

This Use Agreement was prepared by:
Brad Richardson
Bureau of Public Land Administration
Division of State Lands
Department of Environmental Protection, MS 130
3900 Commonwealth Boulevard,
Tallahassee, Florida 32399-3000
Action No. 47290

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

USE AGREEMENT

Use Agreement No. U-0483

THIS USE AGREEMENT is hereby granted this 20 day of June, 2023, by the **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA**, hereinafter referred to as the "GRANTOR", through its lawfully designated agent, the Division of State Lands, Department of Environmental Protection to **LEE COUNTY BOARD OF COUNTY COMMISSIONERS**, hereinafter referred to as "GRANTEE".

WITNESSETH:

WHEREAS, the GRANTEE desires to enter and use state-owned uplands for beach nourishment.

NOW THEREFORE, for the faithful and timely performance of and compliance with the terms and conditions stated herein, GRANTOR does hereby grant to GRANTEE, a use agreement on state-owned lands described below, to wit:

(See Attached Exhibit "A")(the "Use 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. **COMMENCEMENT**: This use agreement and consent shall commence on July 6, 2023 the effective date of this use agreement and shall be valid for a term of five (5) years and shall end on July 5, 2028.
3. **EXTENT OF AGREEMENT**: This use agreement covers the use of state-owned uplands in the upland area more particularly described in Exhibit "A" attached hereto, only for the purpose of staging, beach nourishment, and beach sand placement and no other use or activity shall be allowed.

4. **USE OF PROPERTY AND UNDUE WASTE:** This use agreement shall be non-exclusive. GRANTOR, or its duly authorized agent, shall retain the right to enter the state land covered by this use agreement or engage in management activities not inconsistent with the use herein provided for and shall retain the right to grant compatible uses of the state land subject to this use agreement to third parties during the term of this use agreement.

GRANTEE shall not commit undue waste to the subject state-owned lands. Upon termination or expiration of this use agreement GRANTEE shall maintain or restore, as necessary, said state land to substantially the same condition as it was upon the effective date of this use agreement. GRANTEE shall not remove water from any source on state lands including, but not limited to, a water course, reservoir, spring, or well, without the prior written approval of the GRANTOR. GRANTEE shall clear, remove and pick up all debris including, but not limited to, mud containers, oil 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 shall not dispose of any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents produced or used in GRANTEE'S operations, on the state land covered by this use agreement or on any adjacent state land or in any manner not permitted by law.

Upon termination or expiration of this use agreement and GRANTEE shall remove all facilities and related structures erected at GRANTEE'S expense.

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.

5. **RIGHT OF INSPECTION:** GRANTEE hereby agrees that GRANTOR, or its duly authorized agent, shall have the right at any and all times to inspect the works and operation of GRANTEE in any matter pertaining to this use agreement.

6. **PROPERTY RIGHTS:** GRANTEE agrees and it is hereby expressly stipulated that this use agreement and consent constitutes permissive use only and the placing of facilities and related structures upon public property pursuant to this use agreement shall not operate to create or vest any property right in said holder and shall not conflict with the conservation, protection and enhancement of said lands.

7. **LIABILITY:** GRANTOR does not warrant or represent that Use 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 indemnify, protect, defend, save and hold harmless GRANTOR and the State of Florida, its officers, agents and employees from

any and all damages, claims, costs, expense, including attorney's fees, demands, lawsuits, causes of action 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, officers, and employees. GRANTEE shall contact GRANTOR regarding the legal action deemed appropriate to remedy such damage or claims. 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 Use 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 Use 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 subcontract.

8. **ASSIGNMENT**: This use agreement 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.

9. **CUTTING OF TREES**: The cutting or removal of trees on the state land covered by this use agreement is prohibited. In the event that in the course of its operations it shall become necessary for GRANTEE to cut or remove trees, such trees shall be cut or removed only after prior written approval has been received from GRANTOR through its representative and in accordance with the directions lawfully given by its representative, and title to all portions of trees so felled or removed shall be and remain in GRANTOR. All brush and refuse that is necessarily cut in the course of GRANTEE'S operations shall be handled and disposed of in such a manner as to minimize the danger of fires, all in accordance with said regulations and the directions of the representative of GRANTOR. Trees subject to this provision shall be, except for cypress trees, three inches in diameter or greater in size at a height of forty-eight inches from the ground at the base of the tree. Cypress trees subject to this provision shall be any cypress tree of two inches in diameter or greater in size at a height of forty-eight inches from the ground at the base of the cypress tree. However, in no event shall the indiscriminate cutting down, running over or destruction of trees or vegetation of any size be allowed.

