FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

160 W. GOVERNMENT STREET, SUITE 308
PENSACOLA, FLORIDA 32502-5740

RICK SCOTT
GOVERNOR

CARLOS LOPEZ-CANTERA
LT. GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

April 4, 2014

BY ELECTRONIC MAIL:
Mcdowel2@nwfsc.edu

Choctawhatchee Basin Alliance
of Northwest Florida State College
c/o Alison McDowell
109 Greenway Trail
Santa Rosa Beach, FL 32459

Project Name: Fred Gannon Rocky Bayou State Park
Shoreline Restoration
File No.: 46-0325167-001-EE
Okaloosa County

Dear Ms. McDowell:

On March 20, 2014, we received your request for verification of exemption to perform the following activities:

Plant native, emergent wetland vegetation along 60 linear feet of shoreline. Eighteen-inch by 12-inch biodegradable burlap sand bags, filled with site appropriate sand, will be used to stabilize the plants. Three, four-inch *Spartina alterniflora* will be placed in each burlap bag. Planting will occur along the mean high water line and will extend three foot waterward; bags will be buried in the sediment with approximately 2-inches left above grade. The project is located at the Fred Gannon Rocky Bayou State Park, on Rocky Bayou Aquatic Preserve, a Class II Outstanding Florida Waterbody, Section 14, Township 1S, Range 22W, at Latitude 30° 30' 1.333" North, Longitude -86° 25' 9.965" West, in Okaloosa County.

Your request has been reviewed to determine whether it qualifies for (1) regulatory exemption, (2) proprietary authorization (related to state-owned submerged lands), and (3) federal approval that may be necessary for work in wetlands or waters of the United States.

Your project did not qualify for the federal review portion of this verification request. **Additional authorization must be obtained prior to commencement of the proposed activity**. This letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity. Please refer to the specific section(s) dealing with that portion of the review below for advice on how to proceed.

1. Regulatory Review – Verified

Based on the information submitted, the Department has verified that the activity as proposed is exempt, under Paragraph 62-330.051(12)(e), Florida Administrative Code, from the need to obtain a regulatory permit under part IV of Chapter 373 of the Florida Statutes.

This exemption verification is based on the information you provided the Department and the statutes and rules in effect when the information was submitted. This verification will expire after one year, and will not be valid at any other time if site conditions materially change, the project design is modified, or the statutes or rules governing the exempt activity are amended. However, the activity may still be conducted without further notification to or verification from the Department after the one-year expiration of this verification, provided: 1) the project design does not change; 2) site conditions do not materially change; and 3) there are no changes to the statutes or rules governing the exempt activity. In the event you need to re-verify the exempt status for the activity after the one-year expiration of this verification, a new application and verification fee will be required. Any substantial modifications to the project design should be submitted to the Department for review, as changes may result in a permit being required.

General Conditions for Exemptions
The following apply when specified in an exemption in Rule 62-330.051, F.A.C.:

1. Activities shall not exceed a permitting threshold in section 1.2 of the applicable Volume II;

2. Construction, alteration, and operation shall not:
   a. Adversely 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;
   b. Cause an adverse impact to the minimum flows and levels established pursuant to Section 373.042, F.S.
   c. Cause adverse impacts to a Work of the District established pursuant to Section 373.086, F.S.;
   d. Adversely impede navigation or create a navigational hazard;
   e. Cause or contribute to a violation of state water quality standards. Turbidity, sedimentation, and erosion shall be controlled during and after construction to prevent violations of state water quality standards, including any antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), subsections 62-4.242(2) and (3) and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters due to construction-related activities. Erosion and sediment control best management practices shall be installed and maintained in accordance with the guidelines and specifications described in the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual* (Florida Department of Environmental Protection and Florida Department of Transportation, June 2007), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-02530), and the *Florida Stormwater Erosion and Sedimentation Control Inspector's Manual* (Florida Department of Environmental Protection, Nonpoint Source Management Section,

Tallahassee, Florida, July 2008), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-02531).

