE: Beach Renourishment Projects Update

DATE: December 17, 2024

# **STAFF RECOMMENDATION**

Town staff provided a project update to the Shore Protection Board November 14, 2024. Since that update, there have been several important developments. Staff has provided the below information to the Shore Protection Board and Town Council simultaneously.

# **GENERAL INFORMATION**

The United States Army Corps of Engineers ("USACE") awarded the FY25 maintenance dredging of Palm Beach Harbor on November 22, 2024 to Weeks Marine, Inc. Up to 251,000 cubic yards of material may be dredged from the Palm Beach Harbor entrance channel and settling basins and placed on the Town of Palm Beach shoreline between Florida Department of Environmental Protection (FDEP) R-monuments R-76 to R-80 (the Inlet to between Kenlyn Road and Merrain Road) as detailed in the contract's bid sheet. USACE issued Notice to Proceed (NTP) to the contractor on December 5, 2024. Based on preliminary information provided by the contractor, the contractor has the ability to begin dredging Palm Beach Harbor's entrance channel in (or around) January 14, 2025; however, that timeline is subject to approval of various Government required submittals and plans. The contractor's proposed dredging equipment is currently working on a project in Florida and will mobilize to Palm Beach County following completion of that work in early January 2025. The contractor estimates up to five (5) weeks to complete the work following approval of the required submittals.

The Phipps Ocean Park Nourishment Project is actively dredging and placing sand on the beach north of Lake Worth Beach. The truck hauling contract includes hauling sand north of Phipps Ocean Park to Sloan's Curve and south to Reaches 8 and 9, as well as hauling sand from Reach 1 to Reach 2. Town Council approved an Interlocal Agreement with Lake Worth Beach on November 12, 2024, to utilize the south access of the Lake Worth Beach casino property as an access for trucks hauling sand to Reaches 8 and 9. The Lake Worth Beach City Commission approved the Interlocal Agreement at their December 3<sup>rd</sup> Commission meeting. Subsequently, Lake Worth Beach has rescinded this approval. Staff is proceeding with alternative means to deliver sand to Reaches 8 and 9. The primary option is utilizing Town incorporated property through Lake Worth Beach.

USACE had approved and received full funding for a Flood Control and Coastal Emergencies Act ("FCCE") Project for the Mid-Town Beach Federal Nourishment Project in the Town of Palm Beach to replace sand lost from Hurricane Nicole. USACE Headquarters had determined that the project cannot be designed or constructed due to the Town of Palm Beach's inability to acquire 100% of the required

perpetual easements. Based on meetings with General Spellmon, Chief of Engineers, the Jacksonville District was directed to move forward with a re-evaluation report to eliminate the northern eleven (11) properties that have refused to provide a perpetual easement. Staff is working to secure easements that were identified by USACE as non-compliant. Three (3) of these easements are within The Breakers property and three (3) others are represented by the same attorney representing The Breakers. The Breakers and their attorney informed staff that a perpetual easement which includes public use is unacceptable to them.

Over the past two (2) years the State of Florida's federal legislatures have been working to overcome the newly enforced requirement for 100% perpetual easements within the Federal project envelope. At the time of this memorandum's writing, the Water Resources Development Act of 2024 (WRDA) has been passed by the House of Representatives and the Senate awaiting final signature by the President of the United States. The pertinent WRDA language to the Mid-Town project is attached. Based on staff's conversation with USACE Jacksonville District staff, this language has significant implications for the implementation of the Mid-Town Project. Below are the implications that the Jacksonville District believe are a result of the new WRDA language. Staff met with General Hibner, District Commander of the South Atlantic Division (SAD) and Dr. McAllister, senior ranking civilian of the SAD on December 17<sup>th</sup>. At that meeting staff was informed that SAD disagrees with the Jacksonville District and believes the WRDA language is very confusing. Also prior to implementing the new WRDA language, the Assistant Secretary of the Army for Civil Works is required to provide guidance to USACE for implementation. Guidance in the past on WRDA language has not been provided in a timely manner. Below are the implications that the Jacksonville District believe are a result of the new WRDA language:

- 1. The project may be implemented with temporary easements.
- 2. The sand placed on any property that provides a temporary easement instead of the perpetual easement will be at 100% non-federal sponsor's cost (the Town).
- 3. The project is required to be the same as the project built in 2020, which includes the eleven (11) properties at the northern boundary of the project.
- 4. This provision is only for any construction within the next two (2) years. All projects after the two-year extension will be required to have 100% perpetual easements which include public use.

SAD has committed to reviewing the present path forward and the implications of the WRDA language and will provide guidance on the path forward for the present FCCE project.

The easements required for The Breakers properties and the Lauder properties is directly linked to a project that The Breakers is planning to initiate construction on within the next thirty (30) days. This project is known as the Mid-Town Headland Area Erosion Control Project. The permittees are; The Breakers Palm Beach, Inc., Flagler Drive Holdings, LLC, and South Ocean Boulevard, LLC. These entities represent five (5) of the necessary easements for the long-term implementation of the federally authorized USACE Mid-Town Beach Nourishment Project. The Town has received notice from the Florida Department of Environmental Protection (FDEP) (attached), that the permittees of this project are required to get an easement from the Town for the Clarke Beach property within one (1) year of the time of the project construction. At this time, staff would not recommend agreeing to an easement without first getting the necessary perpetual easements from the five (5) properties associated with the Town's Mid-Town Beach Nourishment project. Lastly, the Mid-Town Headland Area Erosion Control Project is dependent on sand being placed on the beach north of The Breakers as part of the federally authorized project. FDEP is adamant that nourishment of the beach in this area happens because of their dependance on Federal projects to reduce the States funding to these projects.

# **FUNDING/FISCAL IMPACT**

Staff has not determined what the additional cost to the Town would be for the areas with only perpetual construction easements or how this would be funded.

# Attachments

cc: Jason Debrincat, P.E., Assistant Director Patricia Strayer, P.E., Town Engineer Joanne O'Connor, Town Attorney, Jone Foster Jamie Crowley, Enviromental & Landuse Shore Protection Board From: <u>Crowley, James</u>

**To:** <u>Paul Brazil; Patricia Strayer</u>

Cc: <u>Madden, Debbie</u>
Subject: Breakwaters

**Date:** Friday, December 6, 2024 2:00:03 PM

Attachments: <u>image001.png</u>

20241206-proffered permit.pdf

Mid-Town Headland Area Erosion Control Project-002-JN signed.pdf

\*\*\*\*\*\*\*STOP: This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.\*\*\*\*\*\*

Good afternoon Paul and Patricia,

The Permittees for the Midtown Headland Area Erosion Control Project have received the permitting authorizations needed to begin work. We are starting work as soon as possible with the aim of completing work before April 30, 2024. Attached is the U.S. Army Corps of Engineers permit and an administrative modification to the DEP permit, for your files. We are available to discuss the permits and work mobilization if you have any questions or would like to discuss.

Thank you,



James M. Crowley, Esq. | Shareholder Environmental & Land Use 777 S. Flagler Drive, Suite 500 East West Palm Beach, FL 33401 P 561-650-0633 F 561-655-5677

gunster.com | View my bio
Email me: jcrowley@gunster.com

# DEPARTMENT OF THE ARMY PERMIT

# Permittee:

**CO-APPLICANTS:** 

The Breakers Palm Beach, Inc C/O Paul N. Leone

Flagler Drive Holding, LLC, C/O Joseph Tuite

South Ocean Blvd, LLC. C/O Lisa M. Somar

Permit No: SAJ-2021-03307(SP-LCK)

**Issuing Office: U.S. Army Engineer District, Jacksonville** 

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

<u>Project Description</u>: The applicant requests a 10-year authorization to conduct erosion control and shoreline protection between two existing fields of groin structures by conducting the following activities:

- 1. Install three (3) new breakwaters each having a crest length of approximately 85-feet and 15 feet wide (total of approximately 3,825 square feet). The structures will be constructed at crest elevation of +5 feet NAVD and forward slopes of 1V:3H. The breakwaters include the placement of approximately 26,400 square feet of armor stone (5,800 cubic yards) within an approximately 31,000 square feet foundation of approximately one foot diameter bedding stone (1,100 cubic yards) and geotextile extending beyond the structure for scour protection.
- Extend one existing breakwater an additional approximately 700 square feet (48feet by 15-feet).

The three structures will be buried by sand placement upon beach nourishment through the Midtown Beach re-nourishment project, which generally occurs approximately in five-year cycles with the next placement around 2026. After sand placement, the three structures that have a crest elevation of +5 feet NAVD would

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still be covered given the Midtown beach template has an elevation of +7 feet NAVD. Overtime as the beach erodes in between re-nourishment events, the breakwaters would become emergent. For the breakwater extension, beach nourishment will occur behind the breakwater extension, as is done with the existing breakwaters north of the project area. The breakwater extension will also be emergent with crest elevation of +5 feet NAVD. The bedding foundation footprint, which will be permanently buried under sand, for the three structures and the breakwater extension will total approximately 36,500 square feet. When the three structures and the breakwater extension are emergent, it is estimated that there will be between approximately 14,200 to 21,200 square feet of emergent rock footprint, depending on high to low water conditions, respectively.

Construction will be by mechanical placement using land-based equipment (for example, excavators, cranes) or end dumping with rock placement using barges and cranes, as appropriate. Work will be conducted from upland or from the water by barge as required based upon beach conditions and seasonal timing of construction. Temporary staging at the Breakers beach areas may be used during construction. Staging areas are located by beach access points at Breakers Row and Via Bethesda as close to the dune or existing seawall as possible.

The work described above is to be completed in accordance with the eight (8) pages of drawings and seven (7) attachments affixed at the end of this permit instrument.

<u>Project Location</u>: The project would affect waters of the United States associated with the Atlantic Ocean. The project is located at 1 South County Road, 115 Flagler Drive, and 126 South Ocean Blvd in Palm Beach, along 1,700 linear feet of shoreline of the Atlantic Ocean from Florida Department of Environmental Protection (FDEP) monument R-94+1148 to R-95+431 (Section 23, Township 43 South, Range 43 East), Palm Beach County, Florida.

<u>Directions to site</u>: From Interstate 95 exit at Palm Beach Lakes Blvd. Take Palm Beach Lakes Blvd. toward the east until it ends at N. Flagler Drive. Turn toward the south of Flagler Drive ad follow to Quadrille Blvd./Flagler Memorial Bridge. Cross the bay on the bridge and follow to County Road. Turn toward the south and follow to 1 South County Road. The project area is located on the Atlantic side of a portion of the Breakers Hotel and private residences at 115 Flagler Drive and 126 South Ocean Blvd.

# **Approximate Central Coordinates:**

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Latitude 26.7114° Longitude -80.0328°

# **Permit Conditions**

# **General Conditions:**

- 1. The time limit for completing the work authorized ends on <u>December 6, 2034</u>. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
- 2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
- 3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
- 4. If you sell the property associated with this permit, you must obtain the signature and the mailing address of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
- 5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (Attachment).
- 6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

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# **Special Conditions:**

- **1. Reporting Address:** The Permittee shall submit all reports, notifications, documentation, and correspondence required by the general and special conditions of this permit to the following addresses:
  - a. For electronic mail (preferred): SAJ-RD-Enforcement@usace.army.mil (not to exceed 15 MB).
  - b. For standard mail: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019.
  - c. USACE Jacksonville District Engineering Division at <a href="mailto:ENPermits.CESAJ@usace.army.mil">ENPermits.CESAJ@usace.army.mil</a> or by standard mail at Post Office Box 4970, Jacksonville Florida 32232-0019.

The Permittee shall reference this permit number, 2021-03307 (SP –LCK), on all submittals.

- **2. Permit Conditions Prevail:** If information in the permit attachments conflict with the special conditions of this permit, the requirements of the permit special conditions shall prevail.
- **3. Commencement Notification:** Within 10 days from the date of initiating the work authorized by this permit, the Permittee shall submit a completed "Commencement Notification" form (Attachment A) to the reporting address listed in special condition 1.
- 4. **Notification of Work:** National Ocean Service (NOS) has been notified of this authorization. You must notify NOS and this office in writing, at least two weeks before you begin work and upon completion of the activity authorized by this permit. The post-construction notification will include "as-built plans" by a registered surveyor/engineer licensed in the State of Florida, that certify the project is constructed as authorized; and must include an accurate depiction of the location and configuration of the completed activity in relation to the mean high water or ordinary high water of the navigable water. The Permittee shall notify the District Engineer in writing at U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019; and, the NOAA, either in mailed correspondence to Nautical Data Branch Office of Coast Survey N/CS26, 1315 East-West Highway, Silver Spring, MD 20910-

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3282 or by electronic mail correspondence, with the requisite documents attached, through ocs.ndb@noaa.gov.

- **5. Notice of Permit:** The Permittee shall complete and record the "Notice of Department of the Army Authorization" form (Attachment B) with the Clerk of the County Court, Registrar of Deeds or other appropriate official charged with the responsibility of maintaining records of title to or interest in real property within the county of the authorized activity. No later than 90 days from the effective date of this permit, the Permittee shall provide a copy of the recorded Notice of Permit to the Corps clearly showing a stamp from the appropriate official indicating the book and page at which the Notice of Permit is recorded in the official records and the date of recording.
- **6. As-Built Certification:** Within 60 days of completion of work, or cessation of work which will extend longer than one year within each phase, the Permittee shall submit as-built drawings of the authorized work within that phase and a completed "As-Built Certification by Professional Engineer or Surveyor" form (Attachment C) to the Corps. Upon expiration of the construction window identified in General Condition 1, the Permittee shall submit a final as-built drawing and certification for all phases. The as-built drawings for each phase and the final submittal shall be signed and sealed by a registered professional engineer or surveyor and include the following:
  - a. A plan view drawing of the location of the authorized work footprint, as shown on the permit drawings, with an overlay of the work as constructed. The plan view drawing should show all existing structures and the completed structures, dredge/fill activities, and wetland impacts.
  - b. A list of any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the attached "As-Built Certification by Professional Engineer" form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or "As-Built Certification by Professional Engineer" form does not constitute approval of any deviations by the Corps.
  - c. The Department of the Army permit number on all sheets submitted.
  - d. Within 60 days of completion of the work authorized by this permit, the Permittee shall provide a courtesy copy of the signed and sealed As-Built drawings to the Corps, Engineering Division. Submittals shall be sent either electronically by email at ENPermits.CESAJ@usace.army.mil or by standard mail at Post Office Box 4970, Jacksonville Florida 32232-0019.

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# 7. Cultural Resources/Historic Properties:

- a. No structure or work shall adversely affect, impact, or disturb properties listed in the *National Register of Historic Places* (NRHP), or those eligible for inclusion in the NRHP.
- b. If, during permitted activities, items that may have historic or archaeological origin are observed the Permittee shall immediately cease all activities adjacent to the discovery that may result in the destruction of these resources and shall prevent his/her employees from further removing, or otherwise damaging, such resources. The applicant shall notify both the Florida Department of State. Division of Historical Resources, Compliance Review Section at (850)-245-6333 and the Corps, of the observations within the same business day (8 hours). Examples of submerged historical, archaeological or cultural resources include shipwrecks, shipwreck debris fields (such as steam engine parts, or wood planks and beams), anchors, ballast rock, concreted iron objects, concentrations of coal, prehistoric watercraft (such as log "dugouts"), and other evidence of human activity. The materials may be deeply buried in sediment, resting in shallow sediments or above them, or protruding into water. The Corps shall coordinate with the Florida State Historic Preservation Officer (SHPO) to assess the significance of the discovery and devise appropriate actions. Project activities shall not resume without verbal and/or written authorization from the Corps.
- b. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition and, if deemed necessary by the SHPO or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend, or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on nonfederal lands without written authorization from the SHPO for finds under his or her jurisdiction, and from the Corps.
- c. In the unlikely event that unmarked human remains are identified on non-federal lands; they will be treated in accordance with Section 872.05 Florida Statutes. All work and ground disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archaeologist within the same business day (8-hours). The Corps shall then notify the appropriate SHPO. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend, or revoke

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the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume without written authorization from the SHPO and from the Corps.

- d. If prehistoric or historic artifacts such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the vicinity of the discovery. The applicant shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section at (850)-245-6333. Project activities shall not resume without verbal and/or written authorization. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.
- **8. Assurance of Navigation and Maintenance:** The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- **9. Fill Material:** The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance in toxic amounts, in accordance with Section 307 of the Clean Water Act.
- **10.** Individual Section **408** Approval: It has been determined that the activities authorized do not impair the usefulness of the Shore Protection Project, Palm Beach County, Mid-Town Beach Nourishment Project and are not injurious to the public interest. The Permittee shall adhere to the conditions and limitations referenced in the Section 408 approval memo, 408-2022-0108 in Attachment D of this permit. All documentation required in the Section 408 approval memo shall be submitted either electronically by email at ENPermits.CESAJ@usace.army.mil or by standard mail at Post Office Box 4970, Jacksonville Florida 32232-0019. For all questions related to the Section 408 approval, contact the Corps, Jacksonville Engineering Division by

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telephone at 904-232-2757. Engineering Division is the appropriate authority to determine compliance with the terms and conditions of Section 408 approval.

- **11.** The applicant shall adhere to the follow monitoring and potential corrective actions as described in the *Mid-Town Headland Area Erosion Control Project Physical Monitoring and Mitigation Plan Addendum*, dated 30 September 2024 (Attachment E). All required physical monitoring reports of the addendum will be submitted to the Corps addresses in special condition 1.
- **12.** No construction activities for the proposed project shall take place on the beach or nearshore, including staging of equipment or materials, when the Government is renourishing the Shore Protection Project (SPP).
- **13. Biological Opinion:** This permit does not authorize the Permittee to take an endangered species. In order to legally take a listed species, the Permittee must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a BO under ESA Section 7, with "incidental take" provisions with which you must comply). The enclosed FWS Biological Opinion (BO) (Attachment F) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the incidental take statement set forth in the BO. Authorization under this permit is conditional upon compliance with all of the mandatory terms and conditions and reasonable and prudent measures associated with the incidental take statement in the enclosed BO, which are incorporated by reference in this permit. Failure to comply with the terms and conditions and reasonable and prudent measures associated with the incidental take statement set forth in the BO, would constitute noncompliance with this permit. In addition, failure to comply with the terms and conditions and reasonable and prudent measures associated with the incidental take statement set forth in of the BO, where a take of the listed species occurs, would constitute an unauthorized take. The FWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.
- **14. Statewide Programmatic Biological Opinion (SPBO):** This permit does not authorize the Permittee to take an endangered species, in particular sea turtles. In order to legally take a listed species, the Permittee must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a BO under ESA Section 7, with "incidental take" provisions with which you must comply). The U.S. Fish and Wildlife Service (USFWS) **SPBO** contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the incidental take statement set forth in the BO. Authorization under this permit is conditioned upon compliance with all of the mandatory terms and conditions and reasonable and prudent

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measures associated with the incidental take statement set forth in the enclosed BO, which are incorporated by reference in this permit. Failure to comply with the terms and conditions and reasonable and prudent measures associated with the incidental take statement set forth in the BO, would constitute noncompliance with this permit. In addition, failure to comply with the terms and conditions and reasonable and prudent measures associated with the incidental take statement set forth in the BO, where a take of a listed species occurs, would constitute an unauthorized take. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.

- 15. Piping Plover Programmatic Biological Opinion (P<sup>3</sup>BO): This permit does not authorize the Permittee to take an endangered species, in particular piping plover. In order to legally take a listed species, the Permittee must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a BO under ESA Section 7, with "incidental take" provisions with which you must comply). The U.S. Fish and Wildlife Service (USFWS) P<sup>3</sup>BO contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the incidental take statement set forth in the BO. Authorization under this permit is conditioned upon compliance with all of the mandatory terms and conditions and reasonable and prudent measures associated with the incidental take statement set forth in the enclosed BO, which are incorporated by reference in this permit. Failure to comply with the terms and conditions and reasonable and prudent measures associated with the incidental take statement set forth in the BO, would constitute noncompliance with this permit. In addition, failure to comply with the terms and conditions and reasonable and prudent measures associated with the incidental take statement set forth in the BO, where a take of a listed species occurs, would constitute an unauthorized take. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.
- **16. Protected Species Construction Conditions:** The Permittee shall comply with National Marine Fisheries Service's "Protected Species Construction Conditions, NOAA Fisheries Southeast Regional Office" dated May 2021 (Attachment G).

# **Further Information:**

- 1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

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- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344)
- ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413)
  - (X) Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408)
  - 2. Limits of this authorization.
- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.
- 3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

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5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Space intentionally left blank

PERMIT NUMBER: SAJ-2021-0330 PERMITTEE: The Breakers Palm B Blvd, LLC. PAGE 12 of 14	07(SP-LCK) Beach, Inc, Flagler Drive Holding, LLC, South Ocean
1. Paul leone (PERMITTEE)	12/4/2024
(PERMITTEE)	(DATE)
(DEDMITTEE NAME DOINTED)	Paul Leone, Chief Executive Officer and President
(PERMITTEE)	12/4/2024
(PERMITTEE)	(DATE)
South Ocean Boulevard, LLC, Ms. (PERMITTEE NAME-PRINTED)	Lisa M. Somar, Secretary
3. Joseph Tuite	12/4/2024
(PERMITTEE)	(DATE)
(PERMITTEE NAME-PRINTED)	the Federal official, designated to act for the elow.
Alisa Zarbo  Brandon L. Bowman Colonel, U.S. Army District Commander	Date: December 6, 2024

for:

PERMITTEE: The Breakers Palm Beach, Inc, F Blvd, LLC. PAGE 13 of 14	lagler Drive Holding, LLC, South Ocean
When the structures or work authorized by this p the property is transferred, the terms and condition binding on the new owner(s) of the property. To the associated liabilities associated with compliating the transferee sign and date below.	ons of this permit will continue to be validate the transfer of this permit and
(TRANSFEREE-SIGNATURE)	(DATE)
(NAME-PRINTED)	_
(ADDRESS)	_
(CITY, STATE, AND ZIP CODE)	

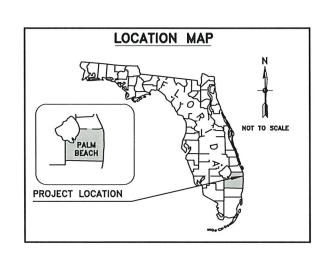
PERMITTEE: The Breakers Palm Beach, Inc, Flagler Drive Holding, LLC, South Ocean

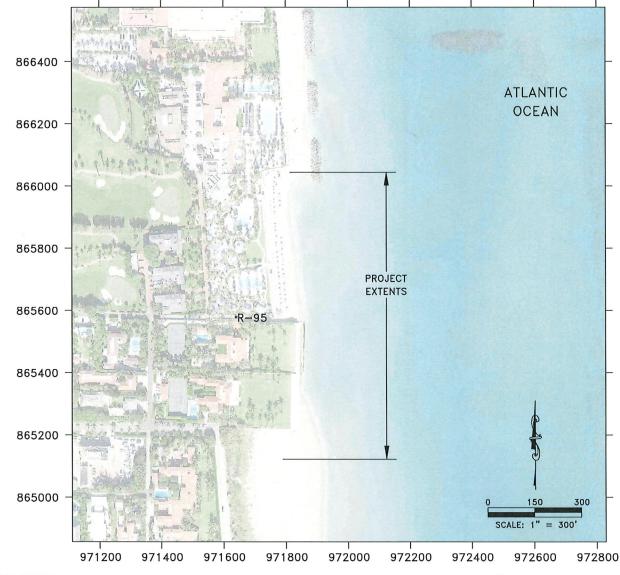
Blvd, LLC. PAGE 14 of 14

# Attachments to Department of the Army Permit Number SAJ-2021-03307

- 1. PERMIT DRAWINGS: 8 pages, dated August 22, 2022
- 2. WATER QUALITY CERTIFICATION: Specific Conditions of the water quality permit/certification in accordance with General Condition number 5 on page 2 of this DA permit.
- 3. ATTACHMENT A: Commencement Notification Form
- 4. ATTACHMENT B: Notice of Permit Form
- 5. ATTACHMENT C: As-Built Certification Form
- 6. ATTACHMENT D: Individual Section 408 Approval
- 7. ATTACHMENT E: Mid-Town Headland Area Erosion Control Project Physical Monitoring and Mitigation Plan Addendum, dated September 30, 2024
- 8. ATTACHMENT F: USFWS BO dated February 15, 2024
- 10. ATTACHMENT G: National Marine Fisheries Service's "Protected Species Construction Conditions, NOAA Fisheries Southeast Regional Office" dated May 2021

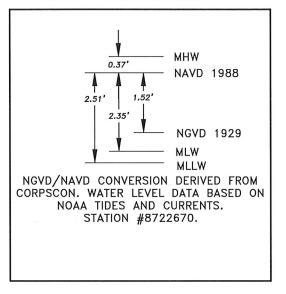
# PERMIT PLANS MID-TOWN HEADLAND AREA EROSION CONTROL PROJECT





# SHEET INDEX

BR-00 COVER SHEET
BR-01 EXISTING CONDITIONS
BR-02 SITE PLAN
BR-03 LOCATION PLAN
BR-04 E.C.S. CROSS SECTIONS
BR-05 E.C.S. CROSS SECTIONS
BR-06 CROSS SECTIONS
BR-07 CROSS SECTIONS



#### NOTES:

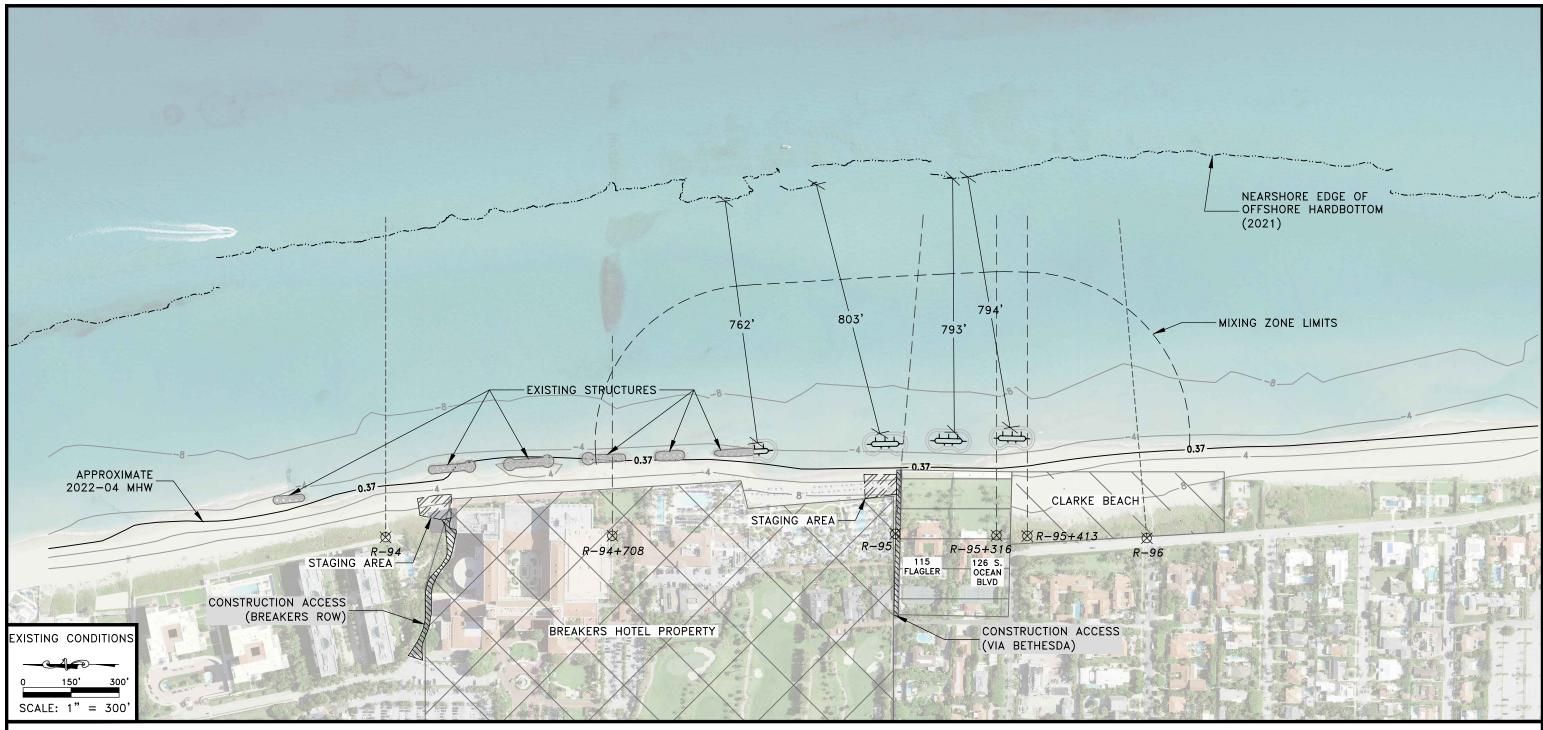
- 1. AERIAL PHOTOGRAPH DATED JANUARY 2021 COURTESY OF FDOT APLUS.
- 2. COORDINATES SHOWN ARE IN FEET BASED ON THE NORTH AMERICAN DATUM OF 1983, FLORIDA EAST ZONE (NAD83).
- 3. ELEVATIONS SHOWN ARE IN FEET BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).



Mohamed A. Dabees 2023.09.08 12:38:32 -04'00'



MID-	TOWN HEADLAND	AREA
EROSION CON	TROL PROJECT -	COVER SHEET
	., FLAGLER DR. HOLI	
DATE: 09/08/23	FILE: 24-007-P	SCALE: SHOWN
JOB: 24-007	DATUM: SHOWN	SHEET: BR-00



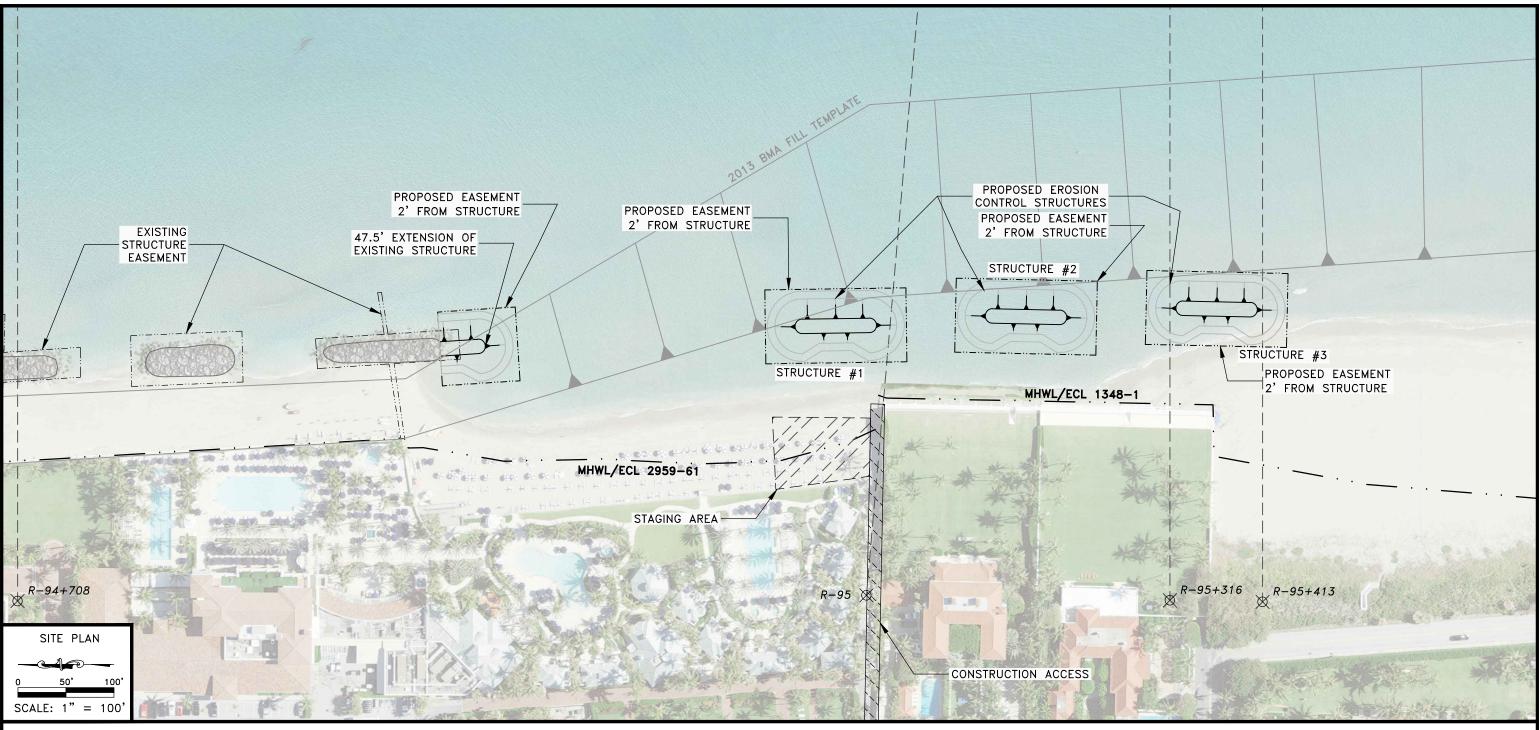
# **GENERAL NOTES:**

- 1. AERIAL PHOTO PROPERTY OF FDOT APLUS DATED JANUARY 2021.

- 2. EXHIBIT IS FOR ILLUSTRATIVE PURPOSES ONLY.
  3. CROSS SECTIONS SHOWN ON E.C.S. ARE ILLUSTRATED ON FIGURE BR-04.
  4. EXISTING STRUCTURES AND PROPERTY BOUNDARIES ARE APPROXIMATE BASED ON AERIAL.
- 5. EDGE OF HARD BOTTOM LOCATIONS DATED 2021 PROVIDED BY COASTAL ECO-GROUP.
- 6. CONTOURS ARE APPROXIMATED BASED ON 04/2022 SDI SURVEY.



