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FEB 29 2008  
SOUTH DISTRICT

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )  
OF ENVIRONMENTAL PROTECTION, )  
)  
)  
Complainant, )  
)  
vs. )  
)  
City of Cape Coral, )  
)  
)  
Respondent. )  
)

IN THE OFFICE OF THE  
SOUTH DISTRICT

OGC NO. 06-2345-DF

AMENDED CONSENT ORDER

This Amended Consent Order ("Amendment") is entered into between the State of Florida Department of Environmental Protection ("Department") and The City Cape Coral ("Respondent") to amend the Consent Order in OGC No: 06-2345, previously entered into between the parties.

The Department and the Respondent agree:

1. The Department and Respondent previously entered into Consent Order 06-2345-DF on February 13, 2007. That Consent Order allowed modification of the requirements of Consent Order 15 entered into between the DER, predecessor agency to DEP, and GAC Corporation who vested their holdings and responsibilities to the City of Cape Coral. Consent Order 15 required actions to protect the water quality of both the canal system of Cape Coral and the receiving waters of the Caloosahatchee River and Matlacha Pass. One of the actions required, pursuant to Paragraph 3 of Consent Order 15, was the installation of Boat Lift C1 as depicted in Exhibit 2 of Consent Order 15. In 2006, it came to the Department's attention that erosion had occurred at the west end of the boatlift structure allowing water to bypass the structure. The erosion may have occurred as a result of the volume of waters in the canal system and the lower elevation of mangrove wetlands on the west side of the boatlift. The erosion has caused the loss of mangrove wetlands to the west of the boat lift and has caused scouring of submerged sediments. The erosion is severe. It allows navigable depth and width bypassing the boat lift structure. It also results in shoaling upstream and downstream of the boatlift structure that requires dredging to maintain navigational access. The erosion is on-going and continues to impact additional

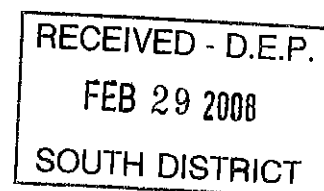
acreage of mangrove wetlands. The modification contained provisions regarding certain restoration activities in the vicinity of the Ceitus Boat Lift that were designed to address the erosion. These provisions included the removal of the existing boatlift structure and the design and construction of a new stormwater barrier with either a boat lift or a boat lock to provide navigation access to the canal system.

2. The Department and Respondent have recently met to discuss the existing conditions in the North Spreader Waterway. In a letter dated October 19, 2007 the Respondent requested the Department suspend the restoration requirements of Consent Order 06-2345-DF. The Respondent requested authorization to remove the existing boat lift structure. The Respondent also requested authorization to pursue an Ecosystem Management Agreement (EMA) pursuant to Section 403.087 Florida Statutes to provide a holistic approach to resolve the water quality and quantity problems associated with the North Spreader Waterway rather than pursuing the construction of a new stormwater barrier with a boat lift or a boat lock. The Department reviewed the requests of the Respondent and reconsidered the issues. The requests made by the Respondent may provide a better environmental outcome than the original proposal. Therefore it is,

ORDERED:

3. This Amendment supersedes the requirements of Consent Order 06-2345-DF. Respondent shall implement the actions described below in the timeframes specified for each action. Respondent shall continue to comply with all other requirements of Consent Order 15. This document does not modify or eliminate any other requirements specified in Consent Order 15.

4. Within ninety (90) days after the date this Amendment is entered Respondent shall remove the existing boat lift structure in accordance with Attachment 1. Prior to any construction required in this Amendment Respondent shall provide notice to all property owners and residents that may be affected by this Amendment. The notice shall advise that although the existing boat lift structure is being removed, projects designed to allow the waterway to meet water quality standards will be constructed or a stormwater barrier and boat lift or boat lock will be constructed in the North Spreader Waterway at some time in the future to ensure water quality standards are met. These property owners and residents include, at a minimum, all owners and



tenants of properties bordering on the navigable portions of the North Spreader Waterway and associated canals upstream of the existing boat lift structure. Within thirty (30) days from the entry of this Consent Order Respondent shall submit the wording for the notice to the Department for review, modification as necessary, and approval prior to distribution to the residents and property owners. Respondent shall distribute the notice to the property owners and residents within thirty (30) days after the Department has provided the approved notice. The notice shall be provided via contact with the homeowners association and through a legal notice published one time only in a newspaper of daily circulation in Lee County, Florida.

