

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CENTER FOR A SUSTAINABLE COAST, INC.

Plaintiff,

v.

THE UNITED STATES ARMY CORPS OF
ENGINEERS, Lieutenant General TODD T.
SEMONITE, in his official capacity as
Commanding General of the U.S. Army Corps of
Engineers, Colonel DANIEL HIBNER in his
official capacity as District Commander of the
Savannah District, and TUNIS McELWAIN, in his
official capacity as Chief of the Regulatory Branch
of the U.S. Army Corps of Engineers,

Defendants.

CIVIL ACTION FILE NO.

CV 418 - 254

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF¹

INTRODUCTION

1.

This action challenges the U.S. Army Corps of Engineers' issuance of a § 404 permit to Sea Island Acquisition, LLC ("SIA") allowing SIA to significantly alter the beach, dunes and sand sharing system on Sea Island, particularly in on the Spit -- a sensitive, pristine, fragile, and undeveloped piece of land at the southern end of Sea Island, the primary purpose for which is to protect eight undeveloped lots SIA seeks to develop as part of a proposed development known as the Reserve at Sea Island. The permit authorizes the construction of a new T-head groin in front

¹ This action is related to the recently filed action: *Altamaha Riverkeeper, et al v. The United States Army Corps of Engineers, et al.*, United States District Court for the Southern District of Georgia, Civil Action No. 4:18-CV-00251-JRH-JEG.

the Reserve at Sea Island development; the dredging of between 1,315,000 to 2,5000,000 cubic yards of sand from an offshore location; and the placement of sand along more than 17,000 linear feet of beach on Sea Island. *See* Individual Permit No. SAS-2015-00742 (September 12, 2018) (a true and correct copy of which is attached hereto as Exhibit A) (the Permit). As authorized by the permit, however, the majority and a disproportionate amount of the sand is to be used on only 1,200 linear feet of beach on the Spit to build up the area in front of the Reserve at Sea Island.

2.

The Corps action violates the substantive and procedural provisions of the Clean Water Act, 33 U.S.C. §1344, (“CWA”) and the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”), and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law in violation of the Administrative Procedures Act (“APA”), 5 U.S.C. §§553, 706(2)(A).

3.

Plaintiff asks the Court to (1) declare that the Corps violated its statutory duties under the CWA and NEPA, (2) issue an injunction requiring the Corps to vacate or rescind the Permit, (3) enjoin construction of the groin and other activities authorized by the Permit, and (4) award to Plaintiff its costs and expenses, including reasonable attorneys’ fees and expenses of litigation.

JURISDICTION AND VENUE

4.

This action arises under the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*, and the Administrative Procedures Act, 5 U.S.C. §§ 701 *et seq.*

5.

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and may issue declaratory and further relief pursuant to 28 U.S.C. §§ 2201 and 2202.

6.

Plaintiff Center for a Sustainable Coast, Inc. is authorized to bring this action under the APA, 5 U.S.C. §§ 701-706.

7.

Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(e) because a substantial part of the events or omissions giving rise to this claim occurred in this District, including Defendant's grant of the Permit.

PARTIES

8.

Defendant United States Army Corps of Engineers is the federal agency charged with administering permits under Clean Water Act § 404 for the discharge of dredged or fill material into waters of the United States. The Corps is headquartered in Washington, D.C., and has a District Office in Savannah, Georgia, where a significant portion of the actions and/or omissions alleged in this Complaint occurred.

9.

Defendant Lieutenant General Todd Semonite, who is being sued in his official capacity, is the current Commanding General of the U.S. Army Corps of Engineers. He is charged with the supervision and management of all Corps decisions and actions, including the evaluation of Corps decisions and actions under NEPA and Section 404 of the CWA, which are the subject of this lawsuit.

10.

Defendant Colonel Daniel Hibner, who is being sued in his official capacity, is the District Commander in charge of the U.S. Army Corps of Engineers in Savannah, Georgia. The Savannah District is responsible for the review, assessment, consideration and issuance of the permit being challenged. Colonel Hibner was responsible for signing the permit being challenged.

11.

Defendant Tunis McElwain, who is being sued in his official capacity, is the chief of the Regulatory Branch of the U.S. Army Corps of Engineers. The Regulatory Branch of the U.S. Army Corps of Engineers administers and enforces Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. McElwain was responsible for the issuance and signing of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), or Statement of Findings as now referred to by the Corps, for the permit being challenged.

12.

Plaintiff Center for a Sustainable Coast, Inc. (CSC or the Center), who brings this action on behalf of itself and its members, is a not-for-profit organization incorporated in Georgia. The Center's principal place of business is in Glynn County, Georgia. The Center's mission is to support conservation and sustainable use of Georgia's coastal resource – natural, historic, and economic – including the coastal resources of Sea Island adversely affected by the issuance of the Permit. The Center is a local leader and advocate on issues related to the adverse impacts associated with the use of groins and sand renourishment practices.

13.

The Center's members use, recreate, work, reside near, as well as derive aesthetic enjoyment from, the waters, adjacent habitat and aquatic life and wildlife along Georgia's coast including on Sea Island, the Sea Island Spit, the adjacent Gould's Inlet, and the adjacent St. Simons Island and other areas adversely affected by the issuance of the Permit. The Center and its members enjoy the natural serenity of the Spit.

14.

The Center and its members believe the public deserves the best possible protection of Georgia's environmental interests and quality of life, while enjoying responsible use of this region's diverse natural resources. The Center and its members work to advance the Center's mission so that the interest of existing and future generations of Georgians are adequately protected in decisions that affect them, such as the permitting decision at issue here.

15.

As part of its core mission, the Center and its members monitor state, federal and local permitting actions pertaining to the issuance of permits and/or authorizations for construction or other work affecting Georgia's coastal resources, including the Sea Island Spit, the adjacent Gould's Inlet, and the adjacent St. Simons Island and other areas adversely affected by the issuance of the Permit.

16.

The Center and its members have an interest in ensuring that the U.S. Army Corps of Engineers carries out and complies with all applicable laws and regulations in performing its duties, including as it relates to the issuance of the challenged permit.

17.

The Center and its members have participated extensively and continue to participate in efforts to protect the coastal resources along Sea Island and St. Simon's Island, including the sensitive Sea Island Spit and other areas affected by the issuance of the Permit, as well as to protect the wildlife that resides and depends upon these areas, for existing and future generations.

18.

The Center and its members are adversely affected and injured by Defendants' actions and/or omissions resulting in the issuance of the Permit, which will damage the sensitive, pristine, and fragile Spit and nearby areas of Gould's Inlet and St. Simon's Island as well as the wildlife species that reside and depend upon these areas. The Center and its members have suffered injury and will suffer injury to their well-being, aesthetic, recreational, environmental, real property, and/or economic interests as a result of Defendants' issuance of the Permit. The Center and its members observe and experience the adverse impacts of groin development and alteration of the beach, dune and sand sharing system along the coast, shore erosion and accretion, destruction of sensitive ecosystems, alteration of wildlife habitat, including habitat of federally protected species such as the Loggerhead Sea Turtle, the Red Knot and the Piping Plover, as well as the unreasonable interference with the use and enjoyment of public tidelands.

19.

Implementation of the work authorized by the Permit, particularly in light of Defendants' failures to comply with the applicable statutes and regulations, has caused and will cause the Center and its members to suffer imminent, irrefutable harm and/or injury. Likewise, Defendants' actions and/or omissions have deprived the Center and its members of certain information and procedural rights pertaining to the review and issuance of the Permit, including

the failure to hold public hearings, whereby affording the public a meaningful opportunity to engage in public comment on the proposed project, and the failure to properly assess and consider the impacts of the work authorized by the Permit. Specifically, Defendants' FONSI decision and subsequent failure to order an Environmental Impact Statement (EIS), which resulted in issuance of the Permit, has caused and will cause the Center and its members imminent, irrefutable harm and/or injury.

STATUTORY AND REGULATORY BACKGROUND

The Clean Water Act

20.

Congress enacted the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251, *et seq.* To accomplish this goal, Section 301 of the Clean Water Act prohibits the discharge of any pollutant, including dredged spoil or other fill material, into navigable waters unless authorized by and in accordance with a permit issued under the Clean Water Act. *Id.* § 1342(a).

21.

One type of permit authorized under the Clean Water Act is a § 404 permit. *Id.* § 1344. Section 404 of the Clean Water Act authorizes the Secretary of the Army to issue permits, under certain circumstances, “for the discharge of dredged or fill material into the navigable waters at specified disposal sites.” *Id.* § 1344(a). The Secretary of the Army acts through the Chief of Engineers of the U.S. Army Corps of Engineers. *Id.* § 1344(d); 33 C.F.R. § 323.6(a).

22.

Unless exempted by Section 404(f)(1), which is not applicable here, all discharges of fill material into waters of the United States must be authorized by a Section 404 Permit issued by the Corps.

23.

The Corps has adopted regulations to guide its compliance with Section 404 of the Clean Water Act, which set forth what is commonly known as the Section 404(b)(1) Guidelines. *See* 40 C.F.R. § 230.1 *et seq.* “Fundamental to these Guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.” 40 C.F.R. § 230.1(c).

24.

The Section 404(b)(1) Guidelines apply to all Section 404 permits and the Corps must follow these guidelines in deciding whether to issue a Section 404 permit. *See* 33 U.S.C. § 1344(b); 40 C.F.R. § 230.2.

25.

In general, the Section 404(b)(1) Guidelines provide that no discharge of fill material shall be permitted if there is a less damaging “practicable alternative” available, or if the discharge will “cause or contribute to significant degradation of waters of the United States.” 40 C.F.R. § 230.10.

26.

Corps guidelines further provide that “practicable alternatives” include “not discharging into waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences.” 40 C.F.R. § 230.5(c).

27.

In conducting its assessment, the Corps may rely on information submitted by the applicant in conducting its analysis, but it must independently verify such information.

28.

Nevertheless, Section 404(b)(1) Guidelines require the Corps to deny a permit unless the applicant can show that there are no practicable alternatives with less adverse impact on the environment. 40 C.F.R. § 230.

National Environmental Policy Act

29.

Congress enacted NEPA to “promote efforts which will prevent or eliminate damages to the environment ...” 42 U.S.C. § 4321. To achieve this goal, NEPA requires federal agencies to fully consider and disclose the environmental consequences of an agency action before proceeding with that action. *Id.* at § 4332(2)(C); 40 C.F.R. §§ 1501.2, 1502.5.

30.

Agencies’ evaluation of environmental consequences must be based on scientific information that is both “[a]ccurate” and of “high quality.” 40 C.F.R. § 1500.1(b). In addition, federal agencies must notify the public of proposed projects and allow the public the opportunity to comment on the environmental impacts of their actions. *Id.* at 1506.6.

31.

NEPA requires all federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C).

32.

Where it is not readily discernible how significant the environmental effects of a proposed action will be, federal agencies may prepare an Environmental Assessment (“EA”), a less onerous assessment, to establish the project’s level of impact. 40 C.F.R. §§ 1501.4(b), 1508.9(a)(1); 33 U.S.C. §§ 230.10 - 230.11.

33.

In determining whether the environmental effects of a project are likely to be significant, agencies must consider a number of factors, including the nature and extent of the impacts; the degree to which the proposed action affects public health or safety; the unique characteristics of the geographic area; the degree to which the impacts are likely to be highly controversial; the degree to which the possible effects are highly uncertain or involve unique or unknown risks; the cumulative impacts; the degree to which the action may adversely affect endangered species and their habitat; and whether the action threatens a violation of state, federal or local law or requirements imposed for the protection of the environment. *Id.* at 1508.27(b). Any “one of these factors may be sufficient to require preparation of an EIS in appropriate circumstances” *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 865 (9th Cir. 2005).

34.

Notably, Section 7 of the Endangered Species Act (ESA) requires all federal agencies to ensure that any action authorized, funded or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(a)(2).

THE ADMINISTRATIVE PROCEDURES ACT

35.

The Center's CWA and NEPA claims are subject to judicial review under the APA, which confers a right of judicial review on any person adversely affected by final agency action, and provides for a waiver of the federal government's sovereign immunity. 5 U.S.C. § 702.

36.

Section 10 of the APA establishes that, as a general rule, "agency action, findings, and conclusions" shall be set aside when they are "found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

37.

An action is arbitrary and capricious where "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. '[The court] may not supply a reasoned basis for the agency's action that the agency itself as not given.'" *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

FACTUAL BACKGROUND AND ALLEGATIONS

Sea Island and the Spit

38.

One of a series of barrier islands off the coast of Georgia, Sea Island is approximately four and a half miles long and a half-mile wide at its widest point. Sea Island is separated from Little St. Simon's Island to the north by the Hampton River and from St. Simon's Island to the west and south by Village Creek, the Black Banks River and Gould's Inlet.

39.

The Spit is a pristine, undeveloped, and ecologically fragile area at the very southern end of Sea Island, between the Black Banks River and the Atlantic Ocean, that provides important habitat for protected sea turtles, shorebirds, and other species, as well as an important recreational area for local residents and tourists alike.

40.

The Spit also provides an invaluable protective barrier for St. Simons Island from storm surge, flooding, and erosion and is vitally important to the sand sharing system that nourishes the beaches and shoreline of St. Simons, including the East Beach area.

Sea Island Acquisition and The Reserve at Sea Island Development

41.

SIA is a private resort and real estate development company, that seeks to build eight multi-million dollar homes on vacant land at the north end of the Spit, just north of the conservation easement boundary, as part of a new development called the Reserve at Sea Island. Significantly for purposes of the permitting evaluation and decision, no lots have been sold, and no homes have been built at the Reserve at Sea Island. Therefore, there are no homes or other

structure that require storm protection, the purpose of the project as stated by SIA and determined by the Corps. Instead, the true intent of the project authorized by the Permit is to protect undeveloped property SIA considers “very, very valuable” and its interest in developing that property for profit.

42.

The inappropriateness of development on the Spit is highlighted by the United States Department of the Interior’s designation of the Spit as ineligible for federally-backed flood insurance and federal disaster assistance by FEMA under the Coastal Barrier Resources Act, 6 U.S.C. § 3501 *et seq.*

Current Groins on Sea Island are Causing Erosion of the Spit and the Proposed Groin Will Exacerbate Conditions and Adversely Impact East Beach on St. Simons Island

43.

Sea Island currently has two groins that were built in the early 1990s. One groin is located at the northern end of the island, and the other one is located further south at the northern edge of the Spit. The current groins have caused a loss of at least 250 feet in the beach width and at least 2,000 feet in the length of the Spit at the southern end near Gould’s Inlet.

44.

The shoreline losses south of the existing groins are not surprising. Groins halt the natural process of the sand-sharing system. The purpose of a groin is to contain sand on the updrift side of the groin. Thus, the groin acts to starve the downdrift beach of sand by eliminating the updrift supply. Because a groin deprives downdrift areas of sand, the construction of one groin typically leads to the construction of another.

45.

The negative impacts of groins are well documented and widely recognized. In fact, the Corps specifically acknowledges the destructive effects of groins, describing them as “probably the most misused and improperly designed of all coastal structures... Over the course of some time interval, accretion causes a positive increase in beach width updrift of the groin. Conservation of sand mass therefore produces erosion and decrease in beach width on the downdrift side of the groin.” *See* Army Corps of Engineers Coastal Engineering Manual at Part V, Chapter C, p. V-3-59 (2002).

46.

The Corps’ opinion is shared by forty-three of the country’s leading geologist, who, in a joint statement, stated: “[t]he negative impact of groins and jetties on downdrift shorelines is well understood. When they work as intended, sand moving along the beach in the so called downdrift direction is trapped on the updrift side, causing a sand deficit and increasing erosion rates on the downdrift side. This well-documented and unquestioned impact is widely cited in the engineering and geologic literature.” *See* Coastal Scientist Statement on Groin Impacts, p. 2. Those scientist further noted: “[t]he localized and temporary updrift benefits afforded by groins and jetties rarely, if ever, justify the downdrift damage cause by increased erosion.” *Id.*

47.

The negative effects of the groins on Sea Island are already known and well-documented both in personal observations and photographic evidence.

48.

The uses of groins, including on Sea Island, results in the proverbial, kick the can down the road solution. The proposed groin on the Spit on Sea Island will be built 1,360 feet closer to

St. Simon than the current groin. It is expected to cause erosion and sand depletion at East Beach on St. Simons Island.

49.

In addition to starving downdrift beaches of sand and causing accelerated downdrift erosion, the proposed groin will have negative impacts on wildlife, especially federally protected sea turtles. The U.S. Fish and Wildlife Service (USFWS) found that “[c]onstruction of another groin will have negative impacts to sea turtle and have possible adverse impacts to the Sea Island spit which is utilized habitat for federally listed shorebirds and turtles.” *See* USFWS November 24, 2015 Comments at p. 2,

Administrative History

50.

On or around October 9, 2015, SIA submitted an application seeking permission to construct a T-head groin immediately south of the proposed Reserve at Sea Island development, as well as authorization to construct dunes and build a beach along 1,200 linear feet between an existing groin and the proposed groin. Pursuant to the application, the proposed groin would be located approximately 1,200 feet south of an existing groin and would be approximately 350 feet in crest length with a “T” head section, parallel to the shoreline, of 120 feet in crest length. The application further provided that the proposed dune construction and beach development project would involve the removal and placement of approximately 120,000 cubic yards of sand from the northern side of the existing groin to the project area.

