



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
PANAMA CITY REGULATORY FIELD OFFICE
1002 WEST 23RD STREET, SUITE 350
PANAMA CITY, FLORIDA 32405

REPLY TO
ATTENTION OF

North Permits Branch
SAJ-2005-3585 (IP-DEB)
Modification #1

JUL 20 2006

Florida Department of Transportation
c/o Joy Giddens
1074 Highway 90
Chipley, Florida 32428

Dear Ms. Giddens:

The U.S. Army Corps of Engineers has completed the review and evaluation of your modification request received June 20, 2006 in which you asked to revise the plans authorized by Department of the Army permit number SAJ-2005-3585 (IP-DEB), issued May 5, 2006. The permit authorized impacts to approximately 3.96 acres of waters of the United States to improve approximately 15.95 miles of SR73, from SR20 to SR71. As mitigation for impacts to 3.96 acres of freshwater wetlands, and by permit special conditions #4 and 8, you were required to place approximately 30.0 acres of freshwater wetlands under conservation easement, and to preserve the wetland in its natural state in perpetuity. The project is located along SR73, from SR20 to SR71, in Sections 11 and 3, Township 3 south, and Range 10 west; Sections 2, 3, 10, 15, 21, 22, 24, 28, and 33, Township 2 south, and Range 10 west; and Sections 1, 11, 14, 23, 25, and 26, Township 1 south, and Range 10 west, Calhoun County, Florida.

The proposed modification is to change the area to be placed under conservation easement, and preserved in perpetuity, from 30.0 to 27.66 acres. The modification must be completed in accordance with the enclosed proposed Conservation Easement, and the special conditions, which are incorporated in, and made a part of the permit.

This letter contains an approved proffered permit for your subject proposed project. If you object to this determination/decision, you may request an administrative appeal under Corps' regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process fact sheet and Request for Appeal (RFA) form. If you request to appeal this

determination/decision, you must submit a completed RFA form to the South Atlantic Division Office at the following address:

Mr. Michael F. Bell
South Atlantic Division
U.S. Army Corps of Engineers
CESAD-CM-CO-R, Room 9M15
60 Forsyth St., SW.
Atlanta, Georgia 30303-8801.

Mr. Bell can be reached by telephone number at 404-562-5137, or by facsimile at 404-562-5138.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division office within 60 days of the date of the RFA. Should you decide to submit an RFA form, it must be received at the above address within 60 days from the date of this letter. It is not necessary to submit an RFA form to the Division office, if you do not object to the determination/decision in this letter.

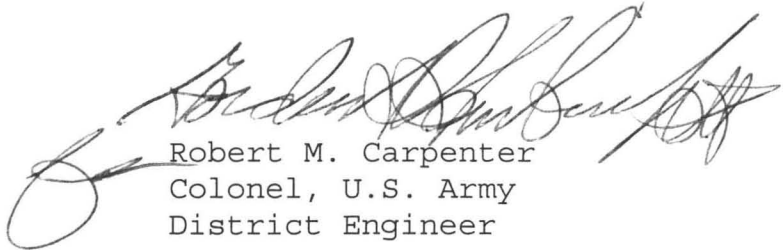
The impact of your proposal on navigation and the environment have been reviewed and found to be insignificant. The permit is hereby modified in accordance with your request. You should attach this letter to the permit. All other conditions of the permit remain in full force and effect.

If you have any questions concerning permit modification, please contact the project manager Mr. Dale Beter at 850-763-0717, #57 or by electronic mail at dale.e.beter@saj02.usace.army.mil.

Thank you for your cooperation with our permit program. The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit the following link and complete our automated Customer Service Survey:

http://www.saj.usace.army.mil/permit/forms/customer_service.htm.
Your input is appreciated - favorable or otherwise.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:



Robert M. Carpenter
Colonel, U.S. Army
District Engineer

Enclosure

Copy/ies Furnished:

Brian Bearwood, David H. Melvin Consulting Engineers, Inc.,

Marianna

Duncan Cairnes, NFWFMD, Havana

Mary Mittiga, FWS, Panama City

FDEP, Pensacola

CESAJ-RD-PE, Jacksonville

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: FDOT District III		File Number: SAJ-2005-3585(IP-DEB)	Date: July 20, 2006
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
X	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- *ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.*
- *OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.*

B: PROFFERED PERMIT: You may accept or appeal the permit

- *ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.*
- *APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.*

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- *ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.*
- *APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.*

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Project Manager as noted in letter

If you only have questions regarding the appeal process you may also contact:

