

This Use Agreement was prepared by:
Jay Sircy,
Bureau of Public Land Administration
Division of State Lands
Department of Environmental Protection, MS 130
3900 Commonwealth Boulevard,
Tallahassee, Florida 32399-3000
AID# 39257

OAU1
[12.04 acres +/-]

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

USE AGREEMENT

Use Agreement No. U-0454

THIS USE AGREEMENT is hereby granted this 29th day of JANUARY 2019, by the **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA**, hereinafter referred to as the "GRANTOR", through its lawfully designated agent, the Division of State Lands, Department of Environmental Protection, to **LEE COUNTY, FLORIDA**, 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 Gasparilla Island State Recreational Area ("Park" or "premises"), over which the State of Florida Department of Environmental Protection, Division of Recreation and Parks ("DRP"), has leased the premises from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida under Lease No. 3338 dated March 12, 1984; and

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

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

WHEREAS, the GRANTEE desires to enter and use the premises for access to transport and place sand along the shoreline above the mean high water line.

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 the premises 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 January 1, 2019, the effective date of this use agreement and shall be valid for a term of one year and shall end on December 31, 2019.
3. **EXTENT OF AGREEMENT**: This use agreement the purpose of access to transport and place sand along the shoreline above the mean high water line and no other use or activity shall be allowed.
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 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: Lee County Board of County Commissioners
Marine Operations Manager
1500 Monroe Street, 3rd Floor
Fort Myers, Florida 33901

28. **COMPLIANCE WITH LAWS:** GRANTEE agrees that this use agreement is contingent upon and subject to GRANTEE obtaining all applicable permits and authorizations. Comply 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. GRANTEE shall comply with all the terms and conditions as set forth in this use agreement and State of Florida Department of Environmental Protection's Consolidated Joint Coastal Permit No. 0358239-001-JC (the "Permit").
- B. GRANTEE shall meet with the manager of the Park ("Park Manager") before undertaking construction activities in the Park. The time and frequency of such meetings shall be agreed to by the Park Manager and GRANTEE prior to mobilization activities. During the pre-construction meeting, Park Manager and GRANTEE shall determine specific needs for the staging area and agree on operational conditions of utilizing the staging area and access. GRANTEE shall also provide to Park Manager contact information of GRANTEE's onsite project manager. The Park Manager can be reached at (941)-964-0375.
- C. GRANTEE shall ensure that access to a portion of the Park is not disrupted while construction is underway, or at any time during the term of this use agreement unless approved by the Park Manager in advance, see special condition E.
- D. GRANTEE shall help to protect Park facilities, plants, and other natural resources by accessing the Park at the points designated by the Park Manager and driving only on those beach areas within the Park, as identified by the Park Manager.
- E. GRANTEE shall establish a safe zone by providing signage and fencing as needed to prevent access to the staging area(s), the worksite, and areas worked by heavy equipment.
- F. GRANTEE shall keep fuel and other poisonous, hazardous, or flammable liquids and powders in a double-walled container with a catch basin, with the catch basin labeled as hazardous. GRANTEE shall conduct refueling operations within the staging area only.
- G. GRANTEE shall repair any damages caused by the installation or removal of the pipeline, or by breach of the pipeline during sediment pumping operations. GRANTEE shall restore the affected areas to pre-existing conditions following the fulfillment of the project or demobilization. This restoration may include the removal of accidentally deposited materials, restoring grade, and planting native vegetation in the areas of damage. If any revegetation is required, the contractor is required to utilize native plant material and seed stock from the southwest gulf coast of Florida. The mixture of native species and the number of plants shall

be determined by the Park Manager in consultation with the district biologist.

- H.** GRANTEE shall ensure that all stationary and mechanized equipment to be used has been thoroughly cleaned to help prevent exotic or invasive species from entering the Park. The Park Manager reserves the right to inspect and deny Park access to equipment that has not been sufficiently cleaned.
- I.** GRANTEE shall 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. The Park Manager shall instruct the GRANTEE to stop work only on the activity which is the source of danger, not the entire dredging operation itself. The Park Manager will also notify GRANTEE's contracting officer or project manager immediately if such an event should occur. GRANTEE shall work cooperatively with the Park Manager and district biologist to resolve issues regarding safety, access, or environmental concerns resulting from this project.
- J.** GRANTEE shall notify the Park Manager twenty-four (24) hours in advance before commencing any post project repairs, maintenance, revegetation, and tilling and escarpment removal.

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

WITNESSES:

David Fewell
Original Signature

DAVE FEWELL
Print/Type Name of Witness

Terri D. Gross
Original Signature

TERRI D. GROSS
Print/Type Name of Witness

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

(SEAL)

BY: Cheryl CMC Call
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

"GRANTOR"

**STATE OF FLORIDA
COUNTY OF LEON**

The foregoing instrument was acknowledged before me this 29th day of JANUARY, 2019, 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:

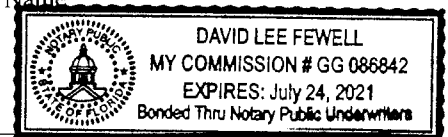
[Signature] 01-02-2019
DEP Attorney Date

David Lee Fewell
Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No.



LINDA DOGGETT
CLERK OF CIRCUIT COURT

Melissa Butler

DEPUTY CLERK

LEE COUNTY, FLORIDA
a political subdivision of the State of Florida
By its Board of County Commissioners

By: Brian Hammen (SEAL)
for Larry Kiker, Chairman



Approved as to Form for the
Reliance of Lee County Only

John Kiker
Office of the County Attorney

"GRANTEE"

STATE OF FLORIDA
COUNTY OF LEE

§ 81 The foregoing instrument was acknowledged before me this 15th day of January, 2019, by Brian Hammen
Larry Kiker, as Chairman of the Board of County Commissioners, for and on behalf of Lee County, Florida, a political
subdivision of the State of Florida. He is personally known to me.

Rosa M Bahena
Notary Public, State of Florida

Rosa m Bahena
Print/Type Notary Name

Commission Number:

Commission Expires:



ROSA M. BAHENA
MY COMMISSION # FF 952294
EXPIRES: May 13, 2020
Bonded Thru Budget Notary Services

EXHIBIT "A"

--- ECL

State Park Parcels

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Use Agreement No. U-0454

23432000000071010

R-015

R-016

R-017

R-018

February 2018 Aerial



Gasparilla State Park
Beach Nourishment

0 125 250 500 750 1,000 Feet

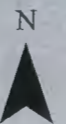


EXHIBIT "A"

2643200400000032A

R-023

26432000002000000

R-024

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R-025

26432000000110000

--- ECL

State Park Parcels

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February 2018 Aerial





Gasparilla Island Shore Protection Project

0 120 240 480 720 960
Feet




EXHIBIT "A"


 Park Parcels North

 ECL

State Park

Upland Activity

 Access and Staging

 Beach Fill

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Use Agreement No. U-0454

234.32000000071010

February 2018 Aerial



**Gasparilla Island
Shore Protection Project**

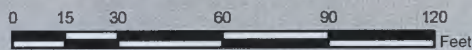


EXHIBIT "A"


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
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
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
 Park Parcels South

 ECL

State Park

Upland Activity

 Access and Staging

 Beach Fill

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February 2018 Aerial