



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.5.

8/12/2025

Subject:

Consideration and Approval of Proposed Consent Order Issued by Florida Department of Environmental Protection (FDEP) Regarding Certain Activities Conducted by the County to Improve Drainage within the Pelican Creek Outfall/Old Causeway Outfall (the Old Causeway Outfall ditch) (District 2)

Fiscal Impact:

Estimated \$100,000.00. Costs associated with restoration actions, maintenance for duration of consent order, and potential re-planting of mangroves in designated areas, as needed. If the consent order is not approved by the Board, the County is likely to incur costs associated with defending against the enforcement action if initiated by FDEP and the risk of incurring potential fines and costs for completing, at a minimum, the restoration actions, maintenance, and re-plantings identified above.

Dept/Office:

Public Works

Requested Action:

It is requested that the Board of County Commissioners consider and approve the proposed consent order issued by FDEP and authorize the Public Works Department Director to sign the consent order and any necessary amendments or related documents thereto, subject to review and approval by the County Attorney's Office and Risk Management.

Summary Explanation and Background:

The Mangrove Trimming and Protection Act (Sections 403.9321 - 403.9333, Florida Statutes) establishes standards and criteria for trimming and/or altering mangroves. Failure to adhere to these standards can result in FDEP issuing a notice of violation, which can lead to enforcement action and civil penalties. As an alternative to enforcement action, FDEP and a respondent may enter a consent order effectively operating as a stipulated settlement agreement, allowing the respondent to address the allegations and avoid additional penalties and fines if the necessary work is completed in accordance with the terms and conditions of the consent order.

In this case, the County conducted certain maintenance activities along the Old Causeway Outfall ditch to improve drainage, reduce the risk of flooding to adjacent homeowners, and improve the flow of stormwater in the area back in Summer 2022. While attempting to complete this necessary work, the County inadvertently exceeded the allowable level of impacts to mangroves, although it was consistent with past authorized work. Making matters worse for the County, several property owners in the area took advantage of the County's maintenance project to further degrade the area by dredging out land, making a navigable channel and creating boat docks for their own purposes, effectively preventing the remaining mangroves from being able to repopulate. For reference, the property owners came before the Board of County Commissioners on November 12, 2024, seeking a public interest determination to allow them to obtain after-the-fact approval

for the unpermitted dredging they conducted that destroyed environmentally sensitive areas, including wetlands. The Board denied the request, at least in part, due to the fact that the unpermitted activities were (are) not consistent with the County's Comprehensive Plan. The County is pursuing code enforcement action (s) against the property owners. It is County staff's position that the mangroves in the area that was ultimately dredged by these property owners would have naturally recruited and the County's responsibilities under the consent order would have been limited.

Following a significant number of emails, meetings, and phone calls with FDEP, the County was able to work the proposed consent order into its final draft form. Key takeaways of the proposed consent order are as follows:

1. The County is responsible for removing invasive/nuisance vegetation in specified areas.
2. The County shall be permitted one (1) year from the effective date of the proposed consent order to allow natural recruitment of mangroves in specified areas (Restoration Areas A and B - north of the dredged area) with the goal of obtaining 80% aerial coverage of mangroves. If the 80% threshold is met, then the County will be relieved of its corresponding obligations under the consent order. If the 80% threshold is not met, then the County will be responsible for re-planting mangroves as necessary in accordance with a plan approved by FDEP.
3. The County shall not be responsible for any obligations within the area dredged by the property owners, but if the dredged area is restored then the County shall be responsible for re-planting mangroves in that area in accordance with a plan that has been agreed to between the County and FDEP. The County intends to hold the responsible property owners accountable for their impacts and is pursuing restoration plans through the County's Code Enforcement process to address such violations of the Brevard County Code.
4. If a property owner denies the County access to complete its restoration and/or maintenance obligations, then the County shall be relieved of its corresponding responsibilities under the consent order.

If the Board decides not to accept the terms of this proposed consent order, then FDEP is likely to proceed with an enforcement action, which could result in greater financial and legal exposure if found to be in violation of the Mangrove Trimming and Protection Act.

Clerk to the Board Instructions:

Provide the associated Clerk's memo outlining the Board's action to Marc Bernath, Public Works Director.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

August 13, 2025

M E M O R A N D U M

TO: Marc Bernath, Public Works Director

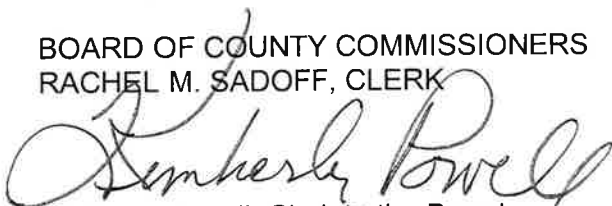
RE: Item F.5., Consideration and Approval of Proposed Consent Order Issued by Florida Department of Environmental Protection (FDEP) Regarding Certain Activities Conducted by the County to Improve Drainage within the Pelican Creek Outfall/Old Causeway Outfall (the Old Causeway Outfall Ditch)

The Board of County Commissioners, in regular session on August 12, 2025, considered and approved the proposed consent order issued by FDEP regarding certain activities conducted by the County to improve drainage within the Pelican Creek Outfall/Old Causeway Outfall (the Old Causeway Outfall Ditch); and authorized you to sign the consent order and any necessary amendments or related documents thereto, subject to review and approval by the County Attorney's Office and Risk Management.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/sj

cc: Budget
Finance



PELICAN CREEK OUTFALL/OLD CAUSEWAY OUTFALL

March 8, 2023

**AERIAL PHOTO OF PELICAN CREEK
OUTFALL (YELLOW) AND OLD
CAUSEWAY OUTFALL (ORANGE)
PRIOR TO PUBLIC WORKS
MAINTENANCE ACTIVITY.**



OLD CAUSEWAY RD LOOKING NORTH AT PELICAN CREEK OUTFALL (YELLOW)



OLD CAUSEWAY RD LOOKING SOUTH AT OLD CAUSEWAY OUTFALL (ORANGE)



**AERIAL PHOTO OF PELICAN CREEK
OUTFALL (YELLOW) AND OLD
CAUSEWAY OUTFALL (ORANGE)
AFTER PUBLIC WORKS
MAINTENANCE ACTIVITY AND
HOMEOWNER EXCAVATION OF OLD
CAUSEWAY OUTFALL.**



OLD CAUSEWAY RD LOOKING NORTH AT PELICAN CREEK OUTFALL (YELLOW)
COUNTY'S MAINTENANCE ACTIVITY INCLUDED REMOVAL OF MULCHED
VEGETATION AND APPROXIMATELY TWO (2) INCHES OF MUCK FROM THE
OUTFALL AND LAID ON THE TOP OF BANK. OUTFALL CLEANING TAPERED OFF
TO THE NORTH WITH MINIMAL SPOIL ON BANKS.





