

RESOLUTION NO. 2017- 264

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF A USE AGREEMENT FOR ANASTASIA STATE PARK FOR A BEACH NOURISHMENT PROJECT BETWEEN THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA AND ST. JOHNS COUNTY AND AUTHORIZING THE CHAIR TO EXECUTE THE USE AGREEMENT ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, the Board of Trustees of the Internal Improvement Fund of the State of Florida (“Board of Trustees”) is the owner of certain property commonly known as Anastasia State Park (“Park”); and

WHEREAS, the United States Army Corps of Engineers has plans for beach nourishment project (“project”) in the vicinity of the Park that requires use of a portion the state land of the Park for such purposes as placement and maintenance of a pipeline and equipment and the placement of sand and dredged materials upon that portion of the Park; and

WHEREAS, St. Johns County (“County”) is the “local sponsor” of the project responsible for obtaining certain permissions necessary to complete the work; and

WHEREAS, the Florida Department of Environmental Protection (“DEP”), on behalf of the Board of Trustees has presented a Use Agreement, attached hereto as Exhibit “A” and incorporated herein by reference, to the County, that would allow the proposed use of the Park for the project under certain terms and conditions; and

WHEREAS, the County has reviewed the terms and conditions of the Use Agreement and has determined that approving and accepting the Use Agreement serves the public interests of the citizens of St. Johns County.

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 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 conditions of the Use Agreement between the Board of Trustees and the County and authorizes the Chairman of the Board of County Commissioners to execute the agreement on behalf of the County in substantially the same form and format as attached.

Section 3. The Clerk is instructed to provide the original executed agreement to the DEP.

Section 4. To the extent that there are typographical and/or administrative 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.

PASSED AND ADOPTED by the Board of County Commissioners this 15 day of August, 2017.

**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

By: _____
James K. Johns, Chair

ATTEST: Hunter S. Conrad

By: *Pam Hatten*
Deputy Clerk

RENDITION DATE 8/17/17



Exhibit "A" to Resolution

This Use Agreement was prepared by:
Brad Richardson
Bureau of Public Land Administration
Division of State Lands
Department of Environmental Protection, MS 130
3900 Commonwealth Boulevard,
Tallahassee, Florida 32399-3000
AID# 35036
OAU1

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

USE AGREEMENT

Use Agreement No. U-0441

THIS USE AGREEMENT is hereby granted this ____ day of _____ 2017, by the **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA**, hereinafter referred to as the "GRANTOR" to **ST. JOHNS COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "GRANTEE".

WITNESSETH:

WHEREAS, GRANTOR is the owner of the hereinafter described real estate property, commonly known as Anastasia State Park ("Park" or "premises"), which is managed by the State of Florida Department of Environmental Protection, Division of Recreation and Parks ("DRP") under GRANTOR'S Lease Number 3608; and

WHEREAS, the United States Army Corps of Engineers ("ACOE") is embarking upon a beach nourishment project (the "project") within the vicinity of Anastasia State Park as depicted in Exhibit "A" attached hereto and made part hereof, in which GRANTEE is the "local sponsor" responsible for obtaining such permissions necessary to complete the work; and

WHEREAS, in undertaking the project, GRANTEE desires to temporarily place and maintain pipeline and equipment and to place dredged materials upon that portion of the Park, as depicted in Exhibit "A" attached hereto and made part hereof; and

WHEREAS, DRP has agreed to the proposed use of the Park under this use agreement.

NOW THEREFORE, for the faithful and timely performance of and compliance with the terms and conditions stated herein, GRANTOR does hereby grant to GRANTEE, a use agreement on state-owned lands described below, to wit:

(See Attached Exhibit "A")(the "Use Area")

subject to the following terms and conditions:

1. **DELEGATIONS OF AUTHORITY:** GRANTOR'S responsibilities and obligations herein shall be exercised by the Division of State Lands, State of Florida Department of Environmental Protection.
2. **COMMENCEMENT:** This use agreement and consent shall commence on _____ the effective date of this use agreement and shall be valid for a term of five (5) years and shall end on _____.
3. **EXTENT OF AGREEMENT:** This use agreement covers the use of the premises for the purposes of construction, operation and maintenance of a sand transmission pipeline and placing dredged materials in certain areas within that portion of the Park as depicted in Exhibit "A" of this use agreement. It is understood that heavy equipment will be used to move the pipe, grade and till the beach during the project and at the finish of the project. No other use or activity shall be allowed. All such activities shall be consistent with the Consolidated Joint Coastal Permit Modification and Sovereign Submerged Lands Authorization No. 0295429-003-JN issued by the State of Florida Department of Environmental Protection on September 30, 2016, attached hereto as Exhibit "B" and made a part hereof.
4. **USE OF PROPERTY AND UNDUE WASTE:** This use agreement shall be non-exclusive. GRANTOR, or its duly authorized agent, shall retain the right to enter the state land covered by this use agreement or engage in management activities not inconsistent with the use herein provided for and shall retain the right to grant compatible uses of the state land subject to this use agreement to third parties during the term of this use agreement.

