

**Lee County Board Of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20030263

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Authorize Chairman to approve by signature the attached Easement No. 31107 and Use Agreement Nos. U-0309 & U-0310. These documents bind the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and Lee County into an agreement for the use of upland state park lands during construction and maintenance of the Lovers Key and Gasparilla Island beach restoration.

**WHY ACTION IS NECESSARY:** Florida Administrative Code 18-2.018(2)(o) requires agreements for use of state uplands between local governmental agencies and the State of Florida to be made by the local governing board and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

**WHAT ACTION ACCOMPLISHES:** Easement No. 31107 grants Lee County authorization to construct and maintain a groin structure on state property in Gasparilla Island State Park as part of the Gasparilla Island beach restoration. Use Agreements Nos. U-0309 & 0310 grant Lee County permission to temporarily place and maintain dredged material, pipeline and equipment on state lands in Gasparilla Island State Park and Lovers Key State Park respectively, as necessary to construct and maintain Lovers Key and Gasparilla Island beach restoration.

**2. DEPARTMENTAL CATEGORY:  
COMMISSION DISTRICT #:**

*C8A*

**3. MEETING DATE:**

*03-18-2003*

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:  
(Specify)**

- STATUTE
- ORDINANCE
- ADMIN. CODE FAC 18-2.018
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT Public Works
- C. DIVISION Natural Resources
- BY: Roland Ottolini, P.E. Res. Dir.

**7. BACKGROUND:** In accordance with Florida Administrative Code 18-2.018(2)(o), resolution 08-27-20002 approved a formal request to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida for activities associated with beach restoration on state owned uplands. The execution of these documents binds Lee County and the State of Florida in a written agreement for these activities. The easement has a term of 50 years and it is anticipated that the use agreements will have a term of 5 years.

Upon the Board of County Commissioner's review and approval of the instruments they will be forwarded for the State's execution. Original executed documents for the use agreements and easement will then be returned to Lee County for recording in the public records.

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services Risk				G County Manager
					OA	OM		GC	
<i>[Signature]</i> 3-3-03	<i>[Signature]</i>			<i>[Signature]</i> 3/3/03	<i>[Signature]</i> 3/4/03	<i>[Signature]</i> 3/4/03	<i>[Signature]</i> 3/4/03	<i>[Signature]</i> 3-4-03	<i>[Signature]</i> 3-3-03

**10. COMMISSION ACTION:**

- \_\_\_\_\_ APPROVED
- \_\_\_\_\_ DENIED
- \_\_\_\_\_ DEFERRED
- \_\_\_\_\_ OTHER

**Rec. by CoAtty**  
 Date: *3/3/03*  
 Time: *11:15 am*  
 Forwarded To:  
 Cty. Admin  
*3-4-03 9:20AM*

**RECEIVED BY**  
**COUNTY ADMIN. *PM***  
*3-4-03*  
*9:40*  
 COUNTY ADMIN.  
 FORWARDED TO:  
*3/4 500*

OAE1

(0.46 acre)

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

EASEMENT

LEE COUNTY

Easement Number 31107

THIS INDENTURE, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, acting pursuant to its authority set forth in Section 253.03, Florida Statutes, hereinafter referred to as "GRANTOR", and LEE COUNTY, FLORIDA, hereinafter referred to as "GRANTEE".

WHEREAS, GRANTOR is the owner of the hereinafter described real property, which is managed by the Florida Department of Environmental Protection, Division of Recreation and Parks under Lease Number 3338; and

WHEREAS, GRANTEE desires an easement across the hereinafter described real property for construction and maintenance of a groin structure; and

WHEREAS, the managing agency has agreed to the proposed use of this land under this instrument.

NOW THEREFORE, GRANTOR, for and in consideration of mutual covenants and agreements hereinafter contained, has granted, and by these presents does grant, a non-exclusive easement unto GRANTEE over and across the following described real property in Lee County, Florida, to-wit:

(See Exhibit "A" Attached)

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, Department of Environmental Protection.
2. TERM: The term of this easement shall be for a period of fifty years commencing on \_\_\_\_\_ and ending on \_\_\_\_\_, unless sooner terminated pursuant to the provisions of this easement.
3. USE OF PROPERTY AND UNDUE WASTE: This easement shall be limited to the construction and maintenance of a groin structure upon and across the property described in Exhibit "A" during the term of this easement. This easement shall be non-exclusive. GRANTOR, retains the right to engage in any activities on, over, across or below the easement area which do not unreasonably interfere with GRANTEE'S exercise of this easement and further retains the right to grant compatible uses to third parties during the term of this easement.