OLD CAUSEWAY RD LOOKING SOUTH AT OLD CAUSEWAY OUTFALL (ORANGE)
 NOTE: COUNTY'S MAINTENANCE ACTIVITY INCLUDED THE REMOVAL OF
 MULCHED VEGETATION AND ABOUT SIX (6) TO EIGHT (8) INCHES OF MUCK AT
 THE PIPE CROSSING, THEN TAPERING DOWN TO ABOUT 2 INCHES OF MUCK AT
 THE SOUTH PROJECT LIMITS. REMNANTS OF THE DEBRIS REMOVAL CAN BE
 SEEN ON THE LEFT (EAST) SIDE OF THE PHOTO FOR A SHORT DISTANCE DUE
 TO THE PROPERTY OWNER DREDGING ACTIVITY. TO THE RIGHT (WEST), THE
 PROPERTY OWNER INSTALLED SOO. TO THE SOUTHEAST, THE PROPERTY
 OWNER HIRED A CONTRACTOR TO DO SIGNIFICANT DREDGING AND
 EXCAVATION OF THE OUTFALL





OLD CAUSEWAY OUTFALL LOOKING SOUTH AFTER PROPERTY OWNER STARTED HIS DREDGING-EXCAVATION OPERATION OUTSIDE THE WIDTH OF THE ORIGINAL OUTFALL.



OLD CAUSEWAY OUTFALL LOOKING SOUTH NEAR THE PROPERTY OWNER'S DREDGING-EXCAVATION OPERATION.



THURSDAY 6/9/22 - KAISER ENTERED PELICAN CREEK OUTFALL NORTH OF OLD CAUSEWAY RD. REMOVED VEGETATION INSIDE OUTFALL AND STOPPED 240' ± NORTH OF OLD CAUSEWAY RD. ALSO MULCHED 10' ± ALONG THE EAST AND WEST BANK WITHIN THE 240'. MAINTENANCE ACTIVITY TAPERED OFF TO THE NORTH WITH MINIMAL SPOIL DEPOSITS ON THE BANK.



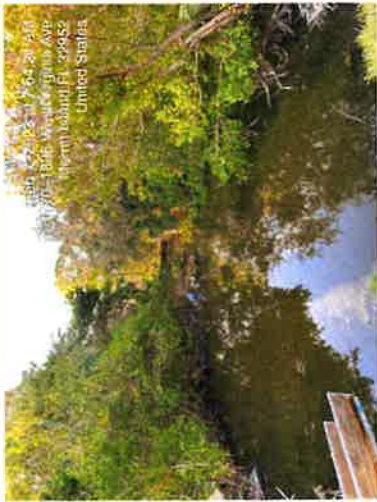


OLD CAUSEWAY RD - PELICAN CREEK OUTFALL LOOKING NORTH DURING MAINTENANCE (JUNE 2022). ACTIVITY TAPERED TO THE NORTH WITH MINIMAL SPOIL DEPOSITS ON THE BANK

DUE TO A LOW-HANGING POWERLINE SOUTH OF OLD CAUSEWAY RD, THE MAINTENANCE OPERATION MOVED NORTH TO WEST VIRGINIA AVENUE UNTIL THE ISSUE COULD BE RESOLVED BY FPL.

FRIDAY 6/10/22 THE KAISER ENTERED AT WEST VIRGINIA AVE HEADING SOUTH AND MULCHED ABOUT 25' ON THE EAST, NORTH, AND WEST SIDE OF PELICAN CREEK OUTFALL - VERY LIMITED TRIMMING AS CAN BE SEEN IN THE PICTURE BELOW.





WEST VIRGINIA AVE PELICAN CREEK OUTFALL LOOKING SOUTH

FRIDAY 6/10/22 - KAISER ENTERED AT ORRIS AVE AND PERFORMED LIMITED MULCHING OF VEGETATION ALONG EAST AND WEST BANK - VERY LIMITED TRIMMING AS CAN BE SEEN IN THE PICTURE BELOW





TUESDAY 6/14/22 - FPI RAISED THE POWERLINES AND KAISER ENTERED THE OLD CAUSEWAY OUTFALL AND MULCHED VEGETATION INSIDE THE OUTFALL FROM OLD CAUSEWAY RD, SOUTH 400'±. ALSO MULCHED 10' ± ALONG THE EAST AND WEST BANK. REMOVAL OF MULCHED VEGETATION INSIDE THE OUTFALL AND APPROXIMATELY TWO (2) INCHES OF MUCK WERE LAID ON THE TOP OF THE BANK





OLD CAUSEWAY RD - OLD CAUSEWAY OUTFALL LOOKING SOUTH (JUNE 2022)

COUNTY MAINTENANCE ACTIVITY INCLUDED MULCHED VEGETATION INSIDE THE OUTFALL FROM OLD CAUSEWAY RD, SOUTH 400'±. ALSO MULCHED 10' ± ALONG THE EAST AND WEST BANK. REMOVAL OF MULCHED VEGETATION INSIDE THE OUTFALL AND APPROXIMATELY TWO (2) INCHES OF MUCK WERE LAID ON THE TOP OF THE BANK

WEDNESDAY 6/15/22- KAISER ENTERS DUANE PLACE HEADING NORTH 40'±. OPERATOR MULCHED VEGETATION FROM PELICAN CREEK OUTFALL - VERY LIMITED TRIMMING AS CAN BE SEEN IN THE PICTURE BELOW





Photo 7 - 2023 at 7:39:55 AM
1500 - 1515 Play Wards On
Meritt Island FFA
Unlabeled

PELICAN CREEK DITCH LOOKING NORTH FROM DUANE PL

WEDNESDAY 6/15/22 - KAISER ENTERS DUANE PLACE HEADING SOUTH 24°. OPERATOR MULCHED VEGETATION FROM PELICAN CREEK OUTFALL - VERY LIMITED TRIMMING AS CAN BE SEEN IN THE PICTURE BELOW. DUE TO OUTFALL DEPTH, THE OPERATION COULD NOT CONTINUE ANY FURTHER SOUTH.



