

**RESOLUTION NO. 4161-10**

**RESCINDING RESOLUTION 4123-10 AND APPROVING  
ENTERING INTO A LAND USE AGREEMENT  
WITH COASTAL WILDLIFE RESCUE CENTER OF SOUTH ALABAMA, INC.**

WHEREAS, the Foley City Council adopted Resolution 4123-10 on June 21, 2010 accepting a donation from Coastal Wildlife Rescue Center of South Alabama, Inc., and

WHEREAS, the Coastal Wildlife Rescue Center received a donation of a 12x50' portable building and \$10,000 to start a wildlife rehabilitation center, and

WHEREAS, the Coastal Wildlife Rescue Center would like to place their portable building at the Graham Creek Nature Preserve to rehabilitate birds and other wildlife needing additional care due to the oil spill, and

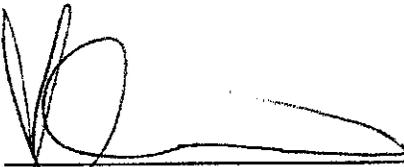
WHEREAS, the Coastal Wildlife Rescue Center would be responsible for all utilities, cleanup, and disposal of any hazardous material.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Rescinds Resolution 4123-10 and authorizes the Mayor to enter into a Land Usage Agreement with Coastal Wildlife Rescue Center of South Alabama, Inc. as outlined in the attached Land Usage Agreement, which is made a permanent part of this resolution upon its adoption.

SECTION 2: This Resolution shall become effective immediately upon its adoption as required by law.

PASSED, ADOPTED AND APPROVED THIS 19th day of July 2010.



John E. Koniar, Mayor

ATTEST:



A. Perry Wilbourne  
City Clerk/Administrator

## LAND USAGE AGREEMENT

This Land Usage Agreement (the "Agreement") effective as of July 19<sup>th</sup>, 2010 is between the CITY OF FOLEY, ALABAMA, a municipal corporation of the State of Alabama ("Foley") and COASTAL WILDLIFE RESCUE CENTER OF SOUTH ALABAMA, INC. an Alabama corporation ("Coastal").

### Definitions

For purposes of this Agreement, the words and phrases set forth below shall have the following meanings:

"Site" shall mean the following real property, to-wit:

Approximately one-tenth (1/10<sup>th</sup>) of one (1) acre of land (0.1 acre), more or less, located approximately 637 feet East of and 400 feet South of the Northwestern (NW) corner of Tax Parcel ID number 61-06-13-0-000-003.010 within Section 13, Township 8 South, Range 4 East, Baldwin County Alabama as approved by the City of Foley Environmental Manager for the location of a portable building, plus such additional areas as approved by the City of Foley Environmental Manager on Tax Parcel ID number 61-06-13-0-000-003.010 and Tax Parcel ID number 61-06-14-0-000-004.000 for the location of temporary portable wildlife enclosures for animal rehabilitation as approved by the City of Foley Environmental Manager.

"Activities" shall mean (i) placing a portable building that is no larger than twelve feet by fifty feet (12' x 50') on the 1/10<sup>th</sup> acre portion of the Site and connecting it to necessary utilities; (ii) running necessary utilities to the 1/10<sup>th</sup> acre portion of the Site to serve the portable building; (iii) erecting or placing such temporary, portable cages, fences, enclosures and other systems to house or store animals being rehabilitated in such locations as approved by the City of Foley Environmental Manager on the Site; and (iv) operating and conducting non-profit wildlife rescue and rehabilitation services on the Site.

### Preamble

Foley owns the Site, and Coastal desires to use the Site for the Activities.

