



Florida Department of Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

August 7, 2018

Ann Shortell, Executive Director
St. John's Water Management District
Post Office Box 1429
Palatka, Florida 32178
ashortelle@sjrwmd.com

File No. 18-0365427-001-EG, Flagler County

Dear Ms. Shortell;

On July 11, 2018, we received your notice of intent to use a General Permit (GP), pursuant to Rule 62-330.485, Florida Administrative Code (F.A.C.) to restore approximately 113 acres of drag-line impacted wetlands back to surrounding marsh elevations within Smith Creek, a Class III Florida Waterbody, portions of the project will be located within the Tomoka Marsh Aquatic Preserve an Outstanding Florida Waterbody, within Flagler County. The activities will take place within the sites as shown on the attached figures.

Your intent to use a general permit has been reviewed by Department staff for three types of authorizations: (1) regulatory authorization, (2) proprietary authorization (related to state-owned submerged lands), and (3) federal authorization. The authority for review and the outcomes of the reviews are listed below. Please read each section carefully.

Your project did not qualify for the federal authorization; therefore, additional authorization must be obtained prior to commencement of the proposed activity. This letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity. Please refer to the specific section(s) dealing with that portion of the review below for advice on how to proceed.

If you change the project from what you submitted, the authorization(s) granted may no longer be valid at the time of commencement of the project. Please contact us prior to beginning your project if you wish to make any changes.

1. Regulatory Review – Approved

Based on the forms, drawings, and documents submitted with your notice, it appears that the project meets the requirements for the General Permit under Rule 62-330.485, F.A.C. Any activities performed under a general permit are subject to general conditions required in Rule 62-330.405, F.A.C. (attached), and the specific conditions of Rule 62-330.485, F.A.C. (attached). Any deviations from these conditions may subject the permittee to enforcement action and possible penalties.

Please be advised that the construction phase of the GP must be completed within five years from the date the notice to use the GP was received by the Department. If you wish to continue this GP beyond the expiration date, you must notify the Department at least 30 days before its expiration.

Authority for review- Part IV of Chapter 373, F.S., Title 62, F.A.C. and in accordance with the operating agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C.

2. Proprietary Review – Granted

The Department acts as staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) and issues certain authorizations for the use of sovereign submerged lands. The Department has the authority to review activities on sovereign submerged lands under Chapter 253 of the Florida Statutes (F.S.) and 258, F.S. if located within an aquatic preserve, and Chapters 18-20 and 18-21 of the Florida Administrative Code.

The activity appears to be located on sovereign submerged lands owned by the Board of Trustees. The activity is not exempt from the need to obtain the applicable proprietary authorization. As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that the activity qualifies for a letter of consent under Section 253.77, Florida Statutes, to construct and use the activity on the specified sovereign submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein.

During the term of this Letter of Consent you shall maintain satisfactory evidence of sufficient upland interest as required by paragraph 18-21.004(3)(b), Florida Administrative Code. If such interest is terminated or the Board of Trustees determines that such interest did not exist on the date of issuance of this Letter of Consent, this Letter of Consent may be terminated by the Board of Trustees at its sole option. If the Board of Trustees terminates this Letter of Consent, you agree not to assert a claim or defense against the Board of Trustees arising out of this Letter of Consent.

Authority for review - Chapter 253 F.S., and Chapter 18-21, F.A.C, and Section 62-330.075, F.A.C. as required.

3. Federal Review- SPGP Not Approved

Your proposed activity as outlined on your application and attached drawings **does not qualify** for Federal authorization pursuant to the State Programmatic General Permit and a **SEPARATE permit** or authorization **Shall be required** from the Corps. You must apply separately to the Corps using the federal application form (ENG 4345). More information about Corps permitting may be found online in the Jacksonville District Regulatory Division Sourcebook. **Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency.**

Authority for review - an agreement with the USACOE entitled “Coordination Agreement Between the U. S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection, or Duly Authorized Designee, State Programmatic General Permit”, Section 10 of the Rivers and Harbor Act of 1899, and Section 404 of the Clean Water Act.

Additional Information

Please retain this general permit. The activities may be inspected by authorized state personnel in the future to ensure compliance with appropriate statutes and administrative codes. If the activities are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 18-14, F.A.C.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department’s action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency’s file or identification number, if known;

- (b) The name, address, any email address, any facsimile number, and telephone number of the 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; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an administrative hearing. A timely request for

extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

Judicial Review

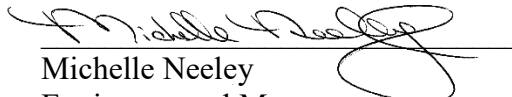
Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this action is filed with the Clerk of the Department.

