Filing # 53525490 E-Filed 03/09/2017 03:20:19 PM

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. _____**

CITY OF SARASOTA,

Defendant.

_____/

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 Defendant, City of Sarasota ("City"), a political subdivision of the State of Florida and allege as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory and injunctive relief requesting that the 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. 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 Plaintiffs' reside in Sarasota County, Florida, and cause of action accrued in Sarasota County, Florida.

Filed 03/09/2017 03:44 PM - Karen E. Rushing, Clerk of the Circuit Court, Sarasota County, FL

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

GENERAL ALLEGATIONS

6. The U.S. Corps of Engineers and the City are co-applicants for Joint Coastal Permit 0333315-001-JC ("Permit").

7. 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").

8. 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.

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

10. 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).

11. 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.

12. 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.

13. On December 22, 2016, the Florida Department of Environmental Protection issued its Consolidated Notice of Intent to Issue the Permit authorizing the Corps and City to implement the Project.

14. 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 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.

15. 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.

16. 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.

17. 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 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

18. Plaintiffs reallege and incorporate herein by reference the allegations in Paragraphs 1-17 of this Complaint as if fully set forth herein.

19. 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).

20. The Plaintiffs are citizens of the State.

21. 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 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."

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

23. 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.

24. 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.

25. Big Sarasota Pass has never been previously dredged.

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

27. The City has refused to seek or obtain the Board of County Commissioner's approval of the Project as required by Policy 4.6.1 of the County Comprehensive Plan as it does not believe it is required.

28. 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 Project is in violation of the County's Comprehensive Plan until the Project is approved by the Sarasota County Board of County Commissioners.

29. The City and Corps will be in violation of the laws adopted by Sarasota County for the protection of certain natural resources in Florida by not securing the Board of County Commissioner's approval of the Project in Compliance Policy 4.6.1 of the County Comprehensive Plan.

30. 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.

31. As stated above, the Project activities will violate the County's Comprehensive Plan and, therefore, the Project will violate the City's own Comprehensive Plan.

32. 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.

33. Additionally, Florida's Community Planning Act ("Act") requires that all development undertaken by governmental agencies in regard to land covered by a comprehensive plan be consistent with such comprehensive plan as adopted. *See* § 163.3194(1)(a), Fla. Stat.

34. 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.

35. 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.

36. "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.

37. The Project activities 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.

38. Thus, the Project activities being carried out by the Corps and the City 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.

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

40. Therefore, the Project activities will violate section 163.3194(1)(a), Fla. Stat., and the City and Corps should be enjoined from violating such law for the protection of natural resources of Florida.

41. A Verified Complaint was served on Defendant and not filed until 30 days thereafter in accordance with section 403.412(2)(c), Fla. Stat.

42. 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 Project activities 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 to be carried out by the Corps and the City are in violation of section 163.3194(1)(a), Fla. Stat.

d. Issue an injunction pursuant to section 403.412, Fla. Stat., enjoining the Project from proceeding until the City complies with environmental policy 4.6.1 of the County's Comprehensive Plan by obtaining the approval of the County Board of County Commissioners for the Project.

e. Order the City 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 9th day of March, 2017, in Tallahassee, Florida.

HOPPING GREEN & SAMS, P.A.

/s/ D. Kent Safriet
D. Kent Safriet (Florida Bar No. 174939)
Mohammad O. Jazil (Florida Bar No. 72556)
Adam F. Blalock (Florida Bar No. 16397)
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
Telephone: (850) 222-7500
Facsimile: (850) 224-8551
KentS@hgslaw.com
MohammadJ@hgslaw.com
AdamB@hgslaw.com

