

**AMENDED**

**MEMORANDUM OF UNDERSTANDING REGARDING DRAINAGE EASEMENT**

**THIS MEMORANDUM OF UNDERSTANDING REGARDING DRAINAGE EASEMENT** is made this 28th day of <sup>November</sup>       , 2011, by and between **RAYONIER FOREST RESOURCES, L.P.**, a Delaware limited partnership ("RFR"), whose address is 1901 Island Walkway, Fernandina Beach, Florida 32034 (hereinafter collectively referred to as "GRANTOR") and **NASSAU COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida ("County"), whose address is 96135 Nassau Place, Suite 1, Yulee, Florida 32097.

**RECITALS**

A. The County is desirous of obtaining a drainage easement on the southern side of the Swallowfork Estates development (the "Subdivision"), located in Nassau County in Section 6, Township 1 North, Range 25 East, in order to address some drainage issues in the Subdivision and provide a better outfall for the Subdivision. The area where the drainage easement is to be located is on the property of RFR.

B. RFR is willing to provide the drainage easement in exchange for certain conditions and consideration as set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements made herein, the parties agree as follows:

1. **RECITALS.** The matters set forth in the above Recitals are true and correct, and are hereby incorporated herein by reference.

2. **CONVEYANCE OF PROPERTY.** In exchange for the County Obligations in Paragraph 3 below, RFR shall convey to the County, on the form of drainage easement attached as Exhibit A and incorporated by reference, a sixty (60) foot wide drainage easement as depicted on the attached Exhibit B incorporated by reference. RFR shall also provide County with access to the drainage easement as depicted on Exhibit B as part of the easement terms.

3. **COUNTY OBLIGATIONS.** The County shall perform the following as consideration for the conveyance of the drainage easement:

(a) At the time of closing of the drainage easement, payment of Nine Thousand and 00/100 Dollars (\$9,000.00) for the timber that will be impacted by the location of the drainage easement.

(b) Removal of all unnecessary or excess soil from the drainage easement area following construction of the drainage easement.

(c) No later than at the completion of the construction phase of the drainage easement, County shall fence the boundary of the drainage easement, within the easement area,

with a six-foot high chain link FDOT-Type B fence, and install certain signage at fifteen (15) foot intervals along the fence. RFR is agreeable to locating the fence inside the drainage easement but such location shall not establish the property line. The signs shall read as follows:

**NO TRESPASSING – PRIVATE PROPERTY**

This fence does not constitute the property boundary. No activity shall take place within \_\_\_ feet of this sign (amount to be determined when fence location is fixed), which is located within a drainage easement for Nassau County, Florida provided by Rayonier Forest Resources, L.P.

(d) Keep access to the drainage easement secure, both during construction and after construction. RFR maintains a gate at the entrance to its property, adjacent to the drainage easement. RFR will provide County with a key to the lock on said gate, or County can install its own lock so as to be able to access the drainage easement.

(e) As soon as practicable during the construction of the drainage easement, relocate and build the portion of the road depicted on Exhibit B C as "Road Relocation" on Rayonier's property so as to allow uninterrupted passage for Rayonier and its agents, representatives and assigns both during and after construction. The road shall be constructed to the same or better standard as the existing road, and shall tie into said existing road so as to ensure that it is sufficient to permit log trucks and other heavy machinery to access said road. The County shall consult with Rayonier representatives in the process of the design and construction of the relocated road and County shall provide "as built" drawings and specifications for the road once completed.

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FRH*

(f) Be responsible for obtaining and complying with all permits from local, state and federal agencies for the design, construction, installation and maintenance of the drainage easement, including but not limited to all ditches, culverts, crossings and roadways associated with same, as well as for the construction of the road referenced in (e) above.

(g) Maintain the drainage easement (both sides of the fence) in a working and well-maintained manner, and not allow overgrowth to accumulate. County may not locate any materials from the building or maintenance of the drainage easement on Rayonier's land.

(h) The above matters are material elements of the terms and conditions of this Agreement and the drainage easement, the denial or impairment of which shall be in frustration of the terms and conditions for which the drainage easement is given and received. Thus, the failure of any of the above at any time following the execution of the drainage easement form shall permit RFR to cancel and revoke the drainage easement, and in such event, the County shall immediately quit claim any interest that it therein has to RFR; provided, however, that prior to any such revocation, RFR shall engage in good faith negotiations, for a period not to exceed thirty (30) days after providing notice to the County of any issue relating to the above, and shall only be entitled to revocation if the County fails to address any issues in a manner satisfactory to RFR and in compliance with this Agreement, within such thirty (30) day period or as otherwise mutually agreed between the parties.