MID-TOWN HEADLAND AREA EROSION CONTROL PROJECT — EXISTING CONDITIONS FOR: BREAKERS P.B., FLAGLER DR. HOLD., S. OCEAN BLVD. FILE: 24-007-P JOB: 24-007 DATUM: SHOWN FIGURE: BR-01



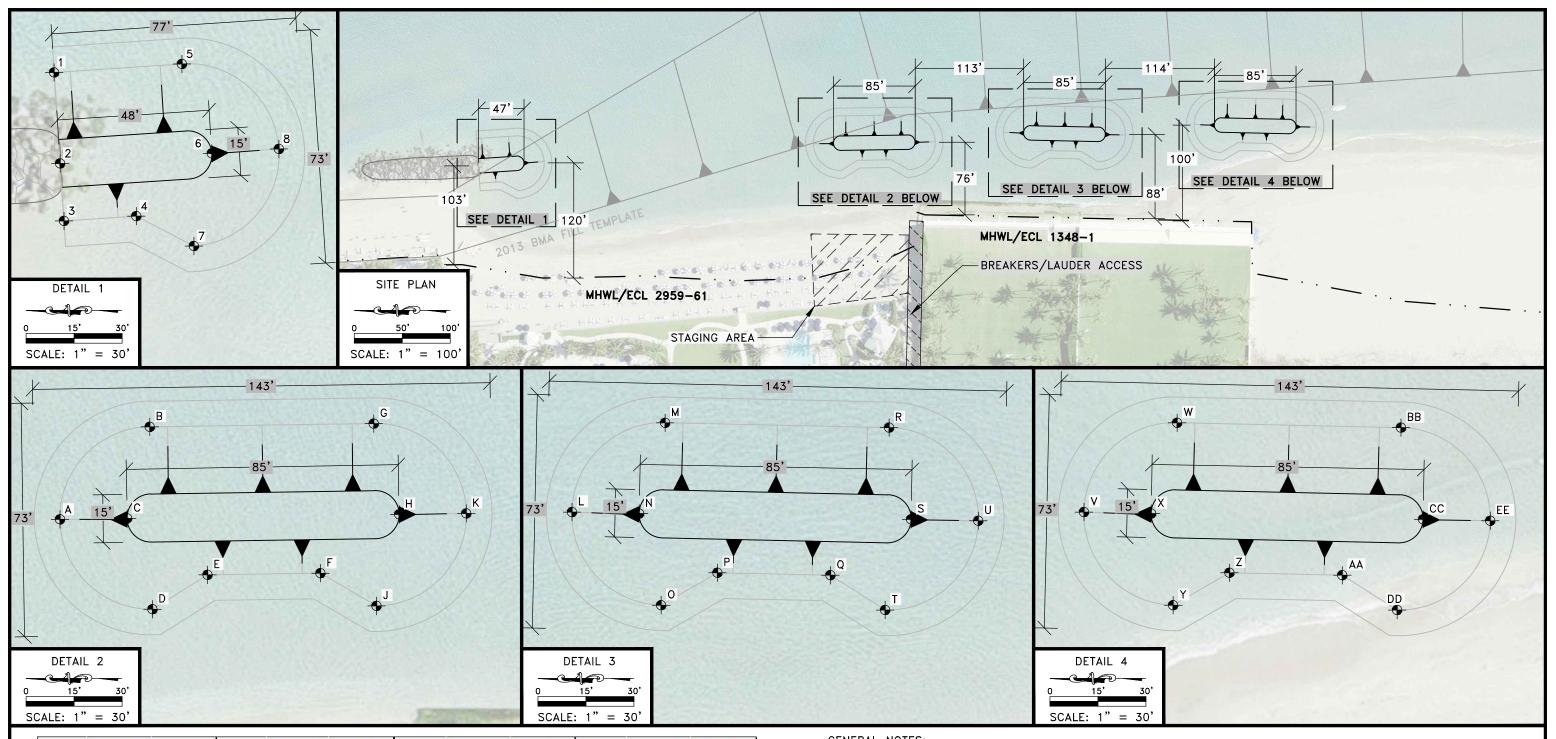
# **GENERAL NOTES:**

- 1. MHWL/ECL 2959-61 BASED ON TOWN OF PALM BEACH MEAN HIGH WATER SURVEY AND PROPOSED EROSION CONTROL LINE NORTH EXTENSION PREPARED BY COASTAL PLANNING & ENGINEERING, INC. DATED 1/7/2003.
- 2. MHWL/ECL 1348-1 BASED ON TOWN OF PALM BEACH MEAN HIGH WATER SURVEY AND PROPOSED EROSION CONTROL LINE PREPARED BY MORGAN & EKLUND, INC. DATED 7/11/1995.
- 3. FILL TEMPLATE APPROXIMATED BASED ON MID-TOWN SEGMENT BEACH MANAGEMENT AGREEMENT FILL PLAN (DEP PERMIT #0328802-002-BMA).

- 4. AERIAL PHOTO PROPERTY OF FDOT APLUS DATED JANUARY 2021.
  5. EXHIBIT IS FOR ILLUSTRATIVE PURPOSES ONLY.
  6. CROSS SECTIONS SHOWN ON E.C.S. ARE ILLUSTRATED ON FIGURE BR-04.



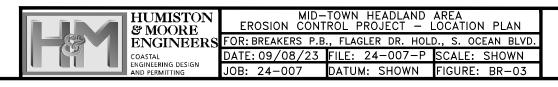
MID-TOWN HEADLAND AREA EROSION CONTROL PROJECT — SITE PLAN OVERVIEW FOR: BREAKERS P.B., FLAGLER DR. HOLD., S. OCEAN BLVD. FILE: 24-007-P SCALE: SHOWN JOB: 24-007 DATUM: SHOWN FIGURE: BR-02

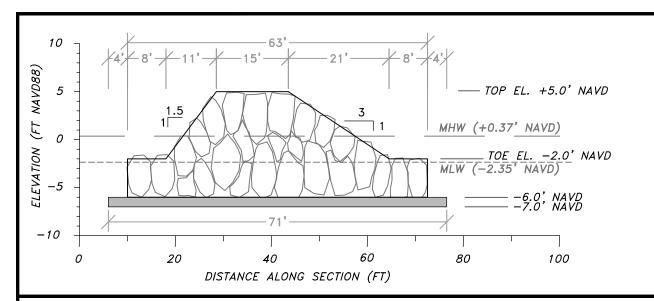


E.C.S. DETAIL 1 COORDINATES			E.C.S. DETAIL 2 COORDINATES		E.C.S. DETAIL 3 COORDINATES			E.C.S. DETAIL 4 COORDINATES			
POINT ID	EASTING (FEET)	NORTHING (FEET)	POINT ID	EASTING (FEET)	NORTHING (FEET)	POINTID	EASTING (FEET)	NORTHING (FEET)	POINT ID	EASTING (FEET)	NORTHING (FEET)
1	971925.50	866024.70	Α	971920.23	865673.99	L	971932.03	865475.87	V	971940.13	865277.26
2	971897.06	866022.83	В	971949.15	865645.91	M	971959.91	865446.76	W	971968.01	865248.15
3	971879.10	866021.64	C	971920.54	865652.99	N	971931.58	865454.87	X	971939.67	865256.26
4	971880.59	865999.04	D	971892.15	865645.07	0	971902.92	865447.99	Y	971911.02	865249.38
5	971928.13	865984.79	E	971902.91	865627.88	Р	971913.05	865430.42	Z	971921.15	865231.80
6	971900.12	865975.42	F	971903.42	865592.58	Q	971912.29	865395.12	AA	971920.39	865196.51
7	971871.26	865981.04	G	971950.17	865575.91	R	971958.41	865376.78	BB	971966.50	865178.17
8	971901.57	865954.47	Н	971921.78	865568.00	S	971929.75	865369.89	CC	971937.85	865171.28
2:	~	-	J	971893.18	865575.08	Т	971901.42	865378.00	DD	971909.52	865179.39
-	-	-	K	971922.09	865547.00	U	971929.30	865348.90	EE	971937.40	865150.29

# **GENERAL NOTES:**

- 1. MHWL/ECL 2959-61 BASED ON TOWN OF PALM BEACH MEAN HIGH WATER SURVEY AND PROPOSED EROSION CONTROL LINE NORTH EXTENSION PREPARED BY COASTAL PLANNING & ENGINEERING, INC. DATED 1/7/2003.
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- AERIAL PHOTO PROPERTY OF FDOT APLUS DATED JANUARY 2021.
   EXHIBIT IS FOR ILLUSTRATIVE PURPOSES ONLY, NOT FOR CONSTRUCTION.





# TYPICAL ECS SECTION A-A

VERTICAL SCALE: 1"=10'

HORIZONTAL SCALE: 1"=20'

VERTICAL SCALE: 1"=10' HORIZONTAL SCALE: 1"=20'

#### **GENERAL NOTES:**

#### 1. ROCK:

A. ARMOR STONE

DENSITY: 145 - 165 LBS./CU. FT. OR GREATER. SIZE: 50% GREATER THAN 3 TONS.

MINIMUM SIZE: 2 TONS.

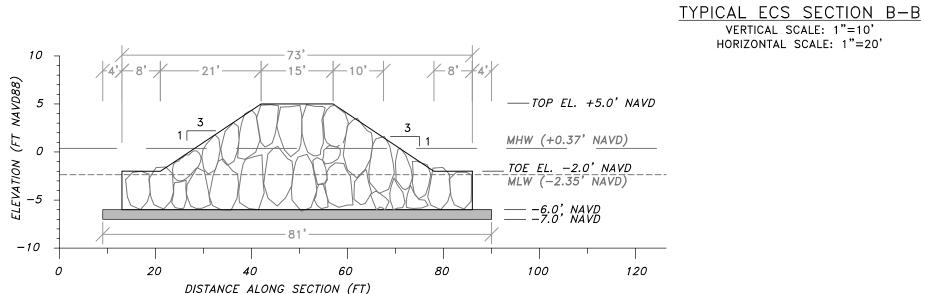
MAXIMUM SIZE: 5 TONS.

B. BEDDING STONE.

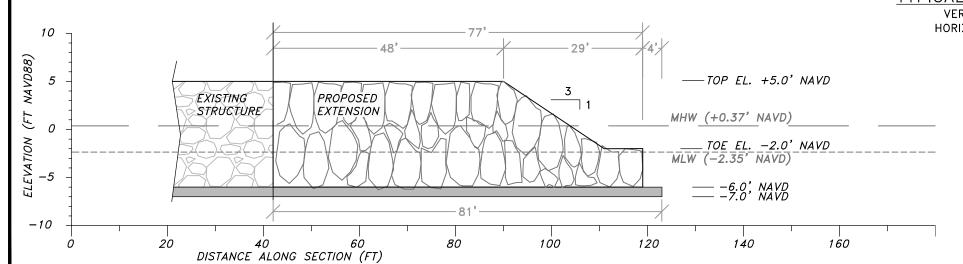
DENSITY: 140 LBS./CU. FT. OR GREATER.

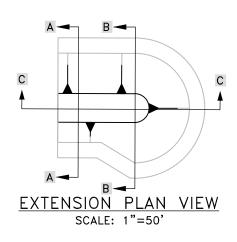
SIZE: 4" TO 9".

- LAYER THICKNESS: 9" TO 15" ABOVE DESIGN FOUNDATION GRADE.
- 2. ARMOR STONE SLOPE TO BE 1V:3H FOR ROCK DENSITY < 160 LBS/CU. FT., OR 1V:2.5H FOR ROCK DENSITY > 160 LBS/CU. FT.
- 3. ARMOR STONE BACK SLOPE TRÁNSITIONS FROM 1V:3H TO 1V:1.5H.
- 4. FILTER CLOTH TO BE PLACED WITH A MINIMUM OVERLAP OF THREE FEET OR SEWN LENGTHS.
- 5. FILTER CLOTH AND GEOGRID TO EXTEND TO EDGE OF BEDDING STONE AND ALONG SHEETPILE
- 6. AS SHOWN WITH A MINIMUM OF 6" AND A MAXIMUM OF 12" EXTENDED BEYOND THE BEDDING STONE.
- 7. TENSAR BIAXIAL GEOGRID BX-1300 (SS-3) OR EQUIVALENT, TO BE PLACED ABOVE FILTER CLOTH AND BENEATH BEDDING STONE.
- 8. A GEOGRID COMPOSITE CONSISTING OF WOVEN FILTER FABRIC AND BIAXIAL GEOGRID SUCH AS TENSAR GC654050, OR EQUIVALENT MAY BE USED UPON APPROVAL BY THE PROJECT ENGINEER.
- 9. ALL ELEVATIONS AS SHOWN ARE REFERENCED TO NORTH AMERICAN VERTICAL DATUM (NAVD'88).
- 10. DIMENSIONS SHOWN ARE IN FEET.
- 11. STATE PLANE COORDINATES BASED ON (NAD83) FLORIDA WEST.



# TYPICAL ECS SECTION C-C VERTICAL SCALE: 1"=10' HORIZONTAL SCALE: 1"=20'

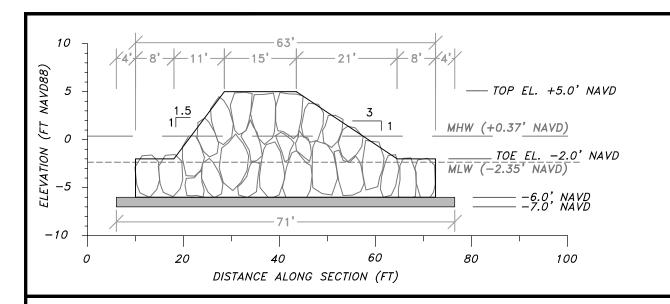






MID-TOWN HEADLAND AREA EROSION CONTROL PROJECT - E.C.S. X-SECTIONS FOR: BREAKERS P.B., FLAGLER DR. HOLD., S. OCEAN BLVD.

DATE: 09/08/23 FILE: 24-007-P SCALE: SHOWN JOB: 24-007 DATUM: SHOWN FIGURE: BR-04

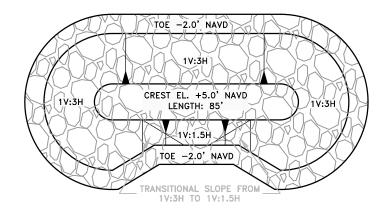


# TYPICAL ECS SECTION D-D

VERTICAL SCALE: 1"=10' HORIZONTAL SCALE: 1"=20'

VERTICAL SCALE: 1"=10'

HORIZONTAL SCALE: 1"=20'



# **GENERAL NOTES:**

# TYPICAL ECS LAYOUT 1-3

1. ROCK:

SCALE: 1"=40'

A. ARMOR STONE

DENSITY: 145 - 165 LBS./CU. FT. OR GREATER.

SIZE: 50% GREATER THAN 3 TONS.

MINIMUM SIZE: 2 TONS. MAXIMUM SIZE: 5 TONS.

B. BEDDING STONE.

DENSITY: 140 LBS./CU. FT. OR GREATER.

SIZE: 4" TO 9".

LAYER THICKNESS: 9" TO 15" ABOVE DESIGN FOUNDATION GRADE.

2. ARMOR STONE SLOPE TO BE 1V:3H FOR ROCK DENSITY < 160 LBS/CU. FT., OR 1V:2.5H FOR ROCK DENSITY > 160 LBS/CU. FT.

ARMOR STONE BACK SLOPÉ TRANSITIONS FROM 1V:3H TO 1V:1.5H.

4. FILTER CLOTH TO BE PLACED WITH A MINIMUM OVERLAP OF THREE FEET OR SEWN LENGTHS.

5. FILTER CLOTH AND GEOGRID TO EXTEND TO EDGE OF BEDDING STONE AND ALONG SHEETPILE

6. AS SHOWN WITH A MINIMUM OF 6" AND A MAXIMUM OF 12" EXTENDED BEYOND THE BEDDING

7. TENSAR BIAXIAL GEOGRID BX-1300 (SS-3) OR EQUIVALENT, TO BE PLACED ABOVE FILTER CLOTH AND BENEATH BEDDING STONE.

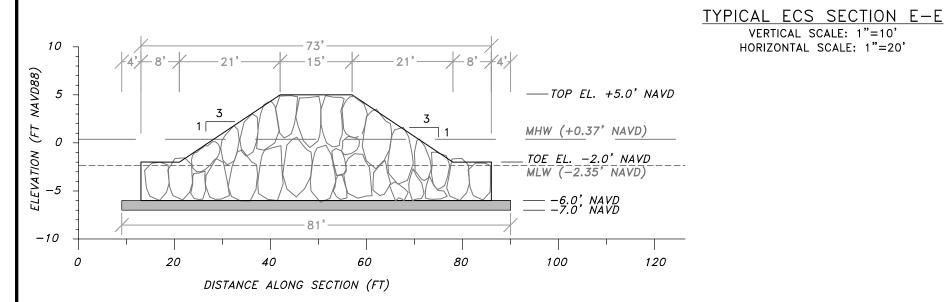
A GEOGRID COMPOSITE CONSISTING OF WOVEN FILTER FABRIC AND BIAXIAL GEOGRID SUCH AS TENSAR GC654050, OR EQUIVALENT MAY BE USED UPON APPROVAL BY THE PROJECT ENGINEER.

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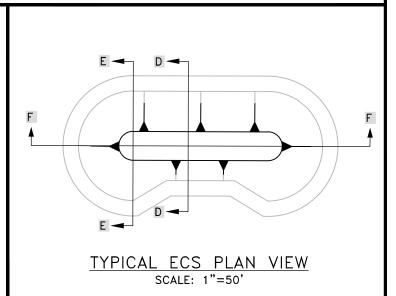
10. DIMENSIONS SHOWN ARE IN FEET.

JOB: 24-007

11. STATE PLANE COORDINATES BASED ON (NAD83) FLORIDA WEST.



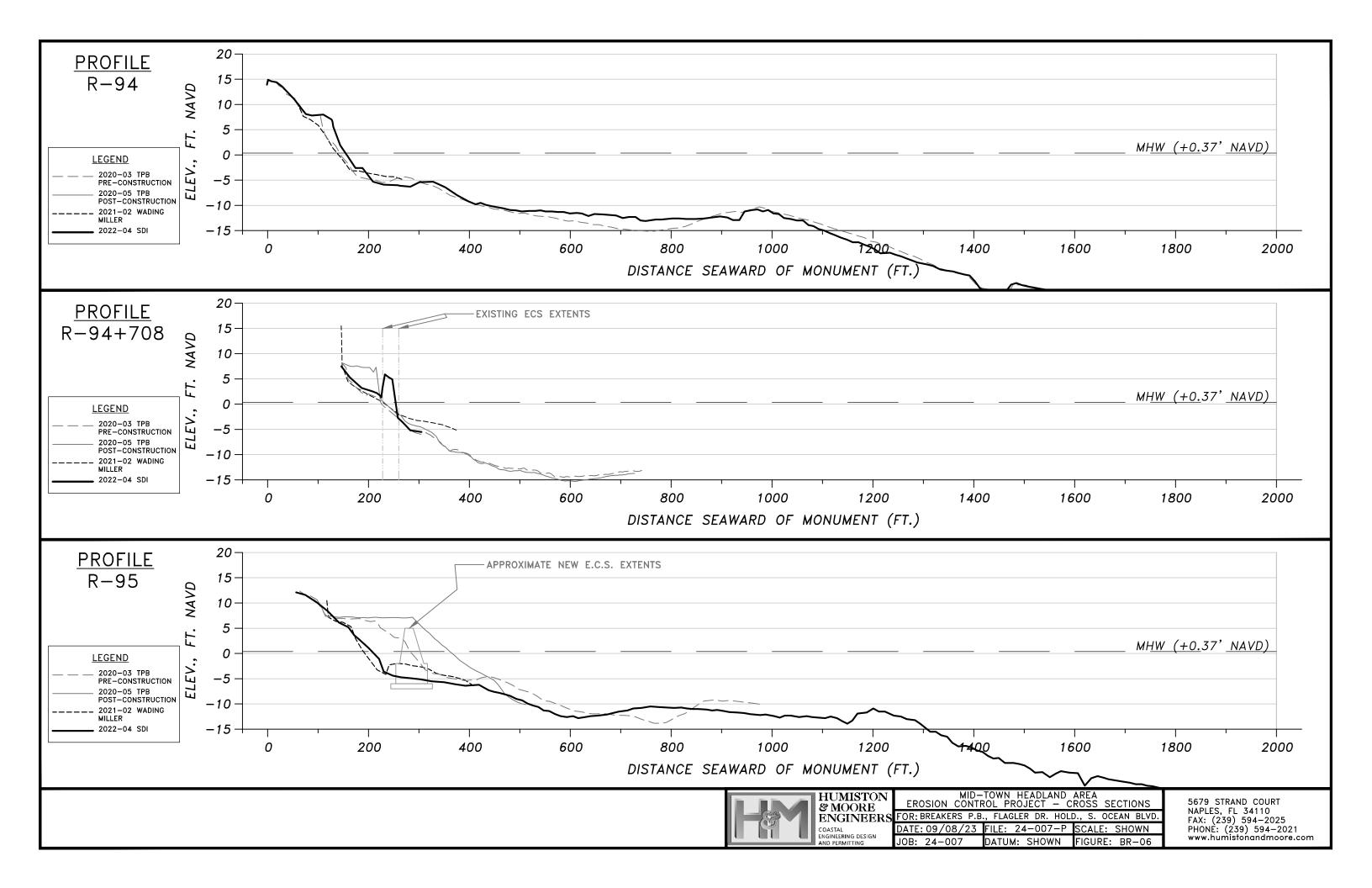
TYPICAL ECS SECTION F-F VERTICAL SCALE: 1"=10' HORIZONTAL SCALE: 1"=20' 10 NAVD88) -TOP EL. +5.0' NAVD 5 (FT MHW (+0.37' NAVD) TOE EL. -2.0' NAVD  $\overline{MLW}$   $(-2.\overline{35}, \overline{NAVD})$ 151 -10 20 80 100 120 140 160 60 DISTANCE ALONG SECTION (FT)

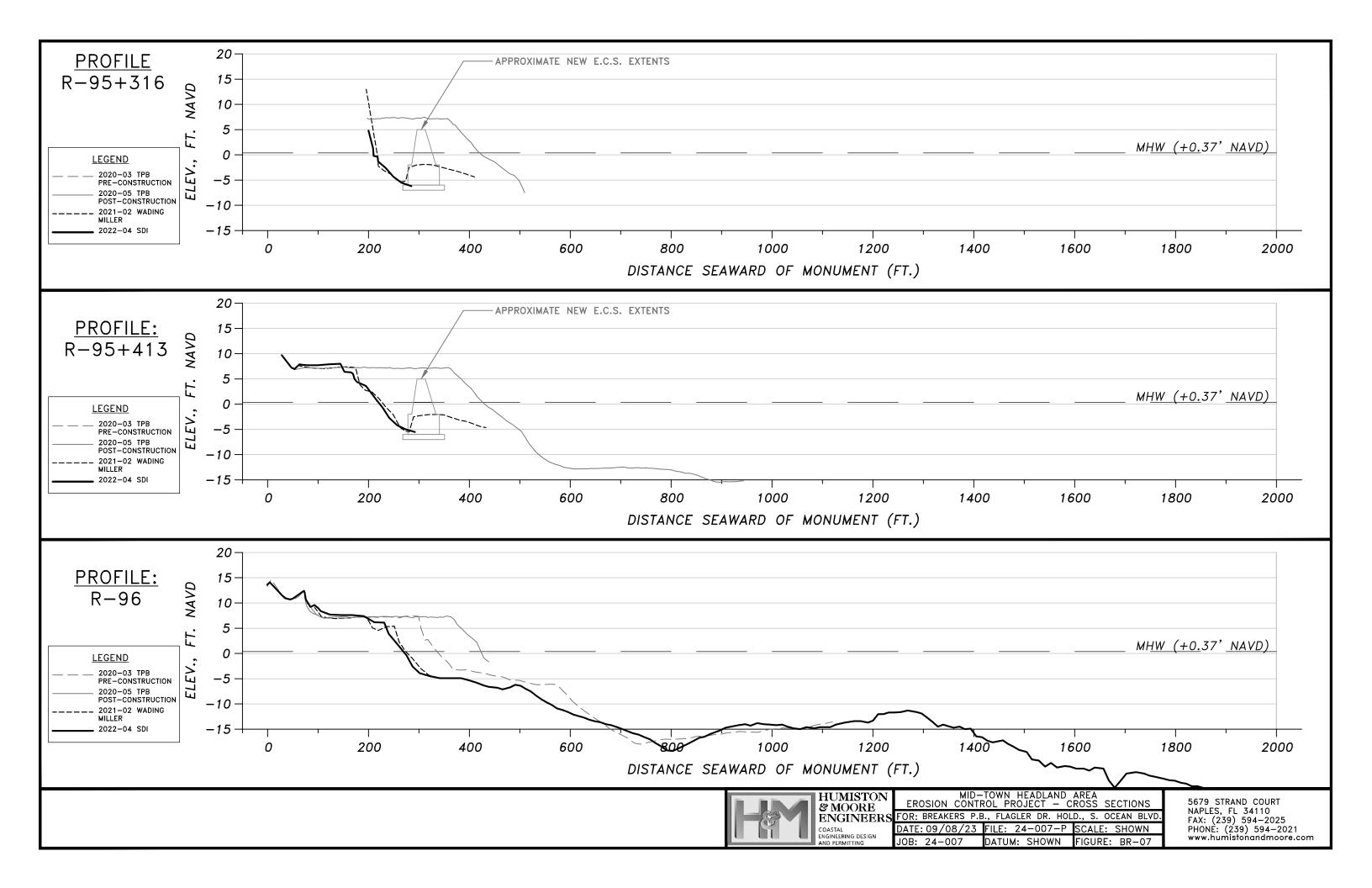




MID-TOWN HEADLAND AREA EROSION CONTROL PROJECT - E.C.S. X-SECTIONS FOR: BREAKERS P.B., FLAGLER DR. HOLD., S. OCEAN BLVD. DATE: 09/08/23 FILE: 24-007-P SCALE: SHOWN

DATUM: SHOWN FIGURE: BR-05







# FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center 2600 Blair Stone Road Tallahassee, FL 32399-2400 Ron DeSantis Governor

Jeanette Nuñez Lt. Governor

Shawn Hamilton Secretary

# CONSOLIDATED JOINT COASTAL PERMIT AND SOVEREIGN SUBMERGED LANDS AUTHORIZATION

# **PERMITTEE:**

The Breakers Palm Beach, Inc. One South Country Road Palm Beach, FL 33480

and

Flagler Drive Holdings, LLC 767 Fifth Avenue, Suite 4200 New York, NY 10153

and

South Ocean Boulevard, LLC 767 Fifth Avenue, 42nd Floor New York, NY 10153

# **AGENT:**

Gregory M. Munson Gunster 215 South Monroe Street, Ste. 601 Tallahassee, FL 32301

# **PERMIT INFORMATION:**

Permit Number: 0414369-001-JC

Project Name: Mid-Town Headland Area

**Erosion Control Project** 

County: Palm Beach

Issuance Date: May 24, 2024

Expiration Date: May 24, 2039

# **REGULATORY AUTHORIZATION:**

This permit is issued under the authority of Chapter 161 and Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). Pursuant to Operating Agreements executed between the Department of Environmental Protection (Department) and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-001-JC Page 2 of 18

# **PROJECT DESCRIPTION:**

The project is to extend an existing breakwater and to construct three new breakwaters between Breakers Beach and Clarke Ave. Beach. The project is designed to provide erosion control and improved sand retention to a stretch of beach that currently sits between two existing zones of erosion control. By bridging the gap between these two existing zones, the project intends to provide a more stable nearshore sand pathway in the area, which will improve the performance and longevity of beach nourishment efforts.

The breakwaters will be constructed with armor stone placed onto a geotextile and bedding stone foundation, and will feature a crest height of +5 feet NAVD with a 1V:3H seaward slope. The new breakwaters will each be 85 feet in length and 15 feet wide at the crest. The extension to the existing breakwater will add 48 feet at the crest length of the existing structure. The breakwaters will be placed in the nearshore, between 76 and 120 feet seaward of the mean high water line (MHWL/ECL).

The activity includes consideration of an application for a sovereign submerged lands private easement containing 40,771 square feet, more or less.

# **PROJECT LOCATION:**

The project site is located between R- 94.5 and R-95.5 in Palm Beach County, Section 23, Township 43 South, Range 43 East, in the Atlantic Ocean, Class III Waters.

# PROPRIETARY AUTHORIZATION:

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands held in trust by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Board of Trustees delegated, to the Department, the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. This proprietary authorization has been reviewed in accordance with Chapter 253 F.S., Chapter 18-21 and Section 62-330.075, F.A.C., and the policies of the Board of Trustees.

The Department has also determined that the breakwater construction activities qualify for a Letter of Consent to use sovereign, submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. Therefore, consent is hereby granted pursuant to Chapter 253.77, F.S., to perform the activity on the specified sovereign submerged lands.

As staff to the Board of Trustees, the Department has reviewed the project described above, and has also determined that the breakwater construction activity requires a private easement for the use of those lands, pursuant to Chapter 253.77, F.S. The Department will issued the private easement, pursuant to the conditions outlined herein in the previously issued

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-001-JC Page 3 of 18

Consolidated Intent to Issue and in the Recommended Proprietary Action (entitled Delegation of Authority).

# **COASTAL ZONE MANAGEMENT:**

This permit constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

# WATER QUALITY CERTIFICATION:

This permit constitutes certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341.

# **OTHER PERMITS:**

Authorization from the Department does not relieve you from the responsibility of obtaining other permits (Federal, State, or local) that may be required for the project. When the Department received your permit application, a copy was sent to the U.S. Army Corps of Engineers (Corps) for review. The Corps will issue their authorization directly to you, or contact you if additional information is needed. If you have not heard from the Corps within 30 days from the date that your application was received by the Department, contact the nearest Corps regulatory office for status and further information. Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency.

# **AGENCY ACTION:**

The above named Permittee is hereby authorized to construct the work that is outlined in the Project Description and Project Location of this permit and as shown on the approved permit drawings, plans and other documents attached hereto. This agency action is based on the information submitted to the Department as part of the permit application, and adherence with the final details of that proposal shall be a requirement of the permit. This permit and authorization to use sovereign submerged lands are subject to the General Conditions, General Consent Conditions and Specific Conditions, which are a binding part of this permit and authorization. Both the Permittee and their Contractor are responsible for reading and understanding this permit (including the permit conditions and the approved permit drawings) prior to commencing the authorized activities, and for ensuring that the work is conducted in conformance with all the terms, conditions and drawings.

# **GENERAL CONDITIONS:**

1. All activities authorized by this permit shall be implemented as set forth in the project description, permit drawings, plans and specifications approved as a part of this permit, and all conditions and requirements of this permit. The Permittee shall notify the Department in writing of any anticipated deviation from the permit prior to implementation so that the Department can determine whether a modification of the permit is required pursuant to Rule 62B-49.008, F.A.C.

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-001-JC Page 4 of 18

- 2. If, for any reason, the Permittee does not comply with any condition or limitation specified in this permit, the Permittee shall immediately provide the Department and the appropriate District office of the Department with a written report containing the following information: a description of and cause of noncompliance; and the period of noncompliance, including dates and times; and, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.
- 3. This permit does not eliminate the necessity to obtain any other applicable licenses or permits that may be required by federal, state, local or special district laws and regulations. This permit is not a waiver or approval of any other Department permit or authorization that may be required for other aspects of the total project that are not addressed in this permit.
- 4. Pursuant to Sections 253.77 and 373.422, F.S., prior to conducting any works or other activities on state-owned submerged lands, or other lands of the state, title to which is vested in the Board of Trustees, the Permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees shall not be considered received until it has been fully executed.
- 5. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.
- 6. This permit does not convey to the Permittee or create in the Permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the Permittee. The issuance of this permit does not convey any vested rights or any exclusive privileges.
- 7. This permit or a copy thereof, complete with all conditions, attachments, plans and specifications, modifications, and time extensions shall be kept at the work site of the permitted activity. The Permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
- 8. The Permittee, by accepting this permit, specifically agrees to allow authorized Department personnel with proper identification and at reasonable times, access to the premises where the permitted activity is located or conducted for the purpose of ascertaining compliance with the terms of the permit and with the rules of the Department and to have access to and copy any records that must be kept under conditions of the permit; to inspect the facility, equipment, practices, or operations regulated or required under this permit; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-001-JC Page 5 of 18

- 9. At least 48 hours prior to commencement of activity authorized by this permit, the Permittee shall electronically submit to the Department, by email at JCPCompliance@dep.state.fl.us, and the appropriate District office of the Department a written notice of commencement of construction indicating the actual start date and the expected completion date and an affirmative statement that the Permittee and the contractor, if one is to be used, have read the general and specific conditions of the permit and understand them.
- 10. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, shipwreck remains or anchors, dugout canoes or other physical remains that could be associated with Native American cultures, or early Colonial or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The Permittee, or other designee, shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section at (850)245-6333 or (800)847-7278, as well as the appropriate permitting agency office. Project activities shall not resume without verbal and/or written authorization from the Division of Historical Resources. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, F.S.
- 11. Within 30 days after completion of construction or completion of a subsequent maintenance event authorized by this permit, the Permittee shall electronically submit to the Department, by email at JCPCompliance@dep.state.fl.us, and the appropriate District office of the Department a written statement of completion and certification by a registered professional engineer. This certification shall state that all locations and elevations specified by the permit have been verified; the activities authorized by the permit have been performed in compliance with the plans and specifications approved as a part of the permit, and all conditions of the permit; or shall describe any deviations from the plans and specifications, and all conditions of the permit. When the completed activity differs substantially from the permitted plans, any substantial deviations shall be noted and explained on as-built drawings electronically submitted to the Department, by email at JCPCompliance@dep.state.fl.us.

# **GENERAL CONSENT CONDITIONS:**

1. Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-001-JC Page 6 of 18

- 2. Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.
- 3. Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.
- 4. Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.
- 5. Construction, use or operation of the structure or activity shall not adversely affect any species that is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C.
- 6. Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.
- 7. Structures or activities shall not create a navigational hazard.
- 8. Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident or fire.
- 9. Structures or activities shall be constructed, operated and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(f), F.A.C., or any other applicable law.

# **SPECIFIC CONDITIONS:**

- 1. All reports or notices relating to this permit shall be electronically submitted to the Department's JCP Compliance Officer (e-mail address: <a href="mailto:JCPCompliance@dep.state.fl.us">JCPCompliance@dep.state.fl.us</a>) unless otherwise specified in the specific conditions of this permit.
- 2. The Permittee shall not store or stockpile tools, equipment, materials, etc., within littoral zones or elsewhere within surface waters of the state without prior written approval from the Department. Storage, stockpiling or access of equipment on, in, over or through beds of submerged aquatic vegetation, wetlands or hardbottom is prohibited unless it occurs within a work area or ingress/egress corridor that is specifically approved by this permit and is shown on the approved permit drawings. Anchoring or spudding of vessels and barges within beds of aquatic vegetation or hardbottom is also prohibited.

