

RESOLUTION NO. 2009- 193

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE CHAIR TO EXECUTE THE PERMISSIVE USE AGREEMENT ALLOWING ST. JOHNS COUNTY AND THEIR CONSULTANT/CONTRACTOR AND THE WATER MANAGEMENT DISTRICT ACCESS TO PROPERTY OWNED BY R&F JACKSONVILLE 44, LLC TO BE USED IN COMPLIANCE WITH THE RESTORATION PLAN.

RECITALS

WHEREAS, the property owner, R&F Jacksonville 44, LLC, has executed and presented to the County a Permissive Use Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof; and

WHEREAS, St. Johns County is conducting improvements to Russell Sampson Road and the Contractor engaged in sediment, erosion and turbidity practices which resulted in the discharge of sediment to a tributary to Sampson Creek which impacted jurisdictional wetlands located on the property owned by R&F Jacksonville 44, LLC; and

WHEREAS, St. Johns River Water Management District (WMD) issued ERP General Consent Order Number 116, attached hereto as Exhibit "B", incorporated by reference and made a part hereof, requiring St. Johns County restore the disturbed and filled wetland habitat to its predisturbance wetland elevation and grade and to successfully install a sufficient amount of vegetative cover; and

WHEREAS, the WMD requires the permission of R&F to access the premises to implement the Restoration Plan and R&F desires to grant such permission to access the premises; and

WHEREAS, the contractor shall be responsible for all costs, fees and fines associated with this Consent Order.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the terms and authorizes the Chair to execute two original Permissive Use Agreements. To the extent that there are typographical errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 3. The Clerk is instructed to record the original Permissive Use Agreement in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 21st day of July, 2009.

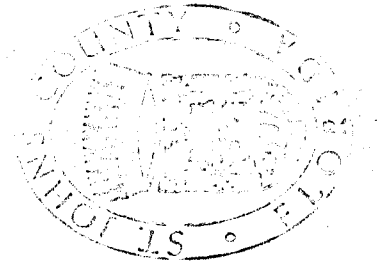
BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Cyndi Stevenson
Chair

ATTEST: Cheryl Strickland, Clerk

By: Pam Halterman
Deputy Clerk

RENDITION DATE 7/23/09



PERMISSIVE USE AGREEMENT

This Permissive Use Agreement ("Agreement") is entered into this ___ day of **June**, 2009 by and between **R&F^{JACKSONVILLE}44, LLC**, a Florida limited liability company ("R&F") and **ST. JOHNS COUNTY**, a political subdivision of the State of Florida ("SJC").

WHEREAS R&F is the owner of certain real property in St. Johns County, Florida more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property") within which lies that portion of the Property depicted in Exhibit B attached hereto and incorporated herein by reference (the "Premises"); and

WHEREAS SJC, in conducting improvements to Russell Sampson Road, **engaged in sediment, erosion, and turbidity practices** which resulted in the discharge of sediment to a tributary to Sampson Creek which impacted jurisdictional wetlands located within the Premises; and

WHEREAS the St. Johns River Water Management District ("District") issued ERP General Consent Order Number 116 requiring, among other actions, that SJC restore the disturbed and filled wetland habitat to its predisturbance wetland elevation and grade and to install successfully a sufficient amount of vegetative cover ("Restoration Plan"); and

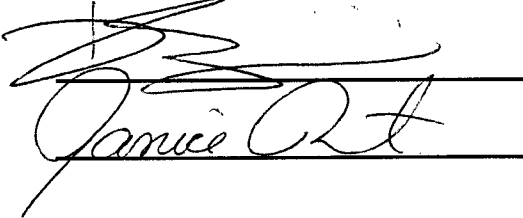
WHEREAS SJC requires the permission of R&F to access the Premises to implement the Restoration Plan and R&F desires to grant such permission to access the Premises to SJC, all on the terms and conditions set forth herein;

NOW, THEREFORE, IT IS AGREED:

1. **TERM.** R&F agrees that SJC may access the Premises for a term of two (2) years, six (6) months commencing **July 1, 2009** at 12:01 a.m. and terminating at 11:59 p.m. **December 31, 2011**.
2. **USE.** The Premises may be accessed by SJC, St. Johns County Consultant/Contractor and the District to enter upon the Premises to implement the Restoration Plan and to allow the District to evaluate SJC's compliance with the Restoration Plan and for no other purpose. The Premises may only be used in compliance with all applicable federal, state and local rules and regulations.
3. **CONDITION OF PREMISES/RESTORATION.** SJC shall maintain the Premises in a clean and orderly manner, normal wear and tear excepted. No permanent installations of any kind other than those required by the Restoration Plan will be permitted. The Premises not be damaged by SJC and shall be in the same condition at the termination of this PUA as at its commencement, but for the changes caused by the implementation of the Restoration Plan. This paragraph shall specifically survive the termination and/or satisfaction of this Agreement.
4. **LIABILITY.** Prior to entering onto the premises, SJC will obtain and provide R&F with evidence of insurance coverage in an amount not less than \$1,000,000 naming R&F as an additional insured insuring R&F from any claim, demand, suit or action against R&F arising out of the use of the Premises by SJC, St. Johns County Consultant/Contractor and the District.

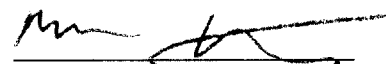
5. DEFAULT. In the event of a default by either party, the non defaulting party shall be entitled to all remedies permitted in law or in equity. The prevailing party in any action shall be entitled to recover from the non defaulting party its reasonable attorneys fees and costs, including on appeal. In the event of any suit arising out of this Agreement, the parties agree that the sole venue for such action shall be in St. Johns County, Florida. This paragraph shall specifically survive termination and/or satisfaction of this Agreement.
6. BINDING EFFECT. The provisions of this Agreement shall be binding on and inure to the benefit of the parties and their respective successors. None of the provisions hereof shall inure to the benefit of any party other than the parties hereto and their respective successors, or be deemed to create any rights, benefits or privileges in favor of any other party except the parties hereto.
7. WHOLE AGREEMENT. This Agreement contains all of the agreements and representations between the parties. None of the terms of this Agreement shall be waived or modified to any extent, except by written instrument signed and delivered by both parties.
8. SEVERABILITY. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.
9. DUPLICATE COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
10. GOVERNING LAW; VENUE. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. **Venue for any administrative or legal action shall be St. Johns County, Florida.**
11. TIME. Time is of the essence for the purposes of construing the terms and conditions of this Agreement.

WITNESS:



WITNESS:

Jacksonville
 R&F 44, LLC


 BY: Marc Roberts as president of
 ITS: Jacksonville 44 LLC, managing member
 of R&F Jacksonville 44 LLC
 PHONE: 561-744-3002

