



FLORIDA DEPARTMENT OF Environmental Protection

Northwest District Office
160 West Government Street, Suite 308
Pensacola, FL 32502

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

May 10, 2024

Shields St. Marks Partnership, Ltd
Mr. Charles Shields
PO Box 218
St. Marks, FL 32355
chuck@shieldsmarina.com

RE: Executed Consent Order; DEP vs. Shields St. Marks Partnership, Ltd; Facility ID
No.209213; OGC File No. 23-1052; Wakulla County

Dear Mr. Shields:

Enclosed is the executed Consent Order (Order), which addresses Rule 62-330.020, Florida Administrative Code (F.A.C.) and Section 373.430, Florida Statute (F.S.), Rule 18-21.005, F.A.C. and Section 253.77, F.S. Please note the requirements of the Order for which you are responsible for and fulfill all pertinent actions accordingly. All Order time requirements begin the date that it is clerked by our Department unless otherwise noted.

Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Jeanne A. Williams at (850) 595.0600 or by email at Jeanne.Williams@FloridaDEP.gov.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Mullins Orr".

Elizabeth Mullins Orr
Director
Northwest District

EMO/jaw

Enclosures: Executed Consent Order & Temporary Use Agreement

cc: Lea Crandall, Agency Clerk (Mail Station 35)

and to administer and enforce the provisions of Chapters 403 and 373 F.S., and the rules promulgated thereunder in Title 62, F.A.C. In addition to its authority under Chapter 403, F.S., the Department is specifically authorized to administer and enforce the management and storage of surface waters and the environmental resource permitting programs in Chapter 373-Part IV, F.S.¹

3. Respondent is a person within the meaning of sections 253.04 and 373.019(15), F.S.

4. Respondent is the owner of real property located at 97 Riverside Drive, St. Marks, FL, 32355, Parcel ID Nos. 11-4S-01E-073-05814-000, 11-4S-01E-073-05815-000, 11-4S-01E-073-05816-000, Section 11, Township 04 South, Range 01 East, Wakulla County, Florida (Property), ERP 219213.

5. The Department and the Board find that the Respondent violated rule 62-330.020, F.A.C. and Section 373.430, F.S., which requires a permit for any work conducted in, on, or over surface waters. The Department and Board find that the Respondent violated Rule 18-21.005, F.A.C. and Section 253.77, F.S., which require that all activities conducted on sovereign submerged lands (Sovereign Lands) obtain authorization from the Board. Department personnel conducted an inspection on August 17, 2023, which revealed that the Respondent constructed docking structures, involving work conducted in, on, or over surface waters without a valid permit from the Department. The Respondent also conducted activities on Sovereign Lands without a valid sovereignty submerged lands lease from the Board (Proprietary Authorization) to use Sovereign Lands. The above-described activities were conducted on these Sovereign Lands within the landward extent of St. Marks River, which is a water of the state as defined by Florida Law, adjacent to Respondent's riparian upland real property without the Board's approval or authorization.

¹ In part, the Department has implemented these statutes through Chapter 62-330, Florida Administrative Code, and the *Environmental Resource Permit Applicant's Handbook* ("Applicant Handbook"), incorporated by reference in Rule 62-330.010, Florida Administrative Code.

6. Respondent desires to enter into this Order to resolve these violations set out herein and to obtain authorization from the Department and the Board to use Sovereign Lands, adjacent to the Respondent's riparian upland Property described in Paragraph 4 herein and maintain the Dock structures located thereon.

7. Respondent desires to obtain a Proprietary Authorization from the Board to use the Sovereign Lands and water column adjacent to the Respondent's riparian upland Property described in Paragraph 4 herein as depicted in Exhibit A.

8. The Parties acknowledge that the Proprietary Authorization application and approval process may require a time period of several months to complete. Therefore, Respondent requests temporary use of the Sovereign Lands upon which the Dock structures are located during the Department's processing and review of Respondent's application for Proprietary Authorization to use the Sovereign Lands depicted in Exhibit A.

