RESOLUTION 17-141

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA APPROVING A STORMWATER CHANNEL IMPROVEMENT AGREEMENT WITH BREAKFAST POINT, LLC, RELATING TO THE CITY'S IMPROVEMENT OF STORMWATER DRAINAGE CHANNEL RUNNING FROM PANAMA CITY BEACH PARKWAY TO WEST BAY.

BE IT RESOLVED that the appropriate officers of the City are authorized but not required to accept and deliver on behalf of the City that certain Breakfast Point Stormwater Channel Improvement Agreement between the City and Breakfast Point, LLC, relating to the improvement of a stormwater drainage channel running from the Panama City Beach Parkway to West Bay, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 28 day of Septenber, 2017.

CITY OF PANAMA CITY BEACH

Mike Thomas, Mayor

ATTEST:

City Clerk

BREAKFAST POINT STORMWATER CHANNEL IMPROVEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between THE ST. JOE COMPANY, a Florida corporation ("St. Joe") and the CITY OF PANAMA CITY BEACH, FLORIDA, a municipal corporation ("City"), as of the _____ day of September, 2017, upon the terms and conditions following.

WITNESSETH:

WHEREAS, City desires to expand and improve an existing stormwater drainage channel ("Channel") that runs from the Panama City Beach Parkway north of the Hombre Subdivision to West Bay; and

WHEREAS, the Channel is located on property further described on Exhibit "A" ("Property") which Property is owned entirely by St. Joe, and located primarily in unincorporated Bay County, though it includes a portion of Breakfast Point subdivision which is located within the City;

WHEREAS, the City's proposed Project (as further detailed and defined herein) will negate certain stormwater obligations of St. Joe related to Breakfast Point Phases 2A and 2B as guaranteed by the Bonds (as defined herein), and St. Joe is willing to donate the property rights necessary for the Project as consideration for its relief from those stormwater obligations;

WHEREAS, the EMA and RGP (both as described herein) establish certain environmental and stormwater design procedures and requirements for regulatory permitting and mitigation of the Property subject to the jurisdiction of the FDEP, the Corps and other applicable governmental agencies;

WHEREAS, the EMA and RGP may be obtained at http://www.dep.state.fl.us/northwest/StJoeEMA/joeema.htm;

WHEREAS, the Army Corps of Engineers has agreed the Project does not qualify to be authorized under the Regional General Permit (SAJ-86), and an individual permit authorization must be sought; however, any required mitigation will follow a similar process as SAJ-86;

WHEREAS, the Florida Department of Environmental Protection has suggested the Project may be exempt under Chapter 62-330.051; and

WHEREAS, the City has determined that the improvements contemplated by this Agreement are the preferred solution to address some of the region's flooding issues.

NOW THEREFORE, in consideration of reliance upon these premises, the parties agree:

1. Recitals. The forgoing recitals are true, complete and not misleading.

2. The Project.

- a. <u>Description</u>. Collectively the following elements shall be defined as the "Project" herein:
- i. Widening of the existing stormwater channel to approximately ten (10) feet at its channel bottom and fifty (50) feet at the top of channel, as generally depicted on Exhibit A and Exhibit B attached hereto and incorporated herein, and extending the stormwater channel from Panama City Beach Parkway to Parcel Number 34028-000-000 and allowing flow to continue naturally toward West Bay. The design, location, and area encumbered shall be substantially similar to the design drawings entitled North Glades and Hombre Drainage Improvements Permit Set dated September 2017 ("Design Drawings"), attached and incorporated by reference as Exhibit C.
- ii. Construction of the Maintenance Road as depicted by Exhibits B and C.
- ii. Construction of a single lane timber bridge from the existing maintenance road around the Conservation Easement, as generally depicted on Exhibit C.
- b. <u>Additional Improvements</u>. St. Joe shall be responsible for the costs for any enhancements to the Project not depicted on the Design Drawings (i.e., design or materials desired for the proposed bridge which differ from the Design Drawings).
- 3. <u>St. Joe's Conceptual Approval</u>. St. Joe hereby approves and accepts the City's conceptual description of the Project as generally depicted on Exhibit A through C and acknowledges that the City shall immediately proceed to design and permit the Project at the City's sole cost and expense.