### Agreement

NOW, THEREFORE, in consideration of the premises, mutual agreements of the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Site License: Limitations. Foley hereby grants a non-exclusive license to Coastal on the terms and conditions herein for the use of the Site for the Activities, but for no other purposes.
2. Term. The term of this Agreement shall commence on the effective date first above written and continue for three (3) years unless sooner terminated as herein provided; provided, however, that the term shall continue beyond the expiration date on a month-to-month basis if Coastal remains in possession of any portion of the Site following the expiration of the term and if notice was not provided by either party of their desire to terminate the agreement upon its expiration date. The term of this Agreement can be terminated by either party giving written notice to the other party of their desire to terminate the Agreement on ninety (90) days advance notice during the original term, or on thirty (30) days advance notice during the month-to-month extension of the original term.
3. Consideration. Coastal shall be responsible for any sales, use or income taxes due as a result of its operations at the Site along with all licenses and permit fees necessary for its operations. Coastal is also required to continuously operate a non-profit wildlife rescue and rehabilitation Site at the Site which is part of the consideration to Foley under this Agreement.
4. Inability to Use the Site for Activities. Coastal agrees and acknowledges that Foley shall not be liable for its inability to use the Site for the Activities which occur due to fire or other casualty, acts of God, weather conditions, changes in law or regulation or other acts of governmental authority or any other reason beyond Foley's reasonable control.
5. Assumption of Risk; Waiver of Claims. Coastal agrees that it assumes sole and absolute responsibility for all risk of personal injury, death, damage to property or loss of property suffered by Coastal or any of Coastal's employees, agents, contractors or other invitees of Coastal in connection with use of the Site. Not in limitation of the foregoing, Coastal accepts the Site "as is, where is and with all faults" and agrees that Foley shall have no responsibility for providing any security, lighting, utilities, or other services to the Site hereunder. Coastal acknowledges and agrees that Foley has made no warranties of any kind or nature concerning the Site, its condition, or its fitness or suitability. Coastal agrees to and hereby releases, waives and relinquishes any claim against Foley and the officers, employees, agents, servants, representatives, affiliates, successors and assigns of Foley, that directly or indirectly arise out of or is related to Coastal's use of the Site. Coastal, for itself, its employees, contractors and invitees, assumes the risk of any latent or patent defects that are or may be on the Site, and Coastal agrees that Foley shall not be responsible for any loss or damage on account of any such defects.
6. Indemnity. Coastal will indemnify, save harmless and defend Foley and the officers, employees, agents, servants, representatives, affiliates, successors and assigns of Foley from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or property on the Site.
7. Notices. Any notice to be given hereunder must be in writing and shall be deemed to be given when (a) hand delivered, or (b) one (1) business day after pickup by United Parcel

Services or Federal Express, or another similar overnight express service, in either case addressed to the parties at their respective addresses set forth below:

If to Coastal: Janet Ripp  
Coastal Wildlife Rescue Center of South Alabama, Inc.  
12078 Fernwood Drive West  
Foley, Alabama 36535  
Phone: 251-978-6690

If to Foley: City Clerk, City of Foley  
407 East Laurel Ave.  
Foley AL 36536

8. Utilities. Coastal shall initiate, contract for, and obtain in its name any and all utility services that it requires for use of the Site. Coastal shall pay all charges for the utility services furnished to it during the term as such charges become due. If Coastal fails to pay the utility charges for services furnished the Site, Foley may, at its option, pay such charges and Coastal shall promptly reimburse Foley for any such payments made by Foley, and/or Foley may declare Coastal in default and terminate the term hereunder.

9. Maintenance. Coastal, at its own expense, shall maintain the Site in a safe condition, and upon termination of this Agreement in any manner, shall deliver to Foley the Site in substantially the same condition as existed on the commencement date, ordinary wear and tear, casualty and condemnation excepted. Coastal will not permit any mechanic's or other liens to stand against the Site for labor or material furnished to it in connection with any improvements or installations made by it. No modifications or improvements to the Site shall be made without the prior written consent of Foley.

10. Duty to Obtain Permits and Licenses. Coastal shall, at its own cost and expense, procure each and every permit, license certificate, or other authorization and any renewals, extensions, or continuances of the same required in connection with the lawful and proper use of the Site for the Activities.

11. Insurance and Indemnity.

(a) Coastal, at its sole cost and expense, shall carry and maintain the insurance coverages specified on Exhibit "A" attached hereto to protect Foley from and against all claims for damages to persons and to property which may arise from Coastal's use of the Site.