Photo 7 - 2023 at 7:39:55 AM
1500 - 1515 Play Wards On
Meritt Island FFA
Unlabeled



PELICAN CREEK OUTFALL/OLD CAUSEWAY OUTFALL BUCKET CLEANING

6/16/22 - KAISER RE-ENTERED AT OLD CAUSEWAY ROAD HEADING NORTH AND REMOVING VEGETATION PREVIOUSLY MULCHED INSIDE PELICAN CREEK OUTFALL.



PELICAN CREEK OUTFALL LOOKING NORTH FROM OLD CAUSEWAY RD

6/17/22 - KAISER RE-ENTERED AT OLD CAUSEWAY ROAD HEADING SOUTH AND REMOVING VEGETATION PREVIOUSLY MULCHED INSIDE OLD CAUSEWAY OUTFALL.





OLD CAUSEWAY OUTFALL LOOKING SOUTH (AUGUST 2022) NEW SOD HAS BEEN INSTALLED AND BOAT DECK CONSTRUCTED BY THE PROPERTY OWNER.

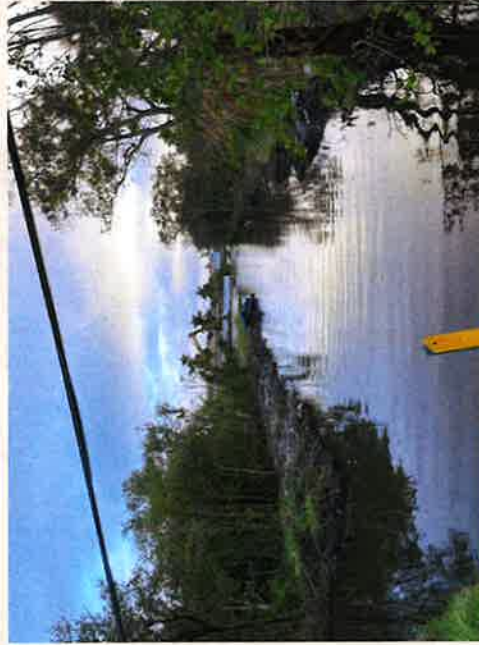


OLD CAUSEWAY OUTFALL LOOKING SOUTH FROM OLD CAUSEWAY RD AFTER PROPERTY OWNER DREDGED AND EXCAVATED THE OUTFALL



OLD CAUSEWAY OUTFALL

- GREEN = KAISER MULCHING AREA
- BLUE = KAISER BUCKET DEBRIS REMOVAL AREA
- RED = AREA ALTERED BY HOMEOWNER
- YELLOW = PELICAN CREEK OUTFALL
- ORANGE = OLD CAUSEWAY OUTFALL



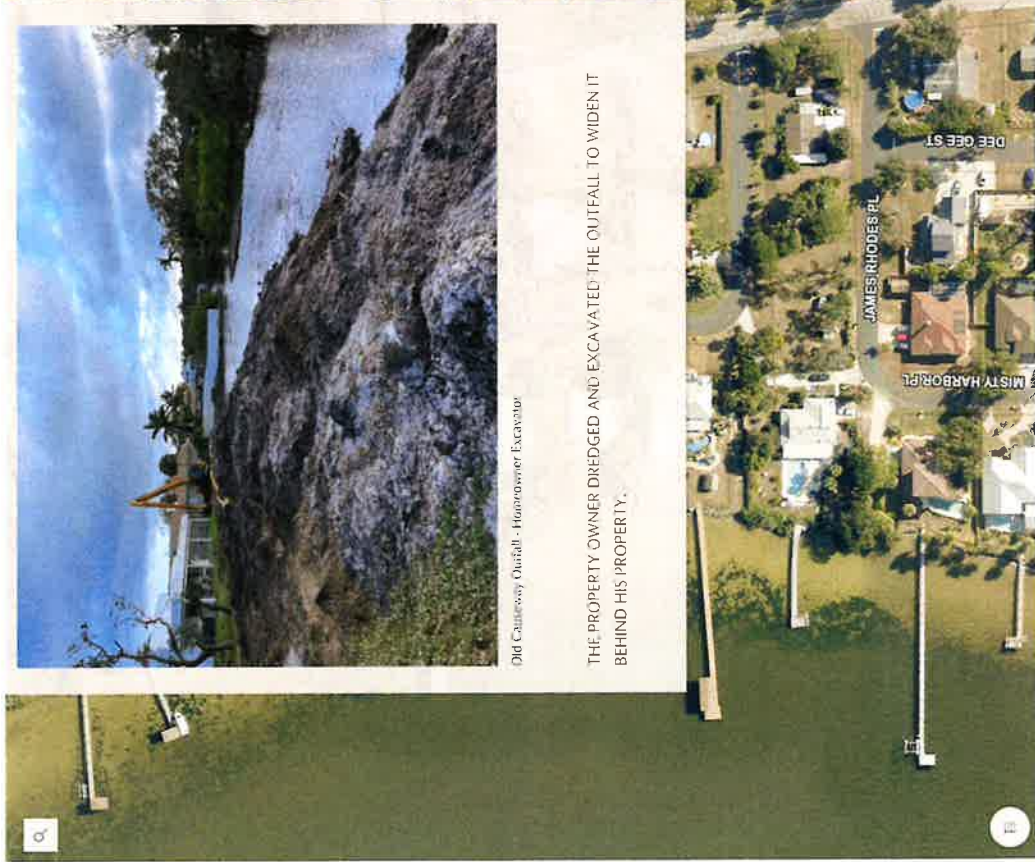
Old Causeway Outfall - Homeowner Excavator





Old Causeway Outfall - Homeowner Excavator

THE PROPERTY OWNER DREDGED AND EXCAVATED THE OUTFALL TO WIDEN IT BEHIND HIS PROPERTY.



STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION)
)
)
 Complainant,)
)
) OGC FILE NO. 24-2170
 vs.)
)
)
 Brevard County, Florida)
)
)
 Respondent.)
)
 _____)

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Brevard County, Florida, a political subdivision of the State of Florida, ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce Chapter 373, Part IV, and Chapter 403, Florida Statutes, and the rules promulgated and authorized thereunder, Title 62, Florida Administrative Code. In addition, the Department is specifically authorized to administer and enforce the provisions of Sections 403.9321-9333, Florida Statutes, the "Mangrove Trimming and Preservation Act." The Department has jurisdiction over the matters addressed in this Consent Order.

SLERP/CO 11/2022

3. Respondent conducted the activities described in Paragraph four (4) below on the following parcels: 1935 S Banana River Drive, Merritt Island, FL 32952, further identified by Parcel ID 25-37-07-00-786, given by the Brevard County Property Appraiser, further identified by ERP Site ID 241016, given by the Department; 1865 S Banana River Drive and 1895 S Banana River Drive, Merritt Island, FL 32952, further identified by Parcel IDs 25-37-07-00-787 and 25-37-07-00-783, respectively, given by the Brevard County Property Appraiser, further identified by ERP Site ID 347714, given by the Department; Parcel ID 25-37-07-00-792 given by the Brevard County Property Appraiser; Parcel ID 25-37-07-00-759, given by the Brevard County Property Appraiser; 1845 S Banana River Drive, further identified by Parcel ID 25-37-07-00-784, given by the Brevard County Property Appraiser; and 1857 Harley Place, further identified by Parcel ID 25-37-07-00-780, given by the Brevard County Property Appraiser. The approximate area of the activities described in Paragraph 4 below is further identified by ERP site ID 429528. The identified properties are adjacent to the Brevard County Old Causeway Road Outfall Ditch, which is connected to the Banana River, an Outstanding Florida Water, as established by state law, and an aquatic preserve, the Banana River Aquatic Preserve. Brevard County is not the owner of record for any of the above-listed properties. The use of the term “Ditch” throughout this Consent Order is strictly to generally identify the impacted area and for ease of reference.

4. Respondent altered mangroves below six feet without authorization from the Department on either side of the Old Causeway Outfall Ditch. Mangroves were cut to the stumps, with complete defoliation occurring. See the inspection report and Warning Letter issued on January 5, 2023, attached hereto and incorporated herein as Attachment A. The area impacted by the Respondent totals approximately 0.39 acres, as depicted on Exhibit A.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is,

ORDERED:

5. Respondent shall implement the Restoration Actions attached hereto and incorporated herein as Attachment B and the Maintenance and Monitoring Actions

attached hereto and incorporated herein as Attachment C in the manner and within the time frames specified therein.

6. With the exception of the activities described in the Restoration Actions, effective immediately and henceforth, Respondent shall not alter mangroves 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, unless such activity is otherwise exempt pursuant to Florida law; 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, unless such activity is otherwise exempt pursuant to Florida law.

7. Once the Restoration Actions have been completed, the Respondent shall implement the Maintenance and Monitoring Actions attached hereto and incorporated herein as Attachment C in the manner and within the time frames specified therein.

8. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraphs 5, 6, and 7 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Order upon written notice to the Respondent of the alleged violation. Within 30 days of said written notice from the Department, Respondent shall either: (1) dispute the violation or (2) agree to the violation and make payment of the appropriate stipulated penalties to the "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Water Quality Assurance Trust Fund." The Department may make demands for payment at any time after violations occur in accordance with the above. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this Paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this Paragraph.

9. 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.

10. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable Federal, State or local laws, regulations or ordinances.

11. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 373.129, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 373.430, Florida Statutes.

12. 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 \$15,000 per day per violation and administrative fines of up to \$10,000 per day per violation and criminal penalties.

13. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, 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 name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's

proposed action;

- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

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 motion 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, or received via electronic correspondence at Agency_Clerk@floridadep.gov, 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; and
- (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.
- (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.

14. The Department hereby 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.

15. 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.

16. 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. However, Respondent does not waive its right to contest or challenge subsequent enforcement of this Consent Order.

17. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

18. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, 3319 Maguire Boulevard, Suite 232, Orlando, FL 32803.

19. 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.

20. 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.

FOR THE RESPONDENT:

DATE

Signature

Marc E. Bernath, Public Works Director
Brevard County, Florida

As approved by the Board on August 12, 2025

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this _____ day of _____, 2025, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Aaron Watkins
District Director

Filed, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date

cc: Lea Crandall, Agency Clerk
Mail Station 35



ATTACHMENT A: WARNING LETTER AND INSPECTION REPORT

FLORIDA DEPARTMENT OF Environmental Protection

Central District Office
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

January 19, 2023

Marc Bernath, Director
Brevard County Public Works
2725 Judge Fran Jamieson Way
Viera, FL 32940
PublicWorksOffice@BrevardFL.gov

Re: Warning Letter
Old Causeway Road Outfall Ditch
ERP Site ID # 429528
Brevard County

Dear Mr. Bernath:

An inspection was conducted at your site on December 16, 2022. During this inspection, possible violations of Chapter 403, Florida Statutes (F.S.) were observed.

During the inspection Department personnel noted the following:

- Approximately 0.1 acres of mangroves had been altered without authorization

Violations of Florida Statutes or administrative rules may result in liability for damages and restoration, and the judicial imposition of civil penalties, pursuant to Sections 403.9328 Florida Statutes.

Please contact Charlie Nolan, at 407-897-2913, within **7 days** of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in receiving any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Watkins".