51.

In its application, SIA stated the purpose of the project is “to stabilize the eroding beach south of the existing groin (in front of the Reserve at Sea Island development) and to provide storm protection to the adjacent upland.”

52.

The Corps issued a public notice of the permit application on or around December 18, 2015.

53.

On or around January 15, 2016, the Center submitted comments opposing SIA’s permit application (GreenLaw 2016 Comments) along with documentation supporting its opposition. In its comments, the Center explained that the proposed project would cause significant erosion along the Sea Island Spit south of the proposed groin and would adversely impact habitat for a number federally protected species, as well as cause erosion and other adverse impacts to East Beach on St. Simons Island.

54.

In response to the application and public notice, the Corps received comments from 197 separate individuals or organizations. Of those 197 commenters, 194 opposed the project. In addition to the federal comments, nearly one hundred individuals and organizations, including federal and state agencies, submitted comments to the state agency – the Georgia Department of Natural Resources Coastal Resource Division (CRD) opposing the project.

55.

By way of example, the Georgia Department of Natural Resources Wildlife Resources Division (WRD) submitted written comments explaining that groins interfere with the conservation of federally and state protected sea turtle and specifically stating that “[t]he

construction of the T-head groin will result in the loss of sea turtle nesting habitat and will interfere with the conservation of sea turtle populations in Georgia.”

56.

Similarly, the USFWS submitted comments specifically recommending denial of the permit because of the adverse and negative impacts the groin will have on sea turtles and their habitat.

57.

On or around March 6, 2018, SIA submitted an amended application. The amended application included the construction of the T-head groin in front of the Reserve at Sea Island, but not the proposed excavation and discharge of sand. Instead, the revised project includes dredging vastly larger volumes of sand from an offshore location, and placement along a greater area of the Sea Island coast. Specifically, the amended application seeks authorization (1) to construct the new T-head groin on the Spit; (2) to dredge between 1,315,000 to 2,500,000 cubic yards of sand from an offshore location; and (3) to renourish more than 17,000 feet of beach on Sea Island.

58.

The Applicant’s stated purpose of the project and need is “to restore the Sea Island (GA) beach to provide storm protection for adjacent uplands, restore wildlife habitat, restore recreational functions, and to provide a reservoir for sand recycling to address existing erosion patterns.” *See* March 6, 2018 Addendum. The Applicant further stated, “[t]he basic project purpose is to provide storm protection for developed shoreline through beach nourishment techniques.” *Id.*

59.

On or around March 20, 2018, the Corps published notice of the vastly expanded project and Revised Application.

60.

Again, the Corps received overwhelming opposition to the application and proposed project.

61.

On or around May 23, 2018, the Center submitted comments opposing SIA's permit revised application (SELC 2018 Comments) along with documentation supporting its opposition. In its comments, the Center explained that the proposed project would cause significant erosion along the Sea Island Spit south of the proposed groin and would adversely impact habitat for a number federally protected species, as well as cause erosion and other adverse impacts to East Beach on St. Simons Island.

62.

Among other things, the Center noted that neither the October 2015 application nor the March 2018 revised application by SIA adequately considered the direct, indirect, or cumulative impacts of the proposed project. In addition, neither the October 2015 application nor the March 2018 revised application by SIA adequately considered less environmentally damaging, practicable alternatives.

63.

On or around September 11, 2018, the Corps issued a permit authorizing Sea Island Acquisition to construct the new T-head groin on the Spit; to dredge between 1,315,000 to 2,500,000 cubic yards of sand from an offshore source; and to renourish more than 17,000 linear feet of beach on Sea Island.

64.

The Permit authorizes SIA to place a disproportionate amount of sand on the Spit, along 1,200 linear feet of the more 17,000 linear feet identified in the project, in which half, if not more, of all the sand, is proposed to be placed.

65.

On or around this same time, the Corps issued its combined Environmental Assessment, 404(B)(1) Guidelines Evaluation, Public Interest Review, and Statement of Findings for the subject application.

66.

In this decision document, the Corps specifically found the basic purpose of the project to be storm protection. “The Corps has determined that the overall project purpose is to protect upland lots and development located along the shoreline of Sea Island from storm damage.”

67.

The purpose of the project as defined by the Applicant and determined by the Corps do not support the issuance of the Permit and the work authorized pursuant to the Permit.

68.

In its decision document, the Corps also specifically found the project not be water dependent.

69.

In its decision document, the Corps found that the authorized project would have no significant impact to the environment. Despite such, the decision document is replete with acknowledgements that the existing groins have cause accelerate erosion on the Spit and the

proposed project will likely exacerbate conditions downdrift and will adversely affect sea turtles and other endangered and threatened wildlife.

70.

The Corps' decision to grant the Permit is arbitrary, capricious, an abuse of discretion and otherwise contrary to law.

CLAIMS FOR RELIEF

I. FAILURE TO PREPARE AN EIS IN VIOLATION OF NEPA

71.

Plaintiff incorporates the allegations asserted in paragraphs 1 through 70 as if stated fully herein.

72.

Plaintiff avers that the Corps' Finding of No Significant Impact and failure to require an Environmental Impact Statement violates the NEPA, including but not limited to, 42 U.S.C. § 4332, the APA, and/or the CWA.

73.

NEPA requires the Corps to prepare an EIS whenever it engages in a major Federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C).

74.

Implementing regulations require agencies to determine whether to prepare an EIS for such actions based on the analysis set forth in an EA. 40 C.F.R. § 1501.4(c).

75.

The Corps' NEPA regulations require the Corps to issue a FONSI for any project for which an EIS is not prepared. 33 C.F.R. § 230.11. In the FONSI, the Corps must present reasons why an action will not have a significant effect on the human environment. *Id.*

76.

As acknowledged by the Corp's own findings in its decision document, the environmental effects of the project are likely to be significant considering the project's direct, indirect and cumulative impacts to the sand-sharing system, the adverse impacts to threatened and endangered species and their habitat, the controversial nature of the project as evidenced by the overwhelming objection to the project and the highly controversial nature of the impacts. In addition, there is evidence that the project may violate State and local laws governing work on the sand-sharing system.

77.

The issuance of the Permit under Clean Water Act § 404 to SIA is a major federal action that significantly affects the quality of the human environment, and thus Defendants were required under NEPA and implementing regulations, and the Corps regulations to prepare an EIS before the Permit was issued. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1501.4(c); 33 C.F.R. §§ 230.10 and 230.11.

78.

The FONSI issued for the SIA project does not provide a rational basis for the Corps' decision not to prepare an EIS. Accordingly, Defendants' grant of the SIA permit absent presentation of an EIS violates NEPA, 42 U.S.C. § 4321 *et seq.*, and is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law, in violation of the APA, 5 U.S.C. § 706(2)(A).

79.

These violations of NEPA and the APA by the Defendants threaten Plaintiff with irreparable injury for which they have no adequate remedy at law.

II. FAILURE TO COMPLY WITH THE CWA AND IMPLEMENTING REGULATIONS

80.

Plaintiff incorporates by reference paragraphs 1-79 as if fully stated herein.

81.

The Clean Water Act requires the Corps to grant or deny permits for the discharge of fill material in accordance with criteria set forth in the Corps' own guidelines. *See* 33 U.S.C. § 1344(b) and 40 C.F.R. § 230.1 *et seq.*

82.

An applicant for a Section 404 permit must show that its project complies with Section 404 Guidelines. The 404(b)(1) Guidelines provide that “dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.” 40 C.F.R. § 2301.1(c). In evaluating adverse impacts, the Corps must consider both the short and long term consequences of discharges on the physical, chemical and biological components of the aquatic environment. 40 C.F.R. § 230.11.

83.

The Corps may approve a project only if: (a) it is the least damaging practicable alternative; (b) it would not violate the Endangered Species Act; (c) its discharges would not

cause or contribute to significant degradation of the waters of the United States; and (d) its potential impacts to aquatic ecosystems are minimized to the extent practicable.

84.

As set forth above, the Corps failed to take a “hard look” at the environmental concerns raised by the Permit. It failed to analyze adequately both the specific environmental impacts that would be allowed if the permit were granted and the cumulative environmental impacts of the project.

85.

The Corps failed to analyze and consider practicable alternatives that achieve the purpose of the project while causing significantly fewer adverse environmental effects. With respect to the least damaging practicable alternative requirement, the Guidelines provide that “[a]n alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. 40 C.F.R. § 230.10(a)(2). The Corps improperly determined that the work, as requested by SIA in its application, was the least environmentally damaging practicable alternative that would achieve the purposes for which the work is being performed. The Corps failed to adequately consider less environmentally damaging practicable alternatives, including but not limited to no action; beach nourishment without a groin; and beach nourishment coupled with removal of the existing south and/or north groin, particularly in the context of the purpose for the project. Accordingly, Plaintiff avers that Defendants violated the CWA and the APA by issuing the Permit when there is a less environmentally damaging practicable alternative. 40 C.F.R. §§ 230.10(a) and 230.12(a)(3)(i).

86.

The Corps failed to adequately analyze endangered and threatened species issues. SIA has an obligation to show that the proposed project will not violate the Endangered Species Act. As set forth above, there is ample evidence which demonstrates that the proposed project will jeopardize existence of several threatened and endangered species under the ESA, including the Loggerhead Sea Turtle, the Piping Plover, and the Red Knot. There is also ample evidence that the proposed project will result in the destruction or adverse modification of critical habitat.

87.

The Corps failed to adequately analyze minimization of adverse impacts from the proposed project. The Corps did not establish that the significant effects of the permitted activities would be reduced to a minimum by mitigation measures. To the contrary, the Corps determined that no mitigation measures would be required. The Corps' reference to future monitoring of the project fails to adequately evaluate and consider minimization of adverse impacts from the proposed project, particularly in light of the purpose of the project.

88.

Plaintiff also avers that Defendants violated the CWA and NEPA by failing to adequately evaluate the cumulative impacts of the authorized project. Pursuant to 40 C.F.R. §§ 230.11(g) (CWA) and 1508.7-1508.8 (NEPA), the Corps is required to evaluate cumulative effects of the project before granting a permit. The CWA regulations define "cumulative impacts" as "the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges or dredge or fill material. Although the impact of a particular discharge may constitute a minor change in itself, the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems." 40 C.F.R. § 230.11. NEPA

regulations define “cumulative impacts” as the “impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. Defendants failed to adequately evaluate the cumulative effects of the proposed project over the life of the project.

89.

Because Defendants failed to comply with these guidelines, Defendants’ grant of the Permit violates the Clean Water Act, 33 U.S.C. § 1344 and the Corps’ guidelines for implementing the CWA, 40 C.F.R. § 230.1 *et. seq.*, and is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA, 5 U.S.C. § 706(2)(A).

90.

These violations of the CWA and the APA by the Defendants threaten the Plaintiff with irreparable injury for which they have no adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court:

- (a) Take jurisdiction of this case;
- (b) Order, adjudge, and decree that this is a proper case for a declaratory judgment and that there is a bonafide controversy among the parties as to their legal rights, duties, status and proper course of action;

- (c) Issue process to each Defendant as provided by law and the rules of this Court and require each Defendant to respond or answer this Complaint within the time permitted by law;
- (d) Enter judgment declaring that the Corps' issuance of the Permit violates the Clean Water Act and its implementing regulations and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law in violation of the APA;
- (e) Enter judgment declaring that the Corps' FONSI and its subsequent failure to require and prepare an EIS violate NEPA and its implementing regulations and is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law in violation of the APA;
- (f) Vacate or rescind the Permit;
- (g) Temporarily and permanently enjoin construction of the groin as well as any dredging and/or sand placement on Sea Island beach²;
- (h) Award the Center its reasonable attorney's fees and costs of litigation;
- (i) Award the Center such other relief as justice may require and that this Court may deem appropriate.

Respectfully submitted this 2nd day of November 2018

/s/ Kasey Sturm

Kimberly [Kasey] A. Sturm
Georgia Bar No. 690615

Weissman PC
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326

² Plaintiffs in the related action filed a Motion for Preliminary Injunction and Memorandum of Law in Support, to which the Center joins in support of the preliminary injunction.

Office: 404.926.4600

Direct: 404.926.4630

kaseys@weissman.law

Attorney for Plaintiff Center for a Sustainable Coast

JS 44 (Rev. 08/18)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Center for a Sustainable Coast

(b) County of Residence of First Listed Plaintiff Glynn
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Kimberly A. Sturm

DEFENDANTS

United States Army Corps of Engineers, et al

County of Residence of First Listed Defendant Chatham
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

CV 418-254**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability LABOR ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g))	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☒ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Clean Water Act § 404 and 42 U.S.C. § 421

Brief description of cause:

Challenge to Army Corps 404 permit to SIA as arbitrary, capricious and an abuse of discretion

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE J. Randall Hall

DOCKET NUMBER 4:18-cv-0025

DATE
11/02/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Mr. William McHugh, Jr., Sea Island Acquisition, LLC

PERMIT NUMBER: SAS-2015-00742

ISSUING OFFICE:

Savannah District
U.S. Army Corps of Engineers
100 West Oglethorpe Avenue
Savannah, Georgia 31401

NOTE: The term "you" and its derivatives used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the U.S. Army Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

PROJECT DESCRIPTION: To construct and maintain a new T-head groin south of the existing southern groin and place sand along approximately 17,000 linear feet (LF) of beach located between an existing north groin, and the new T-head groin. A hydraulic cutter-head dredge will pump between 1,315,000 to 2,500,000 cubic yards (CY) of sand from the offshore source, to various locations along the beach. Temporary sand-training dikes will be constructed on the beach, and used to contain the discharge of sand and water, parallel to the shore. Once it is dewatered, bulldozers and other equipment will be used to move the sand up and down the beach, to shape the beach to the design template. Following completion of beach renourishment, sand fencing and/or native vegetation will be installed in strategic locations in the dunes in accordance with a Georgia Department of Natural Resources (DNR)-approved vegetation plan.

The project will consist of the following four reaches: Reach 1 extends 1,200' south of the southern groin (i.e. to the new groin); Reach A extends 4,000 LF north of the southern groin to approximately East 9th Street; Reach B extends 9,000 LF from East 9th Street to East 34th Street; and Reach C extends 3,500 LF from East 34th Street to the northern groin. Subsequent sand recycling activities would be accomplished with excavators, dump trucks, and other heavy equipment. Recycling activities will occur during/for the following times/reasons: (1) up to once per year outside of turtle nesting season to maintain the project; (2) at any time to correct unusual erosion rates or to correct damage caused by discrete events, upon notice to the Corps, Georgia Department of Natural Resource, Coastal Resources Division (Georgia CRD); and (3)

Check # 2891 For \$ 100.00
R/D & FWD F & A on

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in the event of an approaching storm, to shape dunes to raise low lying areas for upland protection, upon notice to the Corps and Georgia CRD. Material for recycling activities would be obtained from any location above mean lower low water from Reach A or Reach C.

PROJECT LOCATION: The project site is located within the surf zone of the Atlantic Ocean, along the Sea Island shoreline, in Glynn County, Georgia (Latitude: 31.1833, Longitude: 81.3310). The proposed 255-acre sand borrow area is located in the Atlantic Ocean, approximately 4 miles east/southeast of the Sea Island project area.

1. PERMIT CONDITIONS:

a. General Conditions.

(1) The time limit for completing the work authorized by this Individual Permit ends on September 5, 2023. If you find that you need more time to complete the authorized activity, you must submit a request for your permit extension at least one month prior to the above date.

(2) You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

(3) If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

(4) If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

(5) If a conditioned Water Quality Certification has been issued for your project, you must comply with conditions specified in the certification as Special Conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

(6) You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

(7) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the U.S. Army Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States because of any such removal or alteration.

(b) Special Conditions.

