

FEB 08 2007

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SOUTH DISTRICT

STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL PROTECTION,)

) IN THE OFFICE OF THE
) SOUTH DISTRICT
)

Complainant,)

) OGC FILE NO. 06-2345-DF
)

vs.)

City of Cape Coral,)

Respondent.)
)

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department"), and the City of Cape Coral ("Respondent") as a modification of the requirements of Consent Order 15 entered between DER, predecessor agency to DEP, and GAC Corporation who vested their holdings and responsibilities to the City of Cape Coral. The Department finds and the Respondent admits the following:

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. The Department has jurisdiction over the matters addressed in this Consent Order.

2. Respondent is a person within the meaning of Sections 373.019(15) and 403.031(5), Florida Statutes.

3. Respondent is the owner of property located at 3916 Ceitus Parkway Cape Coral FL 33993 Section 18, Township 44 South, Range 23 East, Lee County.

4. 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. Department inspection has revealed that erosion

occurred between July 23, 2002 and September 3, 2002 at this location. The Department obtained a grant and contracted to make repairs to control the erosion. 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. In 2006, it came to the Department's attention that additional erosion had occurred allowing water to bypass the boatlift structure. 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 so severe, it is beginning to allow navigable depth and width bypassing the boat lift. The erosion is on-going and continues to impact additional acreage of mangrove wetlands.

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 I in the manner and within the time frames specified therein. This will result in the relocation of the boat lift and removal of the existing storm water barrier as shown on the attached plans, and the dredging of silt and sand from the canal and downstream channel which has eroded as a result of the previous boat lift location. 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.

6. With the exception of the activities described in the Restoration Actions, 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.

7. 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.

8. 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.

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

10. 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.

11. 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.

12. 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, 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 Section 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) 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; 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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:
CITY OF CAPE CORAL

2-1-07
DATE

Terrance Stewart
Terrance Stewart
City Manager

STATE OF FLORIDA
COUNTY OF Lee

The foregoing was acknowledged before me this 1st day of Feb, 2007 by (name of individual above). He/she is personally know to me or provided as identification and did/did not take an oath.


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.: DD411391

APPROVED AS TO FORM:

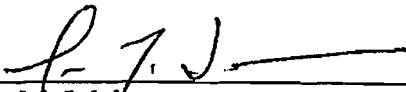
BY: Mauley W. Miller
City Attorney's Office

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

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

DONE AND ORDERED this 13th day of February, 2007, in Lee County, Florida.

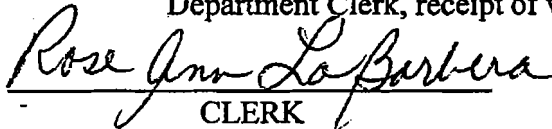
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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.

 2-13-07

CLERK DATE

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

**ATTACHMENT I
OGC NO. 06-2345
RESTORATION ACTIONS**

GENERAL CONDITIONS:

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. 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. The Respondent shall correct any erosion or shoaling that causes adverse impacts to wetlands or surface waters.

COMMENCEMENT NOTICE

3. The Respondent shall notify the Department of the anticipated ordered activity 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.) [Attachment] 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. When the duration of construction will exceed one year, the Respondent shall submit activity status reports to the Department on an annual basis utilizing an "Annual Status Report Form" (Form No. 62-343.900(4), Florida Administrative Code (F.A.C.)) [Attachment]. Status Report Forms shall be submitted the following anniversary of this Consent Order of each year. However, the ordered activity will be completed no later than two years from the date this Consent Order is executed. This form shall include the Respondent's name and the OGC number associated with this Consent Order, **which is 06-2345-DF.** The completed form shall be submitted to the

Florida Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549.

COMPLETION NOTICE

5. Within thirty (30) days after completion of the ordered activity, the Respondent shall submit a written statement of completion. This statement shall include the Respondent's name and the OGC number with this Consent Order, **which is 06-2345-DF**.

6. 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.

7. 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.

8. 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.

9. 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.

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

SPECIFIC CONDITIONS

TURBIDITY/EROSION CONTROL

11. During all construction activities, all work areas and unstabilized slopes will be surrounded by floating turbidity curtains and/or other turbidity and erosion control measures as necessary to avoid a turbid discharge into waters of the state. The turbidity and erosion control measures shall be maintained in place until the restoration actions are completed and all fill slopes are completely stabilized by sod, seed or affirmative plantings. The stabilization of the fill side slopes shall be completed as soon as possible to prevent erosion, siltation, or turbid run-off into wetlands or waters of the state, but, in any event, no later than 72 hours after attaining final grade.