Aaron Watkins, Director
Central District
Florida Department of Environmental Protection
AW/dkh/cn

Enclosures: Inspection Report (with attachments)

cc: FDEP: Charlie Nolan, Sean Boyles, Alton Smith, Daniel Hall, Jason Seyfert



Florida Department of Environmental Protection
CENTRAL DISTRICT COMPLIANCE ASSURANCE PROGRAM
ERP Program Inspection Report

Inspection Date: 12/16/2022
Lead DEP Inspector: Charlie Nolan

Inspection Type: ☒ Complaint ☐ Compliance ☐ Enforcement
☐ Other: N/A

Complaint No. 8377 ERP Site No. 429528 CE Project No. 407779

Owner/Responsible Party: Marc Bernath, Director of Brevard
County Public Works

Contact:
PublicWorksOffice@BrevardFL.gov

Location: Old Causeway Road Outfall Ditch, Merritt Island. GPS Coordinates: 28°19'29.56"N, 80°39'36.69"W

Waterbody: Banana River Below 520 Causeway

Class: ☐ I ☒ II ☐ III ☐ IV ☐ V

OFW: ☐ Yes ☒ No

Aquatic Preserve: ☐ Yes ☒ No

State Lands: ☐ Yes ☒ No

Shellfish Harvesting: ☐ Approved ☐ Conditionally Approved
☐ Conditionally Restricted ☒ Prohibited

Aquatic Preserve Name: N/A

Lease/Easement No.: N/A

☐ SSL Lease Inspection completed: N/A

Site History & Inspection Overview

Site History:

The above referenced site has no prior permitting or compliance history with the Florida Department of Environmental Protection (FDEP).

Site Inspection Overview:

On November 11, 2022, a complaint was received by an anonymous source that there were potential dredge and fill impacts as well as mangrove removal on 1901 Old Causeway Road and additional mangrove removal on the lots to the north and to the east.

An additional complaint was received on November 30, 2022, by Brevard County Natural Resources that alleged dredging, and mangrove impacts specifically at 1865 S Banana River Drive, along with 1895 S Banana River Drive and 1935 S Banana River Drive. Another complaint was received on December 1, 2022, from an anonymous source that was forwarded to FDEP from the Florida Fish and Wildlife Commission that alleged canal dredging and mangrove impacts at 1865, 1895, and 1935 S Banana River Drive. 1865 S. Banana River Drive and 1901 Old Causeway Road are contiguous sides of the same property sitting at the intersection of Old Causeway Road and Banana River Drive

Compliance Status: ☐ In Compliance ☐ Minor Non-Compliance ☒ Significant Non-Compliance

Resource Assessment

FLUCCS/FNAI Community Type(s): 4340: Upland Mixed - Coniferous / Hardwood
Wetlands/Other Surface Waters (OSW) Present: ☒ Yes ☐ No
Waters of the United States (WOTUS) Present: ☒ Yes ☐ No ☐ WOTUS determination not completed
Other Resources Present: ☒ Yes ☐ No
If "Yes," identify: *Avicennia germinans*, *Laguncularia racemosa*
Resource Impacts: ☒ Yes ☐ No
Area of **Authorized** Impacts (ft²): N/A
Area of **Unauthorized** Impacts (ft²): Approximately 4,327 square feet or 0.1 acres

MANGROVES

Total Length of Shoreline (ft.): Approximately 240 feet
Length of Mangrove Fringe (ft.): 147 feet on the east side of the ditch, 445 feet on the west side of the ditch.
Depth of Mangrove Fringe (ft.): Unable to be measured.
Mangroves Trimmed: ☐ Yes ☒ No
Mangroves Altered: ☒ Yes ☐ No 25%
Pre-Impact Height: ☐ <6 ft. ☐ 6-10 ft. ☐ 10-16 ft. ☐ 16-24 ft. ☐ >24 ft.
☒ Unknown
Post-Impact Height: ☒ <6 ft. ☐ 6-10 ft. ☐ 10-16 ft. ☐ 16-24 ft. ☐ >24 ft.
Average Diameter at Breast Height (DBH): ☐ <1" ☐ 1-3" ☐ 3-5" ☐ 5-7" ☐ >7" ☒ Unknown
Percent Canopy Cover by Species: 0% RED 50% BLK 50% WHT 0% OTHER: N/A

Impact Description:

Based on historic images from Google Street View, both black mangroves (*Avicennia germinans*) and white mangroves (*Laguncularia racemosa*) can be seen on either side of the Old Causeway Road drainage ditch. Evidence of black mangrove pneumatophores can also be seen in the post-impact images taken on December 16, 2022. Un-altered mangroves remain further inland on either side of the ditch, with both white mangroves and black mangroves being observed.

Access to the shoreline of the ditch was impeded by water and so field-measurements were unable to be taken. Using aerial imagery and Google Street View imagery, it was determined that two areas of approximately 120 feet long and 20 feet wide were cleared of mangroves and other vegetation on either side of the drainage ditch.

Investigation Summary

On December 16, 2022, FDEP staff Charlie Nolan, Sean Boyles, and Alton Smith went to inspect multiple properties on Merritt Island for mangrove impacts, including 1865 Old Causeway Road, 1895 S Banana River Drive, and 1935 S Banana River Drive. Impacts continued north, past these addresses into a portion of the canal inaccessible to FDEP staff. From the road, vegetation was seen cleared on both sides of the ditch, with living white and black mangroves on either side and pneumatophores from black mangroves observed in the water.

Jeff Cooke, from Brevard County Natural Resources, was met with on-site for the inspections of 1865, 1895, and 1935 S Banana River Drive, but was denied access to the sites by the property owner. After the inspection he confirmed that Brevard County had been performing maintenance dredging and vegetation clearing within the drainage ditch. Photographs of the work were provided to FDEP and showed the extent of mangrove alteration within the northern portion of the Old Causeway drainage ditch.

SIGNIFICANT NON-COMPLIANCE DESCRIPTION:

- 0.1 acres of unauthorized mangrove alteration

Statute/Rule Reference(s):

- Chapter 403.9328 F.S.

