

**EXPLANATION OF CONSENT AGENDA ITEM E.2.c.(25) – December 16, 2015**

**ITEM:**

Consideration of approving 20-year renewal of submerged lands easement from the Board of Trustees of the Internal Improvement Trust Fund for the near shore borrow area associated with the sand bypass project upon approval of the final document by General Counsel and the Port Attorney.

**EXPLANATION:**

The submerged lands easement from the State of Florida is a renewal of the easement granted in 2004 for the near shore borrow area associated with the sand bypass project. The easement is granted in connection with the FDEP Consolidated Joint Coast Permit No. 0220629-005-JC dated June 12, 2015. The term of the easement is 20 years. Staff recommends approval of the easement.

**STAFF RECOMMENDS APPROVAL**

Prepared by Craig Langley

This Instrument Prepared By:  
Tiana D. Brown  
Bureau of Public Land Administration  
3900 Commonwealth Boulevard  
Mail Station No. 125  
Tallahassee, Florida 32399

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

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SOVEREIGNTY SUBMERGED LANDS EASEMENT RENEWAL

BOT FILE NO. 052229049  
EASEMENT NO. 29059

THIS EASEMENT is hereby granted by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Grantor.

WITNESSETH: That for the faithful and timely performance of and compliance with the terms and conditions stated herein, the Grantor does hereby grant to Canaveral Port Authority, hereinafter referred to as the Grantee, a nonexclusive easement on, under and across the sovereignty lands, if any, contained in the following legal description:

A parcel of sovereignty submerged land in Sections 01 and 12, Township 24 South, Range 37 East, in Atlantic Ocean, Brevard County, as is more particularly described and shown on Attachment A, dated August 17, 2004.

TO HAVE THE USE OF the hereinabove described premises from August 25, 2014, the effective date of this easement renewal, through August 25, 2034, the expiration date of this easement renewal. The terms and conditions on and for which this easement renewal is granted are as follows:

1. USE OF PROPERTY: The above described parcel of land shall be used solely for nearshore borrow area and Grantee shall not engage in any activity related to this use except as described in the State of Florida Department of Environmental Protection Consolidated Joint Coastal Permit No. 0220629-005-JC, dated June 12, 2015, incorporated herein and made a part of this easement by reference. All of the foregoing subject to the remaining conditions of this easement.

2. EASEMENT CONSIDERATION: In the event the Grantor amends its rules related to fees and the amended rules provide the Grantee will be charged a fee or an increased fee for this activity, the Grantee agrees to pay all charges required by such amended rules within 90 days of the date the amended rules become effective or by a date provided by an invoice from the Department, whichever is later. All fees charged under this provision shall be prospective in nature; i.e. they shall begin to accrue on the date that the amended rules become effective.

3. WARRANTY OF TITLE/GUARANTEED USE OF LAND: Grantor neither warrants title to the lands described herein nor guarantees the suitability of any of the lands for any particular use.

4. RIGHTS GRANTED: The rights hereby granted shall be subject to any and all prior rights of the United States and any and all prior grants by the Grantor in and to the submerged lands situated within the limits of this easement.

5. DAMAGE TO EASEMENT PROPERTY AND INTERFERENCE WITH PUBLIC AND PRIVATE RIGHTS: Grantee shall not damage the easement lands or unduly interfere with public or private rights therein.

6. GRANTOR'S RIGHT TO GRANT COMPATIBLE USES OF THE EASEMENT PROPERTY: This easement is nonexclusive, and the Grantor, or its duly authorized agent, shall retain the right to enter the property or to engage in management activities not inconsistent with the use herein provided for and shall retain the right to grant compatible uses of the property to third parties during the term of this easement.

7. RIGHT TO INSPECT: Grantor, or its duly authorized agent, shall have the right at any time to inspect the works and operations of the Grantee in any matter pertaining to this easement.

8. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: The Grantee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

9. ASSIGNMENT OF EASEMENT: This easement shall not be assigned or otherwise transferred without prior written consent of the Grantor or its duly authorized agent. Any assignment or other transfer without prior written consent of the Grantor shall be null and void and without legal effect.

