

AGREEMENT RE MAINTENANCE - GRAND HARBOR ESTUARY SYSTEM

THIS AGREEMENT entered into this 6th day of January, 1987, by and between GRAND HARBOR, INC., a Florida corporation and GRAND HARBOR PROPERTY OWNER'S ASSOCIATION, INC., a Florida corporation, (hereinafter "Owners") and INDIAN RIVER COUNTY, a political subdivision of the State of Florida (hereinafter "County").

WHEREAS, GRAND HARBOR, INC., is the owner and developer of a Development of Regional Impact known as GRAND HARBOR, which development is subject to a Development Order entered by County on October 23, 1985, being Resolution 85-128; and

WHEREAS, on October 20, 1986, the Indian River County Board of County Commissioners granted Conceptual Planned Residential Development Plan Approval to GRAND HARBOR, INC., and, at the same meeting, granted approval of the Estuarine Plan in accordance with Condition Number 8 of the Development Order; said approval of the Estuarine Plan was subject to conditions, amongst which was the requirement that GRAND HARBOR, INC. submit an Operation Plan for future maintenance of the estuarine waterway and rotary ditch system.

WHEREAS, said Operation Plan has been submitted by GRAND HARBOR, INC., and is attached hereto as Exhibit A; and

WHEREAS, the purpose of this Agreement is to have all parties acknowledge the existence of said Operation Plan and their relative obligations thereunder and to provide further assurances to County that said obligations will be met in a timely manner by Owners.

FOR AND IN CONSIDERATION OF THE COVENANTS EXPRESSED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. MANAGEMENT PLAN: County acknowledges the submission of the Operation Plan attached hereto as Exhibit A.

2. OBLIGATION TO MAINTAIN: Owners, jointly and severally, agree that as maintenance of the estuary system becomes necessary, that said maintenance shall be performed in a timely manner by them at no expense to County, all in accordance with the Operation Plan.

3. FAILURE BY OWNERS: Should County determine that maintenance contemplated by the Operation Plan is required, but said maintenance is not being performed by Owners in a timely manner, then County shall give written notice to Owners (certified mail, return-receipt requested) specifying the nature of the maintenance to be performed and specifying a time (not less than 10 days) within which the Owners must perform such maintenance work or other activity. Should Owners fail to perform such work or other activity within said time limit, then the County shall have the right to undertake such maintenance work or other activity, and the cost of same shall be chargeable to Owners.

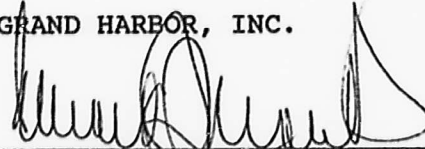
4. BUDGET: The GRAND HARBOR PROPERTY OWNERS ASSOCIATION, INC., agrees that it shall prepare an Annual Budget, which, when adopted, shall provide for sufficient assessments to fund annual maintenance activities as may be reasonably anticipated, and to fund reserves for such extraordinary maintenance as may be reasonably anticipated.

5. IMPOSE ASSESSMENTS: In the event that County is required to undertake maintenance activities because of a failure or refusal of Owners to undertake same, then the Association agrees that it shall invoke its special assessment powers in order to assess and collect such funds as are necessary to reimburse County the reasonable cost of such activities.

6. DISPUTE(S): Should a dispute arise between Owners, or either of them and the County, as to whether a particular maintenance activity is required, or contemplated, by the Operation Plan, then such dispute shall resolved in the Circuit Court and the prevailing party shall be awarded all costs and legal fees.

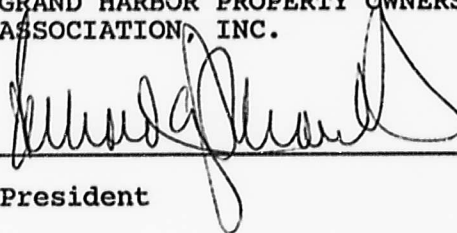
GRAND HARBOR, INC.

By


RICHARD G. SCHAUB, Jr.,
President

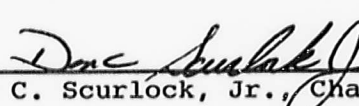
GRAND HARBOR PROPERTY OWNERS
ASSOCIATION, INC.

By


President

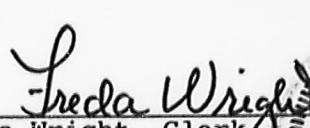
INDIAN RIVER COUNTY BOARD OF COUNTY
COMMISSIONERS

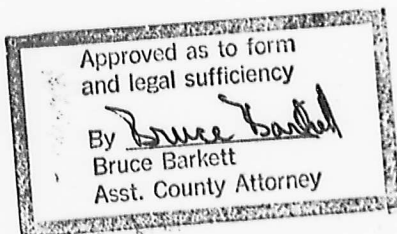
By


Don C. Scurlock, Jr., Chairman

ATTEST:

By


Freda Wright, Clerk



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IRC MAINTENANCE PROVISIONS

11 November 1986

ii) Maintenance Provisions - Prior to any site plan approval, the applicant shall provide Indian River County, Treasure Coast Regional Planning Council and the Indian River Mosquito Control District with an operation plan for future maintenance of the estuarine waterway and rotary ditches. The plan shall, at a minimum describe the methods for detritus removal, responsibility for performing the work, marsh protection practices during work activities in the marsh and channels and the method for funding all maintenance activities.

