JORDAN et al. v. St. Johns County

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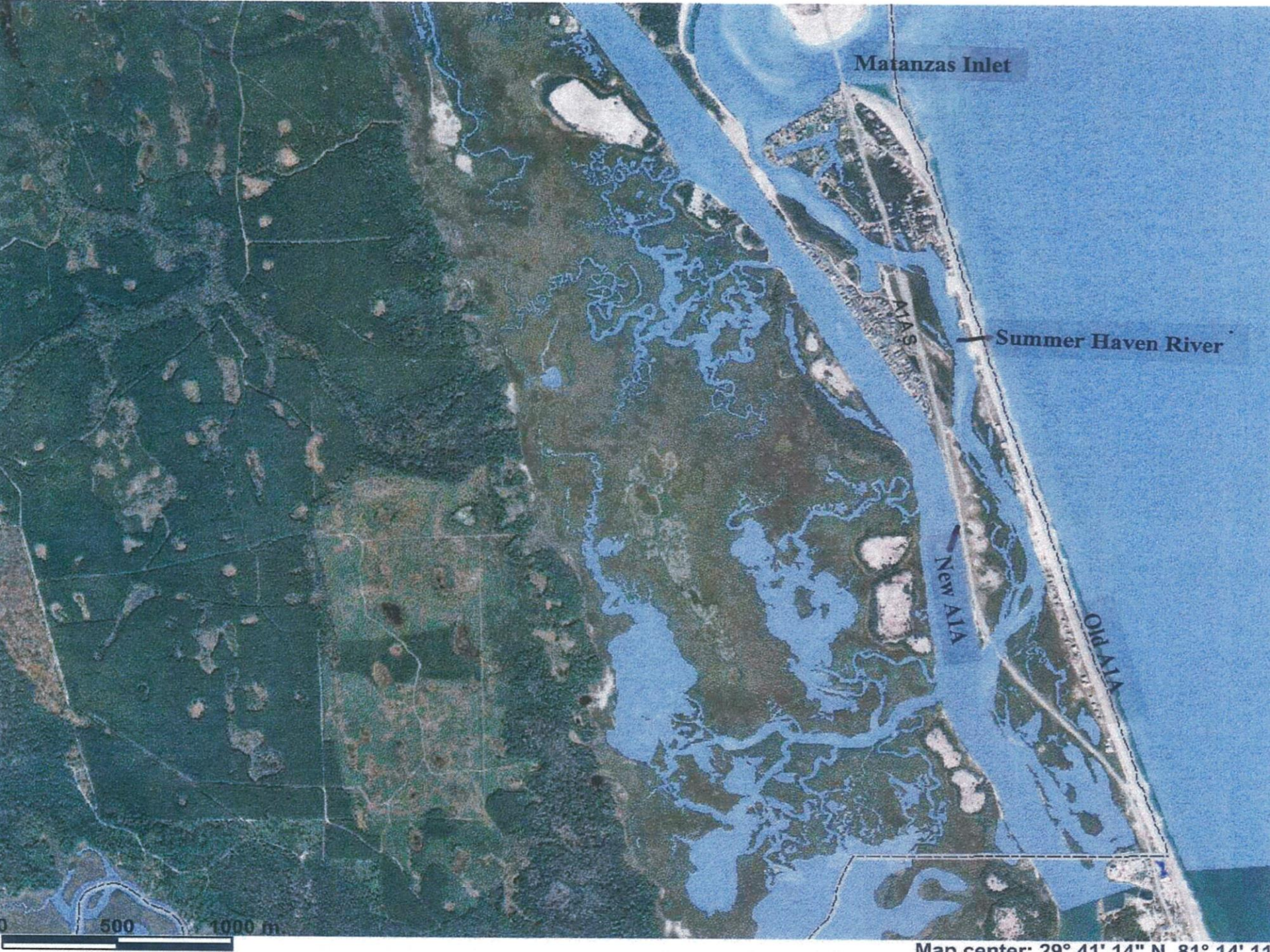
St. Johns County Attorney

Sept 23, 2016


Matanzas Inlet
A1A S
Summer Haven River
New A1A
Old A1A
0
500
1000 m
Map center: 29° 41' 14" N, 81° 14' 11