ST. JOHNS COUNTY

 BY: _____
 ITS: _____
 PHONE: _____

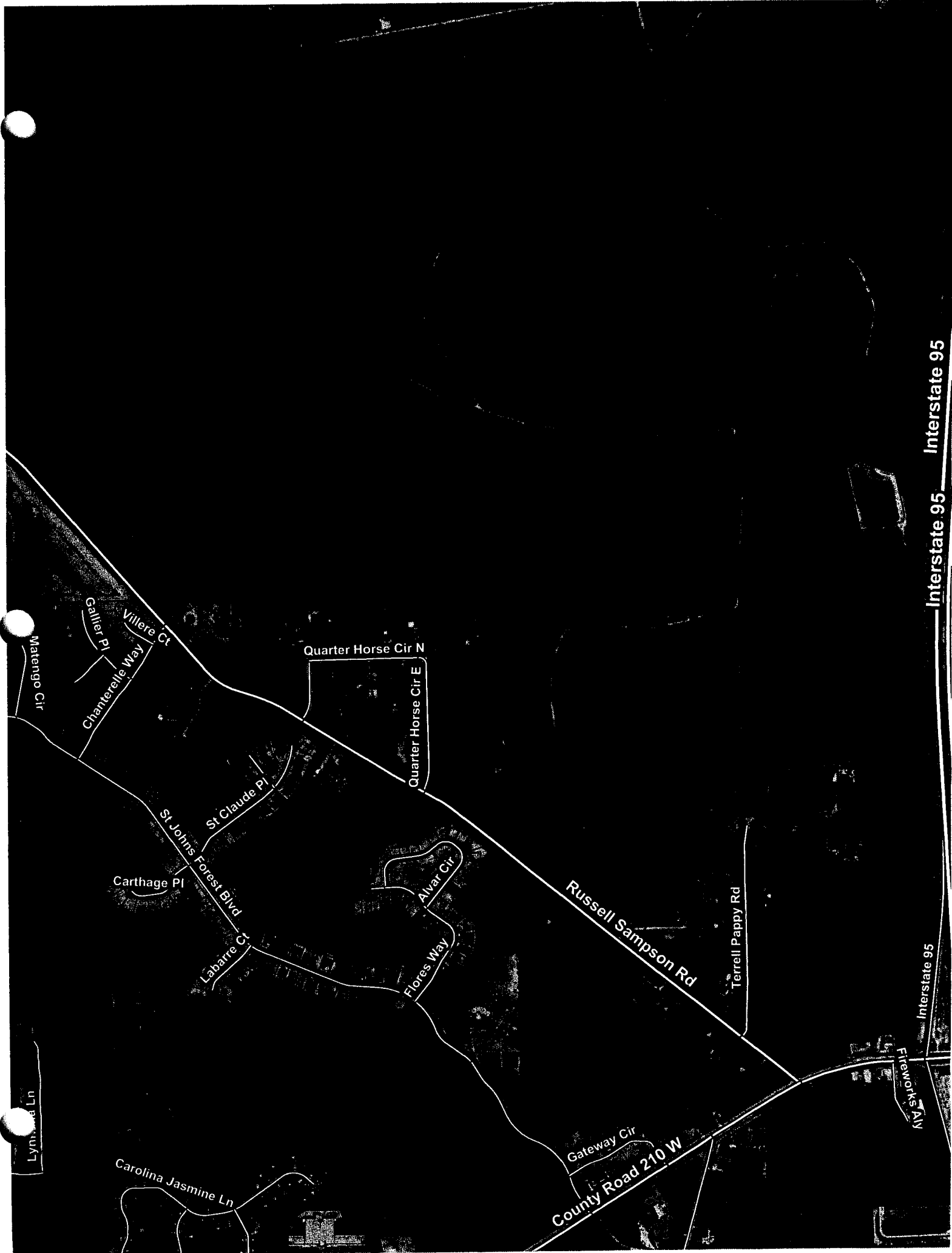
EXHIBIT "A" TO PUA
LEGAL DESCRIPTION

A portion of Sections 7 and 8, together with a portion of Section 46, the Joseph Peavett Grant, all lying in Township 5 South, Range 28 East, St. Johns County, Florida, being more particularly described as follows:

For a Point of Beginning, commence at the Southwest corner of said Section 8; thence North $00^{\circ} 02' 28''$ West, along the Westerly line of said Section 8 and along an Easterly line of the lands described and recorded in Official Records Book 813, page 1729 of the Public Records of said county, 2682.44 feet to its intersection with a Northerly line of said lands, said line also being the Southerly line of the Southeast one-quarter of the Northeast one-quarter of said Section 7; thence South $88^{\circ} 53' 48''$ West, along last said line, 1376.99 feet to its intersection with an Easterly line of said lands, said line also being the Westerly line of said Southeast one-quarter of the Northeast one-quarter of Section 7; thence North $00^{\circ} 25' 28''$ East, along said Westerly line, 1089.87 feet; thence South $65^{\circ} 26' 37''$ East, 1356.86 feet; thence South $77^{\circ} 47' 44''$ East, 1202.67 feet; thence North $81^{\circ} 26' 36''$ East, 3079.25 feet; thence South $35^{\circ} 00' 00''$ East, 2453.26 feet; thence South $65^{\circ} 04' 38''$ West, 3152.75 feet to its intersection with the Southerly line of said Section 8, said line also being the Northerly line of Meehan Estates, as described and recorded in Map Book 20, pages 34 through 35 of said Public Records, thence South $88^{\circ} 57' 51''$ West, along said Southerly line of Section 8, a distance of 2632.12 feet to the Point of Beginning.