Executed in Duval, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Thank you for applying to the Submerged Lands and Environmental Resource Permit Program. If you have any questions regarding this matter, please contact Janice Price at the letterhead address or at 904-256-1640 and janice.r.price@floridadep.gov.

Sincerely,


Michelle Neeley
Environmental Manager

Enclosures:

Ch. 62-330.485, F.A.C.
General Conditions for All General Permits, Ch. 62-330.405, F.A.C.
Special Consent Conditions
General Conditions for Authorizations for Activities on State-Owned Submerged Lands
Standard Manatee Conditions for In-Water Work 2011, 2 pages
Project drawings, 6 pages

Copies furnished to:

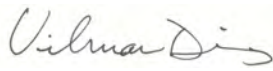
Ronald Brockmeyer, SJRWMD (rbrockmeyer@sjrwmd.com)
Matthew Bledsoe, FDEP Park Service
Annie Otto, FDEP AP Manager
Thomas Kallemeyn, NED FDEP
Brian Durden, NED FDEP
Michelle Neeley, NED FDEP
Kim Pearce, NED FDEP
Janice Price, NED FDEP

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this determination, including all copies, was mailed before the close of business on August 7, 2018, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to 120.52(7),
Florida Statutes, with the designated Department Clerk,
receipt of which is hereby acknowledged.



Clerk

August 7, 2018

Date

62-330.485 General Permit to the Department and Water Management Districts for Environmental Restoration or Enhancement.

(1) A general permit is granted to the Department and Districts for the construction, alteration, operation, maintenance, removal and abandonment of projects to implement Department or District environmental restoration or enhancement projects.

(2) The environmental restoration or enhancement project must comply with any one of the following procedures:

(a) The project is part of a Surface Water Improvement and Management Plan developed pursuant to section 373.453, F.S.; or

(b) The project is approved by the District Governing Board or the Secretary of the Department after conducting at least one public meeting; or

(c) The project is wholly or partially funded through the Land Acquisition Trust Fund pursuant to Article X, Section 28 of the Florida Constitution, or through any successor trust fund.

(3) When the activity is to be conducted by the Department, the Department shall provide the notice and any processing fee required by rule 62-330.071, F.A.C., to the appropriate District.

(4) When the activity is to be conducted by a District, the District shall provide the notice and any required fee to the appropriate Department office.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.406(5), 373.4131, 373.414(9), 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.118(1), 373.406(5), 373.413, 373.4131, 373.414(9), 373.4145, 373.416, 373.418, 373.426, 403.814(1) FS. History—New 10-3-95, Amended 10-1-07, Formerly 62-341.485, Amended 10-1-13, 6-1-18.

62-330.405 General Conditions for All General Permits

The following general permit conditions are binding upon the permittee and are enforceable under chapter 373, F.S. These conditions do not apply to the general permit for stormwater management systems under section 403.814(12), F.S.

(1) The general permit is valid only for the specific activity indicated. Any deviation from the specified activity and the conditions for undertaking that activity shall constitute a violation of the permit and may subject the permittee to enforcement action and revocation of the permit under chapter 373, F.S.

(2) The general permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any construction, alteration, operation, maintenance, removal or abandonment authorized by this permit; and it does not authorize any violation of any other applicable federal, state, local, or special district laws (including, but not limited to, those governing the “take” of listed species).

(3) The general permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the general permit.

(4) The general permit does not relieve the permittee from liability and penalties when the permitted activity causes harm or injury to: human health or welfare; animal, plant or aquatic life; or property. It does not allow the permittee to cause pollution that violates state water quality standards.

(5) Section 253.77, F.S., provides that a person may not commence any excavation, construction, or other activity involving the use of state-owned or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required consent, lease, easement, or other form of authorization authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on state-owned lands.

(6) The authorization to conduct activities under a general permit may be modified, suspended or revoked in accordance with chapter 120, F.S., and section 373.429, F.S.

(7) The general permit is not transferable to a new third party. To be used by a different permittee, a new notice to use a general permit must be submitted in accordance with rule 62-330.402, F.A.C. Activities constructed in accordance with the terms and conditions of a general permit are automatically authorized to be operated and maintained by the permittee and subsequent owners in accordance with subsection 62-330.340(1), F.A.C. Any person holding the general permit, persons working under the general permit, and owners of land while work is conducted under the general permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to sale, conveyance, or other transfer of ownership or control of the permitted project, activity, or the real property at which the permitted project or activity is located.