TIMELINE

- 1950s – Old A1A built after private properties purchased
- 1960 -- State of Florida reroutes to “New A1A”
- 1979 – State deeds Old A1A to St. Johns County
- 2005 – Temporary residential building moratorium enacted
- 2005 – Complaint filed against St. Johns County (Later amended to assert class action.)
- 2007 – Class not certified. Case proceeds with 27 individual plaintiffs/parcel owners
- 2008 – Moratorium repealed
- May 2009 – Summary Judgment for County granted on all Counts
- May 2011 – Fifth DCA affirms in part (3 Counts) and reverses in part (2 Counts)
- December 2011 – Florida Supreme Court declines review; Back to Circuit Court – Trial set for February 2013
- January 2013 – Settlement Agreement


ST JOHNS
ROAD & BRIDGE


ROAD CLOSED
LOCAL
TRAFFIC ONLY
ROAD CLOSED
AHEAD
LOCAL TRAFFIC ONLY

APPELLANTS' CLAIMS:

1. TEMPORARY BUILDING MORATORIUM

   -- NOT RATIONALLY RELATED TO VALID PUBLIC PURPOSE (i.e. safety)

   -- WAS AN INVERSE CONDEMNATION "TAKING"
2. DUTY TO PROVIDE EMERGENCY SERVICES
3. DUTY TO RESTORE AND MAINTAIN ROAD IN PERPETUITY
4. INJUNCTION REQUIRING COUNTY TO PERPETUALLY MAINTAIN ROAD
5. INVERSE CONDEMNATION DUE TO DETERIORATED ROAD/LACK OF ACCESS

VALIDITY OF MORATORIUM

When examining zoning and planning laws for substantive due process violations, the only question to be asked by the courts is "whether a rational relationship exists between the ordinance and <u>any conceivable</u> government objective. If the question is 'at least debatable' there is no substantive due process violation.

***WCI Communities v. City of Coral Springs*, 885 So.2d 912, 914**

A legislative act will withstand a substantive due process violation if the government identifies a legitimate state interest that it could rationally conclude would be served by the ordinance.

***City of Lauderdale v. Rhames*, 864 So.2d 432, 437**

WAS TEMPORARY MORATORIUM INVERSE CONDEMNATION?

TWO TYPES OF "TAKING":

1. **Per Se**
2. **As Applied**

Per Se: Taking of all viable economic use

***Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)**

TEMPORARY MORATORIUM IS NOT "PER SE" TAKING

Temporary taking cannot be a taking of all viable economic use.

***Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002)**

But over one year, Bert J. Harris, Jr. Claim?

As Applied Taking?

Requires case by case factual analysis of degree of interference with property use, IF there is "at least one meaningful application for a building permit."

***Lost Tree Village v. City of Vero Beach*, 838 So.2d 561, 570 (Fla. 4th DCA 2002)**

DUTY TO PROVIDE EMERGENCY SERVICES TO PLAINTIFFS?

"There has never been a common law duty to individual citizens for the enforcement of police power functions."

***Trianon Park Condominium Association v. City of Hialeah*, 468 So.2d 912, 914-15**

***Accord City of Daytona Beach v. Palmer*, 469 So.2d 121 (Fla. 1985)**

"There has never been a common law duty of care to individual property owners to provide fire protection services. Further, we find not statutory duty upon which to base governmental liability for [failure to provide such services]."

But MSBU Issue

DUTY TO MAINTAIN ROADWAY?
(Separation of Powers/Sovereign Immunity)

"A county is not obligated, nor can it be compelled, to perform or provide for any particular level of maintenance, except as it voluntarily assumes to do."

***Ecological Development, Inc. v. Walton County*, 558 So.2d 1069, 1071 (Fla. 1st DCA 1990)**

DUTY TO MAINTAIN ACCESS (St. Johns County's View)

"It is well established that decisions concerning the maintenance of and need to construct roadways, bridges, and other similar services are political questions outside the purview of the courts."

***Gargano v. Lee County Board of County Commissioners*, 921 So.2d 661 (Fla. 2d DCA 2006)**

"A governmental entity's decision not to build or modernize a particular improvement is a discretionary judgmental function with which we have held that the courts cannot interfere."