5. Respondent shall initiate the EMA process by proposing a broad based team of stakeholders (Stakeholders Group) including federal, state, and local regulatory agencies with jurisdiction over the affected area, other governmental entities, environmental groups, citizen groups and others for Department approval. Respondent shall work with the Stakeholders Group to develop a report (Report) that contains a list of recommended projects that will result in a net environmental benefit to the Charlotte Harbor Preserve State Park, Matlacha Pass Aquatic Preserve, and Charlotte Harbor Aquatic Preserve (receiving waters). The Report shall include at a minimum,

- a) A water quality loading analysis from the drainage basin that discharges into the north spreader waterway. This shall include computer modeling showing the loading data for the existing conditions and for the system as it will be when all of the lands in the basin are developed. Loading shall be calculated for nutrients (total nitrogen and total phosphorous), biochemical oxygen demand, fecal coliforms, and metals (copper, lead, arsenic).
- b) A list of projects that would result in a decrease in the amount of water discharged from the spreader waterway drainage basin and projects that would result in the reduction of pollutant loading into the receiving waters. The list shall include a project description, estimated decrease in flow or loading each project would provide, and a timeframe for completion of each project.
- c) A recommendation of the projects to be implemented with a justification of why they should be pursued. The list of recommended projects must also list the potential flow reductions and/or load reductions associated with each project.

This information shall be developed to provide evidence that a net ecosystem benefit will result from the implementation of the projects listed.

6. The initial meeting of the Stakeholders Group shall be held within ninety (90) days of the date of entry of this Amendment. Respondent shall ensure that timely notice of each meeting is published in the Florida Administrative Weekly. A copy of each notice shall be furnished to the Department at: Florida Department of Environmental Protection, P. O. Box 2549, Fort Myers, Fl. 33902-2549 prior to the meeting referenced in the notice.

7. The Report shall be completed and submitted to the Department as part of an application for an EMA within twelve (12) months after the initial meeting of the Stakeholders Group. When the EMA is approved by the Department, Respondent shall immediately initiate the construction of the flow reduction and load reduction projects contained in the EMA and complete them in the timeframes specified for each project.

8. If the Stakeholders Group is not able to develop a Report with recommended projects that will result in a net environmental benefit to the receiving waters at the end of the 12 month period referenced in paragraph 7 above, Respondent shall:

a) Submit an application for an Environmental Resource Permit to the Department for the construction of a permanent stormwater barrier to separate the canal water from the receiving waters within 180 days from notice by the Department that the Report is not sufficient to provide a net environmental benefit. If the application is not complete when submitted Respondent shall submit additional information requested by the Department within 90 days of receipt of an information request. If the design submitted by Respondent cannot be permitted, Respondent shall submit a modified design within 90 days of receipt of notice from the Department stating the design is not acceptable. The modified design shall address all the reasons identified by the Department for why the original design was not acceptable.

b) Construct the permanent stormwater barrier within 365 days after the permit is issued.

9. With the exception of the activities described in Attachment 1, effective immediately and henceforth, Respondent shall not conduct any mangrove trimming or alteration, dredging, filling, or construction activities on or within wetlands and surface waters as defined in Chapter 62-340, Florida Administrative Code without first obtaining a valid Department permit or written notification from the Department that the activities appear to be exempt as proposed from

Department permitting requirements; nor shall Respondent conduct any activities on state owned lands below the ordinary or mean high water lines without first obtaining a lease, easement, or other consent of use from the Department.

10. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

11. Respondent shall allow all authorized representatives of the Department access to the property at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

12. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

13. The terms and conditions set forth in this Consent Order may be enforced in a

court of competent jurisdiction pursuant to Sections 120.69, 373.129 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Sections 373.430 and 403.161, Florida Statutes.

14. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$10,000 per day per violation and criminal penalties.

15. Respondent shall publish the following notice in a newspaper of daily circulation in Lee County, Florida. The notice shall be published one time only within 15 days after the effective date of the Consent Order by the Department.

**STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**NOTICE OF AMENDED ORDER**

The Department of Environmental Protection gives notice of agency action of entering into an Amendment to Consent Order, **OGC Case No. 06-2345**, with The City of Cape Coral pursuant to Section 120.57(4), Florida Statutes. The Amended Consent Order addresses the removal of the existing Ceitus boat lift structure. It also requires the development of an ecosystem management approach to correcting the ongoing mangrove erosion and water quality problems associated with the discharge of water in the area. The boat lift is located at 3916 Ceitus Parkway, Cape Coral, Florida 33993 Section 18, Township 44 South, Range 23 East, Lee County. The Amended Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, South District Office, 2295 Victoria Avenue, Suite 364W, Fort Myers, FL 33901.

Persons whose substantial interests are affected by this Amended Consent Order have a right to petition for an administrative hearing on the Amended Consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

- (a) The Department's identification number for the Consent Order and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each petitioner. The name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes;
- (c) A statement of how and when each petitioner received notice of the Consent Order;
- (d) A statement of how each petitioner's substantial interests are affected by the Consent Order;
- (e) A statement of the material facts disputed by petitioner. If there are none, the petition must so indicate;
- (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order;
- (g) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (h) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order 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 notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon petition filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or

may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement;
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes,

for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

16. The Department expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order.

17. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations addressed in this Consent Order.

18. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

19. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both the Respondent and the Department.

20. All submittals and payments required by this Consent Order to be submitted to the Department, unless otherwise indicated, shall be sent to the Florida Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549.

21. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

22. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

[This section intentionally left blank]

FOR THE RESPONDENT:

CITY OF CAPE CORAL


2-27-08  
DATE

Terrance Stewart  
Terrance Stewart  
City Manager

STATE OF FLORIDA

COUNTY OF Lee

The foregoing was acknowledged before me this 28<sup>th</sup> day of February 2008 by (name of individual above). He/she is personally know to me or provided \_\_\_\_\_ as identification and did/did not take an oath.

NOTARY PUBLIC-STATE OF FLORIDA  
 **Karen A. Ramos**  
Commission # DD411391  
Expires: MAR. 24, 2009  
Bonded Thru Atlantic Bonding Co., Inc.

Karen A Ramos  
Notary Public, State of Florida

Karen A Ramos  
Printed/typed or stamped name

My Commission Expires: 3/24/09  
Commission/Serial No.: DD 411391

Please do not write below this line. For DEP use only.

DONE AND ORDERED this 3<sup>RD</sup> day of MARCH, 2008, in Lee County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

Jon M. Iglehart  
Jon M. Iglehart  
Director of District Management  
South Florida District  
P.O. Box 2549  
Fort Myers, Florida 33902-2549  
Telephone: (239) 332-6975

FILING AND ACKNOWLEDGEMENT

FILED, on this date, pursuant to § 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

*Renise Scarpuzzi*  
CLERK

3/3/08  
DATE

cc: Lea Crandall, Agency Clerk (Mail Station 35)

## ATTACHMENT 1

### REMOVAL OF EXISTING CEITUS BOATLIFT STRUCTURE GENERAL DESCRIPTION OF CONSTRUCTION MEASURES

#### Description of Existing Structure

The existing Ceitus Boat Lift Structure (Structure) is approximately 200 feet in length and consists of several different sections. A photograph showing the area of the structure to be removed is shown in Figure 1. The following description of the Structure is based on visual observations of the facility and a set of drawings prepared for the replacement of the boat lift foundation in 2002. The original design, drawings, and construction details of the Structure are not available. Therefore, the actual size, number and overall length of the foundation elements are not known.