4. Conveyance of Property Rights.

a. Temporary Right of Entry. St. Joe hereby grants to the City a license to enter its land, as identified by Parcel ID Numbers: 27542-000-000, 34030-001-000, 34030-000-000, and 34030-000-010 for purposes of undertaking or performing any inspections, tests, surveys or investigations as City deems necessary or desirable for the Project and to construct the Project. For construction purposes, the City intends to access the Project from US98 and from Breakfast Point Phase 2A and 2B adjacent to the existing stormwater ponds. Additional access points, such as any that would require clearing a trail through a wooded area, shall be approved in writing in advance by the parties; subject to St. Joe's approval to be given in its sole discretion. This license shall extend to City's agents, representatives, consultants, and contractors. Any damage to St. Joe land or improvements thereon not reasonably required to

accomplish work similar to the inspections, tests, surveys, and construction of the Project and which is caused by the City or its agents or contractors shall be repaired immediately by City at the City's sole cost and expense. City shall defend, indemnify and hold St. Joe harmless from and in respect of any loss, costs, damage or expense as a result of any claim asserted against St. Joe arising out of such entry, inspection, test or construction. This right of entry commences on the date of this Agreement and shall terminate on the earlier of:

(a) the recording of the Permanent Maintenance Easement; or (b) 30 days following the date of the City Council's action to conclusively reject construction of the Project as evidenced by recorded vote of the City Council. The provisions of this paragraph 4 shall survive termination of this Agreement.

- b. Permanent Maintenance Easement. On or before the 30th day following substantial completion of the Project, as determined by the parties, St. Joe agrees to dedicate and convey to the City a permanent maintenance easement in substantially the form attached and incorporated as Exhibit D hereto (the "Easement"). The permanent maintenance easement shall encumber the channel and maintenance road, as surveyed following construction, which survey shall be approved by St. Joe, and as generally depicted by Exhibits B and C.
- c. Wetland Impacts. The Project provides for impacts to 0.5 acres of high quality wetlands and impacts to 0.24 acres of low quality wetlands, as further set forth on Exhibit "E".

5. <u>Design and Permitting</u>.

- a. The City shall be responsible for the planning, design, permitting and associated mitigation of the Project, including formal exemption verification from the Florida Department of Environmental Protection. The City agrees to pay all costs associated with the engineering, surveying, permitting and construction of the Project.
- b. St. Joe hereby agrees to serve as the co-applicant to the City for any Ecosystem Management Agreement (EMA), Regional General Permit (RGP), USACE Individual Permit, FDEP permit or request for exemption, if required by local, state and/or federal agency.
- c. The City agrees to comply with all applicable laws, rules and regulations, including but not limited to provisions of the EMA and RGP, governing the use and development of any wetlands. Furthermore, the City agrees to obtain, at its sole cost and expense, any necessary permits related to impacts to (i) low quality wetlands, which will not to exceed 20% of the total low quality wetlands within the Project boundary, (ii) high quality wetland impacts which shall not exceed 1.0 acre, and (iii) required stormwater and erosion control within the