GRANTEE shall dispose of, to the satisfaction of GRANTOR, all brush and refuse resulting from the clearing of the land for the uses authorized hereunder. If timber is removed in connection with clearing this easement, the net proceeds derived from the sale of such timber shall accrue to GRANTOR. GRANTEE shall take all reasonable precautions to control soil erosion and to prevent any other degradation of the real property described in Exhibit "A" during the term of this easement. GRANTEE shall not remove water from any source on this easement including, but not limited to, a watercourse, reservoir, spring, or well, without the prior written approval of GRANTOR. GRANTEE shall clear, remove and pick up all debris including, but not limited to, 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, its agents, successors, or assigns, shall not dispose of any contaminants including but not limited to, hazardous or toxic substances, petroleum, fuel oil, or petroleum by-products, chemicals or other agents produced or used in GRANTEE'S operations, on this easement or on any adjacent state land or in any manner not permitted by law. GRANTEE shall be liable for all costs associated with any cleanup of the subject property which is a result of GRANTEE'S operations and use of the subject property.

Upon termination or expiration of this easement GRANTEE shall restore the lands over which this easement is granted to substantially the same condition as existed on the effective date of this easement. GRANTEE agrees that upon termination of this easement all authorization granted hereunder shall cease and terminate.

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.

4. ASSIGNMENT: This easement 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.

5. RIGHT OF INSPECTION: GRANTOR or its duly authorized agents, representatives or employees shall have the right at any and all times to inspect this easement and the works of GRANTEE in any matter pertaining to this easement.

6. 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 this easement or upon lands adjacent to and used as an adjunct of this easement.
7. LIABILITY: Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or 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.
8. COMPLIANCE WITH LAWS: GRANTEE agrees that this easement 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.
9. ARCHAEOLOGICAL AND HISTORIC SITES: Execution of this easement 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.
10. PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES: Fee title to the lands underlying this easement 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 of GRANTOR including, but not limited to, mortgages or construction liens against the real property described in Exhibit A or against any interest of GRANTOR therein.
11. PARTIAL INVALIDITY: If any term, covenant, condition or provision of this easement 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.
12. SOVEREIGNTY SUBMERGED LANDS: This easement does not authorize the use of any 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.

13. ENTIRE UNDERSTANDING: This easement sets forth the entire understanding between the parties and shall only be amended with the prior written approval of GRANTOR.

14. TIME: Time is expressly declared to be of the essence of this easement.

15. RIGHT OF AUDIT: GRANTEE shall make available to GRANTOR all financial and other records relating to this easement and GRANTOR shall have the right to audit such records at any reasonable time during the term of this easement. This right shall be continuous until this easement expires or is terminated. This easement 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 easement, pursuant to Chapter 119, Florida Statutes.

16. PAYMENT OF TAXES AND ASSESSMENTS: GRANTEE shall assume full responsibility for and shall pay all liabilities that accrue to the easement area or to the improvements thereon including any and all drainage and special assessments or taxes of every kind and all mechanic's or materialman's liens which may be hereafter lawfully assessed and levied against this easement.

17. AUTOMATIC REVERSION: This easement is subject to an automatic termination and reversion to GRANTOR when, in the opinion of GRANTOR, this easement is not used for the purposes outlined herein, and any costs or expenses arising out of the implementation of this clause shall be borne completely, wholly and entirely by GRANTEE, including attorneys' fees.

18. RECORDING OF EASEMENT: 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 days after receipt, and shall provide to the GRANTOR within ten 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. Failure to comply with this paragraph shall constitute grounds for immediate termination of this easement agreement at the option of the GRANTOR.

19. GOVERNING LAW: This easement shall be governed by and interpreted according to the laws of the State of Florida.

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

21. SPECIAL CONDITIONS:

- (a) GRANTEE shall pay reasonable maintenance, repair or replacement costs incurred by the Division of Recreation and Parks (DRP) if such costs are determined by DRP to be a result of the GRANTEE'S activities related to this easement.
- (b) GRANTEE shall maintain and repair the groin structure during the term of this easement.
- (c) GRANTEE shall, upon completion of construction of the groin structure, remove all debris, equipment and materials other than the intended beach fill and permitted structures.
- (d) If any dunes or other features are disturbed as part of the groin construction, the GRANTEE shall restore them to substantially the same condition as existed before the construction.
- (e) GRANTEE shall coordinate with and obtain the approval of the Gasparilla Island State Park Manager before undertaking any construction, maintenance, or repair activity within the easement area.