(1) To ensure that the project would not adversely affect any threatened and endangered species, the Permittee shall comply with the following special conditions:

 a. All work shall be completed outside of the prescribed sea turtle nesting season (i.e. construction between November 1st and April 30th).

b. Following construction, the Permittee shall cross-till the project from the high tide wave rush to the seaward toe of the constructed dune feature. The dune feature should also be tested for compaction prior to the planting of vegetation or sand fence construction. If compaction readings are greater than 500 CPU at any of the test depths (6 inches, 12 inches, 18 inches) for two consecutive stations, the dune feature will be tilled.

c. Annual surveys for compaction will be completed in February for 5 years following completion of the project. Sand compaction should be measured at a maximum of 500 foot intervals along the fill area. Compaction will be measured at 3 stations along three transects corresponding to the landward, middle and seaward portion of the fill berm. An additional measurement should be taken from the dune feature. At each measurement station, a cone penetrometer will be pushed to depths of 6, 12, and 18 inches three times (3 replicates) and the compaction readings will be averaged to produce a final reading at each depth for each station. If the average value for any depth exceeds 500 CPU for any 2 or more adjacent stations (including the dune feature), that area will be tilled prior to May 1. Tilling will be completed to a depth of 36 inches. A representative from Georgia DR shall be present during the compaction testing (contact: Mark Dodd, 912-264-7218).

d. An annual summary of compaction surveys and the actions taken will be submitted to the Corps. A report on the results of compaction monitoring will be submitted to the Corps prior to any tilling actions being taken. This condition will be evaluated annually and may be modified if necessary to address sand compaction problems identified during the previous year.

e. Visual surveys for escarpments along the beach fill area will be made after construction and completed in February for five years following completion of the project. Escarpments in excess of 18 inches extending more than 100 feet will be mechanically leveled to natural beach contour prior to April 1st.

f. Visual surveys for escarpments along the beach fill area will be made weekly, and after storm events, from April 1st through October 31st. Escarpments that interfere with marine turtle nesting or that exceed 18 inches in height for a distance of 100 feet or more will be graded to the natural beach contour with guidance from the Georgia Department of Natural Resources and the U.S. Fish and Wildlife Service.

g. The Permittee shall participate in the Right Whale Early Warning System. Dredging within right whale critical habitat from December through March must follow the protocol established within the Early Warning System.

h. Full-time NMFS-certified endangered species observer(s) shall be present on the dredge to document visible sea turtle activity, monitor any sea turtle takes, and watch for and alert the dredge operator of manatees or whales (especially right whales or humpbacks) in the area.

i. All project personnel shall follow NMFS marine mammal stranding report procedures.

j. The Permittee shall comply with the "Savannah District Standard Manatee Special Conditions for Aquatic Construction." (Enclosed).

k. The Permittee shall utilize one of the following materials to secure the buoy to the pipeline: (1) Light weight chain; (2) Non-looping wire rope; or (3) Plastic sheathing around nylon rope to prevent looping.

(2) To ensure that unsuitable material is not placed onto the beach, the Permittee shall comply with the following special conditions:

a. Prior to any placement of beach fill, the Permittee shall construct temporary sand training dikes on the beach. The slurry from the offshore borrow site shall be pumped behind the sand training dike and the sand shall be allowed to dewater prior to placement on the beach.

b. While the material is being pumped into the dewatering area (i.e. behind the sand training dike), the Permittee shall have qualified personnel under the direction of a Georgia-registered professional engineer or a professional geologist monitoring the slurry discharge and correlating it with the borrow area conditions. Specifically, personnel shall monitor the slurry discharge as well as the dewatering area to determine whether the discharge/sand contains unsuitable material (i.e. clay balls, mud rollers, etc.)

c. During construction of the beach fill, samples of the beach fill will be obtained at 200 foot intervals and compared to the native and borrow area samples. Samples will be taken along one shore-perpendicular transect and will be combined into one physical composite and sent to the laboratory for grain-size analysis. Samples will be analyzed as soon as possible but not more than five (5) days after collection. Sediment test results will be submitted monthly to the USFWS and GADNR for review.

d. Upon completion of construction, the Permittee shall resample the project area and obtain representative samples of the beach fill using the same stations as the pre-project samples. Results will be compared with pre-project beach samples and borrow area sediment test results. Data will be submitted to the USFWS and GADNR in a comprehensive final report.

e. The Permittee shall immediately (i.e. within 24 hours) notify the Corps, GADNR and USFWS if non-compatible material is encountered in the borrow area. The dredge will be relocated to other subareas within the permitted borrow area if the following conditions are encountered:

1. Evidence of high concentrations of mud persisting for more than 30 minutes in the slurry based on visual observation at the discharge pipe and monitoring of specific gravity of the slurry at the dredge.

2. Evidence of high concentrations of non-shell gravel such as chunks of limestone, marl, or similar cemented sediments which persist for more than 30 minutes in the slurry based on visual observation at the discharge pipe and monitoring of specific gravity of the slurry at the dredge.

3. Evidence of high concentrations of coarse shell material exceeding pebble-sized clasts (i.e. oyster shells, quahogs, etc.) which persist for more than 30 minutes in the slurry, based on visual observations at the discharge pipe and monitoring of specific gravity of the slurry at the dredge.

g. Because of the lag time between excavations in the borrow area and pump-out onto the beach, accumulations of mud rollers and coarse gravel material may occur before the dredge can be relocated. If such accumulations exceed the equivalent of one 15 cubic yard dump truck per 100 linear feet of beach, the Permittee shall pick up the coarse material using hand labor or a beach-sweeping device as soon as practicable upon completion of the section or upon completion of the project. To the extent practicable, such accumulations will be raked into stockpiles above the high-tide line.

(3) Prior to any maintenance/sand recycling event, the Permittee shall sample the proposed borrow area to ensure the borrow site has the required amount of beach quality sand to complete the event. The samples should be taken as individual cores and be an adequate amount to represent the borrow area.

(4) The Permittee shall perform beach profile surveys. The surveys shall establish a fixed, repeatable baseline along the shore with perpendicular transects extending 2,400 feet south and 1,200 feet north of the new groin, with stations and transects at 100-foot intervals. Data points shall be surveyed along the above transects to a water depth of 6 feet.

(5) The beach profile surveys shall be performed at the following times: (a) pre-construction; (b) post-construction; (c) 6 months, 1 year, 2 years, 3 years, 4 years, and 5 years after the post-construction survey; and (d) more frequently after storm events, if warranted.

(6) The preconstruction (baseline) survey shall be performed between 7-30 days prior to the start of construction. The preconstruction survey data and drawings shall be submitted to the Corps in a preliminary report within 20 days after the field work is complete, with a final report to be submitted no later than 120 days after the field work for the survey is completed.

(7) Monitoring surveys shall be completed between January 1st-March 31st. Preliminary results will be submitted within 20 days, with final monitoring reports submitted no later than 60 days after the field work for the survey is completed.

(8) Monitoring reports shall include at a minimum the following and along with any other information provided by the applicant will be used to determine if sand-bypassing or other corrective action is required:

a. The transects and survey data shall be plotted on a plan view drawing (or multiple drawings) of the entire survey area. Drawings must be clearly legible on 8.5" x 11" paper and include a scale bar and north arrow.

b. All elevation data shall be reported relative to the NAVD88.

c. The Permittee shall provide a table detailing the data obtained from each sample point along each transect. This data shall be compared to the initial post-construction survey data at each transect.

d. The Permittee shall provide verifiable estimates of the net change in sand volume at each transect, and within the survey area as a whole. The net change in sand volume shall be calculated as the difference between the volume obtained in the initial post-construction survey and subsequent volumes documented in surveys at the required intervals specified in Special Condition (5). The Corps will evaluate the Permittees' volume estimates and determine if a corrective action plan is required.

e. Should the Corps determine that the groin is causing negative impacts to the sand-sharing system, the Permittee shall submit a corrective action plan (i.e. sand bypass, adjustment/removal of the new groin, etc.) to the Corps and GADNR for review and approval.

f. Existing site conditions shall be photographed during each survey. Photographs shall be plotted on a photo location map, including the location and direction of each photograph. Photographs shall be representative of the entire survey area and shall be taken at the same approximate location during each survey.

(9) All work will be performed in accordance with the following attached plans and drawings which are incorporated in and made part of the permit:

- a. Vicinity Map, dated March 2, 2018.
- b. Project Plan, Reach A, Sta 95+00 to 135+00 Map, dated March 2, 2018.
- c. Project Plan, Reach B, Sta 135+00 to 180+00 Map, dated March 2, 2018.
- d. Project Plan, Reach B, Sta 180+00 to 225+00 Map, dated March 2, 2018.
- e. Project Plan, Reach C, Sta 225+00 to 260+00 Map, dated March 2, 2018.
- f. Proposed Fill Sections, Sta 110+00 to 140+00 Map, dated March 2, 2018.
- g. Proposed Fill Sections, Sta 150+00 to 180+00 Map, dated March 2, 2018.
- h. Proposed Fill Sections, Sta 190+00 to 220+00 Map, dated March 2, 2018.
- i. Proposed Fill Sections, Sta 230+00 to 240+00 Map, dated March 2, 2018.
- j. Area Bathymetry, NOAA Map 11502, dated March 2, 2018.
- k. Borrow Area Bathymetry & Geotechnical Data, dated March 2, 2018.
- l. Proposed Borrow Area Excavation Sections, dated March 2, 2018.
- m. Geotechnical Data Grain Size Distributions, dated March 2, 2018.
- n. Reserve at Sea Island, Beach Renourishment & Groin, Sheets 1-13 dated September 10, 2015.

2. FURTHER INFORMATION:

a. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 United States Code (U.S.C.) § 403) and Section 404 of the Clean Water Act (33 U.S.C. § 1344).

b. Limits of this Authorization.

(1) This permit does not obviate the need to obtain other federal, state, or local authorizations required by law.

(2) This permit does not grant any property rights or exclusive privileges.

(3) This permit does not authorize any injury to the property or rights of others.

(4) This permit does not authorize interference with any existing or proposed federal projects.

c. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

(1) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

(2) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

(3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

(4) Design or construction deficiencies associated with the permitted work.

(5) Damage claims associated with any future modification, suspension, or revocation of this permit.

d. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

e. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require reevaluation include, but are not limited to, the following:

(1) You fail to comply with the terms and conditions of this permit.

(2) The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

(3) Significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 Code of Federal Regulations (C.F.R.) § 325.7, or enforcement procedures such as those contained in 33 C.F.R. § 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order, which requires you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate.

(4) You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

f. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the U.S. Army Corps of Engineers will normally consider a request for an extension of time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

SEA Island Acquisition, LLC

By

(PERMITEE)

Authorized Signatory

9.12.18

(DATE)

This permit becomes effective when the federal official, designated to act for the Secretary of the Army, has signed below.



Issued for and in behalf of:

Daniel H. Hibner, P.M.P.

Colonel, U.S. Army

Commanding

12 SEP 18

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To request the transfer of this permit and the associated liabilities with compliance with its terms and conditions, the permittee and transferee must sign and date below.

(PERMITTEE-Printed Name)

(PERMITTEE-Signature)

(DATE)

(TRANSFERREE-Printed Name)

(TRANSFERREE-Signature)

(DATE)

By signature below, the U.S. Army Corps of Engineers hereby validates the transfer of the permit from the permittee named above to the transferee named above.

Issued for and in behalf of:
Daniel H. Hibner, P.M.P.
Colonel, U.S. Army
Commanding

(DATE)

Regulatory Branch

CERTIFICATION OF COMPLIANCE
WITH
DEPARTMENT OF THE ARMY
SAS-2015-00742

PERMIT FILE NUMBER: SAS-2015-00742

PERMITTEE ADDRESS: Mr. William McHugh., Sea Island Acquisition, LLC,
351 Sea Island Road, St Simons Island, Georgia 31522

LOCATION OF WORK: The project site is located within the surf zone of the Atlantic Ocean, along the Sea Island shoreline, in Glynn County, Georgia (Latitude: 31.1833, Longitude: 81.3310). The proposed 255-acre sand borrow area is located in the Atlantic Ocean, approximately 4 miles east/southeast of the Sea Island project area.

PROJECT DESCRIPTION: To construct and maintain a new T-head groin south of the existing southern groin and place sand along approximately 17,000 linear feet (LF) of beach located between an existing north groin, and the new T-head groin. A hydraulic cutter-head dredge will pump between 1,315,000 to 2,500,000 cubic yards (CY) of sand from the offshore source, to various locations along the beach. Temporary sand-training dikes will be constructed on the beach, and used to contain the discharge of sand and water, parallel to the shore. Once it is dewatered, bulldozers and other equipment will be used to move the sand up and down the beach, to shape the beach to the design template. Following completion of beach renourishment, sand fencing and/or native vegetation will be installed in strategic locations in the dunes in accordance with a Georgia Department of Natural Resources (DNR)-approved vegetation plan.

The project will consist of the following four reaches: Reach 1 extends 1,200' south of the southern groin (i.e. to the new groin); Reach A extends 4,000 LF north of the southern groin to approximately East 9th Street; Reach B extends 9,000 LF from East 9th Street to East 34th Street; and Reach C extends 3,500 LF from East 34th Street to the northern groin. Subsequent sand recycling activities would be accomplished with excavators, dump trucks, and other heavy equipment. Recycling activities will occur during/for the following times/reasons: (1) up to once per year outside of turtle nesting season to maintain the project; (2) at any time to correct unusual erosion rates or to correct damage caused by discrete events, upon notice to the Corps, Georgia Department of Natural Resource, Coastal Resources Division (Georgia CRD); and (3) in the event of an approaching storm, to shape dunes to raise low lying areas for upland protection, upon notice to the Corps and Georgia CRD. Material for recycling activities would be obtained from any location above mean lower low water from Reach A or Reach C.

ACRES AND/OR LINEAR FEET OF WATERS OF THE UNITED STATES IMPACTED:
250 acres of open water

DATE WORK IN WATERS OF THE UNITED STATES COMPLETED:

COMPENSATORY MITIGATION REQUIRED: N/A

DATE MITIGATION COMPLETED OR PURCHASED (include bank name): N/A

Within 30 days of completion of the activity authorized by this permit, sign this certification and return it to the following address:

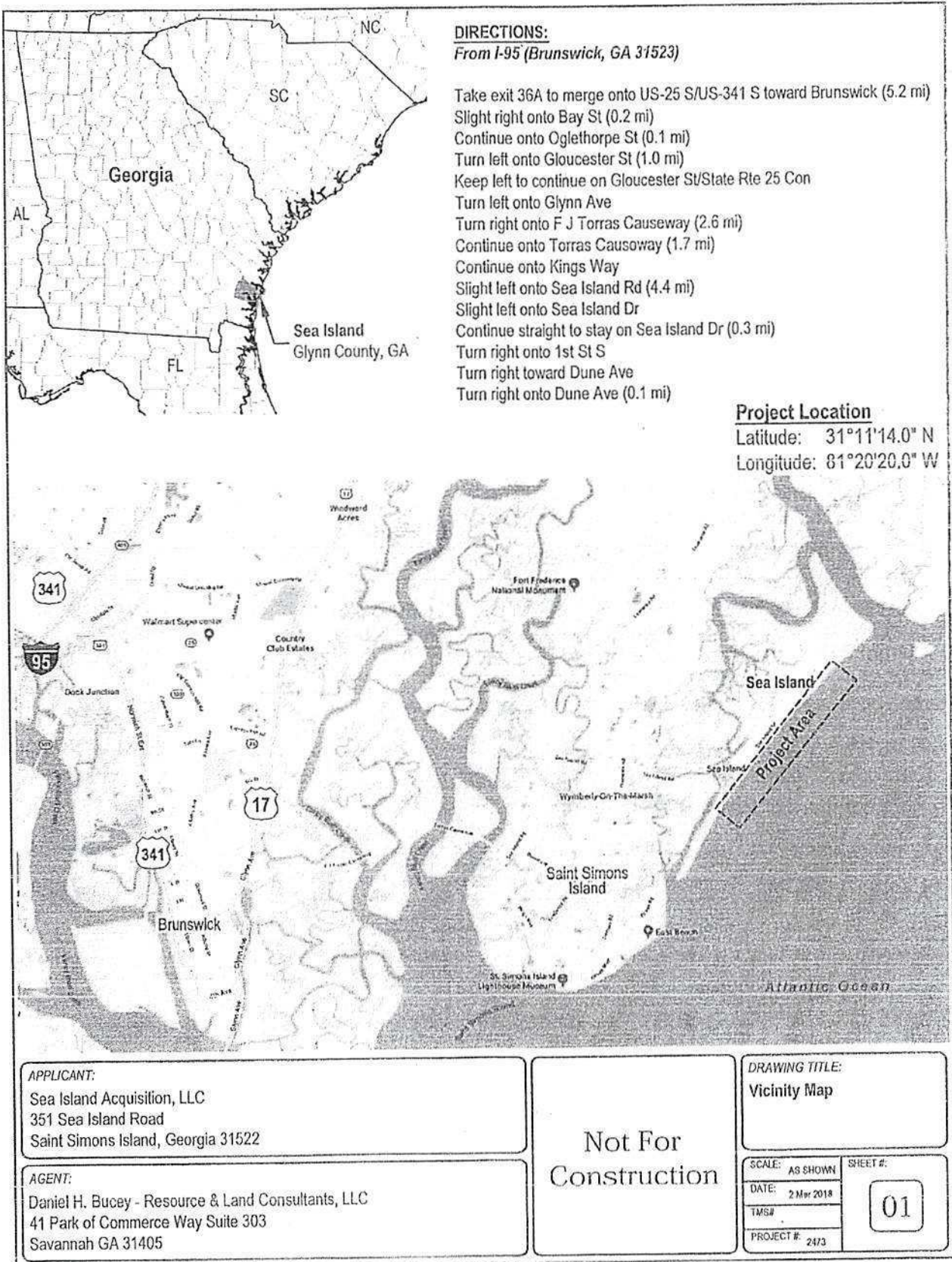
Commander
U.S. Army Engineer District, Savannah
Attention: Regulatory Branch
100 West Oglethorpe Avenue
Savannah, Georgia 31401

