

ORDER OF DELEGATION AND OPERATING AGREEMENT
BETWEEN THE FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE CITY OF SANIBEL
REGARDING THE REGULATION OF MANGROVES

THIS Agreement is made and entered into this 21st day of NOVEMBER, 1995, by and between the Department of Environmental Protection (the Department) and the City of Sanibel (COS). By execution of this agreement, the Department delegates its authority to regulate the trimming and alteration of mangroves.

WITNESSETH

WHEREAS, mangroves play an important ecological role as habitat for various species of marine and estuarine vertebrates, invertebrates, and other wildlife, including mammals, birds, and reptiles; and

WHEREAS, mangroves contribute to the economies of many coastal counties in the state through a combination of functions; and

WHEREAS, it is the intent of section 403.9323(1) of the Florida Statutes to protect and preserve mangrove resources valuable to Florida's environment and economy from unregulated removal, defoliation, and destruction; and

WHEREAS, the Department has been directed by the Legislature to delegate its authority to administer and enforce the regulation of trimming and alteration of mangroves pursuant to ss. 403.9321 - 403.9333 of the Florida Statutes (Mangrove Trimming and Preservation Act) to any local government that makes written request for delegation, if the local government can demonstrate that it has sufficient resources and procedures for the adequate administration and enforcement of a delegated mangrove regulatory program.

I. ORDER OF DELEGATION

A. COS is delegated the authority to issue permits for the trimming of mangroves, provided such mangrove trimming is proposed in connection with an activity that does not require a wetland resource or environmental resource permit under Part IV of Chapter 373, F.S., in lieu of a Department permit pursuant to the Mangrove Trimming and Preservation Act. In accordance with section 403.9327(3) of this act, COS may impose stricter substantive standards than the Department for such mangrove trimming permits; however, such regulations may not preclude the issuance of a permit for the trimming of mangroves in extended mangrove fringe areas.

B. COS is delegated the authority to issue permits for the alteration of mangroves (to remove, destroy, or defoliate mangroves), provided such mangrove alteration is proposed in connection with an activity that does not require a wetland resource or environmental resource permit under Part IV of Chapter 373, F.S., in lieu of a

Department permit pursuant to the Mangrove Trimming and Preservation Act. In accordance with Section 403.9328(3) of this act, COS may impose stricter substantive standards than the Department for such mangrove alteration permits, but may not preclude the issuance of permits.

C. The Department hereby retains the authority to administer and enforce the provisions of ss. 403.9321 - 403.9333, F.S., when mangrove alteration or trimming is proposed in connection with an activity that requires a wetland resource or environmental resource permit to be issued by the Department or the South Florida Water Management District under Part IV of Chapter 373, F.S., if and until COS is delegated the authority to issue such Part IV permits pursuant to section 373.441, F.S. Nothing herein shall preclude COS from administering and enforcing any lawfully adopted regulations in a manner consistent with the provisions of ss. 403.9321 - 403.9333, F.S.

D. COS is delegated the authority to enforce the provisions of the Mangrove Trimming and Preservation Act, as provided in section 403.9332 of the Florida Statutes, for activities requiring a permit from COS. COS is also authorized to enforce any lawful regulation adopted by COS to the fullest extent possible, in accordance with the provisions of this act. Nothing herein shall limit or restrict COS's authority to enforce any lawful regulation adopted by COS to the fullest extent possible. Nevertheless, nothing herein shall limit or restrict the Department's authority to enforce the provisions of the Mangrove Trimming and Preservation Act for activities that require a wetland resource or environmental resource permit under Part IV of Chapter 373, F.S.

II. OPERATING AGREEMENT

A. PURPOSE OF OPERATING AGREEMENT

1. The purpose of this Agreement between the Department and COS is to implement the legislative direction in the Mangrove Trimming and Preservation Act to delegate the Department's authority to regulate the trimming and alteration of mangroves to counties and municipalities.

2. COS shall require compliance with the statutory requirements set forth in ss. 403.9321 - 403.9333, Florida Statutes, in decisions pertaining to the regulation of mangrove trimming and alteration.

3. COS shall not restrict or qualify the availability of the exemptions to trim mangroves in riparian mangrove fringe areas as provided by s. 403.9326, Florida Statutes, except as provided in Section 403.9329(2)(b), F.S. In accordance with Sections 403.9327 and 403.9328 of the Mangrove Trimming and Preservation Act, COS may impose stricter substantive standards or more demanding procedural requirements for mangrove trimming or alteration outside of riparian mangrove fringe areas.

4. In order to ensure consistent implementation of the Mangrove Trimming and Preservation Act throughout the state, COS agrees to construe the phrase "public lands that have been set aside for conservation or preservation" as provided in the definition of riparian

mangrove fringe in s. 403.9325(6), F.S., to include the following lands:

- a. Conservation and Recreation Lands (CARL);
- b. State and National Parks;
- c. State and National Reserves and Preserves;
- d. State and National Wilderness Areas;
- e. National Wildlife Refuges (lands within refuge boundaries that are owned by the federal government);
- f. Lands acquired under the Save Our Rivers program (SOR);
- g. Lands acquired under the Save Our Coast program (SOC);
- h. Lands acquired under the Environmentally Endangered Lands Bond Program;
- i. Public lands designated as conservation, preservation, or mangrove protection areas under a local government comprehensive plan;
- j. Lands purchased by a local government, Water Management District, the Florida Game and Fresh Water Fish Commission or any other state agency for conservation or preservation purposes;
- k. Public lands encumbered by a conservation easement that does not provide for the trimming of mangroves; and
- l. Public lands designated as Critical Wildlife Areas by Florida Game and Freshwater Fish Commission.