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

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

.....  
Witness  
.....  
Print/Type Witness Name  
.....  
Witness  
.....  
Print/Type Witness Name

By: ..... (SEAL)  
GLORIA C. NELSON, OPERATIONS  
AND MANAGEMENT CONSULTANT  
MANAGER, BUREAU OF PUBLIC LAND  
ADMINISTRATION, DIVISION OF  
STATE LANDS, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

"GRANTOR"

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_, 20\_\_, by Gloria C. Nelson, Operations and Management  
Consultant Manager, Bureau of Public Land Administration, Division of State  
Lands, Florida Department of Environmental Protection, acting as an agent on  
behalf of the Board of Trustees of the Internal Improvement Trust Fund of the  
State of Florida. She is personally known to me.

.....  
Notary Public, State of Florida

.....  
Print/Type Notary Name

Commission Number:

Commission Expires:

Approved as to Form and Legality

By: .....  
DEP Attorney

LEE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY COMMISSIONERS

Witness \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Print/Type Witness Name \_\_\_\_\_

Print/Type Name \_\_\_\_\_

Witness \_\_\_\_\_

Title: \_\_\_\_\_

Print/Type Witness Name \_\_\_\_\_

ATTEST: Clerk of the Circuit Court

Original Signature \_\_\_\_\_

Print/Type Name \_\_\_\_\_

"GRANTEE"

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_, and \_\_\_\_\_, as \_\_\_\_\_, respectively, on behalf of the Board of County Commissioners of Lee County, Florida. They are personally known to me or produced \_\_\_\_\_ as identification.

Notary Public, State of Florida

Print/Type Notary Name \_\_\_\_\_

Commission Number: \_\_\_\_\_

Commission Expires: \_\_\_\_\_



### Legal Description

A one hundred foot permanent easement located on the southern portion of Gasparilla Island in Section 26, Township 43 South, Range 20 East, of Lee County, Florida. Said easement more particularly shown on "Attachment A" and described as follows:

Commence at Department of Environmental Protection (DEP) permanent reference monument "12-81-A20-A" for a Point of Reference; Thence N 52° 37' 14" W, 190.84' upon the parcel described in the deed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida recorded in Book 1991, Page 1704 of the Official Records of Lee County, Florida to the Point of Beginning;

Thence S 55° 18' 52" W, 196.61' upon and across said parcel to the intersection with the Submerged Land Easement granted to Lee County, Florida recorded in Book 3639, Page 4745 of the Official Records of Lee County, Florida to a point for corner;

Thence N 54° 21' 08" W, 41.83' along said Submerged Land Easement to a point for angle;

Thence N 14° 20' 05" W, 64.64' continuing along said Submerged Land Easement to a point for corner;

Thence N 55° 18' 52" E, 187.96', upon and across said parcel, intersecting with the southern most property line of Parcel 5 described in the deed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida recorded in Book 1683, Page 1033 of the Official Records of Lee County, Florida at +79', to a point for corner;

Thence S 34° 49' 34" E, 100.00' upon and across said Parcel 5 and said parcel recorded in Book 1991, Page 1704 of the Official Records of Lee County, Florida to the Point of Beginning.

Said 100-foot permanent easement containing 0.46 acres more or less.

**ATTACHMENT A**  
**STATE OF FLORIDA**  
**100 FT. EASEMENT**  
**GASPARILLA ISLAND**

BELCHER RD.

GULF BLVD

THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 26

LINE TABLE		
LINE	LENGTH	BEARING
L1	196.61	S55°18'52"W
L2	41.83	N54°21'08"W
L3	64.64	N14°20'05"W
L4	187.96	N55°18'52"E
L5	100.00	S34°49'34"E

LIMITS OF SUBMERGED LAND EASEMENT AS RECORDED IN BOOK 3639, PAGE 4745 OF THE OFFICIAL RECORDS OF LEE COUNTY, FLORIDA.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA (BK. 1683; PG. 1033)

POINT OF BEGINNING

PROPOSED TIE-GROIN

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA (BK. 1991; PG. 1704)

N52°37'14"W  
190.84'

100' PERMANENT EASEMENT

N: 866663.3352  
E: 570768.7378

POINT OF COMMENCEMENT

DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP) PERMANENT REFERENCE MONUMENT "12-81-A20-A"

NOTES:  
 SUBMERGED LAND EASEMENT AND MONUMENT LOCATIONS ARE BASED ON FLORIDA STATE PLANE, WEST ZONE, NORTH AMERICAN DATUM OF 1983, 1980 ADJUSTMENT (NAD 83/90) AS REFERENCED FROM DRAWING TITLED "01165 SOUTH" FROM DAGOSTINO & WOOD, INC. SURVEYORS OF NAPLES FLORIDA [PH: (239)352-6085].