3. When performed in waters accessible to federally- or state-listed aquatic species, such as manatees, marine turtles, smalltooth sawfish, and Gulf sturgeon, all in-water work shall comply with the following.
   a. All vessels associated with the project shall operate at "Idle Speed/No Wake" at all times while in the work area and where the draft of the vessels provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
   b. All deployed siltation or turbidity barriers shall be properly secured, monitored, and maintained to prevent entanglement or entrapment of listed species.
   c. All in-water activities, including vessel operation, must be shutdown if a listed species comes within 50 feet of the work area. Activities shall not resume until the animal(s) has moved beyond a 50-foot radius of the in-water work, or until 30 minutes elapses since the last sighting within 50 feet. Animals must not be herded away or harassed into leaving. All on-site project personnel are responsible for observing water-related activities for the presence of listed species.
   d. Any listed species that is killed or injured by work associated with activities performed shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1(888)404-3922 and ImperiledSpecies@myFWC.com. Copies of incorporated materials identified above may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C.

2. Proprietary Review - Granted

The Department acts as staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) and issues certain authorizations for the use of sovereign submerged lands. The Department has the authority to review activities on sovereign submerged lands under chapters 253 and 258 of the Florida Statutes, and chapters 18-20 and 18-21 of the Florida Administrative Code.

The activity appears to be located on sovereign submerged lands owned by the Board of Trustees. The activity is not exempt from the need to obtain the applicable proprietary authorization. As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that the activity qualifies for a Letter of Consent under section 253.77, Florida Statutes, to construct and use the activity on the specified sovereign submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein. During the term of this Letter of Consent you shall maintain satisfactory evidence of sufficient upland interest as required by paragraph 18-21.004(3)(b), Florida Administrative Code. If such interest is terminated or the Board of Trustees determines that such interest did not exist on the date of issuance of this Letter of Consent, this Letter of Consent may be terminated by the Board of Trustees at its sole option. If the Board of Trustees terminates this Letter of Consent, you agree not to assert a claim or defense against the Board of Trustees arising out of this Letter of Consent.

General Conditions for State-Owned Submerged Land Authorizations:

(a) Authorizations are valid 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 shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.

(b) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.

(c) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.

(d) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.

(e) Construction, use, or operation of the structure or activity shall 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, F.A.C.

(f) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.

(g) Structures or activities shall not create a navigational hazard.

(h) 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, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.

(i) 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), F.A.C., or any other applicable law.

3. Federal Review – SPGP - Not Approved

A copy of your notice also has been sent to the U.S. Army Corps of Engineers (USACOE) for review. The USACOE may require a separate permit. Failure to obtain this authorization prior to construction could subject you to enforcement action by that agency.

Authority for review - an agreement with the USACOE entitled "Coordination Agreement Between the U. S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection, or Duly Authorized Designee, State Programmatic General

Permit," Section 10 of the Rivers and Harbor Act of 1899, and Section 404 of the Clean Water Act.

Additional Information

This letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity.

Please retain this letter. The activities may be inspected by authorized state personnel in the future to insure compliance with appropriate statutes and administrative codes. If the activities are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 18-14, F.A.C.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice.

Petition for Administrative Hearing
A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing must contain 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 email address, any facsimile number, and telephone number of the petitioner; 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 are or 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 that the petitioner contends warrant reversal or modification of the agency's proposed action;
(f) A statement of the specific rules or statutes that 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 that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S. must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the order is filed with the Clerk of the Department.

Judicial Review

Any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this action is filed with the Clerk of the Department.

Thank you for applying to the Submerged Lands and Environmental Resource Permit Program. If you have any questions regarding this matter, please contact Sarah Kell at the letterhead address, at (850) 595-0602, or at sarah.kell@dep.state.fl.us.

