

STATE OF FLORIDA
OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT TRANSPORTATION FUND

AMENDMENT 4

This Fourth Amendment to OTTED Agreement OT01-073 (Agreement) is made and entered into this 31 day of January, 200~~7~~³, by and between the Office of Tourism, Trade, and Economic Development (OTTED) and Nassau County (County) on behalf of Mulch Manufacturing, Inc. (EDTF Business). A copy of all previous amendments and exhibits are hereby attached and incorporated as "Exhibit 1" to this Amendment. OTTED and the County are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

This Amendment is entered into for the purpose of modifying certain provisions relating to the amended Agreement;

In consideration of the mutual promises and agreements contained herein and pursuant to Article 20.0 of the Agreement, the parties agree as follows:

1. Article 2.0 is hereby deleted and replaced by the following:

2.0 TERM: The term of this Agreement shall commence upon execution and continue through July 30, 2004, unless terminated at an earlier date as provided herein. Only project costs incurred on or after the effective date of this agreement and on or prior to the termination date of the agreement are eligible for reimbursement.

2. Article 6.0(b) is hereby deleted and replaced by the following:

(b) The County shall certify to OTTED that the EDTF Business referred to in Section 1.0 above has secured the necessary permits, including but not limited to, building permits, and initiated vertical construction of the facilities referenced. If the County fails to provide such certification to OTTED by December 31, 2002, OTTED may, at its discretion, terminate this Agreement;

3. Article 6.3 is hereby deleted and replaced by the following:

6.3 USE OF FUNDS: Funds made available by OTTED pursuant to this Agreement shall be expended in a timely manner and solely for the purpose of the approved Project. No such funds shall be used for, including but not limited to, the purchase of any capital equipment, landscaping, mitigation planting, water and sewer lines, for any legal action against OTTED, for the administration of the project fund, or costs associated with preparation of the application.

4. Article 9.0 is hereby deleted and replaced by the following:

9.0 DESIGN AND CONSTRUCTION STANDARDS: The County agrees to design and construct the Project in accordance with standards developed by the Florida Department of Transportation (DOT) in accordance with Section 336.045, Florida Statutes, and to provide certification of same to OTTED upon completion of the Project. A professional engineer, registered in Florida, shall provide the certification that all design and construction for the Project meets the minimum construction standards established by DOT.

5. Article 11.0 is hereby deleted and replaced by the following:

11.0 ACCOUNTING, REPORTS, AND AUDITS: The County agrees:

(a) To comply with all requirements found in Section 215.97, Florida Statutes, and the applicable audit and record keeping provisions contained in “Exhibit 2,” attached to this Agreement and incorporated by reference herein.

(b) To include the audit and record keeping requirements from “Exhibit 2” in contracts and subcontracts entered into by the County with any party for work required in the performance of this Agreement.

(c) That three (3) months after the date of execution of this Agreement and every three (3) months thereafter, the County will provide OTTED with quarterly progress reports. Each quarterly report shall contain a narrative description of the work completed according to the project schedule; a description of any change orders executed by the County; a budget summary detailing planned expenditures versus actual expenditures; and identification of minority business enterprises used as contractors and subcontractors. Records of all progress payments made for work in connection with such transportation projects, and any change orders executed by the County and payments made pursuant to such orders, shall be maintained by the County in accordance with accepted governmental accounting principles and practices and shall be subject to financial audit as required by law.

(d) The County shall submit to OTTED a financial audit conducted by an independent certified public accountant, pursuant to Section 288.063(8), Florida Statutes, within three (3) months of the release of County’s annual audit.

6. Article 14.0 is hereby deleted and replaced by the following:

14.0 INDEPENDENT CAPACITY: The County shall act as an independent contractor and not as an employee of OTTED in the performance of this Agreement. The County agrees to take such steps necessary to ensure that each subcontractor of the County will be deemed to be an independent contractor and will not be considered or permitted to be an agent of the State.

The County will not pledge the State's credit or make OTTED a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

7. Article 15.0 is hereby deleted and replaced by the following:

15.0 COMMENCEMENT: Unless terminated earlier, the construction of the Project shall commence no later than January 30, 2003, and shall be completed on or before July 30, 2003. OTTED shall have the immediate option to terminate this Agreement should the County fail to meet either of the above-required dates.

8. Article 22.0 is hereby deleted and replaced by the following:

22.0 PRESERVATION OF REMEDIES: No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or default by either party under this Agreement, will impair any such right, power or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default.

9. Article 27.0 is hereby deleted and replaced by the following:

27.0 AVAILABILITY OF FUNDS: The State of Florida's performance and obligation to pay under this Agreement are contingent upon an appropriation by the Legislature. In the event of a State revenue shortfall, the total grant may be reduced accordingly. OTTED shall be the final determiner of the availability of funds.

10. Article 28.0 is hereby deleted and replaced by the following:

28.0 PUBLIC ENTITY CRIME: The County affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has the County been convicted of a Public Entity Crime. The County agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement

11. Articles 31.0 through 35.0 are hereby added:

31.0 GOVERNING LAW: This Agreement is executed and entered into in the State of Florida, and will be construed, performed, and enforced in all respects in accordance with the laws and rules of the State of Florida. Each party will perform its obligations in accordance with the terms and conditions of this Agreement.

32.0 LIABILITY AND INDEMNIFICATION: OTTED will not assume any liability for the acts, omissions to act, or negligence of the County, its agents, servants, or employees; nor will the County exclude liability for its own acts, omissions to act, or negligence to OTTED. In addition, the County agrees to be responsible for any injury or property damage resulting from any activities conducted by the County.

To the extent permitted by law, the County agrees to indemnify and hold OTTED harmless from and against any and all claims or demands for damages resulting from personal injury, including death or damage to property, arising out of any activities performed under this Agreement and will investigate all claims at its own expense. However, neither OTTED nor any agency or subdivision of the State of Florida waives any defense of sovereign immunity or increases the limits of its liability upon entering into this contractual relationship.

33.0 SUBCONTRACTS: The County shall be responsible for all work performed and all expenses incurred in connection with the project. It is understood by the County that OTTED will not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the County will be solely liable to the subcontractor. When contracting with subcontractors, the County must require subcontractors to indemnify and hold harmless the state for actions of the subcontractor resulting in personal injury or death, or destruction or damage to property, arising out of activities performed under this Agreement and shall investigate all claims at its own expense.

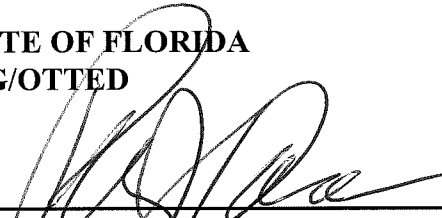
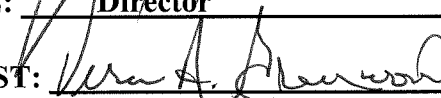
34.0 NON-ASSIGNMENT: Neither party may assign, sublicense, nor otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld. Any assignment, sublicense, or transfer occurring will be null and void; provided, however that OTTED will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to the County. In the event that OTTED approves transfer of the County obligations, the County remains responsible for all work performed and all expenses incurred in connection with this Agreement.

35.0 DISCRIMINATORY VENDOR: The County affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes, and that at no time has the County been placed on the Discriminatory Vendor List. The County further agrees that it shall not violate such law and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.


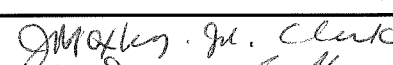
- 12. This Amendment is not intended to increase the maximum amount that may be paid to the County under the original Agreement.
- 13. The Parties reaffirm all portions of Exhibit 1 not in conflict with this Amendment. Performance in accordance with this Amendment will be considered performance of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their undersigned officials as duly authorized.

STATE OF FLORIDA
EOG/OTTE

BY: 
DATE: 1/31/03
TITLE: Director
ATTEST: 

NASSAU COUNTY

BY: 
 Vickie Samus
DATE: 1-27-03
TITLE: Chairman, Board of County Commissioners
ATTEST:  J.M. Oxley, Jr. Clerk
by Joyce Bradley, Deputy Clerk
 J. M. Oxley, Jr. "Chip" Oxley, Jr.
 Ex-Officio Clerk

Approved as to form by the Nassau County Attorney:

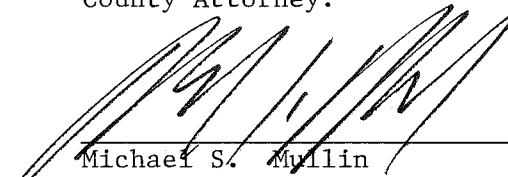

 Michael S. Mullin

EXHIBIT 1

**STATE OF FLORIDA
OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT TRANSPORTATION FUND**

AMENDMENT 3

Amendment Number 3 made this 19 day of February, 2002, amends the Agreement (OT01-073) entered into on February 19, 2001, between the Office of Tourism, Trade, and Economic Development (OTTED) and Nassau County (County) on behalf of Mulch Manufacturing, Inc. (EDTF Business), and modified on August 24, 2001 and October 2, 2001. A copy of the previous modifications and agreement are attached as "Exhibit A."

Whereas the parties to the Agreement desire to modify certain provisions relating to the Agreement;

Now, Therefore in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

The text of Section 2.0 of the Agreement is hereby stricken and shall be amended and shall now read:

2.0 TERM: The term of this Agreement commenced upon execution of the original EDTF Agreement (February 19, 2001) and continues through January 26, 2004, unless terminated at an earlier date as provided herein. Only project costs incurred on or after the effective date of February 19, 2001, and on or prior to the termination date of this agreement are eligible for reimbursement.

The Sub-section 6. 0(b) is hereby stricken and shall be amended and shall now read:

(b) The County shall certify to OTTED that the EDTF Business referred to in Paragraph 1.0 above has secured the necessary permits, including but not limited to, building permits, and initiated vertical construction of the facilities referenced. If the County fails to provide such certification to OTTED by June 19, 2002, OTTED may, at its discretion, terminate this Agreement;

The text of Section 15.0 of the Agreement is hereby stricken and shall be amended and shall now read:

15.0 COMMENCEMENT: Unless terminated earlier, the construction of the Project shall commence no later than July 30, 2002, and shall be completed on or before January 27, 2003. OTTED shall have the immediate option to terminate this Agreement should the County fail to meet either of the above-required dates.

31.0 SIGNATORIES AUTHORITY: By the execution hereof, the parties covenant that the provisions of this Agreement have been duly approved and signatories hereto are duly authorized to execute this Agreement.

32.0 DUPLICATE ORIGINALS: This Agreement is executed in duplicate originals.

STATE OF FLORIDA
EOG/OTTED)

BY: 

DATE: 2/21/02

TITLE: Director

ATTEST: Vern A. Greenwood

TITLE: Incentives Coordinator

NASSAU COUNTY

BY: 

NICK D. DEONAS

DATE: 2/11/02

TITLE: Chairman, Board of County Commissioners

ATTEST: 

M.M. "Chip" Oxley, Jr.