SCALE 1" = 100'

**LEE COUNTY DEPARTMENT OF NATURAL RESOURCES**  
 1500 MONROE STREET  
 THIRD FLOOR  
 FT. MYERS, FL. 33901  
 PH: (239) 479-8109 FAX: (239) 479-8108

BOARD OF TRUSTEES OF THE  
INTERNAL IMPROVEMENT  
TRUST FUND OF THE STATE OF FLORIDA  
  
BEACH RENOURISHMENT USE AGREEMENT  
LEE COUNTY

Use Agreement No. U-0309

THIS USE AGREEMENT is hereby made and entered into by and between the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, hereinafter referred to as the "GRANTOR", and LEE COUNTY, FLORIDA, hereinafter referred to as the "GRANTEE", on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

WITNESSETH

WHEREAS, LEE COUNTY is embarking upon a shore protection project ("project") in the vicinity of Gasparilla Island State Park, which is managed by the Florida Department of Environmental Protection, Division of Recreation and Parks, under Lease No. 3338.

WHEREAS, in undertaking the shore protection project, GRANTEE desires to temporarily place and maintain pipeline and equipment on GRANTOR'S property and to place dredged materials upon GRANTOR'S property.

NOW THEREFORE, in consideration of the faithful and timely performance of and compliance with all the terms and conditions stated herein, the GRANTOR does hereby grant to GRANTEE, the right to use the following described state-owned lands (the "premises"), to wit:

(SEE ATTACHED EXHIBIT "A")

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, Department of Environmental Protection, pursuant to Chapter 18-2, Florida Administrative Code, and applicable delegations of authority.

2. COMMENCEMENT: This use agreement shall commence on \_\_\_\_\_, and end on \_\_\_\_\_, unless sooner

terminated by GRANTOR or otherwise extended in writing by both parties to this use agreement.

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 spoiling of dredged materials, and no other use or activity shall be allowed. All such activities shall be consistent with the water quality certification issued by the Department of Environmental Protection in effect at the time of any dredging activity.

4. UNDUE WASTE: GRANTEE shall not commit undue waste to the premises. Existing beach/dune vegetation shall be disturbed only to the minimum extent necessary for construction, construction access, and other permitted activities as determined at the preconstruction meeting. GRANTEE shall restore landscape features and coastal vegetation damaged during construction to the satisfaction of the manager of Gasparilla Island State Park. Vegetation shall be replaced with plants of the same species or, by authorization of the park manager, with other indigenous salt resistant vegetation suitable for beach and dune stabilization.

5. COORDINATION WITH PARK MANAGER: All activities of the GRANTEE under this use agreement shall be coordinated with the park manager through an on-site preconstruction meeting and through communication with GRANTEE and GRANTEE's contracting officer or representative to ensure visitor safety and protection of natural resources. Project specifics, including but not limited to the number and location of ramps and starting dates, shall be identified at the preconstruction meeting.

6. RIGHT OF INSPECTION: GRANTOR or its duly authorized agent shall have the right at any time to inspect the works and operation of GRANTEE pertaining to this use agreement.

7. PROPERTY RIGHTS: This use agreement constitutes permissive use only, and the placing of temporary or permanent facilities or related structures upon public property pursuant to this use

agreement is prohibited. GRANTEE agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the premises, by virtue of this use agreement or its occupancy or use hereunder.

8. USE OF PROPERTY: This use agreement shall be non-exclusive. GRANTOR, or its duly authorized agent, shall retain the right to enter the premises covered by this use agreement or to engage in management activities not inconsistent with the use herein provided for, and GRANTOR shall retain the right to grant compatible uses of the premises subject to this use agreement to third parties during the term of this use agreement.

9. LIABILITY: Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or 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.

10. ASSIGNMENT: This use agreement is personal to GRANTEE and may not be transferred or assigned without the prior written approval of the GRANTOR; however, the GRANTOR and GRANTEE recognize and agree that some or all of the activities permitted under this use agreement may be performed by GRANTEE or its contractor under separate agreement with the GRANTEE. Such performance by GRANTEE does not create or impose any duty or responsibility between the GRANTOR and the GRANTEE, nor does it relieve the GRANTEE of any duty, responsibility, or liability under this use agreement.