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-001-JC Page 7 of 18

- 3. The Permittee shall not conduct project operations or store project-related equipment in, on or over dunes, or otherwise impact dune vegetation, outside the approved staging, beach access and dune restoration areas designated in the permit drawings.
- 4. No work shall commence until the Permittee has satisfactorily submitted all information noted in this condition. Unless otherwise noted, the Permittee shall submit the following items for review by the Department. Unless notified by the Department within 15 days of receipt of all information specified below, the Permittee shall assume the submittals are satisfactory:
  - a. An electronic copy of *detailed final construction plans and specifications* for all authorized activities. The plans and specifications must be consistent with the project description, conditions and approved drawings of this permit. These documents shall be certified by a professional engineer (P.E.), who must be registered in the State of Florida. The Permittee shall point out any deviations from the Project Description of this permit (as stated above) or the approved permit drawings (attached to this permit), and any significant changes that would require a permit modification. The plans and specifications shall include a description of the construction methods to be utilized and drawings and surveys which show all biological resources and work spaces to be used for this project.
  - b. *Turbidity Monitoring*: In order to assure that turbidity levels do not exceed the compliance standards established in this permit, construction at the project site shall be monitored closely by an independent third party with formal training in water quality monitoring and professional experience in turbidity monitoring for coastal construction projects. Also, an individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when turbidity generating activities are occurring. This individual shall have authority to alter construction techniques or shut down the dredging or beach construction operations if turbidity levels exceed the compliance standards established in this permit.
    - i. *Qualifications*. The names, credentials (demonstrating experience and qualifications) and 24-hour contact information of those individuals performing these functions;
    - ii. A Scope of Work for the turbidity monitoring to ensure that the right equipment is available to conduct the monitoring correctly at any location, and under any conditions;
    - iii. *Draft turbidity sampling map*. An example of the geo-referenced map that will be provided with turbidity reports, including aerial photography and the boundaries of biological resources and/or OFW (pursuant to Specific Condition 14)

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- c. Documentation from the U.S. Fish and Wildlife Service (USFWS) that this work will be covered under a Statewide Programmatic **Biological Opinion** or a Biological Opinion(s) (BO) issued for construction on this project site. If the BO contains conditions that are not already contained herein, a permit modification may be required prior to construction to include those additional conditions.
- d. **Fish & Wildlife Monitoring Qualifications:** To ensure that individuals conducting monitoring of fish and wildlife resources have appropriate qualifications, the Permittee shall provide documentation demonstrating expertise/experience in surveying the types of resources that are present in the project. The Department and the Florida Fish and Wildlife Conservation Commission (FWC) will review this information for confirmation that the monitors meet the requirements in Specific Conditions 6 through 9. This documentation shall include the following:
  - i. *Marine Turtle Protection*: A list of the names and FWC permit numbers for the Marine Turtle Permit Holders;
- e. Documentation that the *Private Easement* has been executed to the satisfaction of the Department.
- 5. **Pre-Construction Conference.** After all submittals required by specific condition 4a through e have been submitted, the Permittee shall conduct a pre-construction conference to review the specific conditions and monitoring requirements of this permit with Permittee's contractors, the engineer of record, those responsible for turbidity monitoring and the JCP Compliance Officer (or designated alternate) prior to each construction event. In order to ensure that appropriate representatives are available, at least twenty-one (21) days prior to the intended commencement date for the permitted construction, the Permittee is advised to contact the Department, and the other agency representatives listed below:

JCP Compliance Officer

e-mail: JCPCompliance@dep.state.fl.us

FWC Imperiled Species Management Section

email: marineturtle@myfwc.com

FWC Regional Biologist

See Contact list for phone numbers:

(http://myfwc.com/conservation/you-conserve/wildlife/shorebirds/contacts)

The Permittee is also advised to schedule the pre-construction conference at least a week prior to the intended commencement date. At least seven (7) days in advance of the pre-construction conference, the Permittee shall provide written notification, advising the

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-001-JC Page 9 of 18

participants of the agreed-upon date, time and location of the meeting, and also provide a meeting agenda and a teleconference number.

If the actual construction start date is different from the expected start date proposed during the preconstruction conference, at least 48 hours prior to the commencement of construction, the Permittee shall ensure that notification is sent to the FWC indicating the actual start date and the expected completion date to MarineTurtle@MyFWC.com. The Permittee shall also ensure that all contracted workers and observers are provided a copy of all permit conditions.

# Fish and Wildlife

- 6. **In-water Activity.** The Permittee shall adhere to the following requirements for all in-water activity:
  - a. The Permittee shall instruct all personnel associated with the project about the presence of marine turtles and manatees, and the need to avoid collisions with (and injury to) these protected marine species. The Permittee shall be responsible for harm to these resources and shall require their contractors to advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees or marine turtles, which are protected under the Endangered Species Act, the Marine Mammal Protection Act, the Marine Turtle Protection Act and the Florida Manatee Sanctuary Act.
  - b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate project area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels shall follow routes of deep water whenever possible.
  - c. Siltation or turbidity barriers (if used) shall be made of material in which manatees and marine turtles cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers shall not impede manatee or marine turtle movement or travel.
  - d. The Permittee is responsible for all on-site project personnel and shall require them to observe water-related activities for the presence of marine turtles and manatee(s). All in-water operations shall be immediately shut down if a marine turtle or manatee comes within 50 feet of the operation. For unanchored vessels, operators shall disengage the propeller and drift out of the potential impact zone. If drifting would jeopardize the safety of the vessel then idle speed may be used to leave the potential impact zone. Activities shall not resume until the animal(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the animal(s) has not reappeared within 50 feet of the operation. Animals shall not be herded away or

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harassed into leaving.

- e. Any collision with (or injury to) a marine turtle or manatee shall be reported immediately to the FWC Hotline at 888-404-3922, and to the FWC at <a href="mailto:ImperiledSpecies@MyFWC.com">ImperiledSpecies@MyFWC.com</a>. Any collision with (and/or injury to) a marine turtle shall also be reported immediately to the Sea Turtle Stranding and Salvage Network (STSSN) at <a href="SeaTurtleStranding@MyFWC.com">SeaTurtleStranding@MyFWC.com</a>.
- 7. **Wildlife Conditions for All Beach Related Activities.** The Permittee shall adhere to the following requirements for all beach-related activities during marine turtle nesting season (March 1 through October 31).

# a. Beach Maintenance.

- i. The Permittee shall require their contractor and marine turtle nesting monitors to inspect all work areas that have excavations and temporary alterations of beach topography each day, to determine which areas have deviations (such as depressions, ruts, holes and vehicle tracks) capable of trapping marine turtle hatchlings. If so, the deviations shall be filled or leveled from the natural beach profile prior to 9:00 p.m. each day. The beach surface shall also be inspected subsequent to completion of the project, and all tracks, mounds, ridges or impressions, etc. left by construction equipment on the beach shall be smoothed and leveled.
- ii. All debris, including derelict construction or coastal armoring material, concrete and metal, found on the beach placement site, shall be removed from the beach each day prior to sunset. If debris removal activities take place during marine turtle nesting seasons, the work shall be conducted during daylight hours only, and shall not commence until completion of daily monitoring surveys.
- b. **Equipment Storage and Placement.** Staging areas and temporary storage for construction equipment shall be located off the beach to the maximum extent practicable. Nighttime storage of construction equipment that is not in use shall be located off the beach. If staging and storage areas off the beach are not possible, then additional marine turtle protective measures shall be implemented. Such protective measures shall be determined in coordination with the Department and the FWC prior to beginning of construction.
- c. **Beach Driving.** All vehicles operated on the beach shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<a href="https://myfwc.com/conservation/you-conserve/wildlife/beach-driving/">https://myfwc.com/conservation/you-conserve/wildlife/beach-driving/</a>). Specifically, the vehicle shall be operated at speeds less than 6 mph and run at or below the high-tide line. All personnel associated with the project shall be instructed about the potential presence of protected species, and the need to avoid injury and

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disturbance to these species.

#### 8. Marine Turtle Protection Conditions for Construction-Related Activities.

Construction-related activities within the area immediately landward of the offshore breakwater area and within the approved staging areas are authorized to occur on the nesting beach. Construction-related activities may only occur during the early nesting season (March 1 through May 1) and late nesting season, (November 1 through November 30) under the following conditions:

- a. Daily early morning marine turtle nest surveys shall start at the beginning of marine turtle nesting season (March 1) or 65 days prior to construction whichever is later. Daily nesting surveys shall continue through November 30, or until two weeks after the last crawl in the project area, as approved by the FWC, whichever is earlier.
- b. Daily nesting surveys shall be conducted beginning ½ hour prior to sunrise, and no construction activity may commence until completion of the marine turtle survey each day.
- c. The Permittee shall ensure that marine turtle nesting surveys are conducted as required in this authorization, and only conducted by personnel with a valid FWC Marine Turtle Permit that covers all project activities as required by Chapter 68E-1, F.A.C. For information on the authorized Marine Turtle Permit Holders in the project area, contact FWC at <a href="https://myfwc.com"><u>MTP@MyfWC.com</u></a>.
- d. Only those nests laid within the construction staging area(s) as identified in the permit application shall be relocated, and nest relocation shall cease after construction is completed. Nests requiring relocation shall be moved no later than 9 a.m., the morning following deposition (no longer than 12 hours from the time the eggs are laid), to a nearby self-release beach site in a secure setting, where artificial lighting will not interfere with hatchling orientation. The relocation site shall be determined in conjunction with and approved by the FWC prior to nest relocations. Relocated nests shall not be placed in organized groupings. Relocated nests shall be randomly staggered along the length and width of beach settings that are not expected to experience any of the following: inundation by high tides; severe erosion; previous egg loss; or illumination by artificial lighting. All nest relocation activities shall either be completed by the active Marine Turtle Permit Holder or shall be conducted in cooperation with the active Marine Turtle Permit Holder to ensure relocation does not occur before the daily nesting survey.
- e. Nests deposited within the construction staging area(s) identified in the permit plans where staging activities will not occur for 65 days shall be marked and left in place. All nests outside the identified construction staging area(s) shall be marked and left in place. The Marine Turtle Permit Holder shall install on- beach markers at the nest site

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to establish a minimum 5- foot radius around the approximate clutch location and shall also install a secondary marker at a point as far landward as possible to assure that the nest can be located should the on- beach marker be lost. No activity shall occur within the marked area, nor shall any activities occur that could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the project activity.

- f. All activity shall be confined to daylight hours. No temporary lighting of the construction area is authorized at any time during the marine turtle nesting season. No permanent lighting is authorized.
- g. Upon locating a dead, injured, or entrapped marine turtle adult, hatchling, or damaged nest in the breakwaters or on the beach within the project boundaries, the Permittee shall be responsible for notifying the FWC Wildlife Alert at 888-404-FWCC (3922). If a marine turtle nest is excavated during construction activities, but not as part of the authorized nest relocation process outlined in these specific conditions, the permitted person responsible for egg relocation for the project shall be notified immediately so the eggs can be moved to a suitable relocation site.
- 9. **Marine Turtle Protection Conditions for Post-Construction and Monitoring.** Upon completion of construction, the Permittee shall implement the following marine turtle protection conditions:
  - a. A pdf map and shapefiles delineating the location of the breakwaters after installation and including specific waypoints and coordinates shall be provided to FWC at MarineTurtle@MyFWC.com.
  - b. In the event a breakwater structure fails or begins to disintegrate, all debris and structural material that washes onto the nesting beach area shall be removed and deposited off-beach immediately. If maintenance of a breakwater structure is required during the period from March 1 through October 31 and requires on-beach construction, no work shall be initiated without prior written coordination with FWC's Imperiled Species Management Section (MarineTurtle@MyFWC.com).
  - c. If the breakwater structure(s) results in the documented entrapment and/or lethal take of a marine turtle, the Permittee shall immediately notify FWC Wildlife Alert at 888-404-FWCC (3922) and the FWC Sea Turtle Stranding Network at <a href="mailto:SeaTurtleStranding@MyFWC.com">SeaTurtleStranding@MyFWC.com</a>.
  - d. If the amount or extent of incidental take authorized in the Biological Opinion, as those terms are described in the Biological Opinion, is exceeded, the Permittee shall notify FWC and DEP. If such notification occurs, then the Permittee shall set up a meeting with FWC, DEP and the U.S. Fish and Wildlife Service (USFWS) to discuss all options including modification, removal, additional protection measures, or re-

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initiation of consultation.

# **MONITORING REQUIRED:**

10. Water Quality - Turbidity shall be monitored as follows: Units: Nephelometric Turbidity Units (NTUs).

Frequency: Monitoring shall be conducted 2 times daily, approximately 4 hours apart and at any other time that there is a likelihood of an exceedance of the turbidity standard, during all in-water construction operations. Sampling shall be conducted while the highest project-related turbidity levels are crossing the edge of the mixing zone. The compliance samples and the corresponding background samples shall be collected at approximately the same time, i.e., background sample shall immediately follow the compliance sample.

Location:

Background: Sampling shall occur at mid-depth, upcurrent from the point of breakwater construction, where turbidity is being generated, at the same distance offshore as the associated compliance sample.. All background sampling shall occur clearly outside the influence of any artificially generated turbidity plume or the influence of an outgoing inlet plume.

Compliance: For activities encompassed by a turbidity curtain or similar turbidity control device, samples shall be collected at mid-depth, downcurrent from the project-related turbidity source, within the densest portion of any visible turbidity plume, immediately outside of the turbidity control device.

For activities not encompassed by a turbidity curtain or similar turbidity control device, sampling shall occur at mid-depth, within the densest portion of any visible turbidity plume generated by this project, 150 meters downdrift from the point of construction.

Calibration: The instruments used to measure turbidity shall be fully calibrated with primary standards within one month of the commencement of the project, and at least once a month throughout the project. Calibration with secondary standards shall be verified each morning prior to use, after each time the instrument is turned on, and after field sampling using two secondary turbidity "standards" that bracket the anticipated turbidity samples. If the post-sampling calibration value deviates more than 8% from the previous calibration value, results shall be reported as estimated and a description of the problem shall be included in the field notes.

Analysis of turbidity samples shall be performed in compliance with DEP-SOP-001/01 FT 1600 Field Measurement of Turbidity:

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# http://publicfiles.dep.state.fl.us/dear/sas/sopdoc/2008sops/ft1600.pdf

If the turbidity monitoring protocol specified above prevents the collection of accurate data, the person in charge of the turbidity monitoring shall contact the JCP Compliance Officer to establish a more appropriate protocol. Once approved in writing by the Department, the new protocol shall be implemented through an administrative permit modification.

11. The **compliance** locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the **compliance** sites that are greater than 29 NTUs above the corresponding background turbidity levels, construction activities shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the JCP Compliance Officer via email at <a href="mailto:JCPCompliance@dep.state.fl.us">JCPCompliance@dep.state.fl.us</a> and include in the subject line, "TURBIDITY EXCEEDANCE", and the Project Name and Permit Number. Also notify the Department's Southeast District office.

Any project-associated turbidity source shall be monitored as close to the source as possible. If the turbidity level exceeds 29 NTUs above background, the construction activities related to the exceedance shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. This turbidity monitoring shall continue every hour until background turbidity levels are restored or until otherwise directed by the Department. The Permittee shall notify the Department, by separate email to the JCP Compliance Officer, of such an event within 24 hours of the time the Permittee first becomes aware of the discharge. The subject line of the email shall state "OTHER PROJECT-ASSOCIATED DISCHARGE, TURBIDITY EXCEEDANCE".

When reporting a turbidity exceedance, the following information shall also be included:

- a. the Project Name;
- b. the Permit Number;
- c. location and level (NTUs above background) of the turbidity exceedance;
- d. the time and date that the exceedance occurred; and
- e. the time and date that construction ceased.

Prior to re-commencing the construction, a report shall be emailed to the Department with the same information that was included in the "Exceedance Report", plus the following information:

# Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-001-JC Page 15 of 18

- a. turbidity monitoring data collected during the shutdown documenting the decline in turbidity levels and achievement of acceptable levels;
- b. corrective measures that were taken; and
- c. cause of the exceedance.
- 12. **Turbidity Reports:** All turbidity monitoring data shall be submitted within one week of analysis. The data shall be presented in tabular format, indicating the measured turbidity levels at the compliance sites for each depth, the corresponding background levels at each depth and the number of NTUs over background at each depth. Any exceedances of the turbidity standard (29 NTUs above background) shall be highlighted in the table. In addition to the raw and processed data, the reports shall also contain the following information:
  - a. time of day samples were taken;
  - b. dates of sampling and analysis;
  - c. GPS location of sample and source. When possible, coordinates should be provided in decimal degrees with a 5 decimal level of precision (i.e., 0.00001). Please also indicate the datum;
  - d. depth of water body;
  - e. depth of each sample
  - f. antecedent weather conditions, including wind direction and velocity;
  - g. tidal stage and direction of flow;
  - h. water temperature;
  - i. a geo-referenced map, overlaid on an aerial photograph, indicating the sampling locations (background and compliance), location of active construction, the visible plume pattern and direction of flow. The map shall also include the boundaries of any benthic resources or OFW. A sample map shall be submitted to and reviewed by the Department prior to construction (Specific Condition 4);
  - j. a statement describing the methods used in collection, handling, storage and analysis of the samples;

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- k. a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection, calibration of the meter, accuracy of the data and precision of the GPS measurements;
- 1. When samples cannot be collected, include an explanation in the report. If unable to collect samples due to severe weather conditions, include a copy of a current report from a reliable, independent source, such as an online weather service.

Monitoring reports shall be submitted by email to the Department's JCP Compliance Officer. In the subject line of the reports, include the Project Name, Permit Number and the dates of the monitoring interval. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the Department's JCP Compliance Officer, on the cover page to the submittal and at the top of each page, please state: "This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0414369-001-JC, for the Mid-Town Headland Area Erosion Control Project"

- 13. Within 30 days after completing construction of the authorized activity, the Permittee shall submit an As-Built Survey that is signed, sealed and dated by a Florida-licensed Surveyor and Mapper in accordance with Chapter 61G17-7, F.A.C. The survey shall depict the boundaries of the easement and shall show the size and dimensions of all structures over sovereign submerged lands and activities located within the easement area. The survey shall contain a statement that all of the depicted structures and activities occur within the easement boundary. If the surveyor observes that structures or activities are occurring outside of the easement area, the surveyor shall document the condition in the statement and note the deviations on the survey. Constructed deviation may require a permit or easement modification.
- 14. Pursuant to Rule 62B-41.005(16), F.A.C., physical monitoring of the project is required through acquisition of project-specific data to include, at a minimum, topographic and bathymetric surveys of the beach and nearshore, and engineering analyses. The monitoring data is necessary in order for both the project sponsor and the Department to regularly observe and assess, with quantitative measurements, the performance of the project, any adverse effects which have occurred, and the need for any adjustments, modifications, or mitigative response to the project. The scientific monitoring data and analysis also provides the project sponsor and the Department information necessary to plan, design, and optimize subsequent follow-up projects, potentially reducing the need for and costs of unnecessary work, as well as potentially reducing any environmental impacts that may have occurred or be expected.
- 15. The Permittee shall implement the approved Physical Monitoring and Mitigation Plan for the Mid-Town Headland Erosion Control Project. The Physical Monitoring and Mitigation Plan provides contingent mitigation, if required, for any unanticipated adverse impacts caused by the project on downdrift shorelines. Furthermore, the Physical

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Monitoring and Mitigation Plan includes reasonable measurements to determine the stability of the structures and any significant settlement or displacement of the structures.

16. During construction, the permittee shall provide periodic progress reports certified by an engineer and supported with photos to the Department. The reports shall be submitted on a three-month basis beginning at the start of breakwater construction and continuing until all work has been completed. The engineer shall certify that all construction as of the date of each report has been performed in compliance with the plans and the project description approved as a part of the permit, and with all conditions of the permit, or shall specify any deviation from the plans, project description or conditions of the permit. The report shall also state the percentage of completion of the project and each major individual component.

# **EXECUTION AND CLERKING:**

Executed in Tallahassee, Florida.
STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Gregory W. Garis

Program Administrator

Beaches, Inlets and Ports Program

Office of Resilience and Coastal Protection

# **Attachment(s):**

- 1. Approved Permit Drawings (8 pages, September 2023)
- 2. Physical Monitoring and Mitigation Plan (Approved May 2024)

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-001-JC Page 18 of 18

# **CERTIFICATE OF SERVICE**

The undersigned duly designated deputy clerk hereby certifies that this permit and all attachments were sent on the filing date below.

# FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.

AVANA KONNY CARMOLA May 24, 2024
Clerk Date

# **COMMENCEMENT NOTIFICATION**

Within ten (10) days of initiating the authorized work, submit this form via electronic mail to saj-rd-enforcement@usace.army.mil (preferred, not to exceed 15 MB) <u>or</u> by standard mail to U.S. Army Corps of Engineers, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019.

1.	Department of th	ne Army Permi	t Number: SAJ-	-	(	-	
2.	Permittee Inform	nation:					
	Name:						
	Email:						
	Address:						
	Phone:						
3.	Construction St	art Date:		<del></del>			
4.	Contact to Sche	dule Inspectio	on:				
	Name:						
	Email:						
	Phone:						
			Signature of P	ermittee			
			Printed Name	of Perm	ittee		
			Date				

Prepared by:
Permittee:
Address:
Phone:
NOTICE OF DEPARTMENT OF THE ARMY PERMIT
TAKE NOTICE the United States Army Corps of Engineers (Corps) has issued a permit or verification to (Permittee) on, authorizing work in navigable waters of the United States in accordance with Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C 403) on a parcel of land known as Folio/Parcel ID: located at
Within 30 days of any transfer of interest or control of said property, the Permittee must notify the Corps in writing of the property transfer by submitting the completed permit transfer page included with the issued permit or verification. The subject permit or verification concerns only that portion of the property determined to fall within the jurisdiction of the Corps and this notice is applicable only to those portions of the subject property in, over, under, or affecting navigable waters of the United States.
<b>Conditions of the Permit/Verification:</b> The permit or verification is subject to General Conditions and Special Conditions which may affect the use of the work authorized in Intracoastal Waterway. Accordingly, interested parties should closely examine the entire permit or verification, all associated applications, and any subsequent modifications.
To obtain a copy of the authorization in its entirety submit a written request to: U.S. Army Corps of Engineers Regulatory Division - Special Projects & Enforcement Branch Post Office Box 4970 Jacksonville, Florida 32232-0019
Questions regarding compliance with these conditions should be directed to: U.S. Army Corps of Engineers

# **Conflict Between Notice and Permit**

Jacksonville, Florida 32232-0019

Enforcement Section Post Office Box 4970

This Notice of Authorization is not a complete summary of the issued permit or verification. Provisions in this Notice of Permit shall not be used in interpreting the permit or verification provisions. In the event of conflict between this Notice of Permit and the permit or verification, the permit or verification shall control.

# This Notice is Not an Encumbrance

This Notice is for informational purposes only. It is not intended to be a lien, encumbrance, or cloud on the title of the premises.

Release
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This Notice may not be released or removitten consent of the Corps.	oved from the public records without the prior
This Notice of Authorization is executed, Ti in the Public Records of Palm Beach Co imposed by the authorization SAJ-2014-	his document is being submitted for recordation bunty, Florida as part of the requirement
	Permittee:
	Address:
	Phone:
STATE OF FLORIDA COUNTY OF	
The foregoing instrument was acknowled, 20, by me or has produced	, who is personally known to
	Notary Public (Seal)
	Print
	My Commission Expires

# AS-BUILT CERTIFICATION BY PROFESSIONAL ENGINEER

Within sixty (60) days of completion of the authorized work, submit this form and one set of asbuilt engineering drawings via electronic mail to <a href="mailto-saj-rd-enforcement@usace.army.mil">saj-rd-enforcement@usace.army.mil</a> (preferred, but not to exceed 15 MB) <a href="mailto-or">or</a> by standard mail to U.S. Army Corps of Engineers, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019. If you have questions regarding this requirement, please contact the Enforcement Branch at 904-232-3697.

Department of the Army Permit Number	er: SAJ ( -	)
2. Permittee Information:		
Name:		
Address:		
3. Project Site Identification (physical loca	ation/address):	
4. As-Built Certification: I hereby certify t by Special Conditions to the permit, has be the Army permit with any deviations noted observation, scheduled and conducted by supervision. I have enclosed one set of a	peen accomplished in accordang d below. This determination is by me or by a project representat	ce with the Department of pased upon on-site
Signature of Engineer	Name ( <i>Please type</i> )	
(FL, PR, or VI) Reg. Number	Company Name	
City	State	ZIP
(Affix Seal)		

Date	Telephone Number
Date Work Started:	_ Date Work Completed:
Identify any deviations from the approved additional pages if necessary):	permit drawings and/or special conditions (attach

CESAJ-EN 16 October 2024

# MEMORANDUM FOR Chief, Regulatory Division

SUBJECT: Mid-Town Headland Erosion Control Project, Shore Protection Project (SPP), Palm Beach County, SAJ-2021-03307

- 1. Reference Regulatory Division email dated 27 September 2022, requesting Engineering Division review the permit package for SAJ-2021-03307, Mid-Town Headland Erosion Control Project, SPP, Palm Beach County, 408 Request 2022-0108. The applicant seeks a 10-year authorization to conduct erosion control and shoreline protection between two existing fields of groin structures by conducting the following activities: 1) Install three new breakwaters each having a crest length of approximately 85 feet and 15 feet wide (total of approximately 3,825 square feet) at crest elevation of +5 feet NAVD and forward slopes of 1V:3H totaling placement of approximately 26,400 square feet of armor stone (5,800 cubic yards) within an approximately 31,000 square feet foundation of approximately one foot diameter bedding stone (1,100 cubic yards) and geotextile extending beyond the structure for scour protection; and 2) Extend one existing breakwater an additional approximately 700 square feet (48 feet by 15 feet). The three structures will be buried by sand placement upon beach nourishment through the Palm Beach County SPP, Mid-town Segment, beach renourishment projects. Overtime, as the beach erodes in between re-nourishment events, the breakwaters would become emergent. Construction will be by mechanical placement using land-based equipment (for example, excavators, cranes) or end dumping with rock placement using barges and cranes, as appropriate. Work will be conducted from upland or from the water by barge as required based upon beach conditions and seasonal timing of construction.
- 2. Engineering Division does not object to the issuance of the permit and approves the request for SAJ-2021-03307, Mid-Town Headland Erosion Control Project, SPP, Palm Beach County, 408 Request 2022-0108, as referenced herein, and conditions the applicant to follow monitoring and potential corrective actions as described in the *Mid-Town Headland Area Erosion Control Project Physical Monitoring and Mitigation Plan Addendum*, dated 30 September 2024.
- 3. No construction activities for the proposed project shall take place on the beach or nearshore, including staging of equipment or materials, when the Government is renourishing the SPP.
- 4. Approval of these modifications to the Shore Protection Project is in accordance with 33 U.S.C. 408. It also complies with the National Environmental Policy Act as the proposed modifications were previously analyzed in the Department of Army Permit SAJ-2021-03307.
- 6. The applicant shall comply with Engineering Circular 1165-2-220, dated 10 September 2018, Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408, Appendix K, Standard Terms and Conditions (enclosed) and the time limit for completing the work authorized in Department of Army Permit SAJ-2021-03307. The applicant is responsible for quality control for performance of the work and for ensuring these actions do not interfere with the functioning of the Shore Protection Project. Documentation of the completed work must be furnished to USACE after completion of the work for our records, per the Standard Terms and Conditions (enclosed).
- 6. If you have any questions regarding the information in this letter, please feel free to contact me or you may contact Josinell Serrano Canals at 904-232-1112 or by email to <u>josinell.m.serrano-canals@usace.army.mil</u>.

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**Enclosure** 

# Mid-Town Headland Area Erosion Control Project Physical Monitoring and Mitigation Plan Addendum

FDEP 0414369-001-JC USACE SAJ-2021-03307

Prepared by

**Humiston & Moore Engineers** 

In coordination with

**USACE Jacksonville District Engineering review** 

Project Ref. 408-2022-0108

September 30, 2024

#### I. Introduction

This Addendum outlines additional monitoring and mitigation measures for the referenced project (the "Project") to address the U.S. Army Corps of Engineers (USACE) Jacksonville District concerns of potential downdrift erosion within the Palm Beach County Shore Protection Project Mid-Town Segment. The additional measures described in this addendum complement, and do not supersede, the initial monitoring and mitigation plan prepared by Humiston & Moore Engineers in August 2023 and approved as part of the State JCP permit by Florida Department of Environmental Protection in May 2024. This Addendum follows review and discussions with Section 408 USACE Jacksonville District.

This Addendum includes more detailed data collection with additional beach profiles and planform mapping, engineering analysis and reporting than previously provided. The action plan criteria for enhanced monitoring and mitigation measures are also more detailed, including establishing Threshold Conditions described in the Enhanced Physical Monitoring Section III.A.2. for contingent corrective actions described in Section IV herein. The goal of the additional data collection and engineering analysis is to distinguish between the effect of the additional structures on the downdrift beach and the chronic erosion caused by natural events, including hurricanes, storm events, sea level events, etc. Technical reports provided with the permit application documented data and analysis of the chronic erosion problem at Clarke Ave. Beach and the role of the existing seawalls on sediment pathways and background erosion. The project design provides reasonable assurances that the Project will not cause adverse impacts on the predominant downdrift area of Clarke Ave. Beach. This Addendum provides additional special condition safeguards requiring contingent monitoring and mitigation, if needed, for any unanticipated adverse impacts caused by the Project. Contingent corrective actions are proposed, if necessary, in this Addendum to correct any increase in downdrift erosion caused by the Project, as opposed to chronic erosion, demonstrated through the annual and enhanced monitoring described herein.

#### **II.** Physical Monitoring

#### A. Physical Monitoring Locations:

The Physical Monitoring includes the overall survey scope of the Mid-Town Headland Area between R-93 and R-97 with a detailed survey scope of the Project area including the three shore parallel locations identified immediately below and depicted on **Figure 1** as the "Detailed Area".

- 1. Breakers Swim Beach: Located between approximately 1130 ft south of R-94 and the northern end of the seawall at 115 Flagler Dr. (about R-95).
- 2. Protruded Seawall: Located along the seaward length of seawalls at 115 Flagler Dr. and 126 S. Ocean Blvd. between about R-95 and 350 ft south of R-95.
- 3. Clarke Ave Beach: Located between the southern end of the seawall at 126 S. Ocean Blvd. (approximately 350 ft south of R-95) and the northernmost existing erosion control structure (groin) located approximately 450 ft south of R-96.

For the topographic and bathymetric transect surveys (i.e., beach profiles), eighteen transects are depicted in **Figure 1**. These transects include the survey transects identified in Figure 8 of the Physical Monitoring and Mitigation Plan dated August 2023 and additional transects identified for this Addendum.

**Figure 1** also includes illustrative examples of the beach planform contour surveys, which will be conducted between R-94+1130 and R-96+450. The beach planform contour surveys will include the mean high-water line at +0.37 (MHWL), upland contour line at +4.0 NAVD (dry beach), upland contour line at +6.0 NAVD (dry beach), and mapping of the prominent vegetation line or seawall boundary if no vegetation is present.

#### B. Physical Monitoring Procedures:

- 1. **Figure 1** depicts the overall survey scope (Overall Scope) of the Midtown Headland Area from R-93 to R-97 and includes a detailed area (Detailed Area) as an inset, depicting the Project area from R94+1130 to R96+450. The Physical Monitoring will include (i) topographic and bathymetric transect surveys (i.e., beach profiles) across the Overall Scope and Detailed Area, as depicted in Figure 1; (ii) beach planform contour surveys including the mean high-water line at +0.37 (MHWL), upland contour line at +4.0 NAVD (dry beach), upland contour line at +6.0 NAVD (dry beach), and vegetation/seawall boundary; and (iii) aerial photography.
- 2. For the beach profile surveys, beach planform surveys, and aerial photography described in Section II.B.1., the Permittee will conduct pre-construction Physical Monitoring within 90 days prior to the commencement of construction, post-construction Physical Monitoring within 60 days following completion of construction, and then annually.
- 3. Annual Physical Monitoring surveys should be conducted in spring or summer months and be repeated as close as practicable during the same month every year for consistency. If the time period between the immediate post-construction and the first annual monitoring survey is less than six months, the Permittee can request a postponement of the first annual monitoring survey until the following spring/summer timeframe. Surveys should be conducted to align with beach monitoring of the Federal Mid-Town Beach Renourishment Project ("Federal Project") whenever possible.

4. Survey activities and deliverables will be in accordance with the latest update of FDEP's Monitoring Standards for Beach Erosion Control Projects, Sections 01000 and 01100, except as noted herein for the shorter additional beach profiles (dashed lines on Figure 1).

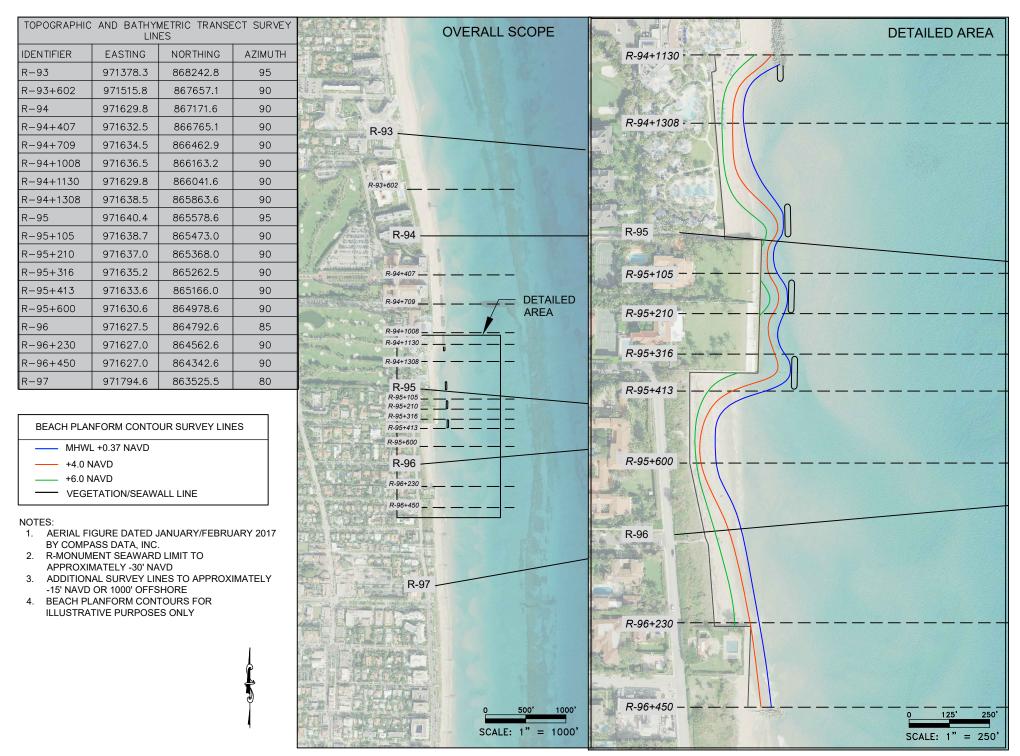


Figure 1: Monitoring Scope Illustrating Overall Scope and Detailed Area

#### C. Detailed Physical Monitoring Procedures:

- 1. Topographic and Bathymetric Transect Surveys (Beach Profiles):
  - i. All beach profiles at FDEP-R-monuments will be surveyed in accordance with the current monitoring by the Town of Palm Beach to the azimuths established by FDEP. The additional profiles will be surveyed to -15 ft NAVD or 1,000 feet offshore, whichever is more landward, at 90-degree azimuth.