The Structure consists of the following elements (described from East to West):

- East Platform – Triangular-shaped reinforced concrete slab approximately 12 inches thick and 40-ft +/- (length) by 40 ft +/- (base width) in plan, supported on sixteen (assumed) 14-inch square precast concrete piles embedded 30 ft (assumed) into the foundation;
- East Access Platform – Rectangular platform (5 ft wide x 13.2 ft long) supported on four 14-inch square concrete piles (assumed);
- Boat Lift Foundation – A 3'-2" thick x 6'- 8" wide x 10' long reinforced concrete slab founded on four 14-inch square precast concrete piles (per Drawing S3) embedded approximately 30 ft (assumed) into the foundation;
- Boat Lift – Minuteman No. DSL20-R(15) hydraulic boat lift of 12,000 lbs (assumed) weight;
- West Access Platform – Rectangular platform (5 ft wide x 13.2 ft long) supported on four 14-inch square concrete piles (assumed);
- West Platform – Diamond-shaped reinforced concrete slab approximately 12 inches thick and 20-ft x 20-ft (widest part) in plan, supported on twelve (assumed) 14-inch square precast concrete piles embedded 30 ft (assumed) into the foundation;
- Structure Wall – The 200-ft long physical Structure is thought to be formed by precast reinforced concrete panels. The size of the panels is not known, nor is the embedment depth. For the purposes of this document, it is assumed that the panels

are 8-inches thick, 3-feet wide and 30-feet long embedded into foundation. The panels are assumed to extend the full 200-foot length of the Structure. The Westernmost 94 ft long section of the Structure wall has a concrete cap, and appears to be supported on both faces by an earth embankment (1V: 4H) covered by rip-rap and volunteer vegetation; and

- West End of Structure Wall – Unreinforced concrete has been dumped at the West end of the Structure wall presumably to provide erosion protection at the end of the Structure wall. The volume and strength of the concrete are unknown.

### Description of the Removal Work

It is anticipated that the removal of the Structure will involve the following activities. The East Platform, including its supporting piles and the 40 feet of seawall underneath it, will not be removed. The remaining 160-ft length of Structure wall will be removed (See Figure 1).

- Place turbidity controls around the entire work area;
- Cut electrical power to all systems, remove and dispose of wiring and conduit;
- Place necessary BMPs and disconnect and secure all hydraulic lines to prevent spillage of fluid into the Waterway or onto the ground;
- Remove and store the following items: Operations Shelter; Operations Panel; Hydraulic Power Unit; and Boat Lift;
- Demolish and dispose of concrete cap from West end of Structure wall to the West Platform;
- Demolish and dispose of West Platform slab concrete and Central Access Platform slab concrete
- Demolish and dispose of Boat Lift foundation concrete ;
- Demolish and dispose of East Access Platform concrete;
- Extract precast concrete pilings and dispose of (or demolish to three feet below minimum channel bottom, say -8.0 ft, NGVD);
- Extract precast concrete panels and dispose of (or demolish to three feet below minimum channel bottom, say -8.0 ft, NGVD);
- Remove and dispose of all vegetation along Structure;

- Demolish and remove concrete fill at West end of the Structure;
- Excavate and remove earth embankment material to depth of El. -5.0 ft, NGVD;
- Dredge Waterway to a depth of El. -5.0 ft, NGVD for a distance of 50 ft north and 50 ft south of the Structure. The width of the dredging shall be limited to the width of the original canal as it existed prior to the erosion of the west end of the Structure. The spoil shall be removed to a self contained upland site. No discharge of turbid waters will be allowed from the upland site back into the canal system.
- Remove turbidity-control measures

The above activities will involve land-based equipment, working from the East bank of the Waterway, as well as barge-mounted marine equipment, working in the Waterway.

1. This Consent Order or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the ordered activity. The complete Consent Order shall be available for review at the work site upon request by the Department staff. The Respondent shall require the contractor to review the complete Consent Order prior to commencement of the activities authorized by this Consent Order.

2. Construction, dredging or filling activities approved by this Consent Order shall be conducted in a manner that does not cause violations of state water quality standards. The Respondent shall implement best management practices for erosion and pollution control to prevent violations of state water quality standards and impacts to wetlands. Temporary erosion control shall be implemented prior to and during construction and permanent control measures shall be completed within seven (7) days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility to transferring suspended solids into wetlands or surface waters exists due to the ordered work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter Six of the Florida Land Development Manual; a Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), unless a project-specific erosion and sediment control plan is approved a part of the Consent Order. Thereafter the Respondent shall be responsible for the removal of the barriers.