The above described lands being subject to any submerged sovereign lands of the State of Florida associated with Durbin and Sampson Creeks.

Containing 346.16 acres, more or less.



Matengo Cir

Galler Pl

Chantrelle Way

Villere Ct

Quarter Horse Cir N

Quarter Horse Cir E

St Johns Forest Blvd

St Claude Pl

Carthage Pl

Labarre C

Alvar Cir

Flores Way

Russell Sampson Rd

Terrell Pappy Rd

Lym Ln

Carolina Jasmine Ln

Gateway Cir

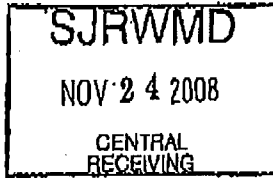
County Road 210 W

Interstate 95

Interstate 95

Interstate 95

Fireworks Aly



ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

ERP GENERAL CONSENT ORDER NUMBER 116

SJR 2008-131

IN RE: Russell Sampson Road & Drainage Improvements
2008-02.

F.O.R. #

St. Johns County
Permit no. 40-109-96535-2
Compliance no. 920677

This ERP General Consent Order is entered into by St. Johns County ("Respondent") located at 2740 Industry Center Road, St. Augustine, FL 32084 and the St. Johns River Water Management District ("District") to settle certain issues between them under Chapter 373, Florida Statutes (F.S.), and Chapters 40C-4, 40C-40, 40C-42 or 40C-400, Florida Administrative Code (F.A.C).

1. The St. Johns River Water Management District is a special taxing district established by Chapter 373, F.S., and charged with the duty to administer and enforce Chapter 373, F.S., and the rules promulgated thereunder, including Chapters 40C-4, 40C-40, 40C-42, and 40C-400, F.A.C.
2. Respondent was issued District permit No. 40-109-96535-2 authorizing improvements to Russell Sampson Road.
3. On September 23, 2008 Respondent violated Section 373.430(1)(b) F.S., and Rule 40C-4.041(1), F.A.C. by: Respondent failed to incorporate all necessary sediment, erosion and turbidity best management practices which resulted in the discharge of sediment to a tributary to Sampson Creek. The sediment plume covered an area of approximately 0.99-acres of jurisdictional wetlands. The sediment plume averaged a depth of approximately one foot. The impact site is at the end of Quarter Horse Circle located adjacent to Russell Sampson Road in Section 8, Township 5 South, Range 28 East in St. Johns County as shown in "Exhibit A".
4. The District has jurisdiction over this matter, Respondent, and the subject property. Sections 373.089(2)(c), 373.413, and 373.416, F.S.
5. The District is authorized under Section 373.129, F.S., to seek injunctive relief and/or a civil penalty not to exceed ten thousand dollars (\$10,000.00), per offense per day, for violations of Chapter 373, F.S., and Chapters 40C-4, 40C-40, 40C-42, or 40C-400, F.A.C.
6. Respondent agrees to pay a settlement penalty of Three Thousand Dollars and No Cents (\$3,000.00) and staff costs of Three Hundred Fifty Dollars and Forty Six Cents (\$350.46). Within ten (10) days of rendition of this consent order, Respondent shall deliver to the District a cashier's check of money order made payable to the St. Johns River Water Management District, 4049 Reid Street, Palatka, FL 32177-2529, in the total amount of Three Thousand Three Hundred Fifty Dollars and Forty Six Cents

(\$3,350.46). Any sums unpaid within the time frame provided herein shall bear interest at the rate of 1.5 percent per month until paid.