Executed in Escambia County, Florida

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

SKell

Sarah Kell
Environmental Specialist
Submerged Lands and Environmental
Resources Program

Attachments:
Project Drawings, 6 pages
Paragraph 62-330.051(12)(e), F.A.C.

Copies furnished to:
U.S. Army Corps of Engineers

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this exemption and authorization to use sovereignty submerged lands, including all copies, were mailed/emailed before the close of business on April 4, 2014, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, under 120.52(7), F.S.,
with the designated Department Clerk,
receipt of which is hereby acknowledged.

	4/4/2014
Clerk	Date

Fred Gannon Rocky Bayou State Park shoreline restoration: Locator map

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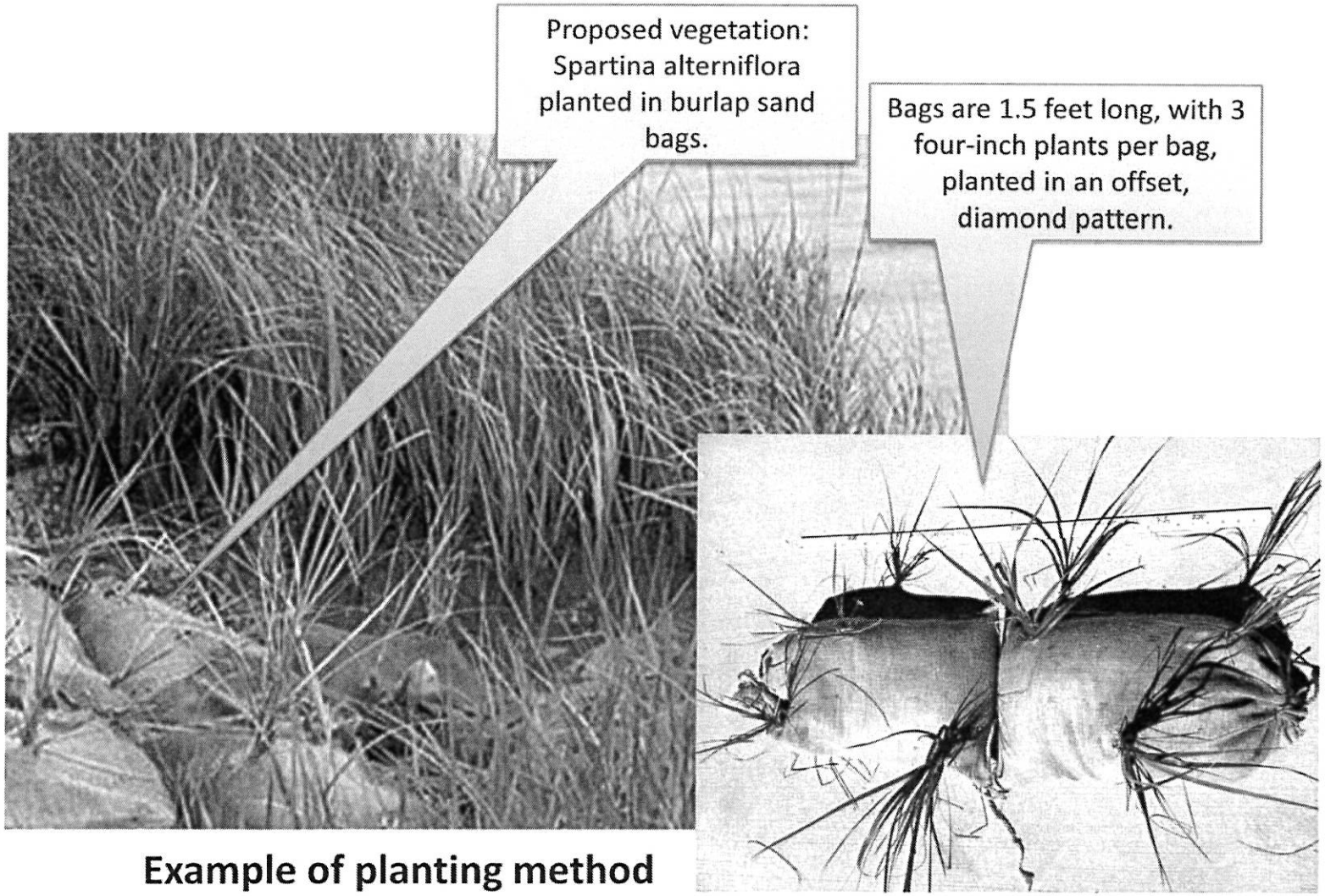