GRANTEE shall not commit undue waste to the subject state-owned lands. Upon termination or expiration of this use agreement GRANTEE shall maintain or restore, as necessary, said state land to substantially the same condition as it was upon the effective date of this use agreement. GRANTEE shall not remove water from any source on state lands including, but not limited to, a water course, reservoir, spring, or well, without the prior written approval of the GRANTOR. GRANTEE shall clear, remove and pick up all debris including, but not limited to, mud containers, oil containers, papers, discarded tools and trash foreign to the work locations and dispose of the same in a satisfactory manner as to leave the work locations clean and free of any such debris. GRANTEE shall not dispose of any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents produced or used in GRANTEE'S operations, on the state land covered by this use agreement or on any adjacent state land or in any manner not permitted by law.

Upon termination or expiration of this use agreement and GRANTEE shall remove all facilities and related structures erected at GRANTEE'S expense.

If the lands described in Exhibit "A" are under lease to another agency GRANTEE shall obtain the consent of such agency prior to engaging in any use of the real property authorized herein.

5. **RIGHT OF INSPECTION:** GRANTEE hereby agrees that GRANTOR, or its duly authorized agent, shall have the right at any and all times to inspect the works and operation of GRANTEE in any matter pertaining to this use agreement.

6. **PROPERTY RIGHTS:** GRANTEE agrees and it is hereby expressly stipulated that this use agreement and consent constitutes permissive use only and the placing of facilities and related structures upon public property pursuant to this use agreement shall not operate to create or vest any property right in said holder and shall not conflict with the conservation, protection and enhancement of said lands.

7. **LIABILITY:** GRANTOR does not warrant or represent that Use Area is safe or suitable for the purpose for which GRANTEE is permitted to use it, and GRANTEE and its agents, representatives, employees, and independent contractors assume all risks in its use. GRANTEE hereby covenants and agrees to investigate all claims of every nature at its own expense and to indemnify, protect, defend, save and hold harmless GRANTOR and the State of Florida, its officers, agents and employees from any and all damages, claims, costs, expense, including attorney's fees, demands, lawsuits, causes of action or liability of any kind or nature arising out of all personal injury or damages attributable to the negligent acts or omissions of GRANTEE and its agents, officers, and employees. GRANTEE shall contact GRANTOR regarding the legal action deemed appropriate to remedy such damage or claims. The GRANTEE shall maintain a program of insurance covering its liabilities as prescribed by Section 768.28, F.S. Nothing herein shall be construed as a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims. In the event GRANTEE subcontracts any part or all of the work performed in the Use Area, the GRANTEE shall require each and every subcontractor to identify the GRANTOR as an additional insured on all insurance policies required by the GRANTEE. Any contract awarded by GRANTEE for work in the Use Area shall include a provision whereby the GRANTEE'S subcontractor agrees to indemnify, pay on behalf, and hold the GRANTOR harmless for all injuries and damages arising in connection with the GRANTEE's subcontract.

8. **ASSIGNMENT:** This use agreement shall not be assigned in whole or in part without the prior written consent of GRANTOR. Any assignment made either in whole or in part without the prior written consent of GRANTOR shall be void and without legal effect.

9. **CUTTING OF TREES:** The cutting or removal of trees on the state land covered by this use agreement is prohibited. In the event that in the course of its operations it shall become necessary for GRANTEE to cut or remove trees, such trees shall be cut or removed only after prior written approval has been received from GRANTOR through its representative and in accordance with the directions lawfully given by its representative, and title to all portions of trees so felled or removed shall be and remain in GRANTOR. All brush and refuse that is necessarily cut in the course of GRANTEE'S operations shall be handled and disposed of in such a manner as to minimize the danger of fires, all in accordance with said regulations and the directions of the representative of GRANTOR. Trees subject to this provision shall be, except for cypress trees, three inches in diameter or greater in size at a height of forty-eight inches from the ground at the base of the tree. Cypress trees subject to this provision shall be any cypress tree of two inches in diameter or greater in size at a height of forty-eight inches from the ground at the base of the cypress tree. However, in no event shall the indiscriminate cutting down, running over or destruction of trees or vegetation of any size be allowed.