## COMMENCEMENT NOTICE

3. The Respondent shall notify the Department of the anticipated start date within thirty (30) days of the date that this Consent Order is entered. At least forty-eight (48) hours prior to commencement of the activity authorized by this Consent Order, the Respondent shall submit to the Department an "Environmental Resource Permit Construction Commencement" notice (Form No. 62-343.900(3), Florida Administrative Code (F.A.C.) indicating the actual start date and expected completion date. This notice shall include the Respondent's name and the OGC number associated with this Consent Order, **which is 06-2345**.

4. Should any other regulatory agency require changes to the herein authorized act, the Respondent shall notify the Department in writing of the changes prior to implementation so that a determination can be made whether a Consent Order modification is required.

5. This Consent Order does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this Consent Order. This Consent Order does not convey to the Respondent or create in the Respondent any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the Respondent, or convey any rights or privileges other than those specified in the Consent Order and Chapter 40E-4 or Chapter 40E-40, F.A.C.

6. The Respondent shall hold and save the Department harmless from any and all damages, claims, or liabilities which may arise by reason of the ordered activities authorized by this Consent Order.

7. If historical or archaeological artifacts are discovered at any time on the project site, the Respondent shall immediately notify the Department's South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549.

8. The Respondent shall immediately notify the Department in writing of any previously submitted information that is later discovered to be inaccurate.

9. Respondent shall provide notice to boaters that may be affected by this construction that passage through the work area will be restricted. Respondent shall provide the notice through press releases and direct communications with the homeowners association representatives thirty (30) days prior to the start of construction. The notice shall set forth the schedule for the closure of the waterway to navigation giving specific dates and times. Respondent shall provide a copy of the notice to the Department at the time it is sent out to the homeowners.

10. Best management practices for erosion and turbidity control, including but not limited to the use of staked hay bales, silt screens, and turbidity barriers shall be used and maintained as necessary at all times during project construction. The Respondent shall be responsible for ensuring that turbidity control devices are inspected daily and maintained in good working order so that there are no violations of state water quality standards resulting in a degradation of the water quality.

11. All materials generated from the demolition including, but not limited to, concrete, rebar, loose fill materials, rock, and vegetation shall be taken to an upland disposal site. The Respondent shall notify the Department of the disposal location prior to commencement of the demolition.

12. Prior to the initiation of any work authorized by this Consent Order, floating turbidity screens with weighted skirts that extend to within 1 foot of the bottom shall be placed so as to surround and isolate the active work areas, including the stormwater barrier, boatlift, and dredge area 50 feet upstream and downstream of the stormwater barrier, from ambient waters. The screens shall be maintained and shall remain in place for the duration of each particular phase of project construction to ensure that turbidity levels outside the construction area do not exceed twenty nine (29) NTUs above background in the canal downstream of the stormwater barrier (Class III waters). The Respondent shall be responsible for ensuring that turbidity control devices are inspected daily and maintained in good working order so that there are no violations of state water quality standards outside of the turbidity screens.

13. During dredging operations the Respondent shall monitor turbidity levels within 5 feet of the active work area once every four hours until project completion. Turbidity shall be monitored down current from the active work site and shall be taken within the densest portion of any turbidity plume within 5 feet outside of the turbidity curtains. An ambient sample shall be collected within 5 minutes of the sample collected above for comparison. The ambient sample shall be taken up current at mid-depth and at no time shall the ambient sample be within an apparent turbidity plume. All monitoring data shall be submitted weekly until the work is completed and any work related turbidity has stopped. The reports shall contain the following information:

- a. Consent Order number;
- b. Dates of sampling and analysis;
- c. A statement describing the methods used in collection, handling, storage, and analysis of the samples;

- d. A copy of the map indicating the sampling locations; and
- e. A statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.