10. **TELEPHONE LINES, DITCHES AND FENCES**: All telephone lines, ditches, and fences located within or immediately outside the exterior boundaries of the any state-owned lands shall be protected so far as possible in the conduct of

GRANTEE'S operations, and, if damaged by reason of said operations, they shall be repaired immediately by and at the expense of GRANTEE. The representative of GRANTOR may, when in his or her judgment it is necessary to avoid risk of damage by said operations, require GRANTEE to move any such telephone lines or fence from one location to an adjacent location without compensation.

11. **ROADS, TRAILS, FIRE LINES:** Roads, trails, and fire lines shall at all times be kept free of brush and debris resulting from GRANTEE'S operations hereunder. Any road, trail, or firebreak used by GRANTEE in connection with the permitted operations that is damaged (beyond what would be ordinary wear and tear without such use) shall be repaired promptly by GRANTEE at its expense to its original conditions. GRANTEE shall not build any roads or trails without prior written approval of GRANTOR. If any live trees are damaged through carelessness or by fire caused by the employees or contractors of GRANTEE, GRANTEE shall fully compensate GRANTOR for the damage caused thereby.

12. **PREVENTION OF FIRES:** GRANTEE agrees to use every reasonable precaution including, but not limited to, Florida Department of Agriculture and Consumer Services, Florida Forest Service (FFS), standards for fire safety on State Forest lands, to prevent the occurrence of forest fires on state lands and to promptly notify the FFS office or nearest of any such occurrence. In the event a forest fire shall commence in the vicinity of GRANTEE'S operations during the period such operations are being conducted, or immediately thereafter, it shall be conclusively presumed that such fire occurred as a result of the operations of GRANTEE, unless the contrary is clearly demonstrated to the satisfaction of GRANTOR by GRANTEE, and GRANTEE hereby agrees to pay GRANTOR for any and all damage caused to state lands by such fire, including but not limited to, costs to suppress such fire; costs for the damage to the timber, trees or other forest products (whether standing, cut or fallen); and costs for the damage to any improvements or personal property thereon, caused by or as a result of such fire. GRANTEE shall, at its expense, replant, restock or reforest any area affected by reason of such fire to the satisfaction of GRANTOR or its LESSEE.

13. **MINERAL RIGHTS:** This use agreement does not cover petroleum or petroleum products or minerals and does not give the right to the GRANTEE to drill for or develop the same.

14. **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 the area subject to this use agreement or upon lands adjacent to and used as an adjunct of the lands covered by this use agreement.

15. **BEST MANAGEMENT PRACTICES:** GRANTEE shall implement applicable Best Management Practices in compliance with paragraph 18-2.018(2)(h), Florida Administrative Code, for all of the activities conducted under this use agreement, which have been selected, developed, or approved by GRANTOR or other land managing agencies for the protection and enhancement of the state land covered by this use agreement.

16. **ARCHAEOLOGICAL AND HISTORIC SITES:** GRANTEE hereby covenants and agrees that execution of this use agreement 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 Department of State, Division of Historical Resources.

17. **PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES:** Fee title to the land included in this use agreement 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 vested in the GRANTOR including, but not limited to, mortgages or construction liens against the real property covered by this use agreement or against any interest of GRANTOR therein.

18. **BREACH OF COVENANTS, TERMS, or CONDITIONS:** Should GRANTEE breach any of the covenants, terms, or conditions of this use agreement, GRANTOR shall give written notice to GRANTEE to remedy such breach within thirty days of such notice. In the event GRANTEE fails to remedy the breach the satisfaction of GRANTOR within thirty days of receipt of written notice, GRANTOR may either terminate this use agreement and recover from GRANTEE all damages GRANTOR may incur by reason of the breach, including, but not limited to, costs and attorneys' fees or maintain this use agreement in full force and effect and exercise all rights and remedies herein conferred upon GRANTOR.

19. **PARTIAL INVALIDITY:** If any term, covenant, condition or provision of this use agreement 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.

20. **NO WAIVER OF BREACH:** The failure of GRANTOR to insist in any one or more instances upon strict performance of any one or more of the covenants, terms and conditions of this use agreement shall not be construed as a waiver of such covenants, terms and conditions, but the same shall continue in full force and effect, and no waiver of GRANTOR of any one of the provisions hereof shall in any event be deemed to have been made unless the waiver is set forth in writing, signed by GRANTOR.