10. **TELEPHONE LINES, DITCHES AND FENCES:** All telephone lines, ditches, and fences located within or immediately outside the exterior boundaries of the any state-owned lands shall be protected so far as possible in the conduct of GRANTEE'S operations, and, if damaged by reason of said operations, they shall be repaired immediately by and at the expense of GRANTEE. The representative of GRANTOR may, when in his or her judgment it is necessary to avoid risk of damage by said operations, require GRANTEE to move any such telephone lines or fence from one location to an adjacent location without compensation.

11. **ROADS, TRAILS, FIRE LINES:** Roads, trails, and fire lines shall at all times be kept free of brush and debris resulting from GRANTEE'S operations hereunder. Any road, trail, or firebreak used by GRANTEE in connection with the permitted operations that is damaged (beyond what would be ordinary wear and tear without such use) shall be repaired promptly by GRANTEE at its expense to its original conditions. GRANTEE shall not build any roads or trails without prior written approval of GRANTOR. If any live trees are damaged through carelessness or by fire caused by the employees or contractors of GRANTEE, GRANTEE shall fully compensate GRANTOR for the damage caused thereby.

12. **PREVENTION OF FIRES:** GRANTEE agrees to use every reasonable precaution including, but not limited to, Florida Department of Agriculture and Consumer Services, Florida Forest Service (FFS), standards for fire safety on State Forest lands, to prevent the occurrence of forest fires on state lands and to promptly notify the FFS office or nearest of any such occurrence. In the event a forest fire shall commence in the vicinity of GRANTEE'S operations during the period such operations

are being conducted, or immediately thereafter, it shall be conclusively presumed that such fire occurred as a result of the operations of GRANTEE, unless the contrary is clearly demonstrated to the satisfaction of GRANTOR by GRANTEE, and GRANTEE hereby agrees to pay GRANTOR for any and all damage caused to state lands by such fire, including but not limited to, costs to suppress such fire; costs for the damage to the timber, trees or other forest products (whether standing, cut or fallen); and costs for the damage to any improvements or personal property thereon, caused by or as a result of such fire. GRANTEE shall, at its expense, replant, restock or reforest any area affected by reason of such fire to the satisfaction of GRANTOR or its LESSEE.

13. **MINERAL RIGHTS**: This use agreement does not cover petroleum or petroleum products or minerals and does not give the right to the GRANTEE to drill for or develop the same.

14. **NON-DISCRIMINATION**: GRANTEE shall not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicaps, or marital status with respect to any activity occurring within the area subject to this use agreement or upon lands adjacent to and used as an adjunct of the lands covered by this use agreement.

15. **BEST MANAGEMENT PRACTICES**: GRANTEE shall implement applicable Best Management Practices in compliance with paragraph 18-2.018(2)(h), Florida Administrative Code, for all of the activities conducted under this use agreement, which have been selected, developed, or approved by GRANTOR or other land managing agencies for the protection and enhancement of the state land covered by this use agreement.

16. **ARCHAEOLOGICAL AND HISTORIC SITES**: GRANTEE hereby covenants and agrees that execution of this use agreement in no way affects any of the parties' obligations pursuant to Chapter 267, Florida Statutes. The collection of artifacts or the disturbance of archaeological and historic sites on state-owned lands is prohibited unless prior authorization has been obtained from the Department of State, Division of Historical Resources.

17. **PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES**: Fee title to the land included in this use agreement is held by GRANTOR. GRANTEE shall not do or permit anything to be done which purports to create a lien or encumbrance of any nature against the real property vested in the GRANTOR including, but not limited to, mortgages or construction liens against the real property covered by this use agreement or against any interest of GRANTOR therein.

18. **BREACH OF COVENANTS, TERMS, or CONDITIONS**: Should GRANTEE breach any of the covenants, terms, or conditions of this use agreement, GRANTOR shall give written notice to GRANTEE to remedy such breach within thirty days of such notice. In the event GRANTEE fails to remedy the breach the satisfaction of GRANTOR within thirty days of

receipt of written notice, GRANTOR may either terminate this use agreement and recover from GRANTEE all damages GRANTOR may incur by reason of the breach, including, but not limited to, costs and attorneys' fees or maintain this use agreement in full force and effect and exercise all rights and remedies herein conferred upon GRANTOR.