- Project in compliance with the EMA, RGP, or other state and federal permitting guidelines and conditions.
- d. City shall defend, indemnify and hold St. Joe harmless from and in respect to any loss, costs, damage or expense as a result of: (a) the unauthorized filling or impacting caused by City or City's employees, agents, or contractors of wetlands within or beyond the boundary of the Property, including but not limited to the impacting of wetlands beyond that permitted hereunder, and agrees to promptly restore the Property to its original condition prior to filling or impacting pursuant to the written direction of St. Joe and/or applicable governing authorities and (b) the City's failure to comply with the RGP, EMA or other state and federal permitting guidelines and conditions.
- e. Mitigation. The City shall be solely responsible for all mitigation required for impacts to low quality wetlands and high quality wetlands within the Project area. Any required mitigation credits for impacts to low quality and high quality wetlands related to the Project shall be purchased by the City from St. Joe's Breakfast Point Mitigation Bank. The City and St. Joe shall enter into a separate agreement for the purchase of mitigation credits at the time the City determines the number of mitigation credits required for the Project.
- f. St. Joe agrees to use its best efforts to cooperate and assist the City in its attempts to obtain environmental permits necessary for the Project. St. Joe shall, within five (5) days following the date of this Agreement, provide the City with copies of all Phase I environmental reports, surveys or other due diligence materials of any nature in its possession (the "Due Diligence Materials"). St. Joe represents that there are no current permits associated with the Project other than as identified in this Agreement. City shall return the Due Diligence Materials to St. Joe no later than five (5) days following termination of this Agreement.
- g. Within 14 days of the City's receipt of 100% complete design plans, the City will submit same to St. Joe for approval, which approval shall not be unreasonably withheld or delayed. The plans shall be deemed approved by St. Joe if not objected to with specificity within 14 days of receipt.
- 6. <u>Bidding and Construction.</u> The City shall build the Project in accordance with the Design Drawings after the same have been approved by St. Joe pursuant to paragraph 2(a)(i). The City agrees to pay all costs associated with the Project. In the event an optional change order is issued, the party requesting the change order shall be required to pay all construction and design costs associated with that change order.
- 7. Release of Breakfast Point Phase 2A and 2B Performance Bond. The Project will supersede certain work originally required as part of the Breakfast Point Phase 2A and 2B approvals. Therefore, contemporaneously with St. Joe's conveyance of the Easement contemplated in paragraph 4, the City will execute a release of the Performance Bond No's

105891767 in the amount of \$100,000 and 105950914 in the amount of \$400,000 ("Bonds") held by the City to secure completion of the stormwater infrastructure for Breakfast Point Phase 2A and 2B. This Agreement does not satisfy the following work related to Breakfast Point 2B to the extent that it has not been completed:

- a. Repair and completion of Breakfast Point Boulevard and associated drainage facilities according to the plans titled Breakfast Point Subdivision Drainage Improvement dated October 9, 2015, as set forth on Exhibit "F;" and
- b. Repair and completion of Johnson Drive and associated drainage facilities according to Exhibit "F."
- 8. <u>Fill Dirt.</u> The City agrees to stock pile dirt excavated as part of the Project in upland locations only adjacent to the Channel, which have been determined to be acceptable in writing by St. Joe prior to construction. The City will make reasonable efforts to contain the fill dirt to ensure no sediment is dispersed in the Channel. St. Joe shall retain ownership of all such dirt from the Project area.
- 9. <u>St. Joe's Representations</u>. As a material inducement to the City to execute and perform its obligations under this Agreement, St. Joe represents and warrants that:
 - a. There are no actions, suits, or proceedings (including condemnation) pending or threatened against St Joe, at law or in equity or before any federal, state, municipal, or other government agency or instrumentality, domestic or foreign which could adversely affect the ability of St. Joe to perform any of its obligations undertaken in this Agreement, nor is St. Joe aware of any facts which to its knowledge might result in any such action, suit, or proceeding, which could adversely affect the ability of St. Joe to perform any of its obligations undertaken in this Agreement.
 - b. St. Joe has good, absolute, and indefeasible title to all of the lands encompassing the Project area, held subject to no lease, mortgage, pledge, lien, charge, security interest, encumbrance, or restriction other than as reflected in the Official Records of Bay County.
 - c. The entry of this Agreement and St. Joe's performance of its obligations hereunder will not violate or contradict any agreement, judicial decree or federal or state administrative order or permit by which St. Joe is bound.
- 10. Termination and Remedies. The City may terminate this Agreement at any time prior to undertaking any significant construction of the Project. Such termination may be for any reason, including higher than anticipated costs for mitigation or construction, and may only be effectuated by City Council action to conclusively reject construction of the Project as evidenced by recorded vote of the City Council. The parties agree that due to the nature of this Agreement, damages to address a breach of this Agreement by either party would be inadequate. Therefore, each party agrees that the other party shall be entitled to the remedy of specific performance in the event of a breach of this Agreement. In addition, the prevailing party in any action or claim arising out of or related to a breach

of this Agreement shall be entitled to collect from the non-prevailing party all attorneys' fees and costs incurred by the prevailing party in prosecuting the claim.

