DRAFT- SUBJECT TO REVISIONS BEFORE FILING

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA

THE SIESTA KEY ASSOCIATION OF SARASOTA, INC., and DAVID N. PATTON,

Plaintiffs,

v. **Case No. _____**

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, CITY OF SARASOTA, and U.S. ARMY CORPS OF ENGINEERS,

Defendants.
_____/

PLAINTIFFS' VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs, The Siesta Key Association of Sarasota, Inc., and David N. Patton (collectively, the "Plaintiffs"), by and through their undersigned counsel, hereby sue the Defendants, State of Florida Department of Environmental Protection ("FDEP"), Board of Trustees of the Internal Improvement Trust Fund ("Board of Trustees"), U.S. Army Corps of Engineers ("Corps"), and City of Sarasota ("City"), a political subdivision of the State of Florida (collectively, the "Defendants") and allege as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory and injunctive relief requesting that the FDEP, Board of Trustees, Corps, and City be enjoined from violating the laws, rules, and regulations for the protection of the air, water, and other natural resources of the State of Florida and to compel the FDEP to enforce the laws, rules, and regulations for the protection of the air, water, and other

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natural resources of the State of Florida against the Corps and the City. As such, the Circuit Court has jurisdiction over this proceeding pursuant to § 403.412, Fla. Stat.

2. Venue in this Court is proper in that the Plaintiff's reside in Sarasota County, Florida, and cause of action accrued in Sarasota County, Florida.

PARTIES

3. Plaintiff, the Siesta Key Association of Sarasota, Inc., is a Florida Not For Profit Corporation and a citizen of the State of Florida within the meaning of Section 403.412, Fla. Stat.

4. Plaintiff, David N. Patton, is a citizen of the State of Florida and owns property on Siesta Key in Sarasota County, Florida.

5. Defendant, Board of Trustees, is an agency of the State of Florida comprised of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture, headquartered in Tallahassee, Leon County, Florida. The Trustees are charged with the responsibility of managing all state owned lands with the authority to sue and be sued. § 253.02, Fla. Stat.

6. Defendant, FDEP, is an agency of the State of Florida headquartered in Tallahassee, Leon County, Florida with the responsibility of carrying out the "Beach and Shore Preservation Act" (§§ 161.011- 161.45, Fla. Stat.) and acting as staff to the Board of Trustees.

7. Defendant, City, is a political subdivision of the State of Florida.

8. Defendant, Corps, is a U.S. federal agency under the Department of Defense.

GENERAL ALLEGATIONS

9. The Corps and City are co-applicants for Joint Coastal Permit 0333315-001-JC ("Permit").

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10. The activities to be authorized under the Permit consist of a beach restoration project known as the Lido Key Beach Nourishment and Groins Project ("Project").

11. The Project includes the placement of approximately 1.3 million cubic yards (cy) of sand along a 1.6 mile segment of the Lido Key coastline between Department monuments R-34.5 and R-44 and construction of two groins on Lido Key with subsequent dredging of approximately 500,000 cubic yards of material every five years for approximately fifteen years.

12. The Big Sarasota Pass channel and ebb shoal are proposed as the main sediment sources for the Project.

13. The Big Sarasota Pass borrow area design established in the Permit includes three cuts labeled Borrow Areas B, C, and D. See **Exhibit A** (Corps' map of dredging areas) and **Exhibit B** (City of Sarasota GIS map of City boundary).

14. Borrow Area B is a southern extension of the existing Big Sarasota Pass channel located offshore of Siesta Key in an area outside the geographic boundary of the City and wholly within the geographic boundary of Sarasota County ("County"). See **Exhibits** A and B.

15. Borrow Areas C and D are located within the ephemeral channel of Big Sarasota Pass with portions of this borrow area occurring within the boundary of the City and portions occurring outside of the City. See **Exhibits** A and B.

16. On December 22, 2016, FDEP issued its Consolidated Notice of Intent to Issue the Permit authorizing the Corps and City to implement the Project.

17. Plaintiff, David N. Patton ("Patton"), resides at 100 Sandy Hook Rd., South Sarasota, FL 34242, which is located within the Sandy Hook subdivision on Siesta Key that includes a deeded private beach on the Gulf of Mexico. Patton has lived on Siesta Key since 1958 and has resided at this location since 1972. The proposed Project is a direct and substantial

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threat to the beaches on Siesta Key and Big Sarasota Pass, potentially making the Pass difficult to navigate and disrupting the downdrift of sand that is deposited on Siesta Key.

18. Patton regularly walks, fishes, and otherwise uses and enjoys the beach along Siesta Key several days a week and uses Big Sarasota Pass to access the Gulf of Mexico by boat, and that use and enjoyment will be interfered with and diminished as a result of Defendants' dredging of Big Sarasota Pass and the existing ebb shoals and the placement of the fill on Lido Key.