19. **PARTIAL INVALIDITY**: If any term, covenant, condition or provision of this use agreement shall be ruled by a court of competent jurisdiction, to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

20. **NO WAIVER OF BREACH**: The failure of GRANTOR to insist in any one or more instances upon strict performance of any one or more of the covenants, terms and conditions of this use agreement shall not be construed as a waiver of such covenants, terms and conditions, but the same shall continue in full force and effect, and no waiver of GRANTOR of any one of the provisions hereof shall in any event be deemed to have been made unless the waiver is set forth in writing, signed by GRANTOR.

21. **SOVEREIGNTY SUBMERGED LANDS**: This use agreement does not authorize any use of lands located waterward of the mean or ordinary high-water line of any lake, river, stream, creek, bay, estuary, or other water body or the waters or the air space thereabove.

22. **DUPLICATE ORIGINALS**: This use agreement is executed in duplicate originals each of which shall be considered an original for all purposes.

23. **ENTIRE UNDERSTANDING**: This use agreement sets forth the entire understanding between the parties and shall only be amended with the prior written approval of GRANTOR.

24. **TIME**: Time is expressly declared to be of the essence of this use agreement.

25. **INSURANCE REQUIREMENTS**: During the term of this use agreement GRANTEE shall procure and maintain policies of insurance or a certificate of self-insurance for property damage and public liability in amounts not less than \$200,000 per person and \$300,000 per incident or occurrence for personal injury, death and property damage on the state land covered by this use agreement. Such policies or certificate shall name the GRANTEE GRANTOR and the State of Florida as coinsureds. GRANTEE shall submit written evidence of having procured all insurance policies or certificate required herein prior to the effective date of this use agreement to the State of Florida Department of Environmental Protection, Division of State Lands, Bureau of Public Land Administration, Mail Station 130, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. GRANTEE shall purchase or have purchased all policies of such insurance from a financially responsible insurer duly authorized

to do business in the State of Florida. In lieu of purchasing insurance, GRANTEE may elect to self-insure these coverages. Any certificate of self-insurance shall be issued or approved by the Insurance Commissioner, State of Florida. The certificate of self-insurance shall provide for liability and property damage coverage. GRANTEE shall be financially responsible for any loss due to failure to obtain adequate insurance coverage and the failure to maintain such policies or certificate in the amounts set forth shall constitute a breach of this use agreement.

26. **RIGHT OF AUDIT:** GRANTEE shall make available to GRANTOR all financial and other records relating to this use agreement and GRANTOR shall have the right to audit such records at any reasonable time. This right shall be continuous until this lease expires or is terminated. This use agreement may be terminated by GRANTOR should GRANTEE fail to allow public access to all documents, papers, letters or other materials made or received in conjunction with this use agreement, pursuant to Chapter 119, Florida Statutes.

27. **NOTICE:** All notices given under this use agreement shall be in writing and shall be served by certified mail including, but not limited to, notice of any violation served pursuant to Section 253.04, Florida Statutes, to the last address of the party to whom notice is to be given, as designated by such party in writing. The GRANTEE and the GRANTOR hereby designate their address as follows:

GRANTOR: Department of Environmental Protection
Division of State Lands
Bureau of Public Land Administration, M. S. 130
3800 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

GRANTEE: St. Johns County
500 San Sebastian View
St. Augustine, FL, 32084

28. **COMPLIANCE WITH LAWS:** GRANTEE agrees that this use agreement is contingent upon and subject to GRANTEE obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida or the United States or of any political subdivision or agency of either.

29. **GOVERNING LAW:** This use agreement shall be governed by and interpreted according to the laws of the State of Florida.

30. **SECTION CAPTIONS:** Articles, subsections and other captions contained in this use agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this use agreement or any provisions thereof.

31. **TITLE DISCLAIMER:** GRANTOR does not warrant or guarantee any title, right or interest in or to the property described in Exhibit "A" attached hereto.

32. **SPECIAL CONDITIONS:** The following special conditions shall apply to this use agreement:

A. Meet for a mandatory pre-work conference with Park Manager and DRP within two (2) weeks after the project has been awarded to the ACOE's contractor. Issues to discuss will include, but are not limited to, park access, operations, animal protection and relocation, vegetation restoration after demobilization, and other resource management issues. GRANTEE shall also coordinate with the Park Manager and DRP for future weekly meetings during the sand placement and dredging to discuss these and any other issues that may arise, including visitor safety, and resource management.