Example of planting method

The proposed project at the Fred Gannon Rocky Bayou State Park parcel will look similar to this site. This picture shows planting area immediately after the site was planted with the burlap sand bag method. The burlap disintegrated after approximately 6 months.

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Fred Gannon Rocky Bayou State Park Shoreline Restoration: Plan View, aerial photo w/o project area overlay

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STATE OF FLORIDA
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Fred Gannon Rocky Bayou State Park Living Shoreline: Plan View, aerial photo

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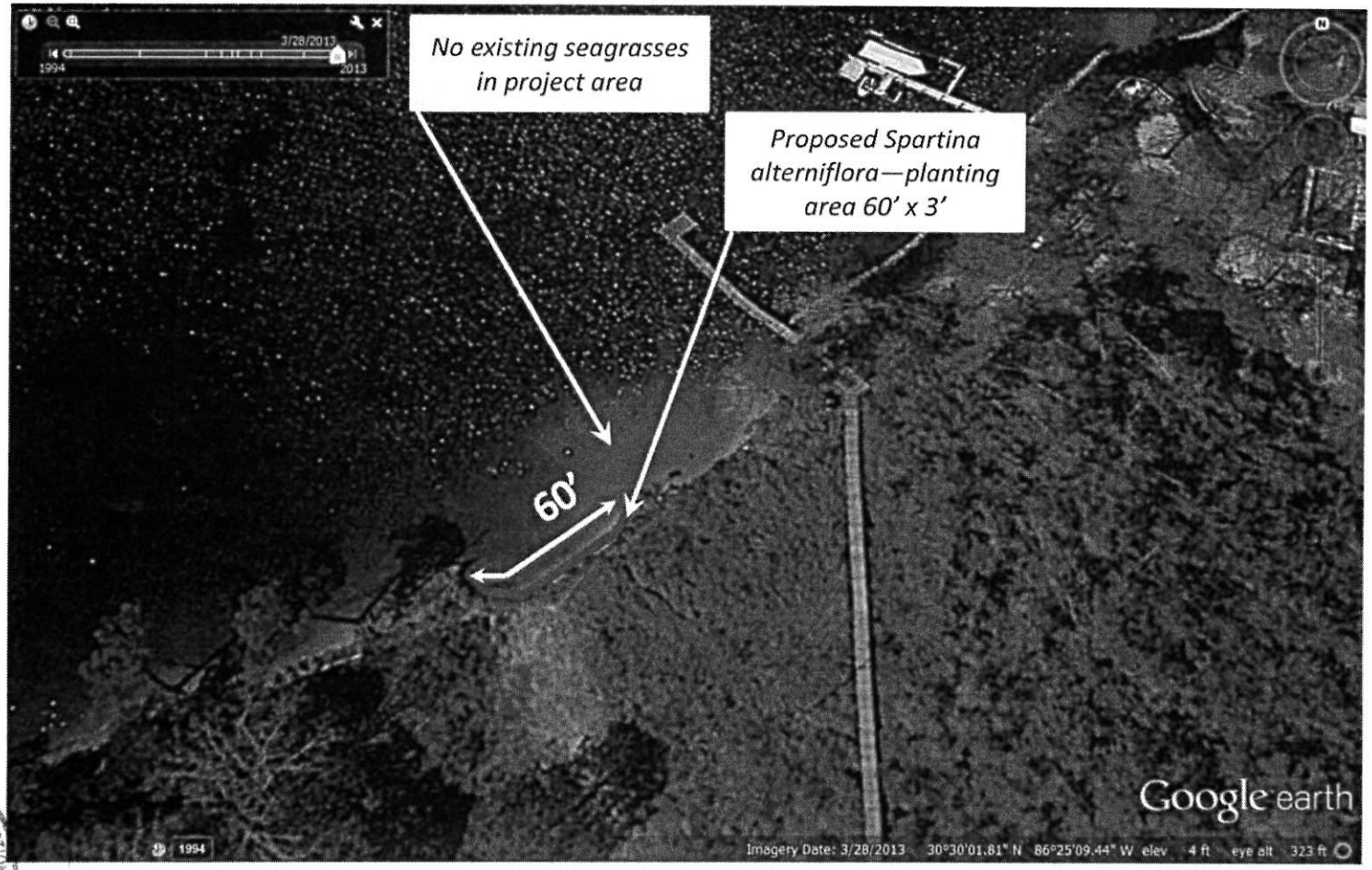

