

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARING**

MATLACHA CIVIC ASSOCIATION
INC., J. MICHAEL HANNON, KARL
R. DEIGERT, YOLANDA OLSEN,
ROBERT S. ZARRANZ, DEBRA HALL,
MELANIE HOFF, AND JESSICA BLANKS,

Petitioners,

vs.

DOAH CASE NO.: 18-6752

CITY OF CAPE CORAL and
FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.

**NOTICE OF FILING AMENDED COMPOSITE EXHIBIT 1 TO
DEPARTMENT OF ENVIRONMENTAL PROTECTION'S NOTICE OF REVISIONS
TO DRAFT INTENT TO ISSUE ENVIRONMENTAL RESOURCE PERMIT AND
ACCOMPANYING DRAFT ENVIRONMENTAL RESOURCE PERMIT**

Respondent, State of Florida Department of Environmental Protection (Department) gives Notice of Filing Amended Composite Exhibit 1 to Notice of Revisions to the Draft Notice of Intent to Issue Environmental Resource Permit and Accompanying Draft Environmental Resource Permit No. 244816-005 (collectively, Permit) and in support thereof states:

1. On February 28, 2019 the Department filed its Notice of Revisions to the Draft Notice of Intent to Issue Environmental Resource Permit and Accompanying Draft Environmental Resource Permit attaching Composite Exhibit 1 to that Notice.

2. This Notice is provided because additional edits have been made to Composite Exhibit 1 filed on February 28, 2019. These changes are reflected in Amended Composite Exhibit 1 attached to this Notice.

Dated this 1st day of March 2019.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

/s/ Kirk S. White

KIRK S. WHITE

Assistant Deputy General Counsel

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Tertiary Email: DEP.Defense@dep.state.fl.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by electronic mail to the following on this 1st day of March 2019:

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/s/ Kirk S. White

KIRK S. WHITE

Assistant Deputy General Counsel



FLORIDA DEPARTMENT OF Environmental Protection

South District
Post Office Box 2549
Fort Myers, Florida 33902-2549
SouthDistrict@FloridaDEP.gov

Rick Scott
Governor
Carlos Lopez-Cantera
Lt. Governor
Noah Valenstein
Secretary

In the matter of an Application for a Permit/Water Quality Certification by:

APPLICANT:

City of Cape Coral
c/o John Szerlag, City Manager
P.O. Box 150027
Cape Coral, FL 33915
Jzerlag@capecoral.net

FILE No.: 244816-005

COUNTY: Lee

PROJECT NAME: Chiquita Boat Lock Removal

NOTICE OF INTENT TO ISSUE ENVIRONMENTAL RESOURCE PERMIT

The Department of Environmental Protection (Department) gives notice of its intent to issue an Environmental Resource Permit (ERP) in accordance with Part IV of Chapter 373, Florida Statutes (F.S.), and Chapter 62-330, Florida Administrative Code (F.A.C.) (draft copy of permit attached). Issuance of the ERP constitutes certification of compliance with state water quality standards pursuant to section 401 of the Clean Water Act U.S.C. § 1341. Additionally, issuance of the ERP permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act, 16 U.S.C. § 1456.

I. DESCRIPTION OF THE PROPOSED ACTIVITY

The ~~applicant~~applicant, City of Cape Coral (~~City~~), applied on October 31, 2016, to the Department of Environmental Protection for a permit to remove the Chiquita Boat Lock (~~Lock~~) and associated uplands, and install a 165-linear foot seawall along the north end of the South Spreader waterbody (~~SSW~~), Class III Waters. The Department sent a request for additional information on November 30, 2016. The ApplicantCity responded on February 14, 2017. The Department sent a second request for additional information on March 16, 2017. The ApplicantCity responded partially on June 13, 2017, and completed the response on July 27, 2017. Since that time, the applicantCity has waived the Department's time to issue the permit until ~~October 5~~November 9, 2018.

The activity is located in the City of Cape Coral, Chiquita Boat Lock, adjacent to 5808 Cape Harbour Drive, in Section 21, Township 45 South, Range 23 East in Lee County, at Latitude 26.54350450° N, Longitude 82.00909191° W.