B. Notify Park Manager at least three (3) weeks prior to mobilizing equipment and piping so that the protected Anastasia Island Beach Mouse trapping can be completed in the impacted areas.

C. Notify the Park Manager twenty-four (24) hours in advance before commencing pumping operations, or changing staging areas.

D. Meet with the Park Manager or his designee regarding after hour permits for entering the Park during after Park operating hours.

E. Help protect Park facilities, natural communities, and other natural resources by accessing the Park at the points designated by the Park Manager and driving only on those areas of beach as identified by the Park Manager.

F. Keep fuel and other poisonous, hazardous, or flammable liquids, and powders in a double walled container with a catch basin, and conduct refueling operations within approved staging area only.

G. Establish a safe zone by providing signage and fencing as needed to prevent access to the staging area, the worksite and areas worked by heavy equipment.

H. Follow the Park Manager's instructions concerning special Park rules with special regards to protection of the Park's plants, animals, vehicular traffic and Park visitors. Take all necessary safety measures as determined by the Park Manager to ensure the safety of Park visitors during all dredging and fill processes.

I. If needed, provide and maintain crossings for vehicular and pedestrian access over sections of the pipeline not within the project safe zone. The number of crossings and locations will be determined on site by GRANTEE and Park Manager prior to the project award. However, once the project has begun, additional crossings or underpasses for shorebirds may be required,

if shorebirds nest and fledge their young on the landward side of the pipeline. GRANTEE agrees to cooperate with the Park Manager to determine where the additional crossings and underpasses will go.

J. Work cooperatively with the Park Manager and district biologists to resolve issues regarding safety, access, or environmental concerns resulting from this project.

K. Not undertake any activity within 200 feet of nesting shorebirds, including, but not limited to, least terns and Wilson's plovers.

L. Prior to laying the pipeline or storing materials and equipment on the premises, GRANTEE shall survey between the frontal dune and Salt Run in the vicinity of proposed pipeline placement or stockpile areas to document existing grade and vegetation. Damages caused by the installation or removal of the pipeline, or by breach of the pipeline during sediment pumping operations, shall be restored by GRANTEE with all affected areas restored to pre-existing conditions. This may include removal of accidentally deposited materials, restoring grade, and planting native vegetation in the areas of damage.

M. Ensure that access to the Park or any portion of the Park is not disrupted while construction is underway or at any time during the term of this use agreement. In the event, due to the nature of activities related to the project, it becomes necessary to disrupt access to the Park or a portion of the Park for a limited period of time, GRANTEE, at its sole cost and expense, shall provide reasonable alternative access to the disrupted areas.

N. Keep all equipment, work materials and workers no less than 15 feet seaward from the toe of the primary dune at all times.

O. Stop work in the event the Park Manager observes conditions in which the general public or cultural and natural resources are deemed to be in imminent danger. GRANTEE shall be instructed by Park Manager to stop work on that particular activity. However, the Park Manager may only stop that particular activity which is the source of danger and not the entire operation. The Park Manager will also notify GRANTEE'S contracting officer or project manager if such an event should occur.

[Remainder of page intentionally left blank;

Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Use Agreement to be executed on the day and year first above written.

WITNESSES:

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

Original Signature

(SEAL)

Print/Type Name of Witness

BY:

Cheryl C. McCall, Chief, Bureau of Public Land Administration,
Division of State Lands, State of Florida 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

Original Signature

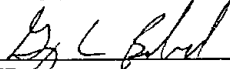
Print/Type Name of Witness

"LESSOR"

**STATE OF FLORIDA
COUNTY OF LEON**

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Cheryl C. McCall, Chief, Bureau of Public Land Administration, Division of State Lands, State of Florida 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. She is personally known to me.

APPROVED SUBJECT TO PROPER EXECUTION:


DEP Attorney

08-03-2017

Date

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No. _____

ST. JOHNS COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS FLORIDA

By: _____ (SEAL)

James K. Johns
Print/Type Name

Title: Chair

OFFICIAL SEAL

Attest By: _____

Hunter S. Conrad
Print/Type Name

Title: Deputy Clerk

"GRANTEE"

STATE OF FLORIDA _____
COUNTY OF ST JOHNS

The foregoing instrument was acknowledged before me this _____ day of _____, 20 __, by James K. Johns and Hunter S. Conrad, as Chair and Deputy Clerk, respectively, on behalf of the Board of County Commissioners of St. Johns County, Florida. They are personally known to me or who produced _____ as identification.