11. REMOVAL OF DEBRIS: GRANTEE shall clear, remove and pick up all of the Army Corps of Engineers' and its contractor's 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 offsite in such a manner as to leave work locations clean and free of any such debris on a daily basis.

12. ARCHAEOLOGICAL AND HISTORIC SITES: Execution of this use agreement in no way affects either 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 Division of Historical Resources of the Department of State.

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

14. RESPONSIBILITY FOR COMPLIANCE: The parties hereto contemplate the performance of all or a part of the activities authorized herein by the GRANTEE. Notwithstanding the foregoing, GRANTEE shall bear the full and ultimate responsibility and liability to GRANTOR for the faithful and timely compliance with the terms and conditions set forth herein.

15. TITLE: GRANTOR neither warrants title to the premises nor guarantees the suitability of the premises for any particular use.

16. DAMAGE: GRANTEE shall not damage the premises, or unduly interfere with public or private rights therein.

17. VENUE: GRANTEE waives venue as to any litigation arising from matters relating to this use agreement and any such litigation between GRANTOR and GRANTEE shall be initiated and maintained only in Leon County, Florida.

18. TERMINATION: The GRANTEE by acceptance of this use agreement, 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, the GRANTOR, through its Office of the Secretary, Department of Environmental Protection, shall give notice to the GRANTEE that curative action must be completed within thirty days. In the event that the matter is not resolved within the thirty day curative period, GRANTOR may elect to terminate this use agreement by means of a letter of termination from its Office of the Secretary, Department of Environmental Protection, notifying GRANTEE that the use agreement is terminated. In the event that this use agreement is terminated by the GRANTOR, all rights inuring to the GRANTEE or its successors shall cease upon the effective date of the letter of termination with the exception of those activities necessary to demobilize and remove personnel and equipment, but GRANTEE'S obligations and responsibilities under paragraphs 9, 20 and 21 of this use agreement shall survive termination.

19. NOTICE: All notices required to be given by GRANTOR to GRANTEE by this use agreement or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

Lec County Department of Public Works  
Post Office Box 398  
Fort Myers, Florida 33902-0398

Department of Environmental  
Protection  
Division of State Lands  
Bureau of Public Land Administration, MS 130  
3800 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

The GRANTEE and its successors shall notify the GRANTOR by certified mail of any changes to the above address at least ten days before the change is effective.

20. TAXES AND ASSESSMENTS: The GRANTEE shall assume all responsibility for liabilities that accrue to the premises 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 premises during the effective period of this use agreement which result from the grant of this use agreement or the activities of GRANTEE hereunder.

21. REMOVAL OF EQUIPMENT: If the GRANTEE does not remove any equipment occupying the premises after expiration or cancellation of this use agreement, within sixty days of the date of expiration or effective date of the letter of termination referenced in paragraph 18, above, such equipment will be deemed forfeited to the GRANTOR, and the GRANTOR may authorize removal and may sell such forfeited equipment. 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 and the right to impose administrative fines.

22. ENFORCEMENT OF PROVISIONS: 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 to the GRANTOR to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

23. AGREEMENT: This use agreement is the entire and only agreement between the parties. Any amendment or modification to this use agreement must be in writing and must be accepted, acknowledged and executed by the GRANTEE and GRANTOR.

24. SOVEREIGNTY SUBMERGED LANDS: This use agreement does not authorize the use of any 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 above.



25. PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES: Fee title to the premises is held by the 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 contained in the premises including, but not limited to, mortgages or construction liens against the premises or against any interest of the GRANTOR therein.

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

27. 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.

28. SPECIAL CONDITION: GRANTEE shall pay reasonable maintenance, repair or replacement costs incurred by the Division of Recreation and Parks (DRP) if such costs are determined by DRP to be a result of the GRANTEE'S activities related to this use agreement.

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

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

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print/Type Name

By: \_\_\_\_\_ (SEAL)  
GLORIA C. NELSON, OPERATIONS AND MANAGEMENT CONSULTANT MANAGER, BUREAU OF PUBLIC LAND ADMINISTRATOR, DIVISION OF STATE LANDS, DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Gloria C. Nelson, 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. She is personally known to me.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print/Type Notary Name

Commission Number:

Commission Expires:

Approved as to Form  
and Legality

By: \_\_\_\_\_  
DEP Attorney

LEE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print/Type Name

By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Print/Type Name

Title: \_\_\_\_\_

ATTEST: Clerk of the Circuit Court

\_\_\_\_\_  
Original Signature

\_\_\_\_\_  
Print/Type Name  
"GRANTEE"

