



FLORIDA DEPARTMENT OF Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, FL 32399

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

May 16, 2022

Indian River County
Attn: Jim Mann
1801 27th Street
Vero Beach, FL 32960

Re: Amendment to Easement 32851

Dear Mr. Mann,

Thank you for contacting the Division of Recreation and Parks (DRP), leaseholder of the St. Sebastian River Preserve State Park (Park), under leases 4118 and 4397. DRP has reviewed Indian River County's request to amend Easement No. 32851 that will allow the County (GRANTEE) to extend the Trans-Florida Central Railroad Trail as depicted in the attached **Exhibit "A"**. DRP has determined this is a direct benefit to the Park and requests that the special conditions of the easement be replaced in its entirety with these modified special conditions, attached hereto as **Exhibit "B"**.

DRP has also determined that this request is consistent with the Park's Unit Management Plan approved February 15, 2019, and therefore has no objection to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, amending Easement 32851, attached hereto as **Exhibit "C"**. This letter should accompany your request to the Division of State Lands, Bureau of Public Land Administration. For more information, visit their website at <https://floridadep.gov/lands/bureau-public-land-administration>

Should you have any questions please don't hesitate to contact our office by phone at 850-245-3051.

Sincerely,

Brian Fugate Digitally signed by Brian Fugate
Date: 2022.05.16 14:16:34

Brian Fugate, Bureau Chief
Office of Park Planning

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Jim Mann

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BF/dp

attachment

Cc: Robert Yero, Bureau of Parks, District 3

Chris Vandello, Park Manager

Angel Granger, Planning Manager, Office of Park Planning

EXHIBIT "A"

EXHIBIT "A"




<ul style="list-style-type: none"> Park Easement 32851 Amend 32851 <p>Sec19 TS31S R38E</p>	<h2 style="margin: 0;">St. Sebastian River State Park</h2> <p style="margin: 0;">Indian River County</p> <p style="font-size: small; margin: 0;">Source: Esri, USDA FSA, GEODATA, Esri, HERE, Garmin, METI/NASA, USGS, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Indian River County, FDER, Esri, HERE, Garmin, SafeGraph, GeoTechnologies Inc, METI/NASA, USGS, EPA, NPS, USDA</p> <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="font-size: small;">Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere</div> <div style="font-size: 2em; font-weight: bold;">2022</div> </div>	<p>N</p>  <div style="display: flex; justify-content: center; align-items: center;"> <div style="width: 100px; border-bottom: 1px solid black; margin-right: 5px;"></div> <div style="margin-right: 5px;">0.2</div> <div style="width: 100px; border-bottom: 1px solid black; margin-right: 5px;"></div> <div style="margin-right: 5px;">0.4</div> <div style="margin-right: 5px;">Mi</div> </div> <div style="display: flex; justify-content: center; align-items: center;"> <div style="width: 100px; border-bottom: 1px solid black; margin-right: 5px;"></div> <div style="margin-right: 5px;">0.4</div> <div style="width: 100px; border-bottom: 1px solid black; margin-right: 5px;"></div> <div style="margin-right: 5px;">0.8</div> <div style="margin-right: 5px;">Km</div> </div>
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EXHIBIT "B"

MODIFIED AND AMENDED SPECIAL CONDITIONS FOR ST. SEBASTIAN RIVER PRESERVE STATE PARK -EASEMENT 32851

- A. GRANTEE will design the Trail and all appurtenant infrastructure to the standards of the DRP. All construction design plans will be reviewed and approved in writing by the DRP and the Department's Bureau of Design and Construction (BDC) prior to the commencement of any construction activities. All construction will comply with the Americans with Disabilities Act ("ADA") and will be in accordance with Florida Department of Transportation's most recent and relevant guidelines for multi-use trails and with the most recent version of Federal Highway Administration's Manual on Uniform Traffic Control Devices.
- B. GRANTEE will design and construct the Trail facility to retain natural hydrologic connections between surrounding wetlands severed by the construction of the railroad berm. These efforts may be by construction of multiple culverts or by low-water crossings filled with ballast, both methods designed to be suitable for use by firefighting equipment.
- C. GRANTEE acknowledges that prescribed burning is a land management practice used by DRP to manage natural resources at St. Sebastian River Preserve State Park and that prescribed burning may result in fire or smoke within the Park.
- D. GRANTEE will design and construct the Trail facility to be fully functional as a fire line traversed by heavy firefighting equipment without damaging the trail surface and will ensure that all improvements are designed, constructed, operated and maintained in a manner compatible with prescribed burning practices. The Park Manager will notify the GRANTEE prior to any prescribed fire activity in the Park and will limit all temporary closures to the minimum duration possible to assure public safety.
- E. GRANTEE agrees to cooperate fully with the Park Manager to ensure that the maintenance and use of the facility does not prevent or adversely affect the Park's ability to conduct prescribed fires. This includes, but may not be limited to, all measures necessary to maximize safety such as assisting with posting and maintaining of smoke signage, complying with and assisting with traffic control and assisting with possible temporary closure of the Park to pedestrian and vehicular traffic.
- F. GRANTEE or GRANTEE'S representative will coordinate all construction and maintenance activities with the Park Manager, at least seven (7) days in advance. At the discretion of the Park Manager, such coordination may require an on-site meeting. The Park Manager may be contacted at (772) 340-7530
- G. GRANTEE acknowledges that the Park Manager has the authority to temporarily halt any construction or maintenance activities that are unsafe for Park visitors or staff or unacceptably adversely impacting Park resources or facilities. The Park Manager will work in earnest to