10. TERMINATION: The Grantee, by acceptance of this easement, binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Grantee, its successors and assigns. In the event the Grantee fails or refuses to comply with the provisions and conditions herein set forth or in the event the Grantee violates any of the provisions and conditions herein, this easement may be terminated by the Grantor upon 30 days written notice to Grantee. If terminated, all of the above-described parcel of land shall revert to the Grantor. All notices required to be given to Grantee by this easement or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

Canaveral Port Authority  
Attention: Mr. Craig Langley  
445 Challenger Road, Suite 301  
Cape Canaveral, Florida 32920

The Grantee agrees to notify the Grantor by certified mail of any changes to this address at least ten (10) days before the change is effective.

11. TAXES AND ASSESSMENTS: The Grantee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this easement which result from the grant of this easement or the activities of Grantee hereunder.

12. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Grantee does not remove said structures and equipment occupying and erected upon the premises after expiration or cancellation of this easement, such structures and equipment will be deemed forfeited to the Grantor, and the Grantor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Grantee at the address specified in paragraph 10 or at such address on record as provided to the Grantor by the Grantee. However, such remedy shall be in addition to all other remedies available to Grantor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

13. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Grantor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Grantor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

14. AMENDMENTS/ MODIFICATIONS: This easement is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this easement must be in writing and must be accepted, acknowledged and executed by the Grantee and Grantor.

15. USACE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Grantee shall obtain the U.S. Army Corps of Engineers (USACE) permit if it is required by the USACE. Any modifications to the construction and/or activities authorized herein that may be required by the USACE shall require consideration by and the prior written approval of the Grantor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

16. ADDITIONAL STRUCTURES OR ACTIVITIES/EMERGENCY STRUCTURAL REPAIRS: No additional structures shall be erected and/or activities undertaken, including but not limited to, dredging, relocation/realignment or major repairs or renovations made to authorized structures, on, in or over sovereignty, submerged lands without the prior written consent of the Grantor, with the exception of emergency repairs. Unless specifically authorized in writing by the Grantor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Grantee to administrative fines under Chapter 18-14, Florida Administrative Code. If emergency repairs are required to be undertaken in the interests of public health, safety or welfare, the Grantee shall notify the Grantor of such repairs as quickly as is practicable; provided, however, that such emergency activities shall not exceed the activities authorized by this easement.

17. UPLAND RIPARIAN PROPERTY INTEREST: During the term of this easement, Grantee must have satisfactory evidence of sufficient upland interest as defined in subsection 18-21.003(60), Florida Administrative Code, to the extent required by paragraph 18-21.004(3)(b), Florida Administrative Code, in order to conduct the activity described in this easement. If at any time during the term of this easement, Grantee fails to comply with this requirement, use of sovereignty, submerged lands described in this easement shall immediately cease and this easement shall terminate and title to this easement shall revert to and vest in the Grantor immediately and automatically.

18. ACCRETION INTEREST: In further consideration of the issuance of this easement by Grantor, Grantee expressly waives any right, title or interest in and to any accretions or additions to Grantee's shoreline resulting from any activity approved herein.

WITNESSES:

Original Signature \_\_\_\_\_

Print/Type Name of Witness \_\_\_\_\_

Original Signature \_\_\_\_\_

Print/Type Name of Witness \_\_\_\_\_

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

(SEAL)

BY: \_\_\_\_\_

Cheryl C. McCall, Chief, Bureau of Public Land Administration,  
Division of State Lands, 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

"GRANTOR"

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Cheryl C. McCall, Chief, Bureau of Public Land Administration, Division of State Lands, 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. She is personally known to me.

APPROVED AS SUBJECT TO PROPER EXECUTION:

DEP Attorney

*[Handwritten Signature]*  
Date 11/18/15

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No. \_\_\_\_\_

WITNESSES:

Canaveral Port Authority (SEAL)  
By its Board of Commissioners

\_\_\_\_\_  
Original Signature

BY: \_\_\_\_\_  
Original Signature of Executing Authority

\_\_\_\_\_  
Typed/Printed Name of Witness

Jerry Allender  
Typed/Printed Name of Executing Authority

\_\_\_\_\_  
Original Signature

Chairman  
Title of Executing Authority

\_\_\_\_\_  
Typed/Printed Name of Witness

“GRANTEE”

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Jerry Allender as Chairman, for and on behalf of Board of Commissioners of Canaveral Port Authority. He is personally known to me or who has produced \_\_\_\_\_, as identification.