4. **FUTURE LANDSCAPING.** RFR reserves, for itself and its successors and assigns forever, the right to landscape the drainage easement area in the future provided that

such landscaping shall not interfere with the County's ability to use and maintain the drainage easement.

5. **RESERVATION.** RFR shall reserve for itself, and its successors and assigns forever, the right to access and use the drainage easement for any purpose not inconsistent with its use as a drainage easement, including utilities, so long as such use does not materially infringe on the County's use. Grantor further reserves the right to make use of the Drainage Easement for drainage purposes from all lands owned by Grantor or its affiliated or related companies adjacent to or appurtenant to or to become appurtenant to the Easement Premises, provided that Grantor can obtain the permits required to do so and that such use does not materially negatively impact County's use hereunder or cause any additional financial burden to County. It is a material element of the terms and conditions of this Agreement that unrestricted vehicular and pedestrian access and use is, and shall remain, a severable and divisible estate vested in RFR, its respective successors and assigns, the denial or impairment of which shall be in frustration of the terms and conditions for which this Grant is given and received.

6. **DEFAULT.**

a. Default By RFR. If RFR defaults in performance of any of its obligations in this Agreement or breaches any warranty or representation, the County may, at its option, either terminate this Agreement and the drainage easement or sue for specific performance. These are the sole and exclusive remedies of the County in the event of a breach by RFR.

b. Default by County. In addition to the remedies set forth in Paragraph 3(h) above, if the County defaults in the performance of any of their obligations in this Agreement, RFR may, at its option, either terminate this Agreement and the drainage easement or sue for specific performance. These are the sole and exclusive remedies of RFR in the event of a breach by the County.

7. **REPRESENTATIONS AND WARRANTIES BY THE COUNTY.** The County hereby represents and warrants to RFR as follows:

a. The County is a public body corporate and politic, organized under the laws of the State of Florida, and has full power and authority to execute this Agreement and the Drainage Easement and to perform its obligations hereunder and under the drainage easement.

b. The individuals executing this Agreement and the drainage easement on behalf of the County are authorized and empowered to execute this Agreement and the drainage easement on behalf of County, and the execution of this Agreement and the drainage easement by said individuals shall bind the County to the terms and conditions of the respective document.

8. **SURVEY AND TITLE.**

a. Survey and Title Deliveries. The County will have the drainage easement surveyed (the "Survey") and is responsible for all costs and expenses incurred in connection with such Survey. The survey shall be provided to RFR for its review and approval no later than five (5) days prior to closing. The legal descriptions provided in the Survey and agreed to between the parties shall be attached to the drainage easement at closing.

b. Defects in Title and Survey. If the County completes a title examination of the drainage easement and such title examination discloses any defects in title which are not acceptable to the County, then the County shall deliver written notice of such defects to RFR within ten (10) days after the execution of this Agreement. RFR at its discretion shall determine whether to correct the defects within forty-five (45) days, but shall have no obligation to cure. If RFR is unsuccessful in removing the defects within said time, then the County shall have the option to terminate this Agreement, thereupon releasing the County and RFR from all further obligations under this Agreement.

9. **CLOSING COSTS.** Each party shall be responsible for the expense of its own legal counsel. The County shall pay all other costs incurred in connection with the conveyance of the drainage easement, including, but not limited to, obtaining a title commitment(s), the premium(s) for issuance of title policies issued pursuant to the Title Commitment, and all costs and expenses in connection with recording the drainage easement and any related documents.

10. **CLOSING DATE.** The closing shall occur on or before the date that is ~~thirty (30)~~ sixty (60) days after the execution of the Agreement (the "Closing Date").

11. **REPRESENTATIONS AND WARRANTIES BY RFR.** RFR hereby represents and warrants to the County as follows:

a. It has full power and authority to execute this Agreement and the drainage easement and to perform its obligations hereunder.

b. The individuals executing this Agreement and the drainage easement on behalf of RFR are authorized and empowered to execute this Agreement and the drainage easement on behalf of RFR, and the execution of the documents by said individuals shall bind RFR to the terms and conditions of this Agreement and the drainage easement.

12. **ENTIRE AGREEMENT; AMENDMENTS.** The parties hereto agree that the entire agreement between the parties is set forth in this Agreement. This Agreement may be amended only by an instrument in writing signed by RFR and the County.

13. **WAIVER.** No waiver of any of the provisions hereof shall be effective unless it is in writing and signed by the party against whom the waiver is asserted. Any such written waiver shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing waiver or waiver of any future matter.