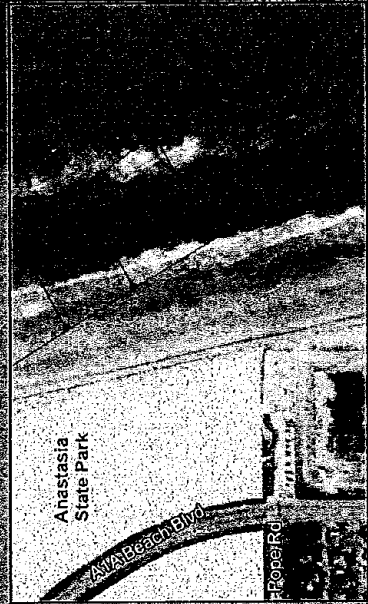
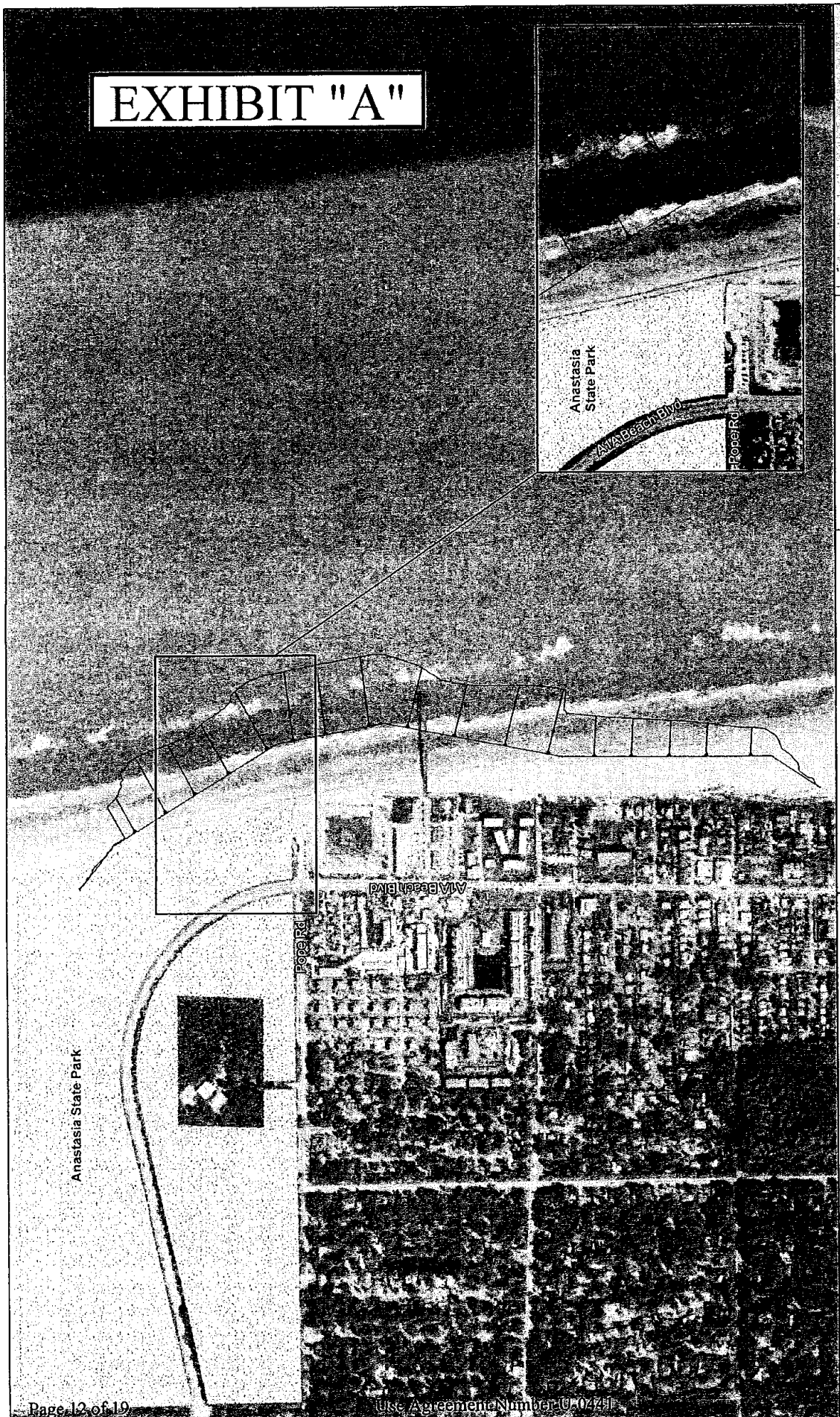
Notary Public, State of Florida