Having reached a resolution of the matter Respondent, the Department and the Board mutually agree and it is,

ORDERED:

9. Respondent shall comply with the following corrective actions within the stated time periods:

- a. **Commencing immediately and henceforth**, Respondent shall not conduct any dredging, filling, or construction activities on or within the landward extent of waters of the state without the issuance of a permit from the Department or written notification from the Department that the proposed activities appear to be exempt from Department permitting requirements; nor shall Respondent conduct any activities on state owned lands below the ordinary or mean high water lines without first obtaining a lease, easement, or other consent of use from the Board. Any future violations by Respondent for dredging, filling, or construction activities conducted without authorization from the Department and/or the Board

may be deemed a "subsequent" offense (i.e., not first offenses) by the Department and/or the Board.

b. **Within 30 days of the Effective Date of this Order**, Respondent shall pay the Department \$6,250.00 in settlement of the matters addressed in this Order. This amount includes \$4,500.00 for unpermitted or unauthorized construction pursuant to Section 403.121(4)(c), F.A.C., \$1,500.00 as a permit recovery fee pursuant to Rule 62-4.050(4)(h)4.a.(II), F.A.C., and \$250.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection", mailed to *Florida Department of Environmental Protection, Northwest District Office, 160 West Government Street, Suite 308, Pensacola, FL 32502.5794*, and shall include both the OGC number assigned to this Order (OGC No. 23-1052) and the notation "*Water Quality Assurance Trust Fund*". Online payments by e-check can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes final, effective and filed with the Clerk of the Department before the ability to make online payment is available.

c. **Within 30 days of the Effective Date of this Order**, Respondent shall submit an application for a post-enforcement individual Environmental Resource Permit and a Proprietary Authorization, in accordance with Chapters 62-330 and 18-21, F.A.C. The post-enforcement permit and the Proprietary Authorization shall be obtained no later than **12 months** from the Effective Date of this Order. Should it be necessary for the Department and the Board to issue a Request for Additional Information

(RAI) during the application review process, Respondent shall provide a full response no later than **90 days** of issuance of the RAI.

Temporary Proprietary Authorization

10. The Board hereby grants Respondent the temporary exclusive use of the Sovereign Lands consisting of approximately 2,256 square feet, as depicted in Exhibit A herein, upon which Respondent's Dock structures, consisting of approximately 2,717 square feet, waterward of Respondent's riparian upland real Property, are located. This temporary exclusive use is for a term **not to exceed one (1) year** from the Effective Date of this Order, or until the date of execution by the Board and Respondent of valid Proprietary Authorization for the use of the Sovereign Lands identified herein, whichever occurs first. Respondent shall make no claim of title to or interest in the Sovereign Lands depicted in Exhibit A herein, solely by reason of occupancy or use thereof under this Order. A copy of this Order will be furnished to the Department's Division of State Lands.

11. **Within 30 days of the Effective Date of this Order**, Respondent shall pay the Board \$724.25 (Exhibit B) for deposit into the Internal Improvement Trust Fund as compensation for the past and current use of the Sovereign Lands within the St. Marks River upon which Respondent's Dock Structures are located as depicted in Exhibit A, herein. Such payment, which shall be in the form of a cashier's check, certified check, or money order payable to the "Department of Environmental Protection", shall include the Board file number (No.650020921) and shall be delivered to the *Board's Accounting Office, Post Office Box 3070, Tallahassee, Florida 32315-3070*.

12. The consideration submitted pursuant to Paragraph 11 of this Order includes the amounts owed for the use of the Sovereign Lands, within the St. Marks River upon which Respondent's Dock structures depicted in Exhibit A are located, from August 17, 2023, through December 31, 2024, plus interest payable on any past due fees. The consideration is not refundable, notwithstanding any denial by the Board of Proprietary Authorization for use the identified Sovereign Lands.

13. Respondent acknowledges that the fees assessed by this Order for the temporary use of the Sovereign Lands depicted in Exhibit A herein, after March 1, 2024, are an estimate created using the base rate of \$0.1992 per square foot fee from the 2023-2024 billing cycle times the approximate square footage of the lands preempted by the Dock structures. The Department's Division of State Lands will generate a supplemental invoice at the time of execution of a sovereign submerged lands lease for any difference in lease fees owed for the new per square foot fee established on March 1, 2024. The difference is based on changes in the Consumer Price Index, pursuant to Rule 18-21.011(1)(b), F.A.C., and any changes in the square footage of the preempted area based on any survey(s) submitted by Respondent with their application for Proprietary Authorization to use the Sovereign Lands identified herein. Respondent hereby agrees to pay the full amount of any additional fees invoiced and owed to the Board due to such changes, within **30 days** of the date of any supplemental invoice issued to Respondent.