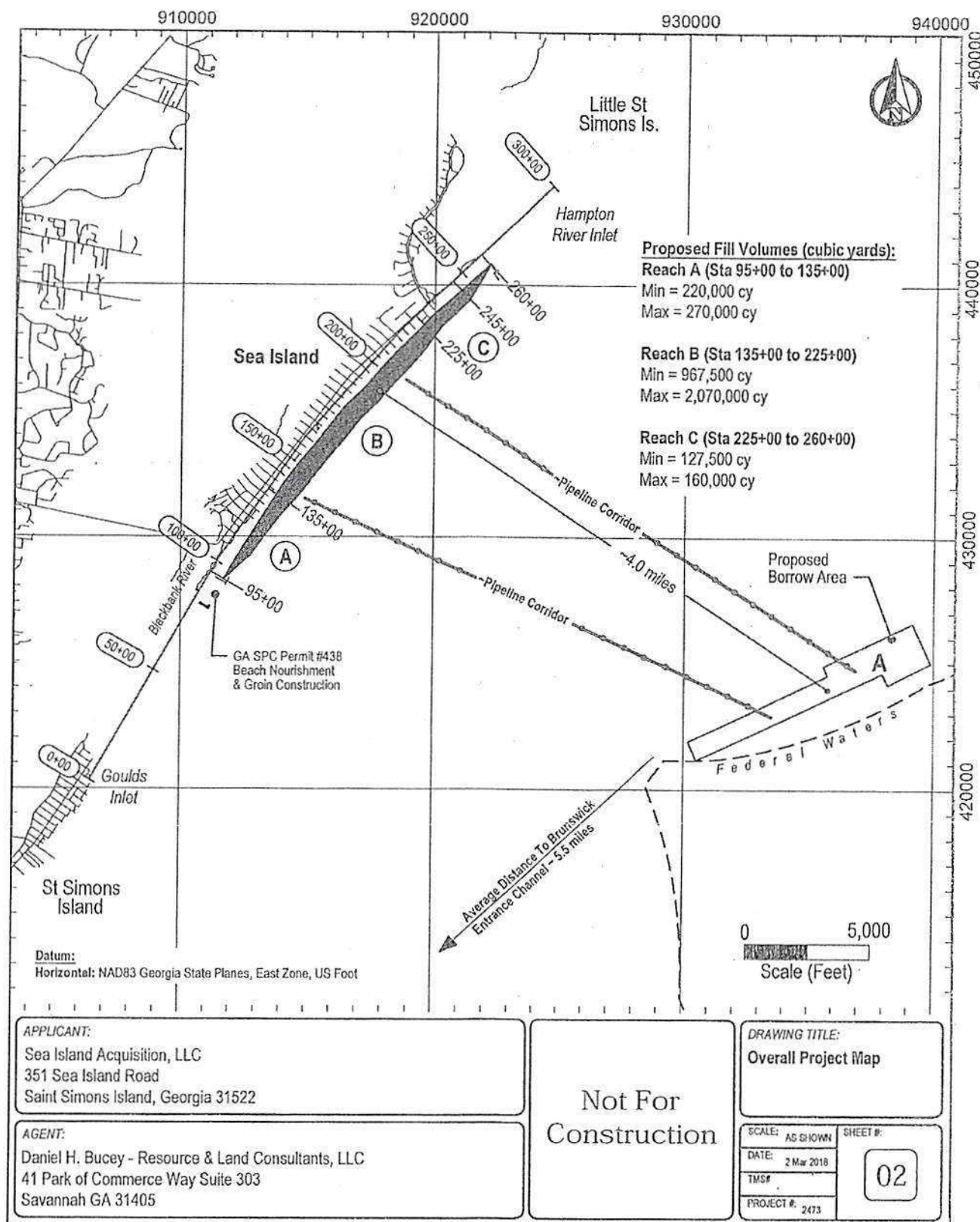
Please note that your permitted activity is subject to compliance inspection by an U.S. Army Corps of Engineers' representative. If you fail to comply with the permit conditions, it may be subject to suspension, modification or revocation.

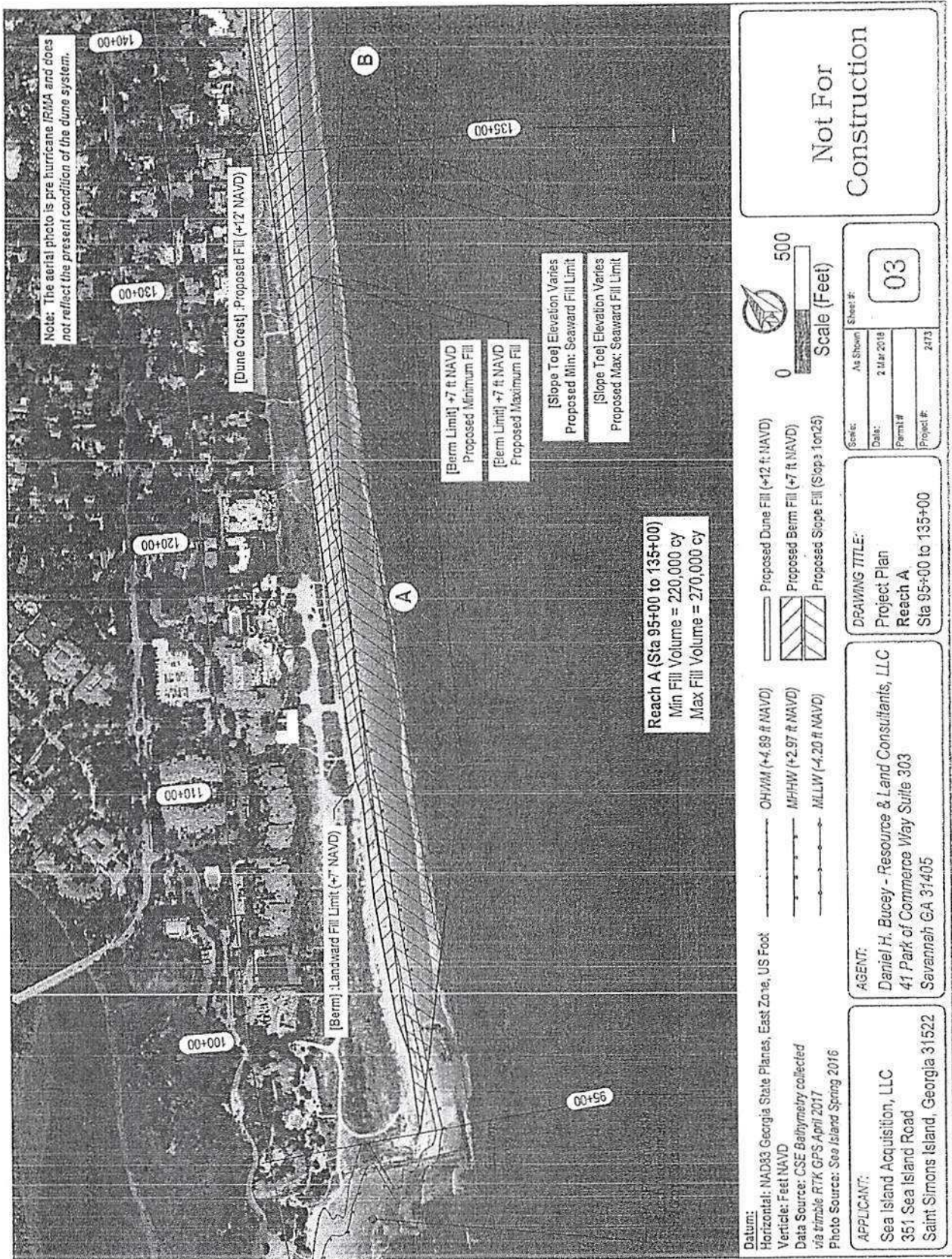
I hereby certify that the work authorized by the above referenced permit as well as any required mitigation (if applicable) has been completed in accordance with the terms and conditions of the said permit.