(8) Upon reasonable notice to the permittee, Agency staff with proper identification shall have permission to enter, inspect, sample and test the permitted system to ensure conformity with the plans and specifications approved by the general permit.

(9) The permittee shall maintain any permitted project or activity in accordance with the plans submitted to the Agency and authorized in the general permit.

(10) A permittee's right to conduct a specific activity under the general permit is authorized for a duration of five years.

(11) Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be implemented and maintained immediately prior to, during, and after construction as needed to stabilize all disturbed areas, including other measures specified in the permit to prevent adverse impacts to the water resources and adjacent lands. Erosion and sediment control measures shall be installed and maintained in accordance with the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation, June 2007)*, available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-04227>, and the *Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008)*, available at http://publicfiles.dep.state.fl.us/DEAR/Stormwater_Training_Docs/erosion-inspectors-manual.pdf.

(12) Unless otherwise specified in the general permit, temporary vehicular access within wetlands during construction shall be performed using vehicles generating minimum ground pressure to minimize rutting and other environmental impacts. Within forested wetlands, the permittee shall choose alignments that minimize the destruction of mature wetland trees to the greatest extent practicable. When needed to prevent rutting or soil compaction, access vehicles shall be operated on wooden, composite, metal, or other non-earthen construction mats. In all cases, access in wetlands shall comply with the following:

(a) Access within forested wetlands shall not include the cutting or clearing of any native wetland tree having a diameter four inches or greater at breast height;

(b) The maximum width of the construction access area shall be limited to 15 feet;

(c) All mats shall be removed as soon as practicable after equipment has completed passage through, or work has been completed, at any location along the alignment of the project, but in no case longer than seven days after equipment has completed work or passage through that location; and

(d) Areas disturbed for access shall be restored to natural grades immediately after the maintenance or repair is completed.

(13) Barges or other work vessels used to conduct in-water activities shall be operated in a manner that prevents unauthorized dredging, water quality violations, and damage to submerged aquatic communities.

(14) The construction, alteration, or use of the authorized project shall not adversely impede navigation or create a navigational hazard in the water body.

(15) Except where specifically authorized in the general permit, activities must not:

(a) Impound or obstruct existing water flow, cause adverse impacts to existing surface water storage and conveyance capabilities, or otherwise cause adverse water quantity or flooding impacts to receiving water and adjacent lands; or

(b) Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to section 373.042, F.S., or a Works of the District established pursuant to section 373.086, F.S.

(16) If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, stone tools, dugout canoes, metal implements, historic building materials, or any other physical remains that

could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the vicinity of the discovery. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section (DHR), at (850)245-6333, as well as the appropriate permitting agency office. Project activities shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and the proper authorities notified in accordance with section 872.05, F.S.

(17) The activity must be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed, and must comply with any applicable District special basin and geographic area criteria.

(18) The permittee shall comply with the following when performing work within waters accessible to federally- or state-listed aquatic species, such as manatees, marine turtles, smalltooth sawfish, and Gulf sturgeon:

(a) All vessels associated with the project shall operate at “Idle Speed/No Wake” at all times while in the work area and where the draft of the vessels provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.

(b) All deployed siltation or turbidity barriers shall be properly secured, monitored, and maintained to prevent entanglement or entrapment of listed species.

(c) All in-water activities, including vessel operation, must be shut down if a listed species comes within 50 feet of the work area. Activities shall not resume until the animal(s) has moved beyond a 50-foot radius of the in-water work, or until 30 minutes elapses since the last sighting within 50 feet. Animals must not be herded away or harassed into leaving. All onsite project personnel are responsible for observing water-related activities for the presence of listed species.

(d) Any listed species that is killed or injured by work associated with activities performed shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1(888)404-3922 and ImperiledSpecies@myFWC.com.

(e) Whenever there is a spill or frac-out of drilling fluid into waters accessible to the above species during a directional drilling operation, the FWC shall be notified at ImperiledSpecies@myfwc.com with details of the event within 24 hours following detection of the spill or frac-out.

(19) The permittee shall hold and save the Agency harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any activity authorized by the general permit.

(20) The permittee shall immediately notify the Agency in writing of any submitted information that is discovered to be inaccurate.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.406(5), 373.4131, 373.414(9), 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.044, 373.118(1), 373.129, 373.136, 373.406(5), 373.413, 373.4131, 373.414(9), 373.4145, 373.416, 373.422, 373.423, 373.429, 403.814(1) FS. History—New 10-3-95, Amended 10-1-07, Formerly 62-341.215, Amended 10-1-13, 6-1-18.