14. The Dock structures described herein and depicted in Exhibit A shall only be utilized as they were on the Effective Date of this Order. In the event any part(s) of any of the Dock structures is determined by a final adjudication issued by a court of competent jurisdiction to encroach or interfere with the riparian rights of an adjacent upland riparian owner(s), Respondent agrees to either obtain written consent for the offending structure [or use] from the affected adjacent upland riparian owner(s) or remove the interference or encroachment within **60 days** from the date of the court's adjudication. **Failure to comply with this Paragraph shall constitute a material breach of this Order and be grounds for immediate termination of this Order at the sole option of the Board.**

15. In the event that Respondent fails to complete any of the requirements of Paragraphs 9 through 14 of this Order, Respondent shall remove any and all structures on the Sovereign Lands depicted in Exhibit A, at the Respondent's sole expense. The complete removal of the structures required by this Paragraph shall be accomplished within **60 days** of written notice by the Department of Respondent failure to comply with the terms of this Order.

16. In the event that Respondent's application for Proprietary Authorization to use of the Sovereign Lands, described in Paragraph 10 and depicted in Exhibit A, is not approved by the Board, or the Respondent fails to execute a sovereign submerged lands lease prior to the expiration or termination of this temporary use agreement, whichever occurs first, Respondent shall remove any and all structures from and cease all activities on the identified Sovereign Lands at Respondent's sole expense. The complete removal of the structures required by this Paragraph shall be accomplished within 180 days following the expiration or termination of the temporary use agreement, whichever occurs first.

17. In the event that Respondent asserts title to the Sovereign Lands depicted in Exhibit A, and either (i) fail to timely submit the information demonstrating their title to the Sovereign Lands as required herein or (ii) the Board denies Respondent's claim of title and the Respondent has not commenced an action to quiet title as specified herein, Respondent shall remove any and all structures from and cease all activities on the identified Sovereign Lands at the Respondent's sole expense. The complete removal of the structures required by this Paragraph shall be accomplished within 60 days following the expiration or termination of the temporary use agreement, whichever occurs first.

18. Respondent acknowledges and understands that the granting of temporary use of the Sovereign Lands depicted in Exhibit A by the Board pursuant to this Order and Respondent's payment of the consideration required by this Order does not guarantee that the Board will grant the Respondent Proprietary Authorization to use the Sovereign Lands identified herein or that the Department will recommend that the appropriate form of Proprietary Authorization be granted.

19. By execution of this Order, Respondent waives any claims they may have against the Department or the Board concerning the Sovereign Lands depicted in Exhibit A. Respondent shall save and hold harmless and indemnify the Board, the Department, and the State of Florida against any and all liability, claims, judgments or costs of whatsoever kind and nature for injury to, or death of, any person or persons and for loss or damage to any property arising out of or connected with Respondent's occupation and

use of the Sovereignty Lands depicted in Exhibit A, and/or the Dock structures or activities located thereon.

Temporary Regulatory Authorization

20. This Order provides temporary after-the-fact authorization by the Department for the 2,717 square feet Dock structures described in Paragraph 5 and depicted in Exhibit A, pursuant to Part IV of Chapter 373, F.S, and Chapter 62-330, F.A.C. The regulatory authorization set out in this Order is conditioned upon the following terms:

- a) Respondent and Respondent's Dock structures shall adhere to the conditions set out in Attachment I, attached hereto and incorporated herein, and any activity authorized herein shall be conducted in accordance with the terms and conditions and attachments contained in this Order.
- b) The temporary regulatory authorization granted herein, including all conditions set out in Attachment I, shall continue into perpetuity upon the Department and Board termination of this enforcement action, provided that Respondent satisfies all of the requirements of this Order.
- c) Failure to comply with any of the attached conditions, including any mitigation requirements, or any other requirements of this Order shall be grounds for the Department to revoke the authorization(s) provided herein and take appropriate enforcement action.
- d) The granting of the authorization(s) herein do not infer, guarantee, nor imply that any future permits, authorizations, or modifications will be granted by the Department.
- e) Operation of the Dock structures is not authorized except when determined by the Department to be in conformance with all applicable terms of this Order, rules, statutes, and/or any sovereignty submerged lands authorization given by the Board.

21. Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections

120.569 and 120.57, F.S. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all the following information:

- a) The name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the *Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000* or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the *Florida Department of Environmental Protection, Northwest District Office, 160 W. Government Street, Suite 308, Pensacola, Florida 32502.5794*. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, F.S. Before the deadline for filing a petition, a person whose substantial interests are affected by this Order may choose to pursue mediation as an alternative remedy under section 120.573, F.S. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, F.S. and F.A.C. Rule 62-110.106(12).

22. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 9 through 14 of this Order. A separate stipulated penalty shall be assessed for each violation of this Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the Department of Environmental Protection by cashier's check or money order and shall include thereon the OGC number assigned to this Order (OGC No. 23-1052) and the notation "*Water Quality Assurance Trust Fund*." The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 9 of this Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Order in an amount greater than the stipulated penalties due under this paragraph.

23. Respondent shall allow all authorized representatives of the Department access to the upland Property and Dock structures at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department and the Board.

24. The sale or conveyance of the upland Property does not relieve Respondent of the obligations imposed in this Order. In the event of a sale or conveyance of the upland Property, if all of the requirements of this Order have not been fully satisfied, Respondent shall: (a) notify the Department of such sale or conveyance of the upland Property, at least **30 days** prior to the sale or conveyance; (b) provide the name and address of the purchaser/grantee, operator, or person(s) in control of the upland Property; and (c) provide a copy of this Order with all attachments to the purchaser/grantee, operator, or person(s) in control of the upland Property. Further, this Order and any rights and privileges contained herein, are for the sole benefit and use of the Respondent and shall not be assigned or transferred by the Respondent to any other party without the prior written consent of the Department and the Board, which consent shall not be unreasonably withheld.

25. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department and the Board orally within 24 hours or by the next working

day and shall, within seven calendar days of oral notification to the Department and the Board, notify the Department and the Board in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. **Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Order.**

26. This Order only addresses violations of the rules and statutes of the Department and the Board as cited herein. Entry of this Order does not constitute a permit or other authorization from the Department or the Board to conduct any activities other than those specifically set out in this Order. Nor does entry of this Order convey any authority from the Board for the use of sovereignty submerged or other lands of the State, other than those lands depicted in Exhibit A. In order to ascertain whether any authority is needed to use sovereign lands other than the lands described herein, the Respondent must contact the Department's Division of State Lands. The Respondent is hereby advised that Florida law states: "No person shall commence any excavation, construction or other activity involving the use of sovereign or other lands of the State, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund under Chapter 253, F.S., until such person has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement or other form of consent authorizing the proposed use." If such work is done without consent, a fine for each offense in an amount of up to \$15,000.00 per day may be imposed.

27. This Order is a settlement of the Department's and the Board's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under

Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

28. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69, 253.04, 373.129, and 403.121, F.S. Failure to comply with the terms of this Order shall constitute a violation of Sections 253.04, 373.430, and 403.161, F.S.

29. The terms of this Order pertaining to the Respondent's use of the Sovereign Lands depicted in Exhibit A, may be enforced by the Board notwithstanding that the temporary proprietary authorization granted hereunder expired.

30. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$15,000.00 per day per violation and administrative fines of up to \$10,000.00 per day per violation and criminal penalties.

31. The Department and the Board hereby expressly reserve the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Order.

32. The Department and the Board, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations addressed in this Order.

33. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent acknowledges its right to appeal the terms of this Order pursuant to section 120.68, F.S., and waives that right upon signing this Order.

34. Unless otherwise specified, all submittals and payments required by this Order to be submitted to the Department shall be sent to the *Florida Department of*

Environmental Protection, Ms. Elizabeth Mullins Orr, Director, Northwest District Office, 160 W. Government Street, Suite 308, Pensacola, Florida 32502.5794.

35. This Order is a settlement of the Department's and the Board's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

36. This Order is a final order pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with chapter 120, F.S.. Upon the timely filing of a petition this Order will not be effective until further order of the Department.

NOTE: The Board's actions relating to Proprietary requirements contained in this Order are not subject to challenge under Chapter 120, F.S. Any litigation involving these Proprietary requirements shall be initiated and maintained only in Leon County.

37. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order shall be effective until reduced to writing and executed by both Respondent, the Department, and the Board.

Rules referenced in this Order may be examined at any Department Office or may be obtained by written request to the District Office referenced in Paragraph 34 above. The rules referenced in this Order are also available at:

<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>

FOR THE RESPONDENT:

Shields St. Marks Partnership, Ltd., a Florida Corporation

5/1/2024
Date

By: 
Signature

CHARLES C. SHIELDS
Printed/Typed Name

CHAIRMAN
Title

Do not write below this line. Department use only.