Print/Type Notary Name

Commission Number:

Commission Expires:

EXHIBIT "A"



Legend
 — Beach Berm
 Florida State Parks Boundaries

St. John's SPP Project



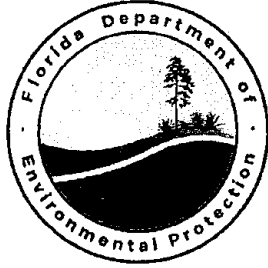
Map Author: E. Boller
 Map Reviewer: Jodie Conroy
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**US ARMY CORPS OF ENGINEERS
 JACKSONVILLE DISTRICT**

AID# 35036

EXHIBIT "B"



Florida Department of Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Jonathan P. Steverson
Secretary

September 30, 2016

Paul Karch
Environmental Branch
U.S. Army Corps of Engineers
P.O. Box 4970
Jacksonville FL 32232

Permit Modification No. 0295429-003-JN
Permit No. 0295429-002-JC, St. Johns County
St. Johns County Beach Nourishment

Dear Mr. Karch:

Your request to modify Permit No. 0295429-002-JC was received on January 15, 2016, and has been reviewed by Florida Department of Environmental Protection (Department) staff. Permit No. 0295429-002-JC was issued on September 26, 2011 for a term of 10 years. The permit authorizes a one-time dredging of the St. Augustine Inlet ebb shoal borrow (which occurred in 2012) and periodic dredging of the federal navigation channel and Vilano Point. You have requested to update the permit to also allow for periodic dredging of the ebb shoal borrow within the volume limitations established in the *Inlet Management Plan (IMP) for St. Augustine Inlet*, which was adopted pursuant to Sections 161.142 and 161.143, Florida Statutes and the Settlement Agreement for OGC Case No. 11-0680 on September 19, 2011.

You also seek to extend the expiration date of the permit by five years in accordance with Rule 62B-49.011(5), Florida Administrative Code (F.A.C.), and to update the Department's outdated contact information.

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. 0295429-002-JC at the following website:

ftp://ftp.dep.state.fl.us/pub/ENV-PRMT/st_john/issued/0295429_St_Johns_County_Shore_%20Protection/002_JC/Intent/Intent%20St%20Johns%20SPP%20Nourishment%204-20-11.pdf

Notice of Permit Modification
Permit Modification No. 0295429-003-JN
St. Johns County Beach Nourishment
Page 2 of 7

Staff Assessment

At the time the permit was issued, the IMP did not yet exist. The IMP was subsequently established in close cooperation with the public including all parties to the above-referenced settlement agreement and was finalized without challenge. The IMP apportions the volume of sand taken from the inlet ebb shoal to be used as a supplemental sand source to construct and maintain beach nourishment projects to the north and south of the St. Augustine Inlet. The referenced permit (i.e., Permit No. 0295429-002-JC) only applies to the beach south of the inlet (i.e., the St. Johns County Beach Nourishment). Modifying this permit to allow for the allotted volume to be placed to the south will in no way affect the sand allotment for the north, which is expected to occur in the future.

Extending the expiration date of the existing permit from September 26, 2021 to September 26, 2026 is consistent with Rule 62B-49.011(5), F.A.C. When the existing 10-year permit was issued, the duration of a Joint Coastal Permit (JCP) was limited to a maximum of 10 years. However, on November 19, 2015, Rule 62B-49.011(5), F.A.C., was revised to allow the Department to extend the duration of an active JCP for up to 15 years.

Updating the contact information is a necessary modification as the Department and the permittee prefer to exchange information via electronic mail to increase efficiency and responsiveness.

After thorough review of your application, staff has determined that the proposed modification does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting sea turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Furthermore, the modification does not change the project purpose or siting, and will not result in the addition or removal of any structures or a seaward advancement of the project.