19. Plaintiff, the Siesta Key Association of Sarasota, Inc. ("Association"), was originally founded in 1948 and organized for the promotion of social welfare purposes, including the protection of the environment, fish and wildlife resources, and protection of air and water quality. The Association includes approximately 1,700 members that use and enjoy the beaches of Siesta Key, the waters that adjoin these beaches, including the Gulf of Mexico and Big Sarasota Pass, and the ebb shoal of Big Sarasota Pass for recreational and aesthetic purposes, such as, fishing, boating, canoeing, kayaking, swimming, wading, and photography, among other uses. For years, the Association has been promoting policies to protect the natural environment of Siesta Key, establish a sustainable beach environment, and prevent overdevelopment. As far back as 1994, the Association and its members successfully opposed an attempt by the Department to permit the dredging of Big Sarasota Pass.

20. The Association and its members will be substantially impacted by the issuance of the Permit. Big Sarasota Pass and the ebb shoals at the entrance of the Pass are part of a complex system that allows the transfer and sharing of sand from Lido Key onto the beaches of Siesta Key. The large-scale dredging of sand from this complex system as contemplated in the Permit will negatively impact the natural drift of sand onto the Siesta Key beaches, impact the

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navigation of Big Sarasota Pass, diminish storm protection for those living on Siesta Key and along Big Pass, and impact anyone who uses the shoals of Big Pass for swimming, boating, and fishing. The proposed Project to dredge sand from the ebb shoals and Big Sarasota Pass with repeated subsequent dredging occurring every five years for at least fifteen years and the placement of this sand on Lido Key will have a direct, immediate, and long-term substantial negative impact on Association members and their ability to use and enjoy the beaches along Siesta Key and the waters of Big Sarasota Pass and Gulf of Mexico.

COUNT I

Declaratory and Injunctive Relief Pursuant to Section 403.412, Fla. Stat

21. Plaintiffs reallege and incorporate herein by reference the allegations in Paragraphs 1-20 of this Complaint as if fully set forth herein.

22. Section 403.412(2)(a), Fla. Stat., provides a cause of action as follows:

> The Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against:
>
> 1. Any governmental agency or authority charged by law with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations;
> 2. Any person, natural or corporate, or governmental agency or authority to enjoin such persons, agencies, or authorities from violating any laws, rules, or regulations for the protection of the air, water, and other natural resources of the state.

(emphasis added).

23. The Plaintiffs are citizens of the State.

24. Environmental Policy 4.6.1 of the Sarasota County Comprehensive Plan prohibits dredge and fill activities in the Gulf of Mexico, bays, rivers, and streams of the county except to

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maintain previously dredged functional navigation channels and existing drainage canals. Any new beach nourishment project "require[s] approval by the Board of County Commissioners and must be determined to be in the public interest."

25. Policy 4.6.1 is designed to protect certain natural resources of the state.

26. The Introduction to Volume I of the Sarasota Comprehensive Plan states that all development orders entered by any state or local government commission, board, agency, department, or official concerning development within the geographic area subject to the provisions of Sarasota Comprehensive Plan shall be consistent with it.

27. Portions of Borrow Areas C and D and the entirety of Borrow Area B are located within the geographic boundary of Sarasota County and outside the City of Sarasota City limits. See **Exhibits** A and B.

28. Big Sarasota Pass has never been previously dredged.

29. The City and the Corps, as co-permit applicants, have not obtained the Board of County Commissioner's approval of the Project as required by Policy 4.6.1 of the County Comprehensive Plan.

30. The dredging of these areas located within the geographic boundary of the County -- as authorized in the Permit -- is prohibited by the Sarasota County Comprehensive Plan. As such, the FDEP's approval of the Permit authorizing the beach nourishment Project is in violation of the County's Comprehensive Plan until the Project is approved by the Sarasota County Board of County Commissioners.

31. FDEP is in violation of the laws adopted by Sarasota County for the protection of certain natural resources in Florida by issuing the Permit authorizing dredging in the Gulf of Mexico that is not for the purpose of maintaining a previously dredged functional navigation

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channel and without first requiring the co-applicants to secure the Board of County Commissioner's approval of the Project in compliance with ENV Policy 4.6.1 of the County Comprehensive Plan.

32. The City and Corps are also in violation of the laws adopted by Sarasota County for the protection of certain natural resources in Florida by obtaining the Permit without first securing the Board of County Commissioner's approval of the Project in Compliance Policy 4.6.1 of the County Comprehensive Plan.