DONE AND ORDERED this 10th day of May, 2024, in
Escambia County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Elizabeth Mullins Orr
Director, Northwest District

Filed, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

John L. Clary

Clerk

May 10, 2024

Date

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

By: Elizabeth Mullins Orr

Elizabeth Mullins Orr

Director, Northwest District

State of Florida Department of Environmental
Protection, as agent for and on behalf of the
Board of Trustees of the Internal Improvement
Trust Fund of the State of Florida

Enclosures: Attachment I
Exhibits A & B

c: Lea Crandall, Agency Clerk (Mail Station 35)

ATTACHMENT I
OGC Case No. 23-1052
General Conditions for all Authorized Activities

The following general conditions are binding on all activities authorized by this Consent Order, that would have required an individual environment resource permit (ERP) authorization pursuant to Chapters 373, Part IV, Florida Statutes, and 62-330, Florida Administrative Code, except where the conditions are not applicable to the authorized activity, or where the conditions must be modified to accommodate project-specific conditions.

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this Consent Order. Any deviations must be authorized in a permit modification in accordance with Rule 62-330.315, Florida Administrative Code. Any deviations that are not so authorized may subject Respondent or their successors to enforcement action and revocation of this authorization under Chapter 373, Florida Statutes. Respondent shall immediately notify the Department in writing, if any information previously submitted to the Department for review and consideration in the issuance of this Consent Order, is discovered to be inaccurate.
2. Respondent shall maintain the dock structure authorized by this Consent Order, in good condition and in conformance with the terms and conditions attached to and incorporated in this Consent Order. Respondent is not relieved of this requirement if they abandon the dock structure or otherwise sell, transfer or assign their interest in Respondent's upland property. *(See, General Condition 3 below)*
3. The after-the-fact permitting authorization for the dock structure and activity granted by this Consent Order, including all terms and conditions incorporated therein, shall continue to bind Respondent and any new owner(s) or assignee(s) of the upland property pursuant to Rule 62-330.340, Florida Administrative Code. Respondent shall notify the Department electronically or in writing, within **30 days** of a change in ownership interest or control of any portion of the real upland Property or the dock structure authorized herein, in accordance with Rule 62-330.340, Florida Administrative Code. Unless the

after-the-fact authorization granted by this Consent Order is transferred under Rule 62-330.340, Florida Administrative Code, or transferred to an operating entity under Rule 62-330.310, Florida Administrative Code, Respondent shall remain jointly liable with any new owner(s) or assignee(s) to comply with the plans, terms, and conditions of this Consent Order for the life of the project or activity authorized therein.

4. All activities authorized herein shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation, June 2007), and the Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), which are both incorporated by reference in Rule 62-330.050(9)(b)5, Florida Administrative Code, unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the authorization provided herein.

5. This Consent Order does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any construction, alteration, operation, maintenance, removal or abandonment authorized by this Consent Order; and it does not authorize any violation of any other applicable federal, state, local, or special district laws (including, but not limited to, those governing the "take" of listed species).

6. The Consent Order does not relieve the Respondent from liability and penalties when the Consent Order causes harm or injury to human health or welfare; animal, plant, or aquatic life; or property. It does not allow the Respondent to cause pollution that violates state water quality standards.

7. The authorization to conduct activities under a Consent Order may be modified, suspended or revoked in accordance with chapter 120, Florida Statutes, and section 373.429, Florida Statutes.

8. This Consent Order is not transferable to a new third party. Activities constructed in accordance with the terms and conditions of the Consent Order are automatically authorized to be operated and maintained by the Respondent and subsequent owners in accordance with subsection 62-330.340(1), Florida Administrative Code. Any person holding the Consent Order, persons working under the Consent Order, and owners of the land, while work is conducted under the Consent Order, shall remain liable for any corrective actions that may be required as a result of any Consent Order violations prior to sale, conveyance, or other transfer of ownership or control of the authorized project, activity, or the real property at which the authorized project or activity is located.

9. If a conditioned water quality certification has been issued for the project, Respondent shall comply with the conditions specified in the certification as special conditions to this Consent Order.