TITLE: Ex-Officio Clerk

Attachment:

Exhibit A – Previous Agreement and/or Amendment(s) with the Economic Development Transportation Fund Application

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Approved as to form by the
Nassau County Attorney:

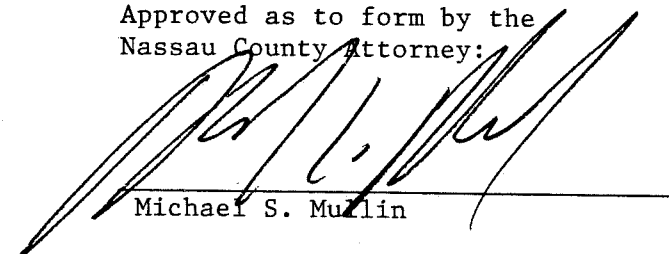

Michael S. Mullin

EXHIBIT A

**STATE OF FLORIDA
OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT TRANSPORTATION FUND**

AMENDMENT 2

Amendment Number 2 made this 2 day of October, 2001, amends the Agreement (OT01-073) entered into on February 19, 2001, between the Office of Tourism, Trade, and Economic Development (OTTED) and Nassau County (County) on behalf of Mulch Manufacturing, Inc. (EDTF Business) and modified on August 24, 2001. A copy of Amendment #1 and the original agreement with exhibit are attached as "Exhibit A."

Whereas the parties to the Agreement desire to modify certain provisions relating to the Agreement;

Now, Therefore in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

The text of Section 2.0 of the Agreement is hereby stricken and shall be amended and shall now read:

2.0 TERM: The term of this Agreement commenced upon execution of the original EDTF Agreement (February 19, 2001) and continues through August 29, 2003, unless terminated at an earlier date as provided herein. Only project costs incurred on or after the effective date of February 19, 2001, and on or prior to the termination date of this agreement are eligible for reimbursement.

The text of Section 6.0(b) of the Agreement is hereby stricken and shall be amended and shall now read:

(b) The County shall certify to OTTED that the EDTF Business referred to in Paragraph 1.0 above has secured the necessary permits, including but not limited to, building permits, and initiated construction of the facilities referenced. If the County fails to provide such certification to OTTED by December 21, 2001, OTTED may, at its discretion, terminate this Agreement;

The text of Section 15.0 of the Agreement is hereby stricken and shall be amended and shall now read:

15.0 COMMENCEMENT: Unless terminated earlier, the construction of the Project shall commence no later than January 31, 2002, and shall be completed on or before August 29, 2002. OTTED shall have the immediate option to terminate this Agreement should the County fail to meet either of the above-required dates.

31.0 SIGNATORIES AUTHORITY: By the execution hereof, the parties covenant that the provisions of this Agreement have been duly approved and signatories hereto are duly authorized to execute this Agreement.

32.0 DUPLICATE ORIGINALS: This Agreement is executed in duplicate originals.

STATE OF FLORIDA
EOG/OTTEB

BY: 

DATE: 10/2/01

TITLE: Director

ATTEST: 

TITLE: Incentives Coordinator

NASSAU COUNTY

BY: 

MARIANNE MARSHALL

DATE: September 24, 2001

TITLE: CHAIRMAN, BD. OF COUNTY COMMISSIONERS

ATTEST: 

J. M. "CHIP" OXLEY, JR.

TITLE: EX-OFFICIO CLERK

Attachment:

Exhibit A – Previous Agreement and/or Amendment(s) with the Economic Development Transportation Fund Application

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APPROVED AS TO FORM BY THE
NASSAU COUNTY ATTORNEY:

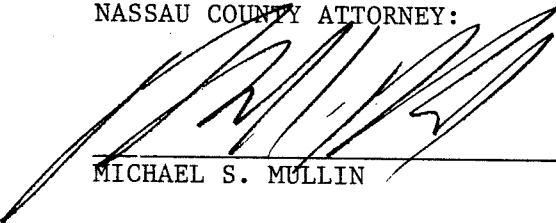

MICHAEL S. MULLIN

EXHIBIT A

STATE OF FLORIDA
OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT TRANSPORTATION FUND

AMENDMENT 1

Amendment Number 1 made this 24 day of August, 2001, amends the Agreement (OT01-073) entered into on February 19, 2001, between the Office of Tourism, Trade, and Economic Development (OTTED) and Nassau County (County) on behalf of Mulch Manufacturing, Inc. (EDTF Business). A copy of the original agreement is attached as "Exhibit A."

Whereas the parties to the Agreement desire to modify certain provisions relating to the Agreement;

Now, Therefore in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

The text of Section 2.0 of the Agreement is hereby stricken and shall be amended and shall now read:

2.0 TERM: The term of this Agreement commenced upon execution of the original EDTF Agreement (February 19, 2001) and continues through March 1, 2003, unless terminated at an earlier date as provided herein. Only project costs incurred on or after the effective date of February 19, 2001, and on or prior to the termination date of this agreement are eligible for reimbursement.

The text of Section 6.0(b) of the Agreement is hereby stricken and shall be amended and shall now read:

(b) The County shall certify to OTTED that the EDTF Business referred to in Paragraph 1.0 above has secured the necessary permits, including but not limited to, building permits, and initiated construction of the facilities referenced. If the County fails to provide such certification to OTTED by August 20, 2001, OTTED may, at its discretion, terminate this Agreement;


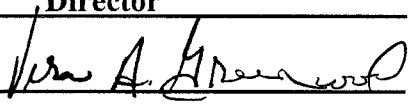
The text of Section 15.0 of the Agreement is hereby stricken and shall be amended and shall now read:

15.0 COMMENCEMENT: Unless terminated earlier, the construction of the Project shall commence no later than September 1, 2001, and shall be completed on or before March 1, 2002. OTTED shall have the immediate option to terminate this Agreement should the County fail to meet either of the above-required dates.


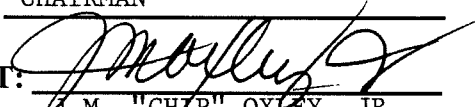
31.0 SIGNATORIES AUTHORITY: By the execution hereof, the parties covenant that the provisions of this Agreement have been duly approved and signatories hereto are duly authorized to execute this Agreement.

32.0 DUPLICATE ORIGINALS: This Agreement is executed in duplicate originals.

STATE OF FLORIDA
EOG/OTTED

BY: 
DATE: 8/24/01
TITLE: Director
ATTEST: 
TITLE: Intertive Coordinator

NASSAU COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: 
MARIANNE MARSHALL
DATE: August 20, 2001
TITLE: CHAIRMAN
ATTEST: 
J.M. "CHIP" OXLEY, JR.
TITLE: EX-OFFICIO CLERK

Attachment:

Exhibit A – Previous Agreement and/or Amendment(s) with the Economic Development Transportation Fund Application

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Approved as to form by the
Nassau County Attorney:

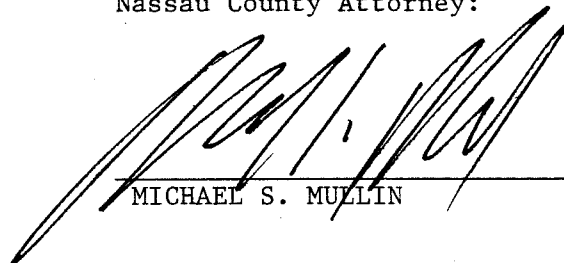

MICHAEL S. MULLIN

EXHIBIT A

**STATE OF FLORIDA
OFFICE OF THE GOVERNOR
ECONOMIC DEVELOPMENT TRANSPORTATION FUND**

AGREEMENT

This Agreement (OT01-073) is entered into this 19th day of February, 2000, between the State of Florida Office of Tourism, Trade, and Economic Development (OTTED) and Nassau County (County) on behalf of Mulch Manufacturing, Inc. (EDTF Business).

OTTED has determined that the transportation project described in the Economic Development Transportation Fund (EDTF) Application, incorporated herein and attached as "Exhibit A" and hereinafter referred to as the "Project," is necessary to facilitate the economic development and growth of the State as contemplated by Section 288.063, Florida Statutes.

The County is prepared to complete the Project at an estimated total cost of \$594,000.00.

OTTED is prepared to provide \$594,000.00 toward the total project cost of construction of the transportation project described in Section 1.0.

In consideration of the mutual undertakings and agreements hereinafter set forth and agreed between the parties as follows:

1.0 PROJECT DESCRIPTION: The Project, identified as Project Number 00/0145A, is described as follows and is in connection with the location of facilities by the EDTF Business:

Construct an approximately 1,800-foot rail spur to connect the EDTF Business site to the existing railway; and, construct an access road, approximately 1,000 feet, to connect the rail spur to U.S. Highway 301, along a 200-foot diameter cul-de-sac.

2.0 TERM: The term of this Agreement shall commence upon execution and continue through September 30, 2002, unless terminated at an earlier date as provided herein. Only project costs incurred on or after the effective date of this agreement and on or prior to the termination date of the agreement are eligible for reimbursement.

3.0 PARTIES: The parties and their respective addresses for purposes of this Agreement are as follows:

STATE OF FLORIDA
OFFICE OF THE GOVERNOR
OFFICE OF TOURISM, TRADE, AND ECONOMIC DEVELOPMENT
THE CAPITOL, SUITE 2001
TALLAHASSEE, FLORIDA 32399-0001
FAX: 850/487-3104

NASSAU COUNTY
POST OFFICE BOX 456
FERNANDINO BEACH, FLORIDA 32035
FAX: (904) 321-5763

4.0 NOTICES: All notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery; United States Post Office, return receipt requested; or, overnight express mail delivery. Facsimile transmission or confirmed e-mail may be used if the notice is also transmitted by one of the preceding forms of delivery. The addresses set forth above for the respective parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

5.0 ADMINISTRATORS: The State EDTF Grant administrator is Wynnelle Wilson,
Chief Analyst for Policy & Incentives. The County Agreement Administrator is
_____. All approvals referenced in this agreement
must be obtained in writing from the parties' agreement administrators or their designees.

6.0 RELEASE OF FUNDS: Project funds made available by OTTED shall not be released until the following have been satisfied:

(a) The County shall agree by resolution to accept future maintenance and other attendant costs occurring after completion of the Project for the portion of the Project on the County system and forward said resolution to OTTED;

(b) The County shall certify to OTTED that the EDTF Business referred to in Paragraph 1.0 above has secured the necessary permits, including but not limited to, building permits, and initiated construction of the facilities referenced. If the County fails to provide such certification to OTTED within 180 days of this contract's execution, OTTED may, at its discretion, terminate this Agreement;

(c) The County shall verify all invoices, statements or other related documents duly submitted to the County for pre-audit and approval by the County;

(d) The County shall certify that its adopted local government comprehensive plan is in compliance with Chapter 163, Part II, Florida Statutes, and that any amendments to the adopted plan related to the transportation Project or EDTF Business facility have been determined by the Department of Community Affairs to be in compliance with Chapter 163, Part II, Florida Statutes;

(e) The County shall provide to OTTED certification and a copy of appropriate documentation substantiating that all required right-of-ways have been obtained and meet the definition of right-of-way set forth in Section 334.03(22), Florida Statutes; and,

(f) Provide OTTED with written notification of either its intent to:

(i) Award the construction of the transportation project to the lowest and best bidder in accordance with applicable state and federal statutes, rules and regulations. The County shall then submit a copy of the bid tally sheet(s) and awarded bid contract, or

(ii) Construct the transportation project utilizing existing County employees, if the County can complete said project within the time frame in Section 15.0 of this Agreement.