Counsel for Plaintiffs

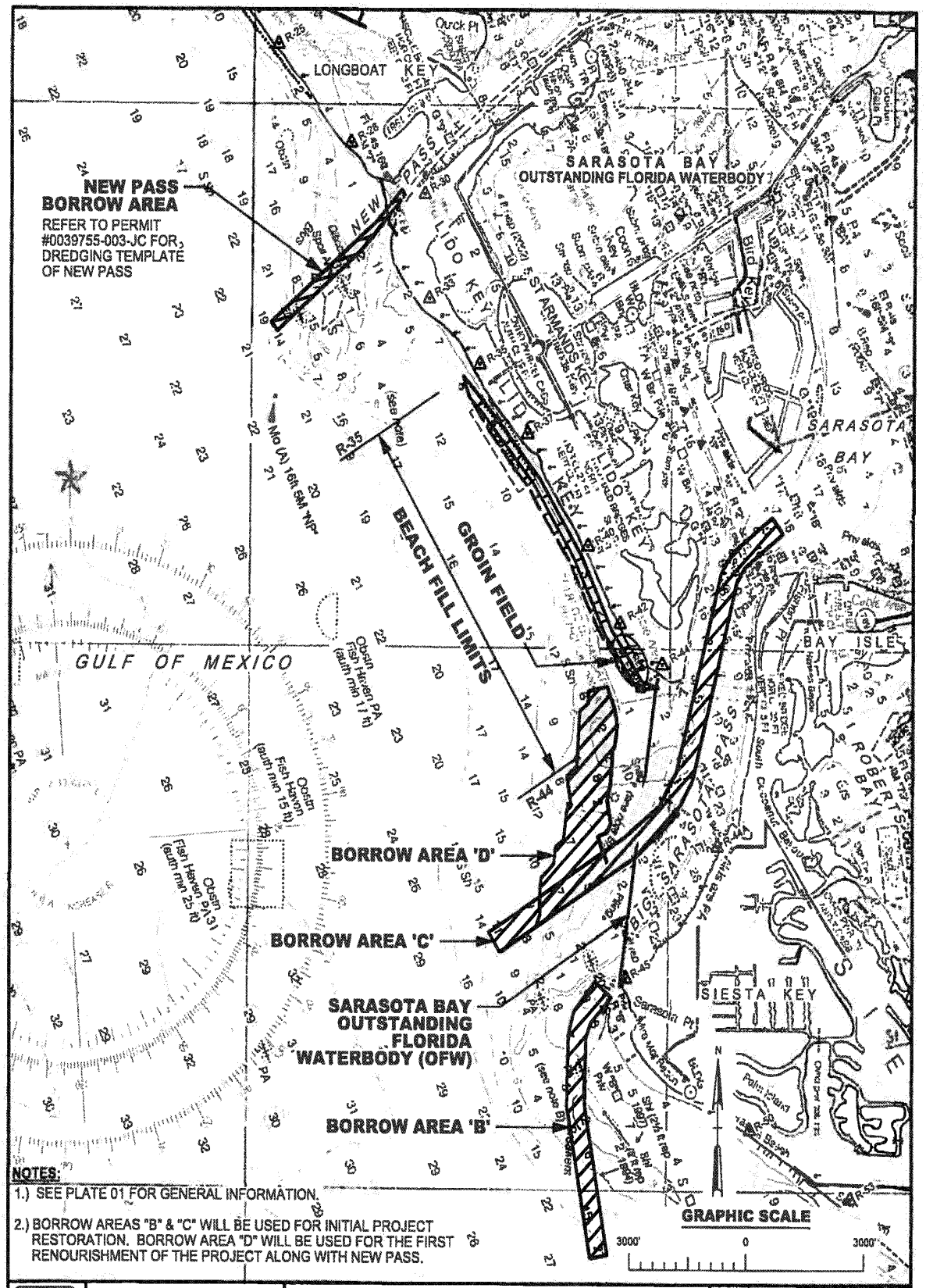
VERIFICATION

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 3-9-17
Plaintiff David N. Patton Date

Catherine E Luckner March 9, 2017
Plaintiff Siesta Key Association of Sarasota, Inc. Date

EXHIBIT A TO PLAINTIFFS' VERIFIED COMPLAINT
FOR INJUNCTIVE AND DECLARATORY RELIEF



COS GIS WebMap - City Limits

EXHIBIT B TO PLAINTIFFS' VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

January 18, 2017

0 1,500 3,000 ft

Legend

Interstates — US Roads — Major Roads

Information contained herein is subject to the acceptance of all disclaimers of the City of Sarasota in affect as the date of the production and printing of this information (To review the disclaimers they can be found at srqgis.sarasotagov.com, under the help tab). The City of Sarasota shall have no actual or implied liability for incorrect drawings, record drawings, data, and other materials that the recipient reviews and/or utilizes in preparation of making business or personal or personal decisions