Special Consent Conditions

1. The applicant agrees to indemnify, defend and hold harmless the Board of Trustees and the State of Florida from all claims, actions, lawsuits and demands in any form arising out of the authorization to use sovereignty submerged lands or the applicant's use and construction of structures on sovereignty submerged lands. This duty to indemnify and hold harmless will include any and all liabilities that are associated with the structure or activity including special assessments or taxes that are now or in the future assessed against the structure or activity during the period of the authorization.
2. Failure by the Board of Trustees to enforce any violation of a provision of the authorization or waiver by the Board of Trustees of any provision of the authorization will not invalidate the provision not enforced or waived, nor will the failure to enforce or a waiver prevent the Board of Trustees from enforcing the unenforced or waived provision in the event of a violation of that provision.
3. Applicant binds itself and its successors and assigns to abide by the provisions and conditions set forth in the authorization. If the applicant or its successors or assigns fails or refuses to comply with the provisions and conditions of the authorization, the authorization may be terminated by the Board of Trustees after written notice to the applicant or its successors or assigns. Upon receipt of such notice, the applicant or its successors or assigns will have thirty (30) days in which to correct the violations. Failure to correct the violations within this period will result in the automatic revocation of this authorization.
4. All costs incurred by the Board of Trustees in enforcing the terms and conditions of the authorization will be paid by the applicant. Any notice required by law will be made by certified mail at the address shown on page one of the authorization. The applicant will notify the Board of Trustees in writing of any change of address at least ten days before the change becomes effective.
5. This authorization does not allow any activity prohibited in a conservation easement or restrictive covenant that prohibits the activity.

General Conditions for Authorizations for Activities on State-Owned Submerged Lands:

All authorizations granted by rule or in writing under Rule 18-21.005, F.A.C., except those for geophysical testing, shall be subject to the general conditions as set forth in paragraphs (a) through (i) below. The general conditions shall be part of all authorizations under this chapter, shall be binding upon the grantee, and shall be enforceable under Chapter 253 or 258, Part II, F.S.

(a) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.

(b) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.

(c) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S. or Chapter 18-14, F.A.C.

(d) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.

(e) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C.

(f) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.

(g) Structures or activities shall not create a navigational hazard.

(h) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.

(i) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(g), F.A.C., or any other applicable law.

(8) Pursuant to Section 253.77(4), F.S., federal, state, or local agencies or political subdivisions, including ports and inland navigation districts, proposing to conduct an activity which qualifies for an exemption under Part IV of Chapter 373, F.S. or Section 403.813(1), F.S., shall be granted a letter of consent or public easement upon receipt of a request and a legal description of the affected land. However, such grant does not release the entity from compliance with other applicable provisions of Chapter 18-18, 18-20 or 18-21, F.A.C.

Rulemaking Authority 253.03(7), 253.73 FS. Law Implemented 253.001, 253.03, 253.141, 253.68, 253.72, 253.74, 253.75, 253.77 FS. History—New 3-27-82, Amended 8-1-83, Formerly 16Q-21.04, 16Q-21.004, Amended 12-25-86, 1-25-87, 3-15-90, 8-18-92, 10-15-98, 12-11-01, 10-29-03, 12-16-03, 3-8-04, 10-27-05, 4-14-08, 9-1-09.

STANDARD MANATEE CONDITIONS FOR IN-WATER WORK

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The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at ImperiledSpecies@myFWC.com
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 ½" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at MyFWC.com/manatee. Questions concerning these signs can be sent to the email address listed above.

CAUTION: MANATEE HABITAT

All project vessels

IDLE SPEED / NO WAKE

When a manatee is within 50 feet of work
all in-water activities must

SHUT DOWN

Report any collision with or injury to a manatee:

Wildlife Alert:

1-888-404-FWCC(3922)

cell *FWC or #FWC



Project Narrative

Background: Coastal wetland habitats provide a vast array of ecosystem functions. They provide habitat for numerous animals (especially fish and birds), thus helping to maintain biodiversity. Wetlands are a source of particulate and dissolved organic materials for the adjacent estuarine water column, supporting estuarine fisheries production. They also moderate storm/flood damage to upland areas. All these functions are dependent on local hydrology and hydrologic links to the estuary. In the Indian River Lagoon (IRL), the majority (over 75%) of the historic wetlands have been impounded for mosquito control and isolated from the estuary since the late 1950s and 1960s. The value of wetland function to the ecosystem and the positive benefits identified by various researchers (e.g., nursery habitat) were the justification for the inclusion of impoundment reconnection and wetland restoration as a high priority in the IRL SWIM Plan, the IRL SWIM Plan 2002 Update, the IRL Comprehensive Conservation and Management Plan, and the Northern Coastal Basins (NCB) SWIM Plan.