Monitoring reports shall also include the following information for each sample taken:

- a. Time of day sample was taken;
- b. Depth of water body;
- c. Depth of sample;
- d. Antecedent weather conditions; and
- e. Velocity of water flow.

If monitoring reveals turbidity levels at the compliance location that appear to violate the State Water quality standards, construction activities shall cease immediately and not resume until corrective measures have been taken and turbidity has returned to acceptable levels. Corrective measures may include modification of the work procedures that were responsible for the violation, install more turbidity containment devices, and repair any non-functioning turbidity containment devices. Any such occurrence shall also be immediately reported to the Department's South District office, SLERP Compliance and Enforcement Section in Fort Myers. Monitoring reports shall be submitted to the Department's South District Office, SLERP Compliance and Enforcement Section, at P.O. Box 2549 Fort Myers, Florida, 33902-2549 or by fax at (239) 332-6969.

**Manatee Protection**

14. The Respondent shall comply with the following manatee protection construction conditions:

- a. The Respondent shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatees.
- b. The Respondent 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 of 1972, The Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act.

c. Siltation barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entrapment. Barriers must not block manatee entry to or exit from essential habitat.

d. All vessels associated with the construction project shall operate at no wake/idle speeds at all times while in the construction area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.

e. If a manatee is sighted within 100 yards of the project area, precautions shall be implemented by the Respondent and the contractor to ensure protection of manatees. These precautions shall include not operating any equipment closer than 50 feet to a manatee, and immediately shutting down equipment if a manatee comes within 50 feet of the equipment. Activities will not resume until the manatees have departed the project area of their own volition.

f. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission at 1-888-404-FWCC (1-888-404-3922). Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-232-2580) for North Florida or in Vero Beach (1-561-562-3909) for South Florida.

g. Temporary signs concerning manatees shall be posted prior to and during all construction/dredging activities. All signs are to be removed by the Respondent upon completion of the project. A sign measuring at least three feet by four feet which reads "*Caution: Manatee Area*" shall be posted in a location prominently visible to water related construction crews. A second sign shall be posted if vessels are associated with the construction and shall be placed visible to the vessel operator. The second sign shall be at least 8 1/2 inches by 11 inches and read:

Caution: Manatee Habitat. Idle speed is required if operating a vessel in the construction area. All equipment must be shutdown if a manatee comes within 50 feet of the operation. Any collision with and/or injury to a manatee shall be reported immediately to the FWC Hotline at 1-888-404-FWCC (1-888-404-3922). The U.S. Fish and Wildlife Service should also be contacted in Jacksonville (1-904-232-2580) for North Florida or in Vero Beach (1-561-562-3909) for South Florida.

Specific information on obtaining these signs may be obtained by contacting the Department or FWC at (850) 922-4330.

15. At least one person shall be designated as a manatee observer when in-water work is being performed. That person shall have experience in manatee observation, and be equipped with polarized sunglasses to aid in observation. The manatee observer must be on site during all in-water construction activities and will advise personnel to cease operation upon sighting a manatee within 50 feet of any in-water construction activity. Movement of a work barge, other associated vessels, or any in-water work shall not be performed after sunset, when the possibility of spotting manatees is negligible.

16. Blasting shall be prohibited. If no other alternative exists, a permit modification shall be required. This modification must include special manatee protection blasting conditions, as required by the Bureau of Imperiled Species Management, Division of Habitat and Species Conservation, Florida Fish and Wildlife Conservation Commission.

#### PROOF OF RESTORATION COMPLETION

17. Within 30 days of completion of the work referenced in this attachment, Respondent shall submit the following information to the Department:

- a. Written notification that the Restoration Actions have been completed.
- b. The notification shall bear the notations "OGC Case No. 06-2345-DF" and name of Respondent exactly as it appears on the first page of this Consent Order.
- c. Enough color photographs to show the entire completed restoration area taken from fixed reference points shown on a plan view drawing.
- d. The above information shall be submitted to the Florida Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549.

18. 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
  - 62-302.510 - Surface Waters: General Criteria



Figure 1 - Photo of Existing Boat Lift Structure. The area of the Structure outlined is to be removed.

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FEB 29 2008  
SOUTH DISTRICT