6.1 TRANSFER OF FUNDS: Upon execution of this Agreement by OTTED and upon written request from the County, OTTED will transfer funds to the County to be applied toward direct Project costs on a quarterly basis consistent with project needs.

6.2 INVESTMENT OF FUNDS: Funds transferred to the County by OTTED shall be invested by the County until their actual expenditure, in such income or revenue producing investments as authorized by law for other County funds. All income, interest or other revenues obtained from such investment shall be considered funds of OTTED. The income, interest or other revenues shall be remitted to OTTED on a quarterly basis within fifteen (15) days of the close of the months March, June, September, and December, regardless of the month in which funds were received. Upon completion of the project, all remaining income, interest, or other revenues shall be returned to OTTED. All refund or interest checks shall be made payable to: **EOG/OTTED**, and mailed to the OTTED address in Section 3.0 of this Agreement; with the Project Number referenced and information that identifies the grant, interest period, amount of interest earned by account, name of depository, and interest rate. The documentation submitted to support interest earnings should include copies of bank or investment account statements, computational work sheets, etc.

6.3 USE OF FUNDS: Funds made available by OTTED pursuant to this Agreement shall be expended in a timely manner and solely for the purpose of the Project. No such funds shall be used for the purchase of any capital equipment, landscaping, mitigation planting, water and sewer lines, for any legal action against OTTED, for the administration of the project fund or costs associated with preparation of the application.

7.0 LOBBYING: Funds may not be used for the purpose of lobbying the Legislature, judicial branch, or any state agency, per Section 216.347, Florida Statutes.

8.0 ASSURANCES: As an inducement to the transfer of funds referred to in Paragraph 6.1 above, the County grants the assurances that, if initiated, the Project will be carried through to its completion and will not require the expenditure of any additional funds from OTTED. The County shall be liable for all cost overruns on the Project.

9.0 DESIGN AND CONSTRUCTION STANDARDS: The County agrees to design and construct the Project in accordance with standards promulgated by the Florida Department of Transportation (DOT) in accordance with Section 336.045, Florida Statutes, and to provide certification of same to OTTED upon completion of the Project. Such certification shall be provided by a professional engineer registered in Florida who shall certify that all design and construction for the Project meets minimum construction standards established by DOT pursuant to Section 336.045, Florida Statutes.

10.0 MINORITY VENDORS: The County is encouraged to utilize "minority business enterprises," as defined in Section 288.703, Florida Statutes, as subcontractors or sub-vendors when permitted under this Agreement and shall, report same to OTTED.

11.0 ACCOUNTING, REPORTS AND AUDIT REQUIREMENTS: The County

agrees:

(a) To maintain books, records, documents and other evidence according to generally accepted governmental accounting principles, procedures and practices which sufficiently and properly reflect all costs of any nature incurred by the County in the performance of this Agreement and to retain said books, records, documents and other evidence for a period of three (3) years after termination of this Agreement.

(b) That aforesaid records, books, documents and other evidence shall be subject at all times to inspection, review or audit by state personnel of the Office of Auditor General, Office of Comptroller and other state personnel authorized by OTTED.

(c) To include these aforementioned audit and record keeping requirements in contracts and subcontracts entered into by the County with any party for work required in the performance of this Agreement.

(d) That three (3) months after the date of execution of this Agreement and every three (3) months thereafter, the County will provide OTTED with quarterly progress reports. Each quarterly report shall contain a narrative description of the work completed according to the project schedule; a description of any change orders executed by the County; a budget summary detailing planned expenditures versus actual expenditures; and identification of minority business enterprises used as contractors and subcontractors. Records of all progress payments made for work in connection with such transportation projects, and any change orders executed by the County and payments made pursuant to such orders, shall be maintained by the County in accordance with accepted governmental accounting principles and practices and shall be subject to financial audit as required by law.

(e) The County shall submit to OTTED a financial audit, pursuant to Section 288.063(8), Florida Statutes, within three (3) months of the Project's completion.

(f) In the event the County expends a total amount of State awards (i.e., State financial assistance provided to a recipient to carry out a State project) equal to or in excess of \$300,000 in any fiscal year of such receipt, the County shall have a State single or project-specific audit for such fiscal year in accordance with Chapter 215.97, Florida Statutes; applicable rules of the Executive Office of The Governor and the Comptroller; and Chapter 10.600, Rules of the Auditor General. In determining the State awards expended in its fiscal year, the County shall consider all sources of State awards, including State funds received from OTTED, except that State awards received by a non-state entity for Federal program matching requirements shall be excluded from consideration. However, if the County expends less than \$300,000 in State awards in its fiscal year, an audit conducted in accordance with the provisions of Chapter 215.97, Florida Statutes, is not required. In connection with the audit requirements, the County shall ensure that the audit complies with all requirements of Section 215.97, Florida Statutes, including submission of a reporting package to OTTED and the Auditor General.

(g) The County shall provide each sub-recipient of State awards information needed by the sub-recipient to comply with the requirements of Section 215.97, Florida Statutes. Pursuant to Section 215.97(6), Florida Statutes, the County shall review and monitor sub-recipient audit reports, and perform other procedures as specified in the agreement with the sub-recipient, which may include on-site visits. The County shall require that sub-recipients, as a condition of receiving State financial assistance, permit the independent auditor of the recipient, the State awarding agency, the comptroller, and the Auditor General access to the sub-recipient's

independent auditor's working papers as necessary to comply with the requirements of Section 215.97, Florida Statutes.

12.0 TERMINATION REPORT: Upon termination of this Agreement, the County will provide the following:

(a) Certification that the Project has been completed in compliance with the terms and conditions of this Agreement, and meets minimum construction standards established in accordance with Section 336.045, Florida Statutes.

(b) A report which shall specify (i) the total funds transferred to the County by OTTED pursuant to this Agreement; (ii) the total income, interest or other revenues obtained from the investment of said funds; (iii) the total direct Project costs paid from funds made available by OTTED pursuant to this Agreement; (iv) the balance of any unexpended Project funds; (v) the actual amount of the EDTF Business' capital investment, and, (vi) the actual number of permanent full-time jobs created by the EDTF Business.

13.0 FOLLOW-UP REPORT: Two (2) years after the EDTF Business has completed the construction associated with this Project, the County will provide OTTED with the actual number of new, permanent, full-time jobs created by the EDTF Business.

14.0 INDEPENDENT CAPACITY: The County shall act as an independent contractor and not as an employee of OTTED in the performance of this Agreement. To the extent permitted by law, the County covenants and agrees that it will indemnify and hold harmless OTTED and all of OTTED's officers, agents, and employees from any claim, loss, damage, cost, charge or expense arising out of any act, action, neglect or omission by the County during the performance of the contract, whether direct or indirect, and whether to any person or property to which OTTED, or said parties may be subject to, except that neither the County nor any of its

sub-contractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of OTTED or any of its officers, agents or employees.

15.0 COMMENCEMENT: Unless terminated earlier, the construction of the Project shall commence no later than April 3, 2001, and shall be completed on or before October 1, 2001. OTTED shall have the immediate option to terminate this Agreement should the County fail to meet either of the above required dates.

16.0 UNEXPENDED FUNDS: Upon termination or expiration of this Agreement, any funds made available by OTTED pursuant to this Agreement but have not been expended at that time, shall be returned to OTTED. All investment earnings realized pursuant to paragraph 6.2 above shall be returned to OTTED.

17.0 EXPENDITURES IN VIOLATION OF AGREEMENT: Any Project funds made available by OTTED pursuant to this Agreement which are determined by OTTED to have been expended by the County in violation of this Agreement, other applicable law or regulation shall be promptly refunded in full to OTTED. Acceptance by OTTED of any documentation or certifications required or permitted to be filed by the County shall not constitute a waiver of OTTED's rights as the funding agency to verify all information at a later date by audit or investigation.

18.0 TERMINATION OF AGREEMENT: Either party may terminate this Agreement upon no less than 24 hours notice in writing delivered by certified mail, return receipt requested, or in person with proof of delivery. In the event the County fails to perform or honor the requirements and provisions of this Agreement, the County shall return funds in accordance with paragraphs 16.0 and 17.0 of this Agreement, within 30 days of the termination of this Agreement.

19.0 TRAVEL: There shall be no reimbursement for travel expenses exceeding the all-inclusive funds allocated in the Grant Agreement.

20.0 MODIFICATION OF AGREEMENT: In the event the County desires to modify any of the terms and conditions of this Agreement, the County shall make such request for modification in writing to OTTED at anytime during the term of this Agreement. However, where the request for modification relates to changes in the project commencement and/or project completion dates, such request must be received by OTTED prior to the expiration of the current commencement or project completion date. If the request for modification of the commencement or completion date is made after the expiration of such date, OTTED shall have the option to terminate this Agreement.

21.0 ATTORNEY FEES: Unless authorized by law and agreed to in writing by the OTTED, OTTED will not be liable to pay attorney fees, interest, or cost of collection.

22.0 WAIVER: The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

23.0 ENTIRE AGREEMENT: This instrument embodies the entire agreement of the parties. There are no provisions, terms, conditions, or obligations other than those contained in this agreement; and this agreement supersedes all previous communication, representation, or agreement, either verbal or written, between the parties. No amendment will be effective unless reduced to writing and signed by the parties.

24.0 SEVERABILITY: If any term or provision of the agreement is found to be illegal and unenforceable, the remainder of the agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

25.0 STRICT COMPLIANCE WITH LAWS: The County agrees that all acts to be performed by it in connection with this agreement shall be performed in strict conformity with all applicable laws and regulation of the State of Florida.

26.0 NON-DISCRIMINATION: The County will not discriminate against any employee employed in the performance of this agreement, or against any applicant for employment because of age, race, creed, color, handicap, national origin, or sex. The County shall insert a similar provision in all subcontracts for services by this Agreement.

Pursuant to Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

27.0 AVAILABILITY OF FUNDS: The State of Florida's performance and obligation to pay under this agreement are contingent upon an appropriation by the Legislature. In the event that the state funds on which this agreement are dependent are withdrawn, the agreement is terminated and the State has no further liability to the County beyond that already incurred by the termination date. In the event of a State revenue shortfall, the total grant may be reduced accordingly.

28.0 PUBLIC ENTITY CRIME: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

29.0 UNAUTHORIZED ALIENS: OTTED will consider the employment of unauthorized aliens by any contractor a violation of Section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this contract.

30.0 PUBLIC RECORDS: OTTED may unilaterally cancel this Agreement for refusal by the County to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County in conjunction with this agreement.

31.0 SIGNATORIES AUTHORITY: By the execution hereof, the parties covenant that the provisions of this Agreement have been duly approved and signatories hereto are duly authorized to execute this Agreement.