#### 2. Beach Planform Survey:

- i. Survey points will be collected at intervals not to exceed 20 ft and of sufficient density to accurately represent the shoreline of the subject area.
- ii. The elevations chosen as described in Section II.B.1. are consistent with elevations mapped in earlier monitoring surveys pre- and post- the 2020 Federal Project. Mapping of beach contours will be surveyed at the same time as the topographic and bathymetric transect surveys.

## 3. Aerial Photography:

- i. Collection of aerial photography and deliverables will be in accordance with the latest update of FDEP's Monitoring Standards for Beach Erosion Control Projects, Section 02000.
- ii. Collection of orthorectified aerial photography for the Detailed Area on Figure 1 at the same time as the topographic and bathymetric transect (beach profile) surveys.

## D. Termination of Physical Monitoring:

Physical Monitoring will occur annually until the next Federal Project fill placement occurs and will continue annually until the subsequent Federal Project renourishment. After the second Federal Project renourishment following breakwater construction, the Permittee can request in writing to the USACE Jacksonville District Engineering Division to discontinue the physical monitoring effort described herein on the basis of the previous physical monitoring results, if those results indicate that the project is performing as designed and there is no need for corrective actions. Upon receiving the request from the Permittee, the USACE Jacksonville District Engineering Division will determine if continued physical monitoring will be required and notify the Permittee. If after the 60<sup>th</sup> day from receiving the request there is no response from the USACE Jacksonville District Engineering Division, the physical monitoring described herein will no longer be required.

#### III. Enhanced Physical Monitoring

Enhanced Physical Monitoring will be required if the annual Physical Monitoring shows that both of the two Threshold Conditions described in Section III.B. (below) are exceeded.

## A. Threshold Condition Justification:

Generally, the Threshold Conditions are intended to indicate whether the Project blocks sediment transport and causes downdrift erosion. This condition can be indicated by the existence of a sustained tombolo formation in the lee of the Project's breakwaters (as described in Section III.B.), impoundment of sand on the beach north of the project, and a significant landward offset of the shoreline downdrift at Clarke Ave Beach compared to historic conditions. The historic beach changes at Clarke Ave. Beach are documented by surveyed profile at R-96 and described in the FDEP-approved Physical Monitoring and Mitigation plan (H&M 2023). The historic profile change analysis at Clarke Ave. Beach (R-

96) indicated that the critical erosion, defined by the location of the MHWL at the end of the full nourishment cycle is 130 feet from R-96.

#### B. Threshold Conditions:

Enhanced Physical Monitoring is required if the Physical Monitoring results of the beach planform contour lines at +4.0 NAVD, +6.0 NAVD, and MHWL +0.37 NAVD show that both of the following two threshold conditions described below and illustrated in Figure 2 are exceeded.

#### 1. Threshold Condition No. 1:

- i) Between R-95+316 and R-95+413, in the lee of the southernmost breakwater, a tombolo exists that is defined by the +4.0 NAVD contour attaching to the breakwater at a distance of 300 feet seaward of the R-95 baseline and for a continuous distance greater than 40 feet (measured shore parallel along the R-95 Baseline). The R-95 baseline is established as the line between R-95 and R-96 with the southern terminus at R-95+413; or
- ii) Between R-95+105 and R-95+210, in the lee of the middle breakwater, beach sand is accumulated to an elevation of +6.0 NAVD at a distance of 270 feet seaward of the R-95 baseline and for a continuous distance greater than 40 feet (measured shore parallel along the R-95 baseline); and

#### 2. Threshold Condition No. 2:

Between R-95+413 and R-96+230, a landward offset of the shoreline exists downdrift at Clark Ave. Beach that is defined by the MHWL +0.37 NAVD contour existing at or less than 130 feet seaward from the R-96 Baseline for a continuous distance greater than 60 feet (measured shore parallel along the R-96 Baseline). The R-96 baseline is established as the line that intersects R-96 and runs parallel to S Ocean Blvd with the northern terminus at the intersection of the R-95+413 transect and the southern terminus at R-96+230.

#### C. Enhanced Physical Monitoring Requirements:

If Enhanced Physical Monitoring is required, the Permittee will conduct additional survey data collection approximately 6 months after the topographic and bathymetric transect (beach profile) surveys, beach planform surveys, and aerial photography as described in Section II. Engineering analysis and reporting will still occur annually, but the annual reporting will include analysis of the previous semiannual data collection.

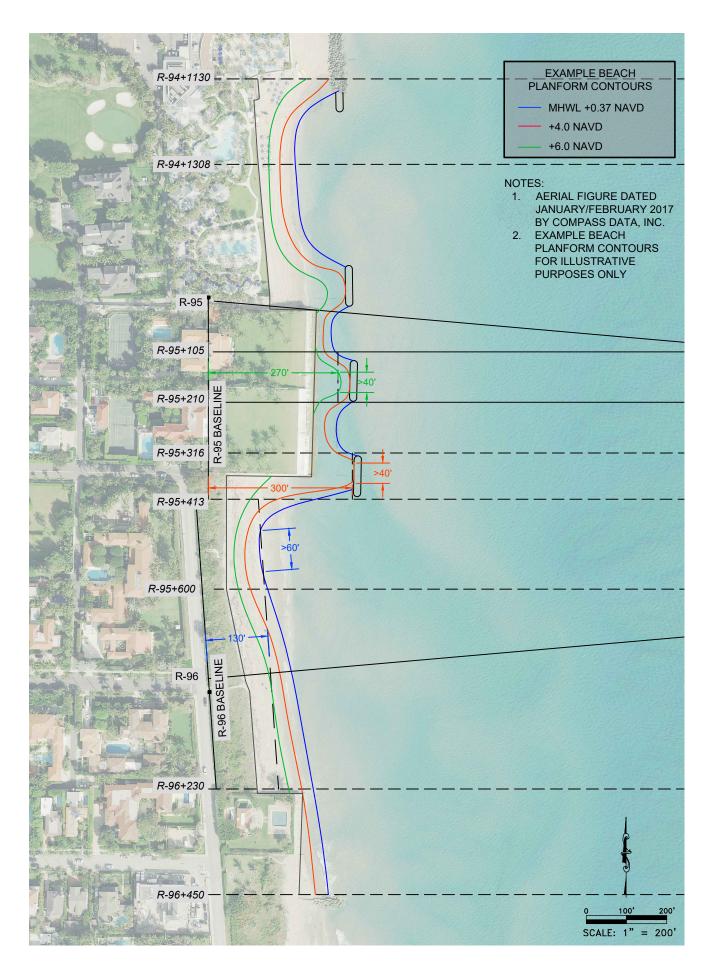


Figure 2: Illustration of Locations for Measuring the Threshold Conditions

#### IV. Contingent Corrective Actions

- A. If the Threshold Conditions described in the Enhanced Physical Monitoring Section III.B. are exceeded for three consecutive surveys spanning a continuous 1-year period (i.e., an annual monitoring survey, an enhanced monitoring survey, and a subsequent annual monitoring survey), then corrective actions are required unless the USACE Jacksonville District Engineering District determines that no corrective actions are necessary in light of the physical monitoring report and the effects of other factors influencing the beach evolution in the Project area.
- B. Upon determination by USACE that corrective actions are required, the Permittee will work with the USACE Jacksonville District Engineering Division and the Jacksonville District Regulatory Division to determine appropriate corrective actions and the timing of performing corrective actions sufficient to offset the adverse impacts. Any corrective action will require further regulatory coordination and approval which may include NEPA review and consultation. Corrective actions that may be proposed by the Permittee include, but are not limited to:
  - Direct placement of beach-quality sand within Clarke Ave. Beach (i.e. between R-95+413 and R-96+230) to offset the volume difference needed to not exceed the Threshold Conditions described in the Enhanced Physical Monitoring Section III.B. for the following monitoring event. Sand placement will be placed within the lines and grades of the Federal Project (berm height and foreshore slope);
  - 2. Transportation of sand impounded in the form of a tombolo at the southernmost breakwater between R-95+316 and R-95+413, or at the middle breakwater between R-95+105 and R-95+210, as defined in Section III.B. for placement on Clarke Ave. Beach (i.e. between R-95+413 and R-96+230). Sand placement will be placed within the lines and grades of the Federal project (berm height and foreshore slope); or
  - 3. Adjustments or modifications to the breakwater structures to reduce the formation of sustained tombolos and downdrift erosion in an effort to not exceed the Threshold Conditions described in the Enhanced Physical Monitoring Section III.B. for the following monitoring event.
- C. Post-construction surveying and reporting, as described herein, is required associated with any corrective actions. Subsequent monitoring events will document, and if possible, quantify the effectiveness of implemented corrective actions. If subsequent monitoring events indicate that the implemented corrective actions are ineffective, then additional corrective actions may be required to be coordinated with the USACE Jacksonville District Engineering Division and the Jacksonville District Regulatory Division.

## V. Engineering Analysis and Reporting of Physical Monitoring

- A. The Permittee will prepare an engineering analysis of the collected data and develop a physical monitoring report associated with the post-construction survey and each subsequent annual monitoring survey. The report must include the following:
  - 1. Summary and discussion of the survey data and identification of erosion and accretion patterns, trends, or changes between physical monitoring surveys and cumulatively since project construction.
  - 2. Analysis of the beach planform position changes relative to previous monitoring surveys including the pre-construction and post-construction conditions. Analysis of the MHWL +0.37 contour, the +4.0 NAVD contour position, and the +6.0 NAVD contour position compared to the Threshold Conditions described in the Enhanced Physical Monitoring Section III.B. overlaid on an updated aerial.
  - 3. Analysis of the volume changes above the MHWL +0.37 contour and depth of closure relative to previous monitoring surveys including the pre-construction and post-construction conditions. Volume changes will be calculated for each physical monitoring cell defined as the areas between surveyed transects.
  - 4. Comparative review of the Project's performance to expected performance (CMS modeling).
  - Additional analysis, as appropriate to describe potential cause and effect relationships, including sediment movement around the breakwaters and the adjacent areas focused on sediment transport pathways and erosion/accretion patterns.
  - 6. Identification of possible adverse effects attributable to the Project, if any.
  - 7. The report will include superimposed plots of the two most recent beach profiles surveys (three most recent if enhanced monitoring occurred), pre-construction and post-construction conditions. Aerial photography associated with each profile condition will be provided and displayed in identical frame and scale.
  - 8. The report will include computations, tables, and graphic illustrations of volumetric and contour position changes for the physical monitoring area.
  - 9. Analysis of the effects of other factors influencing the beach evolution at the project area.
  - 10. Recognizing that the monitoring and Threshold Conditions set herein are based on continuity of the sand management program for the Mid-Town area over the past 20 years, significant changes to the regional sand budget and sand supply to the system may impose an overall sand deficit in the project area. Under such circumstances, the monitoring report will include analysis of the effects of such factors influencing the beach evolution at the project area.
- B. The Permittee will submit a digital copy of physical monitoring report, all data, and photography to USACE Jacksonville District Engineering Division and the USACE Jacksonville District Regulatory Enforcement Section within 120 days following the completion of the post-construction survey and each subsequent annual physical monitoring survey.

# **Biological Opinion**

# Midtown Headland Area Erosion Control Project

FWS Log #: 2022-0084972



# Prepared by:

U.S. Fish and Wildlife Service Florida Ecological Services Office Gainesville, FL

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Robert L. Carey

Manager, Division of Environmental Review Florida Ecological Services Office, Gainesville

#### **CONSULTATION HISTORY**

This section lists key events and correspondence during this consultation. A complete administrative record of this consultation is on file in the Service's Florida Ecological Services Jacksonville Field Office.

September 13, 2023: Consultation initiation by the US Army Corps of Engineers.

March 28, 2023: Request for additional information from the US Army Corps of Engineers received by the US Fish and Wildlife Service.

**April 18, 2023:** Telephone conference held with US Army Corps of Engineers, Applicant and US Fish and Wildlife Service.

October 2, 2023: Second request for additional information from the US Army Corps of Engineers received by the US Fish and Wildlife Service.

**December 21, 2023:** Telephone conference held with US Army Corps of Engineers, Applicant and US Fish and Wildlife Service.

**December 28, 2023:** Telephone conference held with US Army Corps of Engineers, Applicant and US Fish and Wildlife Service.

#### **BIOLOGICAL OPINION**

A biological opinion (BO) is the document that states the opinion of the U.S. Fish and Wildlife Service (Service) under the Endangered Species Act of 1973, as amended (ESA), as to whether a Federal action is likely to:

- jeopardize the continued existence of species listed as endangered or threatened; or
- result in the destruction or adverse modification of designated critical habitat.

The Federal action addressed in this BO is the U.S. Army Corps of Engineers (USACE) proposed authorization to conduct erosion control and shoreline protection between two existing fields of groin structures (the Action). This BO considers the effects of the Action on the North Atlantic and South Atlantic Ocean distinct population segments of green sea turtle (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), Kemp's Ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), Northwest Atlantic Ocean distinct population segment of loggerhead (*Caretta caretta*) and its designated terrestrial critical habitat Unit LOGG-N19, piping plover (*Charadrius melodus*), rufa red knot (*Calidris canutus rufa*; red knot), and West Indian (Florida) manatee (*Trichechus manatus latirostris*).

A BO evaluates the effects of a Federal action along with those resulting from interrelated and interdependent actions, and from non-Federal actions unrelated to the proposed Action (cumulative effects), relative to the status of listed species and the status of designated critical habitat. A Service opinion that concludes a proposed Federal action is *not* likely to jeopardize species and is *not* likely to destroy or adversely modify critical habitat fulfills the Federal agency's responsibilities under section 7(a)(2) of the ESA.

"Jeopardize the continued existence" means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR section 402.02). "Destruction or adverse modification" means a direct or indirect alteration that appreciably diminishes the value of designated critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features (50 CFR section 402.02).

This BO uses hierarchical numeric section headings. Primary (level 1) sections are labeled sequentially with a single digit (e.g., 1. PROPOSED ACTION). Secondary (level 2) sections within each primary section are labeled with two digits (e.g., 1.1. Action Area), and so on for level-3 sections. The basis of our opinion for each listed species and each designated critical habitat identified in the first paragraph of this introduction is wholly contained in a separate level-1 section that addresses its status, baseline, effects of the action, cumulative effects, and conclusion.

#### 1. PROPOSED ACTION

#### 1.1. Action Area

For purposes of consultation under ESA section 7, the action area is defined as "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action" (50 CFR section 402.02). The "Action Area" for this consultation includes the breakwaters, construction area and the temporary staging area and beach access corridors. The project is located along 1,700 linear feet of shoreline of the Atlantic Ocean from Florida Department of Environmental Protection (FDEP) monument R-94+1148 to R-95+431 in Palm Beach County, Florida.

## 1.2. Interrelated and Interdependent Actions

A BO evaluates the effects of a proposed Federal action. For purposes of consultation under ESA section 7, the effects of a Federal action on listed species or critical habitat include the direct and indirect effects of the action, plus the effects of interrelated or interdependent actions. "Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration" (50 CFR section 402.02).

In its request for consultation, the USACE did not describe, and the Service is not aware of, any interrelated or interdependent actions to the Action. Therefore, this BO does not further address the topic of interrelated or interdependent actions.

# 1.3. Summary of the Proposed Action

The applicant seeks to install three new breakwaters each having a crest length of approximately 85 feet and 15 feet wide. The breakwaters include the placement of approximately 26,400 square feet of armor stone with an approximately 31,000 square feet foundation of approximately one foot diameter bedding stone and geotextile extending beyond the structure for scour protection. Extend one existing breakwater an additional approximately 700 square feet. Construction will be by mechanical placement using land-based equipment (for example, excavators, cranes) or end dumping with rock placement using barges and cranes, as appropriate. Work will be conducted from upland or from the water by barge as required based upon beach conditions and seasonal timing of construction. Temporary staging at the Breakers beach areas may be used during construction. Staging areas are located by beach access points at Breakers Row and Via Bethesda as close to the dune or existing seawall as possible.

# 1.4. Figures for Proposed Action

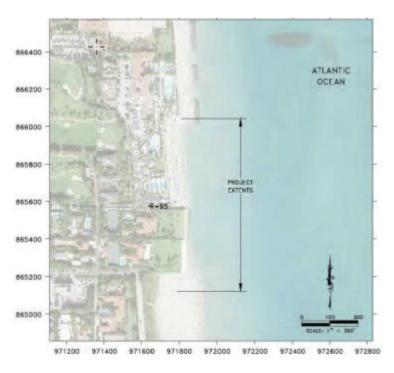
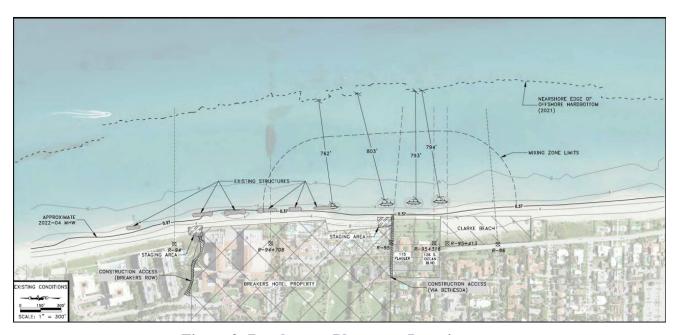


Figure 1: Action Area



**Figure 2: Breakwater Placement Location** 

#### 2. CONCURRENCES

The USACE determined that the Action is not likely to adversely affect the Florida manatee and Loggerhead sea turtle designated critical habitat Unit LOGG-T-N-09. The Service concurs with this determination for the Florida manatee and Loggerhead sea turtle critical habitat for reasons we explain in this section.

#### Florida manatee

The USACE has confirmed it will implement all conservation measures under the 2015 Statewide Placement Biological Opinion (SPBO) and the 2011 Standard Manatee In-Water Working Conditions. Due to the adherence of the 2015 SPBO and the 2011 Standard Manatee In-Water Working Conditions, and the lack of submerged aquatic vegetation (SAV) or seagrass found within the Action Area, the Service concurs with a determination of may affect, not likely to adversely affect for the Florida manatee.

## **Piping Plover**

The USACE has determined a may affect, likely to adversely affect for the piping plover. The Piping Plover Programmatic Biological Opinion (P3BO) has calculated take for sand placement projects located on Florida coastlines that have piping plover habitat. This project falls within the parameters of the P3BO and all reasonable and prudent measures (RPMs) and terms and conditions (T&Cs) of the P3BO will be implemented. Therefore, the Service concurs with the determination of may affect, likely to adversely affect for the piping plover.

#### **Red Knot**

The USACE has determined a may affect, likely to adversely affect for the red knot. This project falls within the parameters of the P3BO and all reasonable and prudent measures (RPMs) and terms and conditions (T&Cs) of the P3BO will be implemented. Therefore, the Service concurs with the determination of may affect, likely to adversely affect for the red knot.

#### **Loggerhead Critical Habitat Unit LOGG-T-N-09**

The USACE has determined a may affect, not likely to adversely affect determination for the North Atlantic Ocean distinct population segment of green sea turtle, hawksbill, Kemp's Ridley, leatherback, Northwest Atlantic Ocean distinct population segment of loggerhead sea turtles. All RPMs and T&Cs of the 2015 SPBO will be implemented for the Action. Due to the implementation of all RPMS and T&Cs of the 2015 SPBO, the Service concurs with a determination of may affect, not likely to adversely affect for the North Atlantic Ocean distinct population segment of green sea turtle, hawksbill, Kemp's Ridley, leatherback, Northwest Atlantic Ocean distinct population segment of loggerhead sea turtles.

#### 3. SEA TURTLE

# 3.1. Status of Species

This section summarizes best available data about the biology and current condition of the sea turtle species throughout their range that are relevant to formulating an opinion about the Action. The most current 5-year review, species status assessment, and Federal Register documents are found at the locations below:

Environmental Conservation Online System (ECOS) for North Atlantic Green Sea Turtle Environmental Conservation Online System (ECOS) for South Atlantic Green Sea Turtle Environmental Conservation Online System (ECOS) for Hawksbill Sea Turtle Environmental Conservation Online System (ECOS) for Kemp's Ridley Sea Turtle Environmental Conservation Online System (ECOS) for Leatherback Sea Turtle Environmental Conservation Online System (ECOS) for Loggerhead Sea Turtle

# 3.2. Environmental Baseline for Sea Turtle Species

This section is an analysis of the effects of past and ongoing human and natural factors leading to the status of the sea turtle, its habitat, and ecosystem within the Action Area. The environmental baseline is a "snapshot" of the species' health in the Action Area at the time of the consultation and does not include the effects of the Action under review.

#### 3.2.1. Status of the Sea Turtle Within the Action Area

Suitable habitat is present for listed sea turtle species that are known to occur within and/or adjacent to the proposed location. FWC's statewide sea turtle nesting data indicate that loggerhead, green, and hawksbill sea turtles' nest in Palm Beach County, but loggerhead, green, and leatherback turtles are the most common.

Palm Beach County is located within the most densely populated nesting range for three species of sea turtles: loggerhead, green, and leatherback sea turtles that regularly nest along the beaches of southeast Florida. Between 2018 and 2022, Palm Beach County beaches supported approximately 26 percent of the overall sea turtle nesting in Florida. Only one other Florida county, Brevard, supports a greater percentage of sea turtle nesting. In total, 33,152 and 37,183 sea turtle nests were recorded in 2021 and 2022, respectively, along the 42 miles of Palm Beach County beach included in the FWC's Florida Statewide Nesting Beach Survey. In Palm Beach County an average of 789 and 885 sea turtle nests were laid per mile in 2021 and 2022, respectively.

## Loggerhead sea turtle

The loggerhead sea turtle nesting and hatching season for Palm Beach County extends from March 15 through November 30. Incubation ranges from about 45 to 95 days. In 2021, a total of 25,880 loggerhead sea turtle nests, or 616 nests per mile, were laid in Palm Beach County. In

2022, a total of 28,922 nests, or 289 nests per mile, were laid. Loggerhead sea turtles made 50,850 false crawls in 2022, in Palm Beach County.

#### Green sea turtle

The green sea turtle nesting and hatching season for Palm Beach County extends from May 1 through November 30. Incubation ranges from about 45 to 75 days. In 2021, a total of 6,788 green sea turtle nests, or 162 nests per mile, were laid in Palm Beach County. In 2022, a total of 7,725 nests, or 184 nests per mile, were laid. Green sea turtles made 11,519 false crawls in 2022, in Palm Beach County.

#### Leatherback sea turtle

The leatherback sea turtle nesting and hatching season for Palm Beach County extends from February 15 through November 30. Incubation ranges from about 55 to 75 days. In 2021, a total of 484 leatherback sea turtle nests, or 12 nests per mile, were laid in Palm Beach County. In 2022, a total of 536 nests, or 13 nests per mile, were laid. Leatherback sea turtles made 74 false crawls in 2022, in Palm Beach County.

#### Hawksbill sea turtle

The hawksbill sea turtle nesting and hatching season for Palm Beach County extends from June 1 through December 31. Incubation lasts about 60 days. Although no nesting has been reported in Palm Beach County in the past five years regarding hawksbill sea turtles, nesting by this species has been documented in years prior.

# Kemp's Ridley sea turtle

Although no nesting has been reported in Palm Beach County in the past five years regarding Kemp's ridley, false crawls by this species have been documented in years prior.

Most nesting surveys conducted in Florida occur during the morning hours and are based on interpretation of the tracks left by the turtles as they ascend and descend the beach; the turtles themselves are rarely observed. Because both hawksbill and Kemp's ridley turtle tracks are difficult to discern from loggerhead tracks, it is likely that nesting by both species is underreported (Meylan et al. 1995).

# 3.2.2. Factors Affecting the Species Habitat within the Action Area

Palm Beach County is a heavily populated county which receives a large volume of tourists, particularly during the winter months. Beaches with access to the public are heavily used year-round. Beaches associated with condominiums, hotels and apartments have more restricted access for the public but receive use from the many visitors as well as the public who walk or jog along the beachfront. The dune system in Palm Beach County along the action area is an engineered dune which was built by the Town of Palm Beach as part of the Midtown project which is part of the Palm Beach County Beach Erosion Control and Hurricane Protection Project

to in part protect the hotels and condominiums. Beaches adjacent to the action area are occupied by many condominiums and hotels used by visitors and residents of the area. It has been determined that the Action Area in its present condition and configuration is not as efficient in stabilizing the shoreline between periodic beach nourishments. The 875 linear foot project area is between groins to the north and south and seaward of existing sea walls. Rapid erosion is experienced within the proposed project area. The proposed project involves the construction of three new breakwaters and extension of one previously authorized breakwater. It is expected that once the breakwaters have been constructed, the shoreline will be more stable, retain sand for longer periods, and increase the time that sand is present between beach nourishment events.

# 3.3. Effects of the Action on Sea Turtle Species

This section analyzes the direct and indirect effects of the Action on the species, which includes the direct and indirect effects of interrelated and interdependent actions. Direct effects are caused by the Action and occur at the same time and place. Indirect effects are caused by the Action but are later in time and reasonably certain to occur. Our analyses are organized according to the description of the Action in section 1 of this BO.

# 3.3.1. Effects of Construction Activities on Species

**Equipment:** Potential adverse impacts during the project construction phase include disturbance of existing nest which may have been missed, disturbance of females attempting to nest, and disorientation of emerging hatchlings. Heavy equipment will be required to install the breakwaters, and this equipment will have to traverse the sandy beach to the project site, which could result in harm to nesting females. Nests, and emerging hatchlings. The equipment can create barriers to nesting females emerging from the surf and crawling up the beach, causing a higher incidence of false crawls and unnecessary energy expenditure. The equipment can also create impediments to hatchling sea turtles as they crawl to the ocean.

Artificial Lighting: Visual cues are the primary sea-finding mechanism for hatchling sea turtles (Mrosovsky and Carr 1967, Mrosovsky and Shettleworth 1968, Dickerson and Nelson 1989, Witherington and Bjorndal 1991). When artificial lighting is present on or near the beach, it can misdirect hatchlings once they emerge from their nests and prevent them from reaching the ocean (Philbosian 1976; Mann 1977; DEP, unpublished data). In addition, a significant reduction in sea turtle nesting activity has been documented on beaches illuminated with artificial lights (Witherington 1992). Therefore, construction lights along a project beach and on the dredging vessel may deter females from coming ashore to nest, misdirect females trying to return to the surf after a nesting event, and misdirect emergent hatchlings from adjacent beaches. Any source of bright lighting can profoundly affect the orientation of hatchlings, both during the crawl from the beach to the ocean and once they begin swimming offshore. Hatchlings attracted to light sources on dredging barges may not only suffer from interference in migration but may also experience higher probabilities of predation by predatory fishes that are also attracted to the barge lights. This impact could be reduced by using the minimum amount of light necessary, avoid light trespass outside the work area, using downward directed shielded fixtures and an approved narrow-band amber LED light source during project construction.

**Missed Nests:** Although a nesting survey and nest marking program would reduce the potential for nests to be impacted by construction activities, nests may be inadvertently missed (when crawls are obscured by rainfall, wind, and/or tides or misidentified as false crawls during daily patrols. Even under the best conditions, about seven percent of the nests can be misidentified as false crawls by experienced sea turtle nest surveyors (Schroeder 1994).

Nest relocation: Besides the potential for missing nests during a nest relocation program, there is a potential for eggs to be damaged by their movement, particularly if eggs are not relocated within 12 hours of deposition (Limpus et al. 1979). Nest relocation can have adverse impacts on incubation temperature (and hence sex ratios), gas exchange parameters, hydric environment of nests, hatching success, and hatchling emergence (Limpus et al. 1979, Ackerrnan 1980, Parmenter 1980, Spotila et al. 1983, McGehee 1990). Relocating nests into sands deficient in oxygen or moisture can result in mortality, morbidity, and reduced behavioral competence of hatchlings. Water availability is known to influence the incubation environment of the embryos and hatchlings of turtles with flexible-shelled eggs, which has been shown to affect nitrogen excretion (Packard et al. 1984), mobilization of calcium (Packard and Packard 1986), mobilization of yolk nutrients (Packard et al. 1985), hatchling size (Packard et al. 1981, McGehee 1990), energy reserves in the yolk at hatching (Packard et al. 1988), and locomotory ability of hatchlings (Miller et al. 1987).

In a 1994 Florida study comparing loggerhead hatching and emergence success of relocated nests with *in situ* nests, Moody (1998) found hatching success was lower in relocated nests at 9 of 12 beaches evaluated and emergence success was lower in relocated nests at 10 of 12 beaches surveyed in 1993 and 1994.

# 3.3.2. Effects of Erosion Control Structures on Species

Beneficial Effects: Erosion control structures constructed in appropriate high erosional areas or to mitigate the effects of shoreline armoring, may benefit sea turtles in areas by reestablishing nesting habitat where none currently exists. The applicants' proposed design of nearshore, permeable structures enhanced nearshore sand pathway, generating a net benefit of sand exchange to adjacent beaches. Additional subsequent modeling was completed in 2022 to further analyze the long-term function of the project over the full nourishment cycle at the request of other agencies. The applicants' modeling and studies support the proposed project design and demonstrate the overall benefits to the project area and adjacent beaches. The modeling also demonstrated no adverse effects nor cumulative impacts to the project area and the downdrift area to the south.

Entrapment/Physical Obstruction: As the breakwaters that are completely or partially exposed on the sandy beach they pose a physical obstruction that may affect both adult female and hatchling sea turtles. Adult females may be deterred from approaching their preferred nesting locations because of the shore parallel barrier the breakwaters pose. When exposed, these structures have the potential to interfere with the egress and/or ingress of adult females at nesting sites where they may proceed around them successfully, abort nesting for that night, move to another section of beach to nest, or become entrapped. Females attempting to dig nests above

breakwaters which are partially exposed which have insufficient sand on top of them for nest construction may also abort nesting for that night. These situations can cause an increase in energy expenditure, and, when the body of the breakwaters is exposed, can act as a barrier between beach segments and prevent nesting along the breakwater alignment.

Typically, sea turtles emerge from the nest at night when lower sand temperatures elicit an increase in hatchling activity (Witherington et al. 1990). After emergence, approximately 20 to 120 hatchlings crawl en *masse* immediately to the surf using predominately visual cues to orient themselves (Witherington and Salmon 1992, Lohrnann et al. 1997). Upon reaching the water, loggerhead and green turtle hatchlings orient themselves into the waves and begin a period of hyperactive swimming activity, or swim frenzy, which lasts for approximately 24 hours (Witherington 1991, Wyneken et al. 1990, Salmon and Wyneken 1987). The swim frenzy effectively moves the hatchling quickly away from shallow, predator rich, nearshore waters to the relative safety of deeper water (Wyneken et al. 2000, Gyuris 1994). The first hour of a hatchling's life is precarious and predation is high, but threats decrease as hatchlings distance themselves from the natal beach (Stancyk 1982, Pilcher et al. 2000). Delays in hatchling migration (both on the beach and in the water) can cause added expenditures of energy and an increase of time spent in predator rich nearshore water.

Rarely will hatchlings encounter natural nearshore features that are like the emergent shore-parallel structures proposed for this project. However, observations of hatchling behavior during an encounter with a sand bar at low tide, a natural shore-parallel barrier, showed the hatchlings maintained their shore-perpendicular path seaward, by crawling over the sand bar versus deviating from this path to swim parallel around the sand bar through the trough, an easier alternative (B. Witherington, FWC, personal communication, 2001). Therefore, the breakwaters may adversely affect sea turtle hatchlings by serving as a barrier or obstruction to sea turtle hatchlings and delaying offshore migration; depleting or increasing expenditure of the "swim frenzy" energy critical for reaching the relative safety of offshore development areas; and possibly entrapping hatchlings within the crevices of the structures or within eddies or other associated currents.

Predator Concentration: The presence of breakwaters has the potential to attract and concentrate predatory fishes and provide perching spots for predatory birds, resulting in higher probabilities of hatchling predation as hatchlings enter the ocean and attempt to reach offshore developmental habitat. It is known that hatchling predation in nearshore waters is high (Stancyk 1982, Wyneken and Salmon 1996, Gyuris 1994). There are many documented occurrences of nearshore predators captured with hatchlings found in their digestive tracts. During hatchling predation studies in Broward County, it was documented that predatory fish species, such as tarpon and snappers (Lutjanus sp.), targeted sea turtle hatchlings and "learned" where to concentrate foraging efforts (Wyneken et al. 1998). Therefore, a delay in the offshore migration can cause increased predation of sea turtle hatchlings (Glenn 1998, Gyuris 1994, Witherington and Salmon 1992).

**Downdrift Erosion Related to Erosion Control Structures**: Erosion control structures (e.g., terminal groins, T-head groins, and breakwaters), in conjunction with beach nourishment, can help stabilize U.S. East Coast barrier island beaches (Leonard et al. 1990). However, groins and

breakwaters often result in accelerated beach erosion downdrift of the structures (Komar 1983, National Research Council 1987, Corps 1992) and corresponding degradation of suitable sea turtle nesting habitat (NMFS and Service 1991a, 1991b, 1992). Impacts first noted and greatest changes are observed close to the structures, but effects eventually may extend great distances along the coast (Komar 1983). Beach nourishment only partly alleviates impacts of groin construction on downdrift beaches (Komar 1983).