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Jim Mann

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identify and implement a resolution as quickly as possible, so as not to cause unnecessary delays to GRANTEE'S schedule of operation.

H. GRANTEE will pay reasonable maintenance, repair or replacement costs incurred by the DRP if such costs are mutually determined by the DRP and GRANTEE to be a result of this proposed use. Any repair or replacement of Park resources will be done at the sole expense of the GRANTEE to the satisfaction of the Park Manager.

J. GRANTEE will install collapsible type bollards along the Trail at each location where a vehicular roadway or driveway crosses the Trail. The bollards will exclude motorized vehicles but will be in ADA compliance.

K. Upon completion of construction of the recreational Trail, GRANTEE shall be fully responsible for the maintenance of the improvements, such as curb drops, uneven surfaces, gates, and bollards. These items shall be repaired immediately as safety items. Visitor precautions should be taken and signs should be posted until such repairs are completed.

L. Maintenance schedules should be coordinated with the Park Manager for weekly trash pickup and biweekly mowing during growing season.

EXHIBIT "C"

This Easement was prepared by:
Diane L. McKenzie, AID: 25015,
Bureau of Public Land Administration
Division of State Lands
Department of Environmental Protection, MS 130
3900 Commonwealth Boulevard,
Tallahassee, Florida 32399-3000
OAE1
[9.05 acres]

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

DIRECT BENEFIT EASEMENT

Easement Number 32851

THIS EASEMENT, made and entered into this 28th day of October 2015 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 **INDIAN RIVER COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "GRANTEE".

WHEREAS, GRANTOR is the owner of the hereinafter described real property, which is managed by the **STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF RECREATION AND PARKS ("DRP")** under Lease Number 4118 (also referred to as "managing agency"); and

WHEREAS, GRANTEE desires an easement across the hereinafter described real property for the construction and maintenance of a segment of the Trans-Central Florida Railroad Trail; and

WHEREAS, the managing agency has agreed to the proposed use of the land subject to this easement.

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

(See Exhibit "A" Attached, the "Easement 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. **TERM:** The term of this easement shall be for a period of fifty years (50) commencing on OCTOBER 28, 2015 and ending on OCTOBER 27, 2065, unless sooner terminated pursuant to the provisions of this easement.

3. **USE OF PROPERTY AND UNDUE WASTE:** This easement upon and across the property described in Exhibit "A" shall be for the purpose of access, construction, maintenance and public use of a segment of the Trans-Central Florida Railroad Trail (the "Trail") during the term of this easement. This easement shall be non-exclusive. GRANTEE shall be responsible for maintaining and repairing the Trail and related improvements within the Easement Area at its sole expense, and in good, safe, and workmanlike manner, free of all liens and in accordance with the requirements of all applicable governmental authorities. 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:** GRANTOR does not warrant or represent that Easement 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 the extent allowed by Section 768.28, Florida Statutes, 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, demands, lawsuits, causes of action, costs, expenses, attorney's fees 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, employees or independent contractors. GRANTEE shall contact GRANTOR regarding the legal action deemed appropriate to remedy all matters indemnified for and defended against herein. GRANTOR shall have the absolute right to choose its own legal counsel in connection with all matters indemnified for and defended against herein at GRANTEE's expense. 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 Easement 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 Easement 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 subcontractor's negligent acts or omissions.

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 State of Florida 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 there above.