7. Respondent agrees to complete the following corrective actions:

- a. Respondent agrees to implement the District approved restoration plan and adhere to all time frames as specified within the restoration plan. A true and correct copy of the restoration plan is attached as Exhibit B.
- b. Respondent shall secure the landowner's written authorization for Respondent to enter onto the property affected by the sediment plume to implement the restoration plan. The authorization shall also allow District staff to enter the property affected by the sediment plume to evaluate Respondent's compliance with this consent order. Respondent shall provide the written authorization to District staff for review and approval prior to initiation of any of the corrective actions.

8. Respondent agrees to pay the District stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely perform any of the corrective actions contained in this Consent Order. A separate stipulated penalty shall be assessed for each failure to timely perform each corrective action in this Consent Order. Within 30 days of written demand from the District, Respondent shall make payment of the appropriate stipulated penalties to the District. Payment shall be by Cashier's check or money order made payable to the St. Johns River Water Management District, 4049 Reid Street, Palmdale, Florida, 3277-2529. The District may make demands for payment at any time after the Respondent fails to timely perform a corrective action. If the District is required to file a lawsuit to recover stipulated penalties under this paragraph, the District will not be foreclosed from seeking civil penalties for the violation of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

9. Respondent shall not undertake any further construction on the subject property except as authorized by District permit and this Consent Order.

10. Respondent shall implement and maintain all erosion and sediment control measures (best management practices) required to retain sediment on-site and to prevent violations of state water quality standards, in accordance with the guidelines and specifications in chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988).

11. The complete and timely performance of the obligation set forth herein shall be dispositive of the violations(s).

12. The District waives its rights to seek judicial imposition of civil or criminal penalties. The Respondent waives its rights, including its defenses, under section 120.69, F.S., to judicial review or an administrative hearing on the terms of this Order.

Approved as to form by Office of General Counsel
(for corrective actions only)

11/2/08 Tara Boonstra
Date Attorney

Respondent

District Staff

11/19/08 [Signature]
Date (Signature)

11/3/08 [Signature]
Date (Signature)

H.P. TOMPKINS, JR.
(Printed Name)
COOZY ENGR.

DALE LOVELL
(Printed Name)
St. Johns River Water
Management District

11/3/08 [Signature]
Date Service Center Director
St. Johns River Water
Management District