(b) Coastal shall conduct all of its operations related to this Agreement in a safe and workmanlike manner, in full compliance with all applicable governmental laws, rules and regulations, at their own cost, expense and risk. Coastal hereby covenants and agrees with Foley to reimburse, indemnify and hold harmless Foley from and against any and all liabilities, claims, suits, judgments, losses or damages, either to person (including death) or property, including without limitation, all attorney's fees, consulting and engineering fees, court costs,

expenses, expert fees, discovery costs and all other costs arising out of, incident to, or resulting from the operations of Coastal, its employees, agents, representatives, contractors, successors or assigns, on the Site or in connection with the Activities.

(c) Coastal represents, warrants and covenants to Foley that Coastal and its agents, servants, employees, contractors and anyone acting on its behalf will not use, store, generate or dispose of "Hazardous Materials" (as hereinafter defined) in, on, under, around or about the Site or on Foley's other property. Coastal shall give Foley prompt written notice of the existence or discovery of the presence or contamination of the Site with Hazardous Materials. Without limiting the foregoing, Coastal also agrees that Coastal shall not install, operate or maintain any underground storage tanks on or about the Site. Coastal agrees that any and all oil, gas or petroleum containers or products that it keeps on the Site shall be kept and maintained in compliance with all applicable Environmental Laws. Should Coastal operate any machinery on the property and any oil or fuel or other contaminant is released onto the Site or Foley's adjacent property, or should any other discharge, improper storage, leakage, spillage, emission, contamination or pollution of any type occur upon or from the Site or Foley's adjacent property due to or associated with Coastal's use and occupancy thereof, Coastal, at Coastal's expense, shall immediately notify Foley, clean all property affected thereby to the satisfaction of Foley and any governmental body or agency having jurisdiction thereof, and remove any contaminated soil to a permitted Site. In the event Coastal or any of its agents, servants, employees, contractors or anyone acting on its behalf violates this Section of the Agreement, Coastal shall indemnify, defend and hold Foley harmless from and against any and all damages, claims, injuries, cost and expenses and liability arising therefrom or related thereto (including, without limitation, any fines, penalties, judgments, clean-up costs, litigation costs, experts' fees, attorneys' fees and consulting, engineering and construction costs), except to the extent that such liability, damage, loss, cost or expense may be contributed to or exacerbated in part by the negligence of Foley. The clean-up and disposal of such Hazardous Materials, including required air and water monitoring and documentation, shall be performed by Coastal at its sole cost and expense and shall be performed in accordance with all applicable laws, rules, regulations and ordinances. Foley shall have the right, but not the obligation, to review and monitor any such clean-up and disposal by Coastal. Within forty-five (45) days following the clean-up of any Hazardous Materials, Coastal shall furnish to Foley Hazardous Materials manifests and records which document transport and disposal of such material. Coastal's obligations to clean such property shall survive the termination of this Agreement and Coastal's vacancy from the Site. Coastal hereby waives any statute of limitations which might bar Foley from recovery against Coastal for damages Foley suffers, including clean-up costs, for any such pollution, emission, improper storage, contamination, leakage, discharge or spillage, on or near the Site resulting directly from Coastal's operations and use thereof. Coastal shall not be responsible for any contamination, pollution, emission, leakage, or damage to the Site and other affected property caused by the negligence or willful misconduct of Foley or by a prior user or occupant of the Site. As used herein, the term "Hazardous Material(s)" means any chemical, substance or material or combination thereof, which (i) is defined as a hazardous substance, hazardous material, hazardous waste, pollutant, toxic material, or contaminant under any Environmental Law (as defined below), and (ii) is a petroleum hydrocarbon, including crude oil or any fraction thereof, (iii) is hazardous to human health or safety or the environment due to its toxicity, corrosivity, flammability, explosivity, infectiousness, radioactivity, carcinogenicity or

reproductive toxicity, or (iv) is regulated, pursuant to any Environmental Law. As used herein, the term "Environmental Laws" shall include local, state and federal laws, judgments, ordinance, rules, regulations, codes and other governmental restrictions.

12. Surrender. Upon the expiration or termination of this Agreement in any manner, the Site shall be restored by Coastal to a condition similar to what existed at the commencement of this Agreement, free of any Hazardous Materials, ordinary wear and tear, casualty and condemnation excepted. Any personal property of Coastal that remains on the Site following the termination of this Agreement will, at the option of Foley, (i) be deemed abandoned; or (ii) become the property of Foley. Foley may, nonetheless, require Coastal to remove such fixtures, equipment and personal property as designated by Foley (the "Required Removables") at Coastal's sole cost. If Coastal fails to remove the Required Removables, Coastal shall pay Foley on demand all costs incurred in removing, storing and/or disposing of the Required Removables and for any damage to the Site. Coastal's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement.