33. The City's own Comprehensive Plan recognizes that the City must comply with the County's Comprehensive Plan. Action Strategy 1.1 within the Environmental Protection and Coastal Islands Plan of the City's Comprehensive Plan states that during the review of requests for both public and private development approval, the City shall ensure that applications are consistent with the most recently adopted and applicable local, regional, state, and federal plans and regulations.

34. As stated above, the Project activities being authorized under the Permit violate the County's Comprehensive Plan and, therefore, the Project is in violation of the City's own Comprehensive Plan.

35. By acting as an applicant and approving the implementation of the Project, the City is not enforcing and is in violation of its own laws and regulations contained in its own Comprehensive Plan requiring that development applications be in compliance with applicable local, regional, state, and federal plans and regulations.

36. Additionally, Florida's Community Planning Act ("Act") requires that all development undertaken by governmental agencies in regard to land covered by a

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comprehensive plan be consistent with such comprehensive plan as adopted. *See* § 163.3194(1)(a), Fla. Stat.

37. The term "governmental agency" is defined under the Act to mean:

a. The United States or any department, commission, agency, or other instrumentality thereof.

b. The State of Florida or any department, commission, agency, or other instrumentality thereof.

c. Any local government, as defined in this section, or any department, commission, agency, or other instrumentality thereof.

d. Any school board or other special district, authority, or governmental entity.

38. The term "development" is defined under the Act to have the same meaning as in § 380.04, Fla. Stat., which specifically states that "development" includes the alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any "coastal construction" as defined in § 161.021, Fla. Stat.

39. "Coastal construction" is defined in § 161.021, Fla. Stat., to include any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.

40. The Project activities being authorized by the FDEP under the Permit meet the definition of coastal construction under § 161.021, Fla. Stat., and, therefore, meet the definition of "development" under § 380.04, Fla. Stat., and the Community Planning Act.

41. Thus, the Project activities being carried out by the Corps and the City under the Permit must be consistent with the Sarasota Comprehensive Plan in regards to the portions of the Project that are within the boundary of the County and covered by the County's Comprehensive Plan.

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42. As stated above, the Project violates Environmental Policy 4.6.1 of the Sarasota County Comprehensive Plan.

43. Therefore, the Project activities authorized under the Permit are in violation of § 163.3194(1)(a), Fla. Stat., and the FDEP, City, and Corps should be enjoined from violating such law for the protection of natural resources of Florida.

44. This Verified Complaint will be served on Defendants and not filed until 30 days thereafter in accordance with section 403.412(2)(c), Fla. Stat.

45. Under section 403.412, Fla. Stat., the Plaintiffs are entitled to recovery of attorneys' fees and costs.

WHEREFORE, Plaintiffs request judgment and relief as follows:

a. Issue a Final Judgment declaring that the Permit issued by FDEP and the Project activities authorized under the Permit violate the County's Comprehensive Plan.

b. Issue a Final Judgment declaring that the City is not enforcing and is in violation of its own laws and regulations contained in the City's Comprehensive Plan.

c. Issue a Final Judgment declaring that the Project activities being carried out by the Corps and the City under the Permit are in violation of § 163.3194(1)(a), Fla. Stat.

d. Issue an injunction pursuant to section 403.412, Fla. Stat., requiring Defendants to revoke the Permit until the co-applicants comply with the County's Comprehensive Plan.

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e. Order the Defendants to pay Plaintiff's costs and reasonable attorneys' fees in bringing this legal action; and

f. Such other and further relief as this court deems just and proper.

Respectfully submitted this 18th day of January, 2017, in Tallahassee, Florida.

HOPPING GREEN & SAMS, P.A.

/s/ D. Kent Safriet
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Counsel for Petitioners.

VERIFICATION

I hereby certify that I have read the foregoing VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and the facts stated therein are true and correct to the best of my knowledge.

David N Patton 1-18-17
Plaintiff David N. Patton Date

Catherine E Lockner 01-18-2017
Plaintiff Siesta Key Association of Sarasota, Inc. Date