10. Neither the Consent Order nor any of the conditions set out herein and, incorporated into the Consent Order:

- a) Convey to Respondent any property rights or privileges, or any other rights or privileges other than those specified herein or in Chapter 62-330, Florida Administrative Code,
- b) Convey to Respondent or create in the Respondent any interest in real property,
- c) Relieve Respondent from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance,
- d) Authorize interference with any existing or proposed Federal projects,
- e) Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the Respondent, or
- f) Authorize any injury to or interference with the property or rights of others.

11. Respondent shall notify the Department in writing of changes required by any other regulatory agency that require changes to the dock structure authorized by this Consent

Order, and any required modification of the authorizations set out herein, must be obtained prior to implementing any such changes.

12. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund (Board), Respondent must receive all necessary approvals and authorizations under Chapters 253 and 258, Florida Statutes. Written authorization that requires formal execution by the Board shall not be considered received until it has been fully executed by both the Board and Respondent.

13. Respondent shall hold and save the Department and/or the Board harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment, or use of any project authorized by this Consent Order.

14. Upon reasonable notice to Respondent, Agency staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized by this Consent Order.

15. If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, stone tools, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the vicinity of the discovery. The Respondent or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section (DHR), at (850)245-6333, as well as the appropriate permitting agency office. Project activities shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and the proper authorities notified in accordance with section 872.05, Florida Statutes For project activities subject to prior consultation with the DHR and as an alternative to the above requirements, the permittee may follow procedures for unanticipated discoveries as set

forth within a cultural resources assessment survey determined complete and sufficient by DHR and included as a specific permit condition herein.

16. If Respondent discovers any previously unknown historic or archeological remains while accomplishing any activity authorized by Consent Order, Respondent shall immediately notify the Department's Northwest District office at (850) 595-8300. The Department 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.

17. Any delineation of the extent of a wetland or other surface water submitted as part of this Consent Order, including plans or other supporting documentation, shall not be considered binding unless a specific condition of the Consent Order or a formal determination under Rule 62-330.201, Florida Administrative Code, provides otherwise.

18. In addition to those general conditions set out above, the Agency shall impose any additional project-specific special conditions necessary to assure the permitted activities will not be harmful to the water resources, as set forth in Rules 62-330.301 and 62-330.302, Florida Administrative Code, Volumes I and II, as applicable, and the rules incorporated by reference in this chapter.

19. The construction, alteration, or use of the authorized project shall not adversely impede navigation or create a navigational hazard in the water body.

20. Except where specifically authorized in this Consent Order, activities must not:

- a. Impound or obstruct existing water flow, cause adverse impacts to existing surface water storage and conveyance capabilities, or otherwise cause adverse water quantity or flooding impacts to receiving water and adjacent lands; or
- b. Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to section 373.042, Florida Statutes., or a Works of the District established pursuant to section 373.086, Florida Statutes.

21. The activity must be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed, and must comply with any applicable District special basin and geographic area criteria.

22. The authorizations granted by this Consent Order are based on the information submitted by the Respondent and obtained by the Department during its enforcement and compliance investigation that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed activity authorized herein. If any adverse impacts result, the Agency will require the Respondent to eliminate the cause, obtain any necessary permits, and take any necessary corrective actions to resolve the adverse impacts.

23. Reliance on Respondent's Data and Reevaluation of Issuance of Order:

The determination of the Department's Northwest District office that issuance of the Consent Order is not contrary to the public interest was made in reliance on the information provided by the Respondent. The Department and/or the Board of Trustees may reevaluate its decision regarding the authorization(s) provided by the Consent Order at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. Respondent's failure to comply with any of the terms and conditions incorporated in this Consent Order;
- b. The information provided to the Department by the Respondent to support of the issuance of the Consent Order proves to have been false, incomplete, or inaccurate; or
- c. New information surfaces, which was not considered by and/or not made known to the Department or the Board in reaching the original public interest decision.

24. A fully executed copy of the Consent Order, including the Conditions attached hereto, may be recorded in the county public records.

Specific Conditions for Docks

1. The dock decking design and construction shall ensure maximum light penetration, with full consideration of safety and practicality.
2. There shall be no boat repair facilities on the boardwalk, pier or dock.
3. No more than 107 boats (62 on sovereign submerged lands plus 45 on privately-owned submerged lands) are authorized to be moored at the dock.