- 11. <u>Amendments and Modifications</u>. No amendment, modification, or alteration of the terms or conditions contained in this Agreement shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
- 12. <u>Notices</u>. All notices and communications required or allowed by this Agreement shall be in writing and delivered in person, by overnight delivery, by electronic mail delivery, or by Certified Mail, Return Receipt Requested, postage prepaid or as otherwise provided in this Section, addressed to the party or person to whom the notice is being given at the following addresses:

TO ST. JOE:

Jorge Gonzalez

The St. Joe Company

133 S. WaterSound Parkway WaterSound, FL 32461 Phone: (850) 231-6400

Email: jorge.gonzalez@joe.com

COPY TO:

Ken Borick

The St. Joe Company

133 S. WaterSound Parkway WaterSound, FL 32461 Phone: (850) 231-6400 Email: ken.borick@joe.com

TO PCB:

Mario Gisbert, City Manager Kelly Jenkins, City Engineer City of Panama City Beach 110 South Arnold Road

Panama City Beach, Florida 32407

(850) 233-5100

Email: mgisbert@pcbgov.com Email: kjenkins@pcbgov.com

COPY TO:

Amy E. Myers

Harrison Sale McCloy 304 Magnolia Avenue Post Office Box 1579

Panama City, Florida 32402 Email: <u>amyers@HSMcLaw.com</u>

- 13. Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.
- 14. <u>Applicable Law and Venue</u>. This Agreement shall be governed, construed and controlled according to the laws of the State of Florida and any applicable laws of the United States of America. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the appropriate court situated in Bay County, Florida.
- 15. <u>Severability</u>. If any part of this Agreement is found by a court of competent jurisdiction to be contrary to, or prohibited by, or deemed to be invalid under applicable laws or regulations, such provisions shall be inapplicable and shall be deemed omitted to the extent so contrary, prohibited or invalid, but the remaining provisions hereof shall not be invalidated thereby and shall be given effect as far as possible.
- 16. <u>Interpretation</u>. The section headings used in this Agreement are for convenience of reference only and are not intended to affect the construction of, or to be taken into consideration in interpreting this Agreement.
- 17. <u>Joint Preparation</u>. The preparation of this Agreement has been a joint effort of the parties hereto and the resulting document shall not, solely as a matter of judicial construction, be constructed more severely against one of the parties than the other.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written. This agreement may be executed in multiple counterparts, each taken together shall constitute an original.

Witnesses	THE ST. JOE COMPANY, a Florida corporation
April Wilkes Veronica K. Morgan Veronica K. Morgan	By:
ATTEST:	PANAMA CITY BEACH, FLORIDA
City Clerk	By:

EXHIBIT A LOCATION MAP AND GENERAL DEPICTION OF PROJECT

FOR THE CONSTRUCTION OF:

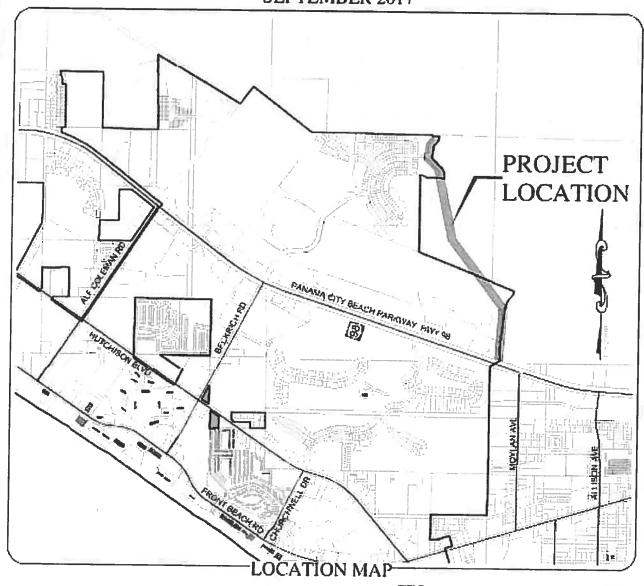
NORTH GLADES AND HOMBRE DRAINAGE IMPROVEMENTS ACOE / FDEP

DREDGE AND FILL PERMIT PREPARED FOR:

CITY OF PANAMA CITY BEACH

BAY COUNTY, FLORIDA

PROJECT NUMBER: 91211213 SEPTEMBER 2017



Dewberry

PREBLE-RISH

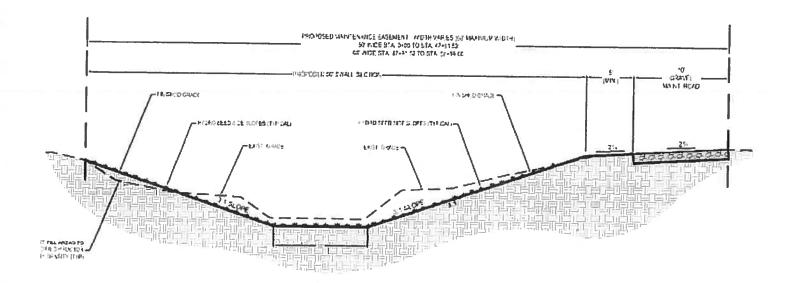
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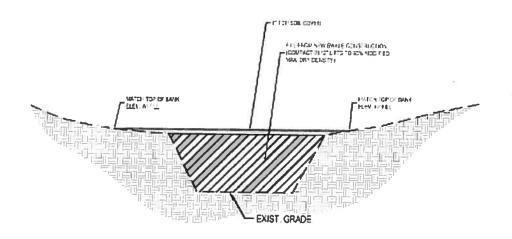
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Betimber 18, 207 CHARL SETT PATRICT THE GLARIE HIS HOME HANNE BANGLYSLIFFILES, MERCHISHERS-CEVERING

EXHIBIT B TYPICAL CROSS SECTION



NEW SWALE CONSTRUCTION TYPICAL SECTION



RESTORATION TYPICAL SECTION

EXHIBIT C

NORTH GLADES AND HOMBRE DRAINAGE IMPROVEMENTS PERMIT SET DATED SEPTEMBER 2017

AVAILABLE FOR REVIEW AT PANAMA CITY BEACH CITY HALL (INTENTIONALLY OMITTED)

EXHIBIT D MAINTENANCE EASEMENT

This instrument prepared by and to be returned to: Nicholas Beninate, Esq. Harrison Sale McCloy P.O. Drawer 1579 Panama City, Florida 32402

EASEMENT AGREEMENT

WITNESSETH:

- 1. That the Grantor for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the Grantee, its successors and assigns, in perpetuity, a non-exclusive easement over, under, and across property located in Bay County, Florida and as more particularly described in Exhibit "A" attached hereto and made a part hereof, (hereinafter the "Easement Property"). The purposes of the easement are limited to access and stormwater drainage associated with the use, operation, maintenance, repair, and reasonable upgrade to the stormwater facilities, maintenance road, and bridge constructed pursuant to the Breakfast Point Stormwater Channel Improvement Agreement dated ______ (the "Improvements") and in emergency circumstances, use by emergency vehicles.
- 2. The foregoing grant of easement shall run with the land and is in favor of Grantor, the Grantee and their respective successor and assigns.
- 3. Grantee shall not be permitted to alter or improve the Easement Property in any manner, except as allowed in Paragraph 1. The cost of the Improvements shall be borne solely by Grantee. Grantee shall be required to abide by the terms and conditions of any and all applicable permits governing the Easement Property.
- 4. Grantor reserves the right and privilege to use and occupy and to grant others the right to use and occupy the subsurface, surface and air space over the Easement Property for any purpose which does not interfere with the rights herein granted to Grantee.
- 5. It is understood and agreed by and between Grantor and Grantee that to the extent the Grantee installs the Improvements within the Easement Property, that such Improvements shall at all times be and remain the absolute property of the Grantee, its successors and assigns, and subject to its complete dominion and control. Subject to Florida Statute 768.28, Grantee agrees to defend, indemnify and hold harmless Grantor and any subsidiaries and affiliated companies of

Grantor, their respective officers, directors, employees and designated agents from and against any and all losses, damages, injuries, causes of action, claims, demands and expenses (whether based upon tort, breach of contract, failure to pay employee taxes or withholdings, failure to obtain workers' compensation insurance or otherwise), including legal fees and expenses, of whatever kind or nature to the extent arising out of use of the Easement Property by Grantee, its successors, assigns, employees, agents or invitees.