Installing culverts in isolated impoundments is the most cost-effective means for reintegrating wetlands into the IRL ecosystem while continuing to provide mosquito control or targeted wildlife management. Past work by the SJRWMD has reconnected more than 19,000 acres of impoundments with the installation of culverts and pumps. This work was done through contracts with mosquito control districts (MCD) and/or the U.S. Fish and Wildlife Service (USFWS) at Merritt Island National Wildlife Refuge (MINWR). Approximately, 7,800 acres of isolated impoundments remain in the IRL system. Restoring the shoreline of previously impounded wetlands, while costlier, provides the most natural condition possible, and removes these wetlands from active hydrological management. With SJRWMD support and recently NOAA Recovery Act funding, approximately 43 miles of previously-impounded shoreline has been restored with SJRWMD participation.

Many coastal wetlands in the IRL that were spared from impounding were still impacted in another way. These wetlands were crisscrossed with hundreds of miles of mosquito control ditches. The most damaging of these ditching efforts used large excavation equipment, called draglines, to ditch through wetlands; most of it during the 1960s. A large concentration of these ditched wetlands are found in northern and central Mosquito Lagoon (approximately 1,200 acres) with others located throughout coastal Florida. Restoration of these impacted wetlands was initiated in 1999 through a pilot project in coordination with the Volusia County Mosquito Control (VCMC) and Canaveral National Seashore (CNS). Over 50 acres of wetlands were restored under the pilot project by contracting the use of an amphibious excavator to regrade spoil piles into the ditches. The promising results of the pilot project convinced VCMC to purchase two amphibious excavators to complete restoration more rapidly and efficiently. To date, over 625 acres of dragline-impacted wetlands have been restored in Volusia County with District support.

Related Permitting: Dragline ditch restoration and the very similar shoreline restoration of impounded wetlands in the Mosquito Lagoon were undertaken with permits as follows:

Year	FDEP permit #	ACOE permit #	Project Description
1996	64-291775-4	1996-04216 (IP-JG)	D-12-S breaching/ditching - Porkchop dragline restoration
1999	05-150816-001	199900993 (LOP-TB)	V-impoundments restoration/reconnection
2000	64-171851-001	1996-04216 (IP-JG) mods 2,3	Pork Chop and Orange Islands – D-12-S
2002	64-171851-004	1996-04216 (IP-JG) mod 4	D-12-S restoration
2006	64-171851-006	SAJ-2006-3687 (NW-TSB)	D-12-N restoration
2007	64-272610-001	SAJ-2007-73 (NW-IS)	C-8 impoundment restoration and dragline ditch restoration
2008	05-171851-009	SAJ-2008-0224 (NW-TSD)	Dike removal at MINWR (including T-43, T-42, and T-41)
2008	05-287323-001	SAJ-2008-1269 (NW-TSD) w/mod	Culverts at MINWR... V-3 impoundment
2008	64-287893-001	SAJ-2008-1455 (NW-TSD)	Bottle Island dragline ditch
2009	64-294562-001	SAJ-2009-00768 (NW-TSD) w/mod 1	MLAP dragline ditch
2012	64-309919-001-EG	SAJ-2009-00768 (NW-TSD)	MLAP dragline ditch (District parcel)
2012	64-314796-001-EG	SAJ-2012-03036 (NW-TSD)	All remaining dragline ditching in CNS
2015	64-294562-005-EG	SAJ-2009-00768 (NW-TSD)	MLAP dragline ditch remaining

Dragline ditch restoration at North Peninsula State Park in northern Volusia County (less than a mile to the south of the proposed work) was completed under SJRWMD 400-127-23047-3 and SAJ-2010-00628 (NW-TSD) mostly in 2010.

Justification: This group has a long history of successfully restoring wetlands and their functions. As an example, over 530 acres of dragline-impacted wetland have been addressed in Mosquito Lagoon alone returning over 200 acres ditch and spoil piles to wetland elevation. None of these areas has been shown to breed substantial numbers of mosquitoes in their present restored configuration. With the long-term success of the restoration work described above, our interagency team proposes to continue our efforts in Flagler County. To that end, a severely impacted area of wetlands has been identified on State lands, just north of work previously conducted in Volusia County. It includes a portion of Gamble Rogers Memorial State Recreation Area and is adjacent to the Tomoka Marshes Aquatic Preserve. In coordination/consultation with State Parks and Aquatic Preserve staff, this plan to work in Flagler County was developed.