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this  
day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and  
\_\_\_\_\_, as \_\_\_\_\_  
and \_\_\_\_\_, respectively, on behalf of the  
Board of County Commissioners of Lee County, Florida. They are  
personally known to me.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print/Type Notary Name

Commission Number:

Commission Expires:

EXHIBIT "A"











All that portion of lands described in those certain deeds recorded in Official Records Book 1991, Page 1704 (Book 787, Pg. 53); Official Records Book 1769, Page 1017 (Plat Bk. 12, Pg. 145); Official Records Book 1683, Page 1033, Parcels 3, 4, and 5; Official Records Book 1991, Page 1706; Official Records Book 1878, Page 158; and Official Records Book 1983, Page 684 of the public records of Lee County, Florida.



Proposed Staging Area & Access

### Legend

#### Book & Page

-  Bk. 1991; Pg. 1704 (Bk. 787; Pg. 53)
-  Bk. 1991; Pg. 1704 (Bk. 787; Pg. 53)
-  Bk. 1769; Pg. 1017 (Plat Bk. 12; Pg. 145)
-  Bk. 1683; Pg. 1033; Parcel 3 (13.93 Ac.)
-  Bk. 1683; Pg. 1033; Parcel 4 (0.48 Ac.)
-  Bk. 1683; Pg. 1033; Parcel 5
-  Bk. 1683; Pg. 1033; Parcel 5 (3.81 Ac.)
-  Bk. 1991; Pg. 1706 (2.4 Ac.)
-  Bk. 1878; Pg. 158
-  Bk. 1983; Pg. 684



Proposed Access & Groom Maintenance Area

Gasparilla Island State Park  
State Parcel Legend  
DEP Land Use Agreement

Limits of Construction



BOARD OF TRUSTEES OF THE  
INTERNAL IMPROVEMENT  
TRUST FUND OF THE STATE OF FLORIDA  
BEACH RENOURISHMENT USE AGREEMENT  
LEE COUNTY

Use Agreement No. U-0310

THIS USE AGREEMENT is hereby made and entered into by and between the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, hereinafter referred to as the "GRANTOR", and LEE COUNTY, FLORIDA, hereinafter referred to as the "GRANTEE", on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

WITNESSETH

WHEREAS, LEE COUNTY is embarking upon a shore protection project ("project") in the vicinity of Lovers Key State Park, which is managed by the Florida Department of Environmental Protection, Division of Recreation and Parks, under Lease No. 3340.

WHEREAS, in undertaking the shore protection project, GRANTEE desires to temporarily place and maintain pipeline and equipment on GRANTOR'S property and to place dredged materials upon GRANTOR'S property.

NOW THEREFORE, in consideration of the faithful and timely performance of and compliance with all the terms and conditions stated herein, the GRANTOR does hereby grant to GRANTEE, the right to use the following described state-owned lands (the "premises"), to wit:

(SEE ATTACHED EXHIBIT "A")

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, Department of Environmental Protection, pursuant to Chapter 18-2, Florida Administrative Code, and applicable delegations of authority.
2. COMMENCEMENT: This use agreement shall commence on \_\_\_\_\_, and end on \_\_\_\_\_, unless sooner

terminated by GRANTOR or otherwise extended in writing by both parties to this use agreement.

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 spoiling of dredged materials, and no other use or activity shall be allowed. All such activities shall be consistent with the water quality certification issued by the Department of Environmental Protection in effect at the time of any dredging activity.

4. UNDUE WASTE: GRANTEE shall not commit undue waste to the premises. Existing beach/dune vegetation shall be disturbed only to the minimum extent necessary for construction, construction access, and other permitted activities as determined at the preconstruction meeting. GRANTEE shall restore landscape features and coastal vegetation damaged during construction to the satisfaction of the manager of Lovers Key State Park. Vegetation shall be replaced with plants of the same species or, by authorization of the park manager, with other indigenous salt resistant vegetation suitable for beach and dune stabilization.

5. COORDINATION WITH PARK MANAGER: All activities of the GRANTEE under this use agreement shall be coordinated with the park manager through an on-site preconstruction meeting and through communication with GRANTEE and GRANTEE's contracting officer or representative to ensure visitor safety and protection of natural resources. Project specifics, including but not limited to the number and location of ramps and starting dates, shall be identified at the preconstruction meeting.

6. RIGHT OF INSPECTION: GRANTOR or its duly authorized agent shall have the right at any time to inspect the works and operation of GRANTEE pertaining to this use agreement.