**Breakwater Breakdown:** If the structures fail and break apart, debris may spread along the beach, which may further impede nesting females from accessing suitable nesting sites (resulting in a higher incidence of false crawls) and trap hatchlings and nesting turtles (NOAA Fisheries and Service 1991a, 1991b).

Cumulative Effects: Cumulative effects include the effects of future State, tribal, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. The Service has considered potential cumulative effects of this project on sea turtles and, in this instance, there are no cumulative effects.

# 3.4. Conclusion for species

After reviewing the current status of the loggerhead, green, leatherback, hawksbill and Kemp's ridley sea turtles, the environmental baseline for the action area, the effects of the proposed breakwaters modification and construction, and the cumulative effects, it is the Service's biological opinion that this project, as proposed, is not likely to jeopardize the continued existence of these sea turtles.

#### 4. INCIDENTAL TAKE STATEMENT

ESA section 9(a)(1) and regulations issued under section 4(d) prohibit the take of endangered and threatened fish and wildlife species without special exemption. The term "take" in the ESA means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (ESA section 3). In regulations at 50 CFR section 17.3, the Service further defines:

- "harass" as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering;"
- "harm" as "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering;" and
- "incidental take" as "any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity."

Under the terms of ESA section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered prohibited, provided that such taking is in compliance with the terms and conditions of an incidental take statement (ITS).

For the exemption in ESA section 7(o)(2) to apply to the Action considered in this BO, the USACE must undertake the non-discretionary measures described in this ITS, and these measures must become binding conditions of any permit, contract, or grant issued for implementing the Action. The USACE has a continuing duty to regulate the activity covered by this ITS. The protective coverage of section 7(o)(2) may lapse if the USACE fails to:

- assume and implement the terms and conditions; or
- require a permittee, contractor, or grantee to adhere to the terms and conditions of the ITS through enforceable terms that are added to the permit, contract, or grant document.

To monitor the impact of incidental take, the USACE must report the progress of the Action and its impact on the species to the Service as specified in this ITS.

#### 4.1. Amount or Extent of Take

This section specifies the amount or extent of take of listed wildlife species that the Action is reasonably certain to cause, which we estimated in the "Effects of the Action" section(s) of this BO. We reference, but do not repeat, these analyses here.

#### 4.1.1. Sea turtle

The Service anticipates that the Action is reasonably certain to cause incidental take of sea turtle species through breakwaters construction and while the structures remain in place (see section [3.3], Summary of the Effects of the Action on Sea Turtle Species).

# **Anticipated Take of Sea Turtle Species**

	<b>Amount or Extent</b>	Life Stage	Form of Take
North Atlantic Green Sea Turtle	Seventeen hundred linear feet of shoreline	All	Harm, Injury
South Atlantic Green Sea Turtle	Seventeen hundred linear feet of shoreline	All	Harm, Injury
Loggerhead Sea Turtle	Seventeen hundred linear feet of shoreline	All	Harm, Injury
Leatherback Sea Turtle	Seventeen hundred linear feet of shoreline	All	Harm, Injury
Hawksbill Sea Turtle	Seventeen hundred linear feet of shoreline	All	Harm, Injury
Kemp's Ridley Sea Turtle	Seventeen hundred linear feet of	All	Harm, Injury

Due to the difficulty of detecting take of sea turtles caused by the Action, the USACE will monitor the extent of taking using the surrogate measure and form of take specified in the table above.

Instructions for monitoring and reporting take are provided in section 4.4.

#### 4.2. Reasonable and Prudent Measures

The Service believes the following reasonable and prudent measures (RPMs) are necessary or appropriate to minimize the impact of incidental take caused by the Action on listed wildlife species. RPMs are described for each listed wildlife species in the subsections below.

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize take of loggerhead, green, leatherback, hawksbill, and Kemp's ridley sea turtles in the proposed action area.

- **RPM 1**. Construction activities shall not occur during the period of peak sea turtle egg laying and egg hatchling (May 1 through October 31) to reduce the possibility of sea turtle nest burial, crushing of eggs, or nest excavation.
- **RPM 2**. If construction activities will be conducted during the early (February 1 through April 30) and late sea turtle nesting season (November 1 through November 30) shall adhere to the following conditions:
  - a. Install a barrier around the perimeter of the work area sufficient to prevent adult and hatchling sea turtles from accessing the project site;
  - b. For construction activities conducted during the early and late sea turtle nesting season, surveys for early and late nesting turtles must be conducted. If nests are constructed in the project area, the eggs must be relocated;
  - c. For projects conducted during the early and late sea turtle nesting season, construction equipment and materials shall be stored in a manner that will minimize impacts to sea turtles to the maximum extent practicable;
  - d. For construction activities conducted during the early and late sea turtle nesting season, no work may occur at night.
- **RPM 3**. Access to the project area and groin construction activities will only take place during daylight hours.
- **RPM 4**. The Corps must ensure that contractors involved in the project fully understand the sea turtle protection measures detailed in this incidental take statement.

- **RPM 5**. If entrapment of sea turtle hatchlings or nesting females occurs in the installed breakwaters, the Corps shall meet with the Service to discuss a possible solution prior to the next nesting season.
- **RPM 6**. A report describing the projects conducted during the year and actions taken to implement the Reasonable and Prudent Measures and Conditions of this incidental take statement shall be submitted to the Service.

#### 4.3. Terms and Conditions

For the exemption from the take prohibitions of section 9(a)(1) and of regulations issued under section 4(d) of the ESA to apply to the Action, the USACE must comply with the terms and conditions (T&Cs) of this statement, provided below, which carry out the RPMs described in the previous section. These T&Cs are mandatory. As necessary and appropriate to fulfill this responsibility, the USACE must require any permittee, contractor, or grantee to implement these T&Cs through enforceable terms that are added to the permit, contract, or grant document.

- **T&C 1**. Project construction activities must be started after October 31 and be completed before May 1. No construction activities will take place from May 1 to October 31.
- **T&C 2**. If the project will be conducted during the early (before April 30) and/or late (after November 1) sea turtle nesting season:
  - a. A barrier (e.g., hay bales, silt screens) sufficient to prevent adult and hatchling sea turtles from accessing the breakwaters footprint must be placed around the perimeter of the project area. The barrier shall be placed parallel to shore, at mean high water (MHW), as close to the breakwaters as feasible, particularly during the period from sunset to sunrise.
  - b. On-beach access to the construction site shall be restricted to the wet sand below MHW to the maximum extent possible. Travel corridors on the beach to the MHWL shall be delineated. If the project is conducted during the early (before April 30) and/or late (after November 1) sea turtle nesting season (see Table 16), daily morning surveys shall be conducted within the travel corridor. If nests are laid within the travel corridor, the travel corridor must be re-routed to avoid the nest. If re-routing is not possible, these nests shall be relocated.
  - c. Staging areas for construction equipment shall be located off the beach to the maximum extent possible.
  - d. No construction shall be conducted at night.
  - e. If the project will be conducted during the earlier part of nesting season through April 30, daily early morning surveys shall begin March 1, and continue through the end of the breakwaters construction window, with egg

relocation continuing only until completion of breakwaters construction. Eggs shall be relocated per the following requirements (i through iii below). For construction activities that occur during the period from November 1 through the end of hatching season, daily early morning sea turtle nesting surveys shall be conducted 65 days prior to project initiation and continue through November 11, and eggs shall be relocated per the requirements listed in (e)i through (e)iii.

- i. Nesting surveys and egg relocations will only be conducted by persons with prior experience and training in these activities and who are duly authorized to conduct such activities through a valid permit issued by FWC, pursuant to FAC 68E-1. Please contact FWC's Imperiled Species Management Section in Tequesta at mtp@myfwc.com for information on the permit holder in the project area. Relocation cannot begin until the Corps has a copy of the FWC permit authorizing relocation for construction purposes at that specific sand placement project. Nesting surveys shall be conducted daily between sunrise and 9 a.m. (this is for all time zones).
- ii. Only those nests that may be affected by sand placement activities will be relocated. Nest relocation shall not occur upon completion of the project. Nests requiring relocation shall be moved no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation. Relocated nests shall not be placed in organized groupings. Relocated nests shall be randomly staggered along the length and width of the beach in settings that are not expected to experience daily inundation by high tides or known to routinely experience severe erosion and egg loss, predation, or be subject to artificial lighting. Nest relocations in association with construction activities shall cease when construction activities no longer threaten nests.
- iii. Nests deposited within areas where construction activities have ceased or will not occur for 65 days or nests laid in the nourished berm prior to tilling shall be marked and left in situ unless other factors threaten the success of the nest. The turtle permit holder shall install an onbeach marker at the nest site and a secondary marker at a point as far landward as possible to assure that future location of the nest will be possible should the on-beach marker be lost. No activity will occur within this area, nor will any activities occur that could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the project activity.

- iv. Daytime surveys shall be conducted for leatherback sea turtle nests beginning March 1. Nighttime surveys for leatherback sea turtles shall begin when the first leatherback crawl is recorded within the project area through April 30 or until completion of the project (whichever is earliest). Nightly nesting surveys shall be conducted from 9 p.m. until 6 a.m. The project area shall be surveyed at 1-hour intervals (since leatherbacks require at least 1.5 hours to complete nesting, this will ensure all nesting leatherbacks are encountered) and eggs shall be relocated per the requirements listed in (e)I through (e)iii.
- **T&C 3**. To the maximum extent possible within the travel corridor, all ruts shall be filled or leveled to the natural beach profile prior to completion of daily construction.
- T&C 4. Exterior lighting shall not be permanently installed in association with the project. Temporary lighting of the construction area during the sea turtle nesting season shall be reduced to the minimum standard required by OSHA for general construction areas. Lighting on all equipment including offshore equipment shall be minimized through reduction, shielding, lowering, and appropriate placement to avoid excessive illumination of the water's surface and nesting beach while meeting all Coast Guard, Corps EM 385-1-1, and OSHA requirements. Light intensity of lighting equipment shall be reduced to the minimum standard required by OSHA for general construction areas, in order not to misdirect sea turtles. Shields shall be affixed to the light housing and be large enough to block light from all lamps from being transmitted outside the construction area and to the adjacent sea turtle nesting beach in line-of-sight of the dredge.
- **T&C 5**. If entrapment of sea turtle hatchlings or an adult female occurs in the breakwaters system, the Corps shall contact the Service immediately to discuss possible solutions.
- **T&C** 6. In the event a breakwater structure fails or begins to disintegrate, all debris and structural material must be removed from the nesting beach area and deposited off-beach immediately. If maintenance of a breakwater structure is required during the period from May 1 through October 31, no work will be initiated without prior coordination with the Service.
- **T&C** 7. If the breakwater structures are determined to not be effective or to be causing a significant adverse impact to the beach and dune system, the structures must be modified or removed.
- **T&C 8.** If the amount of extend of incidental take authorized in the Biological Opinion is exceeded, the Corps shall contact the Service immediately to discuss all options including modification, removal, additional protection measures, or re-initiation of consultation.
- **T&C 8**. The Applicant must arrange a meeting between representatives of the contractor, the Service, the FWC, and the FWC approved sea turtle permit holder responsible for egg

relocation at least 30 days prior to the commencement of work on this project. At least 10 days advanced notice must be provided prior to conducting this meeting. This will provide an opportunity for explanation or clarification of the sea turtle protection measures.

#### 4.4. Monitoring and Reporting Requirements

To monitor the impacts of incidental take, the USACE must report the progress of the Action and its impact on the species to the Service as specified in the incidental take statement (50 CFR section 402.14(i)(3)). This section provides the specific instructions for such monitoring and reporting. As necessary and appropriate to fulfill this responsibility, the USACE must require any permittee, contractor, or grantee to accomplish the monitoring and reporting through enforceable terms that are added to the permit, contract, or grant document. Such enforceable terms must include a requirement to immediately notify the USACE and the Service if the amount or extent of incidental take specified in this ITS is exceeded during Action implementation.

- MR 1: A report transmitted to the Florida Ecological Services (<u>FW4FLESRegs@fws.gov</u>) summarizing ongoing monitoring related to all conservation measures, terms and conditions, and the P3BO shall be submitted to the Service by December 31, annually.
- MR 2: A final report transmitted to the Florida Ecological Services (<u>FW4FLESRegs@fws.gov</u>) no more than 30 days after the completion of the following sea turtle nesting season and after completion of the Action. This report shall also include conclusions regarding the overall effect of the project on beach composition and sea turtle nesting.

#### 5. CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by conducting conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary activities that an action agency may undertake to avoid or minimize the adverse effects of a proposed action, implement recovery plans, or develop information that is useful for the conservation of listed species. The Service offers the following recommendations that are relevant to the listed species addressed in this BO and that we believe are consistent with the authorities of the USACE.

- **CR 1**: Surveys for nesting success of sea turtles should be continued for a minimum of 3 years following breakwater construction to determine whether sea turtle nesting success has been adversely impacted.
- **CR 2**: More in-depth research should be conducted to assess the potential of the breakwater structures to impact nesting sea turtles, nest incubation, and movement of hatchlings from the nest to the ocean.

**CR 3**: Educational signs should be placed where appropriate at beach access points explaining the importance of the area to sea turtles and/or the life history of sea turtle species that nest in the area.

For the Service to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the Service requests notification of the Implementation of any conservation recommendations.

#### 6. REINITIATION NOTICE

Formal consultation for the Action considered in this BO is concluded. Reinitiating consultation is required if the USACE retains discretionary involvement or control over the Action (or is authorized by law) when:

- a. the amount or extent of incidental take is exceeded;
- b. new information reveals that the Action may affect listed species or designated critical habitat in a manner or to an extent not considered in this BO;
- c. the Action is modified in a manner that causes effects to listed species or designated critical habitat not considered in this BO; or
- d. a new species is listed, or critical habitat designated that the Action may affect.

In instances where the amount or extent of incidental take is exceeded, the USACE is required to immediately request a re-initiation of formal consultation.

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# PROTECTED SPECIES CONSTRUCTION CONDITIONS, NOAA FISHERIES SOUTHEAST REGIONAL OFFICE

The action agency and any permittee shall comply with the following construction conditions for protected species under the jurisdiction of NOAA Fisheries Southeast Regional Office (SERO) Protected Resources Division (PRD):<sup>1</sup>

**Protected Species Sightings**—The action agency and any permittee shall ensure that all personnel associated with the project are instructed about the potential presence of species protected under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). All on-site project personnel are responsible for observing water-related activities for the presence of protected species. All personnel shall be advised that there are civil and criminal penalties for harming, harassing, or killing listed species and all marine mammals. To determine which protected species and critical habitat may be found in the transit area, please review the relevant marine mammal and ESA-listed species at Find A Species (https://www.fisheries.noaa.gov/find-species) and the consultation documents that have been completed for the project.

- 1. **Equipment**—Turbidity curtains, if used, shall be made of material in which protected species cannot become entangled and be regularly monitored to avoid protected species entrapment. All turbidity curtains and other in-water equipment shall be properly secured with materials that reduce the risk of protected species entanglement and entrapment.
  - a. In-water lines (rope, chain, and cable, including the lines to secure turbidity curtains) shall be stiff, taut, and non-looping. Examples of such lines are heavy metal chains or heavy cables that do not readily loop and tangle. Flexible in-water lines, such as nylon rope or any lines that could loop or tangle, shall be enclosed in a plastic or rubber sleeve/tube to add rigidity and prevent the line from looping and tangling. In all instances, no excess line shall be allowed in the water. All anchoring shall be in areas free from hardbottom and seagrass.
  - b. Turbidity curtains and other in-water equipment shall be placed in a manner that does not entrap protected species within the project area and minimizes the extent and duration of their exclusion from the project area.
  - c. Turbidity barriers shall be positioned in a way that minimizes the extent and duration of protected species exclusion from important habitat (e.g. critical habitat, hardbottom, seagrass) in the project area.
- 2. **Operations**—For construction work that is generally stationary (e.g., barge-mounted equipment dredging a berth or section of river, or shore-based equipment extending into the water):
  - a. Operations of moving equipment shall cease if a protected species is observed within 150 feet of operations.

<sup>&</sup>lt;sup>1</sup> Manatees are managed under the jurisdiction of the U.S. Fish and Wildlife Service.

- b. Activities shall not resume until the protected species has departed the project area of its own volition (e.g., species was observed departing or 20 minutes have passed since the animal was last seen in the area).
- 3. **Vessels**—For projects requiring vessels, the action agency, and any permittee shall ensure conditions in the Vessel Strike Avoidance Measures are implemented as part of the project/permit issuance (https://www.fisheries.noaa.gov/southeast/consultations/regulations-policies-and-guidance).
- 4. **Consultation Reporting Requirements**—Any interaction with a protected species shall be reported immediately to NOAA Fisheries SERO PRD and the local authorized stranding/rescue organization.

To report to NOAA Fisheries SERO PRD, send an email to takereport.nmfsser@noaa.gov. Please include the species involved, the circumstances of the interaction, the fate and disposition of the species involved, photos (if available), and contact information for the person who can provide additional details if requested. Please include the project's Environmental Consultation Organizer (ECO) number and project title in the subject line of email reports.

To report the interaction to the local stranding/rescue organization, please see the following website for the most up to date information for reporting sick, injured, or dead protected species:

**Reporting Violations**—To report an ESA or MMPA violation, call the NOAA Fisheries Enforcement Hotline. This hotline is available 24 hours a day, 7 days week for anyone in the United States.

NOAA Fisheries Enforcement Hotline (800) 853-1964

5. **Additional Conditions**—Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the project consultation and must also be complied with.

#### For additional information, please contact NOAA Fisheries SERO PRD at:

NOAA Fisheries Service Southeast Regional Office 263 13<sup>th</sup> Avenue South St. Petersburg, Florida 33701

Tel: (727) 824-5312

Visit us on the web at Protected Marine Life in the Southeast

(https://www.fisheries.noaa.gov/region/southeast#protected-marine-life)

Revised: May 2021



# FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center 2600 Blair Stone Road Tallahassee, FL 32399-2400 Ron DeSantis Governor

Jeanette Nuñez Lt. Governor

Shawn Hamilton Secretary

November 6, 2024

#### **PERMITTEE:**

The Breakers Palm Beach, Inc. One South Country Road Palm Beach, FL 33480

and

Flagler Drive Holdings, LLC 767 Fifth Avenue, Suite 4200 New York, NY 10153

and

South Ocean Boulevard, LLC 767 Fifth Avenue, 42nd Floor New York, NY 10153

#### **AGENT:**

Gregory M. Munson Gunster 215 South Monroe Street, Ste. 601 Tallahassee, FL 32301

> Permit Modification No. 0414369-002-JN Permit No. 414369-001-JC, Palm Beach County Mid-Town Headland Area Erosion Control Project

#### Dear Mr. Munson:

The Florida Department of Environmental Protection (Department) is issuing an administrative modification to Permit No. 0414369-001-JC, to update the proprietary authorization to include the emergency provisions of Rule 18-21.005,(1)(c)15, F.A.C. The Department also took the opportunity to revise minor errors found in the project description and Specific Conditions 4, 5 10 and to update the General Consent Conditions.

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#### **Background**

The proposed project site is situated in Palm Beach at the southern edge of Reach 3, a critically eroded segment of shoreline with a long history of beach nourishment and erosion control projects. This is a commercially and recreationally valuable stretch of beach, much of which is armored with seawalls, bulkheads, and other erosion control structures, including a series of T-groins constructed in the 1960s and 1970s, directly north of the proposed project area. This groin field was most recently rehabilitated in 2012. South of this groin field is the Breakers Hotel property and its surrounding seawall.

The shoreline in this reach is periodically nourished by the Mid-Town Beach Nourishment Project, which is authorized under the Palm Beach Island Beach Management Agreement (BMA) (FDEP Project No. 0328802-001-BMA). Despite the periodic nourishment, this specific stretch of shoreline experiences high rates of erosion, often resulting in exposed seawalls.

#### **Permitting History**

On May 24, 2024, the Department issued Permit No. **0414369-001-JC**, authorizing the extension of an existing breakwater and the construction of three new breakwaters between Breakers Beach and Clarke Avenue Beach.

For additional background, please see the *CONSOLIDATED NOTICE OF INTENT TO ISSUE JOINT COASTAL PERMIT AND AUTHORIZATION TO USE SOVEREIGN SUBMERGED LANDS* for Permit No. 0414369-001-JC at the following website:

https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&[guid=20.235632. 1]&[profile=Permitting\_Authorization]

#### **Staff Assessment and Justification**

#### **Updating Proprietary Authorization**

Recent storms have worsened conditions in the project area, further degrading local community recreational uses and impacting nearby ecosystems. If this trend continues, the situation will deteriorate significantly. Additionally, the timing of construction is crucial to meet scheduled nourishment timelines; any delays could lead to setbacks of up to two years. To avoid this, it is essential to begin construction as soon as possible, ensuring the longevity of the planned sand placement and safeguarding both the environment and public interest.

Rule 18-21.005, (1)(c)15, F.A.C. states that emergency or other critical, time-sensitive activities necessary to enhance, protect or restore: public health, safety or welfare; utility service; the health of fish, other aquatic life, or other animals; or recreational, commercial, industrial,

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agricultural, or other reasonable uses. Unless the activity otherwise qualifies for a letter of consent under the provisions of this rule, the activity shall require the applicable form of authorization as specified in this rule within one year. The Department has updated the Proprietary Authorization and included Specific Condition 17 in the permit to incorporate the emergency provisions this rule.

#### **Update of the General Consent Conditions**

Rule 18-21, F.A.C. was revised in 2019, and the revision included an updated set of General Consent Conditions for all sovereign submerged lands authorizations. Accordingly, General Consent Condition (GCC) 8 was added, GCC 8 and 9 were then renumbered as 9 and 10, and the rule cited in the new GCC 10 was updated.

# **Updating Specific Conditions**

The Department has refined the language of certain Specific Conditions to reduce ambiguity. These changes clarify common misinterpretations, update requirements, and ensure consistency across permits. As such, updates have been made throughout the permit.

The project description shall be revised as follows (strikethroughs are deletions, <u>underlines</u> are additions):

The project is to extend an existing breakwater and to construct three new breakwaters between Breakers Beach and Clarke Ave. Beach. The project is designed to provide erosion control and improved sand retention to a stretch of beach that currently sits between two existing zones of erosion control. By bridging the gap between these two existing zones, the project intends to provide a more stable nearshore sand pathway in the area, which will improve the performance and longevity of beach nourishment efforts.

The breakwaters will be constructed with armor stone placed onto a geotextile and bedding stone foundation and will feature a crest height of +5 feet NAVD with a 1V:3H seaward slope. The new breakwaters will each be 85 feet in length and 15 feet wide at the crest. The extension to the existing breakwater will add 48 feet at the crest length of the existing structure. The breakwaters will be placed in the nearshore, between 76 and 120 feet seaward of the mean high water line (MHWL/ECL).

The activity includes consideration of an application for a sovereign submerged lands modification of private easement (Easement No. 30606 and BOT File No. 500222499) containing 40,771 square feet, more or less.

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The proprietary authorization shall be revised as follows (strikethroughs are deletions, underlines are additions):

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands held in trust by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Board of Trustees delegated, to the Department, the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. This proprietary authorization has been reviewed in accordance with Chapter 253 F.S., Chapter 18-21 and Section 62-330.075, F.A.C., and the policies of the Board of Trustees.

The Department has also determined that the breakwater construction activities qualify for a Letter of Consent to use sovereign, submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. Therefore, consent is hereby granted pursuant to Chapter 253.77, F.S., to perform the activity on the specified sovereign submerged lands. This Letter of Consent also constitutes the emergency provisions of Rule 18-21.005, (1)(c)15, F.A.C.

As staff to the Board of Trustees, the Department has reviewed the project described above, and has also determined that the breakwater construction activity requires a private easement for the use of those lands, pursuant to Chapter 253.77, F.S. The Department will issue the private easement <u>modification</u>, pursuant to the conditions outlined herein in the previously issued *Consolidated Intent to Issue* and in the Recommended Proprietary Action (entitled *Delegation of Authority*).

The general consent conditions shall be revised as follows (strikethroughs are deletions, underlines are additions):

- 1. Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.
- 2. Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.

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- 3. Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.
- 4. Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.
- 5. Construction, use or operation of the structure or activity shall not adversely affect any species that is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C.
- 6. Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.
- 7. Structures or activities shall not create a navigational hazard.
- 8. Activities shall not interfere with the public easement for traditional uses of the sandy beaches provided in section 161.141, F.S.
- 9 8. Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident or fire.
- <u>10</u> 9. Structures or activities shall be constructed, operated and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(fg), F.A.C., or any other applicable law.

The specific conditions shall be revised as follows (strikethroughs are deletions, <u>underlines</u> are additions):

- 1. All reports or notices relating to this permit shall be electronically submitted to the Department's JCP Compliance Officer (e-mail address: <u>JCPCompliance@dep.state.fl.us</u>) unless otherwise specified in the specific conditions of this permit.
- 2. The Permittee shall not store or stockpile tools, equipment, materials, etc., within littoral zones or elsewhere within surface waters of the state without prior written approval from the Department. Storage, stockpiling or access of equipment on, in, over or through beds of submerged aquatic vegetation, wetlands or hardbottom is prohibited unless it occurs within a work area or ingress/egress corridor that is specifically approved by this permit and is shown on the approved permit drawings. Anchoring or spudding of vessels and barges within beds of aquatic vegetation or hardbottom is also prohibited.

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- 3. The Permittee shall not conduct project operations or store project-related equipment in, on or over dunes, or otherwise impact dune vegetation, outside the approved staging, beach access and dune restoration areas designated in the permit drawings.
- 4. No work shall commence until the Permittee has satisfactorily submitted all information noted in this condition. Unless otherwise noted, the Permittee shall submit the following items for review by the Department. Unless notified by the Department within 15 days of receipt of all information specified below, the Permittee shall assume the submittals are satisfactory:
  - a. An electronic copy of *detailed final construction plans and specifications* for all authorized activities. The plans and specifications must be consistent with the project description, conditions and approved drawings of this permit. These documents shall be certified by a professional engineer (P.E.), who must be registered in the State of Florida. The Permittee shall point out any deviations from the Project Description of this permit (as stated above) or the approved permit drawings (attached to this permit), and any significant changes that would require a permit modification. The plans and specifications shall include a description of the construction methods to be utilized and drawings and surveys which show all biological resources and work spaces to be used for this project.
  - b. *Turbidity Monitoring*: In order to assure that turbidity levels do not exceed the compliance standards established in this permit, construction at the project site shall be monitored closely by an independent third party with formal training in water quality monitoring and professional experience in turbidity monitoring for coastal construction projects. Also, an individual familiar with beach construction techniques and turbidity monitoring shall be present at all times when turbidity generating activities are occurring. This individual shall have authority to alter construction techniques or shut down the dredging or beach construction operations if turbidity levels exceed the compliance standards established in this permit.
    - i. *Qualifications*. The names, credentials (demonstrating experience and qualifications) and 24-hour contact information of those individuals performing these functions:
    - ii. A Scope of Work for the turbidity monitoring to ensure that the right equipment is available to conduct the monitoring correctly at any location, and under any conditions:

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- iii. *Draft turbidity sampling map*. An example of the geo-referenced map that will be provided with turbidity reports, including aerial photography and the boundaries of biological resources and/or OFW (pursuant to Specific Condition 14)
- c. Documentation from the U.S. Fish and Wildlife Service (USFWS) that this work will be covered under a Statewide Programmatic **Biological Opinion** or a Biological Opinion(s) (BO) issued for construction on this project site. If the BO contains conditions that are not already contained herein, a permit modification may be required prior to construction to include those additional conditions.
- d. **Fish & Wildlife Monitoring Qualifications:** To ensure that individuals conducting monitoring of fish and wildlife resources have appropriate qualifications, the Permittee shall provide documentation demonstrating expertise/experience in surveying the types of resources that are present in the project. The Department and the Florida Fish and Wildlife Conservation Commission (FWC) will review this information for confirmation that the monitors meet the requirements in Specific Conditions 6 through 9. This documentation shall include the following:
  - i. *Marine Turtle Protection*: A list of the names and FWC permit numbers for the Marine Turtle Permit Holders;
- e. Documentation that the *Private Easement* has been executed to the satisfaction of the Department.
- 5. **Pre-Construction Conference.** After all submittals required by specific condition 4a through ed have been submitted, the Permittee shall conduct a pre-construction conference to review the specific conditions and monitoring requirements of this permit with Permittee's contractors, the engineer of record, those responsible for turbidity monitoring and the JCP Compliance Officer (or designated alternate) prior to each construction event. In order to ensure that appropriate representatives are available, at least twenty-one (21) days prior to the intended commencement date for the permitted construction, the Permittee is advised to contact the Department, and the other agency representatives listed below:

JCP Compliance Officer

e-mail: JCPCompliance@dep.state.fl.us

FWC Imperiled Species Management Section

email: marineturtle@myfwc.com

FWC Regional Biologist

See Contact list for phone numbers:

www.floridadep.gov

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(http://myfwc.com/conservation/you-conserve/wildlife/shorebirds/contacts)

The Permittee is also advised to schedule the pre-construction conference at least a week prior to the intended commencement date. At least seven (7) days in advance of the pre-construction conference, the Permittee shall provide written notification, advising the participants of the agreed-upon date, time and location of the meeting, and also provide a meeting agenda and a teleconference number.

If the actual construction start date is different from the expected start date proposed during the preconstruction conference, at least 48 hours prior to the commencement of construction, the Permittee shall ensure that notification is sent to the FWC indicating the actual start date and the expected completion date to <a href="MarineTurtle@MyFWC.com">MarineTurtle@MyFWC.com</a>. The Permittee shall also ensure that all contracted workers and observers are provided a copy of all permit conditions.

#### Fish and Wildlife

- 6. **In-water Activity.** The Permittee shall adhere to the following requirements for all in-water activity:
  - a. The Permittee shall instruct all personnel associated with the project about the presence of marine turtles and manatees, and the need to avoid collisions with (and injury to) these protected marine species. The Permittee shall be responsible for harm to these resources and shall require their contractors to advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees or marine turtles, which are protected under the Endangered Species Act, the Marine Mammal Protection Act, the Marine Turtle Protection Act and the Florida Manatee Sanctuary Act.
  - b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate project area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels shall follow routes of deep water whenever possible.
  - c. Siltation or turbidity barriers (if used) shall be made of material in which manatees and marine turtles cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers shall not impede manatee or marine turtle movement or travel.
  - d. The Permittee is responsible for all on-site project personnel and shall require them to observe water-related activities for the presence of marine turtles and manatee(s). All in-water operations shall be immediately shut down if a marine turtle or manatee comes within 50 feet of the operation. For unanchored vessels, operators shall disengage the propeller and drift out of the potential impact zone. If drifting would jeopardize the safety of the vessel, then idle speed may be used to leave the potential

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impact zone. Activities shall not resume until the animal(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the animal(s) has not reappeared within 50 feet of the operation. Animals shall not be herded away or harassed into leaving.

- e. Any collision with (or injury to) a marine turtle or manatee shall be reported immediately to the FWC Hotline at 888-404-3922, and to the FWC at <a href="mailto:ImperiledSpecies@MyFWC.com">ImperiledSpecies@MyFWC.com</a>. Any collision with (and/or injury to) a marine turtle shall also be reported immediately to the Sea Turtle Stranding and Salvage Network (STSSN) at <a href="mailto:SeaTurtleStranding@MyFWC.com">SeaTurtleStranding@MyFWC.com</a>.
- 7. **Wildlife Conditions for All Beach Related Activities.** The Permittee shall adhere to the following requirements for all beach-related activities during marine turtle nesting season (March 1 through October 31).

#### a. Beach Maintenance.

- i. The Permittee shall require their contractor and marine turtle nesting monitors to inspect all work areas that have excavations and temporary alterations of beach topography each day, to determine which areas have deviations (such as depressions, ruts, holes and vehicle tracks) capable of trapping marine turtle hatchlings. If so, the deviations shall be filled or leveled from the natural beach profile prior to 9:00 p.m. each day. The beach surface shall also be inspected subsequent to completion of the project, and all tracks, mounds, ridges or impressions, etc. left by construction equipment on the beach shall be smoothed and leveled.
- ii. All debris, including derelict construction or coastal armoring material, concrete and metal, found on the beach placement site, shall be removed from the beach each day prior to sunset. If debris removal activities take place during marine turtle nesting seasons, the work shall be conducted during daylight hours only, and shall not commence until completion of daily monitoring surveys.
- b. **Equipment Storage and Placement.** Staging areas and temporary storage for construction equipment shall be located off the beach to the maximum extent practicable. Nighttime storage of construction equipment that is not in use shall be located off the beach. If staging and storage areas off the beach are not possible, then additional marine turtle protective measures shall be implemented. Such protective measures shall be determined in coordination with the Department and the FWC prior to beginning of construction.
- c. **Beach Driving.** All vehicles operated on the beach shall operate in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<a href="https://myfwc.com/conservation/you-conserve/wildlife/beach-driving/">https://myfwc.com/conservation/you-conserve/wildlife/beach-driving/</a>). Specifically, the vehicle shall be operated at speeds less than 6 mph and run at or

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below the high-tide line. All personnel associated with the project shall be instructed about the potential presence of protected species, and the need to avoid injury and disturbance to these species.