21. **SOVEREIGNTY SUBMERGED LANDS:** This use agreement does not authorize any use of lands located waterward of the mean or ordinary high water or erosion control line of any lake, river, stream, creek, bay, estuary, or other water body or the waters or the air space thereabove.

22. **DUPLICATE ORIGINALS:** This use agreement is executed in duplicate originals each of which shall be considered an original for all purposes.

23. **ENTIRE UNDERSTANDING:** This use agreement sets forth the entire understanding between the parties and shall only be amended with the prior written approval of GRANTOR.

24. **TIME:** Time is expressly declared to be of the essence of this use agreement.

25. **INSURANCE REQUIREMENTS:** During the term of this use agreement GRANTEE shall procure and maintain policies of insurance or a certificate of self-insurance for property damage and public liability in amounts not less than \$200,000 per person and \$300,000 per incident or occurrence for personal injury, death and property damage on the state land covered by this use agreement. Such policies or certificate shall name the GRANTEE GRANTOR and the State of Florida as coinsureds. GRANTEE shall submit written evidence of having procured all insurance policies or certificate required herein prior to the effective date of this use agreement to the State of Florida Department of Environmental Protection, Division of State Lands, Bureau of Public Land Administration, Mail Station 130, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. GRANTEE shall purchase or have purchased all policies of such insurance from a financially responsible insurer duly authorized to do business in the State of Florida. In lieu of purchasing insurance, GRANTEE may elect to self-insure these coverages. Any certificate of self-insurance shall be issued or approved by the Insurance Commissioner, State of Florida. The certificate of self-insurance shall provide for liability and property damage coverage. GRANTEE shall be financially responsible for any loss due to failure to obtain adequate insurance coverage and the failure to maintain such policies or certificate in the amounts set forth shall constitute a breach of this use agreement.

26. **RIGHT OF AUDIT:** GRANTEE shall make available to GRANTOR all financial and other records relating to this use agreement and GRANTOR shall have the right to audit such records at any reasonable time. This right shall be continuous until this lease expires or is terminated. This use agreement 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 use agreement, pursuant to Chapter 119, Florida Statutes.

27. **NOTICE**: All notices given under this use agreement shall be in writing and shall be served by certified mail including, but not limited to, notice of any violation served pursuant to Section 253.04, Florida Statutes, to the last address of the party to whom notice is to be given, as designated by such party in writing. The GRANTEE and the GRANTOR hereby designate their address as follows:

GRANTOR: Department of Environmental Protection
Division of State Lands
Bureau of Public Land Administration, M. S. 130
3800 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

GRANTEE: Lee County Board of County Commissioners
1500 Monroe Street, 3rd Floor
Fort Myers, FL 33901

28. **COMPLIANCE WITH LAWS**: GRANTEE agrees that this use agreement 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.

29. **GOVERNING LAW**: This use agreement shall be governed by and interpreted according to the laws of the State of Florida.

30. **SECTION CAPTIONS**: Articles, subsections and other captions contained in this use agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this use agreement or any provisions thereof.

31. **TITLE DISCLAIMER**: GRANTOR does not warrant or guarantee any title, right or interest in or to the property described in Exhibit "A" attached hereto.

32. **ELECTRONIC SIGNATURES**: This use agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

33. **SPECIAL CONDITIONS**: The following special conditions shall apply to this use agreement:

A. GRANTEE shall meet with the park manager ("Park Manager") of Lovers Key State Park ("Park") or Park Manager's designee during the pre-construction phase of this project. The times and frequency of such meetings shall be agreed to by the

Park Manager and GRANTEE'S representative prior to commencement of dredging. Issues to discuss will include, but are not limited to, Park access, pipeline location and operations, staging area boundaries, turtle and shorebird protection, relocation of turtles if encountered and monitoring, scarp removal, tilling and out-year monitoring if required, vegetation restoration after demobilization, safety of Park staff and visitors, and other resource management issues. GRANTEE shall also coordinate with the Park Manager for any future weekly meetings during the sand placement event to discuss these and any other issues that may arise.

B. GRANTEE shall follow all Park Manager's specialized instructions and requests determined at the pre-construction meeting and any meeting thereafter. Additionally, GRANTEE shall stop work in the event the Park Manager observes conditions in which the general public or cultural and natural resources are deemed to be in imminent danger. The Park Manager will also notify GRANTEE'S project manager if such an event should occur.

C. GRANTEE shall stop at the ranger station upon entering the Park and follow all traffic speed signs.

D. GRANTEE shall establish a safe zone by providing signs and fencing as needed to prevent access to the staging area, the use area and any area worked by heavy equipment.