Our team (federal, state, regional, and local agencies) seeks the necessary permits and authorization to return to work in the Flagler County with federal funding under USFWS’s National Coastal Wetland Conservation Grants Program. We seek a FDEP General Permit (Section 62-341.485 FAC) and ACOE Nationwide Permit 27. The project area contains sovereign lands (see ownership information attached) and we request consent of use to complete the restoration activities contained within this application.

Project Area: The proposed area includes over 113 acres of dragline-impacted wetland on public lands in Flagler County (Map 1). These areas of wetland were dragline ditched in the 1960s and 70s. Not all areas identified will be restored based on the intensity of ditching, amount of spoil remaining, and potential disturbance to adjacent areas during restoration. The targeted disturbed areas are contained within the identified tax parcels listed below:

Owner Name	Parcel Number
TIITF/DNR-DIV REC & PARKS	3012320000010300020
STATE OF FLORIDA TIITF	3712310000070400030
STATE OF FLORIDA TIITF	3712310000070400020
STATE OF FLORIDA TIITF	3012320000020400000
STATE OF FLORIDA TIITF	3712310000070400010

Shellfish harvesting is prohibited year-round as the area is “unclassified waters.” Oyster reefs have been mapped in the area and will be avoided during restoration. The project area can be reached by boat from the boat ramp just inside the Gamble Rogers Memorial State Recreation Area (see Map 2). A boat will be provided to visit this location, if requested.

Project Plan: The project plan includes the same techniques used for dragline ditch restoration projects since inception (see *Construction Methods*). This dragline ditch restoration work will benefit from the experience gained on the numerous projects since the original pilot project in Volusia County. The plan has been developed in consultation with FDEP Aquatic Preserve and State Park staff. All work occurs within the historical footprint of previously-disturbed coastal wetlands and on state-owned lands. No natural upland will be disturbed and no excavation below existing wetland elevation will occur.

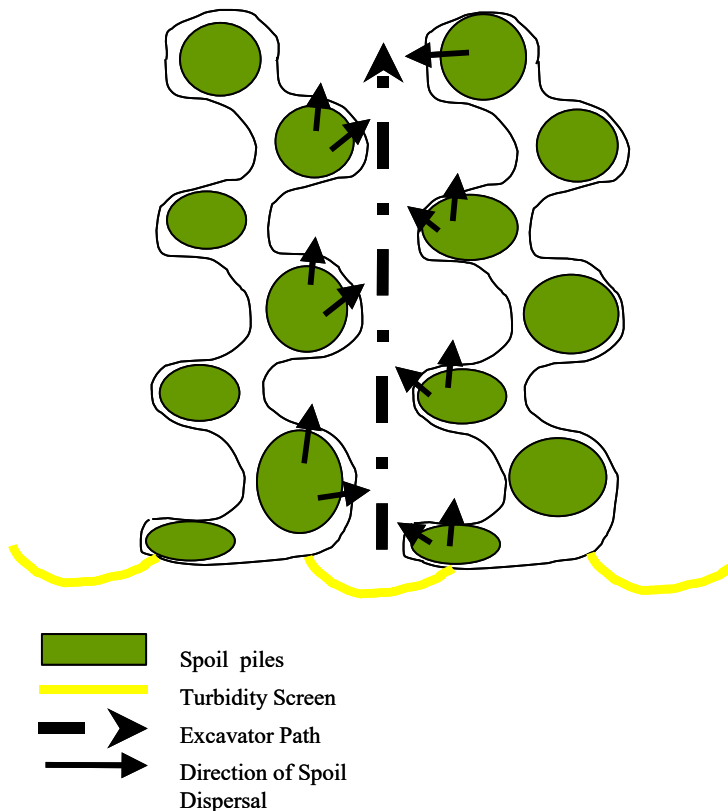
Construction Methods: Dragline ditch restoration will be accomplished using the following procedure. Work areas will be isolated by the installation of turbidity screens at the estuary interface of all tidal creeks and ditches. Vegetation on the spoil piles will be cleared and placed in the portions of the ditch to be filled using an amphibious excavator. Spoil will be returned to the borrow ditch covering the vegetation. No material will be excavated below existing marsh elevations. The excavator will work primarily from the existing ditches, moving backwards and filling the ditch behind it (see Restoration Technique figure below). Due to soil oxidation and compaction, the excavator may not completely fill all ditches to marsh elevation. If necessary, some ditches will be narrowed but left connected to the estuary to reduce the potential for a mosquito breeding problem. By leaving ditches narrowed or unfilled,

