



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.13.

12/20/2022

### Subject:

Approval, Re: License Agreement for access across Environmentally Endangered Lands (EEL) Program managed lands at Pine Island Conservation Area - District 2

### Fiscal Impact:

There are no impacts to General Revenue Funds or EEL Program funds.

### Dept/Office:

Parks and Recreation

### Requested Action:

It is requested that the Board of County Commissioners approve the Chair to execute a License Agreement that allows Mr. Jeff DeLoche to access his property through the EEL Program managed Pine Island Conservation Area.

### Summary Explanation and Background:

Mr. DeLoche owns property that is .3 miles north of the lands managed under the Environmentally Endangered Lands Program known as the Pine Island Conservation Area. Mr. DeLoche does not have physical access to his property by road and the License Agreement provides a mechanism for him to access his property through the conservation area via an existing maintenance road.

This route would provide the only physical upland access to Mr. DeLoche's property. The License Agreement, in addition to providing access for Mr. DeLoche's property, ensures that the access is not detrimental to the ecological health of the sanctuary or restrictive to management operations. This access does not conflict with the proposed Management Plan for this site.

The License Agreement does not provide the legal access easement that would be required if Mr. DeLoche wanted to obtain a building permit for his property. The License Agreement does not prevent Mr. DeLoche from pursuing a formal ingress / egress easement from the County in the future.

### Clerk to the Board Instructions:

Please return Board Memo and executed License Agreement to the EEL Program.

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

## CONTRACT REVIEW AND APPROVAL FORM

### SECTION I - GENERAL INFORMATION

<b>1. Contractor:</b> DELOCHE PROPERTY ACCESS AGREEMENT		<b>2. Amount:</b>
<b>3. Fund/Account #:</b> 1610/300100	<b>4. Department Name:</b> P&R-EEL PROGRAM	
<b>5. Contract Description:</b> DELOCHE PROPERTY ACCESS AGREEMENT		
<b>6. Contract Monitor:</b> JENNY WARNER	<b>8. Contract Type:</b>  TERM CONTRACT	
<b>7. Dept/Office Director:</b> MARY ELLEN DONNER		
<b>9. Type of Procurement:</b> Request for Qualifications (RFQ)		

### SECTION II - REVIEW AND APPROVAL TO ADVERTISE

#### APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	

### SECTION III - REVIEW AND APPROVAL TO EXECUTE

#### APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Warner, Jenny <small>Digitally signed by Warner, Jenny Date: 2022.10.11 10:58:24 -04'00'</small>
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Summer K. Wylie-Vitt</i> <small>Digitally signed by Wylie-Vitt, Summer Date: 2022.10.24 17:34:53 -04'00'</small>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Caron, Justin <small>Digitally signed by Caron, Justin Date: 2022.10.26 09:17:21 -04'00'</small>

### SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

<b>CM DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

## CONTRACT REVIEW AND APPROVAL FORM

### SECTION I - GENERAL INFORMATION

<b>1. Contractor:</b> DELOCHE PROPERTY ACCESS AGREEMENT		<b>2. Amount:</b>
<b>3. Fund/Account #:</b> 1610/300100	<b>4. Department Name:</b> P&R-EEL PROGRAM	
<b>5. Contract Description:</b> DELOCHE PROPERTY ACCESS AGREEMENT		
<b>6. Contract Monitor:</b> JENNY WARNER		<b>8. Contract Type:</b>  TERM CONTRACT
<b>7. Dept/Office Director:</b> MARY ELLEN DONNER		
<b>9. Type of Procurement:</b> Request for Qualifications (RFQ)		

### SECTION II - REVIEW AND APPROVAL TO ADVERTISE

#### APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Purchasing	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

### SECTION III - REVIEW AND APPROVAL TO EXECUTE

#### APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Warner, Jenny <small>Digitally signed by Warner, Jenny Date: 2022.10.11 10:58:24 -04'00'</small>
Purchasing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Wall, Katherine <small>Digitally signed by Wall, Katherine Date: 2022.10.11 11:11:41 -04'00'</small>
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

### SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

<b>CM DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status, Title, Type, and Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date, Effective Date, and Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



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

December 21, 2022

**M E M O R A N D U M**

**TO:** Mary Ellen Donner, Parks and Recreation Director

**RE:** Item F.13., License Agreement for Access across Environmentally Endangered Lands (EEL) Program Managed Lands at Pine Island Conservation Area