32.0 DUPLICATE ORIGINALS: This Agreement is executed in duplicate originals.

STATE OF FLORIDA
EOG/OTTE

NASSAU COUNTY

BY: [Signature]

BY: Harraine Marshall

DATE: 2/19/01

DATE: 2-12-01

TITLE: Director

TITLE: Chairman, Nassau County Board of County Commissioners

ATTEST: Cheryl Clark

ATTEST: [Signature]

TITLE: Incentives Support

TITLE: J.M. "Chip" Oxley, Jr.,
Ex-Officio Clerk

Approved as to form: [Signature]

Attachment:

Michael S. Mullis, County Attorney

Exhibit A – Economic Development Transportation Fund Application

EXHIBIT A

**STATE OF FLORIDA
ECONOMIC DEVELOPMENT TRANSPORTATION FUND
APPLICATION**

NASSAU COUNTY, FLORIDA

Unit of Government or Public Authority ("Applicant")

on behalf of

MULCH MANUFACTURING, INC.

Business Name

FOR EFI USE ONLY	
<u>9/1/02</u> Date Received	<u>10/16/02</u> Date Completed
<u>00/0145A</u> Project Number	

**Submit Application To:
Enterprise Florida
Attn: Alberta Simmons
Economic Development Transportation Fund Program
The Atrium Building, Suite 201
325 John Knox Road
Tallahassee, Florida 32303
Telephone: (850) 922-8737 Fax: (850) 922-9595**

**ECONOMIC DEVELOPMENT TRANSPORTATION FUND APPLICATION
OFFICE OF TOURISM, TRADE, AND ECONOMIC DEVELOPMENT**

Applicants are advised that this application must be submitted in accordance with the provisions of Florida Statutes, Section 288.063, and the Office of Tourism, Trade, and Economic Development's Economic Development Transportation Fund Guidelines.

I. APPLICANT

Government Applicant: NASSAU COUNTY, FLORIDA
Government Federal Employee Identification Number: 59-04-00595
Name of Primary Contact: Jack D'Amato
Title: Public Works Director
Address: P.O. Box 456
Fernandina Beach Florida 32035
(City) (State) (Zip)
Telephone: (904) 321-5760, (800) 264-2065 Fax: (904) 321-5763

II. COMPANY PROVIDING EMPLOYMENT (only one company may be listed)

Company: Mulch Manufacturing Inc.
Primary Contact: Mr. John W. Spencer
Title: President
Address: 6747 Taylor Road S.W.
Reynoldsburg Ohio 43068
(City) (State) (Zip)
Telephone: (614) 864-4004 Fax: (614) 864-1946
Principal Business Activity: Producing pine, cypress and hardwood mulch
SIC Code Number: _____
Type of Facility: New () Existing () Expansion (X)
Estimated Time for Construction: Rail Spur and New Public Road will commence by November 2000, with anticipated completion by May 1, 2001.
Estimated Square Feet of Facility: Approximately 10,000 square feet of new building will be constructed within a twelve to eighteen month time period.

Full-time Employment Generated/Retained:

New 100 Retained 110

(Grant request should not exceed \$5,000 per job. Grants of up to \$7,500 per job may be approved when the project occurs in an economically distressed community and a further waiver of this guideline may be granted if at least two of the conditions listed in Section IV have been met and documented.)

New Capital Investment Generated: \$5,000,000

Briefly Describe the Facility (New or Existing) or the Expansion.

The existing facility has a present capital input of about \$8,000,000. The proposed long term expansion of our current facilities requires the expenditure of about \$5,000,000 in capital funds. The first item of business will be clearing and upgrading the property. We then intend to erect a 10,000 square foot building. At the same time we will be buying and installing equipment for our expanded operation. This will include log handling and milling equipment, tractor-trailers, wheeled equipment and additions to our sawmill.

The next step is to upgrade our sawmill allowing us to double production to our customer base. Once this is completed our two out-of-state partner companies intend to relocate to this Nassau County facility. One company is a log home manufacturer from Alabama. The other partner is a fence manufacturer currently located in Southern Georgia. This new facility will offer maximum utilization of both equipment and raw materials.

Our final process will be extensive modifications to our lumber operation. This will allow us to produce a high-grade lumber product, to customers both in and out of Florida. When all this work is completed within two to three years, the location will have approximately doubled in size and employment.

III. TRANSPORTATION (Attach a rough site plan with facility in relation to the requested transportation improvements.)

A. Briefly describe the transportation problem which is an impediment to the company described above and give its importance to the company's decision.

The major transportation problem is the need to import raw materials and ship

finished products by rail. Truck transportation is too expensive. In order to accomplish our proposed expansion we must have a rail spur. This spur will connect to the CSX Railroad allowing us to receive raw materials and ship out finished goods. This in turn will enable us to expand our operations as well as making it possible for two additional companies to locate on this site. The spur will also provide opportunities to utilize these facilities for new business ventures from within the company or from other companies in Nassau County.

The spur will also require the construction of a public road to allow traffic to and from the spur to State Road 301.

B. Briefly describe the transportation project which will alleviate the transportation problem.

The construction of an 1,800 foot rail spur track and also the construction of a 1,000 foot public road with a 200 foot diameter cul-de-sac from the rail spur to State Road 301. Building an 1800 foot spur track from the CSX main line onto this property will allow Mulch Manufacturing and our partner companies to load and unload railcars with both raw material and finished product.

C. Estimated Cost of the Transportation Project:

Construction of Public Road:	<u>\$ 247,500.00</u>
Design & Engineering Public Road:	<u>\$ 16,870.00</u>
Construction of Rail Spur:	<u>\$ 247,500.00</u>
Design & Engineering Rail Spur:	<u>\$ 74,664.00</u>
TOTAL COST:	\$ 594,000.00

*May be used as matching dollars if acquisition is required from a third party in order to construct the transportation facility.

D. Transportation Project Funding Sources:

City:	<u>\$ 0.00</u>
County:	<u>\$ 0.00</u>
Company:	<u>\$ 0.00</u>

#EDTF04 (effective 07/99)

Post-it* Fax Note	7671	Date	10-13-00	# of Pages	2
Alberta Simmons		From Gus Rappold			
Co./Dept.		Co.			
Phone #		Phone #			

If not, describe the inconsistency and give the time frame for amending the plan:

D. Does construction of the business facility trigger concurrency requirements other than for transportation facilities? Yes No

If so, explain:

E. Does construction of the business facility trigger concurrency requirements for transportation facilities? Yes No

If yes, what transportation management alternatives have been considered?

Use of trucks to carry in raw materials and export finished product to rail.

F. Does the adopted plan include an Economic Development Element?

Yes No

G. Is the applicant's transportation project linked to other publicly funded economic development programs? If so, how does it further those efforts?

No

H. Will low to moderate income workers be eligible for employment within this facility?

Yes No

If not, why not?

I. What role will the transportation project play in the decision of the business to locate, expand, or remain in this state?

This transportation project is imperative to the corporate decision to remain in Florida. Any other transportation alternative would be too expensive for the movement of raw materials and finished product.

J. Is there competition for this project? YES NO (Check all that apply.)

✓ State(s) Louisiana; Georgia; _____

Incentive(s): Site with existing rail spur, Tax Credit, Workforce Training

Country(ies) _____; _____; _____

Incentive(s): _____

Community(ies) _____; _____; _____

Incentive(s): _____

VII. PROJECT INFORMATION

Location of Project (Road Number):

U.S. _____ State 301 County _____ City _____

Party responsible for maintenance and upkeep:

State _____ County X City _____ Other _____

(If more than one is applicable, please indicate.)

Total Length of Project: 1/2 mile(s)

Brief Description of Project: The construction of an 1,800 foot rail spur track with and the construction of a 1,000 foot public access road with a 200 foot diameter cul-de-sac from the new rail spur to State Road 301.

Is there an alternative that would provide more cost effective access to the project?

_____ Yes No

Are there any additional traffic impacts?

Yes _____ No

If yes, does the project provide for additional impact?

_____ Yes No

If no, please explain: Additional traffic will be added to State Road 200

(U.S. 301). Capacity is available on the existing roadway. FDOT plans to widen the roadway in the near future.

VIII. TRAFFIC IMPACTS FOR PROJECTS INVOLVING STATE HIGHWAYS ONLY

1. Traffic generation estimates (in number of vehicles daily):

Number of Cars 614 Number of Trucks 30

2. AM Peak Hour 7:00 a.m. to 8:00 a.m.—Indicate Number of:

Inbound Cars 77 Inbound Trucks 4

Outbound Cars 29 Outbound Trucks 4

3. PM Peak Hour 3:00 p.m. to 4:00 p.m.—Indicate Number of:

Inbound Cars 48 Inbound Trucks 4

Outbound Cars 59 Outbound Trucks 4

IX. SIGNATURE: If this application is for a city road, the city must agree to maintain the road. If a county road is involved, the county must agree to maintain the road. This will be stipulated in all contracts involving expenditure of the Economic Development Transportation Fund. DOT form, letter from applicant, letter from the benefiting company and a map showing the relationship of the facility to the transportation project must accompany this application.

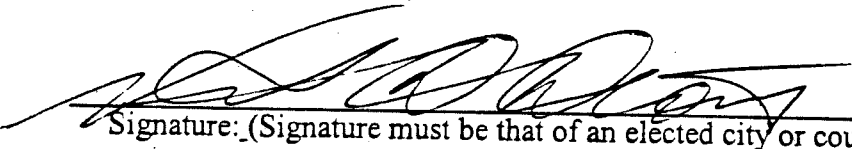
Please type:

Nick Deonas

(Name)

Chairman, Board of County Commissioners

(Title)



Signature: (Signature must be that of an elected city or county official)

Specific Authority 288.063, 120.53 (1) (a), F. S.
Laws Implemented 288.063, 120.53 (1) (a), F. S.

OFFICE OF TOURISM, TRADE, AND ECONOMIC DEVELOPMENT
ECONOMIC DEVELOPMENT TRANSPORTATION PROJECT
FOR SUBMISSION TO YOUR DOT DISTRICT SECRETARY'S OFFICE

X DOT TRANSPORTATION PROJECT CONSTRUCTION COST ESTIMATE

Based on information provided with this application:

Estimated cost of construction: \$ 450,000.00

Estimated cost of right-of-way: \$ N/A

Estimated cost of design and engineering: \$ 90,000.00

Has design and engineering been completed? Yes No

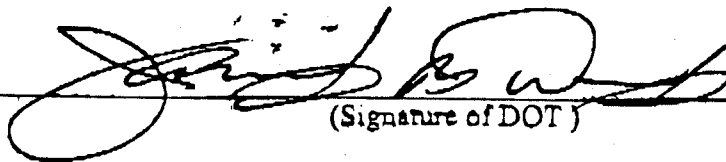
Was cost overrun considered in total cost? Yes No

If yes, how much? 5%

Is design in accordance with DOT specifications? _____

How many days estimated for completion? 210

DOT Comments: Estimate based on information received from Nassau County.