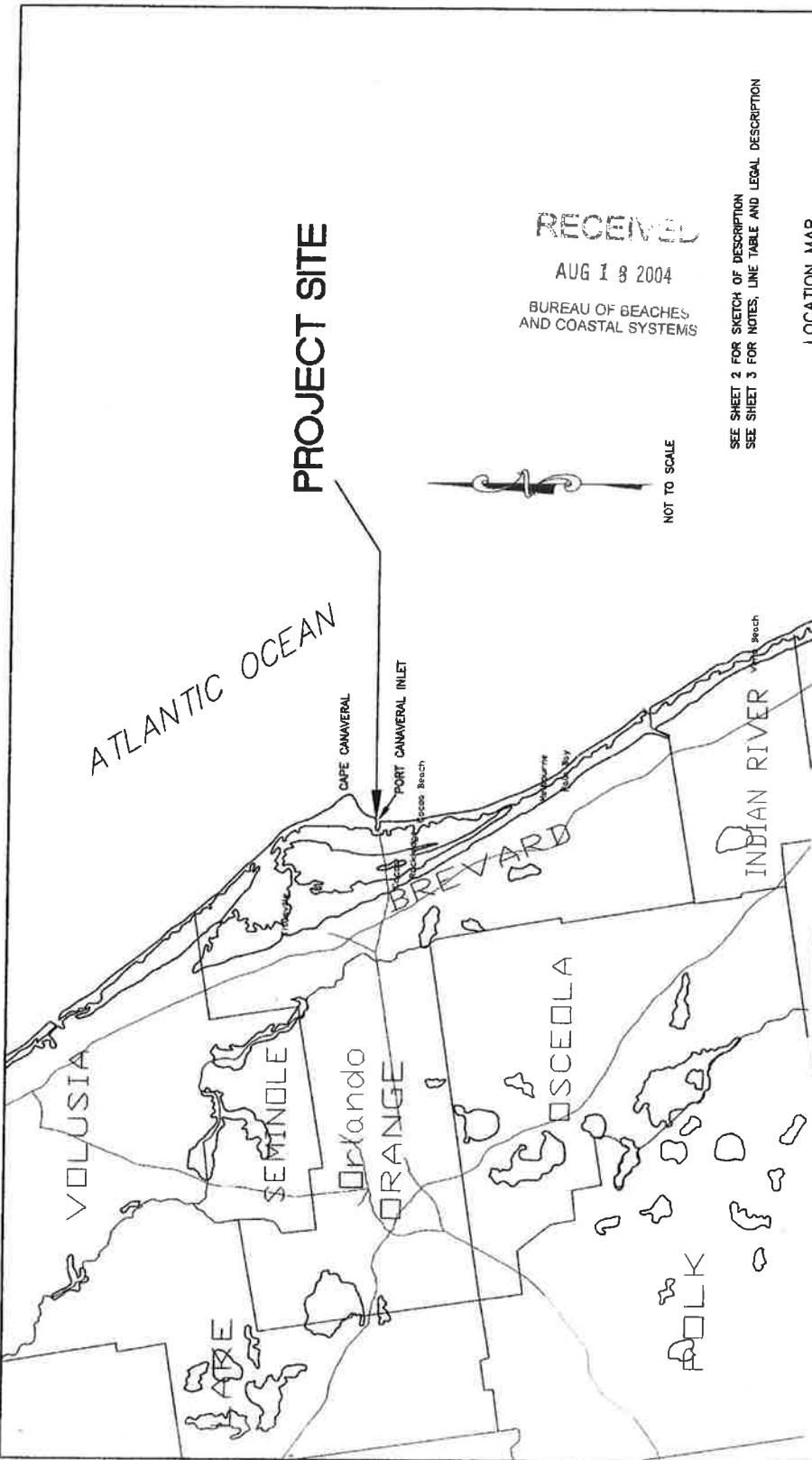
My Commission Expires:

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
Commission/Serial No. \_\_\_\_\_

\_\_\_\_\_  
Printed, Typed or Stamped Name

RECEIVED  
 AUG 18 2004  
 BUREAU OF BEACHES  
 AND COASTAL SYSTEMS



SEE SHEET 2 FOR SKETCH OF DESCRIPTION  
 SEE SHEET 3 FOR NOTES, LINE TABLE AND LEGAL DESCRIPTION

LOCATION MAP

<p><b>MORGAN &amp; EKLUND, INC.</b>          PROFESSIONAL SURVEY CONSULTANTS          8746 US HIGHWAY #1          P.O. BOX 70128          MIAMI, FL 33141          PHONE: (773) 382-1420          FAX: (773) 382-1155</p>	<p>DATE OF SURVEY: N/A</p>
	<p>DATE OF PLOTTING: N/A</p>
<p>PROJECT NO.: 294621</p>	<p>DATE OF SURVEY: AS NOTED</p>
<p>PROJECT NAME: BORROW AREA SUBMERGED LANDS EASEMENT for : OLSEN ASSOCIATES, INC. CAPE CANAVERAL, FLORIDA</p>	<p>DATE OF PLOTTING: 12/05/03</p>
<p>PROJECT NO.: 294621</p>	<p>DATE OF PLOTTING: 12/05/03</p>