- 6. Grantee, by acceptance of this easement, hereby agrees to maintain the Easement Property in good repair and shall at all times have the right to keep the Easement Property clear of all structures, obstructions, trees, shrubbery, undergrowth and roots or objects that may interfere with the Improvements. Grantee shall mow the access path to the Easement Property at least annually. Grantee shall inspect the Easement Property for, and remove or destroy invasive plants on the Easement Property at least annually. Grantee shall provide reasonable mosquito control on the Easement Property.
- 7. Grantee agrees to provide reasonable restoration to the Easement Property and surrounding area as a result of its installation, operation, maintenance, repair or reconstruction of the Improvements.
- 8. Grantee shall exercise the easement rights conveyed herein in a manner which will not unreasonably interfere with uses of the adjacent property owned by Grantor or its affiliated entities.
- 9. The above conveyance is made upon the condition that should the Grantee or its successors or assigns abandon or cease to use the Easement Property for the purposes set forth in this Easement Agreement, then the rights herein granted shall forthwith terminate.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Easement Agreement to be executed on the day and year set forth above.

Signed, seal and delivered in the presence of	THE ST. JOE COMPANY, a Florida corporation
Name:	
	Ву:
N	Name:
Name:	Its:
STATE OF FLORIDA COUNTY OF	
The foregoing instrument w	as acknowledged before me this day of, of The St. Joe Company, who is personally
known to me.	, or the on too company, who is personally

My commission expires:	
	(Notary Public - Signature) CITY OF PANAMA CITY BEACH
	By: Mario Gisbert, City Manager
ATTEST:	
By:City Clerk	
STATE OF FLORIDA COUNTY OF BAY	
The foregoing instrument was acknowledge, 2017, by Mario Gisbert and of the City of Panama City Beach, who are	owledged before me this day of, as City Manager and City Clerk personally known to me.
My commission expires:	
	(Notary Public - Signature)

EXHIBIT "A" EASEMENT PROPERTY

EXHIBIT E

WETLAND IMPACTS

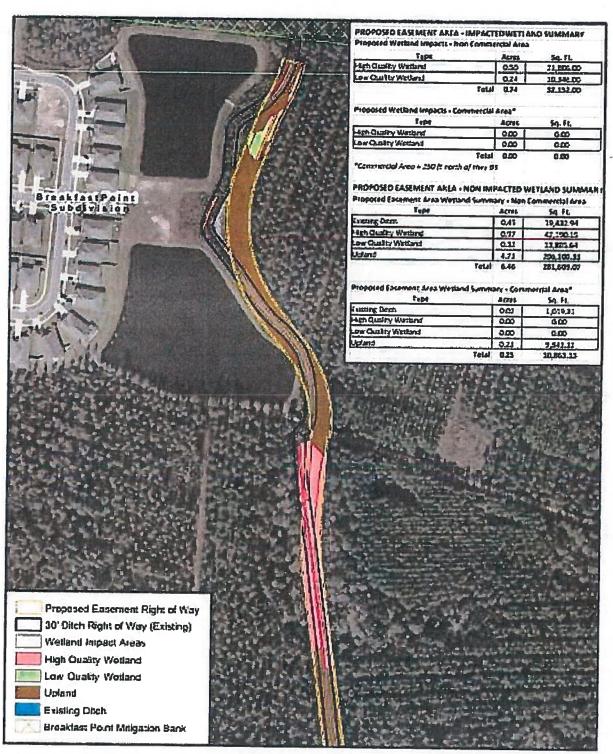


Exhibit E: Breakfast Point Channel - Proposed Impacts
Panama City Beach - Bay County, FL - August 3, 2017
Page 1 of 3

