

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND BOARD OF TRUSTEES OF  
THE  
INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

STATE OF FLORIDA DEPARTMENT	)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION	)	_____ DISTRICT
and BOARD OF TRUSTEES OF THE	)	
INTERNAL IMPROVEMENT TRUST FUND	)	
OF THE STATE OF FLORIDA,	)	
	)	
	)	
	)	OGC FILE NO.
vs.	)	
	)	
[For corporations, insert entire	)	
name as listed in corporate	)	
information records.	)	
For joint owners of the property,	)	
include all owners.	)	
For businesses not listed in	)	
corporate information, contact	)	
OGC for advice on naming the	)	
proper parties.].	)	
	)	
	)	
_____	)	

CONSENT ORDER and TEMPORARY USE AGREEMENT

This Consent Order and Temporary Use Agreement (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Board), as complainants, and \_\_\_\_\_ (Respondent) to reach settlement of certain matters at issue between the Department , the Board and Respondent.

The Department and the Board find and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce chapter 373, Part IV, and chapter 403, Florida Statutes, and the rules promulgated and authorized thereunder, title 62, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Order.

2. The Board is responsible for overseeing state lands and ensuring they are managed in trust for the citizens of the State of Florida pursuant to chapter 253, Florida Statutes, and title 18, Florida Administrative Code. The Department has the duty to perform all staff duties and functions related to the administration of state lands as provided in section 253.002, Florida Statutes.

3. Respondent is a person within the meaning of sections 253.04 and 373.019(15), Florida Statutes.

4. Respondent is the owner of real property located at [Insert latitude, longitude, or address or legal description and name of the development if applicable. Using only Section, Township, Range is insufficient].

5. [ADD A PARAGRAPH OR PARAGRAPHS WITH FINDING OF VIOLATION LANGUAGE AND WHICH DESCRIBE THE VIOLATIONS THAT FORM THE BASIS OF THIS ORDER. THESE PARAGRAPHS SHOULD BE STRICTLY LIMITED TO THE STATEMENT OF ONLY THOSE FACTS THAT ARE NECESSARY TO DESCRIBE THE VIOLATIONS ADDRESSED IN THE ORDER.] FOR EXAMPLE:

The Department and the Board find that the Respondent violated rules 62-330.020(2)(a) and 18-21.005(1)(d), Florida Administrative Code, respectively.

An inspection by Department personnel on [DATE] revealed that [[a \_\_\_ ft. x \_\_\_ft. \_\_\_\_\_ [DESCRIBE THE UNAUTHORIZED ACTIVITY(IES)], totaling \_\_\_\_\_ square feet, has been constructed on these sovereign lands]] (Sovereign Lands) without a valid permit from the Department and valid [letter of consent/sovereignty submerged lands lease/easement (select appropriate form of authorization)] from the Board (Proprietary Authorization) to use Sovereign Lands. The above described activity(ies) was(were) conducted on these Sovereign Lands within the landward extent of [name of water body,] waters of the state, as defined by Florida Law, adjacent to Respondent's riparian upland real property without the Board's approval or authorization.

6. Respondent desires to enter into this Order to resolve these violations and to use the Sovereign Lands and water column adjacent to the Respondent's riparian upland real property described in paragraph 4 of this Order.

7. Respondent desires to obtain Proprietary Authorization from the Board to maintain and use the structures located on the Sovereign Lands as depicted in Exhibit "A".

8. The parties acknowledge that the application, approval and issuance of Proprietary Authorization to use the Sovereign Lands may require a time period of several months.

9. The Respondent desires to have the temporary use of the structures located on Sovereign Lands during the processing and review of the Respondent's application for Proprietary Authorization to use the Sovereign Lands.

Having reached a resolution of the matter Respondent, the Department and the Board mutually agree and it is,

**ORDERED:**

10. Respondent shall make initial application for Proprietary Authorization to use the Sovereign Lands (modification) to the Board within 30 days of the effective date of this Order and complete the application by no later than 90 days of the effective date of this Order for the Sovereign Lands identified above.