Follow-Up Action: Reply to the attached Warning Letter

Supporting Documentation Attached:

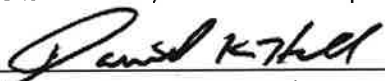
- ☒ Figures such as maps, diagrams, and/or aerial imagery
- ☒ Site inspection photographs
- ☐ Chapter 62-340, F.A.C. Data Form(s)
- ☐ WOTUS Determination Documentation
- ☐ UMAM Documentation
- ☐ SSL Lease Inspection Report
- ☐ Other: N/A



Charlie Nolan, Environmental Specialist I

1/04/2023

Date



Daniel Hall, Environmental Manager

1/25/2023

Date

ERP Site Inspection Figures

Inspection Date: 12/16/2022

Lead DEP Inspector: Charlie Nolan

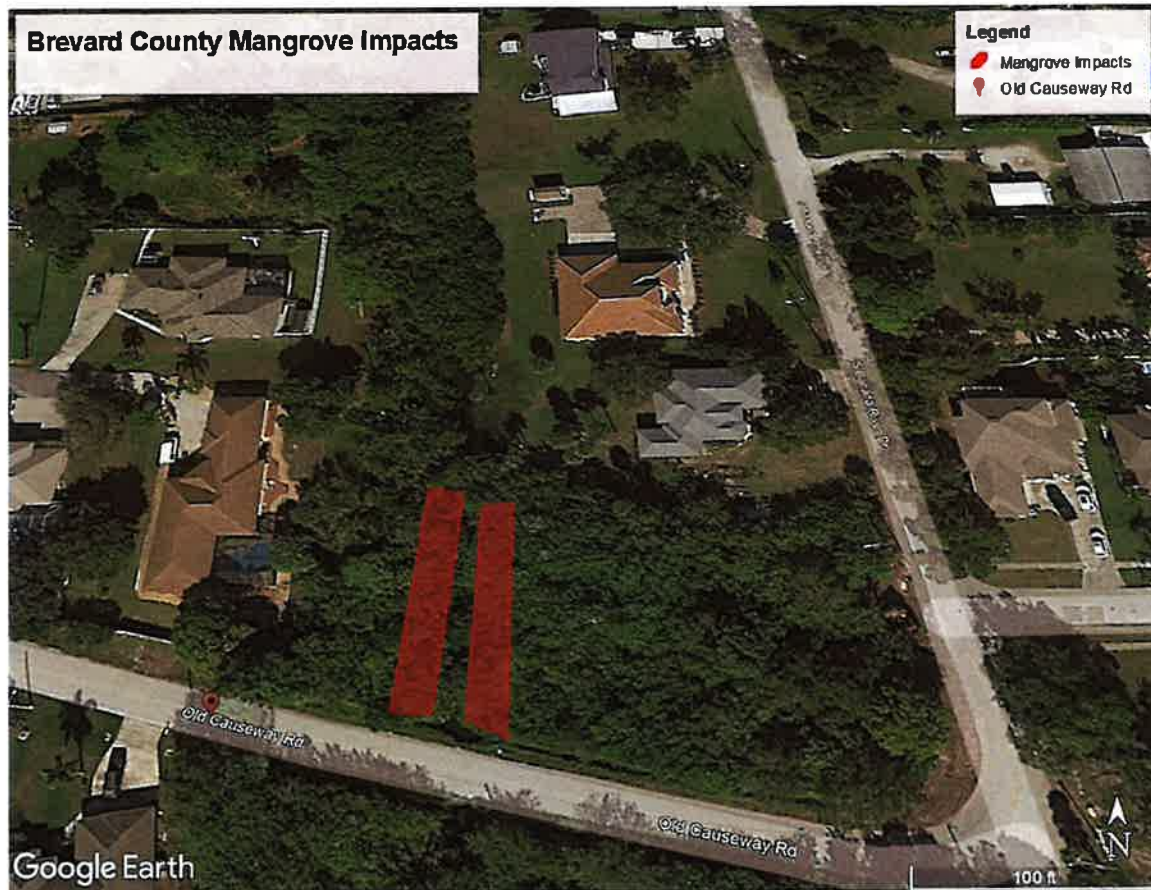


Figure 1: Image shows the approximate area of mangrove impacts along the Old Causeway Road drainage ditch.

ERP Site Inspection Photos

Inspection Date: 12/16/2022

Lead DEP Inspector: Charlie Nolan



Photo 1: Photograph taken facing north into the Old Causeway Road drainage ditch. Image was taken by Brevard County employee David Kain on June 9, 2022. Both shorelines were cleared of vegetation, including mangroves.



Photo 2: Photograph taken facing north into the Old Causeway Road drainage ditch. This image was taken during the inspection on December 16, 2022. Both sides of the ditch remain clear of vegetation, but some saplings of unknown species are beginning to re-establish on the eastern shore.



Photo 3: Photograph was taken facing north towards the eastern shoreline of the Old Causeway Road drainage ditch. The new growth can be seen, as well as the remnant pneumatophores from black mangroves.



Photo 4: Photograph taken facing northwest towards the western shoreline of the Old Causeway Road drainage ditch. Pneumatophores from black mangroves can be seen in the water as well as living white mangroves and Brazilian pepper (*Schinus terebinthifolia*).



Photo 5: Photograph taken facing north into the Old Causeway Road drainage ditch. Image came from Google Street View and was take in June of 2019. Mangroves can be seen growing along the shoreline of the ditch on either side.



Photo 6: Photograph taken facing northwest into the Old Causeway Road drainage ditch. This image was taken from Google Street View and was photographed in May of 2011. Black and white mangroves can be seen growing along the ditch, with black mangrove pneumatophores present in the same location as in the December 16, 2022, site inspection photos.

ATTACHMENT B: RESTORATION ACTIONS

1. Unless otherwise stated herein, within 120 days of the effective date of this Order, Respondent shall complete the following Restoration Actions:
 - a. Respondent shall notify the Department at least 48 hours prior to the commencement of any Restoration Actions within the Restoration Areas.
 - b. Any re-grading or planting activities conducted by the Respondent in the Restoration Areas shall be completed in a manner so as not to negatively affect wetland areas outside the Restoration Areas.
 - c. As necessary, prior to any Restoration Actions, Respondent will receive permission from the private property owners of the sites specified in Paragraph 3 of the Consent Order to conduct required Restoration Actions. Should any property owners deny Respondent access to perform required Restoration Actions, Respondent will notify the Department in writing within seven (7) days which parcels denied property access. Repeated documented denial of access to the property by the property owner may be grounds for relief from Respondent's Restoration Actions at the Department's sole discretion.
 - d. REMOVAL OF NUISANCE AND EXOTIC VEGETATION: Respondent shall remove all exotic and nuisance vegetation within Restoration Areas A and B, as shown in Exhibit A, specifically being 15 feet from the top of bank of the Old Causeway Outfall ditch, as shown in Exhibit A. Nuisance and exotic vegetation includes Brazilian Peppertree (*Schinus terebinthifolia*), seaside mahoe (*Thespesia populnea*), and any plant listed on the Florida Noxious Weeds list (F.A.C. 5B-57) or the Prohibited Aquatic Plants list (F.A.C. 5B-64).
 - i. Nuisance and exotic vegetation shall be removed using equipment in a manner that will minimize impacts to the existing wetland plants and will not cause ruts in the wetland soils which will impede or divert the flow of surface waters.