E. GRANTEE shall keep fuel in a double-walled container with a catch basin and refueling operations will be conducted within the approved staging area only.

F. GRANTEE shall not undertake any activity within 200 feet of nesting shorebirds, including, but not limited to, Least Terns and Wilson's Plovers.

G. GRANTEE shall work cooperatively with the Park Manager and Park biologists, and DRP to resolve issues regarding safety, access, or environmental concerns resulting from this project.

H. GRANTEE shall help protect Park facilities, plants, and other natural resources by accessing the Park at the points designated by the Park Manager and driving only on those beach areas as identified by the Park Manager.

I. GRANTEE shall follow the Park Manager's instructions concerning specific Park rules with special regard to the protection of the plants, animals, natural resources, vehicular traffic, and visitors.

J. GRANTEE shall take all necessary safety measures as determined by the Park Manager to ensure the safety of visitors during all dredging processes.

K. GRANTEE shall build a sand ramp over the pipe at the beach access area and other places if needed, keeping the line within 20 feet seaward of the toe of the dune. GRANTEE shall also maintain crossings if needed for vehicular and pedestrian

access over sections of the pipeline. The number of crossings and locations will be determined on site by GRANTEE and the Park Manager. Additional crossings or underpasses for shorebirds may be required in the event that shorebirds nest and fledge young on the landward side of the pipeline.

L. GRANTEE shall ensure that all stationary and mechanized equipment to be used on Park Property has been thoroughly cleaned to help prevent invasive species from entering the Park. The Park Manager reserves the right to inspect and deny access to equipment that has not been sufficiently cleaned.

M. GRANTEE shall protect all brick paver blocks from the weight of their trucks and equipment using a minimum of ½ inch plywood, which will have to be picked up immediately after each vehicle's use and passage.

N. GRANTEE shall provide portable toilets in locations designated by the Park Manager for use by GRANTEE and its employees, agent, and contractors. The portable toilets shall be serviced on a regular basis. GRANTEE will coordinate location, access, and service activities with the Park Manager in advance. Additionally, GRANTEE shall clear, remove, and pick up debris including but not limited to, mud containers, oil containers, papers, discarded tools and trash foreign to the use area and dispose of the same offsite in such a manner as to leave the use area clean and free of any such debris on a daily basis.

O. GRANTEE shall coordinate with the Park Manager the delivery of equipment with public safety being of extreme priority; this may require that deliveries be made before or after peak visitation hours.

P. GRANTEE shall store employee vehicles and necessary equipment in locations approved by the Park Manager.

Q. GRANTEE shall use the Park's boat ramp to change out crews or deliver and return equipment from the dredges, provided it does not hinder the use of the ramp by Park visitors.

R. GRANTEE shall contact Park Manager or his designee regarding after-hours permits for entering the Park after operating hours. After normal operating hours, the front entrance gates to the Park will be closed after each individual entry and exit.

S. GRANTEE shall if available, use one of the Lovers Key Park's volunteer campsites to set up a temporary mobile office. If electric power or phone service is needed, the contractor will be responsible for setting up the service for the utilities in its name. The contractor will be responsible for any costs incurred from these services and must remove any equipment or utilities that they install or have installed immediately (within 20 days) after completion of the project. All specific locations of installations of equipment or utilities must be approved by the Park Manager who will take into consideration any negative impact it may have.

T. After consultation with the Park Manager, GRANTEE shall plant only sea oats that are from the local area, specifically the west coast region of Florida.

U. GRANTEE accepts that the south beach area will be the use area set aside for staging and considered a starting point for the project. This will allow the Park's center beach access to remain open to the public. As the project moves north from there and before it becomes necessary for the center access to be closed, the south beach use area will be made safe and accessible to beach goers visiting the Park. At that time, the need for center beach use area closures will be coordinated with the Park Manager. Every attempt will be made by GRANTEE to reopen beach use areas as sections of the project are complete and deemed safe for visitors.

V. GRANTEE shall be responsible for any damage caused by the actions of its employees or subcontractors to Park facilities, Park property or personal property of visitors.

W. GRANTEE shall comply with all of the conditions contained in Consolidated Joint Coastal Permit and Sovereign Submerged Lands Authorization Permit No. 0311811-001-JC and any subsequent modifications for the Bonita Beach and Lovers Key Beach Nourishment Project and the special conditions contained in this use agreement.

[Remainder of page intentionally left blank; Signature page follows]


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


“LESSOR”

“LESSEE”

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

LEE COUNTY BOARD OF COUNTY COMMISSIONERS

 (SEAL)

 (SEAL)

BY: Brad Richardson, 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.