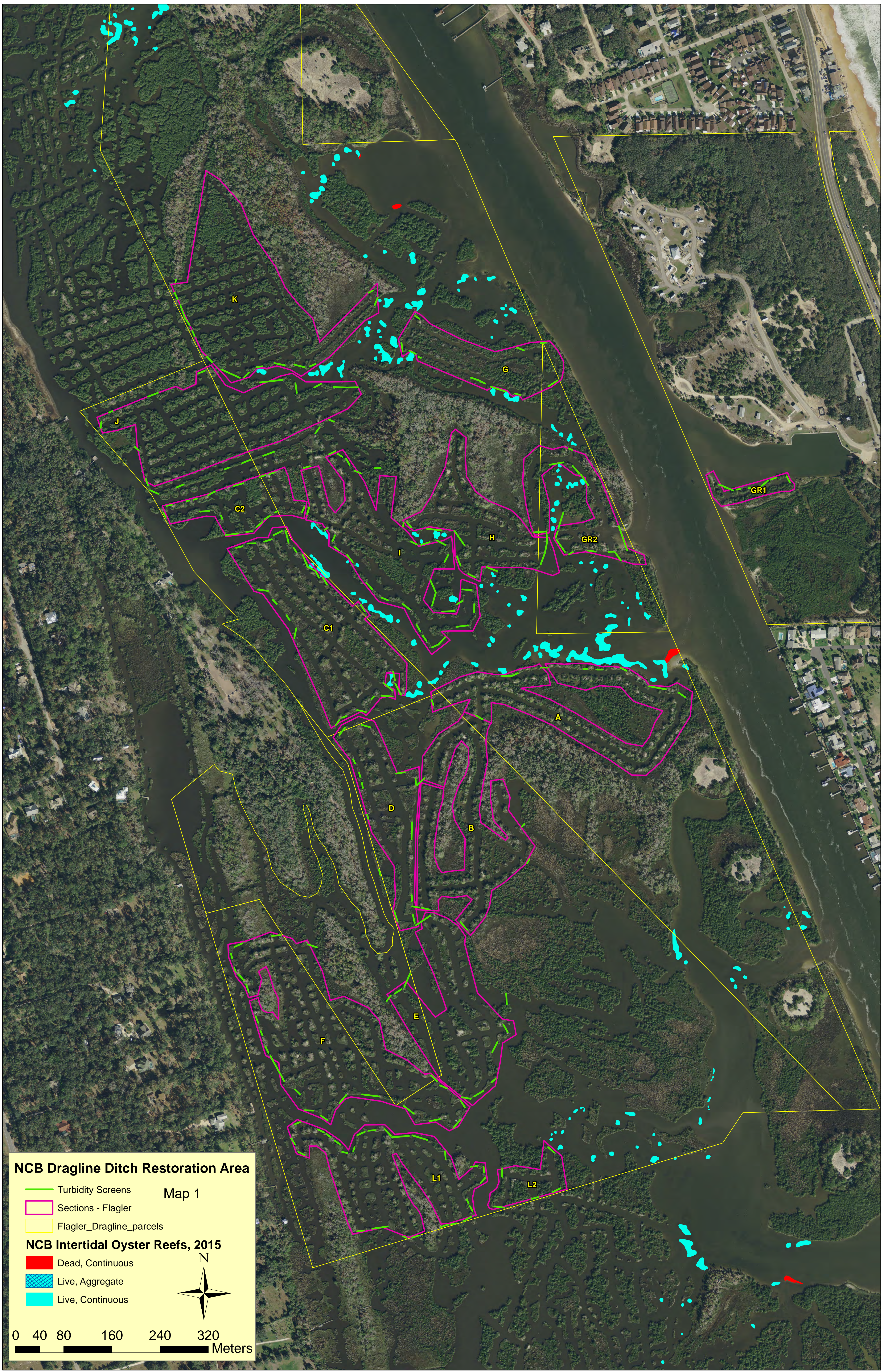
restored areas can be brought up to existing marsh elevation reducing the need for future mosquito treatment. All surfaces will be leveled to existing adjacent wetland elevations (no slope) just inches above mean water level. No new excavation below existing marsh elevation will occur. No natural upland will be excavated.

Following our extensive and successful experience with this method, the restored surface will be allowed to revegetate through natural recruitment or vegetative growth/expansion from adjacent wetland plants. Turbidity screens will remain in place for approximately 2 months after restoration to allow all surfaces to stabilize. Our experience and *in situ* monitoring (e.g., water quality) indicate that 2 months post construction is more than adequate for this purpose.