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Fred Gannon Rocky Bayou State Park Shoreline Restoration: Typical Plan view

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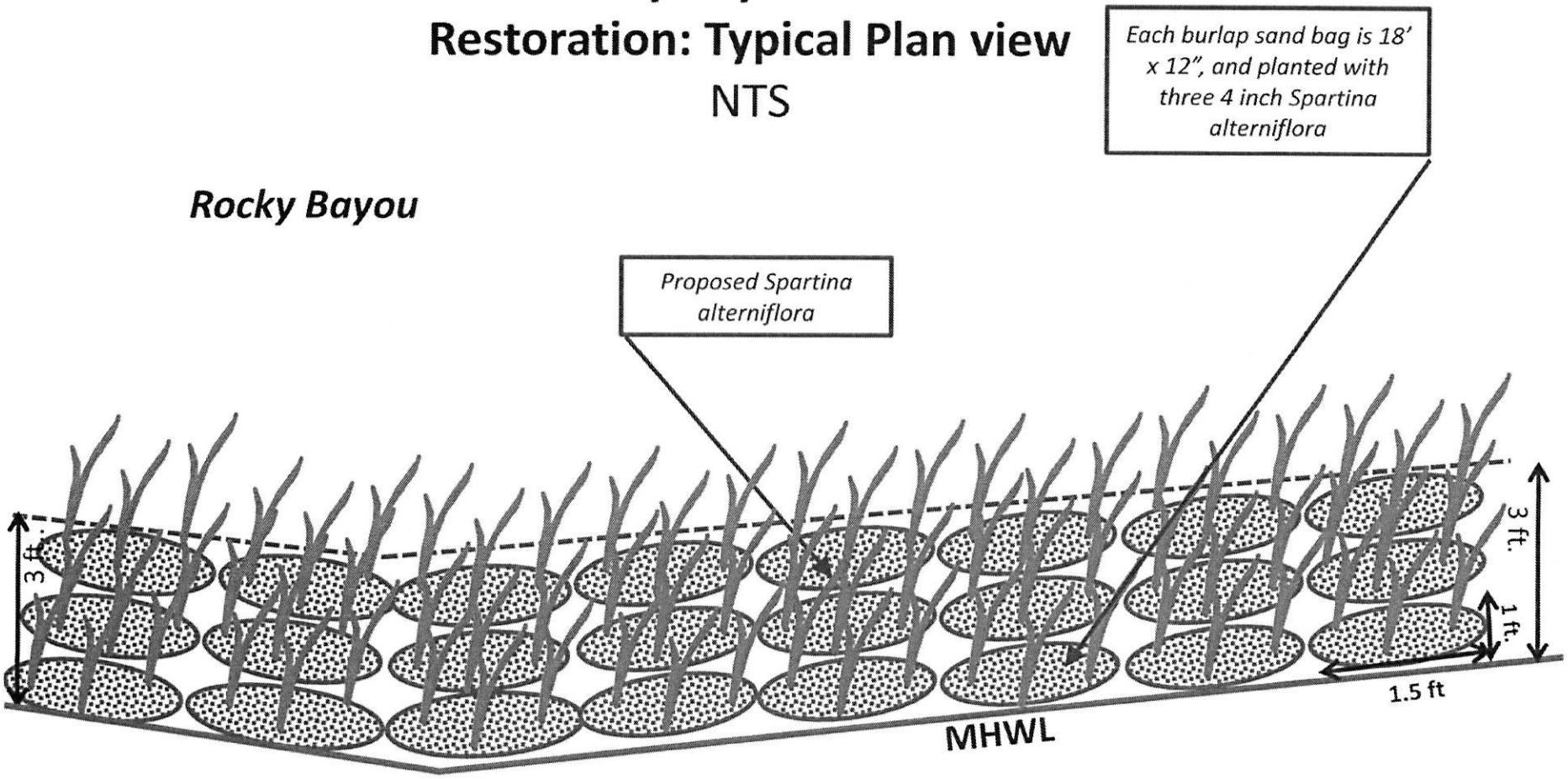