**Michael F. Bell
404-562-5137**

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this ____ day of _____, 2006, by **The Bay County Conservancy, Inc.** having an address of 120 East 2nd Place, Panama City, FL 32402 ("Grantor") to the **Northwest Florida Water Management District** (Grantee), having an address 81 Water Management Drive, Havana, Florida 32333-4712 ("Grantee"). As used herein, the term "Grantor" shall include any and all heirs, successors, or assigns of the Grantor, and all subsequent owners of the Property (as hereinafter defined), and the term "Grantee" shall include any successor or assignee of Grantee.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple title of certain lands situated in Bay County, Florida, more particularly described in Exhibit A, attached hereto and incorporated herein ("Property"), and

WHEREAS, the Corps Permit No. SAJ-2005-3585 authorizes certain activities which affect waters in or of the State of Florida and waters of the United States; and

WHEREAS, the permits require that Grantee preserve, enhance, restore, or mitigate wetlands or uplands located on the Property and under the jurisdiction of the Department and/or the Corps; and

WHEREAS, Grantor, in consideration of the issuance of the permits to construct and operate the permitted activity, is willing to grant a perpetual Conservation Easement, as defined in Section 704.06, Florida Statutes, over the Property; and

NOW THEREFORE, in consideration of the above and mutual covenants, terms conditions, and restrictions contained herein, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby voluntarily grants and conveys a perpetual Conservation Easement for and in favor of Grantee upon the Property, which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. **Purpose:** The purpose of this Conservation Easement is to retain and maintain land or water areas on the Property in their natural, vegetative, hydrologic, scenic, open, agricultural, or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife. Those wetland or upland areas that are to be restored, enhanced, or created pursuant to the Permits shall be retained and maintained in the restored, enhanced, or created condition required by the Permits.

2. **Rights of Grantee:** To carry out this purpose, the following rights are conveyed to Grantee and the Corps by this easement:

a. The right to take action to preserve and protect the environmental value of the Property;

b. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement, and to require the

restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;

c. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor is complying with the covenants and prohibitions contained in this Conservation Easement;

d. The right to proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, and to prevent the occurrence of any of the prohibited activities hereinafter set forth;

e. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within 30 days after receipt of notice thereof the Grantee, or under circumstances where the violation cannot be reasonably cured within a 30 day period, fail to begin curing such violation within the 30 day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement, including damages for the loss of scenic, aesthetic or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting the Grantor's liability therefore, Grantee in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of providing either actual damages described in this paragraph which shall be cumulative and shall be in addition to all remedies now and hereafter existing at law or equity; and

f. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

3. Prohibited Uses: Except for restoration, creation, enhancement, maintenance, and monitoring activities, or surface water management improvements, which are permitted or required by the Permits, the following activities are prohibited on the Property:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except as may be permitted by the Permits, and except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by Grantee;

d. Planting of nuisance, exotic, or non-native plants as listed by the Exotic Pest Plant Council (EPPC), or its successor;

e. Exploration for oil or gas, and excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such a manner as to affect the surface, except as may be permitted or required by the Permits;

f. Surface use except for purposes that permit the land or water area to remain in its natural condition;

g. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking, and fencing, except as permitted or required by the Permits;

h. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas; and

i. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

4. **Reserved Rights:** Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and which are not inconsistent with any Department or Corps rule, criteria, permit, or the intent and purposes of this Conservation Easement.

5. **Public Access:** No right or access by the general public to any portion of the Property is conveyed by this Conservation Easement.

6. **Liability:** Grantor shall be responsible for any costs or liabilities related to the operation, upkeep, and/or maintenance of the Property consistent with the purpose of this Conservation Easement. Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantor, nor any person claiming by or through Grantor, shall hold Grantee or the Corps liable for any damage or injury that may occur on the Property.

7. **Real Property Taxes:** Grantor shall pay any and all real property taxes and assessments levied by competent taxing authority on the Property.

8. **Hazardous Waste:** Grantor covenants and represents that no hazardous substances or toxic waste exists or has been generated, treated, stored, used, disposed

of, or deposited in or on the Property, and that there are not now any underground storage tanks on the Property.

9. **Enforcement Discretion:** Enforcement of the terms, provisions, and restrictions of this Conservation Easement shall be at the reasonable discretion of Grantee and the Corps, and any forbearance on behalf of Grantee or the Corps to exercise its or their rights hereunder in the event of any breach by Grantor shall not be deemed or construed to be a waiver of rights.

10. **Venue and Enforcement Costs:** Venue to enforce the terms of this Conservation Easement shall be in Leon County, Florida. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions, and restrictions of this Conservation Easement, including without limitation, the costs of suit, and attorney's fees, shall be borne by and recoverable against the non-prevailing party in such proceedings, except that such costs shall not be recoverable against the Corps. In addition, if Grantee and/or the Corps prevail in an enforcement action, DEP and/or the Corps shall be entitled to recover the cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement or to the vegetative and hydrologic condition required by the Permits.

