



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.2.

7/25/2023

Subject:

Department of the Air Force Right of Entry for Beach Construction Access at Patrick Space Force Base

Fiscal Impact:

No direct fiscal impact

Dept/Office:

Natural Resources Management Department

Requested Action:

It is requested that the Board: (1) Authorize the Chair to execute the Department of the Air Force Right of Entry to Brevard County, Florida to Use Property Located on Patrick Space Force Base (2) Direct staff that the Air Force site will not be utilized unless any contractor using the site holds appropriate insurance and an agreement with the County to allow such work (3) Authorize staff to execute the agreement with the Contractor after County Attorney and Risk Management approval of the agreement.

Summary Explanation and Background:

On August 31, 2016, the Board of County Commissioners entered into a Project Partnership Agreement with the US Army Corps of Engineers (Corps) to serve as the local sponsor for the Mid Reach Brevard County Shore Protection Project. The Corps plans to award a contract for sand placement in the Mid Reach in late summer 2023 to begin renourishment of the Mid Reach as early as late November 2023. To minimize potential impact to nearshore rock reef habitat, sand placement in the Mid Reach will occur by truck, rather than by hydraulic dredge.

Truck access points to deliver sand to the beach are key to project success. A site at the southeast corner of Patrick Space Force Base at the east end of the Pineda Causeway, is ideal for use as an access point. The Department of the Air Force is willing to provide access through this site for the County's Mid Reach project and has provided a Right of Entry agreement for use of the site.

Use of the site provides great benefit to the County. The County, and its contractors, have used this site for beach construction access several times in the past, utilizing similar Right of Entry agreements. Failure to execute this agreement could result in longer truck routes, increased public disruption, and extended construction timeline.

Clerk to the Board Instructions:

Please execute/attest two copies of Agreement, and contact Mike McGarry (mike.mcgarry@brevardfl.gov <<mailto:mike.mcgarry@brevardfl.gov>>; 321-537-1779) and Leslie Snyder (Leslie.Snyder@brevardfl.gov <<mailto:Leslie.Snyder@brevardfl.gov>>) to pick up documents for transport to the Air Force. After receiving a

fully executed copy from the Air Force, staff will provide a copy to the Clerk for the official records.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

July 26, 2023

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.2., Department of the Air Force Right-of-Entry for Beach Construction Access at Patrick Space Force Base

The Board of County Commissioners, in regular special session on July 25, 2023, approved and authorized the Chair to execute the Department of the Air Force Right-of-Entry to Brevard County, Florida, to use property located on Patrick Space Force Base; directed staff that the Air Force site will not be utilized unless any contractor using the site holds appropriate insurance and an agreement with the County to allow such work; and authorized staff to execute the agreement with the contractor after County Attorney and Risk Management approval of the agreement. Enclosed are two executed Agreements.

Upon execution by all parties, please return a fully-executed Agreement to this office for inclusion of the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

Encl. (2)

cc: Contracts Administration
County Attorney
Risk Management

DEPARTMENT OF THE AIR FORCE

RIGHT OF ENTRY

To

BREVARD COUNTY, FLORIDA

**TO USE PROPERTY LOCATED ON
PATRICK SPACE FORCE BASE**

PREAMBLE

THE SECRETARY OF THE AIR FORCE (“Air Force”) hereby grants to Brevard County, Florida, a local government division of the State of Florida (the “Grantee”), for a period of two years beginning on 1 August, 2023 but revocable at the will of the Secretary of the Air Force, a Right of Entry to allow entry of Grantee, its officers, employees, agents, and invitees upon that certain property at Patrick Space Force Base’s Pineda Beach access as described on **Exhibit A** and shown on **Exhibit B**, both attached hereto and made a part of this Right of Entry (the “Property”). This Right of Entry is to be used only for the purpose of the delivery and transfer of beach restoration material from highway dump trucks to off-road dump trucks then accessing the public beach through a dune cut at the base’s southeastern border. The Air Force and the Grantee may be referred to as “Parties” or separately as a “Party.”