(Signature of DOT)

The signature of FDOT only attests to EDIF transportation project cost estimates and does not commit FDOT to automatically approve any permits associated with this project.



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

JEB BUSH
 Governor

STEVEN M. SEIBERT
 Secretary

October 13, 2000

Ms. Alberta Simmons, Program Director, EDTF
 Enterprise Florida
 The Atrium Building
 325 John Knox Road, Suite 201
 Tallahassee, Florida 32303

Dear Ms. Simmons:

The Office of Tourism, Trade, and Economic Development requested that the Department of Community Affairs review and provide comments on the Economic Development Transportation Fund (EDTF) application from Nassau County on behalf of Mulch Manufacturing Inc.

The Department reviews EDTF applications for consistency with the following program areas: housing and community development, community planning at both the state and local levels, coastal management and emergency management.

Based on our review, the Department did not find any discrepancies with the grant application. If you have any questions, please contact Ms. Cherie Trainor at 414-5495. Thank you.

Sincerely,

Ralph Cantral, Executive Director
 Florida Coastal Management Program

RC/cl

cc: Mr. Jack D'Amato, Public Works Director, Nassau County
 Mr. John W. Spencer, President, Mulch Manufacturing Inc.

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100
 Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781
 Internet address: <http://www.dca.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE
 2796 Overseas Highway, Suite 212
 Marathon, FL 33050-2227
 (850) 489-4472

COMMUNITY PLANNING
 2555 Shumard Oak Boulevard
 Tallahassee, FL 32399-2100
 (850) 488-2356

EMERGENCY MANAGEMENT
 2555 Shumard Oak Boulevard
 Tallahassee, FL 32399-2100
 (850) 413-0949

HOUSING & COMMUNITY DEVELOPMENT
 2555 Shumard Oak Boulevard
 Tallahassee, FL 32399-2100
 (850) 486-7956



NASSAU COUNTY
BOARD OF COUNTY COMMISSIONERS
P. O. Box 1010
Fernandina Beach, Florida 32035-1010

Nick Deonas
David C. Howard
Pete Cooper
Floyd L. Vanzant
Marianne Marshall

Dist. No. 1 Fernandina Beach
Dist. No. 2 Fernandina Beach
Dist. No. 3 Yulee
Dist. No. 4 Hilliard
Dist. No. 5 Callahan

October 12, 2000

JOSEPH M. "Chip" OXLEY, JR.
Ex-Officio Clerk

MICHAEL S. MULLIN
County Attorney

WALTER D. GOSSETT
County Coordinator

Ms. Alberta Simmons
Enterprise Florida
Economic Development Transportation Fund Program
The Atrium Building, Suite 201
325 John Knox Road
Tallahassee, FL 32303

RE: Economic Development Transportation Fund Program Grant
Request - Mulch Manufacturing, Inc., Crawford
Industrial Park, Nassau County, Florida - Addendum to
Application

Dear Ms. Simmons:

This letter is an addendum to Nassau County's letter of August 30, 2000, supporting the application of Mulch Manufacturing, Inc., for Economic Development Transportation Fund Program monies to support the retention and expansion of their operation in Nassau County.

This transportation project, which includes a rail spur and a public road, has been re-estimated by DOT. Their estimate is a total of \$540,000.00 including a five percent (5%) cost overrun. However, it would be prudent to increase the size of the cost overrun by another ten percent (10%) for a total of \$594,000.00. The reason for this is the potential additional costs related to unknown factors that may affect the rail spur construction and the possibility of wetlands affecting the right-of-way for the public road through the site.

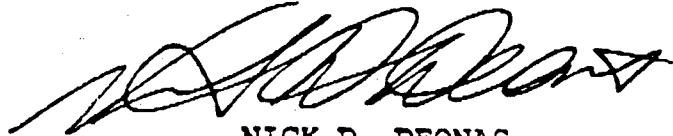
(904) 225-2610 Board Room; 321-5703, 879-1029, (800) 958-3496

An Affirmative Action / Equal Opportunity Employer

Ms. Alberta Sim
October 12, 2000
Page 2

Nassau County continues to support the improved public facilities for the use of Mulch Manufacturing, Inc., and the other companies that may locate in the Crawford Industrial Park area.

Sincerely yours,



NICK D. DEONAS

NDD/am

Cc: Ken Willette, Nassau county Economic Development Board
Ralph Spencer, Mulch Manufacturing, Inc.

f3/enterprise-012



Mulch Manufacturing, Inc.

6747 Taylor Road S.W.
Reynoldsburg, Ohio 43068-9649
(614) 864-4004

Oct. 11, 2000

Ms. Alberta Simmons
Manager Business Retention and Recruitment
Enterprise Florida
Economic Development Transportation Fund Program
The Atrium Building, Suite 201
325 John Knox Road
Tallahassee, Florida 32303

Re: Mulch Manufacturing Inc. Expansion Plan for Callahan, Florida
Plant- Public Access Road Requirement

Dear Ms. Simmons:

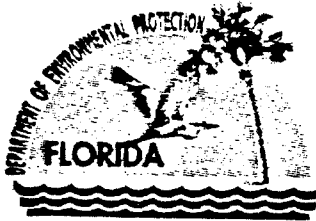
As part of our overall expansion plan at our Callahan facility we will need a public road to allow access from State Route 301 to the proposed rail spur. This road will give ourselves and others the ability to transport products to and from the spur.

Considering the location of the wetlands between our plant and the new rail spur a public road from the spur to Route 301 will provide the route for us to move between our plant and the rail.

Thank you for your assistance in this matter.

Sincerely yours,

John W. Spencer
President



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

October 11, 2000

Ms. Alberta Simmons
Enterprise Florida/Economic Development Transportation Fund Program
The Atrium Building, Suite 201
325 John Knox Road
Tallahassee, Florida 32303

RE: EDTF Application on Behalf of Mulch Manufacturing Inc., Nassau County

Dear Ms. Simmons:

The Department of Environmental Protection has reviewed the above referenced Economic Development Transportation Fund (EDTF) application form, which involves constructing an access road to a proposed rail spur and constructing a rail spur from the CSX railroad line to the company's site. We have no comments at this time.

We appreciate the opportunity to provide comments on the proposed project. If I may be of further assistance, please contact me at (850) 487-2231. Thank you.

Sincerely,

Lindy Broz

Legislative and Governmental Affairs

/lmb

EDTF/Nassau/MulchMfg

"More Protection, Less Process"

Printed on recycled paper.



Florida Department of Transportation

JEB BUSH
GOVERNOR

605 Suwannee Street
Tallahassee, Florida 32399-0450

THOMAS F. BARRY, JR.
SECRETARY

October 10, 2000

Ms. Wynnelle Wilson, Economic Development Incentives Coordinator
Office of Tourism, Trade, and Economic Development
Executive Office of the Governor
The Capitol
Tallahassee, Florida 32399-2000

Subject: Economic Development Transportation Fund (EDTF) Project for Nassau County
/Mulch Manufacturing, Inc.

Dear Ms. Wilson:

The Department of Transportation has reviewed the subject project application for consistency with the Department's policies, plans and standards. Based upon the information provided in the application, the project does not appear to adversely impact the State Highway System; however, permitting may be required for connections to U.S. 301 or any work to be done on State right of way.

Upon finalization of the project plans, the applicant should contact the following person to determine what requirements must be met before construction can begin:

Ms. Carol Wright
Florida Department of Transportation
Jacksonville Urban Office
Post Office Box 6669
Jacksonville, Florida 32236
Phone Number: (904) 360-5610

If you have any questions, please contact Sandra Whitmire at 414-4812. Thank you.

Sincerely,

for Ysela Llorc
State Transportation Planner

YL:sw

cc: Alberta Simmons
James Dees
Carol Wright
Ward Swisher



NASSAU COUNTY
BOARD OF COUNTY COMMISSIONERS
P.O. Box 1010
Fernandina Beach, Florida 32035-1010

Nick Deonas
David C. Howard
Pete Cooper
Floyd L. Vanzant
Marianne Marshall

rec'd
9/11/00
Dist. No. 1 Fernandina Beach
Dist. No. 2 Fernandina Beach
Dist. No. 3 Yulee
Dist. No. 4 Hilliard
Dist. No. 5 Callahan

August 30, 2000

Enterprise Florida
Attn: Alberta Simmons
Economic Development Transportation Fund Program
The Atrium Building, Suite 201
325 John Knox Road
Tallahassee, FL 32303

JOSEPH M. "Chip" OXLEY, JR.
Ex-Officio Clerk

MICHAEL S. MULLIN
County Attorney

WALTER D. GOSSETT
County Coordinator

Re.: Economic Development Transportation Fund Program Grant Request –
Mulch Manufacturing, Inc., Crawford Industrial Park, Nassau County, Florida

To Whom It May Concern:

Mulch Manufacturing, Inc. is considering an expansion of their operation in Nassau County. For this to be economically feasible they have requested the County's assistance through Nassau County applying for a grant in the amount of \$539,664 to construct a 1,800' rail spur track and a 1,000' public road with a 200' diameter cul-de-sac which will service their proposed new plant.

This transportation project is not presently scheduled by Nassau County for construction at any time in the future and certainly not within Mulch Manufacturing, Inc.'s desired time frame.

The estimated new capital investment by Mulch Manufacturing, Inc. is \$5,000,000.

A reasonable estimate of the Mulch Manufacturing, Inc. projected employment to be created is 100 workers with another 110 workers to be retained.

Mulch Manufacturing, Inc. is in a position where they desire to consolidate their operations with two out-of-state partner companies. The consolidation could in any one of their present other out-of state locations. However, through a \$539,664 grant from the Economic Development Transportation Fund Program Nassau County will build a rail spur and public road to assist by providing Mulch Manufacturing with an efficient and productive system to unload and load rail cars carrying raw materials and finished product. The construction of these public transportation facilities offers Mulch the economic impetus needed to locate their combined operation in Nassau County, Florida.

Sincerely yours,

Nick Deonas
Chair,
Board of County Commissioners

(904) 225-2610 Board Room; 321-5703, 879-1029, (800) 958-3496

An Affirmative Action / Equal Opportunity Employer



Mulch Manufacturing, Inc.

6747 Taylor Road S.W.
Reynoldsburg, Ohio 43068-9649
(614) 864-4004

June 26, 2000

Mr. Kenneth J. Willette
Executive Director
Nassau County Economic Development Board
1890 South 14th Street, Suite E
Fernandina Beach, Fl. 32034

Dear Ken:

As we have discussed many times in the past several weeks we at Mulch Manufacturing Inc. have very ambitious plans for expansion in Nassau County. This of course is predicated on our ability to fiscally accomplish all the things this expansion will require. Which will include additional real estate, buildings, equipment, and property improvements. As you know we have already expended substantial capital on a new sawmill and associated machinery.

Our long-term plan will require us to spend an additional \$ 5,000,000 to reach our goals. This is all being done to allow us to greatly expand and diversify our Callahan operation.