***Trianon Park Condo. Ass'n. v. City of Hileah*, 468 So.2d 912, 920 (Fla. 1985)**

"The decision to build or change a road, and all determinations inherent in such a decision, are of the judgmental, planning-level type. To hold otherwise would …supplant the wisdom of the judicial branch for that of the governmental entities whose job it is to determine, fund, and supervise necessary road construction and improvements, thereby violating the separation of powers doctrine."

***Dept. of Transp. v. Neilson*, 419 So.2d 1071, 1077 (Fla. 1982)**

APPELLANTS' COUNTER ARGUMENT

***State ex rel. White v. MacGibbon*, 84 So. 91 (Fla. 1920)**

Holding: BCC had standing to sue to force County Clerk to expend funds for road construction that BCC had authorized.

"Under our statutes, boards of county commissioners are given plenary power and authority over the location, building repairing, and keeping in order the public roads in their respective counties…

and it is made one of their continuous duties to locate, build, repair and keep roads in good order."

***Id*. at 82**

***Ecological Development, Inc. v. Walton County*, 558 So.2d 1069 (Fla. 1st DCA 1990)**

Holding: Walton County could not place county roads in a "no maintenance" status and retain them as public thoroughfares.

(Citing *MacGibbon* for that proposition)

INVERSE CONDEMNATION "TAKING" DUE TO DIMINISHED ACCESS?

No previous case in Florida has ever held that inaction or inadequate protective action can be a "taking" of property.

Can loss of access due to natural forces result in "taking" of property?

"Proof that the governmental body has effected a taking is an essential element of an inverse condemnation action…A taking may occur when governmental action causes a lack of access to one's property even when there is no physical appropriation of the property itself.

***Rubano v. Dept. of Transp.*, 656 So.2d 1264, 1266-67 (Fla. 1995) (emphasis added)**

5th DCA OPINION

Affirmed Summary Judgment:

1. Temporary moratorium is rationally related to safety
2. Temporary moratorium was not inverse condemnation
3. Perpetual performance injunctions not authorized under Florida Law

BUT reversed and remanded for fact finding:

County I – Declaratory relief re duty to maintain road

Count III – Inverse condemnation due to loss of access

COUNT I

"We hold that the County has a duty to reasonably maintain Old A1A as long as it is a public road dedicated to public use."

"We do not hold that the County has the duty to maintain the road in a particular manner or at a particular level of accessibility."

"However, the County's discretion is not absolute. The County must provide a reasonable level of maintenance that affords meaningful access, unless or until the County formally abandons the road." (Emphasis added.)

COUNT III

Inverse Condemnation Based on Loss of Access?

"We conclude that governmental inaction in the face of a n affirmative duty to act can support a claim for inverse condemnation."

FUNDING INFRASTRUCTURE IN SPECIAL SITUATIONS

Municipal Services Taxing Unit (MSTU)

-- pro -- flexible spending

-- con -- millage cap; limited funds

Municipal Services Benefit Unit (MSBU)

-- pro -- greater funding

-- con -- more restricted spending --

con -- may create “duty” to individual lots

MANAGING LIABILITY

- Reasonable restrictions on development
- Avoid or limit “duty” pertaining to accessibility
- Notice
- Acknowledgment
- Waiver/Release
- Assumption of Risk
- Hold Harmless/Indemnification?