Modification

Based on the foregoing, **IT IS HEREBY ORDERED**, that Permit No. 0295429-002-JC is modified as follows (~~strike throughs~~ are deletions, underlines are additions):

PERMIT INFORMATION:

Permit Number: 0295429-002-JC

Project Name: St. Johns County Beach Nourishment

County: St. Johns

Issuance Date: September, 26, 2011

Notice of Permit Modification
Permit Modification No. 0295429-003-JN
St. Johns County Beach Nourishment
Page 3 of 7

Expiration Date: September 26, ~~2026~~ 2021

PROJECT DESCRIPTION:

The authorized activity is to periodically place ~~approximately 2.1 million cubic yards~~ of sand on the St. John's County, Florida Federal Shore Protection Project on St. Augustine Beach. The sand will be dredged from the St. Augustine Inlet as described below. Fill placement shall not exceed the berm templates shown in the permit drawings and shall not exceed the volume limitations stated in the St. Augustine Inlet Management Plan (IMP) approximately 2.1 million cubic yards. ~~This ten (10) year permit is limited to a one time use of the ebb shoal borrow area, unless otherwise authorized by a formal permit modification approved by the Department or through another process authorized by State law.~~ The elevation of the beach berm will be approximately +9.0 feet NAVD 88, with a seaward slope of 1:20 (vertical:horizontal). The dredged material will be transported via pipeline to the beach placement site. The first borrow areas to be dredged shall be from within the Federally-authorized navigation channels, a 200-ft widener along the south side of the navigation channel, and that portion of Vilano Point (also referred to as Porpoise Point) that encroaches into the navigation easement. After all available material from within these areas has been transported to the beach, then dredging shall commence at the southern boundary of the borrow area in the south lobe of the ebb shoal and proceed north through any or all the various sub-areas, but dredging shall not extend north of the navigation channel.

SPECIFIC CONDITIONS:

2. All reports or notices relating to this permit shall be sent to the ~~DEP, Bureau of Beaches and Coastal Systems, Department's~~ JCP Compliance Officer, ~~3900 Commonwealth Boulevard, Mail Station 300, Tallahassee, Florida 32399-3000~~ (e-mail address: JCP Compliance@dep.state.fl.us).

6. **Pre-Construction Conference.** 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 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:

~~DEP, Bureau of Beaches & Coastal Systems
JCP Compliance Officer
Mail Station 300
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000~~

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phone: (850) 414-7716
fax: (850) 414-7725
e-mail: JCPCompliance@dep.state.fl.us

~~DEP Northeast District Office~~
~~Submerged Lands & Environmental Resources~~
~~7825 Baymeadows Way~~
~~Suite B200~~
~~Jacksonville, FL 32256-3560~~
phone: (904) 256-1700
fax: (904) 448-4366
email: meng.lim@dep.state.fl.us

Imperiled Species Management Section
Florida Fish & Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600
phone: (850) 922-4330
fax: (850) 921-4369
email: marine.turtle@myfwc.com

41. 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 Department's ~~Bureau of Beaches and Coastal Systems (BBCS) in Tallahassee via email~~ JCP Compliance Officer at [JCP Compliance@dep.state.fl.us](mailto:JCPCompliance@dep.state.fl.us) and include in the subject line, "TURBIDITY EXCEEDANCE", along with the Project Name and Permit Number. ~~Also notify the Department's Northeast District office.~~

By copy of this letter, we are notifying all necessary parties of the modification. The only parts of the permit that are altered by this modification are those stated above. This letter must be attached to the original permit.

PUBLICATION OF NOTICE

The Department has determined that the proposed activity, because of its size, potential effect on the environment or the public, controversial nature, or location, is likely to have a heightened public concern or likelihood of request for administrative proceedings. Therefore, pursuant to Subsection 373.413(4), F.S. and section 5.5.5.3 of Applicant's Handbook, Volume I, you (the applicant) are required to publish at your own expense this permit modification (Modification

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No. 0295429-003-JN). The notice is required to be published one time, in the legal ad section in a newspaper or newspapers of general circulation in the areas affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. The applicant shall provide proof of publication to:
Robert.Halbert@dep.state.fl.us

The proof of publication shall be provided to the above email within 30 days of issuance of intended agency action, or within 21 days of the date of publication, whichever occurs sooner. Failure to publish the notice and provide proof of publication within the allotted time shall be grounds for denial of the modification.

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 further 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 Rule 28-106.201, 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, any email address, any facsimile number, 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

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- (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. 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 must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the 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. Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication. 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 Sections 120.569 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, before the applicable 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.

US ARMY CORPS OF ENGINEERS
JACKSONVILLE DISTRICT



Map Author: L. Baker
Map Revision: Jacobs Group
Data Source: 7/2002/17
Original Project: S.A. Baker, JPB
Revised: 1/2003/17/2013
Revision: 1/2003/17/2013
Map Scale: 1:12,500
Map Projection: UTM
Map Datum: NAD 83
Map Contour Interval: 10 Feet



St. John's SPP Project

Legend

- Beach Berm
- Florida State Parks Boundaries