II. AUTHORITY FOR REVIEW

The Department is authorized to grant this permit pursuant to Part IV of Chapter 373, F.S., and Chapter 62-330, F.A.C. The activity is not exempt from the requirement to obtain an Environmental Resource Permit. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

III. BACKGROUND/BASIS FOR ISSUANCE

A. General

Background:

The Lock is located within the City's SSW. Both the Lock and the SSW were completed in 1984. Following completion of the SSW, erosion and breaches of the SSW's west bank began which by 1991 has become significant and allowed for tidal exchange between the SSW, tidal Caloosahatchee River and Matlacha Pass (collectively, River). Throughout the years, the attempts to repair the erosion and breaches have been unsuccessful.

In addition to the breaches and erosion of the SSW, the Lock itself has also become a contributor to the tidal exchange between SSW waters and the River. As boat traffic congestion with the SSW has increased with the increase of population, creating a hazardous situation during certain conditions, the Department authorized Howed the City to keep the Lock open during an incoming tide to help alleviate this issue (See DEOP Permit 244816-003). proposed activity is located within the City's South Spreader Waterway System. The South Spreader Canal (Waterway) was established pursuant to Consent Order No. 15 between the Department and GAC Corporation, GAC Properties Credit, Inc., and GAC Properties, Inc. ("GAC") to serve as a water distribution system for intercepting and releasing waters from the Cape Coral Development. As part of the original consent order, the Department required that boat lifts or boat locks be installed between the Cape Coral waterways and waterways of the State. The City of Cape Coral obtained ownership of the Boat Lock from GAC properties. Of the three control structures (boat lifts or boat locks) originally required by Consent Order 15, the Chiquita Lock is the only remaining structure.

Despite the obvious failure of the SSW and Lock to prevent water exchange, from the beginning, the City has and continues to be active in its efforts to ameliorate the water quality issues of both the SSW and River. Such proactivity has included:

The Chiquita Lock began operations in 1984. Since that time, the City of Cape Coral has implemented programs to improve water quality within the City of Cape Coral and receiving waters, such as:

- Installing public sewers, potable water and re-use irrigation water within the areas draining to the South Spreader Waterway and adjacent freshwater canals and continuing to expand to all properties within City limits;

- Installing a deep injection well at the SW Reverse Osmosis (RO) Potable Water Treatment plant which eliminated RO filtrate from normal plant operations to Lake Finnister (part of the canal system connected to the Spreader Waterway);
- Implementing a dual water system for irrigation with improvements at the wastewater treatment plants to eliminate treated wastewater effluent discharges to the Caloosahatchee River; and,
- Creating a stormwater utility to manage, maintain, and improve the stormwater retention and treatment systems

~~Throughout the years, several breaches in the South Spreader Waterway developed. By 1991, erosion and significant breaches formed along the western bank allowing for tidal exchange to the City's canal systems. Repairs to these breaches have been attempted and rendered unsuccessful.~~

~~Additionally, boat traffic within the South Spreader Waterway has increased with the increase in population. Congestion at the lock can create a hazardous situation during certain conditions. The Department has allowed the City to keep the lock doors open during an incoming tide to help alleviate this issue (DEP Permit 244816 003).~~

~~In October 2016, the City of Cape Coral applied to the Department to remove the Chiquita Boat Lock. The Department sent a request for additional information on November 30, 2016. The ApplicantCity responded on February 14, 2017. The Department sent a second request for additional information on March 16, 2017. The ApplicantCity responded partially on June 13, 2017, and completed the response on July 27, 2017. Since that time, the applicantCity has waived the Department's time to issue the permit until October 5, 2018.~~

Regulatory Basis for Issuance:

The ApplicantCity has provided reasonable assurance that the removal of the lock will not impact the values of the wetlands and other surface water functions so as to cause adverse impacts to the abundance and diversity of fish, wildlife, and listed species and the habitat of fish, wildlife and listed species. As part of the application process, the Department sent the application to the Florida Fish and Wildlife Conservation Commission (FWC) for review and comment. FWC responded on November 9, 2016, recommending that the applicantCity follow the Standard Manatee Construction Conditions for In-Water Work (2011). This recommendation has been incorporated into the Draft Permit as Specific Conditions 10-15.