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:** 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:** The following special conditions shall apply to this direct benefit easement:

A. County will design the Trail and all appurtenant infrastructure to the standards of the DRP. All construction design plans will be reviewed and approved in writing by the DRP and the Department's Bureau of Design and Construction (BDC) prior to the commencement of any construction activities. All construction will comply with the Americans with Disabilities Act ("ADA") and will be in accordance with Florida Department of Transportation's most recent and relevant guidelines for multi-use trails and with the most recent version of Federal Highway Administration's Manual on Uniform Traffic Control Devices.

B. County will design and construct the Trail facility to retain natural hydrologic connections between surrounding wetlands severed by the construction of the railroad berm. These efforts may be by construction of multiple culverts or by low-water crossings filled with ballast, both methods designed to be suitable for use by firefighting equipment.

C. County acknowledges that prescribed burning is a land management practice used by DRP to manage natural resources at St. Sebastian River Preserve State Park and that prescribed burning may result in fire or smoke within the Park.

D. County will design and construct the Trail facility to be fully functional as a fire line traversed by heavy firefighting equipment without damaging the trail surface and will ensure that all improvements are designed, constructed,

operated and maintained in a manner compatible with prescribed burning practices. The Park Manager or his/her designee will notify the County prior to any prescribed fire activity on the Park and will limit all temporary closures to the minimum duration possible to assure public safety.

E. County agrees to cooperate fully with the Park Manager or his/her designee to ensure that the maintenance and use of the facility does not prevent or adversely affect the Park's ability to conduct prescribed fires. This includes, but may not be limited to, all measures necessary to maximize safety such as assisting with posting and maintaining of smoke signage, complying with and assisting with traffic control and assisting with possible temporary closure of the Park to pedestrian and vehicular traffic.

F. County or County's representative will coordinate all construction and maintenance activities with the Park Manager or his/her designee, at least seven (7) days in advance. At the discretion of the Park Manager or his/her designee, such coordination may require an on-site meeting. The Park Manager may be contacted at (321) 953-5004.

G. County acknowledges that the Park Manager has the authority to temporarily halt any construction or maintenance activities that he/she determines-using his/her professional opinion-are unsafe for Park visitors or staff or unacceptably adversely impacting Park resources or facilities. In such work stoppage the Park Manager or his/her designee will work in earnest to identify and implement a resolution as quickly as possible, so as not to cause unnecessary delays to County's schedule of operation.

H. County will pay reasonable maintenance, repair or replacement costs incurred by the DRP if such costs are mutually determined by the DRP and County to be a result of this proposed use. Any repair or replacement of Park resources will be done at the sole expense of the County to the satisfaction of the Park Manager or his/her designee.

I. County will install gates at the boundaries of the Park so that DRP personnel can close the trail to public use for safety purposes, such as during prescribed burning activities on the Park.

J. County will install removable bollards along the trail at each location where a vehicular roadway/driveway crosses the trail. The bollards will exclude motorized vehicles but will be in compliance with the ADA.

K. It is understood that the Florida Department of Transportation intends to construct the Trail on behalf of the County/Grantee within the Easement Area.

L. Upon completion of construction of the recreational Trail, County/Grantee shall be fully responsible for the maintenance of the improvements.

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

WITNESSES:

David Lee Fewell
Original Signature

DAVE FEWELL
Print/Type Name of Witness

Kelley Griffin
Original Signature

Kathy C Griffin
Print/Type Name of Witness

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

BY: Cheryl C McCall (SEAL)

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 28th day of OCTOBER, 2015, 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] 8.31.15
DEP Attorney Date

David Lee Fewell
Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:



Commission/Serial No.

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA,
a political subdivision of the State of Florida



WITNESSES:

Wesley S. Davis
Wesley S. Davis, Chairman

Original Signature

ATTEST: Jeffrey R. Smith, Clerk of Court
and Comptroller

Typed/Printed Name of Witness

By: Jeffrey R. Smith
Deputy Clerk

Original Signature

Approved as to form and legal sufficiency:

Typed/Printed Name of Witness

William K. Reingold
William Reingold, County Attorney

STATE OF Florida

"GRANTEE"

COUNTY OF Indian River

The foregoing instrument was acknowledged before me this 20th day of October, 2015, by
as Wesley S. Davis, for and on behalf of the Board of County Commissioners of Indian River County. He is personally known to
me or who has produced N/A, as identification.

Misty L. Pursel
Notary Public, State of Florida
Misty L. Pursel
Printed, Typed or Stamped Name

My Commission Expires: January 11, 2018

Commission/Serial No. FF 65450