**11. [Optional- Structure Removal Paragraph]**

Within \_\_\_ days of the effective date of this Order, Respondent shall use best management practices to remove \_\_\_\_\_ (Describe structure(s)) from sovereign submerged lands. Respondent shall protect all wetland areas or water bodies which are outside the specific limits of construction from erosion, siltation, scouring, excess turbidity, or dewatering. Turbidity curtains and other such erosion/turbidity control devices shall be installed pursuant to Florida Stormwater, Erosion, and Sedimentation Control Inspector's Manual, Fourth Impression – October 2002, website address:

<http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf>, prior to the commencement of dredging, filling, or construction activity. The devices shall remain functional at all times and shall be maintained on a regular basis. Turbidity and/or sedimentation resulting from any activities associated with the project shall not be allowed to enter waters of the State. Floating turbidity curtains (FDOT Type II or equivalent) shall be used to surround all open water work areas and shall remain in place until such time as turbidity levels within these work areas have reduced sufficiently so as not to exceed the State water quality standards.**[END OPTIONAL]**

12. In the event that an application for Proprietary Authorization to use the Sovereign Lands is not approved by the Board, or the Respondent fails to execute the Lease prior to the expiration or termination of the temporary use agreement, whichever occurs first, the Respondent

shall remove all structures referenced herein from [on] the Sovereign Lands at the Respondent's sole expense. In the event that the Respondent asserts title to the Sovereign Lands identified above, and either the Respondent fails to timely submit the information concerning title as required herein, or the Board denies the Respondent's claim of title and the Respondent has not commenced an action to quiet title as specified herein, the Respondent shall remove all structures referenced herein from [on] the Sovereign Lands at the Respondent's sole expense. In the event that the Respondent fails to complete the requirements of paragraph 10 of this Order, the Respondent shall remove all structures referenced herein from [on] the Sovereign Lands at the Respondent's sole expense. The complete removal of the structures as required by this paragraph shall be accomplished within 180 days following the expiration or termination of the temporary use agreement, whichever occurs first.

13. **[OPTIONAL - USE IF PENALTIES OR COSTS ARE REQUIRED]**

Within \_\_\_\_\_ days of the effective date of this Order, Respondent shall pay the Department \$\_\_\_\_\_ in settlement of the matters addressed in this Order. This amount includes \$\_\_\_ for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

[USE EITHER (A) or (B) STATEMENT: (A) The civil penalties are apportioned as follows: *{individually cite the specific rules and/or statutes along with the amount assessed for each, e.g. \$1,000.00 for violation of section 403.121(4)(c), Fla. Stat; \$1,500.00 for violation of Rule 62-330, Florida Administrative Code; \$750.00 for violation of Rule 18-21.008, Florida Administrative Code}* OR (B) The civil penalty in this case includes *{insert #}* violations of \$2,000.00 or more. ]

Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes final and effective filed with the Clerk of the Department before ability to make online payment is available.

14. Respondent agrees to pay the Department stipulated penalties in the amount of \_\_\_\_\_ per day for each and every day Respondent fails to timely comply with any of the

requirements of paragraphs \_\_\_ [Insert appropriate paragraph numbers] of this Order. A separate stipulated penalty shall be assessed for each violation of this Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph \_\_ of this Order. [OPTIONAL SENTENCE] If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Order in an amount greater than the stipulated penalties due under this paragraph.