- ii. The stumps of exotic plants within the restoration area shall be treated during the duration of this Consent Order to prevent regrowth, with an appropriate systemic herbicide approved by the Department in advance.
 - iii. Vegetative debris generated from the removal of nuisance and exotic vegetation shall be removed from the Restoration Areas and placed within an upland location that will not result in debris washing into wetlands or surface waters.
 - iv. Removal of nuisance and exotic vegetation shall occur before any planting, as required, can take place.
- e. The Respondent shall be permitted one (1) year from the date of execution of this Consent Order to allow natural recruitment of mangroves in **Restoration Area A and B** to obtain 80% aerial coverage of mangroves. Respondent may plant mangroves at any time should the natural recruitment not be sufficient to reach 80% aerial coverage. Should the aerial coverage of mangrove species not reach 80% within this one-year period, the Department shall issue a replanting plan. The replanting plan shall be implemented by the Respondent no later than 90 days after receipt of the plan, unless otherwise specified in the replanting plan.
- f. PLANTING OF MANGROVES WITHIN RESTORATION AREA C
 - i. Respondent shall only be required to complete the mangrove plantings and restoration actions within Restoration Area C once the dredged area has been restored. Respondent shall complete the mangrove plantings within 120 days of Restoration Area C being restored by the private property owners.
 - ii. Respondent is to plant one-hundred thirty-three (133) mangroves within Restoration Area C within 15 feet from the top of bank of the

Old Causeway Outfall Ditch. In order to mimic appropriate natural mangrove recruitment, the plantings shall be done as follows:

1. Fifty-eight (58) red mangroves (*Rhizophora mangle*) planted at roughly five-foot (5') centers along the Ditch and most waterward;
 2. Twenty-six (26) black mangroves (*Avicennia germinans*) planted at roughly twelve-foot (12') centers being planted behind the red mangroves (*Rhizophora mangle*); and
 3. Forty-nine (49) white mangroves (*Laguncularia racemosa*) planted at roughly six-foot (6') centers behind the black mangroves (*Avicennia germinans*).
- iii. Respondent's plantings shall not be considered to resolve any wetlands impacts caused by private property owners.
 - iv. Field adjustments to the type, size, placement and numbers of mangroves may be needed. Any adjustments will require written approval from the Department.
 - v. The mangroves shall be at least one-gallon, well-rooted, nursery-grown stock. If Respondent is unable to purchase such stock, the Respondent may seek written approval from the Department for smaller or alternate plantings to achieve the same or similar planting coverage with appropriate spacing based on size.
 - vi. If the private property owner(s) within Restoration Area C receive authorization from the Department to keep the dredged impacts, then the Respondent shall be relieved of its obligations to plant mangroves within Restoration Area C.
 - vii. Should any property owners deny Respondent access to perform required Restoration Actions, Respondent will notify the

Department in writing within seven (7) days which parcels denied property access. Repeated documented denial of access to the property by the property owner may be grounds for relief from Respondent's Restoration Actions within Restoration Area C at the Department's sole discretion.

2. Within thirty (30) days of completion of these Restoration Actions, Respondent shall submit the following information to the Department:
 - a. Written notification that the Restoration Actions have been completed.
 - b. Enough color photographs to show the entire completed Restoration Areas taken from fixed reference points shown on a plan-view drawing.
 - c. Number and spacing of each species of mangrove planted, as applicable.
3. The Parties hereto acknowledge that Respondent has no control over the conditions of Restoration Area C identified in Exhibit A, including, but not limited to, the quality of the soil and adequacy of irrigation. Respondent shall only become responsible for planting mangroves in Restoration Area C if such area is restored by the private property owners.
 - a. If the private property owners within Restoration Area C receive authorization from the Department and other relevant regulatory agencies, as required, to keep the dredged impact, then the Respondent shall be relieved of its obligations to plant mangroves within Restoration Area C.
 - b. Should the private property owners of Restoration Area C agree to implement a Restoration Plan, as approved by the Department, then the Respondent shall be relieved of its obligations to plant mangroves within Restoration Area C.

ATTACHMENT C: MAINTENANCE AND MONITORING ACTIONS

Unless otherwise stated herein, within 90 days of the completion of the Restoration Actions in each corresponding Restoration Area, Respondent shall implement the following Maintenance and Monitoring Actions:

1. For 5 years following completion of the Restoration Actions, Respondent shall inspect Restoration Area semi-annually for the first year and annually for all following years.
 - a. Should the property owners of Restoration Areas B and C agree to perform the required maintenance and monitoring, then the Respondent shall not be responsible for maintenance and monitoring for Restoration Areas B and C. This agreement shall be provided to and agreed upon by the Department prior to the Respondent being relieved of responsibility.
 - b. The purpose of the monitoring shall be to determine the success of the restoration, as defined in Paragraph 2, below.
 - c. If any of the Restoration Areas meet the success criteria as defined in Paragraph 2 prior to the expiration of the 5-year monitoring period, then the Respondent shall provide written notice to the Department with evidence supporting such a finding.
 - d. The Department shall inspect the Restoration Area to confirm that the Restoration Area meets the success criteria, as defined in Paragraph 2, below. Should the success criteria be met, the Department shall release the Respondent from further Maintenance and Monitoring requirements for that respective Restoration Area.
2. "Success of the restoration" means that at the end of the monitoring schedule, as applicable, the following success criteria are met in the Restoration Areas required in the Restoration Actions.