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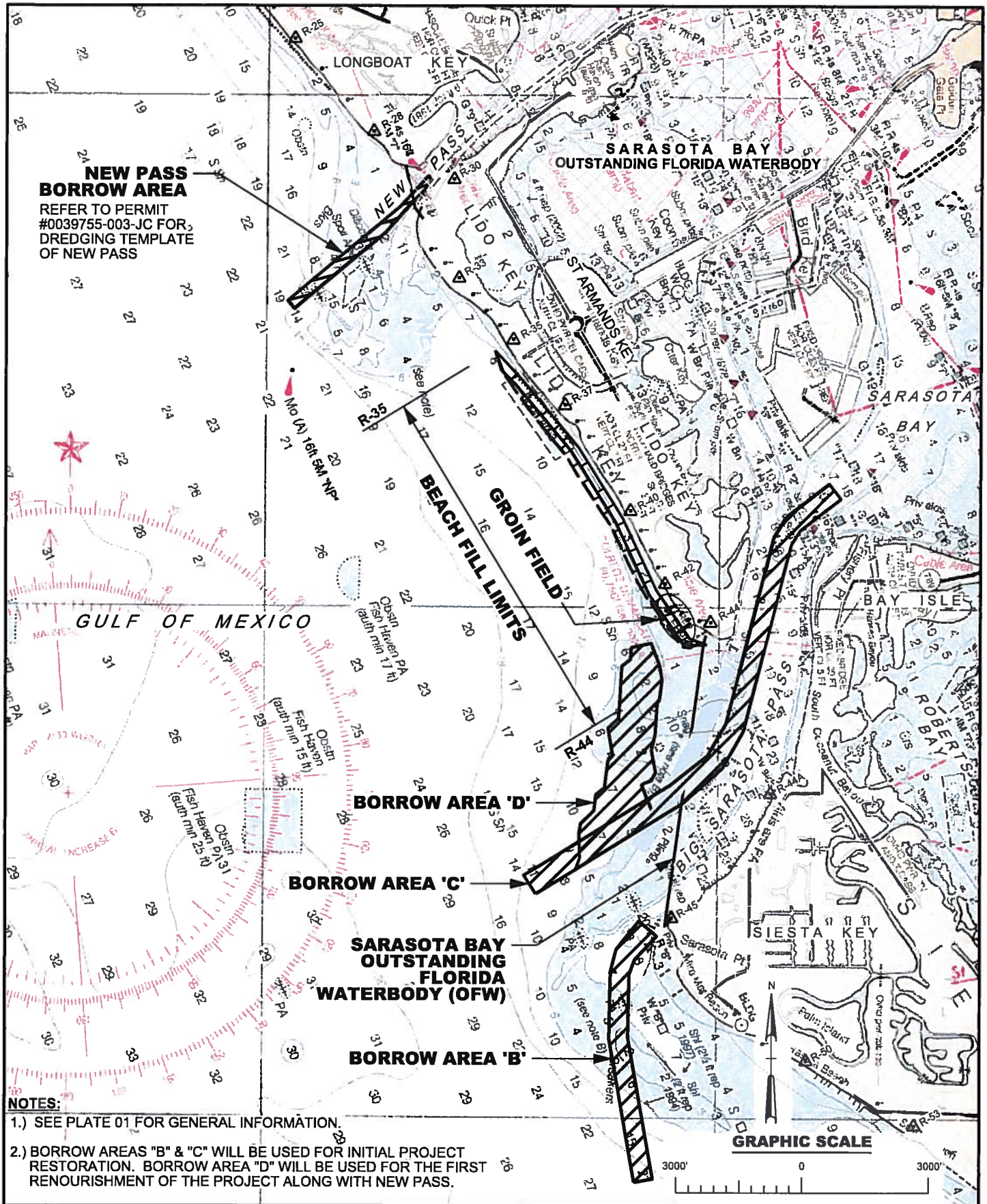
NEW PASS BORROW AREA
REFER TO PERMIT #0039755-003-JC FOR DREDGING TEMPLATE OF NEW PASS
LONGBOAT KEY
SARASOTA BAY
OUTSTANDING FLORIDA WATERBODY
NEW PASS
LIDO KEY
STARMANDS KEY
LIDO KEY
SARASOTA BAY
BAY ISLE
ROBERTS BAY
SIESTA KEY
GULF OF MEXICO
BEACH FILL LIMITS
GROIN FIELD
R-35
R-44
BORROW AREA 'D'
BORROW AREA 'C'
SARASOTA BAY OUTSTANDING FLORIDA WATERBODY (OFW)
BORROW AREA 'B'
Mo (A) 16R 5M "NP"
Obstn Fish Haven PA (auth min 17 ft)
Obstn Fish Haven (auth min 15 ft)
Obstn Fish Haven PA (auth min 25 ft)
Obstn
Wreck
Quick Pt
Sarasota Pt
Palm Island
Bird Key
Coon Key
Cable Area
Pipeline
Spoil Area
Spoil Grounds
Prohibited Anchorage
Fish Haven PA
Fish Haven
Fish Haven Increase
Fish Haven Decrease
Fish Haven Increase PA
Fish Haven Decrease PA
Fish Haven PA (auth min 25 ft)
Fish Haven PA (auth min 17 ft)
Fish Haven (auth min 15 ft)

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COS GIS WebMap - City Limits

January 18, 2017

Legend

Interstates — US Roads — Major Roads

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EXHIBIT B