RESTORATION ACTIONS

12. Within 120 days of the effective date of this Order, the Respondent shall submit for Department review, modification as necessary, and approval, detailed plans for the placement of an interim stormwater barrier and boat lift at the location depicted as Stage

1 Item B on Exhibit A of this consent order. This lift (with a design life shown to be on the order of 10 plus years) shall accommodate the same size (length and draft) vessels as can be serviced by the boat lift authorized previously by Consent Order 15. The plan shall include at minimum, detailed plan and cross-sectional drawings, sealed by an engineer registered in the State of Florida. The plan shall also include details of the construction methods, materials, and sequencing, as well as water quality and habitat protection measures. The plan shall also include details of the removal of the existing stormwater barrier and boatlift. The Respondent shall complete construction within 260 days of Department approval. The plan shall also address navigational concerns during construction.

13. No later than 60 days from the date of this Order, the Respondent shall submit for Department review, modification as necessary, and approval, detailed plans to maintain the existing waterway to its design depth and remove all accumulated sediment to a self contained upland disposal site. The plan shall include at minimum, detailed plan and cross-sectional drawings, sealed by an engineer registered in the State of Florida. The plan shall also include details of the construction methods, materials, and sequencing, as well as water quality and habitat protection measures. The plan shall also address navigational concerns during construction.
14. Within 360 days of the effective date of this Order, the Respondent shall submit an application to the Department for replacement of the interim boatlift with a boat lock in accordance with Exhibit A, Stage 2 and 3. The application shall include timelines for construction and completion of the project. The timeframes allowed by this Consent Order are envisioned to be sufficient to allow for review of a diligently prepared, submitted, and completed application that proposes an alternative mechanism to accommodate vessels that currently use the boatlift required by Consent Order 15.
15. If the Department has not issued a Notice of Permit or a Notice of Intent to grant an Environmental Resource Permit within two years of the effective date of this Order, the Respondent shall submit for Department review, modification as necessary, and approval, detailed plans for the placement of a permanent stormwater barrier and boat lift at the location depicted as Stage 1 Item B on Exhibit A of this Consent Order. This lift shall accommodate vessels as can be serviced by the boat lift authorized previously by Consent Order 15. The plan shall include at minimum, detailed plan and cross-sectional drawings, sealed by an engineer registered in the State of Florida. The plan shall also include details of the construction methods, materials, and sequencing, as well as water quality and habitat protection measures. The plan shall also address navigational concerns during construction. The plan shall include timelines for completion of the project.
16. In the event an Environmental Resource Permit has been granted for a boat lock as a result of the application described in Paragraph 14 above, the Respondent shall implement the requirements of that permit in lieu of the approved permanent stormwater barrier and boat lift no later than two years days of the date of the issued permit. In the event despite the diligent efforts of the Respondent to comply with these timeframes,

construction cannot be completed in a timely manner, the Department can allow additional time upon written request.

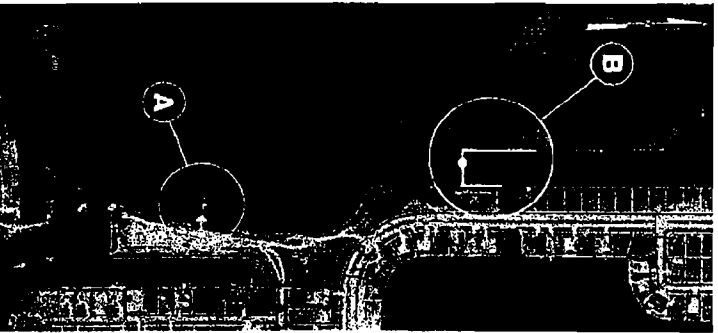
17. This Consent Order does not convey any authorization to use State Owned Uplands under the management of the Department's Division of Parks and Recreation. Respondent must separately attain a management agreement prior to commencing any construction required under this Consent Order. The Respondent shall copy the South District DEP office on all communications with the Division of Parks and Recreation, and the Division of State Lands.

PROOF OF RESTORATION COMPLETION

18. Within 30 days of completion of these Restoration Actions addressed in Specific Condition Nos. 12, 13 and 14, Respondent shall submit the following information to the Department:

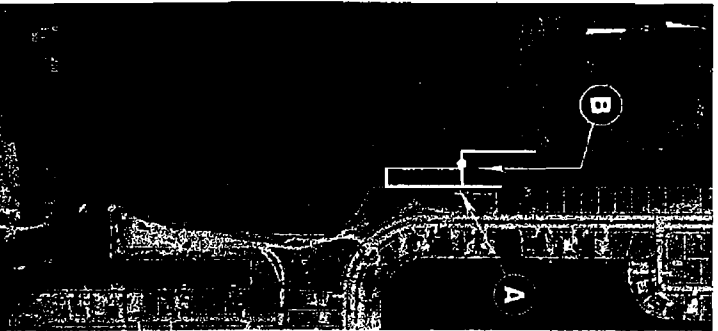
- a. Written notification that the Restoration Actions have been completed.
- b. The notification shall bear the notations "OGC Case No. 06-2345-DF" and name of Respondent exactly as it appears on the first page of this Consent Order.
- c. Enough color photographs to show the entire completed restoration 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.