4. Water depth at the mooring area shall be sufficient to prevent bottom scouring by boat propellers.
5. Other than the areas depicted on the drawings attached to and incorporated in this Consent Order, no portion of the boat slip/mooring area shall be constructed over submerged grass beds.
6. The waterward end of the dock shall be marked by a sufficient number of reflectors so as to be visible from the water at night by reflected light. The reflectors shall not be green or red in color.
7. The dock structure shall be constructed, operated, and maintained solely for water dependent purposes. Any non-water dependent structures shall be located on the uplands.
8. No enclosures on or over the dock structure are authorized by this Consent Order.
9. No overboard discharges of trash, human or animal waste, or fuel shall occur at the dock.
10. This Consent Order does not authorize the construction of additional structures not illustrated in Exhibit A. Examples of additional structures, which are not authorized by this Consent Order include but are not limited to: walkways, doors, awnings, and decking around or under the bottom of the pile-supported structures. Storage of equipment, pesticides, herbicides, construction material, trash receptacles, or part of a septic tank system beneath the pile-supported structure is prohibited.
11. Any non-water dependent structures shall be located on the uplands.
12. This Consent Order does not authorize enclosures.
13. No overboard discharges of trash, human or animal waste, or fuel shall occur at the dock.

General Conditions for All Sovereignty Submerged Lands Authorizations

Any use of sovereignty submerged lands is subject to the following general conditions are binding upon the Respondent and are enforceable under Chapter 253, Florida Statutes.

1. Sovereignty submerged lands may be used only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use will constitute a violation. Violation of the authorization will result in suspension or revocation of the Respondent's use of the sovereignty submerged lands unless cured to the satisfaction of the Board.
2. Authorization under Rule 18-21.005, Florida Administrative Code, conveys no title to sovereignty submerged lands or water column, nor does it constitute recognition or acknowledgment of any other person's title to such land or water.
3. Authorizations under Rule 18-21.005, Florida Administrative Code, may be modified, suspended or revoked in accordance with its terms or the remedies provided in Sections 253.04, Florida Statutes and Chapter 18-14, Florida Administrative. Code, resources.
4. Construction, use, or operation of the structure or activity will not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, Florida Administrative Code.
5. Structures or activities will not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity will be modified in accordance with the court's decision.
6. Structures or activities will not create a navigational hazard.
7. Activities shall not interfere with the public easement for traditional uses of the sandy beaches provided in section 161.141, Florida Statutes.
8. Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions

of Rule 18-21.005, Florida Administrative Code, within one (1) year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.

9. Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(g), Florida Administrative Code, or any other applicable law. Any non-water dependent structures shall be located on the uplands.

10. The Respondent agrees to indemnify, defend and hold harmless the Board of Trustees and the State of Florida from all claims, actions, lawsuits and demands in any form arising out of the authorization to use sovereignty submerged lands or the Respondent's use and construction of structures on sovereignty submerged lands. This duty to indemnify and hold harmless will include any and all liabilities that are associated with the structure or activity including special assessments or taxes that are now or in the future assessed against the structure or activity during the period of the authorization.

11. Failure by the Board to enforce any violation of a provision of the authorization or waiver by the Board of any provision of the authorization will not invalidate the provision not enforced or waived, nor will the failure to enforce or a waiver prevent the Board from enforcing the unenforced or waived provision in the event of a violation of that provision.