The Board of County Commissioners, in regular session on December 20, 2022, executed and approved the License Agreement allowing Jeff DeLoche to access his property through the EEL Program managed Pine Island Conservation Area. Enclosed is the fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

*Kimberly Powell*  
Kimberly Powell, Clerk to the Board

/ds

Encl. (1)

## PROPERTY ACCESS LICENSE AGREEMENT

THIS AGREEMENT is dated this \_\_\_\_ day of \_\_\_\_\_, 2022, BY and BETWEEN: JEFF DELOCHE (hereafter referred to as "Licensee") and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter referred to as "Licensor"):

WHEREAS, the Licensor owns property in Brevard County, Florida, as depicted in Exhibit "A", attached hereto and made a part of by reference (hereafter referred to as the "Property"); and

WHEREAS, the Licensee is the owner of certain parcel of property (hereafter referred to as the "Licensee's Property"), which is adjacent to and/or surrounded by the Licensor's Property; and

WHEREAS, as highlighted in red in Exhibit "A", a dirt trail (hereafter the "trail") exists on the Property, which starts on the east side of the Property, runs north and west to the water for Licensee to access their property; and

WHEREAS, Licensee has expressed an interest in use of the TRAIL identified in Exhibit "A" for access to Licensee's Property.

NOW THEREFORE, for value received and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The recitals set forth above are true and correct and are incorporated into and made a part of this license agreement by reference.

2. Property. This Agreement relates to the land owned by the County and identified in the legal description set forth in Exhibit "B" to this Agreement (highlighted in red), which is attached hereto and incorporated herein by this reference.

3. License. The County hereby grants the Licensee a non-exclusive and revocable license (hereafter referred to as the "License") solely for the purpose of allowing Licensee ingress and egress to Licensee's Property (highlighted in pink) by use of the TRAIL (highlighted in red) in Exhibit "A". This License shall not be interpreted or construed to grant any right of ingress over, egress over or use of the TRAIL by any other person, third party, or property owner other than the Licensee, unless a lease has been executed between the Licensee and a third party for use of Licensee's Property whereby the Licensee indemnifies the County from any and all claims relating to the use of the TRAIL. A written request can be made to the County seeking said individuals/entities be allowed to utilize the TRAIL, subject to the terms and conditions outlined herein and County staff review and approval. This Agreement shall extend to include the invited guests of the Licensee. Licensee agrees to restrict any and all guests to the terms of this Agreement. Licensee agrees to maintain strict control over the gate key (if applicable) and will explicitly not loan or give a key to any other person without written approval from County staff. This License shall not be construed or interpreted as granting or attempting to grant the Licensee ingress or egress across property owned by any other person or legal entity.

4. Right of Access. The Licensee shall be entitled to enter the Property and use the TRAIL for such ingress and egress purposes, subject to and in accordance with the

County's rules and regulations governing such access, as well as all applicable laws and regulations promulgated by the State of Florida or its agencies. The County shall allow the Licensee access to the TRAIL, including any gate restricting access to the TRAIL. Neither this License nor the Licensee's use of the TRAIL for ingress and egress to Licensee's Property shall constitute a basis for obtaining a building permit for the construction of any improvements on Licensee's Property.

5. No Other Activity. The Licensee may not enter upon or engage in any other activity upon the Property unless other members of the general public have been expressly permitted, by rule, regulation or management plan approved by the government agency with jurisdiction, to enter upon or engage in the same type of activity upon the Property. Licensee is hereby granted access to Licensee's Property via motorized truck or car (No ATV's). Licensee further agrees to close any gate used by the Licensee to enter or

6. Authority; maintenance. The County represents that it has the authority to grant the license outlined herein. The County shall not bear any responsibility for maintenance of the TRAIL or Licensee's Property, and shall have no duty to keep the TRAIL in a condition passable by Licensee. Licensee shall not undertake any maintenance or improvement of the Property without the expressed written permission of the County, which permission may not be unreasonably withheld. Licensee shall have the right, after obtaining written approval from County staff, to maintain but not improve the TRAIL depicted on "Exhibit A". Maintenance includes, but is not limited to, trimming of trees and brush that restrict travel along the TRAIL and removal/filling of tire ruts and tire tracks so as to keep the TRAIL in good condition to allow travel thereon. No maintenance may be conducted outside of the boundaries of the TRAIL. Licensee shall be responsible for any repairs (conducting the repair or paying the County for the County to make the repair at the option of the County) that are deemed necessary by the County in order to return the TRAIL to its original state. All gate keys must be returned to the County upon termination of this Agreement.