8/17/04

LINE TABLE

LINE	BEARING	DISTANCE
A	S55°59'16"E	838.53
B	S42°18'12"W	2952.91
C	S40°21'12"W	1212.71
D	S36°16'57"W	551.32
E	S31°30'40"W	730.48
F	S19°33'50"W	403.49
G	S07°32'52"W	818.22
H	S07°04'08"W	697.19
I	S33°38'33"W	659.11
J	N87°53'50"W	926.62
K	N03°41'29"E	121.26
L	N82°23'44"E	383.59
M	N19°48'50"E	337.90
N	N55°15'36"E	397.50
O	N17°59'30"E	508.78
P	N07°42'04"E	508.78
Q	N25°04'26"E	505.24
R	N39°18'27"E	500.44
S	N39°18'27"E	500.72
T	N35°37'28"E	503.78
U	N35°37'28"E	492.19
V	N38°14'08"E	504.84
W	N39°13'20"E	507.15
X	N38°34'29"E	494.26
Y	N40°14'52"E	495.72
Z	N39°16'15"E	501.50
AA	N39°24'52"E	500.44
BB	N41°07'43"E	500.72
CC	N42°55'56"E	503.78
DD	N43°12'58"E	492.19

CONTROL COORDINATES (NAD 83/90)

MONUMENT	NORTHING	EASTING
CCAF'S-29	1482692.87	789605.23
CCAF'S-38	1489595.68	794136.58

LEGAL DESCRIPTION

A PARCEL OF SOVEREIGN SUBMERGED LAND LYING ADJACENT TO SECTIONS 1 AND 12, TOWNSHIP 24 SOUTH, RANGE 37 EAST, BREVARD COUNTY FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT CAPE CANAVERAL AIR FORCE MONUMENT 'CCAF'S-38', HAVING COORDINATES OF NORTHING 1489595.68 FEET AND EASTING OF 794136.58 FEET AS REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT (NAD 83/90), PROCEED S56°00'13"E, A DISTANCE OF 254.97 TO A POINT ON THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN (ELEVATION 2.0 FEET NGVD AS LOCATED MAY 2003) AND THE POINT OF BEGINNING (NORTHING OF 1489453.12 AND EASTING OF 794347.97 NAD 83/90);

THENCE S55°59'16"E INTO THE WATERS OF THE ATLANTIC OCEAN, A DISTANCE OF 838.53 FEET, THENCE S42°18'12"W, A DISTANCE OF 2952.91 FEET, THENCE S40°21'12"W, A DISTANCE OF 1212.71 FEET, THENCE S36°16'57"W, A DISTANCE OF 551.32 FEET, THENCE S31°30'40"W, A DISTANCE OF 730.48 FEET, THENCE S19°33'50"W, A DISTANCE OF 403.49 FEET, THENCE S07°32'52"W, A DISTANCE OF 818.22 FEET, THENCE S07°04'08"W, A DISTANCE OF 697.19 FEET, THENCE N87°53'50"W, A DISTANCE OF 926.62 FEET, THENCE N03°41'29"E, A DISTANCE OF 121.26 FEET, THENCE N82°23'44"E, A DISTANCE OF 383.59 FEET, THENCE N19°48'50"E, A DISTANCE OF 337.90 FEET, THENCE N55°15'36"E, A DISTANCE OF 397.50 FEET, THENCE N17°59'30"E, A DISTANCE OF 508.78 FEET, THENCE N07°42'04"E, A DISTANCE OF 508.78 FEET, THENCE N25°04'26"E, A DISTANCE OF 505.24 FEET, THENCE N39°18'27"E, A DISTANCE OF 500.44 FEET, THENCE N39°18'27"E, A DISTANCE OF 500.72 FEET, THENCE N35°37'28"E, A DISTANCE OF 503.78 FEET, THENCE N35°37'28"E, A DISTANCE OF 492.19 FEET TO THE POINT OF BEGINNING.