CLASSES OF ACCESS

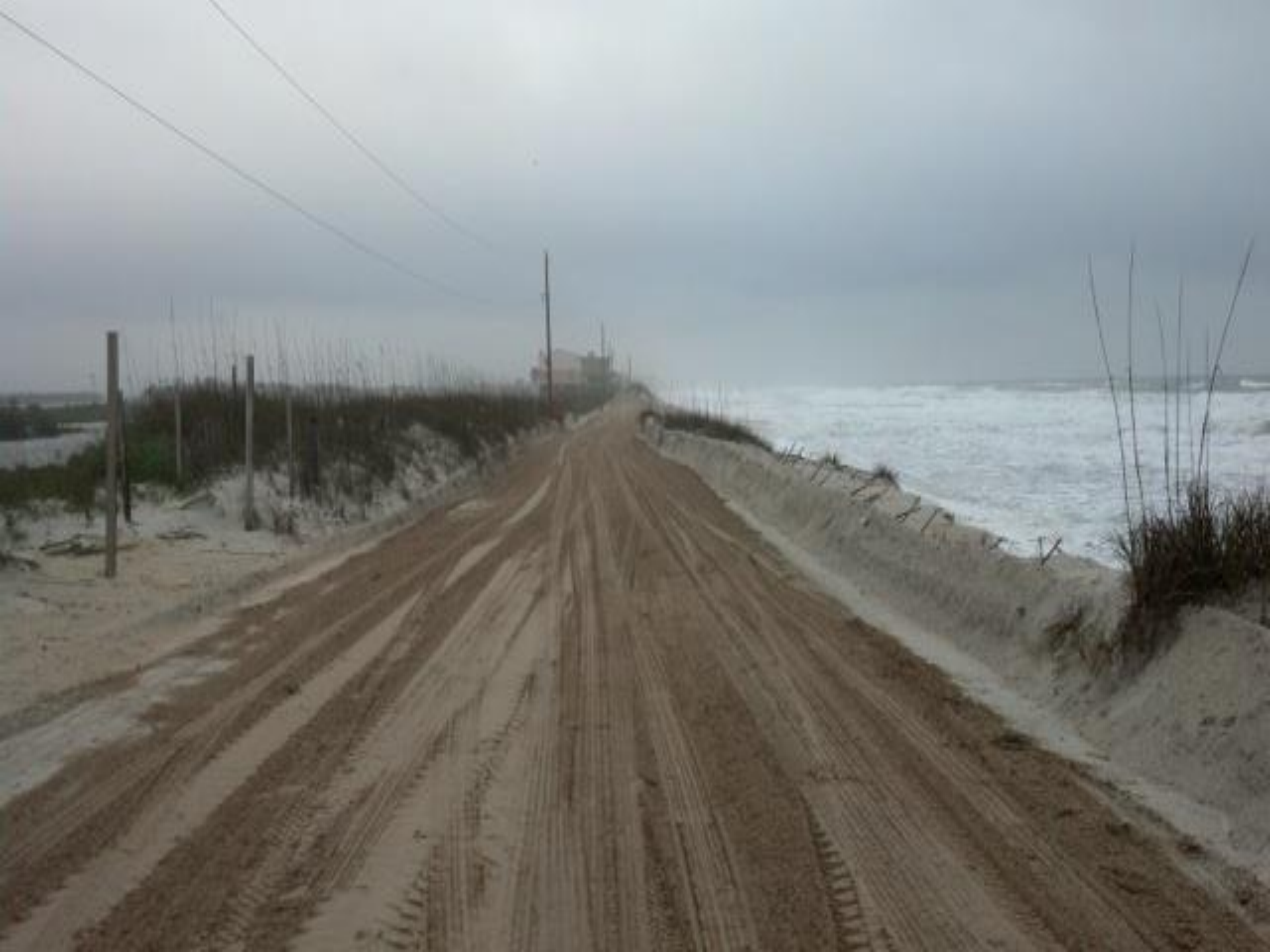
- Paved (Normal GreenBook)

- Suitable Material packed or loose
- Dirt
- Sand
- Water
- Seasonal or otherwise periodic

St. Johns County Ordinance 2012-35

Establishes standards for county roads in environmentally challenging locations.

- Chapter 334, F.S. authorizes FDOT to develop and adopt public road standards.
- Section 336.045 provides for the minimum standards for county roads.
- FDOT “green book” adopted by administrative rule.
- Chapter 14 of FL green book allows “design exceptions” where necessary to deviate from standard FL green book criteria.
- Chapter 14 authorizes counties to adopt design criteria by ordinance and such criteria constitute and approve design exceptions.
- Ordinance 2012-35 defines environmentally challenging locations and meaningful access. Roads and access may include unpaved surfaces, substandard language, vehicle weight limitations, and periodic blockage.