13. Default and Remedies. It is understood and agreed that in the event: (a) Coastal shall fail to make any payment of fees within five (5) business days after receipt of written notice therefor; or (b) the insolvency of Coastal, its adjudication as a bankrupt, voluntary or involuntary, or a general or partial assignment by it for the benefit of its creditors; or (c) Coastal should fail in the performance of any of the other covenants, provisions, or agreements herein contained; and should such default or failure continue for a period of thirty (30) days after receipt of written notice by Coastal of such default or failure or such additional time reasonably necessary to cure, provided Coastal commences to cure such default or failure within such initial 30-day period and diligently prosecutes such cure to completion, then, and in any of those events, Foley shall have the right and option to terminate this Agreement by giving Coastal written notice thereof, in which case this Agreement shall wholly cease and expire on the date fixed by such written notice and Coastal shall immediately remove its operations from the Site and Foley may dismiss Coastal from the Site, in accordance with law.

The right of Foley to terminate this Agreement, as herein set forth, is in addition to and not in exhaustion of such other rights that Foley has or causes of action that may accrue to Foley because of Coastal's failure to fulfill, perform, or observe the obligations, agreements, or covenants of this Agreement after notice and an opportunity to cure as set forth in this Section 13 and the exercise of and pursuit by Foley of any of the rights or causes of action accruing hereunder shall not be an exhaustion of such other rights or causes of action that Foley might otherwise have.

14. Attorney's Fees. In the event of default by either party hereunder and the subsequent employment by the other party of an attorney for the enforcement of its rights under this Agreement, the defaulting party agrees to pay and shall be taxed with a reasonable attorney's fee for the services of such attorney.

16. No Waiver. The failure of Foley to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

17. Limitation of Liability. In no event shall either party be liable to the other for consequential damages regardless of causation. With respect to tort claims, neither party will be liable to the other or to any other person for any act or omission of them (or their agents or employees), except for actual damages or costs incurred as a direct result of and caused directly by the willful misconduct or negligence of the parties hereto (or their agents or employees) in circumstances in which either party is deemed to be liable at law for such acts or omissions. Further, in any circumstance in which Foley is judicially determined to have some liability to Coastal, for whatever reason, such liability shall, in each such instance, be limited to the interest of Foley in the Site, and Coastal agrees to look solely to Foley's interest in the Site for the recovery of any such judgment, it being intended that Foley shall not be personally liable for any judgment or deficiency.

19. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed under the laws of the State of Alabama. The parties agree and submit to the jurisdiction of any state or federal court sitting in Baldwin County, Alabama over any suit, action or proceeding arising out of or relating to this Agreement. The parties further irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

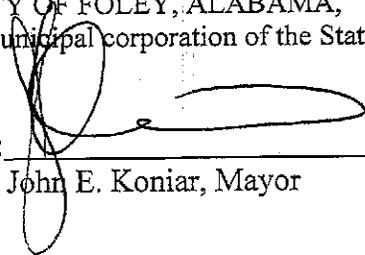
20. Assignment. This Agreement is a personal license in favor of Coastal and is not assignable or divisible by Coastal. The rights and obligations of Foley under this Agreement are freely assignable.

21. Entire Agreement. This Agreement (including all the exhibits and schedules hereto) constitutes the entire agreement between the parties with respect to the matters contained herein, and may be amended only by an instrument in writing signed by both parties hereto.

22. Miscellaneous. The parties to this Agreement are independent contractors and there is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. This Agreement is to be interpreted, construed and governed by and in accordance with the laws of the State of Alabama. This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. No alteration, amendment, change or modification of this Agreement will be binding unless it is in writing and signed by both Foley and Coastal. This Agreement may not be recorded by Coastal in the real property records of Baldwin County, Alabama.

IN WITNESS WHEREOF, Foley and Coastal have caused this Agreement to be duly executed as of the date first set forth above.