### 8. Marine Turtle Protection Conditions for Construction-Related Activities.

Construction-related activities within the area immediately landward of the offshore breakwater area and within the approved staging areas are authorized to occur on the nesting beach. Construction-related activities may only occur during the early nesting season (March 1 through May 1) and late nesting season, (November 1 through November 30) under the following conditions:

- a. Daily early morning marine turtle nest surveys shall start at the beginning of marine turtle nesting season (March 1) or 65 days prior to construction whichever is later. Daily nesting surveys shall continue through November 30, or until two weeks after the last crawl in the project area, as approved by the FWC, whichever is earlier.
- b. Daily nesting surveys shall be conducted beginning ½ hour prior to sunrise, and no construction activity may commence until completion of the marine turtle survey each day.
- c. The Permittee shall ensure that marine turtle nesting surveys are conducted as required in this authorization, and only conducted by personnel with a valid FWC Marine Turtle Permit that covers all project activities as required by Chapter 68E-1, F.A.C. For information on the authorized Marine Turtle Permit Holders in the project area, contact FWC at <a href="https://mxwww.mtm.new.org/myFwC.com"><u>MTP@MyFWC.com</u></a>.
- d. Only those nests laid within the construction staging area(s) as identified in the permit application shall be relocated, and nest relocation shall cease after construction is completed. Nests requiring relocation shall be moved no later than 9 a.m., the morning following deposition (no longer than 12 hours from the time the eggs are laid), to a nearby self-release beach site in a secure setting, where artificial lighting will not interfere with hatchling orientation. The relocation site shall be determined in conjunction with and approved by the FWC prior to nest relocations. Relocated nests shall not be placed in organized groupings. Relocated nests shall be randomly staggered along the length and width of beach settings that are not expected to experience any of the following: inundation by high tides; severe erosion; previous egg loss; or illumination by artificial lighting. All nest relocation activities shall either be completed by the active Marine Turtle Permit Holder or shall be conducted in cooperation with the active Marine Turtle Permit Holder to ensure relocation does not occur before the daily nesting survey.
- e. Nests deposited within the construction staging area(s) identified in the permit plans where staging activities will not occur for 65 days shall be marked and left in place. All nests outside the identified construction staging area(s) shall be marked and left in

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place. The Marine Turtle Permit Holder shall install on- beach markers at the nest site to establish a minimum 5- foot radius around the approximate clutch location and shall also install a secondary marker at a point as far landward as possible to assure that the nest can be located should the on- beach marker be lost. No activity shall occur within the marked area, nor shall any activities occur that could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the project activity.

- f. All activity shall be confined to daylight hours. No temporary lighting of the construction area is authorized at any time during the marine turtle nesting season. No permanent lighting is authorized.
- g. Upon locating a dead, injured, or entrapped marine turtle adult, hatchling, or damaged nest in the breakwaters or on the beach within the project boundaries, the Permittee shall be responsible for notifying the FWC Wildlife Alert at 888-404-FWCC (3922). If a marine turtle nest is excavated during construction activities, but not as part of the authorized nest relocation process outlined in these specific conditions, the permitted person responsible for egg relocation for the project shall be notified immediately so the eggs can be moved to a suitable relocation site.
- 9. **Marine Turtle Protection Conditions for Post-Construction and Monitoring.** Upon completion of construction, the Permittee shall implement the following marine turtle protection conditions:
  - a. A pdf map and shapefiles delineating the location of the breakwaters after installation and including specific waypoints and coordinates shall be provided to FWC at MarineTurtle@MyFWC.com.
  - b. In the event a breakwater structure fails or begins to disintegrate, all debris and structural material that washes onto the nesting beach area shall be removed and deposited off-beach immediately. If maintenance of a breakwater structure is required during the period from March 1 through October 31 and requires on-beach construction, no work shall be initiated without prior written coordination with FWC's Imperiled Species Management Section (MarineTurtle@MyFWC.com).
  - c. If the breakwater structure(s) results in the documented entrapment and/or lethal take of a marine turtle, the Permittee shall immediately notify FWC Wildlife Alert at 888-404-FWCC (3922) and the FWC Sea Turtle Stranding Network at SeaTurtleStranding@MyFWC.com.
  - d. If the amount or extent of incidental take authorized in the Biological Opinion, as those terms are described in the Biological Opinion, is exceeded, the Permittee shall notify FWC and DEP. If such notification occurs, then the Permittee shall set up a meeting with FWC, DEP and the U.S. Fish and Wildlife Service (USFWS) to discuss

**Joint Coastal Permit** Mid-Town Headland Area Erosion Control Project Permit No. 0414369-002-JN Page 12 of 19

> all options including modification, removal, additional protection measures, or reinitiation of consultation.

#### **MONITORING REQUIRED:**

10. Water Quality - Turbidity shall be monitored as follows:

> Nephelometric Turbidity Units (NTUs). Units:

Frequency: Monitoring shall be conducted 2 times daily, approximately 4 hours apart and at any other time that there is a likelihood of an exceedance of the turbidity standard, during all in-water construction operations. Sampling shall be conducted while the highest project-related turbidity levels are crossing the edge of the mixing zone. The compliance samples and the corresponding background samples shall be collected at approximately the same time, i.e., background sample shall immediately follow the compliance sample.

Location:

Background: Sampling shall occur at mid-depth, 300 meters upcurrent from the point of breakwater construction when no turbidity control devices are used, and 150 meters upcurrent when turbidity control devices are being used. where turbidity is being generated, Samples shall be collected at the same distance offshore as the associated compliance sample. All background sampling shall occur clearly outside the influence of any artificially generated turbidity plume or the influence of an outgoing inlet plume.

Compliance: For activities encompassed by a turbidity curtain or similar turbidity control device, samples shall be collected at mid-depth, downcurrent from the project-related turbidity source, within the densest portion of any visible turbidity plume, immediately outside of the turbidity control device.

For activities not encompassed by a turbidity curtain or similar turbidity control device, sampling shall occur at mid-depth, within the densest portion of any visible turbidity plume generated by this project, 150 meters downdrift from the point of construction.

**Calibration:** The instruments used to measure turbidity shall be fully calibrated with primary standards within one month of the commencement of the project, and at least once a month throughout the project. Calibration with secondary standards shall be verified each morning prior to use, after each time the instrument is turned on, and after field sampling using two secondary turbidity "standards" that bracket the anticipated turbidity samples. If the post-sampling calibration value deviates more than 8% from the Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-002-JN Page 13 of 19

previous calibration value, results shall be reported as estimated and a description of the problem shall be included in the field notes.

Analysis of turbidity samples shall be performed in compliance with DEP-SOP-001/01 FT 1600 Field Measurement of Turbidity:

http://publicfiles.dep.state.fl.us/dear/sas/sopdoc/2008sops/ft1600.pdf

If the turbidity monitoring protocol specified above prevents the collection of accurate data, the person in charge of the turbidity monitoring shall contact the JCP Compliance Officer to establish a more appropriate protocol. Once approved in writing by the Department, the new protocol shall be implemented through an administrative permit modification.

11. The **compliance** locations given above shall be considered the limits of the temporary mixing zone for turbidity allowed during construction. If monitoring reveals turbidity levels at the **compliance** sites that are greater than 29 NTUs above the corresponding background turbidity levels, construction activities shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Any such occurrence shall also be immediately reported to the JCP Compliance Officer via email at <a href="mailto:JCPCompliance@dep.state.fl.us">JCPCompliance@dep.state.fl.us</a> and include in the subject line, "TURBIDITY EXCEEDANCE", and the Project Name and Permit Number. Also notify the Department's Southeast District office.

Any project-associated turbidity source shall be monitored as close to the source as possible. If the turbidity level exceeds 29 NTUs above background, the construction activities related to the exceedance shall **cease immediately** and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. This turbidity monitoring shall continue every hour until background turbidity levels are restored or until otherwise directed by the Department. The Permittee shall notify the Department, by separate email to the JCP Compliance Officer, of such an event within 24 hours of the time the Permittee first becomes aware of the discharge. The subject line of the email shall state "OTHER PROJECT-ASSOCIATED DISCHARGE, TURBIDITY EXCEEDANCE".

When reporting a turbidity exceedance, the following information shall also be included:

- a. the Project Name;
- b. the Permit Number;
- c. location and level (NTUs above background) of the turbidity exceedance;
- d. the time and date that the exceedance occurred; and

# Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-002-JN Page 14 of 19

e. the time and date that construction ceased.

Prior to re-commencing the construction, a report shall be emailed to the Department with the same information that was included in the "Exceedance Report", plus the following information:

- a. turbidity monitoring data collected during the shutdown documenting the decline in turbidity levels and achievement of acceptable levels;
- b. corrective measures that were taken; and
- c. cause of the exceedance.
- 12. **Turbidity Reports:** All turbidity monitoring data shall be submitted within one week of analysis. The data shall be presented in tabular format, indicating the measured turbidity levels at the compliance sites for each depth, the corresponding background levels at each depth and the number of NTUs over background at each depth. Any exceedances of the turbidity standard (29 NTUs above background) shall be highlighted in the table. In addition to the raw and processed data, the reports shall also contain the following information:
  - a. time of day samples were taken;
  - b. dates of sampling and analysis;
  - c. GPS location of sample and source. When possible, coordinates should be provided in decimal degrees with a 5 decimal level of precision (i.e., 0.00001). Please also indicate the datum:
  - d. depth of water body;
  - e. depth of each sample
  - f. antecedent weather conditions, including wind direction and velocity;
  - g. tidal stage and direction of flow;
  - h. water temperature;
  - i. a geo-referenced map, overlaid on an aerial photograph, indicating the sampling locations (background and compliance), location of active construction, the visible plume pattern and direction of flow. The map shall also include the boundaries of any benthic resources or OFW. A sample map shall be submitted to and reviewed by the Department prior to construction (Specific Condition 4);

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-002-JN Page 15 of 19

- j. a statement describing the methods used in collection, handling, storage and analysis of the samples;
- k. a statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection, calibration of the meter, accuracy of the data and precision of the GPS measurements;
- 1. When samples cannot be collected, include an explanation in the report. If unable to collect samples due to severe weather conditions, include a copy of a current report from a reliable, independent source, such as an online weather service.

Monitoring reports shall be submitted by email to the Department's JCP Compliance Officer. In the subject line of the reports, include the Project Name, Permit Number and the dates of the monitoring interval. Failure to submit reports in a timely manner constitutes grounds for revocation of the permit. When submitting this information to the Department's JCP Compliance Officer, on the cover page to the submittal and at the top of each page, please state: "This information is provided in partial fulfillment of the monitoring requirements in Permit No. 0414369-001-JC, for the Mid-Town Headland Area Erosion Control Project"

- 13. Within 30 days after completing construction of the authorized activity, the Permittee shall submit an As-Built Survey that is signed, sealed and dated by a Florida-licensed Surveyor and Mapper in accordance with Chapter 61G17-7, F.A.C. The survey shall depict the boundaries of the easement and shall show the size and dimensions of all structures over sovereign submerged lands and activities located within the easement area. The survey shall contain a statement that all of the depicted structures and activities occur within the easement boundary. If the surveyor observes that structures or activities are occurring outside of the easement area, the surveyor shall document the condition in the statement and note the deviations on the survey. Constructed deviation may require a permit or easement modification.
- 14. Pursuant to Rule 62B-41.005(16), F.A.C., physical monitoring of the project is required through acquisition of project-specific data to include, at a minimum, topographic and bathymetric surveys of the beach and nearshore, and engineering analyses. The monitoring data is necessary in order for both the project sponsor and the Department to regularly observe and assess, with quantitative measurements, the performance of the project, any adverse effects which have occurred, and the need for any adjustments, modifications, or mitigative response to the project. The scientific monitoring data and analysis also provides the project sponsor and the Department information necessary to plan, design, and optimize subsequent follow-up projects, potentially reducing the need for and costs of unnecessary work, as well as potentially reducing any environmental impacts that may have occurred or be expected.

# Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-002-JN Page 16 of 19

- 15. The Permittee shall implement the approved Physical Monitoring and Mitigation Plan for the Mid-Town Headland Erosion Control Project. The Physical Monitoring and Mitigation Plan provides contingent mitigation, if required, for any unanticipated adverse impacts caused by the project on downdrift shorelines. Furthermore, the Physical Monitoring and Mitigation Plan includes reasonable measurements to determine the stability of the structures and any significant settlement or displacement of the structures.
- 16. During construction, the permittee shall provide periodic progress reports certified by an engineer and supported with photos to the Department. The reports shall be submitted on a three-month basis beginning at the start of breakwater construction and continuing until all work has been completed. The engineer shall certify that all construction as of the date of each report has been performed in compliance with the plans and the project description approved as a part of the permit, and with all conditions of the permit, or shall specify any deviation from the plans, project description or conditions of the permit. The report shall also state the percentage of completion of the project and each major individual component.
- 17. The executed modification to Easement No.30606 and BOT File No. 500222499 shall be completed within 1-year of issuance of this modification (File No. 0414369-002-JN).

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality or be contrary to the public interest. Staff has also determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting marine turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation and is expected to be of environmental benefit, the **permit is hereby modified** as stated above. By copy of this letter and the attached drawings and the attached plans, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **May 24, 2039** expiration date of the permit. The only Specific Conditions of the permit that are altered by this modification are those stated above. This letter and the attached drawings and the attached plans must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes (F.S.), as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-002-JN Page 17 of 19

#### NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

#### **Petition for Administrative Hearing**

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

- a. The name and address of each agency affected and each agency's file or identification number, if known;
- b. The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- c. A statement of when and how the petitioner received notice of the agency decision;
- d. A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e. A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- f. A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g. A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at <a href="Magency\_Clerk@dep.state.fl.us">Agency\_Clerk@dep.state.fl.us</a>. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

#### **Time Period for Filing a Petition**

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-002-JN Page 18 of 19

applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within **14** days of publication of the notice or within **14** days of receipt of the written notice, whichever occurs first. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under <u>Sections 120.569</u> and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

#### **Extension of Time**

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at <a href="majern: Agency\_Clerk@dep.state.fl.us">Agency\_Clerk@dep.state.fl.us</a>, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

#### Mediation

Mediation is not available in this proceeding.

#### **FLAWAC Review**

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

#### **Judicial Review**

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this action is filed with the Clerk of the Department.

If you have any questions regarding this matter, please contact Rachel Grundl by email at Rachel.Grundl@FloridaDEP.gov or by telephone at (850) 245-7594.

Joint Coastal Permit Mid-Town Headland Area Erosion Control Project Permit No. 0414369-002-JN Page 19 of 19

#### **EXECUTION AND CLERKING:**

Executed in Tallahassee, Florida.
STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_

Gregory W. Garis
Program Administrator
Beaches, Inlets and Ports Program
Office of Resilience and Coastal Protection

**Attachments**: Approved Permit Drawings (8 pages, September 2023)
Physical Monitoring and Mitigation Plan (Approved May 2024)

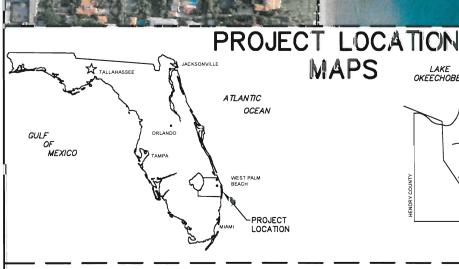
#### **CERTIFICATE OF SERVICE**

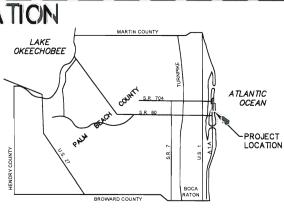
The undersigned duly designated deputy clerk hereby certifies that this permit and all attachments were sent on the filing date below to the following listed persons:

## FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.

PRIVATE SUBMERGED LAND EASEMENTS TOWN OF PALM BEACH, FLORIDA THE BREAKERS HOTEL





#### **LEGEND & ABBREVIATIONS:**

毌 FDEP MASSIVE MONUMENTS

FLORIDA DEPARTMENT OF ENVIRONMENTAL

**PROTECTION** 

FEET C.O.A

FDFP

2009 @ 4:42pm - Mlowied

Revised102009.dwg - Oct 21,

2008

CERTIFICATE OF AUTHORIZATION NAVD NORTH AMERICAN VERTICAL DATUM

SEAWALL

**EGDE OF VEGETATION EROSION CONTROL LINE #1438** 

APPROXIMATE PROPERTY LINE

# **CERTIFICATION:**

I HEREBY CERTIFY THAT THE ATTACHED SKETCHES OF DESCRIPTIONS OF THE SEVEN (7) DESCRIBED SUBMERGED LAND LEASES IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS DELINEATED UNDER MY DIRECTION. I FURTHER CERTIFY THAT THESE SKETCHES OF DESCRIPTIONS MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH IN RULE 61G17-6, ADOPTED BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, PURSUANT TO FLORIDA STATUTE 472.027.

COASTAL PLANNING & ENGINEERING, INC. my leve

JEFFREN ANDREWS, P.S.M. FLORIDA REGISTERED SURVEYOR #5805

# NOTES:

BREAKWATER 21 N

BREAKWATER 20 N

- DATE OF SURVEY: JANUARY, 2006.
- LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR EASEMENTS, OWNERSHIP, OR RIGHTS-OF-WAY. THIS IS A FIELD SURVEY. THIS IS NOT A BOUNDARY
- SURVEY. THIS SURVEY IS TO ACCOMPANY LEGAL DESCRIPTION ONLY.
- THE DISTANCES, COORDINATES, AND BEARINGS SHOWN ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM 1983, MERCATOR PROJECTION, SHOWN IN FEET.
- UNDERGROUND UTILITIES, IMPROVEMENTS, ETC., IF ANY, HAVE NOT BEEN LOCATED.
  THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE
- AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- VERTICAL MEASUREMENTS BASED ON, BUT NOT LIMITED TO, 93-89-A-11 N 862664.35 E 971809.57 AND 06-78-E01-A 1991 N 866963.38 E 971748.86.
- APPROXIMATE SHORELINE, AS REPRESENTED BY THE LENGTH OF EROSION CONTROL LINE #1348 THROUGH SUBJECT PROPERTY, IS ± 2078'
- DATE OF AERIAL PHOTOGRAPHY: AUGUST 5, 2007

告川

2481 N.W. BOCA RATON BOULEVARD BOCA RATON, FLORIDA 33431 C.O.A. 4028 WWW.CoestelPhaning nes

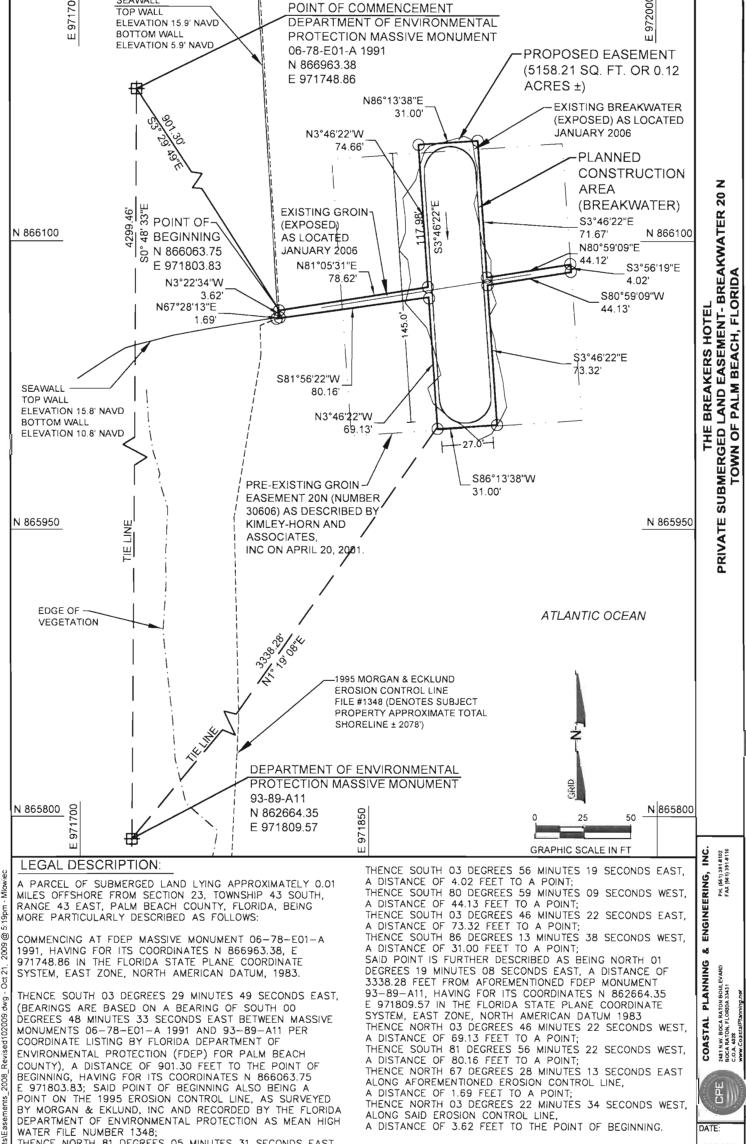
PH. (561) 391-8102 FAX (561) 391-9116

02/06/08

KMG

8440.02

ENGINEERING, త PLANNING COASTAL



WATER FILE NUMBER 1348;
THENCE NORTH 81 DEGREES 05 MINUTES 31 SECONDS EAST,
DISTANCE OF 78.62 FEET TO A POINT;
THENCE NORTH 03 DEGREES 46 MINUTES 22 SECONDS WEST
A DISTANCE OF 74.66 FEET TO A POINT;
THENCE NORTH 86 DEGREES 13 MINUTES 38 SECONDS EAST,
A DISTANCE OF 31.00 FEET TO A POINT;
THENCE SOUTH 03 DEGREES 46 MINUTES 22 SECONDS EAST,

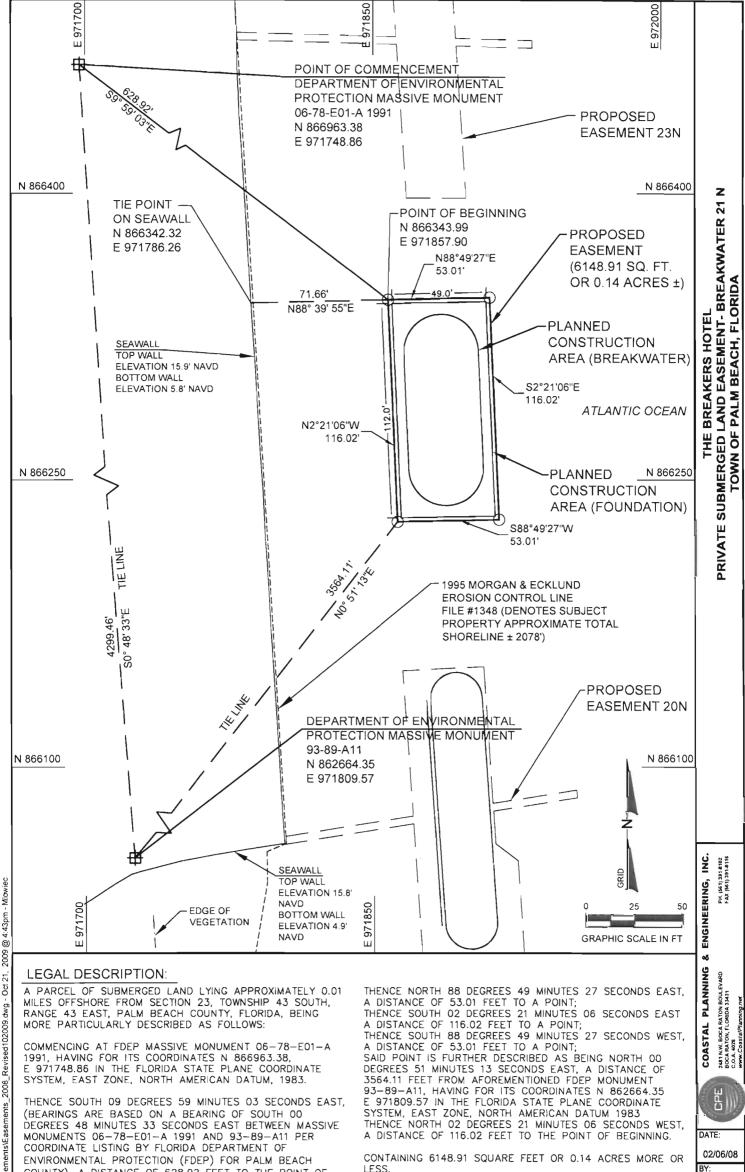
THENCE SOUTH 03 DEGREES 46 MINUTES 22 SECONDS EAST, A DISTANCE OF 71.67 FEET TO A POINT;
THENCE NORTH 80 DEGREES 59 MINUTES 09 SECONDS EAST, A DISTANCE OF 44.12 FEET TO A POINT;

02/06/08 KMG

COMM NO. 8440.02

REDESIGN EASEMENTS CORRECT AREA NOTE (3

CONTAINING 5158.21 SQUARE FEET OR 0.12 ACRES MORE OR



02/06/08

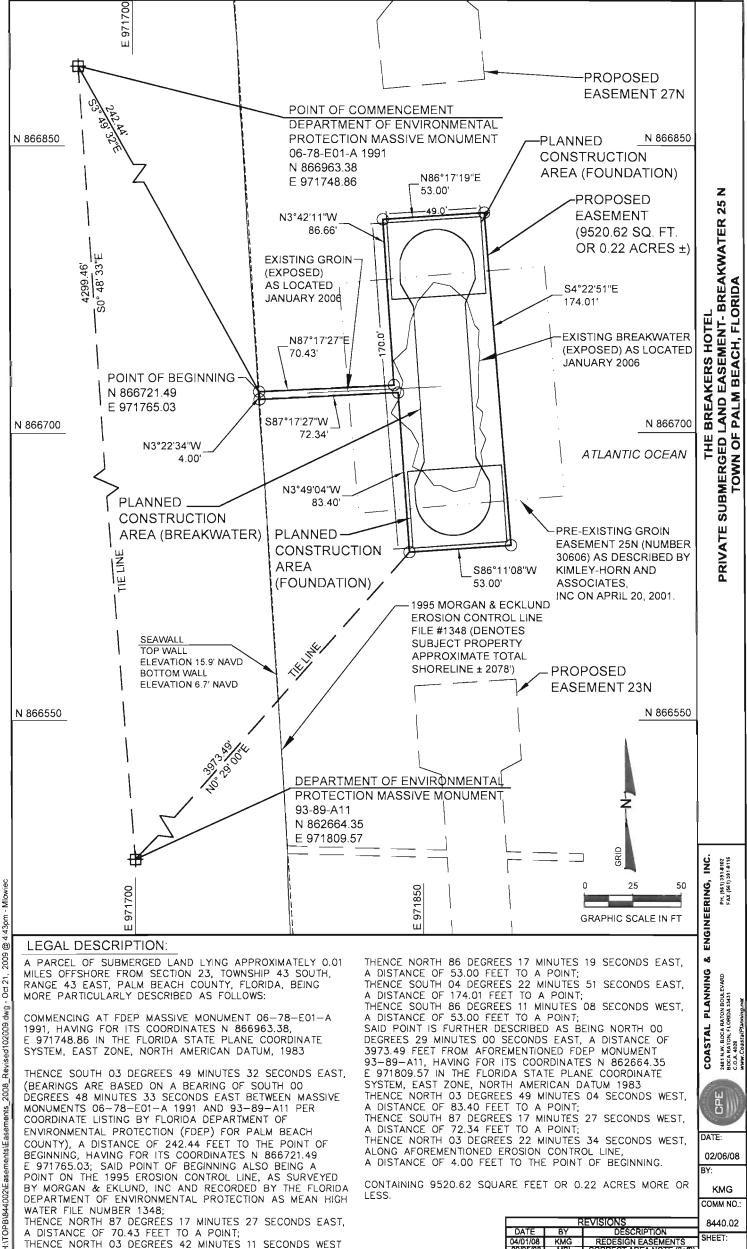
KMG COMM NO.: 8440.02 HEET:

REDESIĞN EASEMENTS CORRECT AREA NOTE (3of8) REMOVE 16N, REVISE 20N

CONTAINING 6148.91 SQUARE FEET OR 0.14 ACRES MORE OR

Oct 21, Revised102009.dwg 2008

ENVIRONMENTAL PROTECTION (FDEP) FOR PALM BEACH COUNTY), A DISTANCE OF 628.92 FEET TO THE POINT OF BEGINNING, HAVING FOR ITS COORDINATES N 866343.99 E 971857.90; SAID POINT OF BEGINNING ALSO BEING DESCRIBED AS BEING NORTH 88 DEGREES 39 MINUTES 55 SECONDS EAST; A DISTANCE OF 71.66 FEET OF AFOREMENTIONED SEAWALL POINT, HAVING FOR ITS COORDINATES N 866342.32 E 971786.26.



LESS.

WATER FILE NUMBER 1348;
THENCE NORTH 87 DEGREES 17 MINUTES 27 SECONDS EAST,
A DISTANCE OF 70.43 FEET TO A POINT;
THENCE NORTH 03 DEGREES 42 MINUTES 11 SECONDS WEST
A DISTANCE OF 86.66 FEET TO A POINT;

A DISTANCE OF 4.00 FEET TO THE POINT OF BEGINNING CONTAINING 9520.62 SQUARE FEET OR 0.22 ACRES MORE OR

REDESIGN EASEMENTS CORRECT AREA NOTE (3of8) REMOVE 16N, REVISE 20N

02/06/08 KMG

COMM NO. 8440.02

SHEET:

1995 MORGAN & ECKLUND

N 867150

N 867150

6 OF 7

10/20/09

MB

REMOVE 16N, REVISE 20N

A PARCEL OF SUBMERGED LAND LYING APPROXIMATELY 0.01 MILES OFFSHORE FROM SECTION 23, TOWNSHIP 43 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT FDEP MASSIVE MONUMENT 06-78-D-06 1978, HAVING FOR ITS COORDINATES N 876964.38, E 971071.58 IN THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM, 1983

2009 @

Oct 21.

102009.dwg

2008

THENCE SOUTH 04 DEGREES 12 MINUTES 10 SECONDS EAST, (BEARINGS ARE BASED ON A BEARING OF SOUTH 04 DEGREES 07 MINUTES 14 SECONDS EAST BETWEEN MASSIVE MONUMENTS 06-78-D-06 1978 AND 06-78-E01-A 1991 PER COORDINATE LISTING BY FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) FOR PALM BEACH ENVIRONMENTAL PROTECTION (FDEP) FOR PALM BEACH COUNTY), A DISTANCE OF 8915.70 FEET TO THE POINT OF BEGINNING, HAVING FOR ITS COORDINATES N 867472.63 E 971724.98; SAID POINT OF BEGINNING ALSO BEING A POINT ON THE 1995 EROSION CONTROL LINE, AS SURVEYED BY MORGAN & EKLUND, INC AND RECORDED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AS MEAN HIGH WATER FILE NUMBER 1348;

WATER FILE NUMBER 1346;
THENCE NORTH 86 DEGREES 03 MINUTES 34 SECONDS EAST,
A DISTANCE OF 10.91 FEET TO A POINT;
THENCE NORTH 03 DEGREES 42 MINUTES 23 SECONDS WEST
A DISTANCE OF 66.32 FEET TO A POINT;

THENCE NORTH 86 DEGREES 15 MINUTES 16 SECONDS EAST, A DISTANCE OF 42.00 FEET TO A POINT;
THENCE SOUTH 03 DEGREES 44 MINUTES 44 SECONDS EAST, A DISTANCE OF 66.17 FEET TO A POINT;

THENCE SOUTH 04 DEGREES 22 MINUTES 29 SECONDS EAST, A DISTANCE OF 4.00 FEET TO A POINT; THENCE SOUTH 86 DEGREES 03 MINUTES 34 SECONDS EAST, A DISTANCE OF 96.03 FEET TO A POINT; THENCE SOUTH 03 DEGREES 44 MINUTES 44 SECONDS EAST, A DISTANCE OF 68.62 FEET TO A POINT; THENCE SOUTH 86 DEGREES 17 MINUTES 18 SECONDS WEST, OF THE SOUTH 18 SECONDS WEST, THENCE SOUTH 86 DEGREES 17 MINUTES 18 SECONDS WEST A DISTANCE OF 42.10 FEET TO A POINT; SAID POINT IS FURTHER DESCRIBED AS BEING NORTH 01 DEGREES 05 MINUTES 18 SECONDS WEST, A DISTANCE OF 437.77 FEET FROM AFOREMENTIONED FDEP MONUMENT 06-78-E01-A 1991, HAVING FOR ITS COORDINATES N 866963.38 E 971748.86 IN THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM 1983

1983

THENCE NORTH 03 DEGREES 42 MINUTES 23 SECONDS WEST, A DISTANCE OF 68.46 FEET TO A POINT;
THENCE SOUTH 86 DEGREES 03 MINUTES 34 SECONDS WEST, A DISTANCE OF 12.34 FEET TO A POINT;
THENCE NORTH 33 DEGREES 37 MINUTES 05 SECONDS EAST ALONG AFOREMENTIONED EROSION CONTROL LINE,

A DISTANCE OF 3.63 FEET TO A POINT; THENCE NORTH 38 DEGREES 03 MINUTES 06 SECONDS WEST,

ALONG SAID EROSION CONTROL LINE, A DISTANCE OF 1.36 FEET TO THE POINT OF BEGINNING.

CONTAINING 6263.83 SQUARE FEET OR 0.14 ACRES MORE OR LESS

REVISIONS REDESIGN EASEMENTS
CORRECT AREA NOTE (30f8)
REMOVE 16N, REVISE 20N

≪ PLANNING 2481 N.W. BOCA RATON BOULEVARD BOCA RATON, FLORIDA 33431 C.O.A. 4028 COASTAL



DATE

02/06/08

KMG COMM NO.:

8440.02 HEET:

7 OF 7

## **TFI Cover Sheet**

**DM ID** 

Document Type: Trustees of the Internal Improvement Trust Fund Instruments
Instrument: [ ]Deed [ ]Lease [X]Easement [ ]Permit [ ]Management Agreement
[ ]Use Agreement [ ]Disclaimer [ ]Quitclaim [ ]Dedication [ ]Release
[ ]Acts of Legislation [ ]Other
Instrument Number: 30606
Extension:
File Number: 5333
Document Date: 02-09-200/
Consideration:
Water Body: Atlanie Octan
Reservations / Reverter: 4/4
Original County: Palm Beach
Section: 23
Township: 435
Range: 43 E
Total Area / Area Unit: 3.28 (A) Acreage (S) Square Feet
Comments: Document recuvid in Ith Die. 2003

The information on this page was collected during the prep phase of scanning and is an aide for data entry. Please refer to the document for actual information.

This Instrument Prepared By:

<u>Deborah Trim</u>

Recurring Revenue Section

Bureau of Public Land Administration
3900 Commonwealth Boulevard

Mail Station No. 125

Tallahassee, Florida 32399

## BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

### SOVEREIGN SUBMERGED LANDS EASEMENT

NO. 30606 A (5333 - 50) BOT FILE NO. 500222499 PA NO. 50-0173170-001-JC

THIS EASEMENT is hereby granted by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Grantor.

WITNESSETH: That for the faithful and timely performance of and compliance with the terms and conditions stated herein, the Grantor does hereby grant to <u>The Breakers Palm Beach, Inc.</u>, a Florida corporation, hereinafter referred to as the Grantee, a nonexclusive easement on, under and across the sovereign lands described as follows:

A parcel of sovereign submerged land in Section 23, Township 43 South, Range 43 East, in Atlantic Ocean, Palm Beach County, as is more particularly described and shown on Attachment A, dated April 20, 2001.