- a. The respective restoration area shall achieve at least 80% aerial coverage of mangroves. Deceased mangroves shall not count towards the aerial coverage percentage.
 - b. The respective restoration area shall have less than 10% aerial coverage of nuisance and exotic vegetation, which includes Brazilian Peppertree (*Schinus terebinthifolia*), seaside mahoe (*Thespesia populnea*), and any plant listed on the Florida Noxious Weeds list (F.A.C. 5B-57) or the Prohibited Aquatic Plants list (F.A.C. 5B-64).
3. Within thirty (30) days after the completion of each inspection in the monitoring schedule, as applicable, Respondent shall complete a monitoring report and submit it to the Department. The monitoring reports shall include the following information:
 - a. Date of the inspection.
 - b. Color photographs taken from the same locations as the pictures taken in the Restoration Actions completion report.
 - c. Statistically valid estimate of the percent aerial coverage of each mangrove species that exists in each Restoration Area. Statistically valid estimating methods include those found in Daubenmire, R. (1968), Oosting (1956), or Mueller-Dombois and Ellenberg (1974), or other method approved by the Department. More information on these methods will be provided by the Department upon request.
 - d. Description of any nuisance or exotic species removed.
4. Should any of the Restoration Areas not meet the success criteria after the 5-year Maintenance and Monitoring Period, the Department shall issue additional restoration actions to be completed by the Respondent
 - a. The Department-issued plan will include additional mangrove plantings sufficient to achieve the required 80% coverage within the five-year

period.

Exhibit A

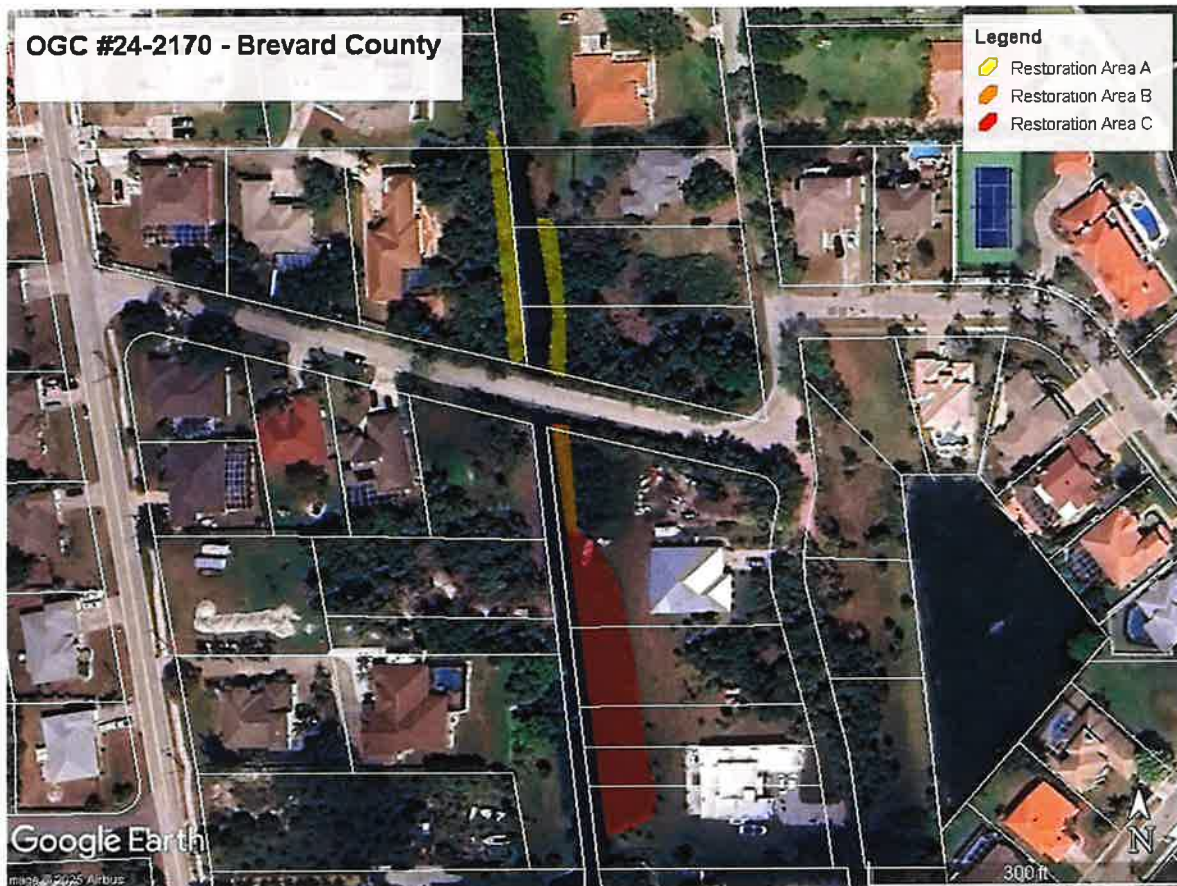


Figure 1: Figure shows the three restoration areas, A, B, and C. Note that the dredging activity performed in Restoration Area C was not performed by the Respondent and the activity is being addressed through a separate consent order process to the responsible parties, see OGC cases 24-2168 and 24-2169.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: FDEP		2. Amount: N/A	
3. Fund/Account #: R&B Maintenance		4. Department Name: Public Works	
5. Contract Description: Consent Order re: Old Causeway Road Outfall Ditch			
6. Contract Monitor: Robert Hendricks		8. Contract Type: INTERGOVT/STATE	
7. Dept/Office Director: Marc Bernath			
9. Type of Procurement: Other			

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	☐	☐	
Purchasing	☐	☐	
Risk Management	☐	☐	
County Attorney	☐	☐	

SECTION III - REVIEW AND APPROVAL TO EXECUTE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	☒	☐	Scott, Jeanette Digitally signed by Scott, Jeanette Date: 2025.08.01 09:36:38 -04'00'
Purchasing	☐	☐	N/A
Risk Management	☒	☐	Watson, Michael Digitally signed by Watson, Michael Date: 2025.08.01 09:34:24 -04'00'
County Attorney	☒	☐	Esseeesse, Alexander Digitally signed by Esseeesse, Alexander Date: 2025.07.30 11:56:16 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	☐
Department	☐
Program	☐
Contact Name	☐
Cost Center, Fund, and G/L Account	☐
Vendor Information (SAP Vendor #)	☐
Contract Status, Title, Type, and Amount	☐
Storage Location (SAP)	☐
Contract Approval Date, Effective Date, and Expiration Date	☐
Contract Absolute End Date (No Additional Renewals/Extensions)	☐
Material Group	☐
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	☐
"Right To Audit" Clause Included in Contract	☐
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	☐