In order to accomplish this new expansion, we will need an 1,800-foot rail spur capable of receiving a large number of cars. This will allow us to receive the logs which are necessary for our expanded operation. These logs will be coming from several sources. The logs will be used in making mulch, lumber, fencing and log home components. The latter two operations will be new companies locating in the county. Both of these companies would relocate from other states. As you can imagine getting these projects off the ground requires a tremendous amount of effort and resources on our part.

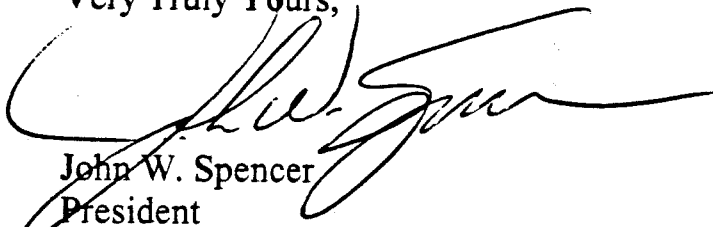
The other use for this spur will be to ship out various finished products and local raw materials to customers both in and out of the state.

We are asking Nassau County to help us with these opportunities. Specifically, we are asking for help in the form of a grant to pay for the rail spur we require to make these projects happen. The benefits for the county are obvious; an expanded business base in the county, an increase in employment both at Mulch Manufacturing and the new industries, an expansion of the CSX presence in the county, and an increase in the county tax base.

The downside of course would be just the opposite. We would have to look at other states to expand our operations. This would entail a reduction or possible elimination of our Callahan plant and the ensuing impact on the community. Both Louisiana and Georgia have already expressed an interest and are offering economic incentives. Both are being given consideration.

We hope, with your help we will be able to remain in Nassau County. Mulch Manufacturing is prepared to make a major commitment to this expansion but we need your help. Thank you in advance for your consideration.

Very Truly Yours,



John W. Spencer
President
Mulch Manufacturing Inc.

CC: James Crawford, CSX Industrial Development

Mulch Manufacturing, Inc.
PROJECT PLAN
for the
Callahan, Florida Plant expansion

April 5, 2000

John W. Spencer, President
And
Ralph T. Spencer, Vice President

Mulch Manufacturing, Inc.
6747 Taylor Road S.W.
Reynoldsburg, OH 43068
(614) 864-4004

State Road 301 South
P.O. Box 4014
Callahan, FL 32011
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BACKGROUND

Mulch Manufacturing consists of three production locations; One in central Ohio, one in Callahan, Florida and one in Madison, Florida. The largest production facility is in Callahan, Florida which produces five types of pine mulch, three types of Cypress mulch, hardwood mulch, recycled wood mulch, soil products and a sawmill that produces lumber products.

The customer base for Mulch Manufacturing is largely concentrated East of the Mississippi and consists of convenience stores, mass merchandisers such as Lowe's, Home Depot, Meijers, Franks, etc.; landscapers and retail outlets. The majority of this product is produced in Callahan, Florida and shipped into the markets by rail into one of eighteen holding locations or directly to the customer. Our largest selling product is Cypress mulch and we have nearly a 30% market share within our marketing area with this product. Our total annual sales is approximately \$30 Million.

The operation began in 1985 in Columbus, Ohio as a Cypress only plant addressing the Ohio marketplace. This was expanded in 1989 to include a new plant in Florida with an increased product line. The Florida location made it possible to economically address a larger market area by using rail to reach most all of the larger metropolitan areas east of the Mississippi river. Pine products were added in 1992, recycled colored mulch was added in 1998 and soil products were added in 1999. A full scale Cypress sawmill was built in 1998 and expanded in 1999.



Figure 1 Mulch Manufacturing mulch plant and sawmill located in Nassau county, Florida.



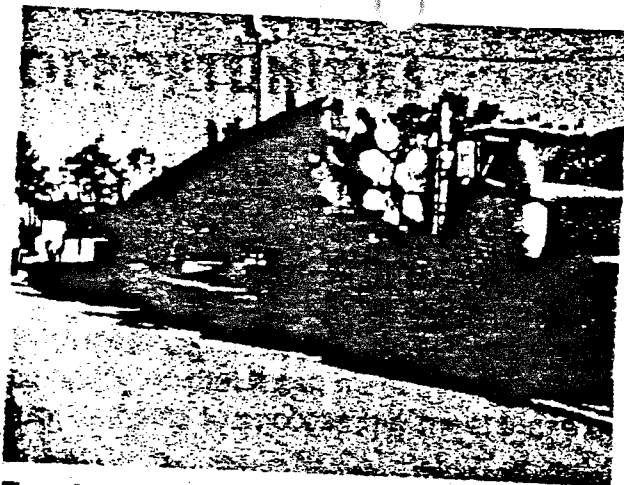


Figure 2 Cypress logs arriving by truck at the Callahan, Florida plant

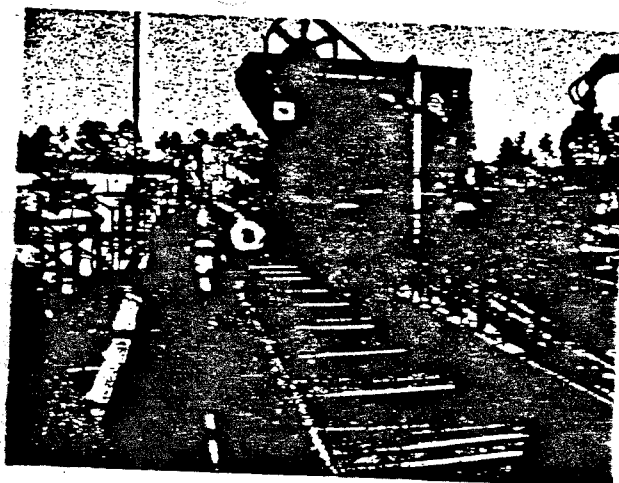


Figure 3 Sawmill operation

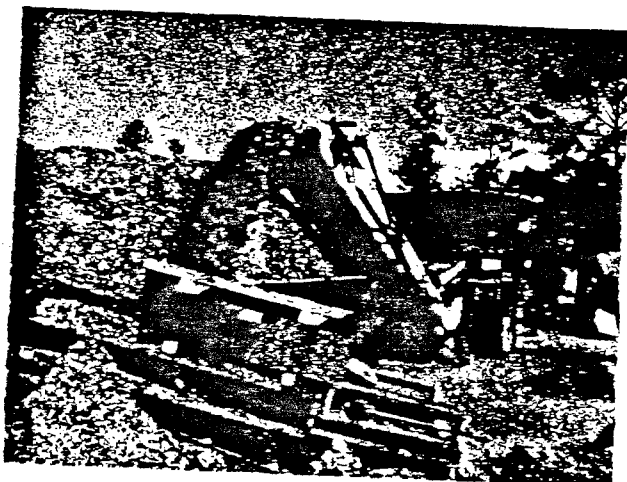


Figure 4 Colored mulch production facility

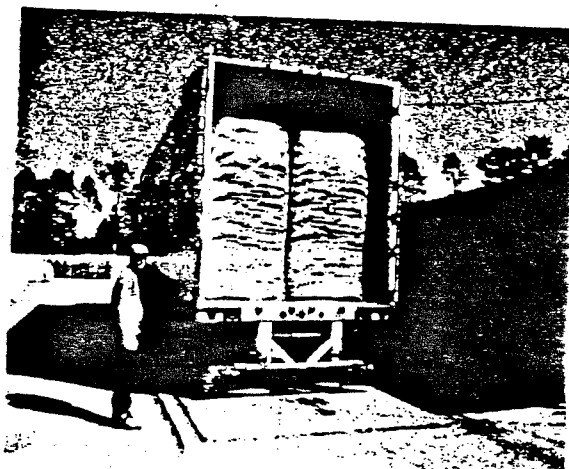


Figure 5 Bagged mulch loaded into an intermodal trailer for shipment.

Employment level in Florida has gradually increased since 1989 from a beginning of 20 to 30 to a present level of 105 to 120. The primary shipping season is from January through June, however the plant operates year round by using the summer and fall months to manufacture and stockpile product at the plant and at eighteen locations throughout the market area which will be shipped to customers in the spring. The plant is presently operating at maximum capacity for the facilities with three shifts per day for six days per week.

Mulch Manufacturing has been successful in establishing a firm position in the market with a diversified customer base of over 3,000 that range from single load customers to the largest merchandisers in the country who purchase thousands of loads per year. We have established a reputation for quality products and excellent customer service. The opportunity for expansion is unlimited and is restricted only by the size of our facilities.

OPPORTUNITIES

The opportunities for growth are nearly unlimited due to the popularity of Lawn & Garden products which is an \$85 Billion market segment and is one of the fastest growing industries due to the popularity of home gardening. Mulch Manufacturing will grow as the industry grows and as we continue to capture more of the market share.

In order to capitalize upon this opportunity it is essential that we are able to position the company so that it can meet the demands of a growing industry. The primary requirements to successfully meet these demands are:

1. Raw material availability
2. Expansion of product line
3. Company facilities

STRUCTURING TO MEET THE OPPORTUNITY

Raw Materials

Mulch Manufacturing currently purchases approximately \$3 million in raw materials each year from local businesses and vendors. This will increase with the planned additions. The addition of the sawmill in 1998 has greatly increased the potential to economically use the Cypress resources which are available. This makes it possible to harvest the higher value fiber in the core of the logs as lumber which has much more worth and then use the scrap slabs, but cuts, tops and bark as mulch. This process fully utilizes 100% of the raw materials producing no scrap for disposal. In order to feed this process it is necessary to obtain reliable suppliers of Cypress logs suitable for sawing. As the demand for this type of timber increases due to local demands from Cypress sawmills and the availability of saw quality Cypress timber declines in this area, it becomes necessary to bring logs in from other areas. Additionally, Cypress log availability in any given area can be hampered by local weather conditions or market constraints which could have devastating consequences if alternate sources were not available. It is, therefore, necessary to have the capability to import saw quality Cypress logs from other areas such as Louisiana, Alabama, Mississippi, Georgia, South Carolina, etc.. Due to the high cost of transporting by over the road trucks, the only economical method to import these logs is by rail. This makes it necessary for the facility to have rail access.

Expansion of Product Lines

Due to the high volume of raw materials being processed it is appropriate that additional products be produced which will optimize the utilization of the resources being consumed. For instance, it is a waste of resources and a loss of profitability to use high quality saw logs to make mulch when a higher value product such as lumber could be produced. Additional products which can be produced with only minimal additional capital investment include fencing, playground materials, building materials, log home materials as well as additional landscaping products such as timbers and mulch. The partner company which are planning to join our facility includes a company that produces Cypress fencing and is using raw materials produced by our sawmill. This will greatly decrease their freight costs by locating where their raw materials are produced. The second company considering locating here is a log home manufacturer who will purchase milled Cypress logs and put log home kits together on site rather than transporting them to their own site.