14. **TIME OF ESSENCE.** Time is of the essence with respect to the provisions of this Agreement which provide time periods for the taking of actions by the parties.

15. **NOTICES.** All written notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with this Agreement shall be served by personal delivery, reputable overnight courier service, or facsimile (followed promptly by a hard copy) at the addresses set forth below:

As to RFR:

Tracy K. Arthur, Esquire  
1901 Island Walkway  
Fernandina Beach, FL 32034

As to County:

County Manager, Nassau County, Florida  
96135 Nassau Place, Suite 1  
Yulee, FL 32097

Any notice or demand such served shall constitute proper notice hereunder upon delivery if delivered personally, upon receipt of confirmation if delivered by facsimile, or one business day after deposit with overnight courier.

16. **EFFECTIVE DATE.** When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the last date that either County or RFR execute this Agreement.

17. **SUCCESSORS AND ASSIGNS.** The terms and provisions of this Agreement and the Drainage Easement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

18. **EXHIBITS.** All exhibits attached hereto are incorporated herein by reference to the same extent as if such exhibits were included in the body of this Agreement verbatim.

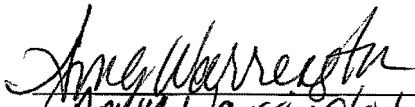
19. **NO RECORDING.** Neither this Agreement, nor any notice, memorandum, or other notice or document related hereto, other than the deed conveying the drainage easement, shall be recorded without prior written consent of RFR.


**IN WITNESS WHEREOF,** RFR and the County have each caused this Agreement to be executed and delivered by their duly appointed officers on the dates indicated below.

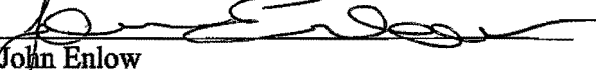
**RAYONIER FOREST RESOURCES, L.P.**

By its Managing General Partner  
RAYONIER TIMBERLANDS  
MANAGEMENT, LLC

Witnesses:

 (Sign)  
Amy Warrington (Print)

 (Sign)  
M. J. Love (Print)

By:   
John Enlow  
Its: Director, Atlantic Region  
Date: 11-23-11

**NASSAU COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**  
A political subdivision of the State of Florida

Witnesses:

Brenda Linville (Sign)  
Brenda Linville (Print)

Peggy B. Snyder (Sign)  
Peggy B. Snyder (Print)

By: Walter J. Boatright  
Name: Walter J. Boatright  
As Its: Chairman  
Date: 11-28-11

Attest as to Chairman's Signature:

John A. Crawford  
JOHN A. CRAWFORD  
As Its: Ex-Officio Clerk *11/30/11*

Approved as to form by the  
Nassau County Attorney: *12/15/11*

David A. Hallman  
DAVID A. HALLMAN

**Exhibit A**  
**FORM OF DRAINAGE EASEMENT**

**PREPARED BY:**

Tracy K. Arthur, Esq.  
1901 Island Walkway  
Fernandina Beach, FL 32034

Return to:

**STATE OF FLORIDA  
COUNTY OF NASSAU**

**DRAINAGE AND ASSOCIATED ACCESS EASEMENT**

**RAYONIER FOREST RESOURCES, L.P.**, a Delaware limited partnership, duly authorized to do business within the State of Florida, whose address is 1901 Island Walkway, Fernandina Beach, Florida 32034 (hereinafter called "Grantor") hereby grants to **NASSAU COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida ("County"), whose address is 96135 Nassau Place, Suite 1, Yulee, Florida 32097, this Drainage and Associated Access Easement.

**WITNESSETH**

**THAT, FOR AND IN CONSIDERATION** of the sum of TEN (\$10.00) DOLLARS and other valuable consideration in hand paid to Grantor by County, the receipt of which is hereby acknowledged, said Grantor hereby grants, bargains, sells, conveys and warrants to County, its successors and assigns, a Drainage and Associated Access Easement upon the terms herein specified. The Drainage and Associated Access Easement shall be limited to, and encumber to that same tract or parcel of land described upon that certain survey plat **recorded in Plat Official Record Book \_\_\_\_\_, Page \_\_\_\_\_** of the Clerk of the Court, Nassau County, Florida referred to herein as the "Easement Premises"

**RESERVING UNTO GRANTOR**, its successors and assigns, all and whatsoever rights of ingress and egress, including the right to locate utilities, to and over said above-described Easement Premises.