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State parcel

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Fred Gannon Rocky Bayou State Park Shoreline Restoration: Typical Profile

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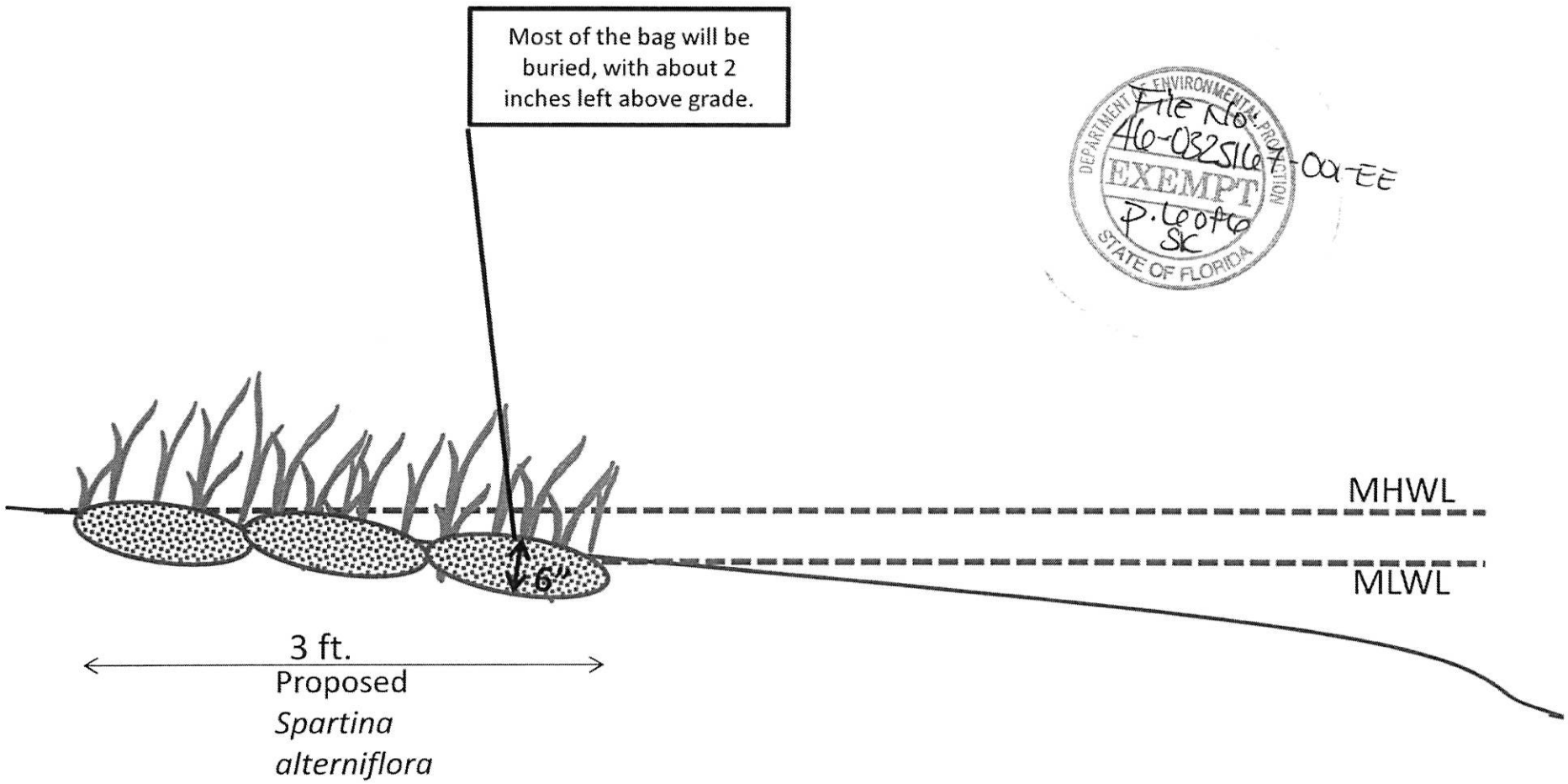