CITY OF FOLEY, ALABAMA,  
a municipal corporation of the State of Alabama

By:   
Its: John E. Koniar, Mayor

COASTAL WILDLIFE RESCUE CENTER OF  
SOUTH ALABAMA, INC.,  
an Alabama corporation

By:   
Its: JANET O RIPP

Exhibit "A"

INSURANCE BY COASTAL WILDLIFE RESCUE CENTER OF SOUTH ALABAMA, INC.,

Coastal, at its own cost and expense, shall carry and maintain the following types of insurance, in the minimum amounts specified, as will protect Foley and its property from and against all claims for damages to persons and to property which may arise from Coastal's use of the Site and the performance of Coastal's operations at the Site or its Activities:

(A) Commercial General Liability insurance with limits of liability not less than \$2,000,000 each occurrence covering liability arising from, but not limited to, bodily injury and property damages; premises and operations including personal and advertising injury liability; products and completed operations; and contractual liability coverage.

(B) Business Automobile Liability Insurance covering owned, non-owned, and hired vehicles with combined primary and excess limits of liability not less than \$400,000, Combined Single Limit, for any one occurrence for bodily injury, including death, and property damage liability;

(C) Statutory Workers' Compensation insurance and Employer's Liability insurance with limits of not less than \$1,000,000 Bodily Injury each accident; \$1,000,000 Disease/each employee; and \$1,000,000 Disease/policy limit. Such policies shall provide a full Waiver of Subrogation in favor of Foley and its officers, representatives, agents and employees.

Coastal may purchase an Excess or Umbrella Liability Policy to provide the limits of coverage specified above so long as such umbrella provides coverage at least as broad as specified for the individual policies; is equivalent to or in excess of the limits specified for each individual policy; and the umbrella applies directly above the individual policy, without any gap in limit of liability.

The coverage provided by the policies required herein is primary coverage, regardless of policy language to the contrary, and any insurance carried by Foley, if any, shall be excess coverage.

All policies of insurance must be written with good and solvent underwriters acceptable to Foley, but Foley shall not unreasonably refuse to accept any such underwriter. Prior to the effective date of this Agreement, Coastal shall furnish to Foley original certificates of insurance signed by the licensed agent evidencing required coverage. Such certificates shall provide that the policies cannot be materially altered or canceled without thirty (30) days prior written notice to Coastal and Foley. Foley reserves the right to require certified copies of any and all policies required in this Agreement.

Coastal's insurance policies, excluding worker's compensation policies, shall include endorsements providing that Foley and its officers, representatives, agents and employees are to be covered as additional insured, with respect to liability arising out of Coastal's use of the Site.

Coastal's insurers shall agree to waive all rights of subrogation against Foley, its officers, representatives, agents and employees for losses arising from Coastal's use of the Site or from its Activities.

Coastal shall not allow any contractor or subcontractor to commence work on the Site until all similar insurance has been obtained by the contractor or subcontractor or until Coastal has provided such coverage for the contractor or subcontractor.

RESOLUTION NO. 4123-10

MEMORIALIZING ACCEPTANCE OF DONATION OF BUILDING AND MONETARY  
DONATION FOR ANIMAL RESCUE AT GRAHAM CREEK NATURE PRESERVE

WHEREAS, Coastal Wildlife Rehab received a portable building for use as a clinic and a \$10,000 donation to build cages for injured wildlife, and

WHEREAS, Coastal Wildlife Rehab would like to make a donation of the portable clinic and \$10,000 to the City of Foley to establish a Wildlife Rehabilitation Center at the Graham Creek Nature Preserve, and

WHEREAS, Janet D. Ripp, Coastal Wildlife Rehab Director, along with Jody Young, will head the Wildlife Rehabilitation Center project with no financial support from the City of Foley.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Foley, Alabama, as follows:

SECTION 1: Approves memorializing acceptance of the donation of a portable building and a \$10,000 monetary donation for establishing an animal rescue center at Graham Creek Nature Preserve.

SECTION 2: Janet D. Ripp, Coastal Wildlife Rehab Director, along with Jody Young, will head the Wildlife Rehabilitation Center project with no financial support from the City of Foley.

SECTION 3: This Resolution shall become effective immediately upon its adoption as required by law.