11. **Recording in Land Records:** Grantor shall record this Conservation Easement in the official records of Bay County, Florida, and shall re-record it at any time Grantee or the Corps may require to preserve their rights. Grantor shall pay all recording costs and taxes necessary at any time to record this Conservation Easement in the public records.

12. **Assignment of Rights:** Grantee shall hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement, except to another legal entity qualified to hold such interests under applicable state and federal laws, including Section 704.05, Florida Statutes, and committed to holding this Conservation Easement exclusively for the purposes stated herein. Grantee shall notify the Corps in writing of any intention to reassign this Conservation Easement to a new grantee and the Corps must accept the assignment in writing. The new grantee shall then deliver a written acceptance to the Corps. The assignment instrument must then be recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the assignment instrument must be furnished to the Corps. Failure to comply with the assignment procedure herein stated shall result in invalidity of the assignment.

13. **Transfer of Ownership:** Grantor shall insert the terms and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Property. Grantor shall provide a photocopy of the recorded Conservation Easement to the new owner to the Department and Corps, together with the requisite notice of permit transfer.

14. **Successors:** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

15. **Notices:** All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

16. **Severability:** If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

17. **Alteration or Revocation:** This Conservation Easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns, or successors in interest, which shall be filed in the public records of Bay County, Florida.

18. **Controlling Law:** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Florida.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions, and purpose imposed with this Conservation Easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

GRANTOR FURTHER COVENANTS that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement and that no mortgages or other liens exist; that Grantor has good right and lawful authority to convey this Conservation Easement, and that it hereby fully warrants and defends the title to the Conservation Easement hereby conveyed against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor and Grantee have executed this Conservation Easement on the day and year first above written.

Signed, sealed and delivered
in our presence as witnesses:

Witness:

By: _____
Grantor
Candis Harbison, as President
The Bay County Conservancy, Inc.

Witness:

Signed, sealed and delivered
in our presence as witnesses:

Witness:

By: _____
Grantee
Douglas E. Barr, Executive Director
Northwest Florida Water
Management District

Witness:

STATE OF FLORIDA
COUNTY OF BAY

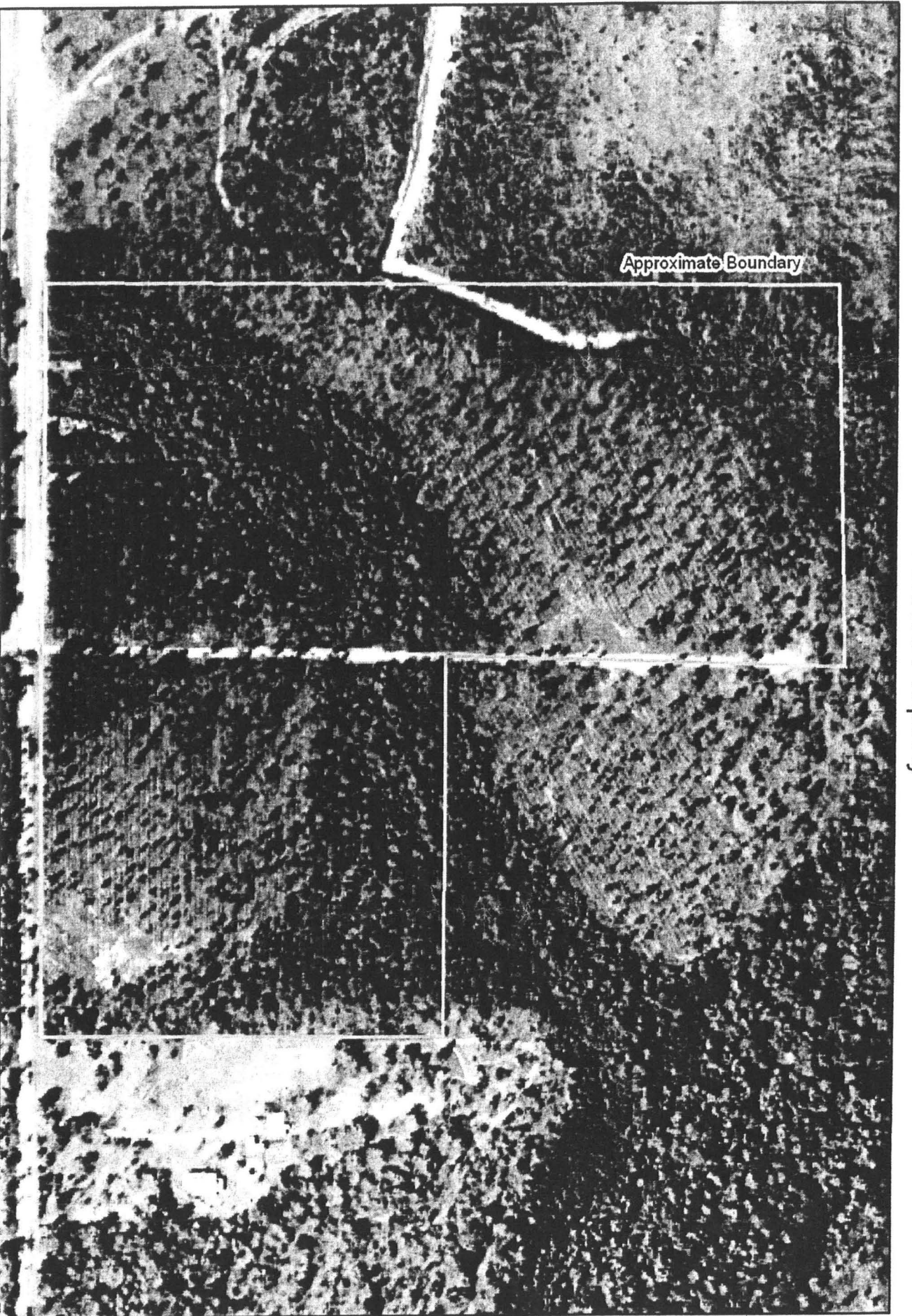
The foregoing instrument was acknowledged before me this ____ day of _____,
2006, by _____ as _____,
of _____. He/she is personally known to me.