THIS RIGHT OF ENTRY is granted subject to the following conditions:

1. The exercise of the privileges hereby granted shall be without cost or expense to the Air Force, under the general supervision and subject to the approval of the installation commander (“the Commander”), or their designated representative, and such reasonable rules and regulations as the Commander may prescribe from time to time.

2. This Right of Entry shall be exercised only at reasonable times and upon reasonable notice to the Commander’s representative on site, currently 45 CES/CEIE Environmental Conservation office. Prior to entering the Property, the Grantee will notify the Commander’s

representative, Keitha Dattilo-Bain, by telephone (321) 853-6438. One or more of Grantee's employees, agents, or representatives shall accompany Grantee's invitees while such invitees are on the Property.

3. Any property of the Government damaged or destroyed by the Grantee, its officers, employees, agents, or invitees incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to the satisfaction of the Director, or in lieu of such repair or replacement, the Grantee shall, if so required by the Director, pay to the Government money in an amount sufficient to compensate for the loss sustained by the Government by reason of such damage to or destruction of Government property.

4. The Government shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges granted under this Right of Entry, or for damages to the property of the Grantee or for damages to the property or injuries to the person of the Grantee's officers, employees, agents, or others who may be on the Property at their invitation or the invitation of any one of them, arising from governmental activities on the Property.

a. The Grantee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of the exercise of the privileges granted herein and expressly waives all claims against the Government for any such loss, damage, personal injury or death occurring as a consequence of the conduct of activities under this Right of Entry. The Grantee further agrees, to the extent permitted by State law, to indemnify, save, hold harmless, and defend the Government against all suits, fines, claims, or actions of any sort resulting from, related to, or arising out of any activities conducted under or pursuant to this Right of Entry. This provision shall survive the expiration or termination or revocation of this Right of Entry.

b. The Grantee shall carry adequate liability and indemnity insurance to protect the Government against claims for bodily injury or death and for damage to property resulting from the activities of the Grantee under this Right of Entry. The insurer shall have no right of subrogation against the Government. The Grantee shall furnish the Government a letter of assurance relating to the adequacy of its liability and indemnity insurance coverage.

5. No alterations or construction will be done under the privileges of this Right of Entry.

6. The routes of ingress and egress for the Grantee, its officers, employees, and agents, shall be under the supervision of the Air Force caretaker representative to ensure compliance with established security procedures.

7. The Grantee will comply with the provisions of all applicable Federal, State, and local laws, rules, and regulations.

8. The Grantee will be solely responsible for compliance with all applicable environmental laws or other legal requirements in conjunction with its exercise of the privileges granted under this Right of Entry, including any taxes, fees, permits, fines, penalties, or other

requirements or costs associated with any environmental compliance or violations related to its operations. The Grantee shall promptly take all steps necessary to clean up, abate, remove, or remediate any contamination for which it is responsible, including proper notification to regulatory authorities, and will promptly notify the Commander of any such events.

9. The Grantee shall comply with the Patrick Space Force Base spill prevention control and countermeasure plan, and hazardous materials/wastes plan.

10. All tools, equipment, and other property taken upon or placed upon the Property by the Grantee shall remain the property of the Grantee and will be removed by the Grantee upon expiration of this Right of Entry in accordance with Paragraph 12 below. The Grantee shall be solely responsible for securing its tools, equipment, and other personal property on the Property.

11. This Right of Entry may be relinquished by the Grantee on two (2) business days written notice to the Commander.

12. On or before the date of expiration of this Right of Entry, or its revocation, or its relinquishment by the Grantee, the Grantee shall, within such reasonable time as the Secretary of the Air Force may designate, remove all its personal property therefrom. If the Grantee shall fail or neglect to remove its property, then at the option of the Secretary of the Air Force, such property shall either become the property of the Air Force without compensation therefor, or the Secretary of the Air Force may cause the property to be removed at the expense of the Grantee, and no claim for damages against the Air Force or its officers or agents shall be created by or made on account of such removal and restoration.