The ApplicantCity has provided reasonable assurance that the removal of the lock will not have an adverse effect on water quantity impacts to wetlands or surface waters. The ApplicantCity developed a water budget using the EFDC model to track the mass flux of water into and out of the model domain.

The ApplicantCity has addressed the short-term water quality impacts of the proposed activity through the implementation of best management practices to contain turbidity while the work is performed. The newly created shoreline will be permanently stabilized with a seawall. The spoil that is removed during construction will be properly contained to prevent the discharge of the material back into the waterbody to prevent water quality degradation.

The ~~proposed project~~ Lock is located at the boundary between the Cape Coral (South Urban) waterbody WBID 3240S and Cape Coral (Tidal Segment) WBID 3240A1. ~~These two WBIDs are currently conjoined on an incoming tide through DEP Permit 244816-003, which allows the lock doors to remain open on an incoming tide. Currently on an outgoing tide, the waters of these two WBIDs are comingled and discharged to the west and south through the breaches and wetlands to the Matlacha Pass waterbody WBID 2065F and the Caloosahatchee River WBID 3240A. The removal of the lock will allow for a permanent discharge of the water within the City canals upstream of the lock through the Cape Coral (tidal segment) to the Caloosahatchee River WBID 3240A.~~

~~As the Lock itself is not a source of pollution or prohibited discharge its removal is not expected to contribute to any long-term water quality violations. Moreover, as described in detail above, ever since the Lock has been installed, there hasve been tidal connectionsditions between the SSW/Lock and River, belying the Lock’s reputation as a pollution barrier. As such it is reasonable to conclude that removing the Lock will not affect what has been the status quo for the last 35 years or in any way be a contributing factor to any preexisting water quality violations.~~

~~In August 2009, DEP adopted the Caloosahatchee Estuary Total Maximum Daily Load (TMDL), which established a reduction target for Total Nitrogen (TN) in the Caloosahatchee Estuary downstream of the Franklin Lock and Dam (S-79) to restore chlorophyll *a* levels. The Caloosahatchee Estuary Basin Management Action Plan (BMAP) was adopted in November 2012 to implement the TN TMDL. During BMAP development, DEP worked with stakeholders to allocate the total TN load by entity. The required reduction for the Applicant is 103,414 lbs-TN/yr. The projects for which the city is receiving BMAP credit as of September 2018 are listed in the table below, and the total credits assigned to all projects are 144,376 lbs-TN/yr. At this time, the city is meeting their requirements as outlined in the adopted BMAP, and DEP will continue to evaluate and update individual credits as more information becomes available.~~

Project Name	Project Type	Credit
Education Efforts	Education Efforts	15,429
Canal Detention	Control Structure	28,522
Freshwater Canal Irrigation	Stormwater Reuse	27,670
Street Sweeping	Street Sweeping	1,084
Septic to Sewer Phase Out Project	Wastewater Service Area Expansion	71,081
Catch Basin Cleanout	Catch Basin Insert/Inlet Filter Cleanout	590
Total		144,376

~~Because the Applicant has demonstrated that it is meeting and exceeding its reductions required in the Caloosahatchee BMAP, the Applicant has demonstrated that they are providing a net improvement and are not contributing to the water quality violation.~~

~~Specific Condition 18 requires that the City continue to meet and exceed the BMAP allocation for the duration of the existing BMAP, and all future BMAPs, and that it will continue to comply with the Department requirements for any future water quality protection mechanisms.~~

The ~~Applicant~~City has provided reasonable assurance that the project will be not contrary to the public interest. The removal of the lock will not adversely affect the public health, safety or welfare or the property of others. There will be no adverse effect on navigation, the flow of water, or harmful erosion or shoaling. There are no significant historical and archeological resources within the project area, as reported by the Department of State, Division of Historic Resources, in a letter dated December 28, 2016. This project will be permanent in nature and will not adversely affect the current condition and relative value of functions performed by wetlands and surface waters.

There will be no adverse secondary nor unacceptable cumulative impacts upon wetlands and other surface waters.