Rendered this 25TH day of November, 2008

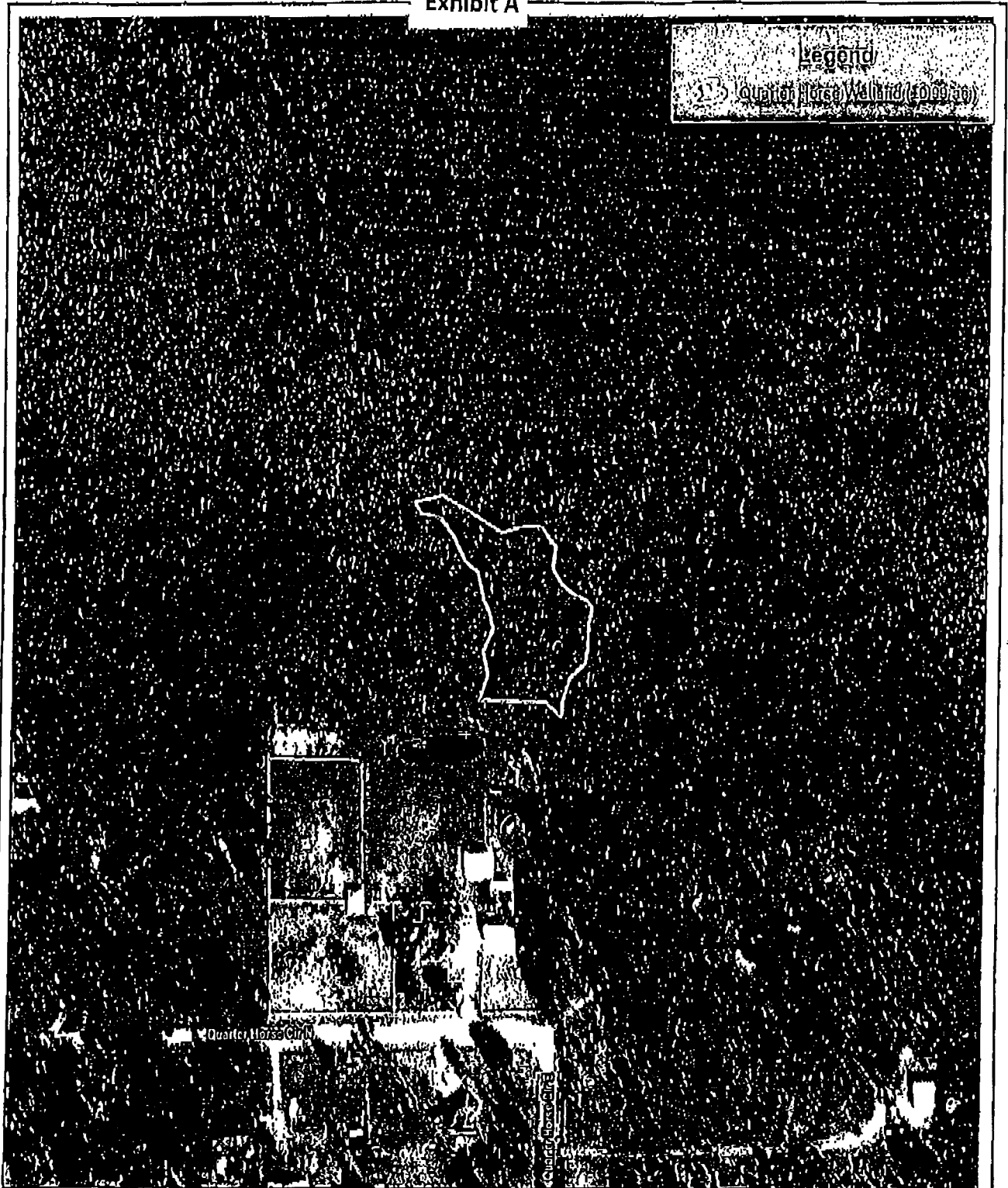
Sandra Bertram for
Robert Nawrocki
District Clerk

Send cashier's check of money order (Do Not Send Cash) to: SJRWMD, Attn. Tara Boonstra, 4049 Reid Street, Palatka, FL 32177-2529.

(NOTE: When remitting payment, please include: ERP General Consent Order Number 920677, F.O.R. 2008-02, and return with a copy of this ERP General Consent Order.)

Location map of impact area

Exhibit A



Legend

Quarter Horse Wallford (10/09/08)



 <p>Environmental Resource Solutions Inc. 1807 The Grange Way, Suite 200 Jacksonville Beach, FL 32250</p>	<p>Quarter Horse Violation True Color Aerial</p>		Project No.: 08119	
			Exhibit No.: 2	
	Source: Aerials Express (2007)	By: ML	Date: 10-24-08	
			Rev. Date:	

restoration plan

St. Johns County

Restoration Plan

(Restoration of Property)

The goal of this plan is to restore the disturbed and filled wetland habitat to its predisturbance wetland elevation and grade and to install successfully a sufficient amount of vegetative cover. Care will be exercised to avoid impacting adjacent wetlands, including but not limited to the use of silt-fencing and other best management practices. The 0.99 acres of wetland will be restored as follows:

Wetland Area (0.99 acres)

- Within 90 days of the rendition of the consent order, Respondent shall have completed the following corrective actions in sequential order with respect to the parcel identified on Exhibit A. Install silt fencing around the perimeter of the restoration area to protect the adjacent areas from erosion and sediment and from vehicular encroachment.
- Remove and excavate all fill material and solid materials from the parcel utilizing small track hoes, bobcat machinery, and manual shovels.
- Grade the area to re-establish the natural land elevations that existed prior to activities in 2008.
- Within 5 days of completion of rough grade, Respondent shall contact District staff to inspect. Respondent shall adjust elevations to final grade as directed by District staff.
- Within 5 days of completion of final grade, Respondent shall contact District staff to inspect. Respondent shall adjust elevations if needed as directed by District staff. Respondent shall obtain District staff's written approval of final grade.
- Within 30 days of obtaining staff approval, Respondent shall plant the wetland area with 110 Bald Cypress (*Taxodium distichum*) trees throughout the restoration area where needed. The trees must be healthy, nursery-grown material, having a minimum height of 5 feet and a minimum size of 3 gallons. The trees should be selectively located and planted in appropriate to the species, hydrologic conditions within the wetland restoration area.
- Within 5 days of completion of planting, Respondent shall contact District staff to allow for inspection and approval of plantings. Within 30 days of District staff's notification, Respondent shall correct any planting deficiencies as directed by District staff. Respondent shall obtain written approval of the planting from the District.