1482692.87 AND EASTING OF 789605.23 NAD 83/90) BEING 376.09 FEET DISTANT FROM CAPE CANAVERAL AIR FORCE MONUMENT 'CCAF'S-29' (NORTHING OF 1482692.87 AND EASTING OF 789605.23 NAD 83/90) ALONG A BEARING OF S58°01'17"W, THENCE ALONG THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN (ELEVATION 2.0 FEET NGVD AS LOCATED MAY, 2003) N13°27'38"E, A DISTANCE OF 526.22 FEET, THENCE N17°59'30"E, A DISTANCE OF 508.78 FEET, THENCE N20°42'04"E, A DISTANCE OF 502.94 FEET, THENCE N35°35'26"E, A DISTANCE OF 505.24 FEET, THENCE N32°25'39"E, A DISTANCE OF 498.03 FEET, THENCE N39°13'20"E, A DISTANCE OF 507.15 FEET, THENCE N36°14'08"E, A DISTANCE OF 504.84 FEET, THENCE N40°14'52"E, A DISTANCE OF 495.72 FEET, THENCE N38°34'29"E, A DISTANCE OF 494.26 FEET, THENCE N39°18'27"E, A DISTANCE OF 495.72 FEET, THENCE N39°16'15"E, A DISTANCE OF 501.50 FEET, THENCE N39°24'52"E, A DISTANCE OF 500.44 FEET, THENCE N41°07'43"E, A DISTANCE OF 500.72 FEET, THENCE N42°55'56"E, A DISTANCE OF 503.78 FEET, THENCE N43°12'58"E, A DISTANCE OF 492.19 FEET TO THE POINT OF BEGINNING.

CONTAINING 162.8 ACRES PLUS OR MINUS.

NOTES:

- 1) THIS IS NOT A FIELD SURVEY.
- 2) LOCATION OF MEAN HIGH WATER LINE BASED ON SURVEY DATA PROVIDED BY U.S. ARMY CORPS OF ENGINEERS, DATED MAY 2003.
- 3) MEAN HIGH WATER ELEVATION (2.0 FEET NGVD), BASED ON MEAN HIGH WATER DATA POINT ID No. 14001 PER FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION LABINS.
- 4) BEARINGS AND COORDINATES ARE REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, AND ARE REFERENCED TO THE NORTH AMERICAN DATUM OF 1983, 1990 ADJUSTMENT (NAD 83/90).
- 5) NOT VALID WITHOUT THE SIGNATURE AND MAPPER SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- 6) LOCATION OF PROPOSED BORROW AREA PROVIDED BY OLSEN ASSOCIATES.

LEGEND:  
 P.O.B. = POINT OF COMMENCEMENT  
 P.O.B. = POINT OF BEGINNING  
 FDP = FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