Company Facilities

In order to produce the additional products and respond to the increased demand for our existing products, it is essential that we upgrade our facilities to make it possible to produce the type of products at the volumes required to satisfactorily address the available market. The primary facilities required can be defined in three categories:

1. Additional real estate

The current facility located five miles south of Callahan, Florida on route 301 is approximately 40 acres. However, half of this site is unusable due to accessibility or wetlands conditions. All available space is fully utilized and additional space has been leased in Jacksonville for our use. It is essential that additional operating space be obtained for expansion of the current operation and the addition of production facilities, raw material storage, finished goods storage, parking and the incorporation of additional business operations. The most logical, and probably the only alternative to expand the present facilities, is the acreage presently owned by ITT Rayonier located adjacent to our present plant to the North between the CSX railroad and highway 301 (see figures 1 and 2 attached). Even though some of this property is also wetlands, sufficient dry area is available to accommodate our needs. Utilization of this property would entail clearing and prepping, stabilizing, connecting the current plant to the new area with a driveway through the wetland and installing a rail spur. This property would also be used by other businesses who have demonstrated a desire to locate near our present plant to minimize transportation and operational costs.

2. Rail accessibility

Rail access is essential for the purpose of importing raw materials, primarily cypress logs, from other locations. These materials would be purchased in other

states where availability and cost are acceptable and transported to the Florida plant for processing. The rail would also be used to transport logs from Florida to our other plant in Ohio for processing into mulch or to transport finished goods produced by Mulch Manufacturing or partner companies to market. This rail access is essential for the current operation to remain viable in the long run and for any expansion. CSX has performed a feasibility study and has concluded that a rail spur could be constructed on the target property.



Figure 6 CSX main rail track along the Northwestern border of the property looking North showing the new property on the right.

3. Equipment

Most of the equipment required for the expanded operation is presently on hand and is being used in the present operation. Some modifications, upgrades and additions will be required for the expanded operation such as milling equipment for log home cants, equipment to recover long slabs and equipment to produce fencing products. This equipment has been identified and is presently available off the shelf. The cost is minimal compared to the cost of the equipment already in place. Some of this equipment will be provided by partner companies which will operate on the site as separate companies.

EMPLOYMENT CONSIDERATIONS

The expansion under consideration by Mulch Manufacturing will make additional jobs available with Mulch Manufacturing as well as with the other companies which will operate in conjunction with the expanded facility and will provide a base for employment by supporting organizations both on site and off site. The present payroll at this facility exceeds \$3 Million per year excluding benefits. This employee population includes unskilled, semi-skilled, equipment operators, clerical, supervision and corporate management. The average hourly wage including the entire employee base is approximately \$13.24 per hour plus benefits. The benefits provided to the employees include medical, paid vacation, paid sick leave, life insurance and holiday pay. All of the employees employed by Mulch Manufacturing are full time year round employees.

It is anticipated that after the first year of operation with the improved facility the payroll will exceed \$5 Million per year. The total economic benefit to the local community will exceed \$15 Million per year after the improvements are in place and full operation is underway. Anticipated resulting employment levels are shown in the chart on the following page:

Budgeted Employment Level

	Mulch Manufacturing Operations	Partner Company Operations	Local Outside Contractors
Present employment level	110		
During Construction	125	20	15
First year of operation	140	25	10
Years 2 - 5	150	30	10
Years 5 - 10	170	40	15

Table 1 - Anticipated employment levels resulting from the expanded operation at the Mulch Manufacturing facility in Nassau County Florida.

ALTERNATE PLAN

Mulch Manufacturing has been an integral part of the Nassau County community for over twelve years. A substantial investment has been made in this facility and we have enjoyed our relationship with the local community. It is our preference to remain in our present facility and make the required improvements to facilitate the expansions necessary to address the opportunity we presently have. We have three ways in which we can proceed:

1. Expand the present facility as required to meet the objectives.
2. Leave the present facility as it now exists without expansion and construct an additional facility in another location.
3. Move the present facility to a new location where the required facilities are in place or can be constructed at minimum cost.

Creating a new facility at an alternate site where raw materials are more plentiful and where the political environment is conducive to new business locations is a viable alternative to the expansion of the present facilities. Our search for alternate sites has resulted in several potential locations where facilities are available, raw materials are plentiful and economic help is available from the local municipalities. Such a move would be disruptive to the business and would result in a higher initial investment. However, the transportation savings which will result from being located closer to the

source of raw materials would be beneficial and would result in substantial cost savings over the long term.

The preferred plan is to expand the present facility to incorporate our needs as well as the opportunity to provide facilities for additional partner companies. This action would also provide additional employment for the local community and a collateral benefit to the economy of the county.

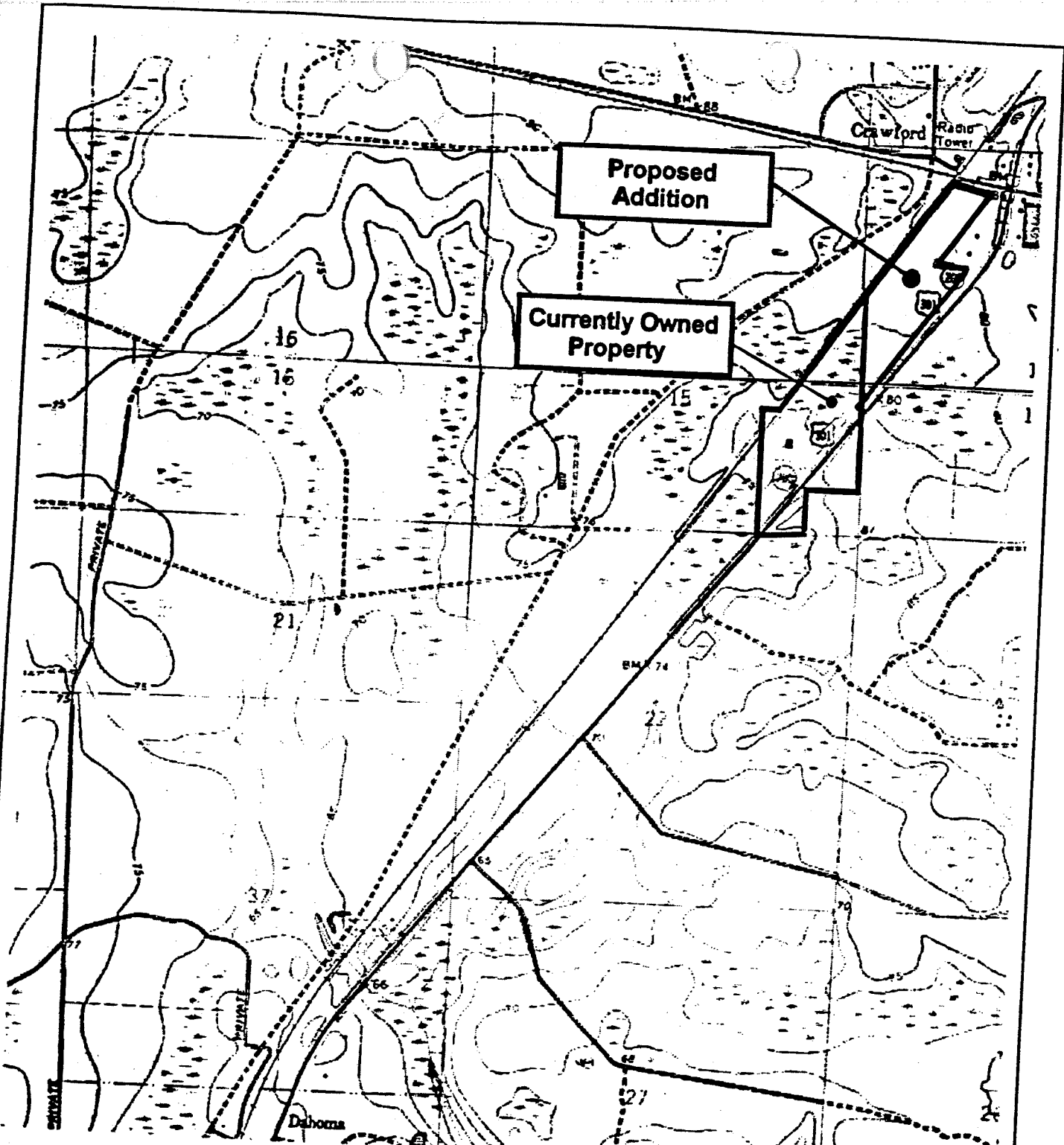
ASSISTANCE REQUIRED

When Mulch Manufacturing moved into Nassau county twelve years ago we purchased property and installed a mulch operation which consisted of property improvements and the installation of production equipment. This expenditure was approximately \$2.5 million. In 1996 we upgraded the production facility with automation and other improvements at a cost of over \$1.0 million. In 1998 we installed the sawmill at a cost of approximately \$1.5 million and then spent an additional \$1.0 million last year to upgrade it for increased capacity. In fact, the total investment that has been made in the Nassau county facility is in excess of \$8 million. We have also paid a total of approximately a quarter of a million dollars in property taxes. This was all accomplished strictly with company funds. We have not receive, nor have we requested, any type of financial assistance or tax abatements from the state or local municipalities during our entire tenure in the county.

The situation has now changed and we can no longer make this type of expenditures without some form of assistance or consideration. With our track record, employment needs and financial contributions to the local economy the opportunities available in many locations for land use, grants, tax abatements, low interest loans and other incentives are plentiful.

Our desire is to remain in Nassau county and expand our present facilities to accommodate our needs and provide an attractive opportunity for partner companies to locate adjacent to our plant.

To make this expansion feasible we must be able to obtain some economic assistance from the local community in the form of a grant which could finance the rail spur installation on the new property and/or providing the land to us at no cost for the expansion as well as other economic or tax abatement incentives which might be available.