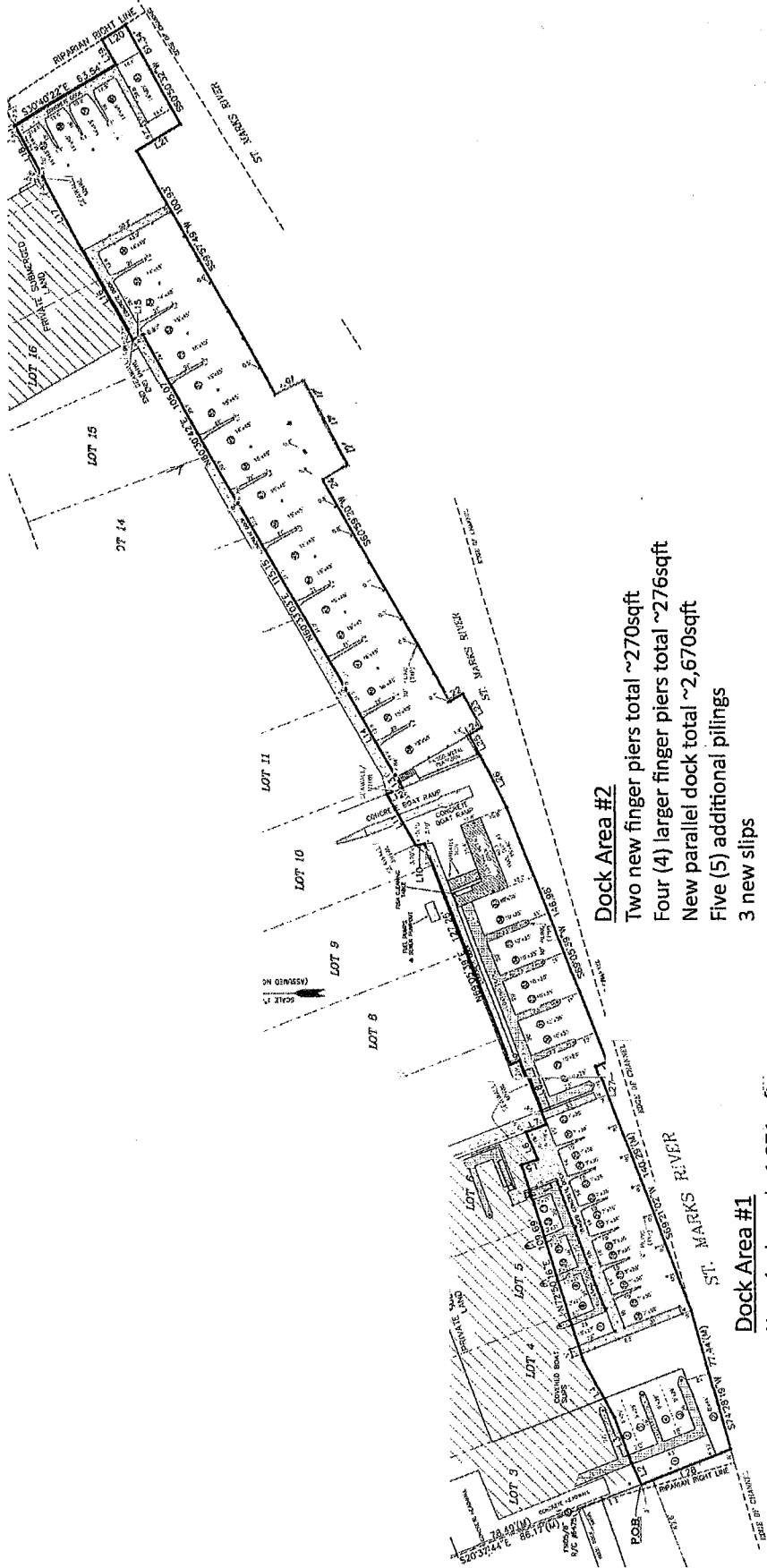
12. Respondent binds themselves and their successors and assigns to abide by the provisions and conditions set forth in the authorization. If the Respondent or their successors or assigns fail or refuse to comply with the provisions and conditions of the authorization, the authorization may be terminated by the Board after written notice to the applicant or its successors or assigns. Upon receipt of such notice, the Respondent or their successors or assigns will have thirty (30) days in which to correct the violations. Failure to correct the violations within this period will result in the automatic revocation of this authorization.

13. All costs incurred by the Board in enforcing the terms and conditions of the authorization will be paid by the Respondent. Any notice required by law will be made by certified mail at the address shown on page one of the authorization. The Respondent

will notify the Board in writing of any change of address at least ten (10) days before the change becomes effective.

14. This authorization does not allow any activity prohibited in a conservation easement or restrictive covenant that prohibits the activity.

Consent Order and Temporary Use Agreement (OGC No.23-1052)
 Shields St. Marks Partnership, Ltd (BOT No.650020921)
 Exhibit A



DOCK AREA #2

- Two new finger piers total ~270sqft
- Four (4) larger finger piers total ~276sqft
- New parallel dock total ~2,670sqft
- Five (5) additional pilings
- 3 new slips

DOCK AREA #1

- New dock total ~1,371sqft
- Eight new finger piers total ~800sqft
- Six (6) additional pilings
- 19 new slips

TOTAL

- Additional (docks & finger piers) docking structure totaling ~2,717sqft
- 11 additional pilings
- 22 additional slips (Total slips: 107 [45 slips on privately owned submerged lands + 62 slips on state owned submerged lands])
- Additional lease area totaling ~2,256sqft (Existing 41,060 + additional 2,256 = lease area totaling 43,316sqft)