7. PROPERTY RIGHTS: This use agreement constitutes permissive use only, and the placing of temporary or permanent facilities or related structures upon public property pursuant to this use

agreement is prohibited. GRANTEE agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the premises, by virtue of this use agreement or its occupancy or use hereunder.

8. USE OF PROPERTY: This use agreement shall be non-exclusive. GRANTOR, or its duly authorized agent, shall retain the right to enter the premises covered by this use agreement or to engage in management activities not inconsistent with the use herein provided for, and GRANTOR shall retain the right to grant compatible uses of the premises subject to this use agreement to third parties during the term of this use agreement.

9. LIABILITY: Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or 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.

10. ASSIGNMENT: This use agreement is personal to GRANTEE and may not be transferred or assigned without the prior written approval of the GRANTOR; however, the GRANTOR and GRANTEE recognize and agree that some or all of the activities permitted under this use agreement may be performed by GRANTEE or its contractor under separate agreement with the GRANTEE. Such performance by GRANTEE does not create or impose any duty or responsibility between the GRANTOR and the GRANTEE, nor does it relieve the GRANTEE of any duty, responsibility, or liability under this use agreement.

11. REMOVAL OF DEBRIS: GRANTEE shall clear, remove and pick up all of the Army Corps of Engineers' and its contractor's 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 offsite in such a manner as to leave work locations clean and free of any such debris on a daily basis.

12. ARCHAEOLOGICAL AND HISTORIC SITES: Execution of this use agreement in no way affects either 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 Division of Historical Resources of the Department of State.

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

14. RESPONSIBILITY FOR COMPLIANCE: The parties hereto contemplate the performance of all or a part of the activities authorized herein by the GRANTEE. Notwithstanding the foregoing, GRANTEE shall bear the full and ultimate responsibility and liability to GRANTOR for the faithful and timely compliance with the terms and conditions set forth herein.

15. TITLE: GRANTOR neither warrants title to the premises nor guarantees the suitability of the premises for any particular use.

16. DAMAGE: GRANTEE shall not damage the premises, or unduly interfere with public or private rights therein.

17. VENUE: GRANTEE waives venue as to any litigation arising from matters relating to this use agreement and any such litigation between GRANTOR and GRANTEE shall be initiated and maintained only in Leon County, Florida.

18. TERMINATION: The GRANTEE by acceptance of this use agreement, 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, the GRANTOR, through its Office of the Secretary, Department of Environmental Protection, shall give notice to the GRANTEE that curative action must be completed within thirty days. In the event that the matter is not resolved within the thirty day curative period, GRANTOR may elect to terminate this use agreement by means of a letter of termination from its Office of the Secretary, Department of Environmental Protection, notifying GRANTEE that the use agreement is terminated. In the event that this use agreement is terminated by the GRANTOR, all rights inuring to the GRANTEE or its successors shall cease upon the effective date of the letter of termination with the exception of those activities necessary to demobilize and remove personnel and equipment, but GRANTEE'S obligations and responsibilities under paragraphs 9, 20 and 21 of this use agreement shall survive termination.

19. NOTICE: All notices required to be given by GRANTOR to GRANTEE by this use agreement or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

Lee County Department of Public Works  
Post Office Box 398  
Fort Myers, Florida 33902-0398

Department of Environmental  
Protection  
Division of State Lands  
Bureau of Public Land Administration, MS 130  
3800 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

The GRANTEE and its successors shall notify the GRANTOR by certified mail of any changes to the above address at least ten days before the change is effective.

20. TAXES AND ASSESSMENTS: The GRANTEE shall assume all responsibility for liabilities that accrue to the premises 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 premises during the effective period of this use agreement which result from the grant of this use agreement or the activities of GRANTEE hereunder.

21. REMOVAL OF EQUIPMENT: If the GRANTEE does not remove any equipment occupying the premises after expiration or cancellation of this use agreement, within sixty days of the date of expiration or effective date of the letter of termination referenced in paragraph 18, above, such equipment will be deemed forfeited to the GRANTOR, and the GRANTOR may authorize removal and may sell such forfeited equipment. 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 and the right to impose administrative fines.

22. ENFORCEMENT OF PROVISIONS: 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 to the GRANTOR to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

23. AGREEMENT: This use agreement is the entire and only agreement between the parties. Any amendment or modification to this use agreement must be in writing and must be accepted, acknowledged and executed by the GRANTEE and GRANTOR.