BY: Signature
BRIAN Hamman - Chair
Print/Type Name of Executing Authority and Title




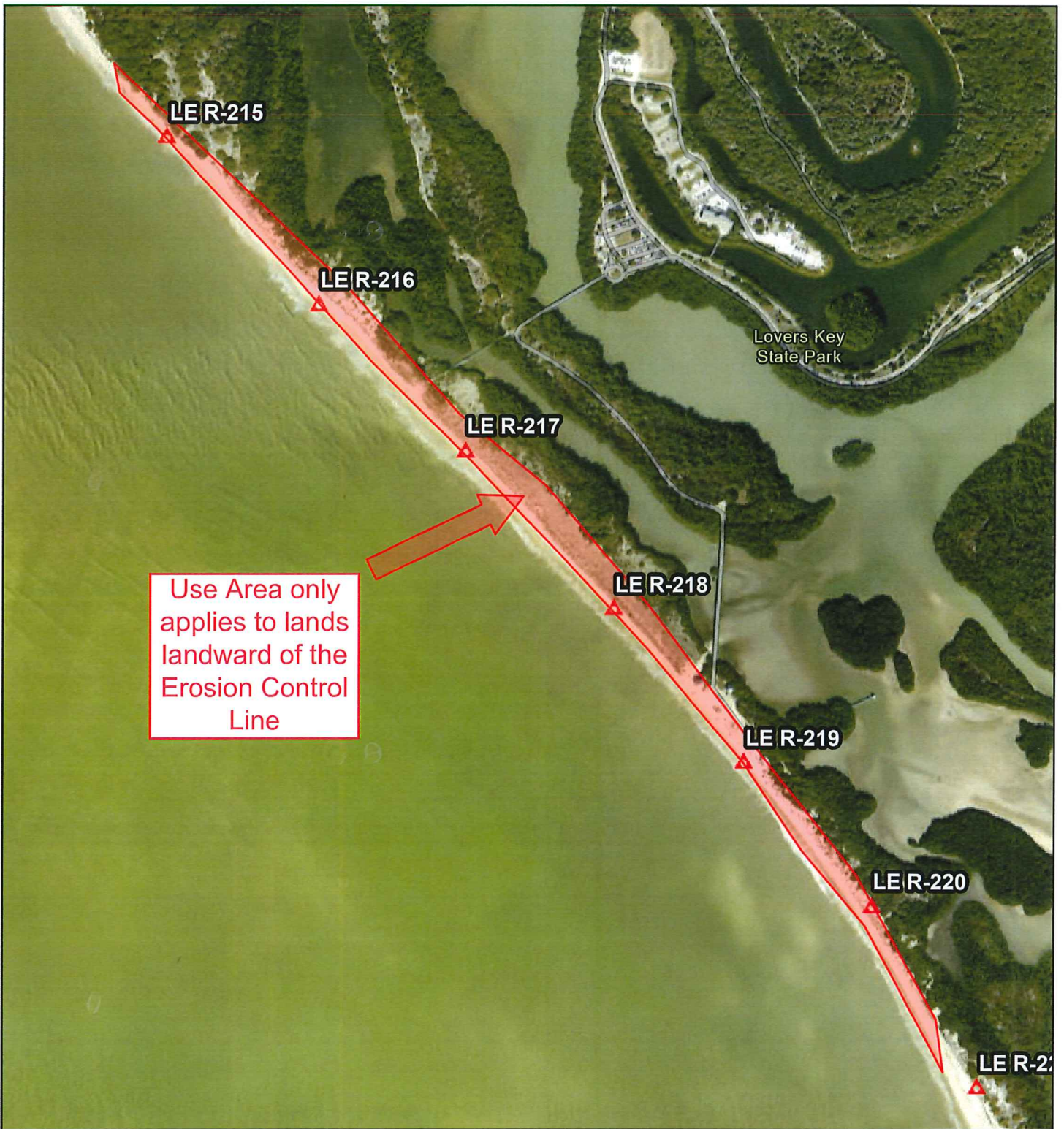
Approved as to Form for the
Refined of Lee County Only

Officer of the County Attorney

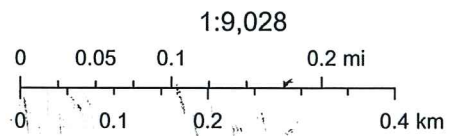
Exhibit "A" Use Area



March 16, 2023

Coastal Range Monuments

▲ Range Monuments



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