**THIS GRANT is made upon the following terms:**

1. The Drainage Easement is granted for the express purpose of establishing a drainage right of way for the use and benefit of the Swallowfork Estates, Phases I-V. In the event functioning drainage or maintenance should be abandoned, or if through acts of governmental entities downstream outfall(s) for the drainage preclude use of the easement for the purpose herein granted, then and in that event the condition, premises and consideration of this Grant shall have failed, and Grantor, its successors and assigns, may thereupon reenter upon the premises, terminate the estate herein granted to County, and possess the premises as heretofore, unencumbered by this Drainage Easement.

2. Any and all drainage work(s) and use shall be done at the sole expense of County and with as little inconvenience to Grantor as is consistent with reasonable progress, and in strict accordance with all applicable state, federal and local ordinances and the rules and regulations set forth by the United States Army Corps of Engineers concerning wetlands preservation.

3. Lands of Grantor or its affiliated or related companies, successors and assigns, as to which this easement is adjacent, or which they may be or become appurtenant, may drain, naturally into the Easement Premises. Grantor further reserves the right to make use of the Easement Premises for drainage purposes from all lands owned by Grantor or its affiliated or related companies adjacent to or appurtenant to or to becomes appurtenant to the Easement Premises, provided that Grantor can obtain the permits required to do so and that such use does not materially negatively impact County's use hereunder or cause any additional financial burden to County. Furthermore, Grantor may have access over, across and through this easement for access and utility purposes, provided that such activities by Grantor shall not permanently interfere with the use of the easement as a drainage easement.

4. Responsibility for maintenance of drainage ditches or other items constructed by County within the Easement Premises, including the fence and signs thereon, as well as the roads across the Easement Premises if built by County, shall lie with County and no responsibility for maintenance thereof shall be assumed by Grantor. The Easement Premises shall be maintained in good working order and in a sightly manner, with no overgrowth permitted. Grantor shall have responsibility for maintenance of anything it places across or in the Easement Premises pursuant to its reservation hereunder. Grantor grants County access across Grantor's property adjacent to the Easement Premises for the purposes of County's access to the Easement Premises for maintenance and repair of the Easement Premises by County.

5. County shall defend, indemnify and hold harmless Grantor against any and all damages that Grantor or other landowners may sustain by reason of the permitting, construction and maintenance upon the Easement Premises or as may be appurtenant to the Drainage Easement, and for all activities that take place on the Easement Premises or on the access areas to the Drainage Easement during their use by or on behalf of County. The duties hereunder of County shall not extend to any activities that take place pursuant to Grantor's reservation, except and only to the extent County's actions or inactions or those of its agents, representatives or contractors, cause damage.

6. Grantor makes no warranties nor representations concerning the condition of the Easement Premises or the access areas appurtenant thereto, nor their suitability for County's intended use, nor the applicability of any state, federal, or local governmental land use restrictions: Grantor makes no warranty other than the warranty of sufficient corporate authority to grant this Drainage and Associated Access Easement. It shall be the sole responsibility of County to determine the applicability of all state, federal and local governmental laws, or regulations that may affect its intended use, and to secure and satisfy any such governmental permits and conditions as may be applicable.

7. This Grant of Drainage and Associated Access Easement is subject to all restrictions, exceptions, reservations, conditions and covenants of record, together with any easement(s) or right(s) of way as may be of record, in existence, or apparent from an inspection or survey of the Easement Premises, and is further subject to Grantor's reservation herein. This Grant of Drainage and Associated Access Easement is by and in the nature of a quitclaim, with Grantor warranting to County only the corporate authority of its execution, and granting to County only so much rights by and under this Grant of Drainage and Associated Access Easement as is consistent with Grantor's record title in and to the property through which this Drainage and Associated Access Easement may pass.

8. This Grant of Drainage and Associated Access Easement runs to the successors and assigns of both parties, as an appurtenance to the land.

**IN WITNESS WHEREOF**, Grantor has hereunto executed this easement, the day and year first above written.

**RAYONIER FOREST RESOURCES, L.P.**  
**By its managing general partner**  
**Rayonier Timberlands Management, LLC**

By: \_\_\_\_\_

(Print) \_\_\_\_\_

As its: \_\_\_\_\_

Attest: \_\_\_\_\_

(Print) \_\_\_\_\_

As its: \_\_\_\_\_

**NOTARY PUBLIC**, State of Florida  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Sign)  
(Print)

ACCEPTANCE

THE FOREGOING EASEMENT is accepted upon this date by GRANTEE:

DATED THIS \_\_\_ day of \_\_\_\_\_ 2011.