1 inch = 200 feet 0 100 200 400 Feet

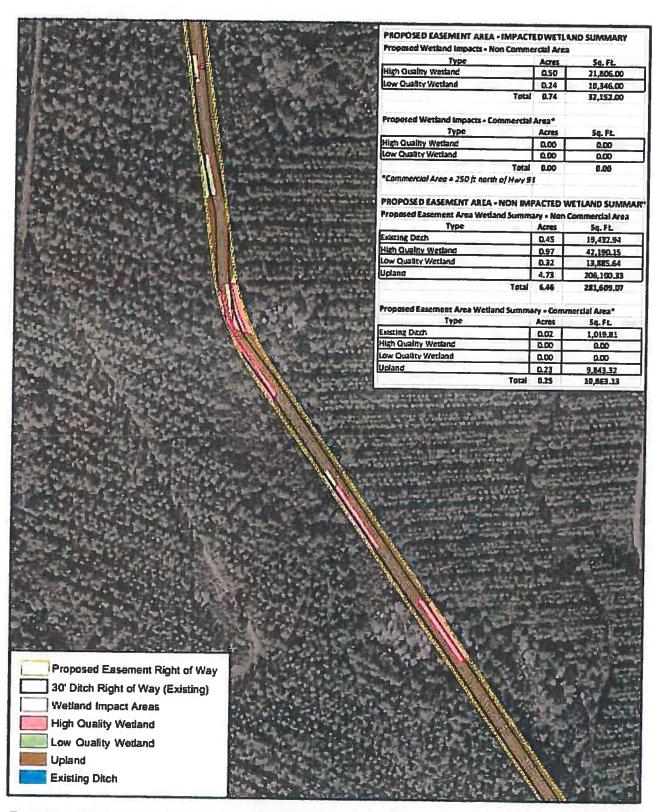
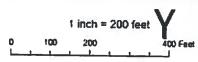


Exhibit E: Breakfast Point Channel - Proposed Impacts
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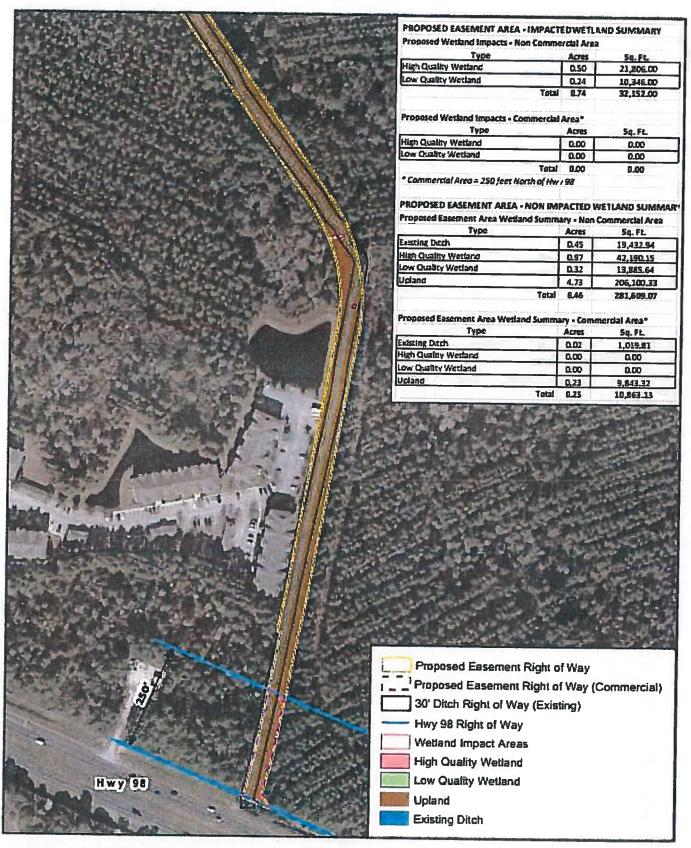


Exhibit E: Breakfast Point Channel - Proposed Impacts Panama City Beach - Bay County, FL - August 3, 2017

1 inch = 200 feet V

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EXHIBIT F

PLANS FOR INCOMPLETE ROAD AND DRAINAGE

BREAKFAST POINT SUBDIVISION DRAINAGE IMPROVEMENT

FOR

THE ST. JOE COMPANY
135 S. WATERSOUND PARKWAY
WATERSOUND, FL 32413



HEPAULD IN

PROJECT 16246B

C-C NYTH ALB TENENS

OPPINED.