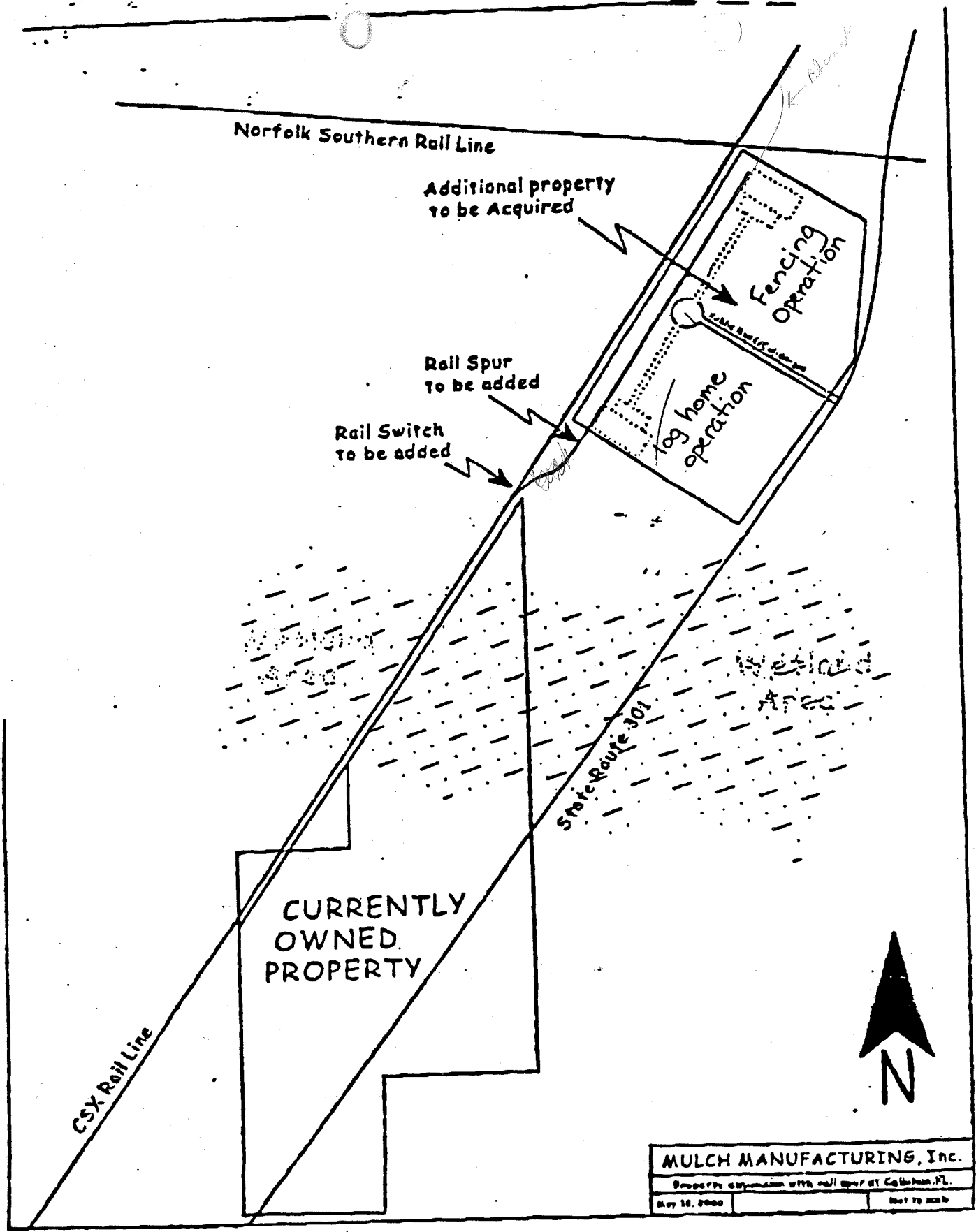
Source: U.S.G.S. Topographical Survey, Bryceville and Hilliard SW, FL, Quadrangles (1992)
 Scale: 1"=2000'



Location/Topographic Map

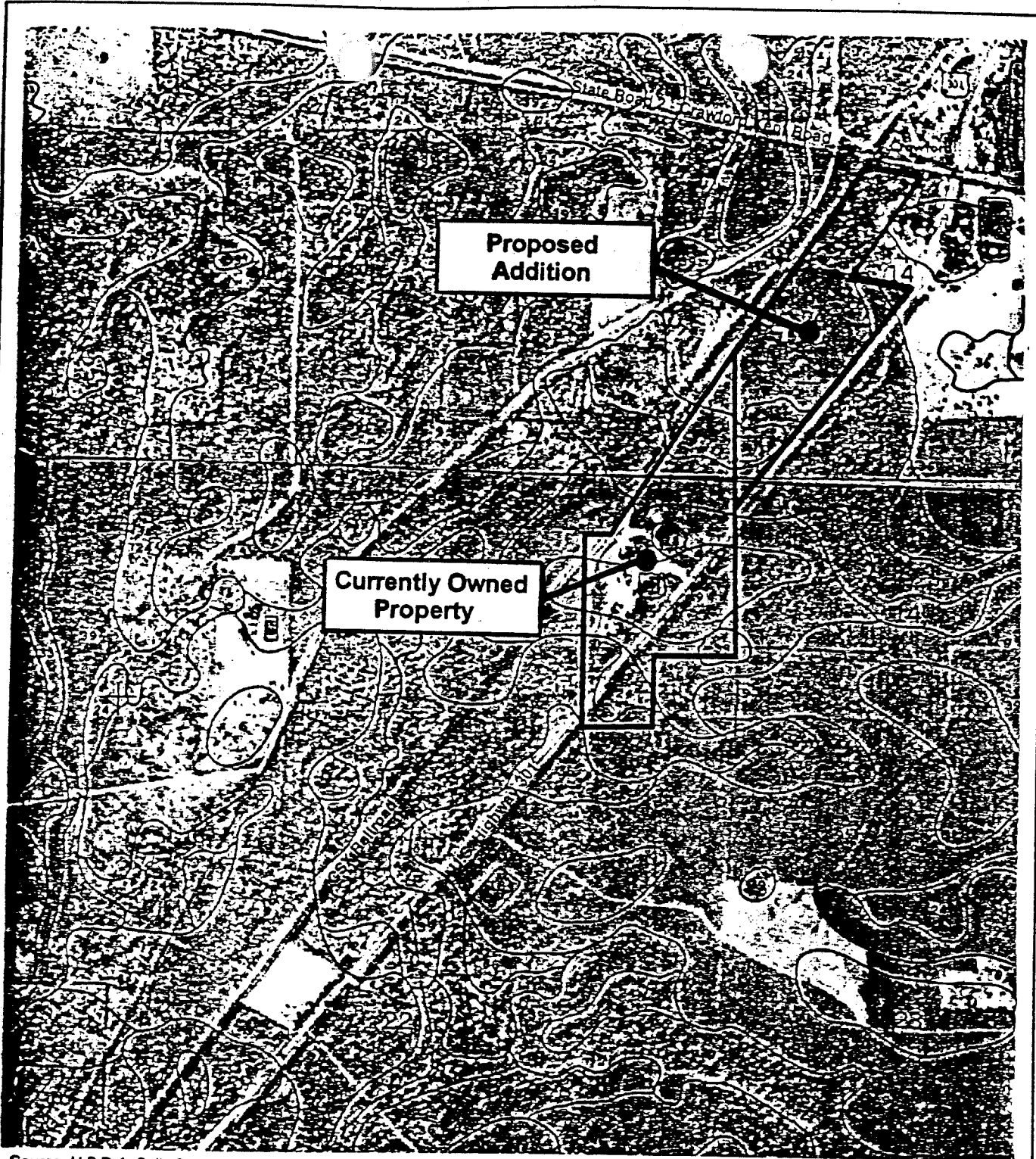
Mulch Manufacturing, Inc.
 U.S. Highway 301 South
 Callahan, Florida

Figure No. 1



MULCH MANUFACTURING, Inc.
 Property acquisition with rail spur at Collier, Pa.
 May 18, 2000

Not to scale



Source: U.S.D.A. Soils Survey for Nassau County, Florida
 Scale: 1"=1666'

- 9 - Leon fine sand
- 18 - Lynn Haven-Wessconnett-Leon complex, depressional
- 24 - Kings Ferry fine sand
- 36 - Boulogne fine sand
- 39 - Evergreen-Leon mucks, depressional



Soils Map

Mulch Manufacturing, Inc.
 U.S. Highway 301 South
 Callahan, Florida

Figure No. 2

EXHIBIT 2

EXHIBIT 2

SPECIAL AUDIT REQUIREMENTS

The administration of funds awarded by the Office of Tourism, Trade, and Economic Development (OTTED) to the County may be subject to audits and/or monitoring by OTTED, as described in this section.

MONITORING

By entering into this agreement, the County agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by OTTED. In the event OTTED determines that a limited scope audit of the recipient is appropriate, the County agrees to comply with any additional instructions provided by OTTED to the County regarding such audit. The County further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Comptroller, Auditor General, or Chief Inspector General. The County shall permit access to the County's records and independent auditor's working papers as necessary to comply with the requirements of this Agreement.

AUDITS

1. In the event that the County expends a total amount of State awards (i.e., State financial assistance provided to the recipient to carry out a State project) equal to or in excess of \$300,000 in any fiscal year of the County, the County must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes (the Single Audit Act); applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.550, Rules of the Auditor General. In determining the State financial assistance expended in its fiscal year, the County shall consider all sources of State awards, including State funds received from OTTED, except that State financial assistance received by a non-state entity for Federal program matching requirements shall be excluded from consideration.
2. In connection with the audit requirements, the County shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapter 10.550, Rules of the Auditor General.
3. If the County expends less than \$300,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of the Single Audit Act is not required. In the event that the County expends less than \$300,000 in State financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of the Single Audit Act, the cost of the audit must be paid from non-State funds (i.e., the cost of such an audit must be paid from County funds obtained from other than State entities).
4. The County must include the record keeping requirements found herein in sub-recipient contracts and subcontracts entered into by the County for work required under terms of this Agreement. In the executed subcontract, the County shall provide each sub-recipient of state financial assistance the information needed by the sub-recipient to comply with the requirements of the Single Audit Act. Pursuant to Section 215.97(6), Florida

Statutes, the County shall review and monitor sub-recipient audit reports and perform other procedures as specified in the agreement with the sub-recipient, which may include onsite visits. The County shall require sub-recipients, as a condition of receiving state financial assistance, to permit the independent auditor of the recipient, the state awarding agency, the Comptroller, and the Auditor General access to the sub-recipient's records and independent auditor's working papers as necessary to comply with the requirements of the Single Audit Act.

5. For information regarding the Florida Single Audit Act, including the Florida Catalog of State Financial Assistance (CFSA), the County should access the website for the Governor's Office located at <http://www.flgov.com/> for assistance. In addition to the above website, the following websites may be accessed for information: Legislature's Website <http://www.leg.state.fl.us/>, the Department of Banking and Finance's Website <http://www.dbf.state.fl.us/aadir/FSAAIndex.html>, and the Auditor General's Website <http://sun6.dms.state.fl.us/audgen>.

REPORT SUBMISSION

Copies of audit reports conducted in accordance with the audit requirements contained herein shall be submitted to the parties set out below. The annual financial audit report shall include all management letters and the County's response to all findings, including corrective actions to be taken. The annual financial audit report shall include a schedule of financial assistance specifically identifying all Agreement and other revenue by sponsoring agency and Agreement number.

The complete financial audit report, including all items specified above, shall be sent directly to:

Vera A. Greenwood
Office of Tourism, Trade, and Economic Development
The Capitol, Suite 2001
Tallahassee, Florida 32399 -0001
and
State of Florida Auditor General
Attn: Ted J. Sauerbeck
Room 574, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32302-1450

RECORD RETENTION

The County shall retain and maintain all grant records and make such records available for an audit as may be requested. Records shall include independent auditor working papers, books, documents, and other evidence, including, but not limited to, vouchers, bills, invoices, requests for payment, and other supporting documentation, which according to generally accepted governmental accounting principles, procedures and practices, sufficiently and properly reflect all program costs expended in the performance of this Agreement. Such records shall be retained by the County for a minimum period of five (5) years after termination of this Agreement. The records shall be subject at all times to inspection, review, or audit by state personnel of the Office of the Auditor General, Office of Comptroller, Office of the Chief Inspector General, or other personnel authorized by OTTED and copies of the records shall be delivered to OTTED upon request.