**NASSAU COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**  
A political subdivision of the State of Florida

By: \_\_\_\_\_  
Name: Walter J. Boatright  
As Its: Chairman  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Sign)  
\_\_\_\_\_  
(Print)  
Notary Public, State of Florida  
Commission No. \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

ATTEST: \_\_\_\_\_ (Sign)  
As Its:

**EXHIBIT B**  
**Drawings of Drainage Easement**

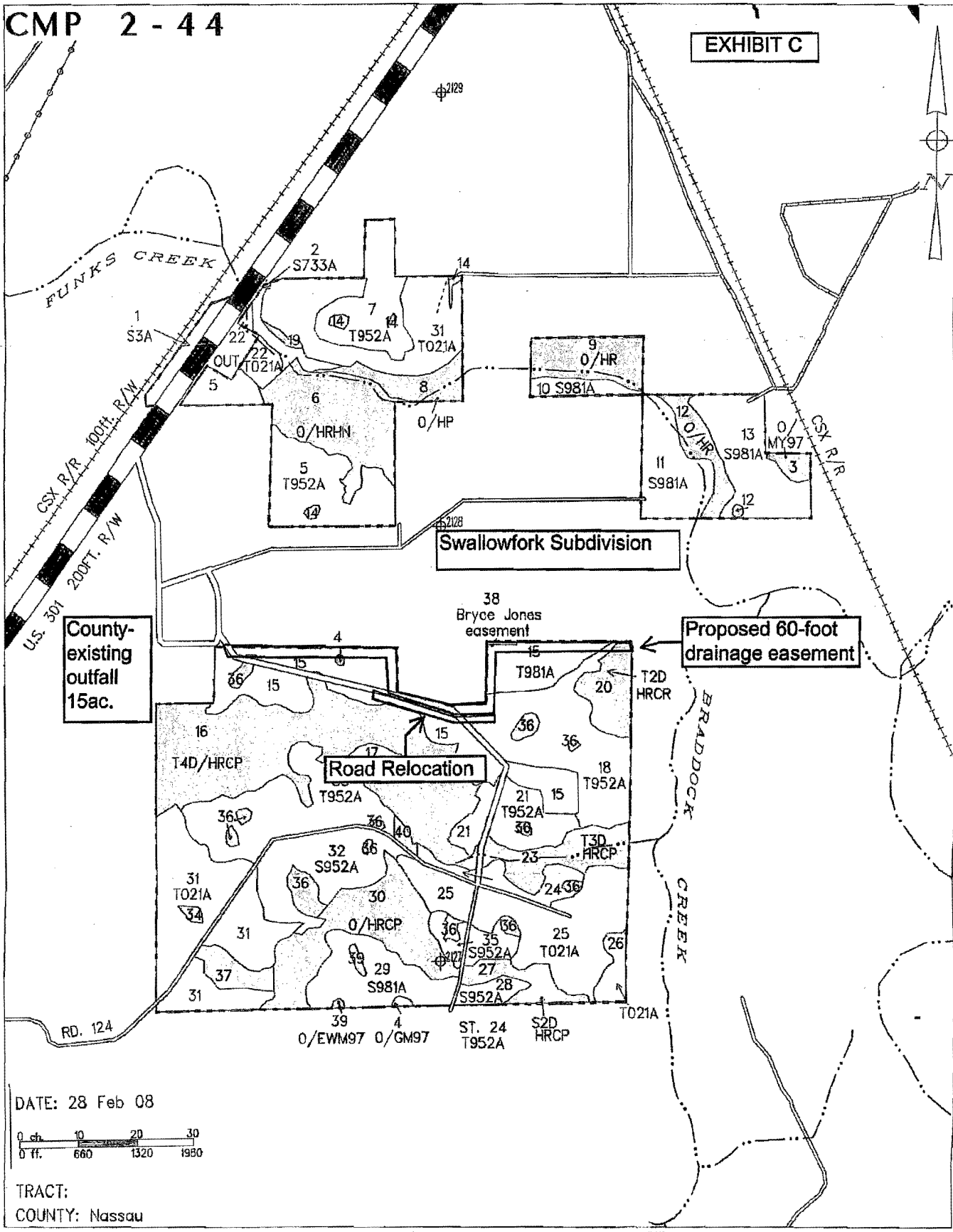


**EXHIBIT C**  
**Compartment map of drainage easement**

DAM PAJ

CMP 2 - 44

EXHIBIT C

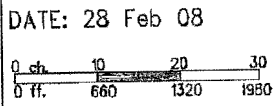


County-existing outfall 15ac.

Swallowfork Subdivision

Proposed 60-foot drainage easement

Road Relocation



TRACT:  
COUNTY: Nassau