15. Within \_\_\_\_\_ days of the effective date of this Order, Respondent shall pay the Board \$ \_\_\_\_\_ for deposit into the Internal Improvement Trust Fund as compensation for the past and current use of the Sovereign Lands without the approval or authorization of the Board. (1) OPTIONAL - USE FOLLOWING IF NO PAYMENT PLAN IS BEING USED: Such payment, which shall be in the form of a cashier's check, certified check, or money order payable to the Department of Environmental Protection shall be delivered to the Board's Accounting Office, Post Office Box 3070, Tallahassee, Florida 32315-3070. or (2) OPTIONAL- USE IF PAYMENT PLAN IS BEING USED: Such payment, which shall be in the form of a cashier's check, certified check, or money order payable to the Department of Environmental Protection shall be made in X monthly installment payments delivered to the Board's Accounting Office, Post Office Box 3070, Tallahassee, Florida 32315-3070. The first X installment payments shall each be for an amount \$\_\_\_\_\_, the X and final installment payment shall be for an amount of \$\_\_\_\_\_. The X installment payments shall be due on the first, second, 22<sup>nd</sup> etc. of each month with the first installment payment due on Month, Day, Year and the final installment payment due no later than Month, Day, Year. See a schedule of the payment plan attached as Exhibit "A".

16. The consideration paid for this Order includes the fees due for the use of the Sovereign Lands from \_\_\_\_\_ through \_\_\_\_\_ [plus interest payable on past due

fees]. This consideration is not refundable, notwithstanding the denial of Proprietary Authorization to use the Sovereign Lands by the Board.

17. The Respondent acknowledges that the fees assessed for the Proprietary Authorization to use the Sovereign Lands in this Order after March 1, 20\_\_ are an estimate created using the base rate of \$0.\_\_\_\_\_per square foot fee from the 20\_\_-20\_\_ billing cycle times the approximate square footage of the lands preempted by the structures. A supplemental invoice will be generated and issued to the Respondent at the time of lease execution that accounts for any difference in lease fees owed for the new per square foot fee established on March 1, 20\_\_ which is based on changes in the consumer price index, pursuant to rule 18-21.011(1)(b), Florida Administrative Code, and changes in the square footage of the preempted area based on a survey supplied by the Respondent pursuant to Respondent's application for Proprietary Authorization to use the Sovereign Lands, and the Respondent hereby agrees to pay the full amount of any additional fees owed to the Board due to these changes within 30 days of the receipt of the supplemental invoice.

**18. The Respondent acknowledges and understands that the grant of this Order and the payment of the amount herein does not guarantee that the Board will grant the Respondent a Proprietary Authorization to use the Sovereign Lands or that the Department of Environmental Protection will recommend that the appropriate form of Proprietary Authorization be granted.**

19. The Respondent is hereby granted the temporary exclusive use of the structures located on the Sovereign Lands identified above, consisting of approximately \_\_\_\_ square feet, waterward of Respondent's riparian upland real property described above in paragraph 4. This temporary exclusive use is for a term not to exceed one year from the effective date of this Order, or until the date of execution of Proprietary Authorization to use the Sovereign Lands between the Board and the Respondent, whichever occurs first. The Respondent shall make no claim of title to or interest in the Sovereign Lands identified above solely by reason of occupancy or use thereof under this Order.

20. The existing structures can only be utilized as they were on the effective date of this Order. In the event any part of any of these structures is determined by a final adjudication issued by a court of competent jurisdiction to encroach or interfere with riparian rights of the adjacent upland riparian owner, Respondent agrees to either obtain written consent for the

offending structure [or use] from the affected adjacent upland riparian owner or remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this paragraph shall constitute a material breach of this Order and be grounds for immediate termination of this Order at the sole option of the Board.

21. **[OPTIONAL - EXCUSABLE DELAY CLAUSE]** If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department and the Board orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department and the Board, notify the Department and the Board in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Order.

22. Respondent shall allow all authorized representatives of the Department and the Board access to the Respondent's riparian upland property and the Sovereignty Lands at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes of the Department and the Board.

23. Respondent shall not conduct any dredging, filling, or construction activities on or within the landward extent of waters of the state without first obtaining a valid Department permit or written notification from the Department that the activities appear to be exempt as proposed from Department permitting requirements; nor shall Respondent conduct any activities on state lands below the ordinary or mean high water line without first obtaining the appropriate form of Proprietary Authorization to use the Sovereign Lands from the Board.

24. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

25. Respondent shall save and hold harmless and indemnify the Board, the Department, and the State of Florida against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of, any person or persons and for loss or damage to any property arising out of or connected with Respondent's occupation and use of the Sovereignty Lands and the structures or activities located thereon. By execution of this Order, Respondent waives any claim it may have against the Department or the Board concerning the Sovereign Lands.

26. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69, 253.04 and 373.129, Florida Statutes. Failure to comply with the terms of this Order shall constitute a violation of sections 253.04 and 373.430, Florida Statutes.

27. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$10,000 per day per violation [and administrative fines of up to \$10,000 per day per violation] and criminal penalties.

28. The Department and the Board hereby expressly reserve the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Order.

29. The Department and the Board, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations addressed in this Order. [INSERT THIS SENTENCE IF ANY VIOLATIONS ON STATE LANDS ARE NOT BEING ADDRESSED IN THIS ORDER: **This waiver does not affect any claim the Department or the Board of Trustees of the Internal Improvement Trust Fund may have for violations not**



**addressed herein, notwithstanding that the other claims may involve the same activities addressed herein.]**

30. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes, on the terms of this Order. Respondent acknowledges its right to appeal the terms of this Order pursuant to section 120.68, Florida Statutes, and waives that right upon signing this Order.

31. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order shall be effective until reduced to writing and executed by both Respondent, the Department, and the Board.

32. [USE THIS PARAGRAPH IF THE RESPONDENT IS THE PROPERTY OWNER] In the event of a sale or conveyance of the Respondent's riparian upland property, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property, (1) notify the Department of such sale or conveyance and (2) provide a copy of this Order with all attachments to the new owner. The sale or conveyance of the property shall not relieve the Respondent of the obligations imposed in this Order. Further, this Order and any rights and privileges contained herein, are for the sole benefit and use of the Respondent and shall not be assigned or transferred by the Respondent to any other party without the prior written consent of the Department and the Board, which consent shall not be unreasonably withheld.

33. The terms of this Order pertaining to the Respondent's use of the Sovereign Lands may be enforced by the Board notwithstanding that the proprietary authorization granted hereunder has expired.

34. Unless otherwise specified, all submittals and payments required by this Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, **[INSERT TITLE AND ADDRESS]**.

35. This Order is a settlement of the Department's and the Board's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

36. This Order is a final order pursuant to section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with chapter 120, Florida Statutes. Upon the timely filing of a petition this Order will not be effective until further order.

**NOTE: The Board's actions relating to Proprietary requirements contained in this Consent Order are not subject to challenge under Chapter 120, Florida Statutes. Any litigation involving these Proprietary requirements shall be initiated and maintained only in Leon County.**

37. >>>**OPTIONAL**<<<Respondent shall publish the following notice in a newspaper of daily circulation in Insert County Name County, Florida. The notice shall be published one time only within # days of the effective date of the Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NOTICE OF CONSENT ORDER

The Department of Environmental Protection (Department) gives notice of agency action of entering into a Consent Order with Insert Respondent's Name pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the Describe nature of activities at Insert location of Facility or Property. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Insert District Office and Address. >>>**END**

**OPTIONAL**<<<

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;

- c) An explanation of how the petitioner’s substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Insert District Office and Address. Failure to file a petition within the 21-day period constitutes a person’s waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person’s right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Florida Administrative Code Rule 62-110.106(12).

38. Rules referenced in this Order are available at <https://softlive.dep.state.fl.us/ogc/ogc/content/rules>

FOR THE RESPONDENT:

---



---

DATE

(Name)

(Title) \_\_\_\_\_

DONE AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_,

in \_\_\_\_\_, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
[type district director's name here]  
District Director

**Filed, on this date, pursuant to Section 120.52, Fla. Stat., with the designated Department Clerk, receipt of which is hereby acknowledged.**

\_\_\_\_\_  
**Clerk**

\_\_\_\_\_  
**Date**

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

By: \_\_\_\_\_  
[type district director's name here]  
District Director, 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

cc: Lea Crandall, Agency Clerk  
Mail Station