7. Term. The term of this Agreement, and the rights granted herein, shall be effective upon the date of execution of this License by the last party to execute the Agreement and shall continue for a period of ten (10) years thereafter (the Term"). The term of this Agreement shall automatically renew for subsequent one (1) year periods unless either party delivers written notice to the other party at least thirty (30) days prior to the termination of the current term that the License is revoked for any of the reasons recited in paragraph 8 below.

8. Revocation. This License may be revoked or terminated by the Licensor before the expiration of the Term or any automatic renewal term upon thirty (30) days' written notice to the Licensee if the Licensee:

- a. Transfers ownership of all or any part of Licensee's Property. In the event of transfer of ownership of all or any part of Licensee's Property, Licensee agrees to make a condition of the sale that the new owner applies 60 days prior to the transfer of title to the County for an access license, which shall not be unreasonably withheld by the County. In the event the County has reason not to enter into an agreement with the new owner, the County will notify Licensee within this 60-day period of the reasons why a Property Access Management Agreement should not be issued to the prospective new owner.
- b. Obtains alternate access for ingress and egress to Licensee's Property;

- c. Violates any law, rule, regulation or management plan applicable to the Licensee, as promulgated by the State of Florida or any of its agencies; the County; or any other governmental agency with jurisdiction;
  - d. Engages in any hunting activity on the County's Property;
  - e. Discharges any firearms on or across any portion of the County's Property;
  - f. Conducts any illegal activity on the County's Property;
  - g. Enters upon or conducts activity upon the County's Property for uses other than use of the TRAIL for ingress and egress, unless such entry or activity is otherwise allowed under Paragraph 4 above;
  - h. Violates any term, provision or condition of this License Agreement; or,
  - i. If, in the sole discretion of the Board of County Commissioners, Licensee's continued use of the TRAIL for ingress or egress interferes with the County's management of the County's Property. Alternate access for ingress and egress may be provided when agreeable to both parties.
9. **Indemnification.** Licensee agrees to indemnify, defend, and hold harmless the County, and its respective officers, directors, employees, and agents, from and against claims, liabilities, damages, and expenses, including, but not limited to, reasonable attorneys' fees, resulting from any and all claims arising out of this Agreement. The County's liability obligations hereunder shall be subject to the common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing herein shall constitute a waiver of the County's sovereign immunity. Specific consideration has been given for this indemnification clause.
10. **No Recording.** This License shall not be recorded in the official records of Brevard County, Florida by either party.
11. **No Interest in the Property.** This License is the grant of a personal right to the Licensee. This License shall not be construed to create any real property interest in the County's Property.
12. **Assignment.** This License may not be assigned, transferred or devised to any other person, corporation, partnership or entity without prior written consent from the County.
13. **Acceptance.** This License Agreement constitutes the entire agreement between the County and the Licensee and supersedes all prior arrangements and understandings whether written or oral relative to the subject matters thereof. Except as otherwise specifically set forth in this Agreement, neither party makes any representation or warranty, express or implied, statutory or otherwise to the other. This Agreement may not be amended or modified except by a written instrument executed by both parties.
14. **Venue; Governing Law, Waiver of Jury Trial.** Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this Agreement shall be in court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury. This License Agreement shall be governed, interpreted and construed according to the laws of the State of Florida
15. **Counterparts.** This License Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. The parties agree that executed counterparts may be transmitted by facsimile machine and that such counterparts shall be treated as originally executed instruments. Each party undertakes to provide the other with a copy of the original

executed instruments. Each party undertakes to provide the other with a copy of the original Agreement bearing actual original signatures and initials within a reasonable period of time following execution of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

ATTEST

Clerk

LICENSOR:  
BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

BY: [Signature]  
Rita Pritchett, Chair  
Brevard County Commission

As approved by the Board: 12/20/22

Reviewed for legal form and content:

[Signature]  
Assistant County Attorney-Justin Caron

WITNESS:

LICENSEE:

Date: 10/3/22

STATE OF Florida

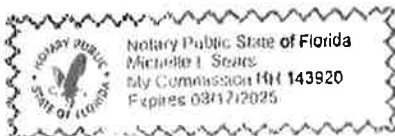
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of October, 2022, by Jeffrey Delache, who is personally known to me or produced FL. Drivers license as identification.

