COLUMBIA COUNTY, FLORIDA
Office of the County Attorney

Joel F. Foreman
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MEMORANDUM

To: Board Agenda, _____

From: Joel F. Foreman

Re: Rum Island – Deed restrictions on further action

Date: June 21, 2024

Highlights by the Observer
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At its meeting on June 20, 2024, I offered to present the Board with a memorandum concerning the deed conveying real property we now know as Rum Island Park from the United States Government to the County Commissioners. Below I provide a short analysis of the patent conveying the land (a copy being attached to this memo) followed by a list of options available to the County Commission as it considers further action on Rum Island Park.

RUM ISLAND PARK

In 1965 the Bureau of Land Management ("BLM"), a bureau of the United States Department of the Interior, through Patent No. 1238655 (the "Patent"), conveyed 44 acres located on Lots 8, 9, and 10 of Township 7 South, Range 16 East, Section 35 to the Board of County Commissioners, Columbia County, Florida.

Since that date, the land has been under the care and control of Columbia County. Today this property is known as Rum Island Park. Rum Island Park (the "Park") is a popular recreational destination, providing swimmers, kayakers, and canoers access to the Santa Fe River and Rum Island Spring.

THE PATENT

The Patent, which can be thought of as a deed for purposes of this memo, includes many restrictions on the County's use and disposition of the Park. The habendum clause which sets out the quality of the County's title reads as follows:

> NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the said Acts of Congress, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT, unto the said Board of County Commissioners, Columbia County, Florida, the land above described, for recreational purposes only; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Board of County Commissioners, Columbia County, Florida, and to its successors forever; subject, however, to the following reservations, conditions and limitations:

The very first restriction, then, is that the Park may be used for *recreational* purposes only. While it is unlikely the County could put the land to any other use, this restriction would prohibit the County from dividing and selling the land for residential purposes, or from making commercial uses of the land. Industrial uses, such as pumping and bottling spring water, are also prohibited by this language. The land was conveyed to the County for recreation, and no other use by the County, under the Patent, can be permitted. To date, the County has only used the Park for recreational purposes, making the Park available to the public for recreational use. While in recent years the County has assessed a small fee for accessing the park, this was incidental to the recreational use as the number and frequency of users of the Park had to be monitored and controlled.

The Patent reserves to the United States any and all mineral rights in the land. Such a reservation is common, and logical for a conveyance with use restrictions. The County cannot mine or remove any minerals or resources from the Park; that right is reserved to the United Sates government.

The Park is subject to "approved plans of development and management" administered by the BLM pursuant to the Recreation and Public Purposes Act. The Park has been assigned number FL-BLM-079812, and is one of two BLM administered recreation areas in Columbia County. The most recent Florida Resource Management Plan and Record of Decision (the "Plan") was released in June of 1995, with updates appearing as recently as 2016. The County, pursuant to the Patent, is responsible for compliance with this revision to the BLM and Department of Interior's plan, and the Secretary of the Interior or that office's designee has enforcement authority to declare violations and, if violations are not cured, terminate the Patent and retake the lands in the name of the United States. The Plan relates to many issues, and there is no evidence or suggestion that the County has violated the Plan or that there is any risk of receiving notice. The Plan is relevant because the County's use of the land, already limited to recreational purposes, must not violate the Plan.

If the County violates the Plan and the Secretary of the Interior so chooses, rather than work a forfeiture of the Park back to the United States government, the Secretary may order the Count to pay an amount "equal to the difference between the price paid for the land by the patentee prior to issuance of [the] patent and 50 percent of the fair market value of the patented lands", plus interest at four percent since June of 1965. In other words, the County could not force a forfeiture to the United States government by violating the Plan. Instead, the County could be financially penalized and forced to buy out the United States government's interest with significant interest charges.

There are events of default which trigger automatic reversion:

> Provided, that, if the [County] or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts,

> directly or indirectly, or permits its agents, employees, contractors, or subcontractors (including without limitation, lessees, sublessees and permittees), to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States.

The remaining provisions in the Patent relate to the Secretary of the Interior requiring the County's compliance with the Civil Rights Act of 1964 and any rules or regulations promulgated by the Secretary of the Interior pursuant to that act. The County, by accepting the Patent, agreed to such terms and to the power of the Secretary or delegate to retake title to the Park in the event of any violation.

All these restrictions "run with the land", and do not expire.

AVAILABLE COURSES OF ACTION

1. Park Closure

While the County's use of the land is restricted, it does not appear that the County is obligated to keep the Park open for use. So long as no other use is made; so long as the County does not attempt to transfer ownership or control of the property; and so long as denial of access to the Park is not based on any person's race, creed, color, or national origin, the property will not automatically revert to the United States government. Should the Board choose, subject to these restrictions it can close the park to the public.

2. "Privatized" Management

There are two sections of the Patent that recognize the Board's authority to lease or license the Park subject to the other restrictions provided in the Patent.

First, the habendum clause reads as follows:

> TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Board of County Commissioners, Columbia County, Florida, and to its successors forever; subject, however, to the following reservations, conditions and limitations

This is a broadly inclusive conveyance of title to the County. The County holds any and all rights of a fee simple title holder, subject only to very specific reversionary interests of the United States through the BLM and Dept. of Interior. There is nothing about the Patent that suggests the County cannot lease or license the Park, so long as the County retains title and control, and requires the lessee or licensee to abide by the terms of the Patent.

Second, the clause prohibiting transfer of ownership or control also includes this language relative to compliance with the Civil Rights Act:

> "Provided, that, if the patentee or its successor… prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors (including without limitation, lessees, sublessees and permittees), to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States"

The Patent gives the County unqualified title subject only to the restrictions appearing in the Patent and clearly contemplates scenarios that include the County leasing, subleasing, or permitting the Park to another who the County would then have to ensure complied with the restrictions of the Patent. As such, the County may wish to have the Park evaluated for such an arrangement whereby a private concern operates the Park, always keeping in mind that the purpose must be recreational and there could be no exclusion of patrons from the park on any basis protected by the Civil Rights Act.

3. Modification of the Use Restriction

I am unaware of any other use the County might hope to make of the Park, but BLM literature suggests the County may approach the BLM to request modification. Since this property was conveyed under the Recreation and Public Purposes Act, any non-recreational use would still have to be public in nature.

4. Buyout of Patent Restrictions

It is not clear whether the BLM or Dept. of Interior are authorized to convey the mineral rights reserved to the United States. The Patent makes clear, however, that the reversionary interests in the land may be bought out by its inclusion of the buyout penalty option given to the Secretary of the Interior. If the County wished to obtain the Park free of the reversion, it could approach BLM or the Secretary and attempt to negotiate the same. It is likely the County would be required to pay one half of the fair market value of the Park lands plus four percent compounding interest since June of 1964, so this option would be very costly.

5. Voluntary Return/Reversion

The Patent makes clear that the BLM or Dept. of Interior may take the Park back by way of triggering reversion if certain requirements of the Patent are violated. This suggests that the County could approach BLM or the Dept. of Interior and ask to return these lands to the United States. I found nothing prohibiting the BLM or Dept. of Interior from accepting the lands back.