B. Specific Regulatory Basis for Issuance

The Department has determined, based on the information currently on file and the general and specific conditions included within the attached draft permit, the ~~applicant~~City has provided reasonable assurance that the construction, including the direct, secondary and cumulative impacts, will comply with the provisions of Part IV of Chapter 373, F.S., and the rules adopted thereunder, including the Conditions for Issuance of an environmental resource permit, as provided in Chapter 62-330, F.A.C., and ~~Applicant~~City's Handbook, Volumes I and II (as applicable). The construction and operations of the activity will not result in violations of the water quality standards set forth in Chapters 62-4, 62-302, 62-520, 62-522, and 62-550, F.A.C. ~~The applicantCity has demonstrated, pursuant to paragraph 373.414(1)(b), F.S., that the activity will provide for a net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.~~ The ~~applicant~~City has also demonstrated that the construction of the activity, including a consideration of the direct, secondary and cumulative impacts, is not contrary to the public interest, pursuant to Section 373.414(1)(a), F.S.

IV. PUBLICATION OF NOTICE

The Department has determined that the proposed activity, because of its size, potential effect on the environment or the public, controversial nature, or location, is likely to have a heightened public concern or likelihood of request for administrative proceedings. Therefore, pursuant to Subsection 373.413(4), F.S. and section 5.5.5.3 of ~~Applicant~~City's Handbook, Volume I, you (the ~~applicant~~City) are required to publish at your own expense this Notice of Intent to Issue. The notice is required to be published one time, in the legal ad section in a newspaper or newspapers of general circulation in the areas affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of

Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. The **applicantCity** shall provide proof of publication to:

Florida Department of Environmental Protection
P.O. Box 2549
Ft. Myers, FL 33901
SouthDistrict@dep.state.fl.us

The proof of publication shall be provided to the above address within 30 days of issuance of intended agency action, or within 21 days of the date of publication, whichever occurs sooner. Failure to publish the notice and provide proof of publication within the allotted time shall be grounds for denial of the permit.

VI. RIGHTS OF AFFECTED PARTIES

The Department will issue the environmental resource permit (draft permit attached). This action is final and effective on the date filed with the Clerk of the Department unless a timely petition for an administrative proceeding (hearing) is filed pursuant to sections 120.569 and 120.57, F.S. If a timely petition for an administrative hearing is timely filed, this intent to issue automatically becomes only proposed agency action on the application(s), subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. When proof of publication is provided, if required by this intent, and if a sufficient petition is not timely filed, the permit be issued as a ministerial action.

A person whose substantial interests are affected by the Department's proposed decision may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Petitions filed by the permit **applicantCity** and the parties listed below must be filed within 21 days of receipt of this intent. Petitions filed by other persons must be filed within 21 days of publication of the public notice or within 21 days of their receipt of this intent, whichever first occurs. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000 or at Agency_Clerk@dep.state.fl.us.

Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name, address, and telephone number of each petitioner, the **applicantCity**'s name and address, the Department Permit File Number and the county in which the project is proposed;
- (b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

- (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;
- (d) A statement of the material facts disputed by Petitioner, if any;
- (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;
- (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and
- (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process will constitute a renewed determination of the Department's decision on the application. Accordingly, the Department's final action may be different from the position taken by it in this intent. Persons whose substantial interests will be affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this intent, in the Office of General Counsel at the above address. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rules 28-5.207 and 60Q-2.010, F.A.C.

Executed in Lee County, Florida

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jon Iglehart
Director of District Management
South Florida District

cc:

City of Cape Coral, Oliver Clarke, oclarke@capecoral.net
Avalon Engineering, Inc., Jack Schrader, jack@avaloneng.com
Janicki Environmental, Inc, Tony Janicki, tjanicki@janickienvironmental.com
U.S. Army Corps of Engineers, [Fort Myers](http://FortMyers)
Lee County Property Appraiser, dataservices@leepa.org
DEP, Office of General Counsel (agency_clerk@dep.state.fl.us)
FWC, Imperiled Species Management Section FWCConservationPlanningServices@myfwc.com;

Calusa Waterkeeper, John Cassani, jcass927@gmail.com
Martin Van Assche, zzzat30west@yahoo.com
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Richard Gainley, rgainley@capecoral.net
Yolanda Olson, Olsen.yolanda@gmail.com

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document, including all copies, was mailed before the close of business on November 7, 2018, to the above listed person(s).

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52(7), F.S., with the designated Department clerk, receipt of which is hereby acknowledged.