13. No written communication under this Right of Entry shall be of any effect unless it is signed by the duly authorized representative of the Party giving such communication and delivered to the appropriate Party recipient as shown below.

a. Written communications to the Grantee shall be delivered by hand or by regular mail addressed:

Brevard County Office of Natural Management
Judge Fran Jamieson Way Bldg A219
Viera FL 32940

b. Written communications to the Air Force shall be delivered by hand or by regular mail addressed:

45 CES/CEI
Attn: Real Property Officer
1224 Jupiter Street
Patrick SFB FL 32925-3343

14. Nothing in this Right of Entry shall be deemed to release the Air Force from any liability it may have for cleanup, abatement, removal, or remediation of existing environmental problems under any applicable Federal or State environmental laws or regulations or to obligate the Grantee to undertake such actions or make the Grantee liable therefor under this Right of Entry.

15. The Grantee has inspected and knows the condition of the Property. It is understood that the Air Force is granting this Right of Entry without any representation or obligation on the part of the Air Force to make any alterations, repairs, or improvements to the Property.

16. The Grantee will reimburse the Air Force for any utilities and services the Air Force provides to the Grantee during the existence of this Right of Entry. The Grantee acknowledges and agrees that the Air Force is under no obligation to furnish any utilities or services.

17. The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. In the event such items are discovered on the Property, the Grantee shall immediately notify the Commander and protect the site and the material from further disturbance until the Director gives written approval to proceed.

18. The Grantee shall not discriminate against any person because of race, color, age, sex, religion, handicap, or national origin in the conduct of its activities hereunder.

19. This Right of Entry is effective only insofar as the rights of the Air Force in the property involved is concerned, and the Grantee shall obtain such permission as may be necessary on account of any other existing rights.

20. The Air Force may authorize use of the Property by others, subject to all of the terms and conditions of this Right of Entry. The Grantee may not authorize use of the Property by others. Use of the Property by others shall not relieve the Grantee of any of its obligations hereunder.

21. This Right of Entry may only be extended, modified, or amended by mutual agreement of the Parties in writing and signed by a duly authorized representative of each of the respective Parties hereto.

22. This Right of Entry may not be transferred or assigned except as expressly provided otherwise herein.

This Right of Entry is not subject to Title 10 U.S.C. § 2662.

(Remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, I have hereunto set my hand by direction of the Secretary of the Air Force this _____ day of _____, 2023.

THE UNITED STATES OF AMERICA
by the Secretary of the Air Force

By: _____
STEPHEN G. PURDY, JR.
Major General, USSF
Commander, Space Launch Delta 45

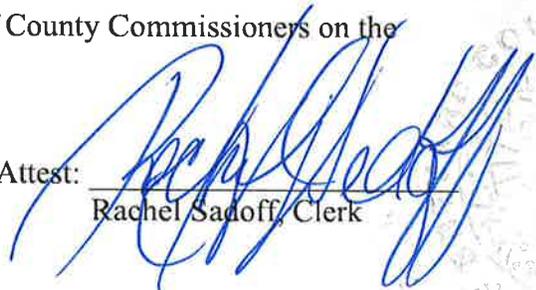
This Right of Entry, together with all its terms and conditions, is hereby accepted this
25th day of July, 2023.

Board of County Commissioners of
Brevard County, Florida

By: 

Rita Pritchett, Chair

As approved by the Brevard Board of County Commissioners on the
25th day of July, 2023.

Attest: 