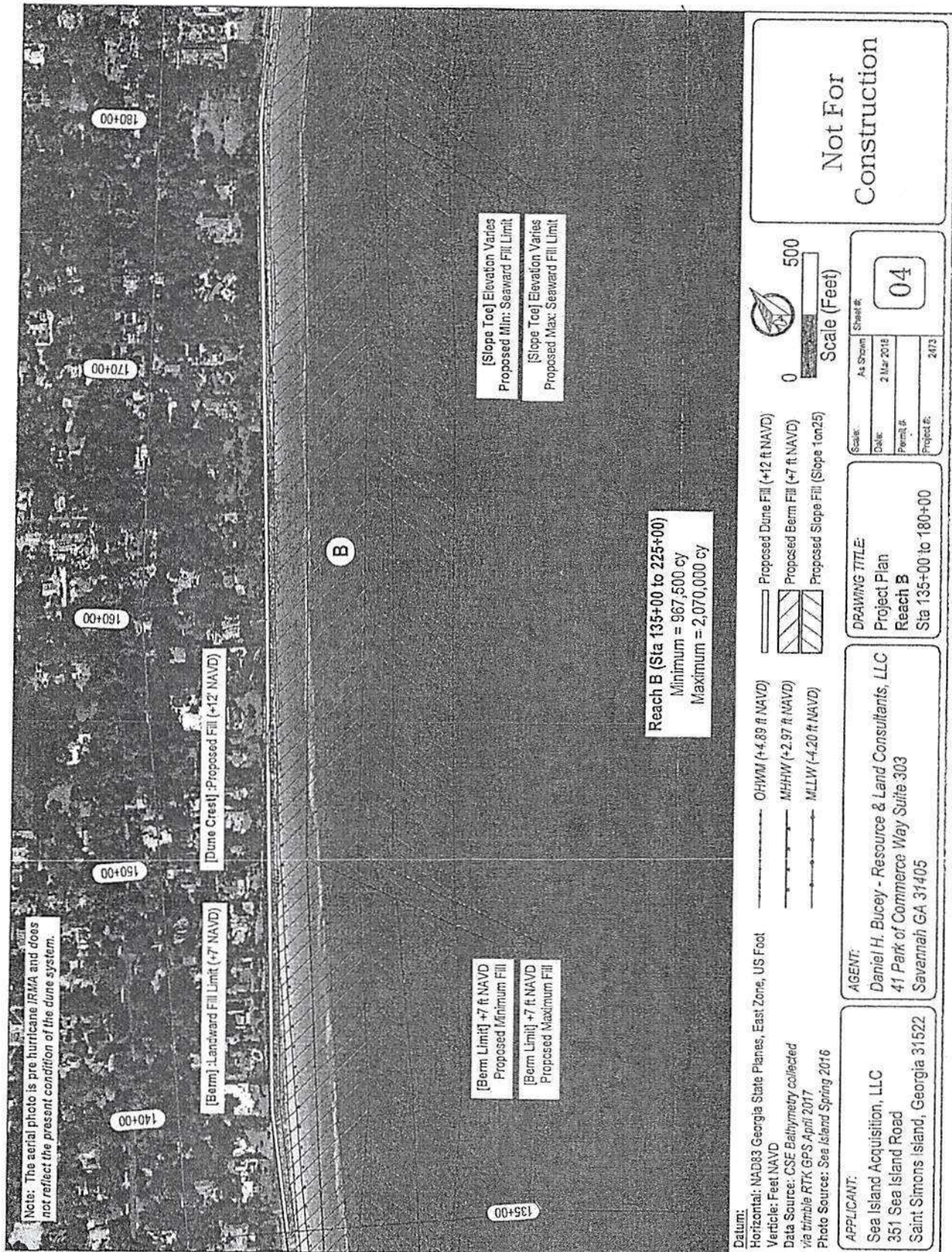
Signature of Permittee

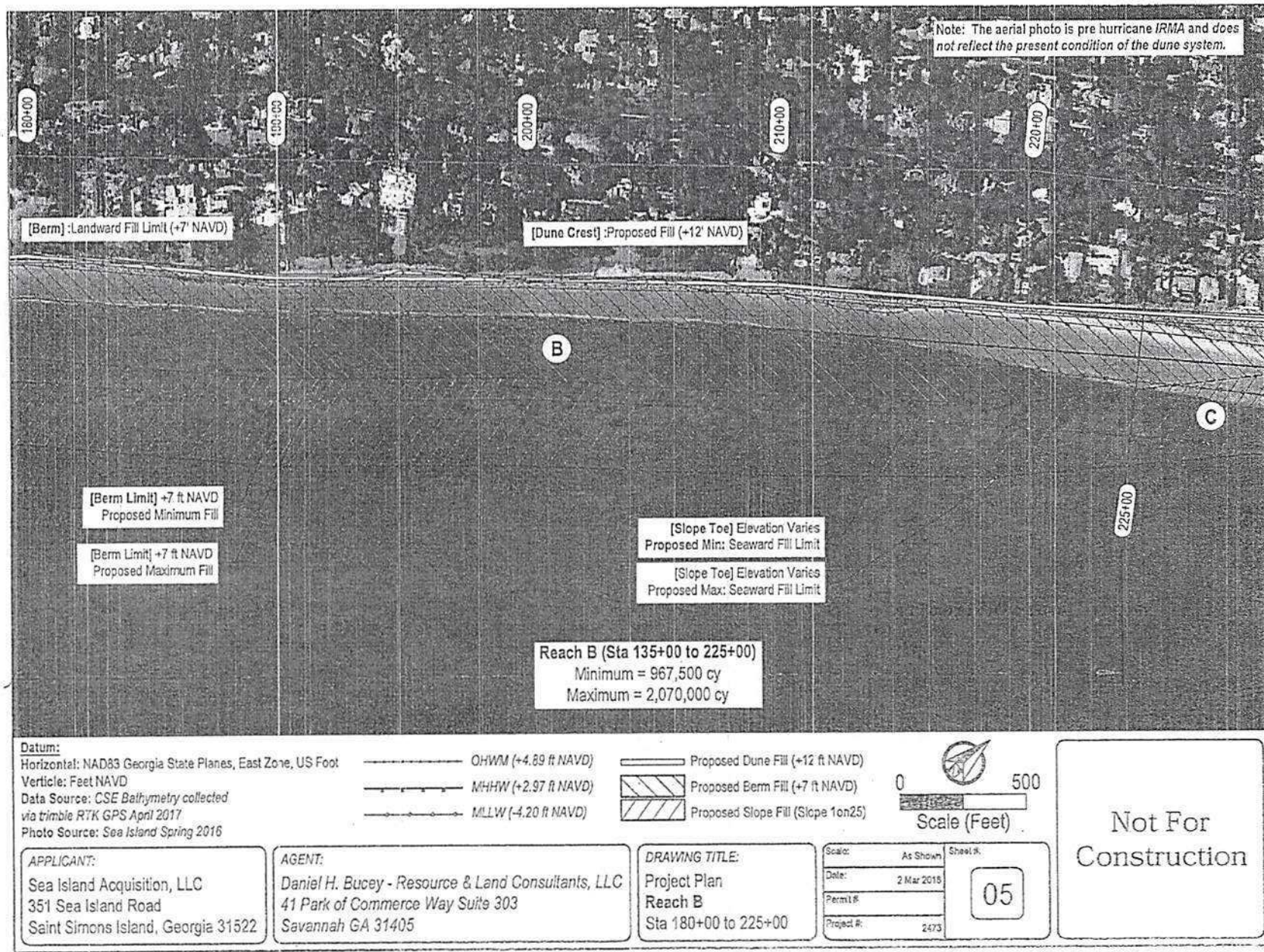
Date

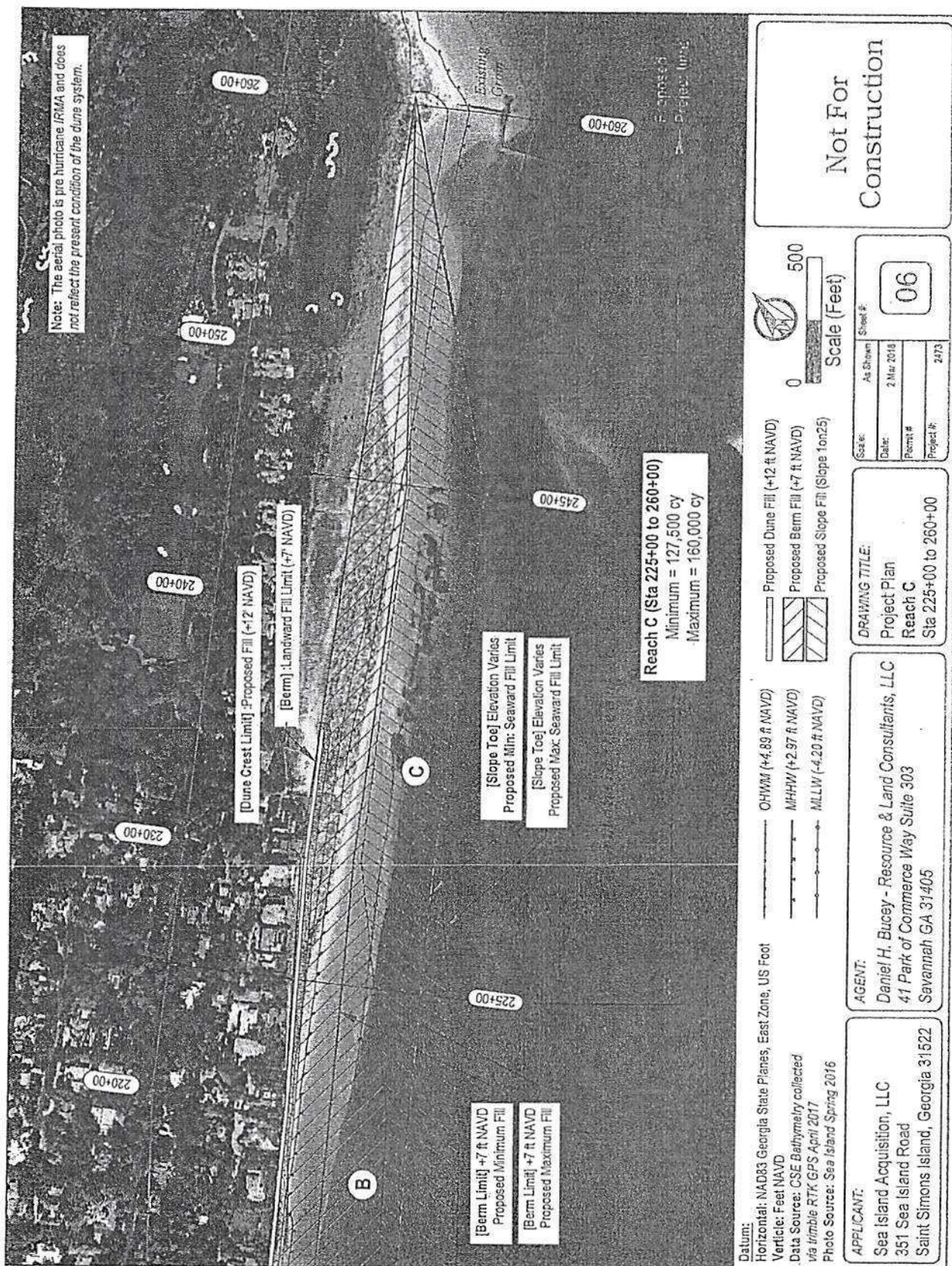


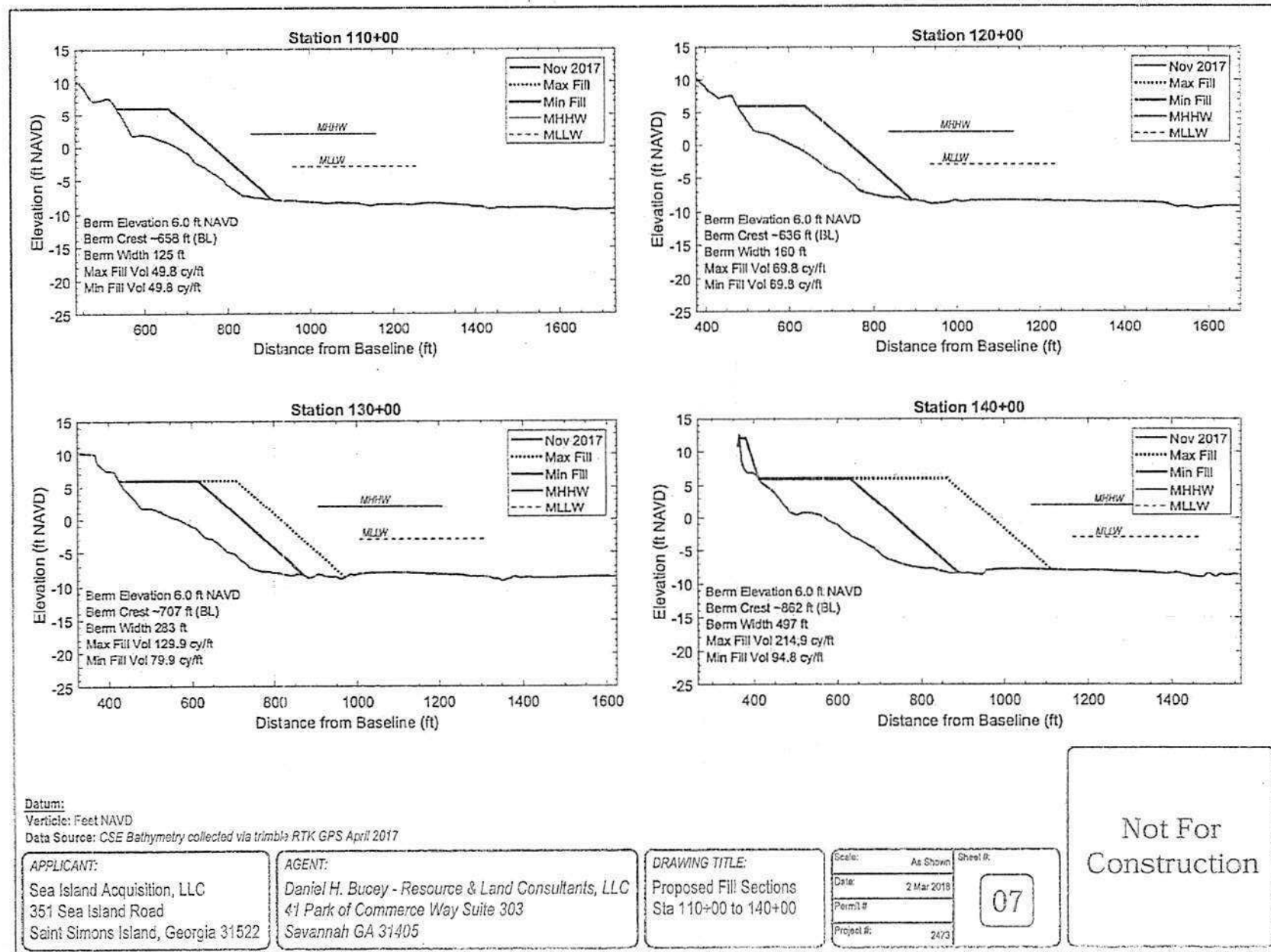


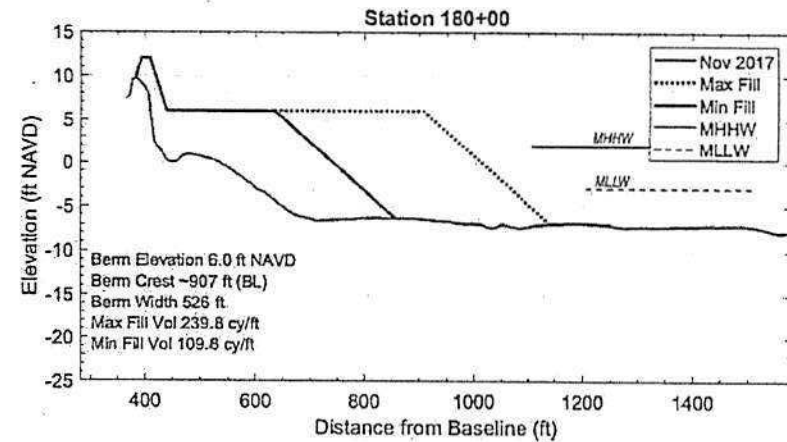
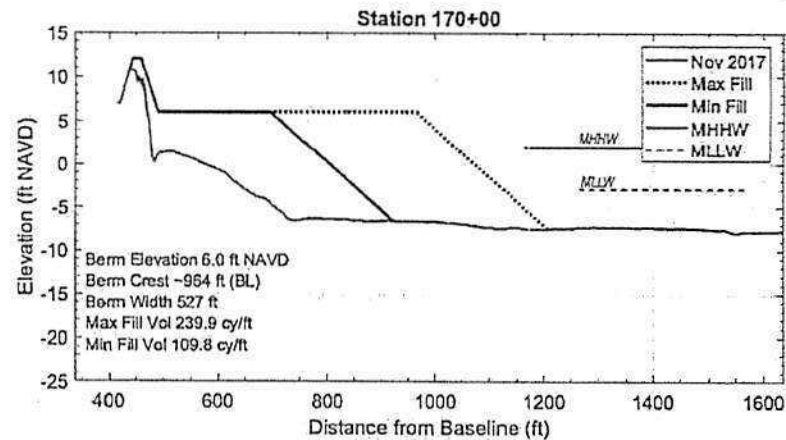
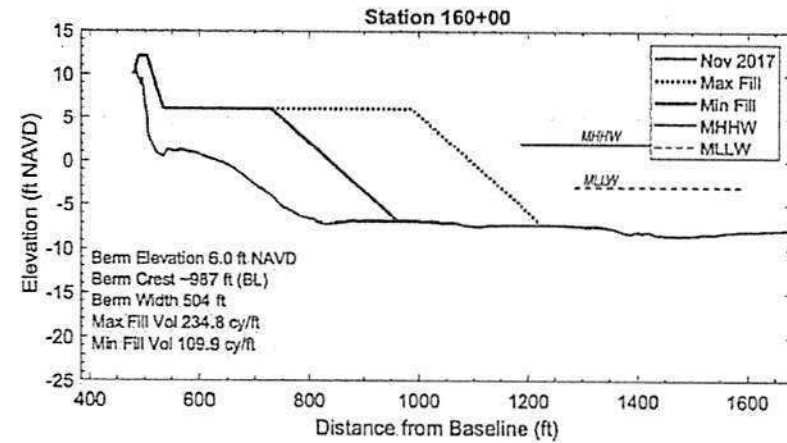
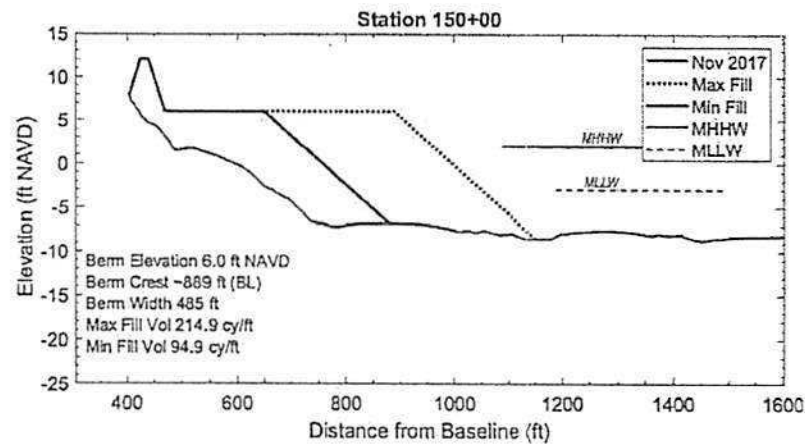












Datum:
Vertical: Feet NAVD
Data Source: CSE Bathymetry collected via trimble RTK GPS April 2017

APPLICANT:

Sea Island Acquisition, LLC
351 Sea Island Road
Saint Simons Island, Georgia 31522

AGENT:

Daniel H. Bucey - Resource & Land Consultants, LLC
41 Park of Commerce Way Suite 303
Savannah GA 31405

DRAWING TITLE:

Proposed Fill Sections
Sta 150+00 to 180+00

Scale:

As Shown

Sheet #:

08

Date:

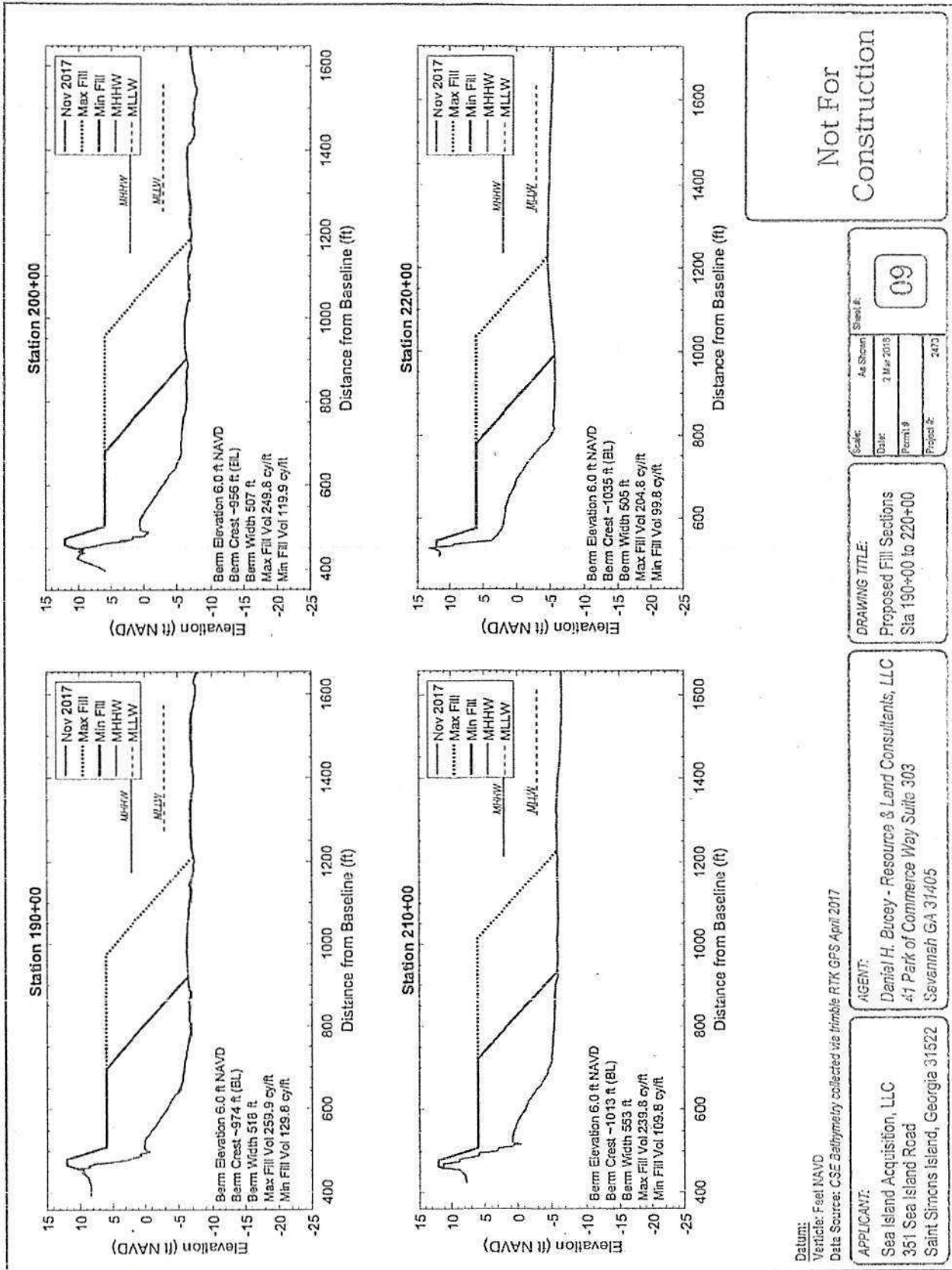
2 Mar 2018

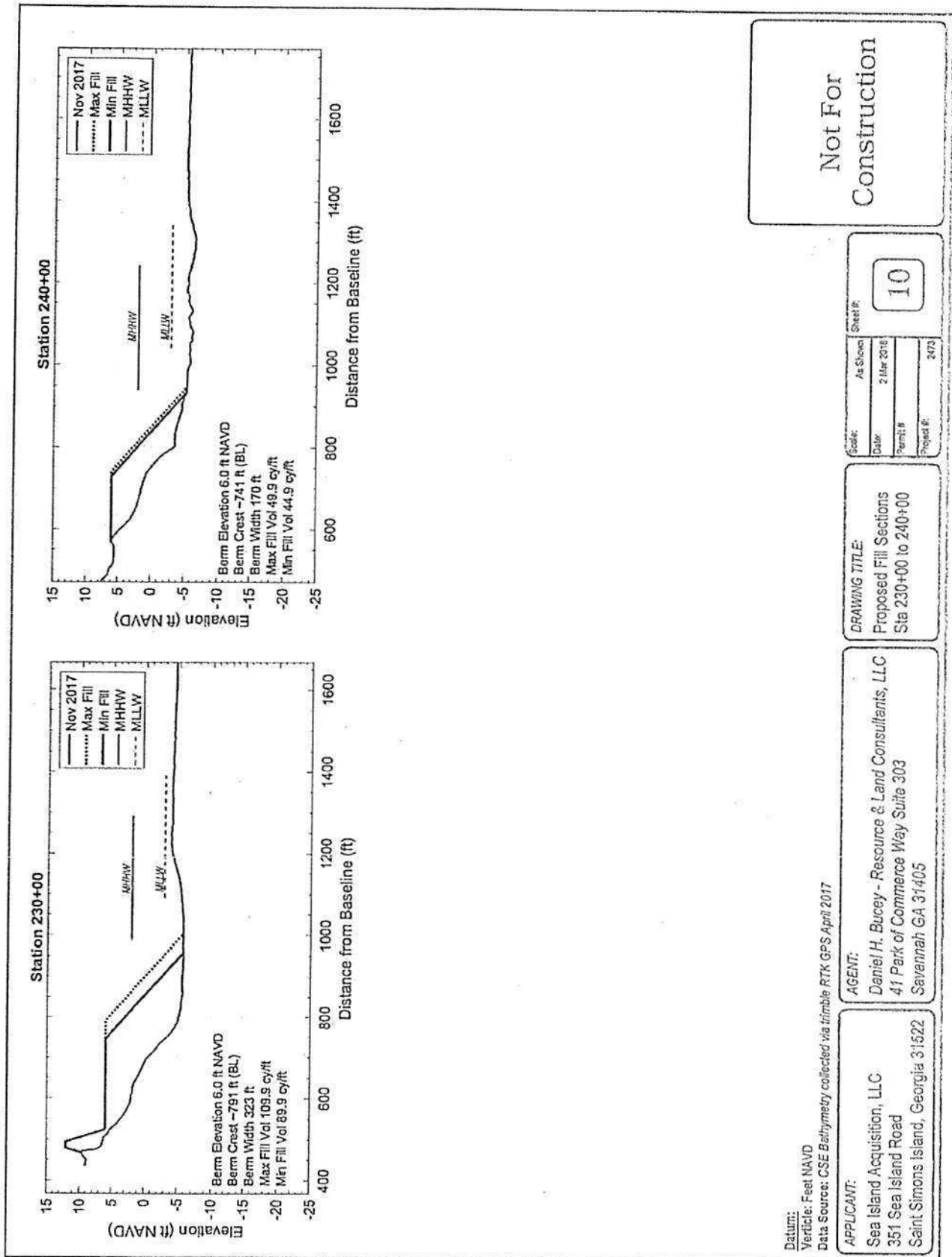
Permit #

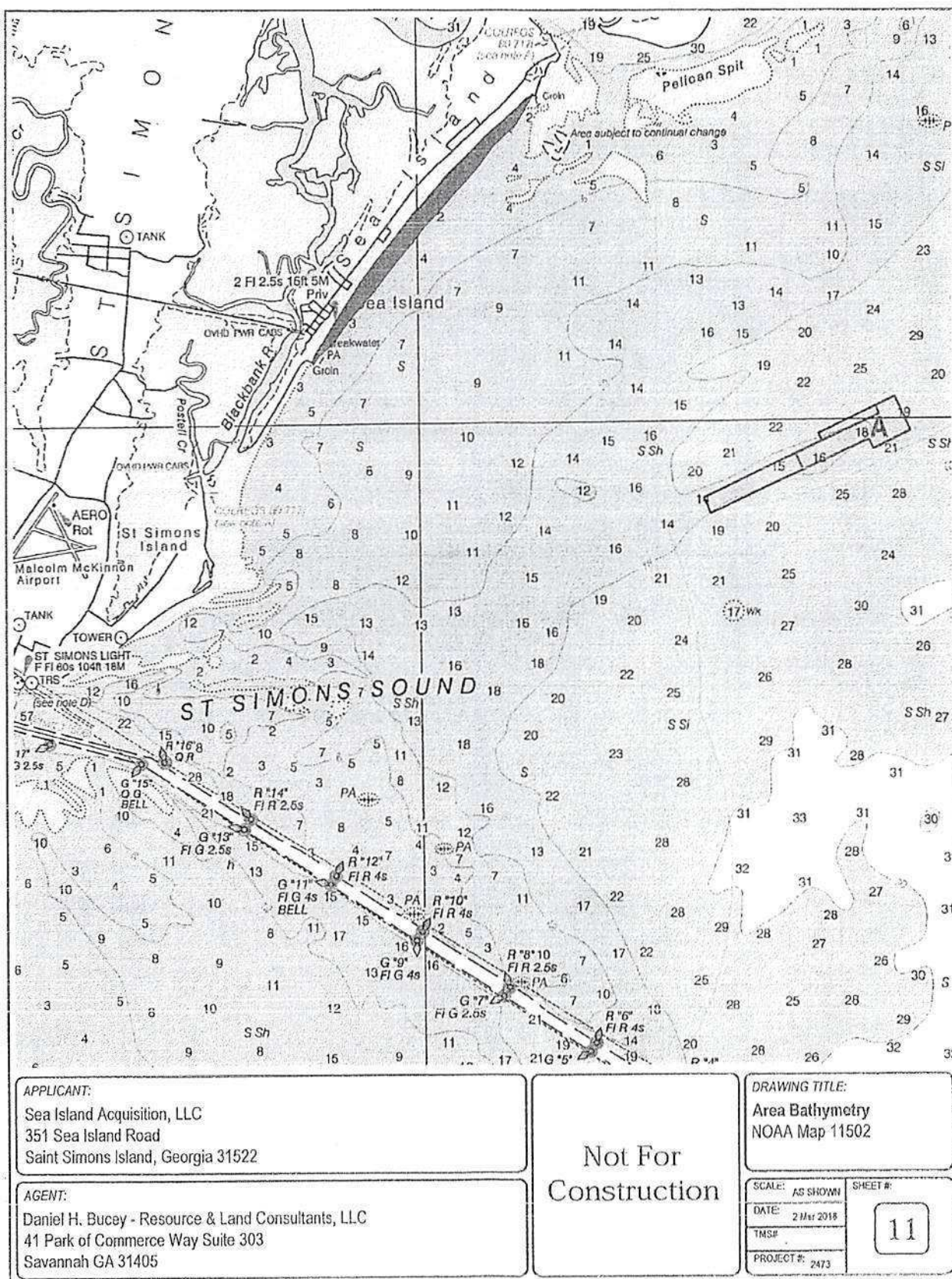
Project #:

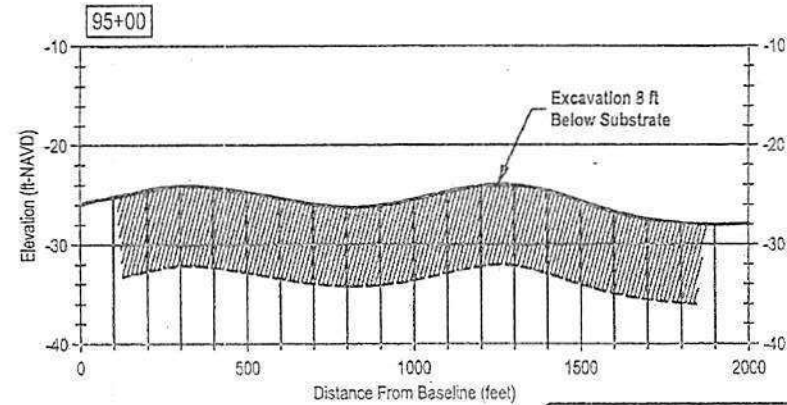
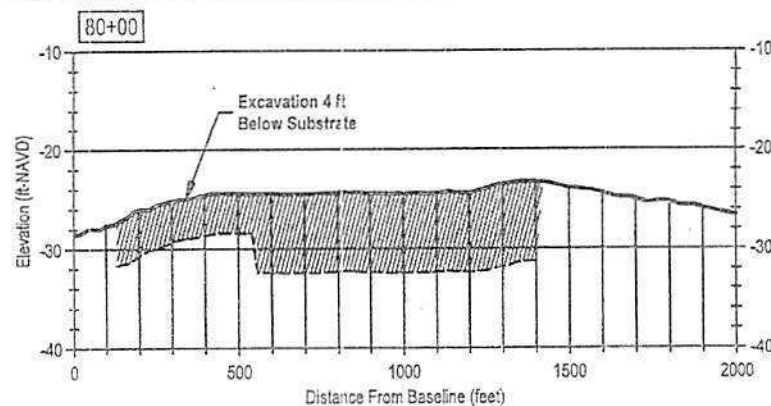
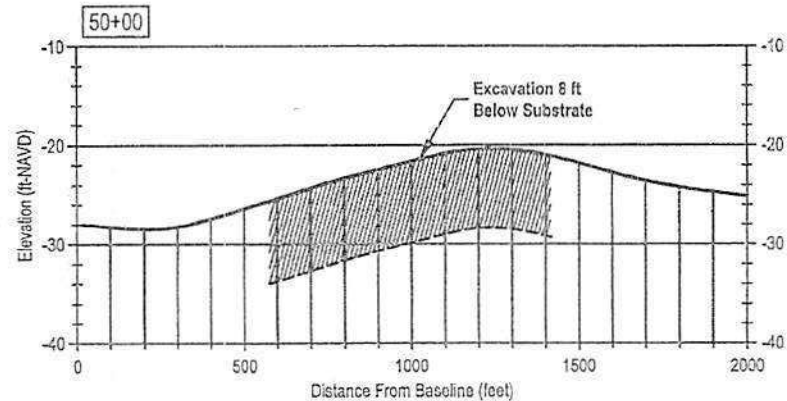
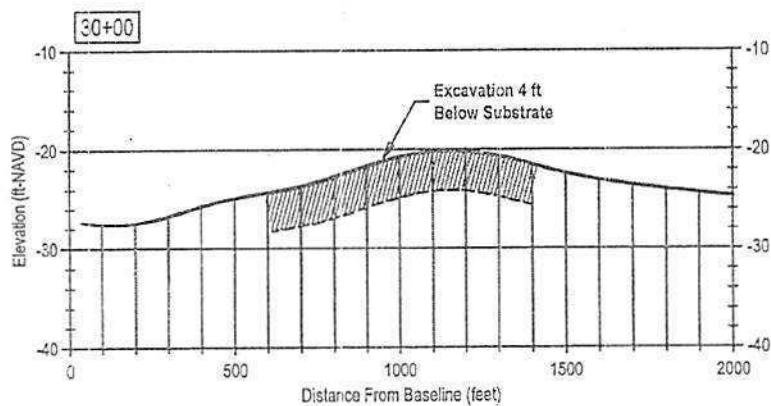
2473

Not For
Construction









Datum:
 Horizontal: NAD83 Georgia State Planes, East Zone, US Foot
 Vertical: Feet NAVD
 Vertical Exaggeration: 30
 Data Source: CSE Bathymetry collected via trimble RTK GPS April 2017

APPLICANT:
 Sea Island Acquisition, LLC
 351 Sea Island Road
 Saint Simons Island, Georgia 31522

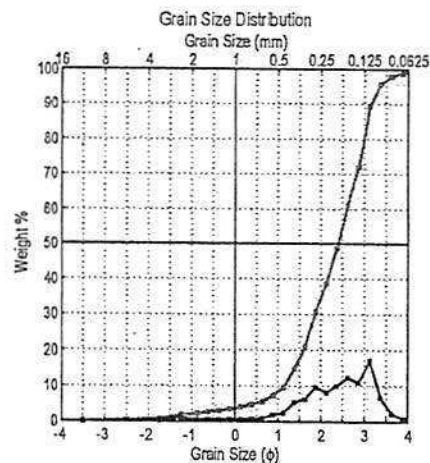
AGENT:
 Daniel H. Bucey - Resource & Land Consultants, LLC
 41 Park of Commerce Way Suite 303
 Savannah GA 31405

DRAWING TITLE:
 Proposed Borrow Area
 Excavation Sections

Scale: As Shown
 Date: 2 Mar 2019
 Permit #
 Project #: 2473

13

Not For
 Construction



Project 2473
Location Sea Island, GA
Date Apr 2017

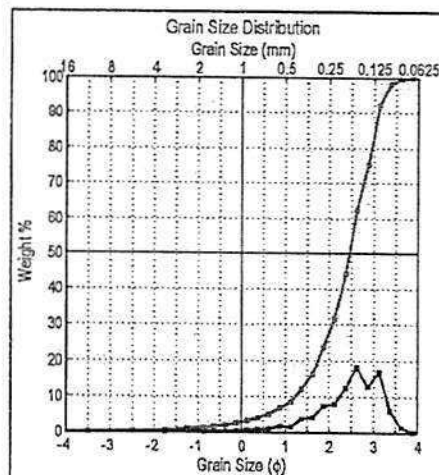
Station 4 ft Comp
Interval (ft) 0-4

Mean 0.198 mm
STD 0.505 mm
Skewness -1.537

USCS Wentworth

SP Fine Sand
Moderately Sorted
Poorly Graded
Strongly Coarse Skewed
Leptokurtic

Total weight (gram) 2217.69
% finer than 0.0625 mm 1.11
% coarser than 2.00 mm 1.68
CaCO₃ 0.0



Native Beach Composite

Project 2473
Location Sea Island, GA
Date Mar 2017

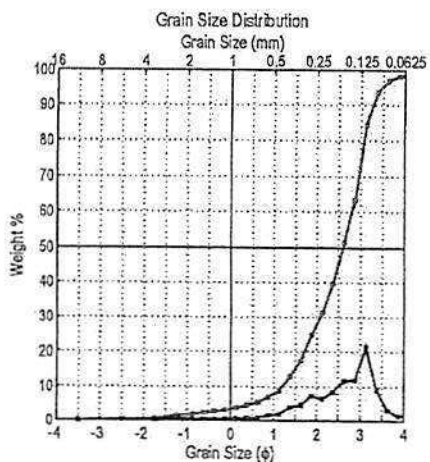
Station Composite
Interval (ft) All Beach

Mean 0.191 mm
STD 0.543 mm
Skewness -1.920

USCS Wentworth

SP Fine Sand
Moderately Sorted
Poorly Graded
Strongly Coarse Skewed
Very Leptokurtic

Total weight (gram) 116.67
% finer than 0.0625 mm 0.07
% coarser than 2.00 mm 1.00
CaCO₃ 0.0



Project 2473
Location Sea Island, GA
Date Apr 2017

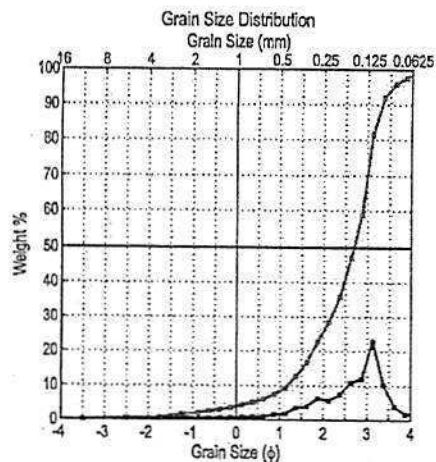
Station 6 ft Comp
Interval (ft) 0-6

Mean 0.179 mm
STD 0.501 mm
Skewness -1.618

USCS Wentworth

SP Fine Sand
Moderately Sorted
Poorly Graded
Strongly Coarse Skewed
Leptokurtic

Total weight (gram) 2216.25
% finer than 0.0625 mm 1.82
% coarser than 2.00 mm 1.48
CaCO₃ 0.0



Project 2473
Location Sea Island, GA
Date Apr 2017

Station 8 ft Comp
Interval (ft) 0-8

Mean 0.172 mm
STD 0.489 mm
Skewness -1.660

USCS Wentworth

SP Fine Sand
Moderately Sorted
Poorly Graded
Strongly Coarse Skewed
Leptokurtic

Total weight (gram) 2215.18
% finer than 0.0625 mm 2.46
% coarser than 2.00 mm 1.52
CaCO₃ 0.0

APPLICANT:

Sea Island Acquisition, LLC
351 Sea Island Road
Saint Simons Island, Georgia 31522

AGENT:

Daniel H. Bucey - Resource & Land Consultants, LLC
41 Park of Commerce Way Suite 303
Savannah GA 31405

DRAWING TITLE:

Geotechnical Data
Grain Size Distributions

Scale:

As Shown

Date:

2 Nov 2016

Permit #:

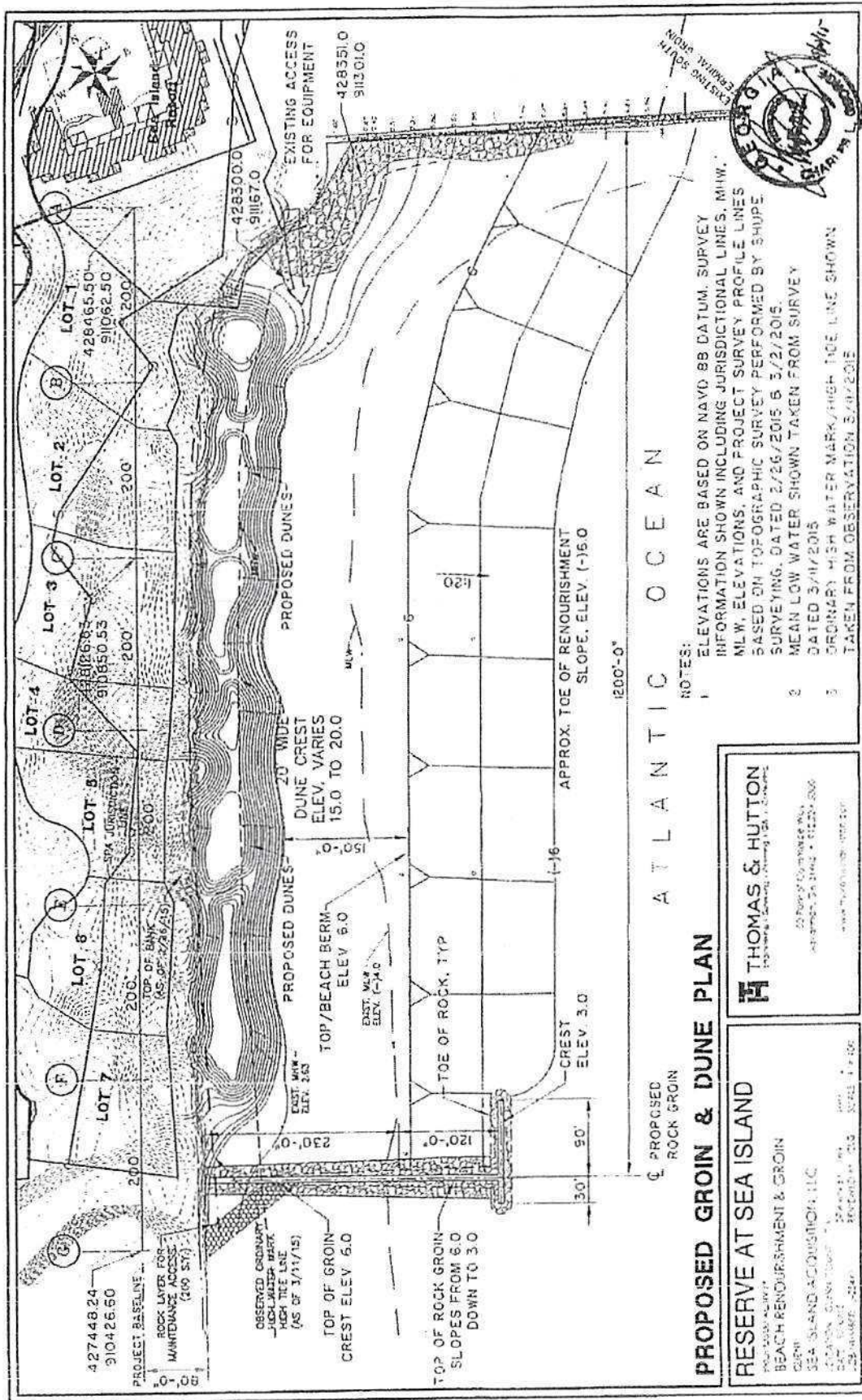
Project #:

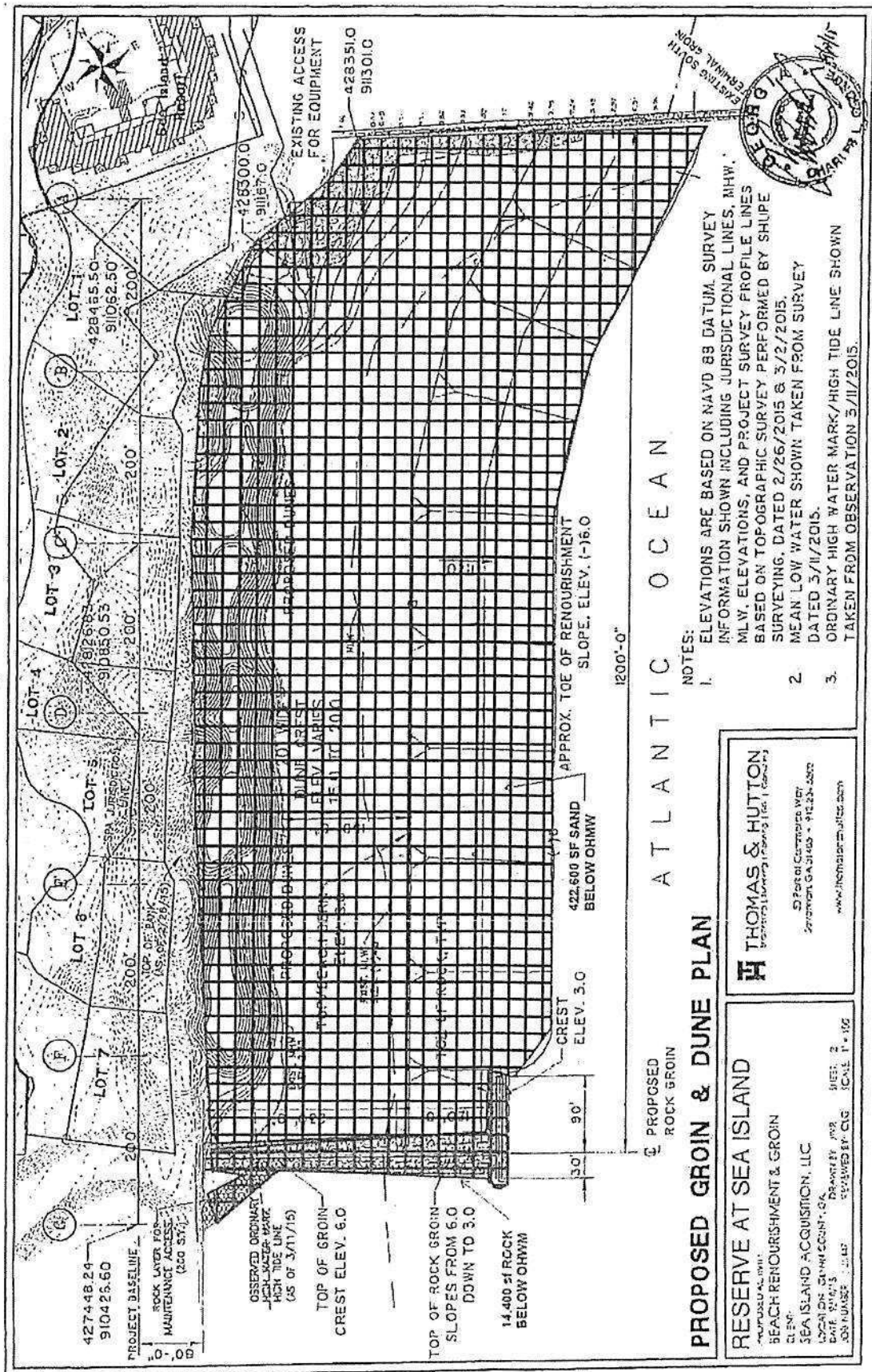
2473

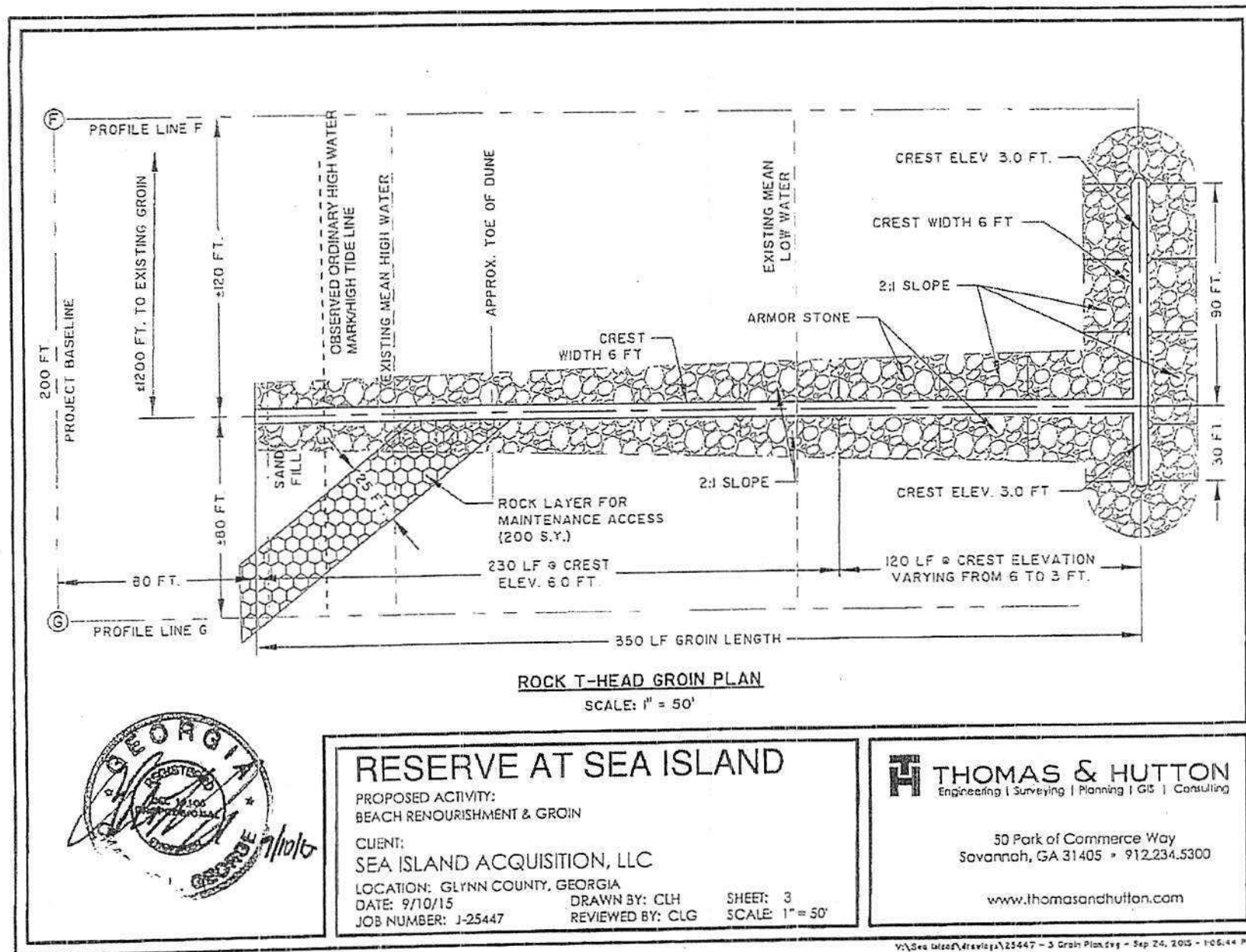
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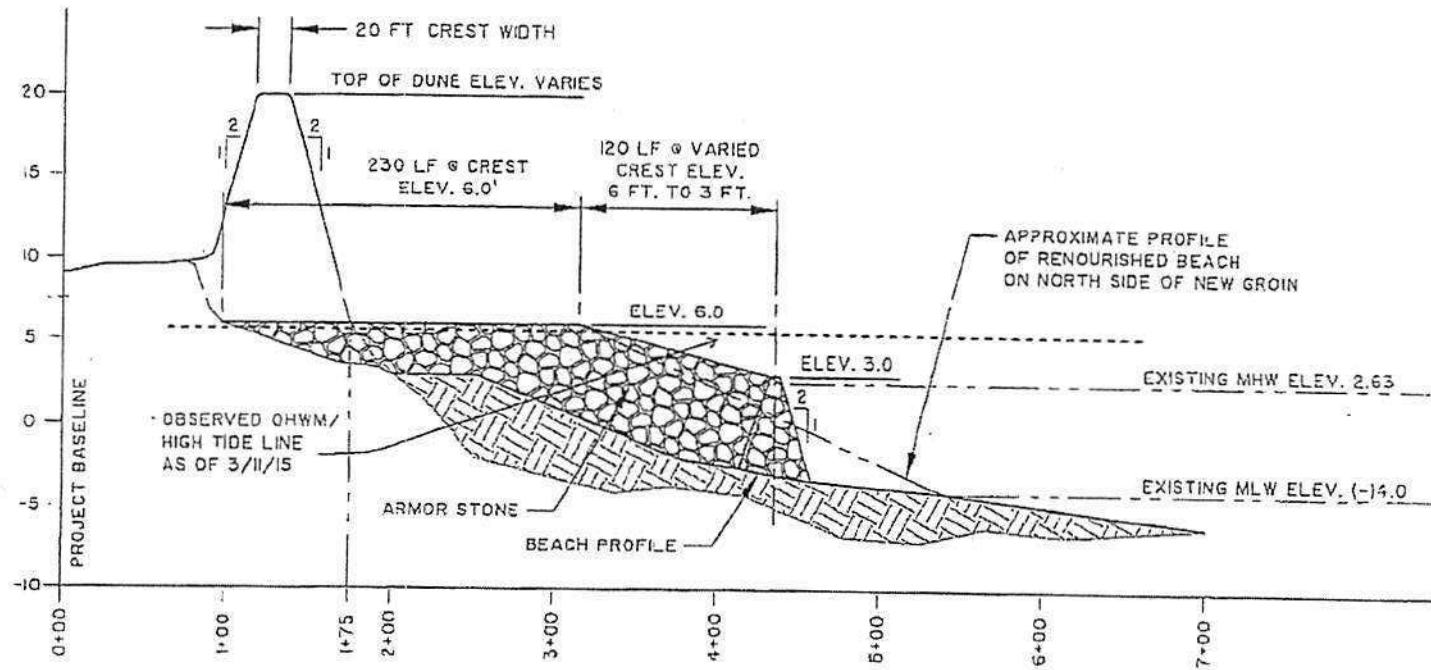
14

Not For
Construction









ELEVATIONS SHOWN
BASED ON NAVD88 DATUM

SIDE VIEW THRU ROCK GROIN

HORIZONTAL SCALE: 1" = 100'

VERTICAL SCALE: 1" = 10'