Barbara Browning
Clerk

November 7, 2018
Date



FLORIDA DEPARTMENT OF Environmental Protection

South District
Post Office Box 2549
Fort Myers, Florida 33902-2549
SouthDistrict@FloridaDEP.gov

Rick Scott
Governor
Carlos Lopez-Cantera
Lt. Governor
Noah Valenstein
Secretary

Permittee/Authorized Entity:

City of Cape Coral
c/o John Szerlag, City Manager
P.O. Box 150027
Cape Coral, FL33915
jzerlag@capecoral.net

Removal of Chiquita Lock

Authorized Agent:

Avalon Engineering, Inc.
c/o Jack Shrager
2503 Del Prado Boulevard South, Suite 200
Cape Coral, FL 33904
jack@avaloneng.com

Environmental Resource Permit

State-owned Submerged Lands Authorization – Not Applicable

**U.S. Army Corps of Engineers Authorization – Separate Corps Authorization
Required**

Permit No.: 244816-005 EI

Permit Issuance Date: DRAFT

Permit Construction Phase Expiration Date: DRAFT

Environmental Resource Permit

Permittee: City of Cape Coral

Permit No: 244816-005

PROJECT LOCATION

The activities authorized by this permit are located at the public right of way at 5808 Cape Harbor Drive, Parcel ID of Adjacent access parcel is 214523C20040G00CE, Cape Coral, Florida 33914, in Section 21, Township 45 South, Range 23 East in Lee County, at Latitude 26.54350450° N, Longitude 82.00909191° W.

PROJECT DESCRIPTION

The permittee is authorized to remove the Chiquita Boat Lock and associated uplands, and to install a 165-linear foot seawall in the South Spreader Waterway, Class III Waters. Authorized activities are depicted on the attached exhibits.

AUTHORIZATIONS

Environmental Resource Permit

The Department has determined that the activity qualifies for an Environmental Resource Permit. Therefore, the Environmental Resource Permit is hereby granted, pursuant to Part IV of Chapter 373, Florida Statutes (F.S.), and Chapter 62-330, Florida Administrative Code (F.A.C.).

Sovereignty Submerged Lands Authorization

As staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), the Department has determined the activity is not on submerged lands owned by the State of Florida. Therefore, your project is not subject to the requirements of Chapter 253, F.S., or Rule 18-21 F.A.C.

Federal Authorization

Your proposed activity as outlined on your application and attached drawings **does not qualify** for Federal authorization pursuant to the State Programmatic General Permit and a **SEPARATE permit** or authorization **may be required** from the Corps. A copy of your permit application has been forwarded to the Corps for their review. **The Corps has assigned file number 2005-1586 to your project.** The Corps will issue their authorization directly to you or contact you if additional information is needed. If you have not heard from the Corps within 30 days from the date your application was received at the local FDEP Office, contact the Corps at Fort Myers Regulatory Field Office at 1520 Royal Palm Square Blvd, Ste 310, Fort Myers FL 33919-103, or by telephone at (239) 334-1975, or electronically at SF.New.Applications@usace.army.mil, for status and further information. **Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency.**

Authority for review - an agreement with the USACOE entitled "Coordination Agreement Between the U. S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection, or Duly Authorized Designee, State Programmatic General

Permit”, Section 10 of the Rivers and Harbor Act of 1899, and Section 404 of the Clean Water Act.

Coastal Zone Management

Issuance of this authorization also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

Water Quality Certification

[This permit also constitutes a water quality certification under Section 401 of the Clean Water Act, 33 U.S.C. 1341.](#)

~~This permit also constitutes a waiver of water quality certification under Section 401 of the Clean Water Act, 33 U.S.C. 1341 because the authorized activity involves “net improvement” of water quality under Section 373.414(1)(b)3, F.S.~~

Other Authorizations

You are advised that authorizations or permits for this activity may be required by other federal, state, regional, or local entities including but not limited to local governments or municipalities. This permit does not relieve you from the requirements to obtain all other required permits or authorizations.

The activity described may be conducted only in accordance with the terms, conditions and attachments contained in this document. Issuance and granting of the permit and authorizations herein do not infer, nor guarantee, nor imply that future permits, authorizations, or modifications will be granted by the Department.