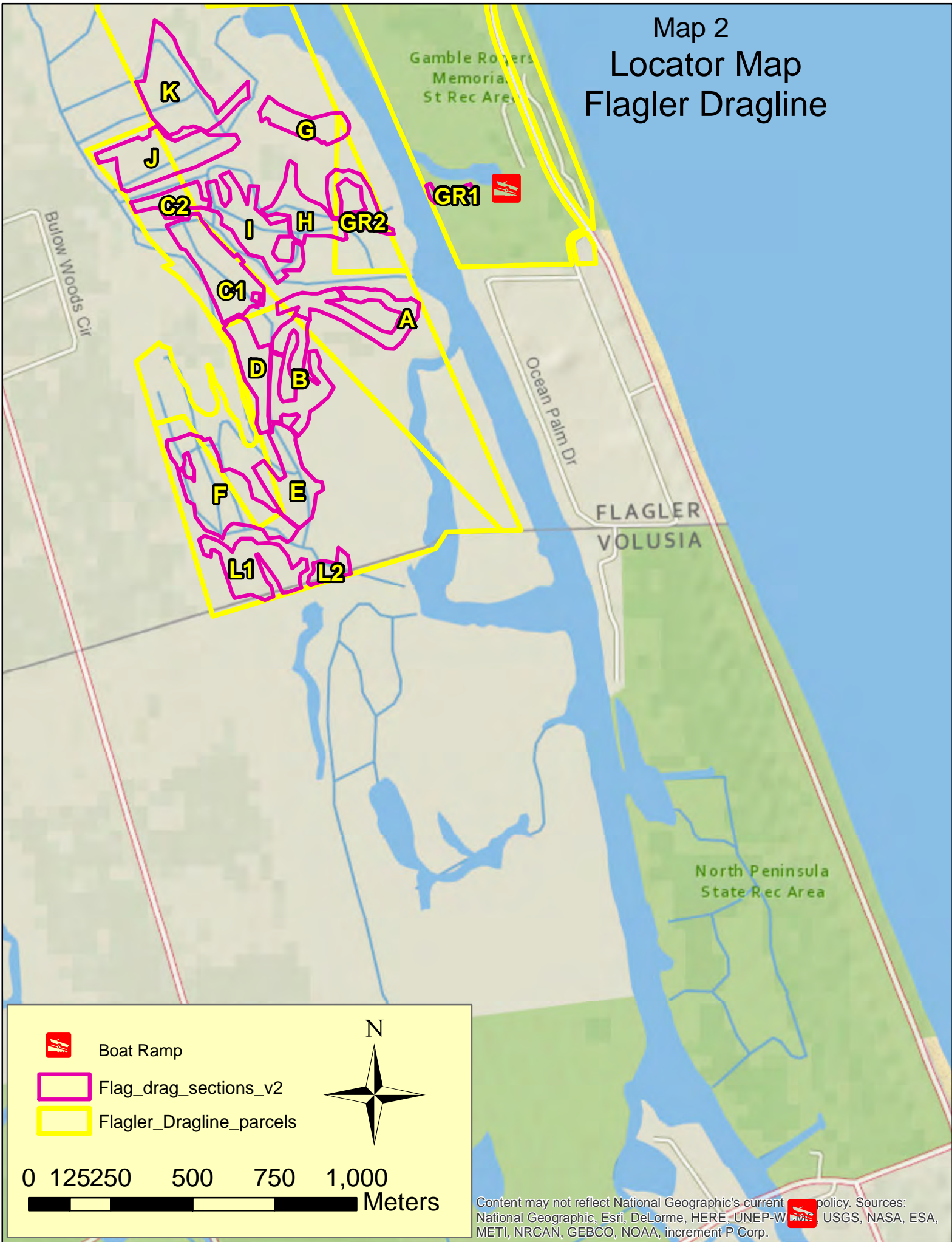
The hydraulic backhoe on an “amphibious excavator” is the typical units used in construction throughout the industry. The difference is that this backhoe is mounted on pontoons making it amphibious. Tracks, typical of this type of equipment, are mounted around the pontoons resulting in a self-crawling track-type vehicle often called a “Marsh Buggy.” Ground bearing pressure for this type of vehicle is approximately 2 pounds per square inch with the weight being distributed over the entire bottom surface of the pontoon.

Dragline Ditch Restoration Technique





Map 2 Locator Map Flagler Dragline



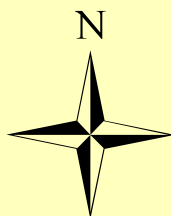
Boat Ramp



Flag_drag_sections_v2



Flagler_Dragline_parcel



0 125 250 500 750 1,000
Meters

**TIITF/DNR-DIV REC & PARKS
FLAGLER BEACH STATE PARK C/O DEP
3012320000010300020**

**BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA
3012320000020400000**

**BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA
3712310000070400030**

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