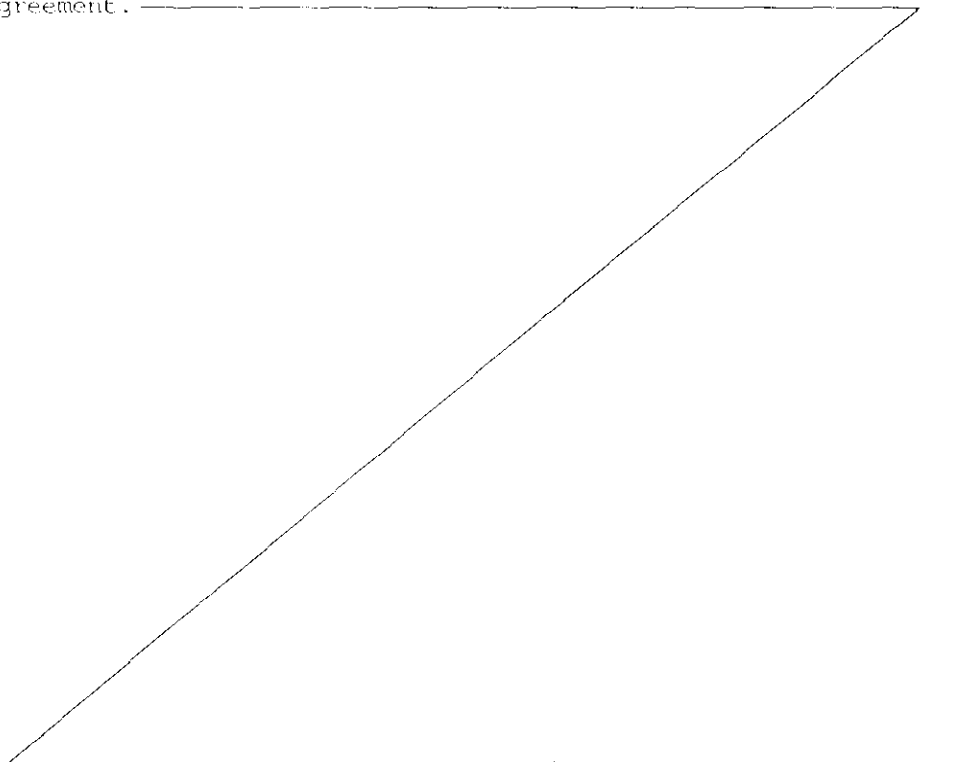
24. SOVEREIGNTY SUBMERGED LANDS: This use agreement does not authorize the use of any lands located waterward of the mean or ordinary high water line of any lake, river, stream, creek, bay, estuary, or other water body or the waters or the air space above.

25. PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES: Fee title to the premises is held by the 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 contained in the premises including, but not limited to, mortgages or construction liens against the premises or against any interest of the GRANTOR therein.

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

27. 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.

28. SPECIAL CONDITION: GRANTEE shall pay reasonable maintenance, repair or replacement costs incurred by the Division of Recreation and Parks (DRP) if such costs are determined by DRP to be a result of the GRANTEE'S activities related to this use agreement.



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

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

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Print/Type Name

By: \_\_\_\_\_ (SEAL)  
GLORIA C. NELSON, OPERATIONS AND MANAGEMENT CONSULTANT MANAGER, BUREAU OF PUBLIC LAND ADMINISTRATOR, DIVISION OF STATE LANDS, DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Gloria C. Nelson, 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. She is personally known to me.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print/Type Notary Name

Commission Number:

Commission Expires:

Approved as to Form  
and Legality

By: \_\_\_\_\_  
DEP Attorney

LEE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print/Type Name

By: \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Print/Type Name

Title: \_\_\_\_\_

ATTEST: Clerk of the Circuit Court

\_\_\_\_\_  
Original Signature

\_\_\_\_\_  
Print/Type Name  
"GRANTEE"

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_, as \_\_\_\_\_, respectively, on behalf of the Board of County Commissioners of Lee County, Florida. They are personally known to me.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print/Type Notary Name

Commission Number:

Commission Expires:

EXHIBIT "A"

All that portion of lands described in those certain deeds recorded in Official Records Book 1740, page 3899; Official Records Book 1685, page 1627 of the public records of Lee County, Florida, and that certain Lease Agreement dated June 12, 2001, between Lee County and the Department of Environmental Protection, Division of Recreation and Parks, for Dog Beach.



**Legend**

Book & Page	
[Symbol]	Bk 1740; Pg. 3899
[Symbol]	Bk. 1740; Pg. 3899
[Symbol]	Lease Agreement (6/12/01)
[Symbol]	Bk 1685; Pg. 1627

Lovers Key State Park  
 Site Plan  
 DEP Land Use Agreement

Not to Scale