5. In order to further ensure consistent implementation of the Mangrove Trimming and Preservation Act throughout the state, COS agrees that "mangroves on lands that have been set aside for mitigation" as provided in the definition of riparian mangrove fringe in section 403.9325(6), F.S., shall mean mangrove areas on public or private land that have been created, enhanced, restored, or preserved as mitigation pursuant to a Wetland Resource Permit, Management and Storage of Surface Waters Permit, Environmental Resource Permit, a dredge and fill permit issued by COS, or a resolution of an enforcement action, where the permitting or enforcement agency has not determined that the success criteria have been met, or where a consent agreement has been entered into between the permitting or enforcement agency and the property owner or a restrictive covenant or conservation easement has been granted by the property owner that does not provide for trimming. These mangroves may not be trimmed under exemptions applicable to riparian mangrove fringes.

B. MODIFICATION OF AGREEMENT

This Agreement may be modified in writing at any time as necessary by mutual consent of the Department and COS. Modifications may be made in whole, by part, or by section; and upon approval shall supersede previous versions of this Agreement. Approvals of modifications to the language of this Agreement shall be approved and signed by the Secretary for the Department and the Mayor, for the City of Sanibel.

C. REPORTING REQUIREMENTS

The Department may biannually review the performance of COS's delegated mangrove regulatory program to determine if the program is being properly administered and enforced. To allow the Department to effectively review the delegated mangrove regulatory program, COS shall submit a semiannual report to the Department that includes at a minimum:

1. number of trimming and alteration permit applications received during the reporting period;
2. number of trimming and alteration permits issued during the reporting period;
3. number of trimming and alteration permit denials issued during the reporting period;
4. number of exemption notifications issued during the reporting period;
5. number of violations reported and investigated during the reporting period; and
6. number and result of enforcement actions taken during the reporting period.

If additional information is needed for the Department to effectively review COS's performance of administering and enforcing the delegated mangrove regulatory program, COS shall, upon request from the Department's contact person, provide additional information concerning permitting, compliance and enforcement for mangrove trimming and alteration activities.

D. COMPLIANCE AND ENFORCEMENT

1. COS shall be responsible for ensuring that appropriate compliance inspections are conducted on all permits issued pursuant to this Agreement.
2. COS shall be responsible for enforcement of this Agreement and any ordinance, rule, or order adopted pursuant hereto. The Department may provide assistance in compliance and enforcement cases, intervene or take the lead role in any enforcement actions within COS's jurisdiction, when deemed necessary by the Department. The Department shall give notice to COS of its intent to pursue such an enforcement action.
3. Where appropriate, the Department and COS shall coordinate their enforcement activities in order to maximize the staff resources available to each.
4. Nothing in this Agreement shall limit the enforcement authority of either party.

E. NOTIFICATION REQUIREMENTS

1. COS shall notify the Department prior to promulgating new or modified mangrove regulations.

2. All notices and reports required or permitted to be given under the terms and provisions of this Agreement by a party to the other party shall be in writing and sent by registered or certified mail, return receipt requested, as follows:

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Environmental Resource Permitting
Bureau of Aquatic Plant Management
Environmental Program Administrator, Permitting
2051 East Dirac Drive
Tallahassee, Florida 32310

CITY OF SANIBEL
City Manager
800 Dunlop Road
Sanibel, FL 33957-4096

or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt.

F. CONFLICT OF INTEREST

No employee or independent contractor with COS, who is responsible for permitting or compliance and enforcement for mangrove trimming or alteration pursuant to this order, shall supervise or perform mangrove trimming or alteration as part of any private business activity within the jurisdictional boundaries of COS. Furthermore, no employee or independent contractor with COS shall have or hold any employment or contractual relationship that will create a conflict between his private interests and the performance of his public duties.

G. EFFECTIVE DATE OF AGREEMENT

This agreement shall become effective on the latest day and year executed by either the Department or COS as noted below.

H. TERMINATION OF AGREEMENT

1. Either party may terminate this Agreement upon written notice of not less than ninety (90) days.

2. In the event of termination of this Agreement, COS agrees to perform compliance inspections on those permits that were issued by COS under this Agreement, and to report any violations to the Department. COS retains joint authority with the Department to enforce the provisions of the Mangrove Trimming and Preservation Act for any

mangrove trimming or alteration activities which were permitted while COS was operating under the provisions of this Agreement.

I. SEVERABILITY

If any part of this Agreement is judicially, administratively or otherwise determined to be invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect, provided that both parties agree that the material purposes of this Agreement can be determined and effectuated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative(s) on the latest day and year noted below.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

CITY OF SANIBEL

By: *Virginia B. Wetherell*
VIRGINIA B. WETHERELL
Secretary
3900 Commonwealth Blvd.
Tallahassee, FL 32399

By: *Wallace M. Kain*
Wallace M. Kain
Mayor
800 Dunlop Road
Sanibel, FL 33957-4096

This 8th day of November, 1995.

This 21st day of NOVEMBER, 1995.

WITNESS: *Bonnie Jurdall*

WITNESS: *Veronica J. Amey*

Approved as to Form and Legality

Approved as to Form and legality

By: *Stacey D. Cowley*
DEP Attorney

By: *Robert D. Pratt*
COS Attorney