Notary Public

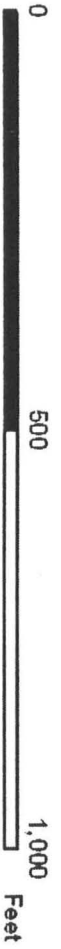
Commission No. _____

Commission Expires _____

Anders Property



2004 DOO



S90°00'00"E 2823'± (C)

S90°00'00"E

EXHIBIT - A
EXCERPTED FROM BOUNDARY
CERTIFICATION MAP

NORTH 1/2 OF
NW 1/4 OF
SECTION 15, T1N, R12W

25' RESERVED FOR
ROAD RIGHT-OF-WAY
O.R. BOOK 134, PAGE 543
DEED BOOK 121, PAGE 205

3°W 1315.05' (C)

RESERVED FOR
RIGHT-OF-WAY
BOOK 134, PAGE 543
BOOK 121, PAGE 205

W 1/4 OF
W 1/4 OF
SECTION 15, T1N, R12W

SILVER LAKE ROAD

W 1318'± (C)

25' RESERVED FOR
ROAD RIGHT-OF-WAY
O.R. BOOK 134, PAGE 543
DEED BOOK 121, PAGE 205

SW 1/4 OF
SECTION 15, T1N, R12W

N89°57'53"W
657'± (C)

N89°57'53"W
657'± (C)

632'± (C)

O.R. 2748
PAGE 1276

1267'± (C)
S00°08'36"E 1317'± (C)

SE 1/4 OF
NW 1/4 OF
SECTION 15, T1N, R12W

27.66 ACRES±

1268'± (C)

N89°55'47"W 1318'± (C)

SECTION 15

SILVER LAKE ROAD

N89°56'50"W
658'± (C)

633'± (C)

656'± (C)
S00°12'54"E
656'± (C)

633'± (C)

NE 1/4 OF
SE 1/4 OF
NW 1/4
SECTION 15,
T1N, R12W

S00°17'12"E 1318'± (C)

S00°17'12"E
656'± (C)

S00°17'12"E
656'± (C)

S00°17'12"E 2836'± (C)

25' RESERVED FOR
ROAD RIGHT-OF-WAY
O.R. BOOK 134, PAGE 543
DEED BOOK 121, PAGE 205

MORRELL ROAD

MORRELL ROAD

NE
SECTION

MORRELL ROAD

SE 1/
SECTION 15

Exhibit A
Property Description

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15,
TOWNSHIP 1 NORTH, RANGE 12 WEST, BAY COUNTY, FLORIDA

LESS AND EXCEPT

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF NORTHWEST
QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 12 WEST, BAY
COUNTY, FLORIDA

EASEMENT(S) IN FAVOR OF GULF COAST ELECTRIC COOPERATIVE SET FOR
THE IN INSTRUMENT(S) RECORDED IN DEED BOOK 157, PAGE 111.

RESERVATIONS OF ROAD RIGHT OF WAY RECORDED IN DEED BOOK 121,
PAGE 205 AND O.R. BOOK 134, PAGE 543.