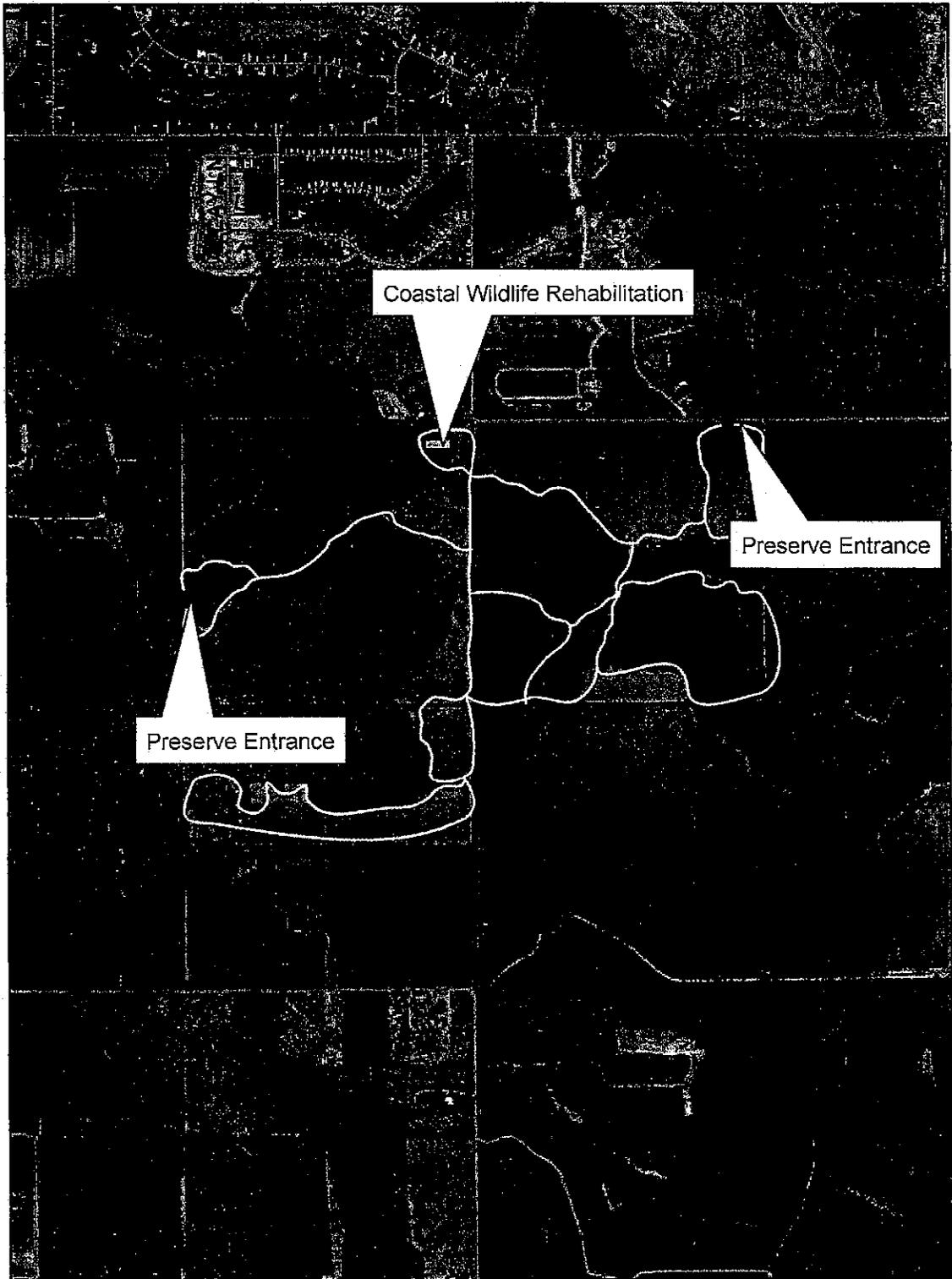
PASSED, ADOPTED AND APPROVED THIS 21st day of June 2010.

  
\_\_\_\_\_  
John E. Koniar, Mayor

ATTEST:

  
\_\_\_\_\_  
A. Perry Wilbourne  
City Clerk/Administrator

# Graham Creek Nature Preserve



0 675 1,750 3,500 Feet