RECEIVED

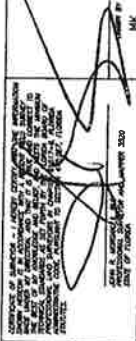
AUG 18 2004

BUREAU OF BEACHES AND COASTAL SYSTEMS

SEE SHEET 1 FOR LOCATION MAP  
 SEE SHEET 2 FOR SKETCH OF DESCRIPTION

LEGAL DESCRIPTION

BORROW AREA  
 SUBMERGED LANDS EASEMENT  
 for : OLSEN ASSOCIATES, INC.  
 CAPE CANAVERAL, FLORIDA

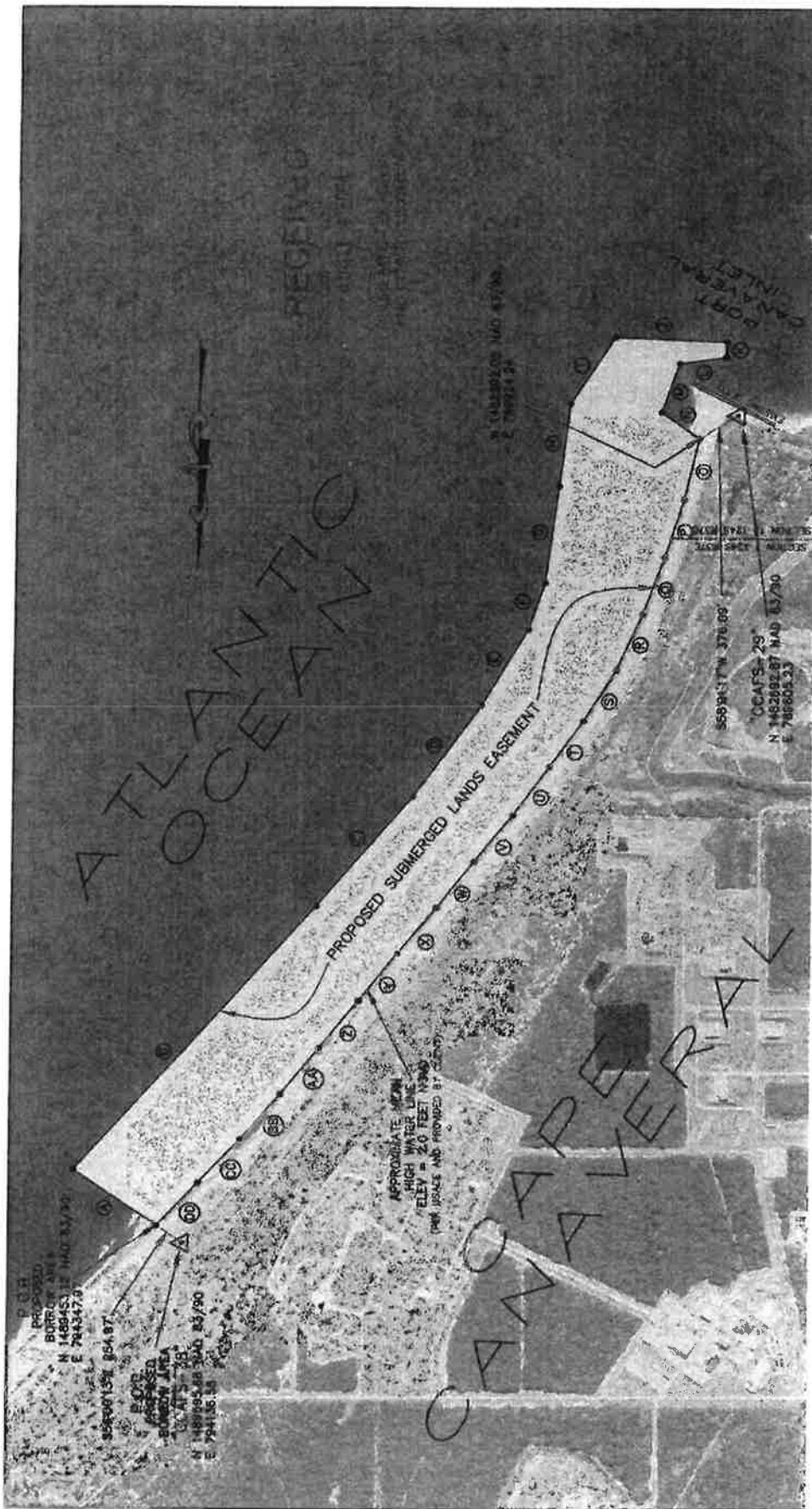


**MORGAN & EKLUND, INC.**  
 PROFESSIONAL SURVEY CONSULTANTS  
 8745 U.S. HIGHWAY #1  
 SUITE 110  
 WAKESHA, FL 32772-1400  
 PHONE: (772) 388-5344  
 FAX: (772) 388-5165

1500 S.E. 3RD COURT  
 SUITE 110  
 DEERFIELD BEACH, FL 33441  
 PHONE: (854) 421-6882  
 FAX: (854) 421-0451

COMMISSION NO.	2946.21
DATE	N/A
DATE	12/05/03
SHEET	3 OF 3





SKETCH OF DESCRIPTION

COMMISSION NO.	29416.21
SCALE	1" = 1000'
DATE	12/05/03
SHEET	2 of 3

**BORROW AREA  
SUBMERGED LANDS EASEMENT**  
for : **OLSEN ASSOCIATES, INC.**  
**CAPE CANAVERAL, FLORIDA**

SEE SHEET 1 FOR LOCATION MAP  
SEE SHEET 3 FOR NOTES, LINE TABLE AND LEGAL DESCRIPTION

**MORGAN & EKLUND, INC.**  
PROFESSIONAL SURVEY CONSULTANTS  
1500 S.E. 3RD COURT  
SUITE 110  
DEERFIELD, FL 33441  
PHONE: (850) 421-0881  
FAX: (850) 421-0431

**GRAPHIC SCALE**  
( IN FEET )  
1 inch = 100 ft.