[Signature]

Notary Public

(NOTARY PUBLIC SEAL)



Michelle L. Sears

(Printed, Typed or Stamped Name of

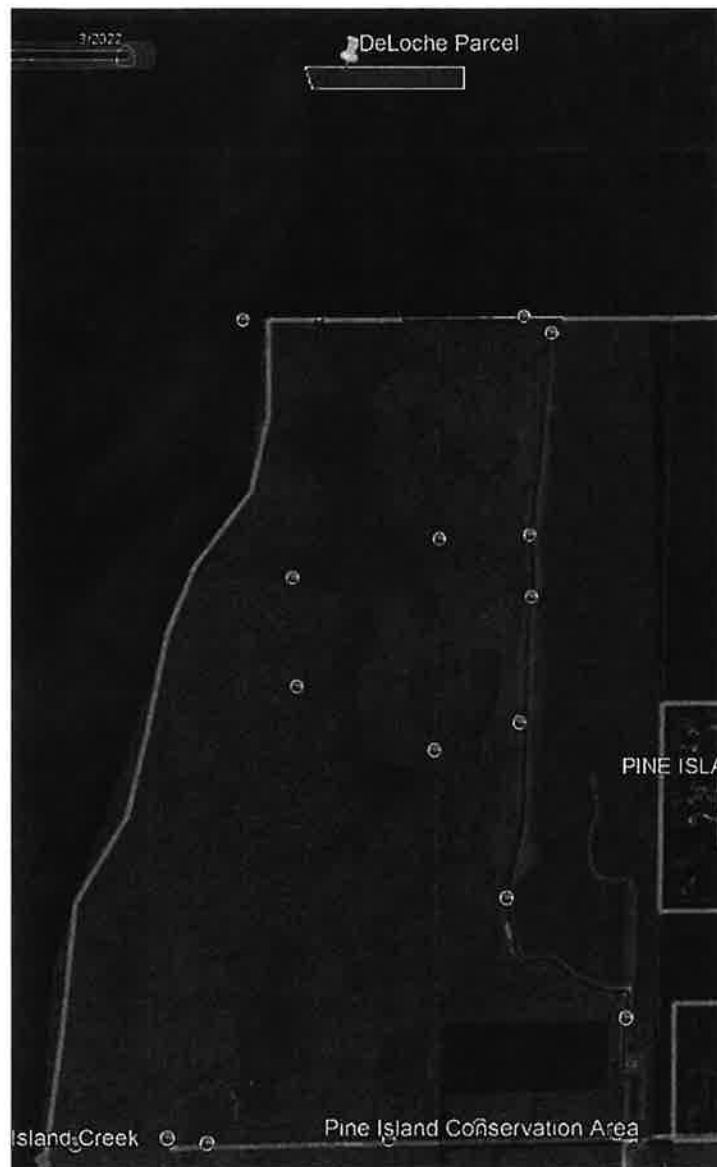
Notary Public)

Commission No.: HH143920

My Commission Expires: 03/17/2025



## EXHIBIT A



## **EXHIBIT B**

Lots 3, 4, and 5 in fractional Section 16, Township 23 South, Range 36 East, according to map surveyed and made by Walter Overstreet, and recorded in Plat Book 1, Page 19, of the Public Records of Brevard County, Florida; excepting therefrom the North 211 feet on a perpendicular measurement. Said property being also the same described as Lots 3 and 4, less the North 211 feet thereof, and all of Lot 5, Joseph Odea and Daniel Mcinnis Subdivision according to said plat thereof as recorded in Plat Book 1, Page 19, of the Public Records of Brevard County, Florida

The North 211 feet, on a perpendicular measurement, of Lots 3 and 4 in fractional Section 16, Township 23 South, Range 36 East, according to the map surveyed and made by Walter Overstreet recorded in Plat Book 1, at Page 19 of the Public Records of Brevard County, Florida,