TO HAVE THE USE OF the hereinabove described premises for a period of <u>25</u> years from <u>February 9, 2001</u>, the effective date of this easement. The terms and conditions of and for which this easement is granted are as follows:

- 1. <u>EASEMENT CONSIDERATION</u>: In the event the Grantor amends its rules related to fees and the amended rules provide the Grantee will be charged a fee or an increased fee for this activity, the Grantee agrees to pay all charges required by such amended rules within 90 days of the date the amended rules become effective or by a date provided by an invoice from the Department, whichever is later. All fees charged under this provision shall be prospective in nature; i.e. they shall begin to accrue on the date that the amended rules become effective.
- 2. <u>USE OF PROPERTY</u>: The above described parcel of land shall be used solely for <u>six existing T-Head granite groins</u> and Grantee shall not engage in any activity except as described in the Department of Environmental Protection, Consolidated Joint Coastal Permit No. <u>0173170-001-JC</u>, dated <u>February 9, 2001</u>, incorporated herein and made a part of this easement by reference. All of the foregoing subject to the remaining conditions of this easement.
- 3. <u>RIGHTS GRANTED</u>: The rights hereby granted shall be subject to any and all prior rights of the United States and any and all prior grants by the Grantor in and to the submerged lands situated within the limits of this easement.
- 4. <u>DAMAGE TO EASEMENT PROPERTY AND INTERFERENCE WITH PUBLIC AND PRIVATE RIGHTS</u>: Grantee shall not damage the easement lands or unduly interfere with public or private rights therein.

- 5. GRANTOR'S RIGHT TO GRANT COMPATIBLE USES OF THE EASEMENT PROPERTY: This easement is nonexclusive, and the Grantor, or its duly authorized agent, shall retain the right to enter the property or to engage in management activities not inconsistent with the use herein provided for and shall retain the right to grant compatible uses of the property to third parties during the term of this easement.
- 6. <u>RIGHT TO INSPECT</u>: Grantor, or its duly authorized agent, shall have the right at any time to inspect the works and operations of the Grantee in any matter pertaining to this easement.
- 7. <u>INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS</u>: The Grantee shall investigate all claims of every nature at its expense, and shall indemnify, defend and save and hold harmless the Grantor and the State of Florida from all claims, actions, lawsuits and demands arising out of this easement.
- 8. <u>VENUE</u>: Grantee waives venue as to any litigation arising from matters relating to this easement and any such litigation between Grantor and Grantee shall be initiated and maintained only in Leon County, Florida.
- 9. <u>ASSIGNMENT OF EASEMENT</u>: This easement shall not be assigned or otherwise transferred without prior written consent of the Grantor or its duly authorized agent. Any assignment or other transfer without prior written consent of the Grantor shall be null and void and without legal effect.
- 10. <u>TERMINATION</u>: The Grantee, by acceptance of this easement, binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Grantee, its successors and assigns. In the event the Grantee fails or refuses to comply with the provisions and conditions herein set forth or in the event the Grantee violates any of the provisions and conditions herein, this easement may be terminated by the Grantor upon 30 days written notice to Grantee. If terminated, all of the above-described parcel of land shall revert to the Grantor. All costs, including attorneys' fees, incurred by the Grantor to enforce the provisions of this easement shall be paid by the Grantee. All notices required to be given to Grantee by this easement or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

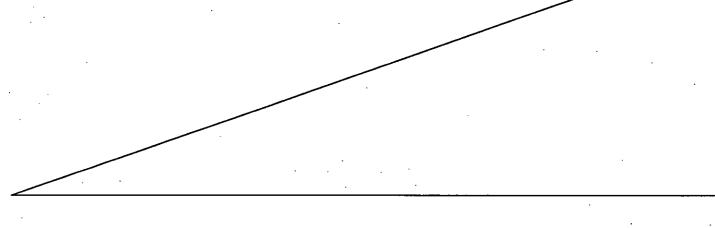
The Breakers Palm Beach, Inc. One South County Road Palm Beach, Florida 33480

The Grantee agrees to notify the Grantor by certified mail of any changes to this address at least ten (10) days before the change is effective.

- 11. <u>TAXES AND ASSESSMENTS</u>: The Grantee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this easement which result from the grant of this easement or the activities of Grantee hereunder.
- 12. <u>RENEWAL PROVISIONS</u>: Renewal of this easement is at the sole option of the Grantor. Such renewal shall be subject to the terms, conditions and provisions of current management standards, easement fees, and applicable laws, rules and regulations in effect at that time. In the event that Grantee is in full compliance with the terms of this easement, the Grantee may apply in writing for a renewal. Such application for renewal must be received by Grantor no later than six months prior to the expiration date of this easement. The term of any renewal granted by the Grantor shall commence on the last day of the previous easement term. If the Grantee fails to apply for a renewal, or in the event the Grantor does not grant a renewal, the Grantee shall vacate the easement premises and remove all structures and equipment occupying and erected thereon at its expense.
- 13. <u>REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES</u>: If the Grantee does not remove said structures and equipment occupying and erected upon the premises after expiration or cancellation of this easement, such structures and equipment will be deemed forfeited to the Grantor, and the Grantor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Grantee at the address specified in Item 10 or at such address on record as provided to the Grantor by the Grantee. However, such remedy shall be in addition to all other remedies available to Grantor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

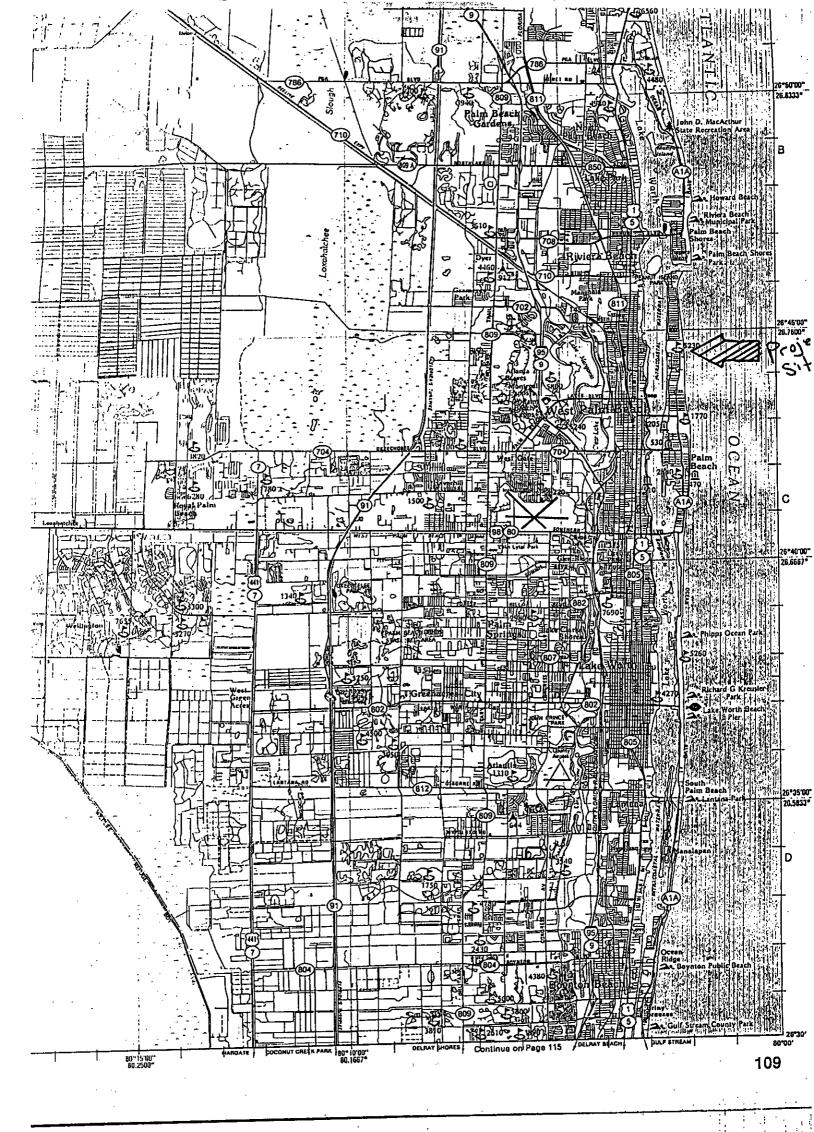
Page 2 of 16 Pages Easement No. 30606A(5333-50)

- 14. <u>ENFORCEMENT OF PROVISIONS</u>: No failure, or successive failures, on the part of the Grantor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Grantor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.
- 15. <u>RECORDATION OF EASEMENT</u>: The Grantee, at its own expense, shall record this fully executed easement in its entirety in the public records of the county within which the easement site is located within fourteen (14) days after receipt, and shall provide to the Grantor within ten (10) days following the recordation a copy of the recorded easement in its entirety which contains the O.R. Book and pages at which the easement is recorded.
- 16. <u>AMENDMENTS/MODIFICATIONS</u>: This easement is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this easement must be in writing and must be accepted, acknowledged and executed by the Grantee and Grantor.
- 17. ACOE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Grantee shall obtain the U.S. Army Corps of Engineers (COE) permit if it is required by the COE. Any modifications to the construction and/or activities authorized herein that may be required by the COE shall require consideration by and the prior written approval of the Grantor prior to the commencement of construction and/or any activities on sovereign, submerged lands.
- 18. ADDITIONAL STRUCTURES OR ACTIVITIES/EMERGENCY STRUCTURAL REPAIRS: No additional structures shall be erected and/or activities undertaken, including but not limited to, dredging, relocation/realignment or major repairs or renovations made to authorized structures, on, in or over sovereignty, submerged lands without the prior written consent of the Grantor, with the exception of emergency repairs. Unless specifically authorized in writing by the Grantor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Grantee to administrative fines under Chapter 18-14, Florida Administrative Code. If emergency repairs are required to be undertaken in the interests of public health, safety or welfare, the Grantee shall notify the Grantor of such repairs as quickly as is practicable; provided, however, that such emergency activities shall not exceed the activities authorized by this easement.
- 19. <u>UPLAND RIPARIAN PROPERTY INTEREST</u>: During the term of this easement, Grantee, pursuant to section 18-21.010, Florida Administrative Code, must either be the record owner of the riparian upland property or have the written consent of the riparian upland property owner(s) to conduct the activity described in this easement. If at any time during the term of this easement, Grantee fails to comply with this requirement, use of sovereignty, submerged lands described in this easement shall immediately cease and this easement shall terminate and title to this easement shall revert to and vest in the Grantor immediately and automatically.
- 20. SPECIAL EASEMENT CONDITION: The Grantee shall adjust, alter or remove any permitted structure or other physical evidence of the work or activity permitted, upon written notice from the Grantor or Department of Environmental Protection that the coastal construction in question results in a significant adverse impact or is inconsistent with Section 370.12, Florida Statutes, or otherwise proves to be undesirable or becomes unnecessary. The Grantee, at its sole cost and expense, shall also be required to restore the impacted coastal system. Adjustment, alteration, or removal required under this provision shall be accomplished by the Grantee at no cost to the Grantor or the State of Florida.

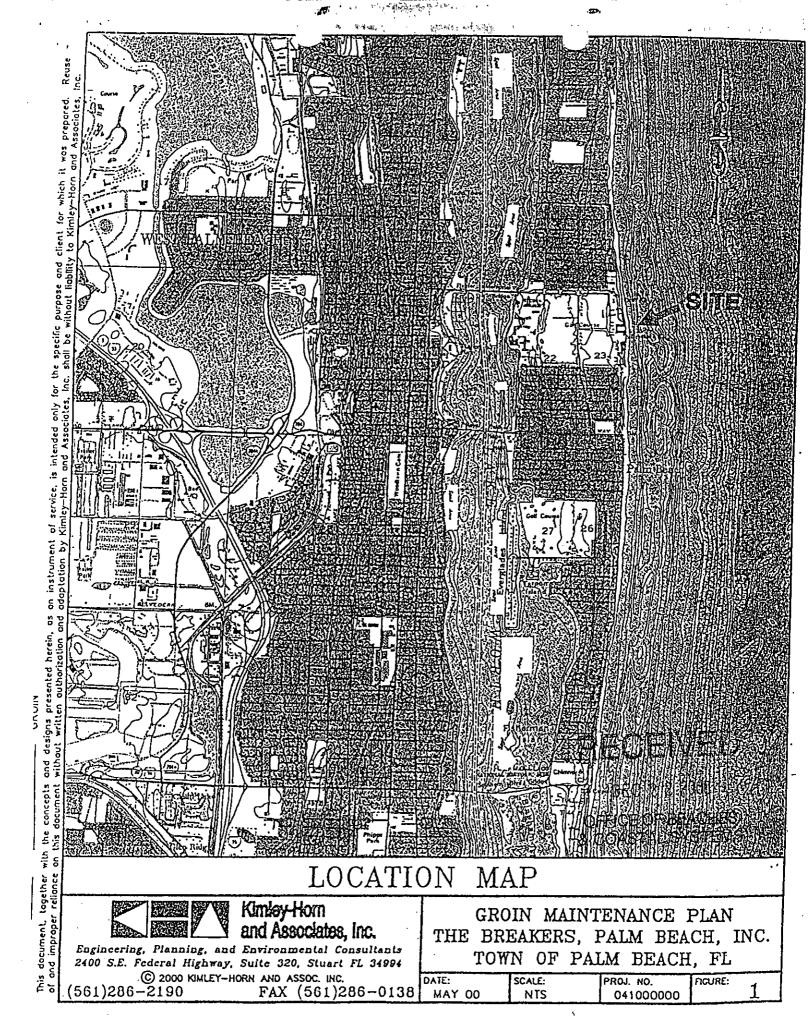


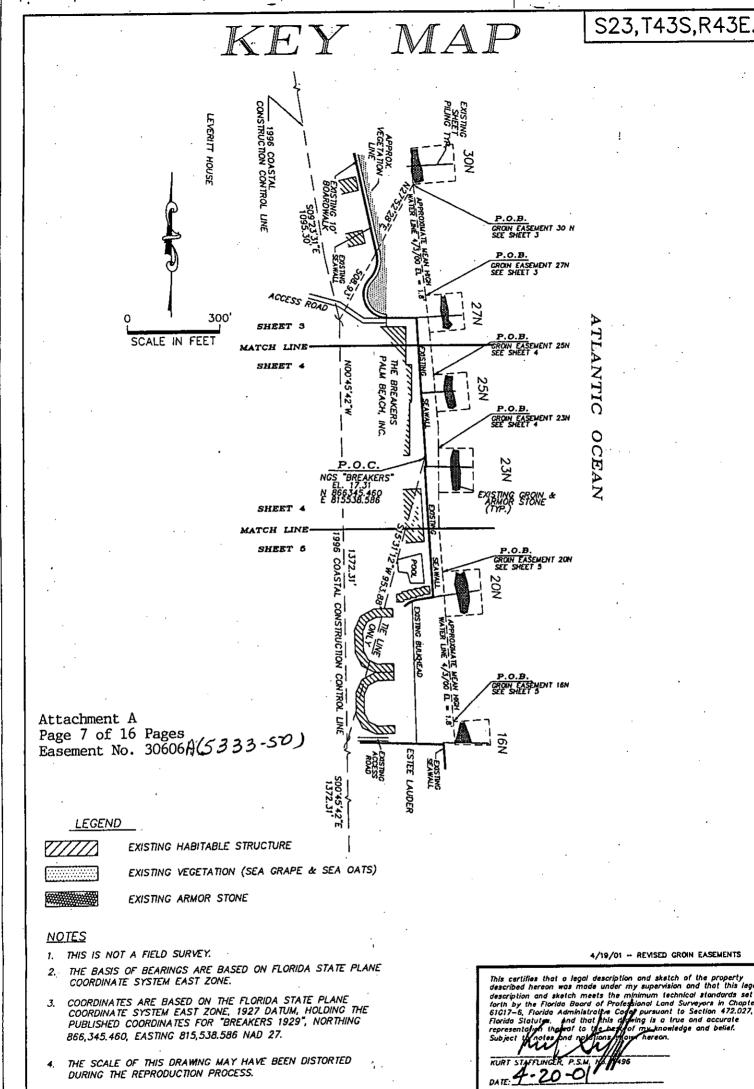
WITNESSES:	BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA
Original Signature	(SEAL)
	BY:
Print/Type Name of Witness  Original Signature  Fredrica W. Jones  Print/Type Name of Witness	Acey L. Stinson, Operations and Management Consultant Manager, Bureau of Public Land Administration, Division of State Lands, Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida
STATE OF FLORIDA COUNTY OF LEON	"GRANTOR"
	Manager, Bureau of Public Land Administration, Division of State or and on behalf of the Board of Trustees of the Internal Improvement
APPROVED AS TO FORM AND LEGALITY:	Thursa M. Blad
DEP Attorney	Notary Public, State of HIGHESA M. BRADY  COMMISSION # CC 702200  EXPIRES DEC 15, 2001  BONDED THRU  ATLANTIC BONDING CO., INC.
	Printed, Typed or Stamped Name
	My Commission Expires:
·	· · · · · · · · · · · · · · · · · · ·
	Commission/Serial No
	·
·	
WITNESSES:	The Breakers Palm Beach, Inc., a Florida corporation (SEAL)
	BY: fr. Ine
Original Signature	Original Signature of Executing Authority
NANCI B. DEOE Typed/Printed Name of Witness	Paul N. Leone Typed/Printed Name of Executing Authority
Halin C. Men Billing	President Title of Executing Authority
Hated E. Nawschofel Typed/Printed Name of Witness	"GRANTEE"
STATE OF Florida	
COUNTY OF PALM BEACH	
The foregoing instrument was acknowledged before Paul N. Leone as President of The Breakers Palm Beach, Inc. personally known to me or who has produced	, a Florida corporation, for and on behalf of the corporation. He is
My Corporation Expires:	Maileal Berso
MARILYN J. BARNES  Notary Public - State of Florida	Notary Public, State of Florida
My Commission Expires Apr 9, 2004 Commission/SerfapMonission # CC919154	Printed, Typed or Stamped Name

Page 4 of 16 Pages Sovereignty Submerged Land Lease No. 30606A(5333 50)



Attachment A
Page 5 of 16 Pages
Easement No. 30606A(5333-50)





1.65

BKETCH OF LEGAL DESCRIPTION

SKETCH OF LEGAL DESCRIPTION

FOR

BREAKERS

PALM BEACH COUNTY

FLORIDA

BREAKERS

PALM BEACH COUNTY

FLORIDA

BRIEFS

FLORIDA

BREAKERS

PALM BEACH COUNTY

FLORIDA

BRIEFS

FLORIDA

## GROIN EASEMENT 30N

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND BEING A PORTION OF THE SUBMERGED SOVERIGN LANDS LYING IN THE ATLANTIC OCEAN AND BEING WITHIN SECTION 23, TOWNSHIP 43 SOUTH, RANGE 43 EAST, OF THE TALLAHASSEE BASE MERIDIAN, PALM BEACH, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING FOR REFERENCE AT NATIONAL GEODETIC SURVEY MONUMENT "BREAKERS 1929", HAVING PUBLISHED COORDINATES OF NORTHING 866,345.460, EASTING 815,538.586 NORTH AMERICAN DATUM OF 1927;

THENCE, BEARING SOUTH 15'31'12" WEST A DISTANCE OF 953.88 FEET TO A POINT ON THE COASTAL CONSTRUCTION LINE OF 1996 AS RECORDED IN OFFICIAL RECORDS BOOK 9951 PAGES 85 THROUGH 108, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA;

THENCE, NORTH 00'45'42" WEST, ALONG SAID COASTAL CONSTRUCTION CONTROL LINE, A DISTANCE OF 1372.31 FEET;

THENCE, LEAVING SAID COASTAL CONSTRUCTION CONTROL LINE, BEARING NORTH 27'52'28" EAST, A DISTANCE OF 508.93 FEET TO THE MEAN HIGH WATER LINE (ELEVATION 1.8' NGVD 1929), AND THE POINT OF BEGINNING OF HEREIN DESCRIBED GROIN EASEMENT 30N;

THENCE, BEARING NORTH 06'23'34" WEST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 32.51 FEET;

THENCE, BEARING NORTH 03'01'58" WEST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 85.65 FEET;

THENCE, LEAVING SAID MEAN HIGH WATER LINE, BEARING NORTH 84'32'34" EAST, INTO THE ATLANTIC OCEAN, A DISTANCE OF 137.45 FEET;

THENCE, BEARING SOUTH 04'22'29" EAST A DISTANCE OF 120.71 FEET;

THENCE, BEARING SOUTH 85'37'31" WEST A DISTANCE OF 138.28 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PREMISES CONTAIN AN AREA OF 16,543.50 SQUARE FEET OR 0.380 ACRES, MORE OR LESS.

4/19/01 - REVISED GROIN EASEMENTS

Attachment A
Page 8 of 16 Pages
Easement No. 30606#(5333-50)

This certifies that a legal description and sketch of the property described hereon was made under my supervision and that this legal description and sketch meets the minimum technical standards set forth by the Florida Board of Professorbi Land Surveyors in Chapter 61617-6, Florida Administrative Code Jursuant to Section 472.027, Florida Statiffs. And that this drawing is a true and occurate representation thereof to this best of my included and belief. Subject tenotes and notations stopp person.

KURT STAFFLIGER, S.M. No 6446

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

BETT NO.	SKETCH OF LEGAL DESCRIPTION FOR	DRAWN BY K.S. CHECKED BY E.C.D.	Engineering Planning and Environmenta Consultants E.R. No. 696 Suite 400 Soil 21st Str Vero Beach, 32560 Phone: 561–56 www.Kinley-i	Kinley Horn and Associat
OF 11	BREAKERS PALM BEACH COUNTY FLORIDA	K.S.  DATE PROTES  12/13/00  DATE RISUED  12/13/00	y Florida Florida -562-7981 52-9689 Horn.com	75 F

## GROIN EASEMENT 27N

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND BEING A PORTION OF THE SUBMERGED SOVERIGN LANDS LYING IN THE ATLANTIC OCEAN AND BEING WITHIN SECTION 23, TOWNSHIP 43 SOUTH, RANGE 43 EAST, OF THE TALLAHASSEE BASE MERIDIAN, PALM BEACH, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING FOR REFERENCE AT NATIONAL GEODETIC SURVEY MONUMENT "BREAKERS 1929", HAVING PUBLISHED COORDINATES OF NORTHING 866,345.460, EASTING 815,538.586 NORTH AMERICAN DATUM OF 1927;

THENCE, BEARING SOUTH 15'31'12" WEST A DISTANCE OF 953.88 FEET TO A POINT ON THE COASTAL CONSTRUCTION LINE OF 1996 AS RECORDED IN OFFICIAL RECORDS BOOK 9951 PAGES 85 THROUGH 108, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA;

THENCE, NORTH 00'45'42" WEST, ALONG SAID COASTAL CONSTRUCTION CONTROL LINE, A DISTANCE OF 1372.31 FEET;

THENCE, LEAVING SAID COASTAL CONSTRUCTION CONTROL LINE, BEARING NORTH 27'52'28" EAST, A DISTANCE OF 508.93 FEET TO THE MEAN HIGH WATER LINE (ELEVATION 1.8' NGVD 1929);

THENCE, BEARING SOUTH 06"13"O3" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 373.82 FEET TO THE POINT OF BEGINNING OF GROIN EASEMENT 27N;

THENCE, LEAVING SAID MEAN HIGH WATER LINE, BEARING NORTH 84'40'57" EAST INTO THE ATLANTIC OCEAN, A DISTANCE OF 117.09 FEET;

THENCE, BEARING SOUTH 05"19"03" EAST, A DISTANCE OF 122.73 FEET;

THENCE, BEARING SOUTH 84'40'57" WEST, A DISTANCE OF 115.61 FEET TO AFORESAID MEAN HIGH WATER LINE;

THENCE, BEARING NORTH 06'00'38" WEST, ALONG SAID MEAN HIGH WATER LINE A DISTANCE OF 122.74 FEET TO THE POINT OF BEGINNING.

ABOVE DESCRIBED PREMISES CONTAIN AN AREA OF 14,280.23 SQUARE FEET OR 0.328 ACRES, MORE OR LESS.

4/19/01 - REVISED GROIN EASEMENTS

to technical standards set Land Surveyors in Chapter uant to Section 472.027, a true and accurate

SIGNATURE AND THE ORIGINAL RAISED SEAL SURVEYOR AND MAPPER.

Suite 400 601 21st Street Vera Beach, Florida 12960 Phane: 561–562–7981 Fax: 561–562–9689 www.Krinley-Harn.com 041000000 SKETCH OF LEGAL DESCRIPTION ¥. K,S, FOR E.C.D. q ¥ BREAKERS PALM BEACH COUNTY 18/13/00

12/13/00

FLORIDA

Attachment A

Page 9 of 16 Pages Easement No. 30606#(5333 -5-0)

17 S23,T43S,R43E LEVERITT HOUSE COASTAL CONSTRUCTION CONTROL 30N S09'23'31"E S85°37'31 138.28' 100 S06.13.03.E APPROXIMATE MEAN HIGH WATER LINE 4/3/00 EL = 1.8. NGVD 29 SCALE IN FEET P.O.B.ATLANTIC GROIN EASEMENT 30N OCEAN P.O.B.S12"43"24"E / 216.02' / GROIN EASEMENT 27N ACCESS ROAD M. 85.00.90N 122.74 27N S84'40'57" 115.61' NO0.45 S05'23'10"E MATCHLINE P.O.B.SEE SHEET 4 PALM BEACH, INC. THE BREAKERS GROIN EASEMENT 25N 185°15'44"E 107.43 P.O.C. "BREAKERS 1929" NORTHING 866,345.460 EASTING 815,538.586 THE LINE ONLY 4/19/01 - REVISED GROIN EASEMENTS 515'31'12"W 953.88' Attachment A Page 10 of 16 Pages Easement No. 30606A(5333-50) SIGNATURE AND THE ORIGINAL RAISED SEASURVEYOR AND MAPPER. Saite 400 601 21st Street Vero Beach, Florida 32950 Phone: 561-562-7981 Fac: 561-562-9689 rew.Kimley-Hann.com Engineering
Planning
and
Environmental
Consultants E.B. No. 696 and Associates, Inc. 0410000 SKETCH OF LEGAL DESCRIPTION K.S. FOR 1 - 100 3 OF 2 BREAKERS PALM BEACH COUNTY 19/13/0 FLORIDA

## GROIN EASEMENT 25N

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND BEING A PORTION OF THE SUBMERGED SOVERIGN LANDS LYING IN THE ATLANTIC OCEAN AND BEING WITHIN SECTION 23, TOWNSHIP 43 SOUTH, RANGE 43 EAST, OF THE TALLAHASSEE BASE MERIDIAN, PALM BEACH, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING FOR REFERENCE AT NATIONAL GEODETIC SURVEY MONUMENT "BREAKERS 1929", HAVING PUBLISHED COORDINATES OF NORTHING 866,345.460, EASTING 815,538.586 NORTH AMERICAN DATUM OF 1927;

THENCE, BEARING SOUTH 15'31'12" WEST A DISTANCE OF 953.88 FEET TO A POINT ON THE COASTAL CONSTRUCTION LINE OF 1996 AS RECORDED IN OFFICIAL RECORDS BOOK 9951 PAGES 85 THROUGH 108, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA;

THENCE, NORTH 00'45'42" WEST, ALONG SAID COASTAL CONSTRUCTION CONTROL LINE, A DISTANCE OF 1372.31 FEET;

THENCE, LEAVING SAID COASTAL CONSTRUCTION CONTROL LINE, BEARING NORTH 27°52'28" EAST, A DISTANCE OF 508.93 FEET TO THE MEAN HIGH WATER LINE (ELEVATION 1.8' NGVD 1929);

THENCE, BEARING SOUTH 06"13"03" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 373.82 FEET;

THENCE, BEARING SOUTH 06'00'38" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 122.74 FEET;

THENCE, BEARING SOUTH 05'23'10" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 139.78 FEET TO THE POINT OF BEGINNING OF HEREIN DESCRIBED GROIN EASEMENT 25N:

THENCE, LEAVING SAID MEAN HIGH WATER LINE, BEARING NORTH 8575'44" EAST, INTO THE ATLANTIC OCEAN, A DISTANCE OF 107.43 FEET;

THENCE, BEARING SOUTH 04'44'16" EAST A DISTANCE OF 120.48 FEET;

THENCE, BEARING SOUTH 8515'44" WEST, A DISTANCE OF 107.43 FEET TO THE AFORESAID MEAN HIGH WATER LINE;

THENCE, BEARING NORTH 04'44'16" WEST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 120.48 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PREMISES CONTAIN AN AREA OF 12,943.64 SQUARE FEET OR 0.297 ACRES, MORE OR LESS.

4/19/01 - REVISED GROIN EASEMENTS

rgol description and sketch of the property made under my supervision and that this lega meets the minimum technical standards set oard of Professional Land Surveyors in Chapter historities Coop pursuant to Section 472.027, that his defining is a true and accurate to the best for my teamledge and belief. notal partitions in the professional control partition in the profession in the partition i

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

041000000 SKETCH OF LEGAL DESCRIPTION K.S. FOR × 읶 **PREAKERS** K.S. PALM BEACH COUNTY 12/13/00 MIL MAUE FLORIDA 12/13/00

Attachment A

Page 11 of 16 Pages

Easement No. 30606A (5333-50)

E.R. Na. 696
Suite 400
601 21st Street
Vero Beach, Florida
32860
Phone: 561-562-7981
Fax 561-562-9689
www.Kinley-Harn.com Engineering
Planning
and
Environmenta
Consultants
E.B. No. 696



## GROIN EASEMENT 23N

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND BEING A PORTION OF THE SUBMERGED SOVERIGN LANDS LYING IN THE ATLANTIC OCEAN AND BEING WITHIN SECTION 23, TOWNSHIP 43 SOUTH, RANGE 43 EAST, OF THE TALLAHASSEE BASE MERIDIAN, PALM BEACH, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING FOR REFERENCE AT NATIONAL GEODETIC SURVEY MONUMENT "BREAKERS 1929", HAVING PUBLISHED COORDINATES OF NORTHING 866,345.460, EASTING 815,538.586 NORTH AMERICAN DATUM OF 1927;

THENCE, BEARING SOUTH 15'31'12" WEST A DISTANCE OF 953.88 FEET TO A POINT ON THE COASTAL CONSTRUCTION LINE OF 1996 AS RECORDED IN OFFICIAL RECORDS BOOK 9951 PAGES 85 THROUGH 108, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA;

THENCE, NORTH 00°45'42" WEST, ALONG SAID COASTAL CONSTRUCTION CONTROLLINE, A DISTANCE OF 1372.31 FEET;

THENCE, LEAVING SAID COASTAL CONSTRUCTION CONTROL LINE, BEARING NORTH 27'52'28" EAST, A DISTANCE OF 508.93 FEET TO THE MEAN HIGH WATER LINE (ELEVATION 1.8' NGVD 1929);

THENCE, BEARING SOUTH 06"13"03" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 373.82 FEET;

THENCE, BEARING SOUTH 06'00'38" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 122.74 FEET;

THENCE, BEARING SOUTH 05°23'10" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 139.78 FEET;

THENCE, BEARING, SOUTH 04'44'16" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 165.81 FEET;

THENCE, BEARING SOUTH 00'00'48" EAST ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 72.85 FEET TO THE POINT OF BEGINNING OF HEREIN DESCRIBED GROIN EASEMENT 23N;

THENCE, LEAVING SAID MEAN HIGH WATER LINE, BEARING SOUTH 89'28'59" EAST, INTO THE ATLANTIC OCEAN, A DISTANCE OF 112.63 FEET;

THENCE, BEARING SOUTH 00'06'29" WEST, A DISTANCE OF 141.45 FEET;

THENCE, BEARING NORTH 89'53'31" WEST, A DISTANCE OF 122.33 FEET TO AFORESAID MEAN HIGH WATER LINE;

THENCE; BEARING NORTH 00'00'48" WEST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 142.25 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PREMISES CONTAIN AN AREA OF 15,954.52 SQUARE FEET OR 0.366 ACRES, MORE OR LESS.

4/19/01 - REVISED GROIN EASEMENTS

This certifies that a legal description and sketch of the property described hereon was made under my supervision and that this legal description and sketch meets the migratum technical standards set forth by the Florida Board of Professighal Land Surveyors in Chapter 61017-6, Florida Administrative Coeff bursuant to Section 472.027, Florida Statute. And that this daying is a true and occurate representation thereof to tide best of my knowledge and belief. Subject to tooks and notations from his memory and belief.

KURT STAFFLNICER, J.S.M. NA 1936
DATE: 4-20-0

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

SKETCH OF LEGAL DESCRIPTION

SOLUTION

BREAKERS

PALM BEACH COUNTY

PLORIDA

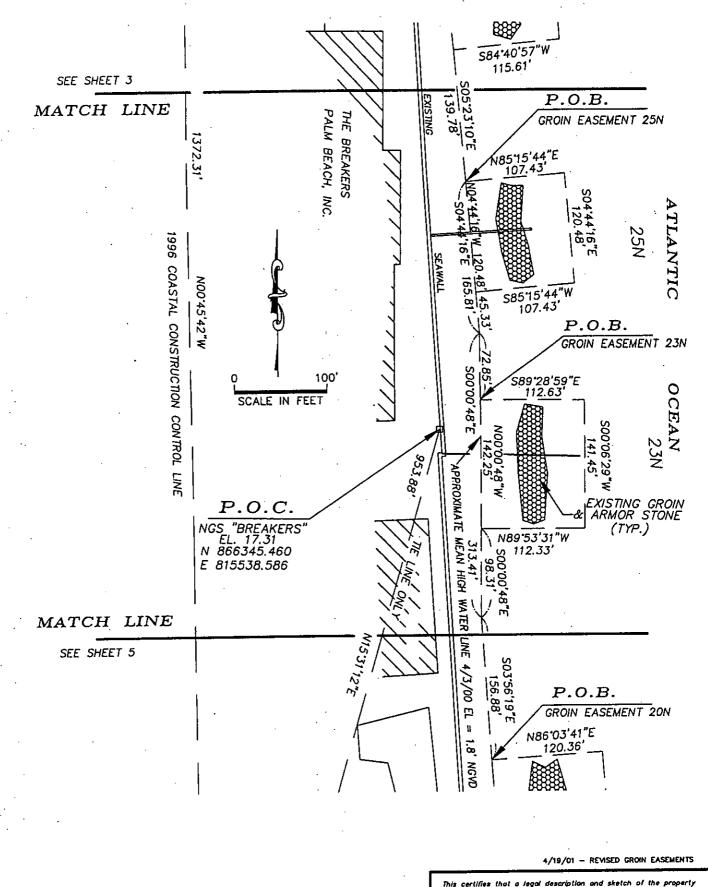
BRISHING

SOLUTION

BRISHING

Attachment A Page 12 of 16 Pages

Easement No. 30606 (5333 -50)



Attachment A
Page 13 of 16 Pages
Easement No. 306064(5333-50)

described hereon was mode under my supervision and that this legal description and sketch meets the minimum technical standards set forth by the Florida Board of Professional Land Surveyors in Chaptel 61G17-6, Florida Administrative Code, present to Section 472.027, Florida Statutes And that this drawiff is a true and accurate representation thereof to the test of any knowledge and belief. Subject to facts and notation of the second.