RESERVE AT SEA ISLAND

PROPOSED ACTIVITY:
BEACH RENOURISHMENT & GROIN

CLIENT:
SEA ISLAND ACQUISITION, LLC

LOCATION: GLYNN COUNTY, GEORGIA

DATE: 9/10/15

JOB NUMBER: J-25447

DRAWN BY: CLH

REVIEWED BY: CLG

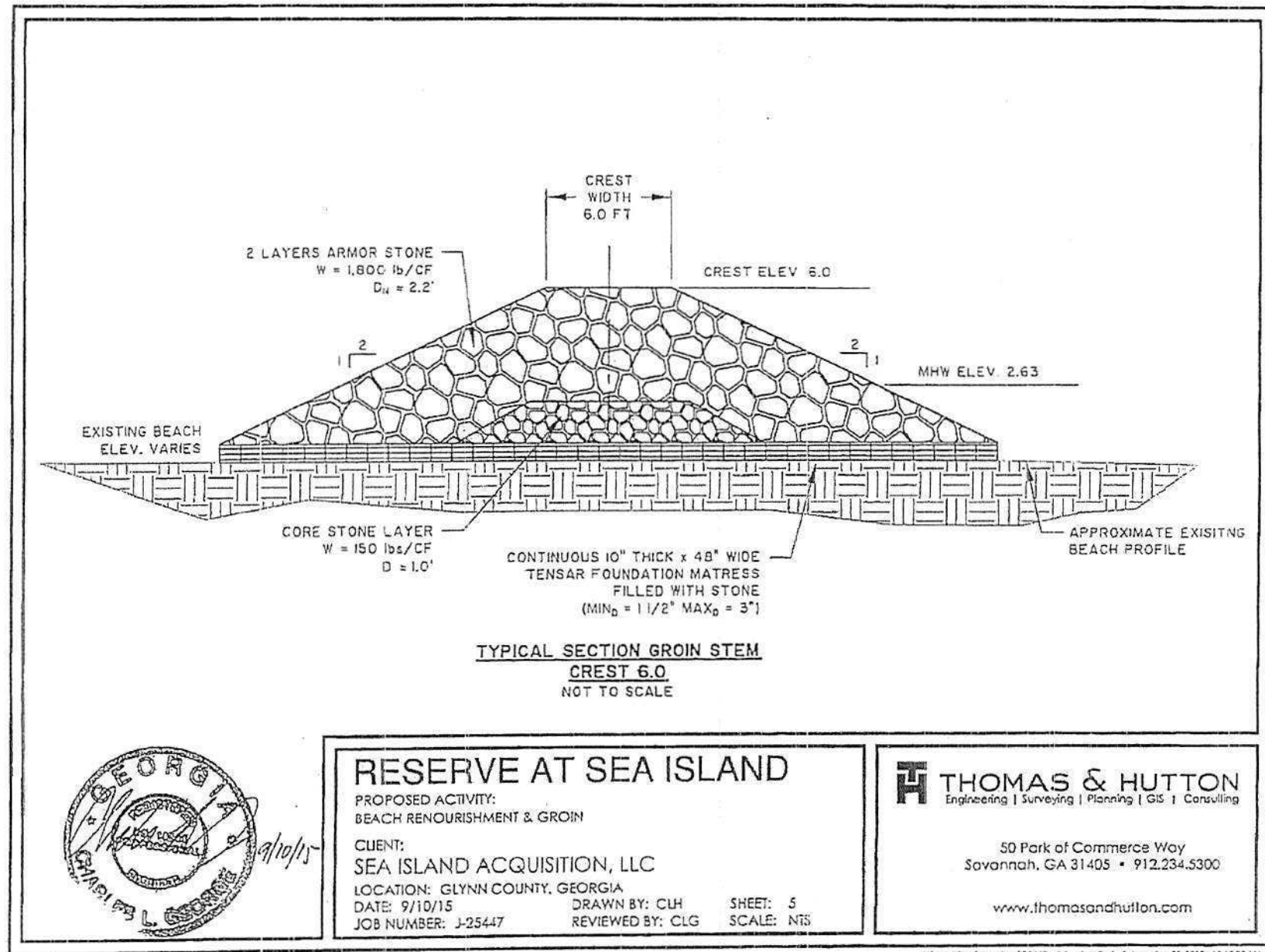
SHEET: 4

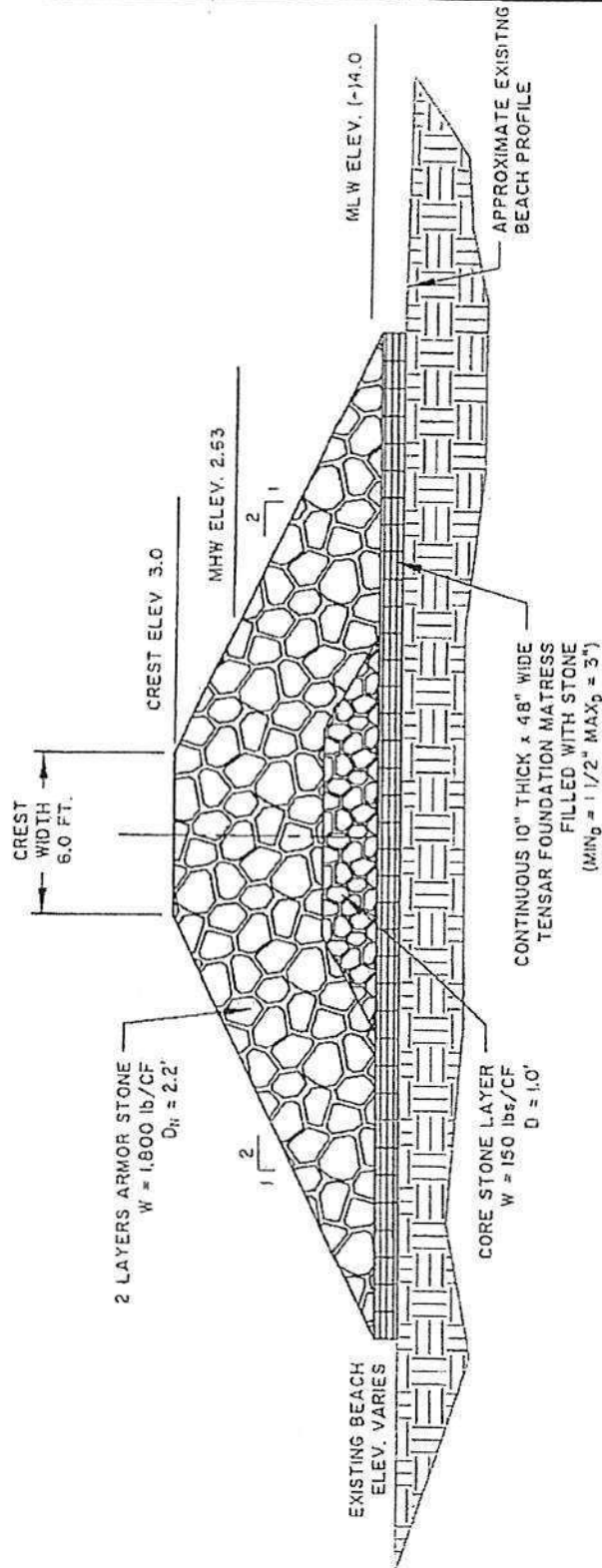
SCALE: AS SHOWN

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Savannah, GA 31405 • 912.234.5300

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TYPICAL SECTION GROIN STEM

CREST 3.0
NOT TO SCALE

RESERVE AT SEA ISLAND

PROPOSED ACTIVITY:
BEACH RENOURISHMENT & GROIN

CLIENT:

SEA ISLAND ACQUISITION, LLC

LOCATION: GLYNN COUNTY, GEORGIA

DATE: 9/10/15

JOB NUMBER: J-25447

DRAWN BY: CLH

REVIEWED BY: CLG

SHEET: 6

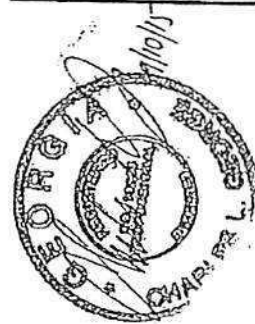
SCALE: NTS

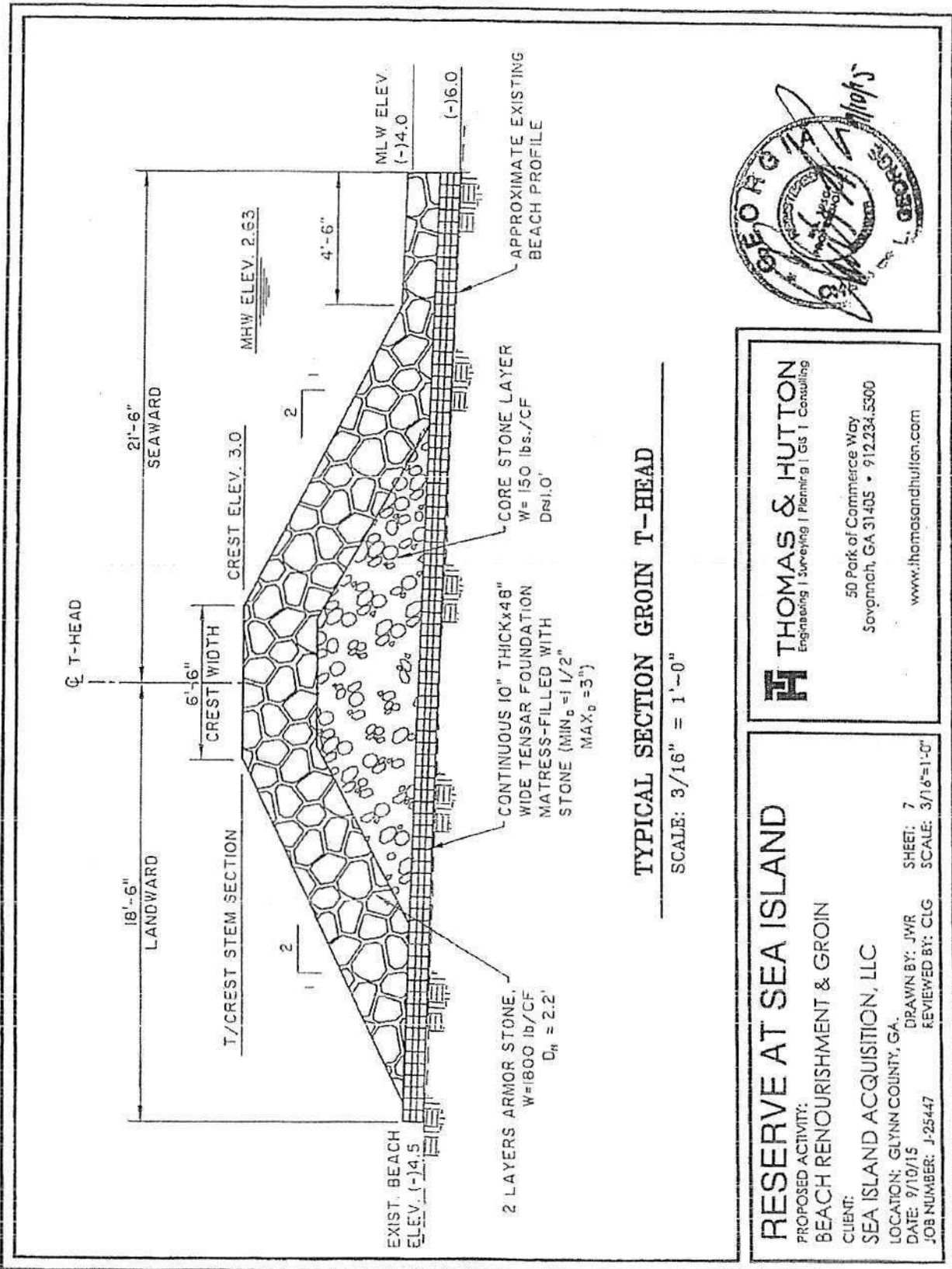
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V:\Sea Island\Drawings\J25447 - 6 Section Groin 3.dwg - Sep 12, 2015 - 10:18 AM





RESERVE AT SEA ISLAND

PROPOSED ACTIVITY:
BEACH RENOURISHMENT & GROIN

CLIENT:

SEA ISLAND ACQUISITION, LLC

LOCATION: GLYNN COUNTY, GA.

DATE: 9/10/15

JOB NUMBER: J-25447

DRAWN BY: JWR

REVIEWED BY: CLG

SHEET: 7

SCALE: 3/16"=1'-0"

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**Programmatic Agreement
U.S. Army Corps of Engineers
U.S. Fish and Wildlife Service
Section 7 of the Endangered Species Act
Manatee Consultation Procedures
Dock and Marina Facilities in Coastal Georgia Waters**

The U.S. Army Corps of Engineers, Savannah District, and the U.S. Fish and Wildlife Service, Georgia Ecological Services (FWS) agree to the consultation procedures outlined in this Programmatic Agreement (PA), pursuant to Section 7 of the Endangered Species Act, concerning effects on the West Indian Manatee (*Trichechus manatus*) (manatee), from construction, modification, maintenance and use of dock and marina facilities, in Brantley, Bryan, Camden, Charlton, Chatham, Effingham, Glynn, Liberty, Long, McIntosh and Wayne Counties, Georgia.

CONSULTATION PROCEDURES:

1. The Corps will coordinate permit actions with FWS, as follows:

a. Individual Permits (IP): The Corps will include the following statement in joint public notices advertising Department of the Army IP applications for proposed dock and marina facilities, "Any permit that may be issued by the Corps for the proposed project will include the applicable manatee special permit conditions: (1) for single and multi-family private recreational docks, special conditions a thru j; or (2) for private community docks and commercial marinas, special conditions a thru p. The facility types will follow the definitions the Georgia Department of Natural Resources (Georgia DNR) uses in their facility permitting. With inclusion of the applicable special conditions in the permit, and with the requirement for the permittee to implement and adhere to these conditions, the Corps has determined that the project may affect, but is not likely to adversely affect the manatee."

b. Letters of Permission (LOP): The Corps will include the following statement in the agency coordination email for all LOP for proposed dock and marina facilities, "Any permit that may be issued by the Corps for the proposed project will include the applicable manatee special permit conditions: (1) for single and multi-family private recreational docks, special conditions a thru j; or (2) for private community docks and commercial marinas, special conditions a thru p. With inclusion of the applicable special conditions the permit, and with the requirement for the permittee to implement and adhere to these conditions, the Corps has determined that the project may affect, but is not likely to adversely affect the manatee."

c. Nationwide Permit 3(a) (NWP 3(a)): The Corps will include the following statement in agency coordination email for all Pre-Construction Notifications proposing use of NWP 3(a) to repair, rehabilitate or replace a previously authorized, currently serviceable dock or marina facility, "Any verification for use of NWP 3(a) that may be

issued by the Corps for the proposed project will include the applicable manatee special permit conditions: (1) for single and multi-family private recreational docks, special conditions a thru j; or (2) for private community docks and commercial marinas, special conditions a thru p. With inclusion of the applicable special conditions in the NWP 3(a) verification letter, and with the requirement for the permittee to implement and adhere to these conditions, the Corps has determined that the project may affect, but is not likely to adversely affect the manatee."

d. Programmatic General Permit 83 (PGP 83): PGP 83 authorizes the construction, maintenance and modification of certain private recreational dock facilities in the tidal waters of Georgia. The Corps has delegated authority to the Georgia Department of Natural Resources, Coastal Resources Division (Georgia CRD) to review PGP 83 applications, and verify whether proposed dock facilities comply with the terms and conditions for authorization under the PGP. All dock facilities authorized by PGP 83 must comply with manatee special permit conditions a thru j. With inclusion of these special conditions in PGP 83 verifications issued by Georgia CRD, and with the requirement for the permittee to implement and adhere to these conditions, the Corps has determined that private single family docks authorized by PGP 83 may affect, but are not likely to adversely affect the manatee.

2. FWS: For IP, LOP and NWP 3.a, the FWS will respond in writing (letter or email) to the Corps' public notice or email notification during the specified comment period when there is a project specific issue that would preclude FWS' concurrence with the Corps' may affect but not likely adversely affect determination for the project. The Corps will initiate Section 7 consultation with the FWS for such a project. However, if FWS does not disagree in writing with the Corps' determination within the specified comment period; the FWS is thereby concurring with the Corps' determination for the project. For private recreational dock facilities authorized by PGP 83, the FWS concurs with the Corps' may affect but not likely adversely affect determination.

MANATEE SPECIAL PERMIT CONDITIONS:

1. Single and multi-family private recreational docks, conditions a thru j.
2. Private community docks and commercial marinas, conditions a thru p.
3. Special Permit Conditions:

a. The permittee shall ensure that all personnel associated with construction of the authorized dock facility are informed of the civil and criminal penalties for harming, harassing or killing manatees, which are protected under the Endangered Species Act of 1973 (ESA) and the Marine Mammal Protection Act of 1972. The permittee and the permittee's contractor(s) (contractor) will be held responsible for any manatee harmed, harassed or killed as a result of construction activities.

b. The use of siltation barriers in waters of the United States, below the high tide line, is not allowed in association with the construction of the authorized dock facility.

c. All vessels associated with project construction shall operate at "no wake/idle" speeds at all times while in the project area. All vessels will follow routes of deep water when entering or exiting the project area, and while operating in the project area, whenever possible. For the purposes of compliance with manatee conditions, the project area is defined as all areas of shoreline, marsh and open waters within 100 feet of the outermost perimeter of the authorized dock facility.

d. All contractors and other on-site personnel are responsible for observing for the presence of manatees in or near the project area. All in-water construction activities shall cease upon sighting of a manatee within 50 feet of any ongoing work in the marsh or open waters. 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. Extreme care shall be taken when lowering equipment and materials below the water surface and/or to the water bottom. Equipment and materials include, but are not limited to: piles; sheet piles; casings for drilled shaft construction; spuds; pile templates; and anchors. All such equipment/material shall be lowered as slow as possible, to avoid injury to any manatee that may have entered the project area undetected.

f. In the event of injury to or mortality of a manatee in the project area, the permittee or contractor shall immediately notify the Georgia Department of Natural Resources (Georgia DNR) at 912-264-7218 or 1-800-272-8363 on weekdays between 8:00 a.m. to 4:30 p.m., or 1-800-241-4113 on nights and weekends. Within one hour of a manatee injury or mortality the permittee or contractor shall notify the Corps at 1-800-448-2402 and the US Fish and Wildlife Service, Georgia Ecological Services Field Office at 912-832-8739. Any dead manatee found in the project area shall be secured to a stable object to prevent the carcass from moving with the current. In the event of a manatee injury or mortality, all open water construction activity shall cease pending completion of consultation between the Corps and the FWS, pursuant to Section 7 of the ESA.

g. The permittee shall ensure that the contractor keeps a log of sightings, collisions or injury to manatees that occur during construction of the dock facility.

h. Within 30 days of project completion, the permittee shall submit a report summarizing manatee sightings or incidents that occurred during project construction, to the FWS, Ecological Services Field Office, Coastal Georgia Sub-Office, 4980 Wildlife Drive NE, Townsend, Georgia 31331. Submission of a negative report is not required.

i. All temporary or unused construction materials shall be removed from the project area upon completion of the work, and any impacted area of salt marsh shall be restored. No construction debris or trash is to be discarded in project area.

j. The permittee shall regularly inspect and maintain all hoses, faucets, and other potential sources of freshwater, to ensure that any freshwater leak is stopped and immediately repaired. Manatees are attracted to freshwater leaking from dock facilities, where boats are concentrated and there is an increased risk for manatee collisions.

k. Prior to initiating authorized construction activities, the permittee shall contact Georgia DNR at 912-264-7218 for assistance with development of temporary manatee awareness sign plan for the project area. The plan will include the types and number of signs; and locations where signs will be installed to be prominently visible to contractors entering the project area from uplands and from the water. The permittee shall install temporary manatee awareness signs in accordance with the Georgia DNR approved plan. See attached Appendix A for information about the size and appearance of temporary manatee awareness signs. Within 30 days of project completion, the permittee shall remove all temporary manatee signs.

l. Once construction activities are completed, and prior to use of the facility, the permittee shall contact Georgia DNR at 912-264-7218 for assistance with development of permanent manatee awareness sign plan. The plan will include the types and number of signs; and locations where signs will be installed to be prominently visible to all facility users entering the project area from uplands and from the water. The permittee shall install permanent manatee awareness signs in accordance with the Georgia DNR approved plan. See attached Appendix A for information about the size and appearance of permanent manatee awareness signs.

m. Within 30 days of installation, the permittee shall submit a notarized letter to the Corps confirming that required permanent manatee signs have been installed in compliance with the Georgia DNR approved plan. The permittee shall maintain all permanent manatee signs in a clearly visible condition for the life of the facility.

n. The permittee shall utilize the Georgia DNR video, "Georgia Wildlife - Sharing the Coast - Manatee" as a manatee education awareness program; available at www.youtube.com/watch?v=whD8KX4PBNA. This video program focuses on educating boaters on manatee biology, how watercraft can adversely affect the manatee, and detail actions that boaters can take to avoid impacts to the manatee. The permittee shall insure that all boat operators view this video before using the permitted facility. The permittee shall continue a manatee education awareness program for the life of the facility. The permittee may develop and use a comparable manatee education awareness program upon approval by the Corps, FWS, and Georgia DNR.

o. After project completion, the permittee shall identify the individual, facility operator or homeowner's association representative to be responsible for reporting manatee sightings, boat strikes or other manatee concerns to the FWS and Georgia DNR.

p. For facilities with oil/gas pumps and/or sewage pump-out equipment, the permittee shall develop and maintain spill contingency plans in accordance with the requirements of the Georgia DNR, Coastal Resources Division.