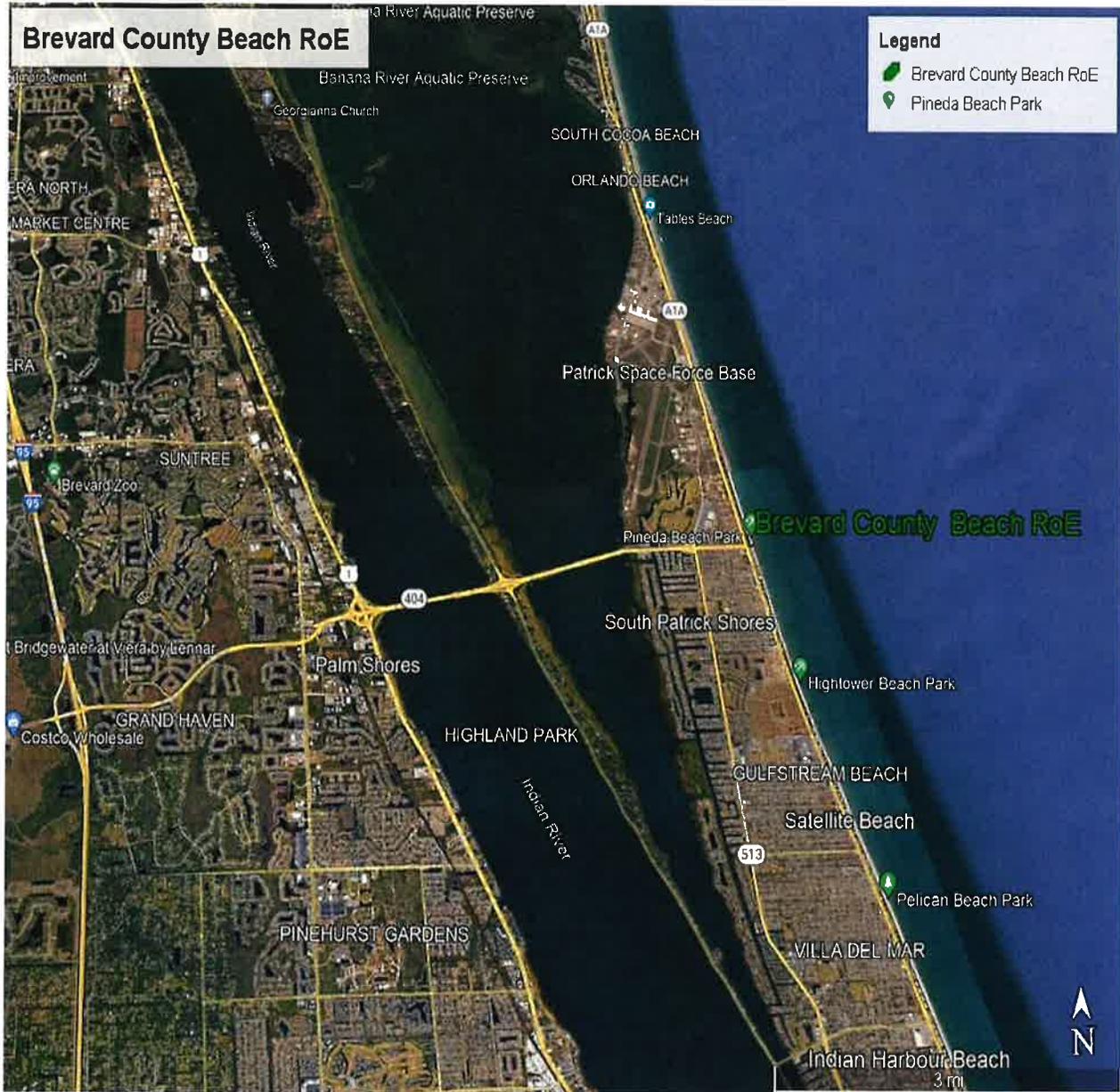
Rachel Sadoff, Clerk



EXHIBIT A— DESCRIPTION OF PREMISES

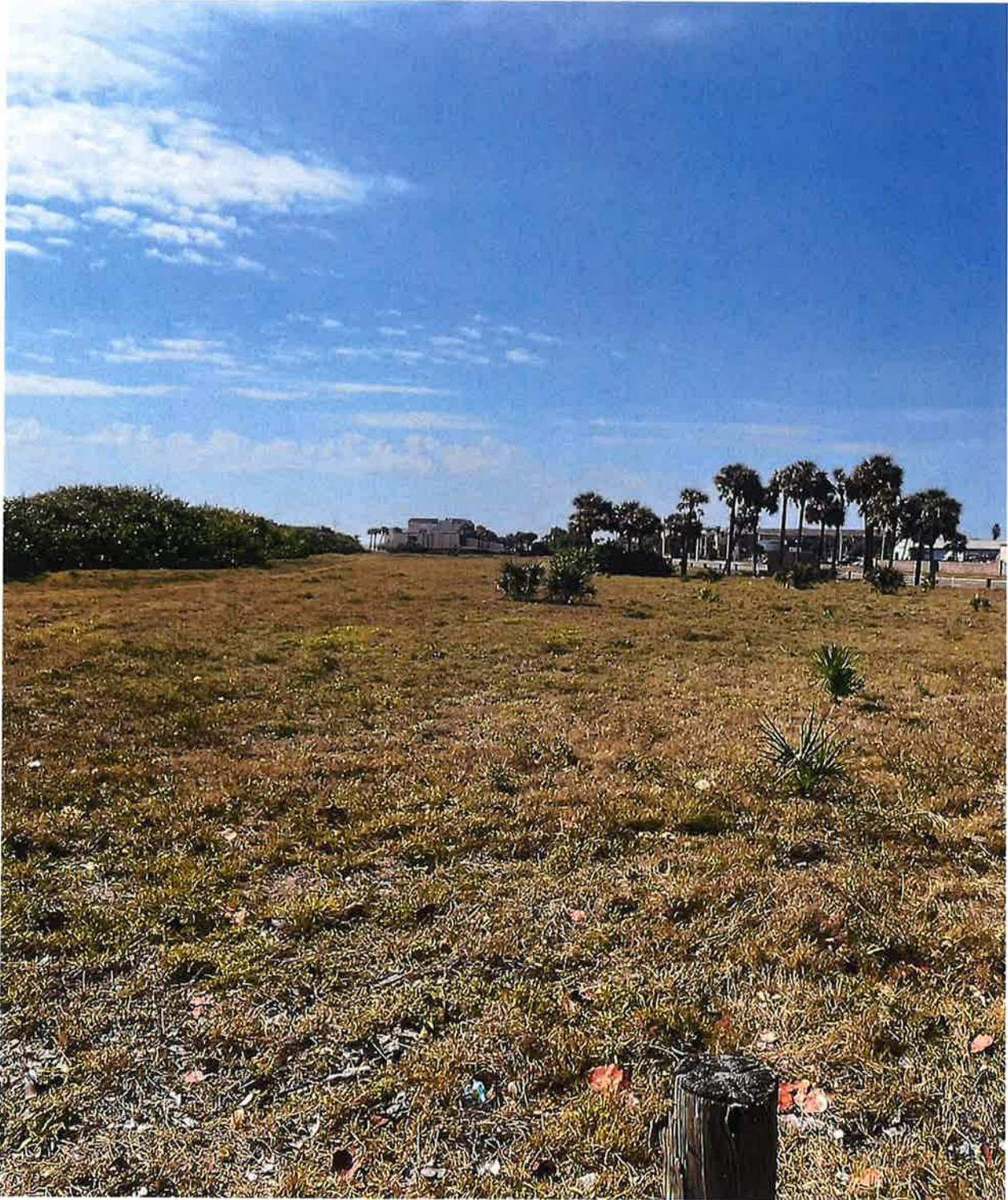
The location requested by Brevard County is within Patrick SFB south beach adjacent to State Road 404, Pineda Causeway and State Road A1A. Refer to the associated maps and photographs documenting the existing conditions (April 2023). The site described is a portion of disturbed beach/dune complex and coastal upland. This location has been used for this purpose under past Rights of Entry and a License for similar staging of beach/dune restoration equipment/sand, and beach access through dune cuts. The dune that will be cut under this Right of Entry has been re-planted several times with sea grape and sea oats after each use. The coastal upland is covered in mixed grasses and low-lying herbaceous vegetation that are periodically mowed. The overall physical condition of the site can be described as disturbed but comprised of healthy immature dune vegetation and maintained grasses.

EXHIBIT B— MAP AND PHOTOS OF PREMISES



Brevard County Beach RoE High View





North end of RoE looking south.



At south end dune pass-through of RoE looking east.



At south end dune pass-through of RoE looking west.



Southern end of RoE looking north.