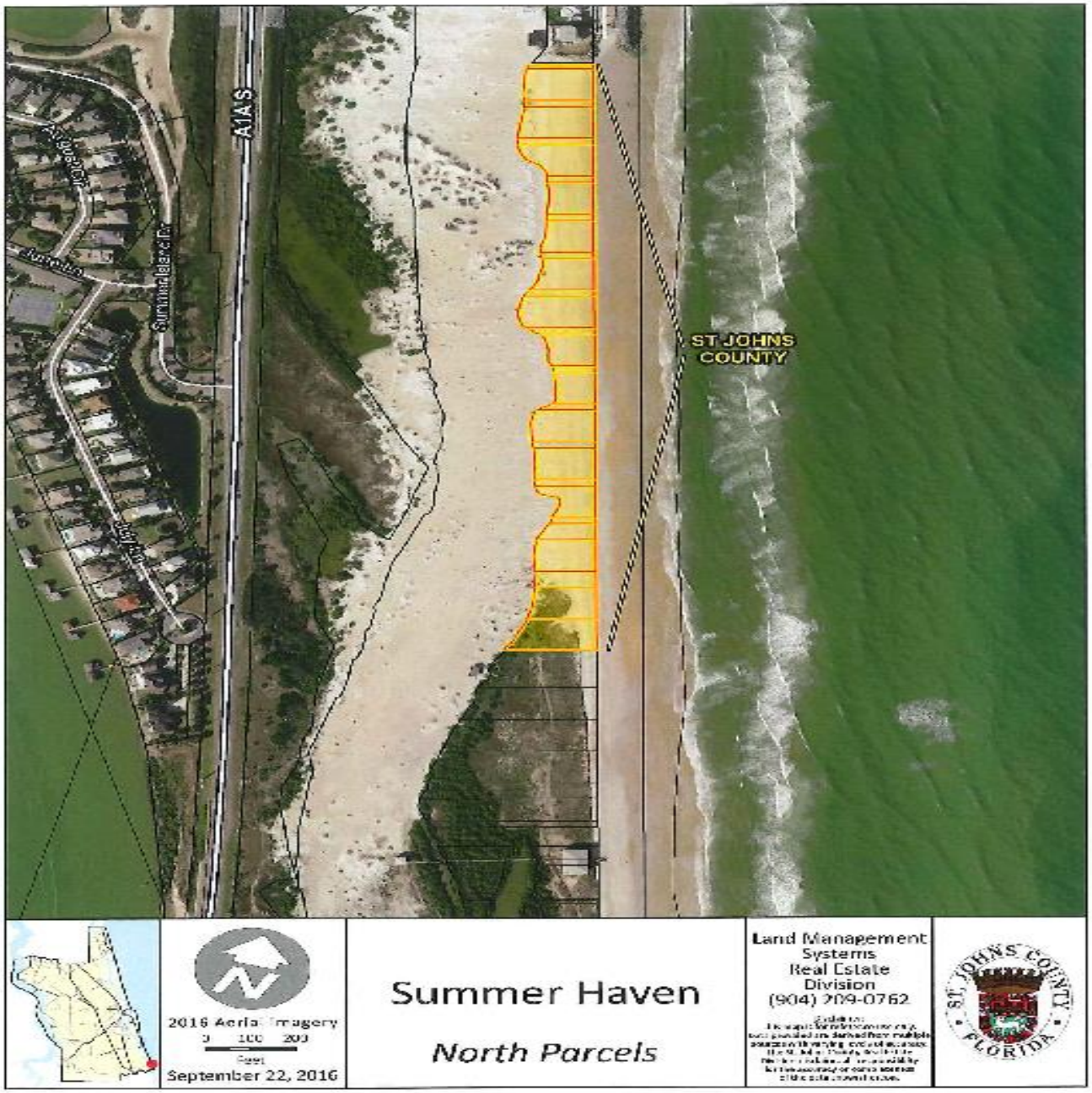


County is required to do what it already intended to do:

1. Use “good faith” to maintain Old A1A in “as is” condition.
2. Use “timely and good faith efforts” to keep access open.
3. Include paved portion of Old A1A in pavement management schedule (repave as needed).
4. Resurface 0.3 mile portion of Old A1A from New A1A to the point where the 2005 FEMA repavement project began.

5. Remove diminished road access as an impediment to obtaining building permits (already implied).

   (Owners must give County notice and opportunity to buy properties before selling to others.)
6. Repeal requirement that prospective home builders sign “hold harmless” agreement to get building permits (already implied).
7. Obtain easement from south to “way of necessity” to restore access to Blocks 3-22.
8. Allow transit of County-owned Blocks 4-7 and 10, 11, and 15 in the north (no improvement required).


A1A S
ST JOHNS
COUNTY
2016 Aerial Imagery
0 100 200
Feet
September 22, 2016
Summer Haven
North Parcels
Land Management
Systems
Real Estate
Division
(904) 209-0762
ST JOHNS COUNTY
FLORIDA

Questions?