PERMIT

The activities described must be conducted in accordance with:

- **The Specific Conditions**
- **The General Conditions**
- **The limits, conditions and locations of work shown in the attached drawings**
- **The term limits of this authorization**

You are advised to read and understand these conditions and drawings prior to beginning the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings herein. If you are using a contractor, the contractor also should read and understand these conditions and drawings prior to beginning any activity. Failure to comply with these conditions, including any mitigation requirements, shall be grounds for the Department to revoke the permit and authorization and to take appropriate enforcement action.

Operation of the facility is not authorized except when determined to be in conformance with all applicable rules and this permit, as described.

SPECIFIC CONDITIONS – ADMINISTRATIVE

1. All required submittals, such as certifications, monitoring reports, notifications, etc., shall be submitted to the Florida Department of Environmental Protection, South District

Office, Submerged Lands and Environmental Resource Permitting, P.O. Box 2549, Fort Myers, FL 33902-2549 or via e-mail to FTMERP_Compliance@dep.state.fl.us . All submittals shall include the project name and indicated permit number when referring to this project.

Note: In the event of an emergency, the Permittee should contact the Department by calling (800)320-0519. During normal business hours, the permittee should call (239)344-5600.

SPECIFIC CONDITIONS - PRIOR TO ANY CONSTRUCTION

2. Prior to commencement of construction the permittee shall coordinate with the affected boaters and post notices alerting the public of the any channel closure necessary during construction. The Permittee shall post signs no less than 7 days prior, in locations visible to boaters normally navigating in the project area. The Permittee shall also publish notices in the newspaper or other media that will assure notification of affected boaters. The Permittee shall submit a description of these notices, the media used, and locations, for Department review, modification as necessary, and approval no less than 60 days prior to construction.

SPECIFIC CONDITIONS – CONSTRUCTION ACTIVITIES

3. Best management practices for erosion control shall be implemented prior to construction commencement and shall be maintained at all times during construction to prevent siltation and turbid discharges in excess of **State water quality standards pursuant to Rule 62-302, F.A.C.** Methods shall include, but are not limited to the use of staked filter cloth, sodding, seeding, staged construction and the installation of turbidity screens around the immediate project site.
4. Floating turbidity curtains with weighted skirts that extend to within 1 ft. of the bottom shall be placed **to surround the in-water work area** prior to the initiation of work authorized by this permit. The screens shall be maintained and remain in place for the duration of the construction to ensure turbidity levels outside the construction area do not **exceed 29 NTU's above background levels**. The permittee shall be responsible for inspecting and maintaining turbidity control devices so **no violations of state water quality standards** outside of the turbidity screens occurs. Turbidity shall be monitored as described in the monitoring portion of this permit.
5. The permittee shall be responsible for ensuring erosion control devices/procedures are inspected and maintained daily during all phases of construction authorized by this permit until areas disturbed during construction are sufficiently stabilized to prevent erosion, siltation, and turbid discharges.
6. The following measures shall be taken immediately by the permittee when turbidity levels within waters of the State surrounding the project site, **exceed 29 NTUs above background**:
 - a. Immediately cease work contributing to the water quality violation.

- b. Stabilize exposed soils contributing to the violation and/or adjust the floating turbidity curtains to contain turbid area. Modify the work procedures responsible for the violation, install additional turbidity containment devices and repair non-functioning turbidity containment devices.
 - c. Notify the Department within 24 hours of the time the violation is first detected.
7. The existing 375 linear feet of seawall shall remain in place during demolition and excavation. The new 165 linear feet of seawall shall be installed prior to demolition of the existing seawall.
8. All spoil material shall be properly contained within the project area as well as during transportation in a manner that prevents return of the spoil material to Waters of the State. The spoil material and demolition materials shall be deposited in a self-contained upland site (pursuant to 62-340 FAC) that prevents return of any water or material in to Waters of the State.
9. The project shall comply with applicable State Water Quality Standards, namely:
62-302.500 – Minimum Criteria for All Waters at All Times and All Places
62-302.530 – Surface Waters: General Criteria

SPECIFIC MANATEE PROTECTION CONDITIONS

10. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with, and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
11. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels shall follow routes of deep water whenever possible.
12. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers shall not impede manatee movement.
13. All on-site project personnel are responsible for observing water-related activities for the presence of manatees. All in-water operations, including vessels, shall be shutdown if a manatee comes within 50 feet of the operation. Activities shall not resume until every

manatee has moved beyond the 50-foot radius of the project operation, or until 30 minutes has elapsed wherein a manatee has not reappeared within 50 feet of the operation. Animals shall not be herded away or harassed into leaving.

14. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at ImperiledSpecies@myFWC.com
15. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Awareness signs that have already been approved for this use by the Florida Fish and Wildlife Conservation Commission (FWC) must be used. One sign measuring at least 3 ft. by 4 ft. which reads *Caution: Manatee Area* must be posted. A second sign measuring at least 8 1/2" by 11" explaining the requirements for "Idle Speed/No Wake" and the shutdown of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. Please see the Florida Fish and Wildlife Conservation Commission website for information on how to obtain appropriate signs: http://www.myfwc.com/docs/WildlifeHabitats/Manatee_EducationalSign.pdf

SPECIFIC CONDITIONS – MONITORING/REPORTING REQUIREMENTS

16. Turbidity Monitoring. Water turbidity levels shall be monitored when a turbidity plume is observed outside the limits of the required turbidity control devices. Samples shall be taken every four hours, one foot above the bottom, mid-depth, and one-foot below the surface at monitoring stations located as follows:
 - a. Approximately 100 feet up-current of the work sites and clearly outside the influence of construction activities. (This shall serve as the natural background sample against which other turbidity readings shall be compared.)
 - b. Directly outside the turbidity curtains surrounding the work sites and within the densest portion of any visible turbidity plume. (This sample shall serve as the compliance sample.)
17. Turbidity Monitoring Reports. During dredging activities, the permittee or permittee's contractor shall collect the following turbidity monitoring data at the frequency and water depths directed by Specific Condition 16:
 - a. Date and time of sampling event
 - b. Turbidity sampling results (background NTUs, compliance NTUs, and the difference between them)
 - c. Description of data collection methods
 - d. An aerial map indicating the sampling locations
 - e. Depth of sample(s)

- f. Weather conditions at times of sampling
- g. Tidal stage and direction of flow

Data shall be collected in a turbidity log and shall include a statement by the individual responsible for implementation of the sampling program attesting to the authenticity, precision, limits of detection, and accuracy of the data. The turbidity log shall be scanned and sent on a weekly basis to the Department’s Environmental Resources Compliance Assurance Program Staff by email at FTMerp_compliance@floridadep.gov. The subject line of the email shall include the project name, permit number, and the title “Turbidity Monitoring Reports.”

~~SPECIFIC CONDITIONS—OPERATION AND MAINTENANCE ACTIVITIES~~

~~18. As net improvement of water quality at the time of permit issuance, the Permittee has demonstrated that it is meeting and exceeding its reduction requirement for total nitrogen as outlined in the Caloosahatchee Estuary Basin Management Action Plan (BMAP), through the implementation of the following projects:~~

Project Name	Project Type	Credit
Education Efforts	Education Efforts	15,429
Canal Detention	Control Structure	28,522
Freshwater Canal Irrigation	Stormwater Reuse	27,670
Street Sweeping	Street Sweeping	1,084
Septic to Sewer Phase Out Project	Wastewater Service Area Expansion	71,081
Catch Basin Cleanout	Catch Basin Inlet/Filter Cleanout	590
Total		144,376

~~The Permittee shall continue to operate, maintain, and fund these projects in order to continue to meet and exceed the required reduction allocations for the duration of the existing BMAP and all future BMAPs, or equivalents. The Permittee shall timely submit all required information required by the BMAP to the Department. If the Permittee would like to use a project not considered herein, to replace one of the projects listed, the project must provide equal or greater water quality benefits toward meeting and exceeding the BMAP allocation that exists at the time of the requested modification.~~

GENERAL CONDITIONS FOR INDIVIDUAL PERMITS

The following general conditions are binding on all individual permits issued under chapter 62-330, F.A.C., except where the conditions are not applicable to the authorized activity, or where the conditions must be modified to accommodate project-specific conditions.

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in

accordance with Rule 62-330.315, F.A.C. Any deviations that are not so authorized may subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.