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Paragraph 62-330.051(12)(e), F.A.C.:
The activities meeting the limitations and restrictions below are exempt from permitting. However, if located in, on, or over state-owned submerged lands, they are subject to a separate authorization under Chapters 253 and 258, F.S., and Chapters 18-18, 18-20, and 18-21, F.A.C., as applicable.

(12) Construction, Restoration, Enhancement, and Repair of Seawall, Riprap, and Other Shoreline Stabilization
(e) Restoration of an eroding shoreline with native wetland vegetative enhancement plantings, provided:
1. The length of shoreline is 500 linear feet or less;
2. Plantings are native wetland plants appropriate for the site obtained from commercially-grown stock;
3. Plantings extend no farther than 10 feet waterward of the approximate mean high water line (MHWL);
4. All invasive and exotic vegetative species along the shoreline is removed in conjunction with the planting to the extent practicable;
5. If temporary wave attenuation is needed, turbidity curtains shall be installed and maintained in place parallel to the shoreline for a full growing season;
6. No fill is placed other than that needed to support the vegetative plantings, except that a "breakwater" is authorized to be established concurrent with the planting if permanent wave attenuation is required to maintain the shoreline vegetation, provided:

a. The inner toe of the "breakwater" extends no more than 10 feet waterward of the approximate MHWL, with a top height of no more than MHWL;

b. The "breakwater" is composed predominantly of natural oyster shell cultch (clean and fossilized oyster shell) or other stable, non-degradable materials such as oyster reef, reef balls, unconsolidated boulders, clean concrete rubble, rip rap, rock sills, or triangular concrete forms. Oyster shell cultch, if used, shall be enclosed in mesh bags having openings of no more than 3 inches, or securely fixed to matting prior to placement in the water. Oyster bags and mats must be anchored to prevent movement of shell from the project area;

c. The "breakwater" shall not be placed over, or within 3 feet (in any direction) of any submerged grassbed or existing emergent marsh vegetation;

d. The "breakwater" shall be placed in units so that there is a tidal channel of at least three feet wide located a minimum of every 20 feet along the "breakwater" so as to not substantially impede the flow of water;

e. All equipment used during construction shall be operated from, and be stored in uplands;

f. All work is conducted in compliance with subsection 62-330.050(9), F.A.C.