KURT STAFFLINGER, P.S.M. No. (AB)
DATE: 4-20-01

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

1° .	SKETCH OF LEGAL DESCRIPTION  SKETCH OF LEGAL DESCRIPTION  FOR  EXECUTION	by Hom by Hom hey Hom hey Hom hey Hom his pineering anning d his roument his r
Off 11	BREAKERS K. PALM BEACH COUNTY 12/1: FLORIDA 112/1:	Rect Florida 562-7981 Sec. 7981

## GROIN EASEMENT 20N

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND BEING A PORTION OF THE SUBMERGED SOVERIGN LANDS LYING IN THE ATLANTIC OCEAN AND BEING WITHIN SECTION 23, TOWNSHIP 43 SOUTH, RANGE 43 EAST, OF THE TALLAHASSEE BASE MERIDIAN, PALM BEACH, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING FOR REFERENCE AT NATIONAL GEODETIC SURVEY MONUMENT "BREAKERS 1929", HAVING PUBLISHED COORDINATES OF NORTHING 866,345.460, EASTING 815,538.586 NORTH AMERICAN DATUM OF 1927;

THENCE, BEARING SOUTH 15'31'12" WEST A DISTANCE OF 953.88 FEET TO A POINT ON THE COASTAL CONSTRUCTION LINE OF 1996 AS RECORDED IN OFFICIAL RECORDS BOOK 9951 PAGES 85 THROUGH 108, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA;

THENCE, NORTH 00°45'42" WEST, ALONG SAID COASTAL CONSTRUCTION CONTROL LINE, A DISTANCE OF 1372.31 FEET;

THENCE, LEAVING SAID COASTAL CONSTRUCTION CONTROL LINE, BEARING NORTH 27'52'28" EAST, A DISTANCE OF 508.93 FEET TO THE MEAN HIGH WATER LINE (ELEVATION 1.8' NGVD 1929);

THENCE, BEARING SOUTH 06"13"03" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 373.82 FEET;

THENCE, BEARING SOUTH 06'00'38" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 122.74 FEET;

THENCE, BEARING SOUTH 05'23'10" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 139.78 FEET;

THENCE, BEARING, SOUTH 04'44'16" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 165.81 FEET;

THENCE, BEARING SOUTH 00'00'48" EAST ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 313.41 FEET;

THENCE, BEARING SOUTH 03'56'19" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 156.88 FEET TO THE POINT OF BEGINNING OF HEREIN DESCRIBED GROIN EASEMENT 20N;

THENCE, LEAVING SAID MEAN HIGH WATER LINE, BEARING NORTH 86'03'41" EAST, INTO THE ATLANTIC OCEAN, A DISTANCE OF 120.36 FEET;

THENCE, BEARING SOUTH 03'56'19" EAST, A DISTANCE OF 145.17 FEET;

THENCE, BEARING SOUTH 86'03'41" WEST, A DISTANCE OF 120.36 FEET TO AFORESAID MEAN HIGH WATER LINE;

THENCE, BEARING NORTH 03'56'19" WEST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 145.17 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PREMISES CONTAIN AN AREA OF 17,472.48 SQUARE FEET OR 0.401 ACRES, MORE OR LESS.

4/19/01 - REVISED GROIN EASEMENTS

This certifies that a legal description and sketch of the property described hereon was made under my supervision and that this legal description and sketch meets the minimum technical standards set forth by the Florida Board of Professional Land Surveyors in Chapter 61G17-6. Florida Administrative Coar pursuant to Section 472.027, Florida States, and that this defining is a true and accurate representation thereof to the best in my Rhowledge and belief. Subject by notes and notypions applied hereon.

KURT STAFFYINGER P.S.M. NUMBER

DATE: 4 20 - 01

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

•		
SOCIA AV	SKETCH OF LEGAL DESCRIPTION FOR	DRAWN BY  EMECKED BY  E.C.D.
OF 11	BREAKERS PALM BEACH COUNTY FLORIDA	APPROVED BY K.S. BATE PARTITION 13/13/00 DATE ESPAID 12/13/00

Attachment A
Page 14 of 16 Pages
Easement No. 306067(5333-50)

Engineering
Planning
and
Environmental
Consultants
E.B. No. 696
Suite 400
601 21st Street
Vero Beach, Florida
32960
Phone: 561–562–7981
Fax: 561–562–9689
www.Kimley-Horn.com



## GROIN EASEMENT 16N

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND BEING A PORTION OF THE SUBMERGED SOVERIGN LANDS LYING IN THE ATLANTIC OCEAN AND BEING WITHIN SECTION 23, TOWNSHIP 43 SOUTH, RANGE 43 EAST, OF THE TALLAHASSEE BASE MERIDIAN, PALM BEACH, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING FOR REFERENCE AT NATIONAL GEODETIC SURVEY MONUMENT "BREAKERS 1929", HAVING PUBLISHED COORDINATES OF NORTHING 866,345.460, EASTING 815,538.586 NORTH AMERICAN DATUM OF 1927;

THENCE, BEARING SOUTH 15'31'12" WEST A DISTANCE OF 953.88 FEET TO A POINT ON THE COASTAL CONSTRUCTION LINE OF 1996 AS RECORDED IN OFFICIAL RECORDS BOOK 9951 PAGES 85 THROUGH 108, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA;

THENCE, NORTH 00'45'42" WEST. ALONG SAID COASTAL CONSTRUCTION CONTROL LINE, A DISTANCE OF 1372.31 FEET;

THENCE, LEAVING SAID COASTAL CONSTRUCTION CONTROL LINE, BEARING NORTH 27'52'28" EAST, A DISTANCE OF 508.93 FEET TO THE MEAN HIGH WATER LINE (ELEVATION 1.8' NGVD 1929);

THENCE, BEARING SOUTH 06"13" O3" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 373.82 FEET;

THENCE, BEARING SOUTH 06'00'38" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 122.74 FEET;

THENCE, BEARING SOUTH 05'23'10" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 139.78 FEET;

THENCE, BEARING, SOUTH 04'44'16" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 165.81 FEET;

THENCE, BEARING SOUTH 00'00'48" EAST ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 313.41 FEET;

THENCE, BEARING SOUTH 03'56'19" EAST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 646.60 FEET TO THE POINT OF BEGINNING OF HEREIN DESCRIBED GROIN EASEMENT 16N;

THENCE, LEAVING SAID MEAN HIGH WATER LINE, BEARING NORTH 86 03'41" EAST, INTO THE ATLANTIC OCEAN, A DISTANCE OF 115.32 FEET;

THENCE, BEARING SOUTH 03'56'19" EAST, A DISTANCE OF 88.06 FEET;

THENCE, BEARING NORTH 88'43'25" WEST, A DISTANCE OF 115.80 FEET TO AFORESAID MEAN HIGH WATER LINE;

THENCE, BEARING NORTH 03'56'19" WEST, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 77.54 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PREMISES CONTAIN AN AREA OF 9,548.98 SQUARE FEET OR 0.219 ACRES, MORE OR LESS.

Attachment A
Page 15 of 16 Pages
Easement No. 30606 (5333-50)

4/19/01 - REVISED GROIN EASEMENTS

This certifies that a legal description and sketch of the property described hereon was made under my supervision and that this legal description and sketch meets the minimum technical standards set forth by the Florida Board of Professional and Surveyors in Chapter 61C17-6, Florida Administrative code, gurduant to Section 47.2027, Florida Statutese And that this force legals a true and accurate representation thereof to the tiest of the professional and belief.

KURT STAFFLINGE, P.F.M. No. 649

NOT VAUD WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

alget no	SKETCH OF LEGAL DESCRIPTION FOR	108 NO. 041000000 DRAYR BY R.S. CHECKED BY R.C.D.	Engineering and Environmenta Environmenta Consultants E.H. No. 696 Suite 400 601 21st Str Vero Beach, 22960 Phone: 561-56 Fax: 561-56	Kinley Horn and Associat
OF 11	BREAKERS PALM BEACH COUNTY FLORIDA	K.S.  BATE PRINTED  12/13/00  DATE ISSUED  12/13/13/00	eet Florida 562–7981 52–9689 Harn.com	<b>H</b>

S23,T43S,R43E. SEE SHEET 4 MATCH LINE N00'45'42"W P.O.B.GROIN EASEMENT 20N N86'03'41"E 120.36'\_\_ S03'56'19"E 1996 COASTAL CONSTRUCTION CONTROL LINE NO3:56'19 20N 1372.31 EXISTING BULKHEAD MEAN HIGH WATER LINE 4/3/00 EL = 1.8' NGVD 29 586°03'41"W 120.36' ATLANTIC OCEAN 100 SCALE IN FEET 344.55 646.60 P.O.B.GROIN EASEMENT 16N N86°03'41"E 115.<u>32'</u> 16N N88'36'20"W 115.80' S00'45'42"E 1372.31' ESTEE LAUDER EXISTING SEAWALL

4/19/01 - REVISED GROIN EASEMENTS

Attachment A
Page 16 of 16 Pages
Easement No. 30606A(5333 -50)

This certifies that a legal description and sketch of the property described hereon was made under my supervision and that this legal description and sketch meets the minimum technical standards set forth by the Florida Board of Professional Land Surveyors in Chapter 61G17-6, Florida Administrative Could pursuant to Section 472.027, Florida Stoyules, and that this priving is a true and accurate representation they to the bist of my knowledge and belief.

Subject to apples and manufacture thereon.

KURT STAFFINGER, P.S.M. 60 6496

DATE: 4-20-0

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEA

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5 OF 11	### BREAKERS ### PAPERS  PALM BEACH COUNTY   18/13/00    FLORIDA   18/13/00	dea, hc.  dea, hc.  dea, hc.  forest Florida Florida Florida Florida Florida Florida Florida Harn.com

### SPECIFIC PURPOSE SURVEY SOVEREIGNTY SUBMERGED LAND PRIVATE EASEMENT SECTION 23 - TOWNSHIP 43 SOUTH - RANGE 43 EAST PALM BEACH, FL.

### SURVEY REPORT

- THIS IS A SPECIFIC PURPOSE SURVEY AND IS FOR A SUBMERGED LAND PRIVATE EASEMENT THAT CONFORMS TO THE SLERP PROCEDURES MANUAL - SLER 0950.
- SURVEY BASED ON THE TOWN OF PALM BEACH EROSION CONTROL LINE, FILE NUMBER 2959, AND AS RECORDED IN MISCELLANEOUS BOOK 1, PAGE 34, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.
- THERE MAY BE ADDITIONAL EASEMENTS AND/OR RESTRICTIONS NOT SHOWN ON THIS SURVEY THAT MAY BE FOUND IN THE PUBLIC RECORDS OF PALM BEACH COUNTY. NO SEARCH OF THE PUBLIC RECORDS HAS BEEN PERFORMED BY LIDBERG LAND SURVEYING, INC.
- ALL FIELD-MEASURED CONTROL MEASUREMENTS EXCEEDED AN ACCURACY OF 1' IN 7,500'.
- BEARINGS BASIS: SEE SKETCH. STATE PLANE COORDINATES SHOWN HEREON WERE ESTABLISHED USING TOPCON HYPER GPS RECEIVERS.
- 6. TOTAL SUBMERGED LAND PRIVATE EASEMENT AREA: 40,771 SQUARE FEET OR 0.936 ACRES, MORE OR LESS.
- THIS SURVEY IS PREPARED ONLY FOR THE PARTIES LISTED BELOW AND IS NOT ASSIGNABLE. CERTIFIED TO: GUNSTER BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA
- 8. © COPYRIGHT 2024 BY LIDBERG LAND SURVEYING, INC. THE SKETCH OF SURVEY AND SURVEY REPORT COMPRISE THE COMPLETE SURVEY. THIS SURVEY IS NOT VALID UNLESS THE SKETCH AND REPORT ACCOMPANY EACH OTHER. REPRODUCTIONS OF THIS SURVEY ARE NOT VALID WITHOUT THE ORIGINAL RAISED SEAL, OR DIGITAL SIGNATURE OF A FLORIDA LICENSED SURVEYOR AND MAPPER EMPLOYED BY LIDBERG LAND SURVEYING, INC.

DATE OF ORIGINAL SURVEY: SEPTEMBER 30, 2021 DATE OF MAP:

AUGUST 26, 2024

ABBREVIATIONS:

= EASTING

E.C.L. **EROSION CONTROL LINE** 

EXIST. = **EXISTING** 

FLORIDA DEPARTMENT OF F.D.E.P. =**ENVIRONMENTAL PROTECTION** 

FND. **FOUND** =

M.B. MISCELLANEOUS BOOK

N. NORTHING

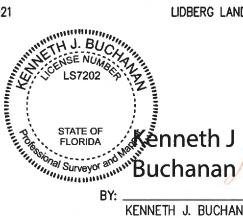
OFFICIAL RECORD BOOK 0.R.B. =

P.B. = PLAT BOOK

P.G. = PAGE

POINT OF BEGINNING P.O.B. = POINT OF COMMENCEMENT P.O.C. =

REFERENCE REF. = STRUCT. = STRUCTURE LIDBERG LAND SURVEYING, INC.



Digitally signed by Kenneth J Buchanan DN: c=US, o=LIDBERG LAND SURVEYING, dnQualifler=A01410D0000018DD1FA86F 000063635, cn=Kenneth J Buchanan Date: 2024.10.02 09:18:47 -04'00'

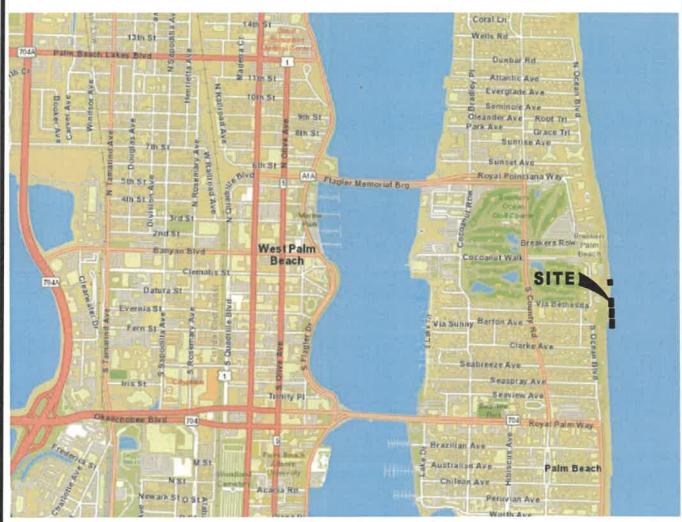
KENNETH J. BUCHANAN PROFESSIONAL SURVEYOR AND MAPPER FLORIDA CERTIFICATE NO. 7202

IDBERG LAND

.B4431 675 West Indiantown Road, Suite 200, Jupiter, Florida 33458 TEL. 561-746-8454

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REF.					
FLD. D.B.	FB.	PG.	JOB	21-098-101	
OFF. A.C.B.	842	64	DATE	08/26/2024	
CKD. K.J.B.	SHEET 1	0F 6	DWG.	A21-098A	

## SPECIFIC PURPOSE SURVEY SOVEREIGNTY SUBMERGED LAND PRIVATE EASEMENT SECTION 23 - TOWNSHIP 43 SOUTH - RANGE 43 EAST PALM BEACH, FL.



VICINITY MAP NOT TO SCALE



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OFF. A.C.B.	842	64	DATE	08/26/2024
CKD. K.J.B.	SHEET 2	OF <b>6</b>	DWG.	A21-098A

## SPECIFIC PURPOSE SURVEY SOVEREIGNTY SUBMERGED LAND PRIVATE EASEMENT SECTION 23 - TOWNSHIP 43 SOUTH - RANGE 43 EAST

PALM BEACH, FL.

### **LEGAL DESCRIPTION**

A PARCEL OF LAND BEING A PORTION OF SUBMERGED SOVEREIGN LANDS OF THE ATLANTIC OCEAN LYING WITHIN SECTION 23, TOWNSHIP 43 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

#### EXTENSION OF EXISTING STRUCTURE:

COMMENCING AT THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION STATION 06-78E-01 1978 AS SHOWN ON THAT TOWN OF PALM BEACH EROSION CONTROL LINE, FILE NUMBER 2959, AND AS RECORDED IN MISCELLANEOUS BOOK 1, PAGE 34, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, SAID STATION 06-78E-01 1978 HAVING COORDINATES OF NORTHING 872397.44, EASTING 971132.99 IN THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM 1983/90; THENCE SOUTH 06"14" EAST, A DISTANCE OF 5925.09 FEET TO FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION STATION BREAKERS 1929 AS SHOWN ON THAT SAID TOWN OF PALM BEACH EROSION CONTROL LINE, FILE NUMBER 2959, SAID STATION BREAKERS 1929 HAVING COORDINATES OF NORTHING 866507.42, EASTING 971776.72 IN THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM 1983/90; THENCE SOUTH 09"39"57" EAST, A DISTANCE OF 484.02 FEET TO THE POINT OF BEGINNING; THENCE NORTH 86"13"47" EAST, A DISTANCE OF 77.00 FEET; THENCE SOUTH 03"46"13" EAST, A DISTANCE OF 88.50 FEET; THENCE SOUTH 03"46"13" WEST, A DISTANCE OF 77.00 FEET TO THE POINT OF BEGINNING.

#### TOGETHER WITH STRUCTURE 1:

COMMENCING AT AFORESAID REFERENCE POINT "A"; THENCE SOUTH 03°56'10" EAST, A DISTANCE OF 259.15 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°09'55" EAST, A DISTANCE OF 77.00 FEET; THENCE SOUTH 00°50'05" EAST, A DISTANCE OF 147.00 FEET; THENCE SOUTH 89°09'55" WEST, A DISTANCE OF 77.00 FEET TO A REFERENCE POINT "B"; THENCE NORTH 00°50'05" WEST, A DISTANCE OF 147.00 FEET TO THE POINT OF BEGINNING.

### TOGETHER WITH STRUCTURE 2:

COMMENCING AT AFORESAID REFERENCE POINT "B"; THENCE SOUTH 11°23'09" EAST, A DISTANCE OF 50.74 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88'46'10" EAST, A DISTANCE OF 77.00 FEET; THENCE SOUTH 01°13'50" WEST, A DISTANCE OF 147.00 FEET; THENCE NORTH 88'46'10" WEST, A DISTANCE OF 77.00 FEET TO A REFERENCE POINT "C"; THENCE NORTH 01°13'50" EAST, A DISTANCE OF 147.00 FEET TO THE POINT OF BEGINNING.

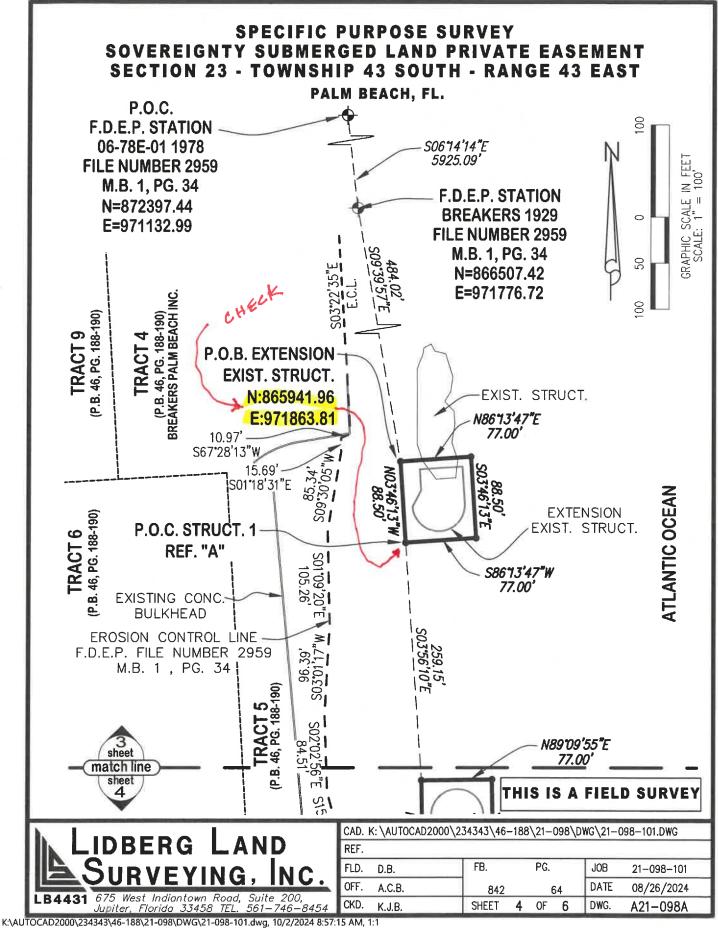
### TOGETHER WITH STRUCTURE 3:

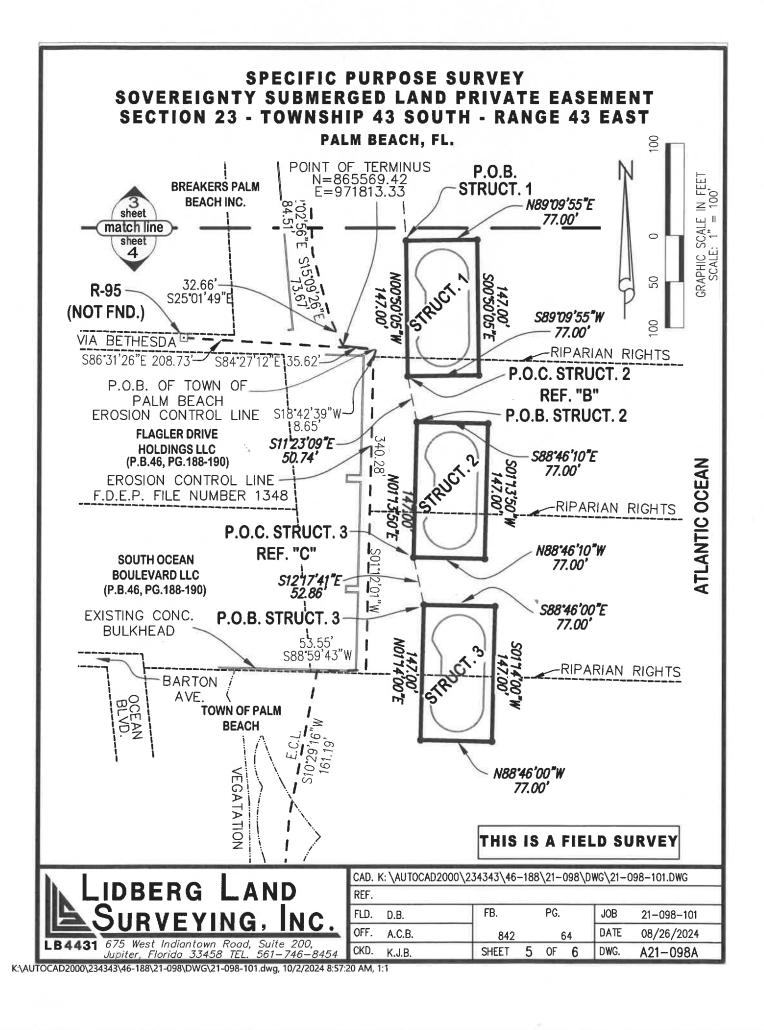
COMMENCING AT AFORESAID REFERENCE POINT "C"; THENCE SOUTH 1217'41" EAST, A DISTANCE OF 52.86 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88'46'00" EAST, A DISTANCE OF 77.00 FEET; THENCE SOUTH 0114'00" WEST, A DISTANCE OF 147.00 FEET; THENCE NORTH 88'46'00" WEST, A DISTANCE OF 77.00 FEET; THENCE NORTH 0114'00" EAST, A DISTANCE OF 147.00 FEET TO THE POINT OF BEGINNING.

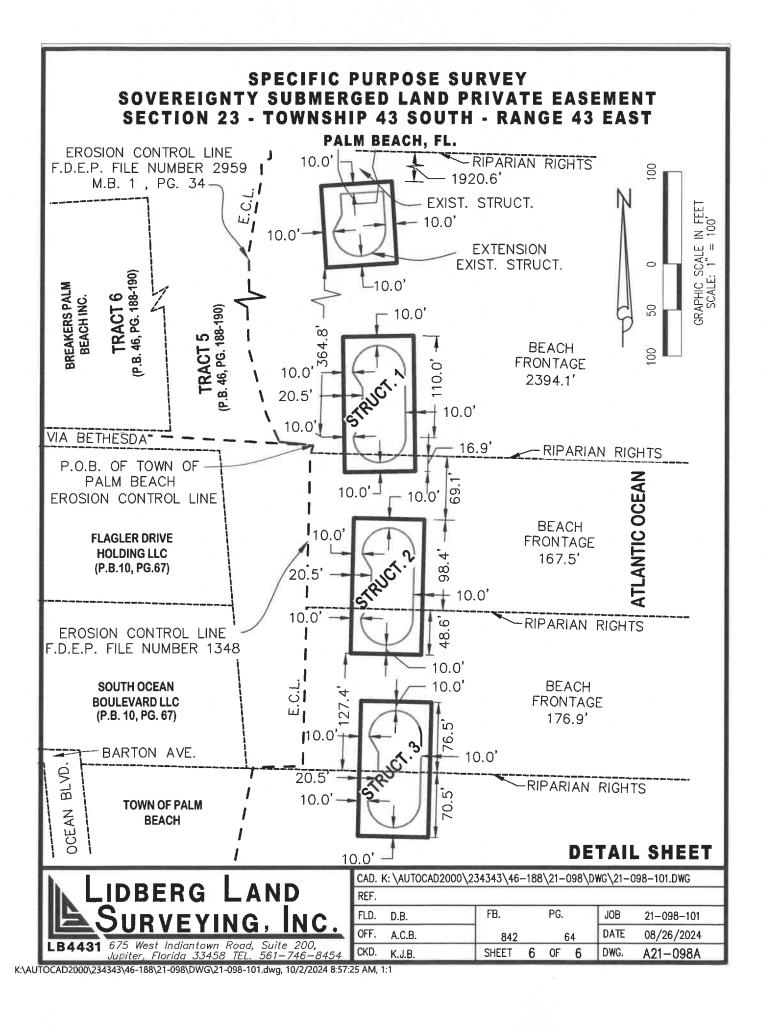
CONTAINING IN ALL 0.936 ACRES OR 40,771 SQUARE FEET MORE OR LESS.

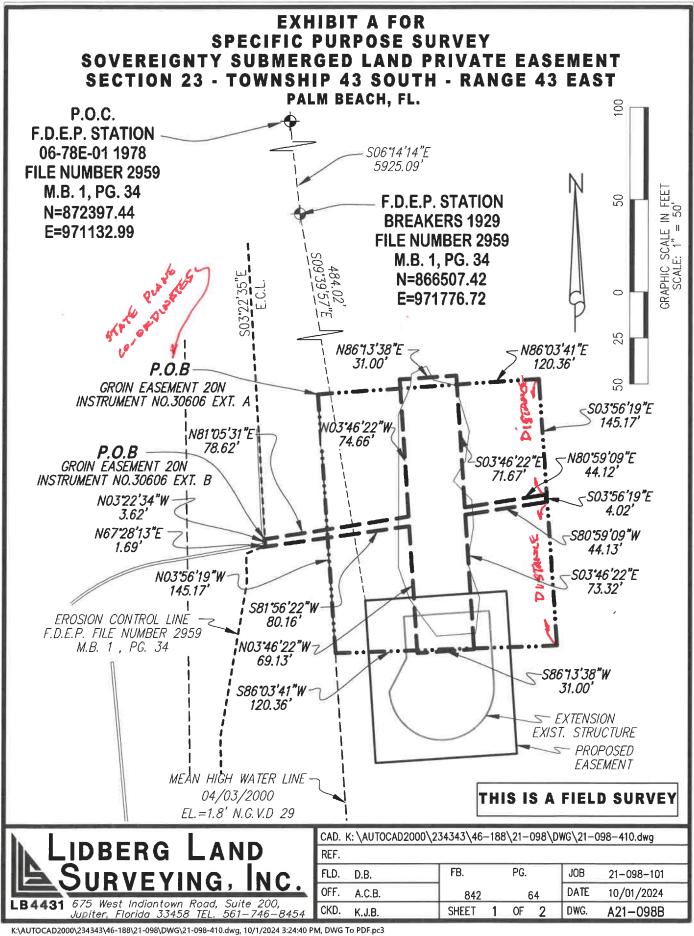
### LIDBERG LAND SURVEYING, INC. B4431 675 West Indiantown Road, Suite 200, Jupiter, Florida 33458 TEL. 561-746-8454

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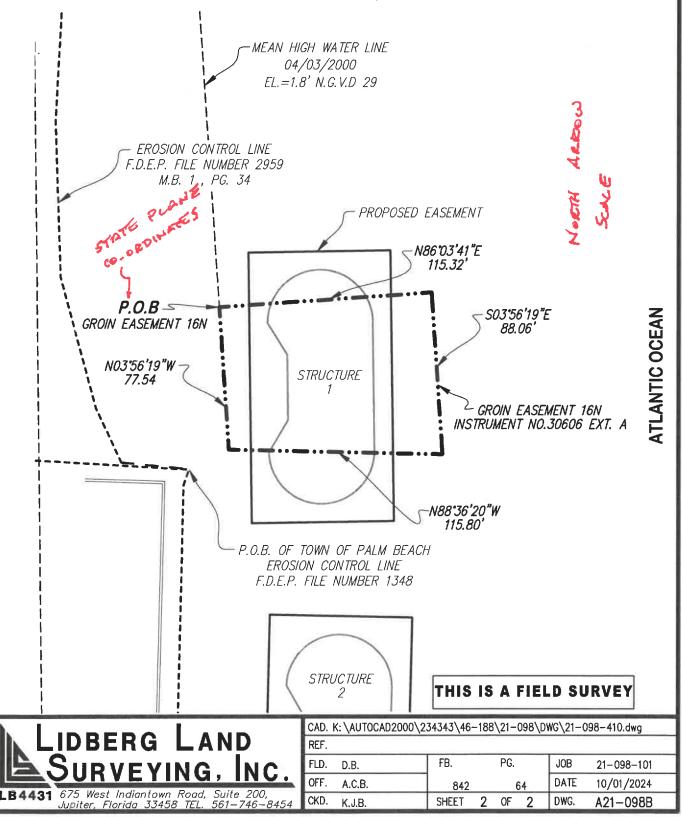








# EXHIBIT FOR SPECIFIC PURPOSE SURVEY SOVEREIGNTY SUBMERGED LAND PRIVATE EASEMENT SECTION 23 - TOWNSHIP 43 SOUTH - RANGE 43 EAST PALM BEACH, FL.



### SURVEY REVIEW CHECKLIST

Applicant: Midtown He	adland Area Erosion C	ontrol Project Perm	ittees File !	No. 0414369-001-JC
DEP/WMD Reviewer:	Zach Boudreau, DEP		Date	:10/08/2024
For: Lease	or Private Easement	√ σ::::me	(> 3,000 sq. ft.) Appro	ved: Yes No

PLEA	ASE ENSUR	RE THIS CHECKLIST IS COMPLETED PRIOR TO THE ST		
Surveyor Review	Agent or Applicant Review	Survey Requirements	Comments: Please fill in highlighted boxes	DEP/ WMD Review
1	<b>V</b>	Surveyor's original signature		V
<b>V</b>	1	Surveyor's original seal		V
1	1	Surveyors certification number	No. 7202	1/
<b>V</b>	1	Name and address of surveyor		1/
<b>V</b>	1	Date of survey	Date: 08/26/2024	1/
<b>V</b>	V	Each submitted	Graphic Scale = 1" = 100'	V
<b>√</b>	<b>V</b>	North arrow		7/
<b>√</b>	<b>V</b>	Location or vicinity map of at least 7.5 minute quad scale		V
<b>/</b>	<b>V</b>	Two 8 ½ by 11 originals		1/
<b>V</b>	✓ <sub>[a]</sub>	Boundaries of Lease/Easement (preempted area) shown,		V
		labeled (structures, mooring, activities)		
✓	✓ [p]	Size and dimensions shown for all existing and proposed overwater structures and activities		
<b>V</b>	<b>V</b>	All structures, moorings and activities are within the Lease/Easement area		
<b>V</b>	✓ [c]	Upland Property (parcel) boundaries shown and labeled. This is not a requirement to survey the upland property; however, the survey must show where the upland property lines intersect the MHWL/OHWL/SUL.		
<b>V</b>	✓ [d]	Primary navigation channel(s) or direction to center of affected waterbody shown		
<b>V</b>	✓  e	Riparian rights line shown and labeled from both sides of property		D/
V	<b>V</b> Iff	Distance from structures/moorings/activities to riparian lines shown		
		Distance from docks and waterward pilings to Lease limits	N/A	1
		Identify each slip and mooring area; provide slip length and width (if needed, cross reference slips to dimensions provided in a table).  Identify any staging area.	N/A	
	□  g	Florida Keys Leases: Show water depths referenced to MLW in Lease area & out to navigation channel	N/A	
<b>V</b>	√ [h]	Linear footage of applicant's shoreline shown and noted	2738' SHEE	16 4
	[1]	Location of any existing shoreline vegetation shown and noted	None	$\square$
	[5]	Location of and distance to any structures within 100 feet of Lease/Easement area shown	N/A	V
<b>✓</b>	[k]	Township 42 South Range 43 East County Palm Beach Water body Atlantic Ocean STR matches survey, Deed, and/or Title Sheet		d
<b>V</b>	<b>✓</b> [k]	Legal description on separate page (if not legible on 8 ½" paper)		