2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase, and shall be available for review at the work site upon request by the Agency staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.

3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation June 2007)*, and the *Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008)*, which are both incorporated by reference in subparagraph 62-330.050(9)(b)5., F.A.C., unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.

4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the Agency a fully executed Form 62-330.350(1), "Construction Commencement Notice," [October 1, 2013], which is incorporated by reference in paragraph 62-330.350(1)(d), F.A.C., indicating the expected start and completion dates. A copy of this form may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C. If available, an Agency website that fulfills this notification requirement may be used in lieu of the form.

5. Unless the permit is transferred under Rule 62-330.340, F.A.C., or transferred to an operating entity under Rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms and conditions of the permit for the life of the project or activity.

6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:

- a. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex "Construction Completion and Inspection Certification for Activities Associated With a Private Single-Family Dwelling Unit" [Form 62-330.310(3)]; or
- b. For all other activities "As-Built Certification and Request for Conversion to Operational Phase" [Form 62-330.310(1)].
- c. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.

7. If the final operation and maintenance entity is a third party:

- a. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as-built certification, whichever comes first, the permittee shall submit,

as applicable, a copy of the operation and maintenance documents (see sections 12.3 thru 12.3.3 of Volume I) as filed with the Department of State, Division of Corporations and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which the activity is located.

- b. Within 30 days of submittal of the as-built certification, the permittee shall submit "Request for Transfer of Environmental Resource Permit to the Perpetual Operation Entity" [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.

8. The permittee shall notify the Agency in writing of changes required by any other regulatory agency that require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.

9. This permit does not:

- a. Convey to the permittee any property rights or privileges, or any other rights or privileges other than those specified herein or in Chapter 62-330, F.A.C.;
- b. Convey to the permittee or create in the permittee any interest in real property;
- c. Relieve the permittee from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance; or
- d. Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the permittee.

10. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.

11. The permittee shall hold and save the Agency harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any project authorized by the permit.

12. The permittee shall notify the Agency in writing:

- a. Immediately if any previously submitted information is discovered to be inaccurate; and
- b. Within 30 days of any conveyance or division of ownership or control of the property or the system, other than conveyance via a long-term lease, and the new owner shall request transfer of the permit in accordance with Rule 62-330.340, F.A.C. This does not apply to the sale of lots or units in residential or commercial subdivisions or condominiums where the stormwater management system has been completed and converted to the operation phase.

13. Upon reasonable notice to the permittee, Agency staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.

14. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, work involving subsurface disturbance in the immediate vicinity of such discoveries shall cease. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section, at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Such subsurface work shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and notification shall be provided in accordance with Section 872.05, F.S.

15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 62-330.201, F.A.C., provides otherwise.

16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other uplands in a manner that does not require a permit under Chapter 62-330, F.A.C., or cause violations of state water quality standards.

17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the Agency will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.

18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with subsection 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.

Executed in Lee County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Jon M. Iglehart
District Director
South District Office

Attachments:

11 project drawing(s)

'Post Issuance' forms: <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/forms-environmental-resource>

Copies furnished to:

City of Cape Coral, Oliver Clarke, oclarke@capecoral.net
Avalon Engineering, Inc., Jack Schrader, jack@avloneng.com
Janicki Environmental, Inc, Tony Janicki, tjanicki@janickienverinmental.com
U.S. Army Corps of Engineers, [Fort Myers](#)
Lee County Property Appraiser, dataservices@leepa.org
DEP, Office of General Counsel (agency_clerk@dep.state.fl.us)
FWC, Imperiled Species Management Section FWCConservationPlanningServices@myfwc.com;
Calusa Waterkeeper, John Cassani, jcass927@gmail.com
Martin Van Assche, zzzat30west@yahoo.com
Greater Pine Island Civic Association, Roger Wood, rogergpica@gmail.com
Steve Crane, Steve@craneprosys.com
Jerry Gailey, lastmango09@aol.com
Thomas Hiller, thiller@bdo.com
Richard Gainley, rgainley@capecoral.net
Yolanda Olson, Olsen.yolanda@gmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this permit, including all copies, were mailed before the close of business on _____, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52(7), F.S., with the designated Department clerk, receipt of which is hereby acknowledged.

Clerk

Date