OPERATION PLAN

Considerable attention has been given to the equipment and methodologies to be employed in accomplishing the marsh rehabilitation and creation work. The resulting system will be predominantly high marsh interlaced with rather 'broad' waterways resulting from pesticide laden silt and exotic removal. As designed these water courses should be stable and not require any significant maintenance work. This is supported by the fact the current, non-tidally flushed ditches remain interconnected after two decades without maintenance. Opening these water courses to tidal flushing will, however, promote the establishment of mangroves (reds, blacks and whites can be expected to volunteer and thrive in some areas) that, in some cases, tend to reduce circulation which could increase mosquito breeding potential if not kept under control. Two techniques will be employed to maintain circulation through the widened water courses. The first will be the establishment of an ongoing program for hand removal of mangrove seedlings from areas that are tending toward undesirable proliferation. Removal can be accomplished year round from john boats without the necessity of vehicle traffic through the high marsh areas. These seedlings will be made available for transplanting in other areas where their establishment is desirable such as the fringes of spoil islands in the Indian River Lagoon.

Detrital deposit and sedimentation is not expected to be a problem in the circulation channels, especially if the mangroves are prevented from taking over the shallow reaches possibly preventing easy access to gambusia. Because of the stability of the system design, no significant sedimentation of the circulation channels is expected. Periodic export of detrital material can be expected which will be beneficial to the lagoon system. Due to unpredictable occurrences, however, some long

term maintenance of the circulation channels may become desirable both to insure viability of the Open Marsh Water Management mosquito control system and functional viability of the rehabilitated and created marsh. Because the circulation channels will be initially modified by a floating vacuum dredge, they will continue to be accessible by small barge mounted equipment. Numerous access points will continue to be available through golf fairways that lie between upland roadways and the circulation channels. The equipment to be used for circulation channel maintenance will be a form of the jet spray system which combines suction dredging with detritus knives and a spray system which can be accurately directed to adjacent marsh areas. The value of dredge material used as top dressing for marsh restoration is well appreciated. As pointed out by Daiber (1986), "While the tidal accumulation of sediments can influence the plant species composition, the deposition of spoil on the marsh surface can have a profound influence on the well-being of the marsh vegetation." This periodic "top dressing" has been accomplished using the jet spray equipment with authenticated positive results. The jet spray equipment was developed in Florida and is currently available from Aztec Development Co., P.O. Box 3348, Orlando, Florida 32802, 305/849-6420. They have considerable references and independent write ups on their various activities which they would be happy to share.

The only other maintenance that may become necessary would involve the radial ditches that would be used to connect any small isolated mosquito breeding depressions that may be discovered after system rehabilitation. Because of the system geometry, however, we do not expect such ditching to become necessary. If they are found to be necessary, their maintenance for mangrove removal will be covered by the same program as mentioned for the circulation channels. If major maintenance is required in the long run, the jet spray system would not be effective because of the narrowness of the radial ditches. If the radial ditches become necessary, they will be cut using a rotary ditcher which also broadcasts the material thinly over the adjacent marshes. This equipment is designed to cause minimum marsh disturbance being built on large low pressure tire support that will actually support the vehicle in open water. This same rotary ditcher can be used for rotary ditch maintenance for detritus and vegetation removal if it becomes necessary. Again, access will be across the golf course areas and the ditcher can be floated through the circulation channels to the radial ditch sites without damage to the intervening marsh areas. It is a condition of the DER permit that permit modifications will be requested and approved prior to any additional mosquito control efforts. As in the past it will be possible to accomplish any additional ditching (if found to be necessary) by hand labor to reduce any adverse impacts on the high marsh.

All contractors will, through contract documents, be made to take responsibility for following the marsh protection practices which shall include but not be limited to: no movement of heavy equipment through vegetated marsh areas except as designated as limited access routes; no deposition of spoil material on the marsh surface to a thickness greater than two inches; and, the restoration of any damaged vegetation to the original DER specifications.

The responsibility for performing the work will be undertaken by the Developer for transfer to the master association to be known as the Grand Harbor Property Owners Association, Inc. which will take ownership of all common areas including the rehabilitated and created marsh areas. Maintenance funding will be provided through Association dues.

Reference: Daiber, Franklin C., CONSERVATION OF TIDAL MARSHES, Van Nostrand Reinhold, 1986, ISBN 0-442-24873-3