Monitoring

All areas are to be monitored and maintained as follows:

1. Within the wetland restoration area, Respondent shall control invasive and non-native vegetation, including, but not limited to cattails (*Typha spp.*), Chinese Tallow (*Sapium sebiferum*), and primrose willow (*Ludwigia peruviana*), by hand clearing or other methods approved by the District so that they constitute no more than 10% of the aerial cover in each

stratum. Respondent shall control invasive and non-native vegetation as described above until the wetland restoration area has met the success criteria described below.

2. Respondent shall have demonstrated the successful establishment of the wetland restoration area when:
 - At least 80% cover of the planted individuals in each stratum have survived and are showing signs of normal annual growth, based upon standard growth parameters such as height and base diameter, or canopy circumference.
 - At least 80% cover by appropriate wetland herbaceous species have been obtained; and
 - The above criterion has been achieved by the end of a 3-year period following initial planting.
3. Respondent shall monitor the wetland restoration area on an annual basis, with a wetland monitoring report submitted annually August 1 of each year through August 2011. The first annual report is due on August 1, 2009. The annual monitoring reports shall be in conformance with District form EN-55. The reports shall also include photo documentation of the restored area. Photo stations shall be established within the restored area. Photos shall be taken annually at the established stations during the monitoring events and submitted in the annual report.
4. Respondent shall perform regular nuisance and exotic species management, through the manual removal and/or targeted application of herbicides, as labeled and approved by the Florida Department of Agriculture and such management shall be conducted within the wetland restoration area as needed to achieve success criteria.
5. If District staff determines that 50% or greater mortality of planted wetlands species has occurred in any stratum within the wetland restoration area, Respondent shall submit a remediation plan to the District for review and approval no later than 30 days following notification by the District. Within 30 days of the District's written approval of the remediation plan, Respondent shall begin implementation of the plan. The success criteria as stated below or as modified by the remediation plan shall be achieved. If Respondent fails to timely submit a remediation plan or the remediation plan is unacceptable to the District, Respondent shall replant and monitor the restored wetland area in accordance with the specifications provided by the District within 30 days of notification by the District.
6. Successful establishment of the wetland restoration area will have occurred when
 - At least 80% of the planted individuals in each stratum have survived through the monitoring period and are showing signs of normal growth, based upon standard growth parameters such as height and base diameters, or canopy circumference; and
 - At least 80% cover by appropriate wetland herbaceous species has been obtained; and
 - The wetland restoration area exhibits less than 5% coverage by nuisance and exotic species as defined in the Florida Exotic Pest Plant Council's 2003 List of Invasive Species; and
 - The above criteria have been achieved by the end of a 3-year period following the initial planting.

7. If District staff determines that the success criteria described above have not been achieved by August 31, 2011, Respondent shall submit a remediation plan to the District for review and written approval no later than 30 days following notification by the District. The plan must include a narrative describing the type and causes of failure and contain a complete set of plans for the redesign and/or replacement planting of the wetland restoration area so that the success criteria will be achieved. Within 90 days of written District approval, Respondent shall begin implementation of the plan. The success criteria as stated above or as modified by the remediation plan shall be achieved. If Respondent fails to timely submit a remediation plan or the remediation plan is unacceptable to the District, Respondent shall replant and monitor the wetland restoration area in accordance with the specifications provided by the District within 30 days of the notification by the District.