19. 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



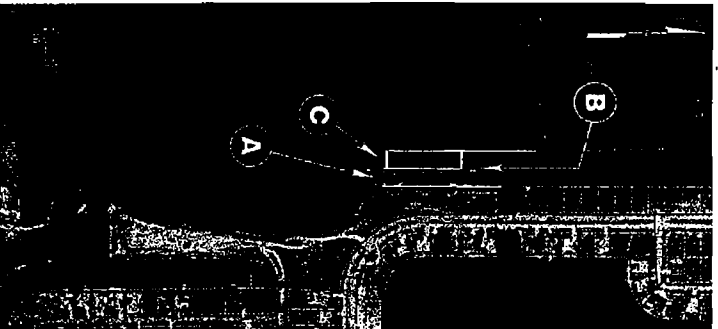
Stage 1

- A. Demolish/remove existing stormwater barrier and boat lift.
- B. Construct new interim stormwater barrier and boat lift. (See Detail 1)



Stage 2

- A. Construct East lock chamber and remaining elements of permanent stormwater barrier.
- B. Vessel transit via boat lift and West lane during construction.

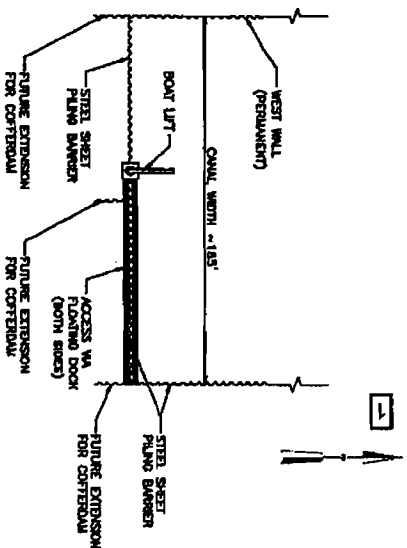


Stage 3

- A. Vessel transit via East lock.
- B. Decommission boat lift.
- C. Future capability to construct West lock chamber when warranted.

 **MWH** December 2006

Exhibit A



Detail 1 of Interim Stormwater Barrier and Boat Lift

(Not to Scale)

<p>City of Cape Coral, FL North Spreader Canal Stormwater Barrier Conceptual Plan</p>
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MEETING DATE
January 29, 2007

- Consent Agenda Item
- Admin Discussion Item
- Personnel Action
- Committee of the Whole

AGENDA REQUEST FORM
City of Cape Coral, Florida

CITY MANAGER

RECEIVED
FEB 01 2007 2007 JAN 30 AM 9:14

AGENDA ITEM NO. **68(3)(e)**
DPO _____
INTRO _____
PH _____
PH _____

TITLE:

Ceitus Boat Lock -- Modification of Consent Order 15.

REQUESTED ACTION:

Motion to approve proposed Consent Order between the State of Florida Department of Environmental Protection (FDEP) and the City of Cape Coral (FILE NO. 06-2345-DF) and authorize the City Manager to execute the Consent Order on behalf of the City.

STRATEGIC PLAN INFO:

1. Is this a Strategic Decision? Yes No
If Yes, supports: Strategic Priority #: , Priority Name:
If No, will it harm the intent or success of the Strategic Plan? Yes No
2. City Vision:
3. City Mission:
 Increased Efficiency Increased Quality of Services Positive Return on Investment (ROI)

SUMMARY EXPLANATION AND BACKGROUND:

1. Consent Order 15, which 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, was entered in April, 1977 between DER (a predecessor agency to FDEP) and GAC Corporation who vested their holdings and responsibilities to the City of Cape Coral. This established the location of the storm water barrier and boat lift in the south end of the North Spreader Waterway.
2. In January 2006 a major breach developed on State owned property at west end of this storm water barrier. In July 2006 this breach suddenly expanded substantially. This breach caused damage to mangroves, major sediment problems impeding navigation in the waterway, and opened the canal system to manatees. This with several other breaches in the west side of the North Spreader Waterway on State owned property essentially resulted in this canal system reverting to tidal conditions.
3. In order to minimize further environmental damage, close the canal system to manatees, and resolve navigation impediments, on July 19, 2006 the City proposed a strategy to the FDEP to eliminate the major breaches at the south end of the spreader by:
 - > Removing the existing storm water barrier and boat lift; and
 - > Establishing the location of the future boat lock in position where the hydraulic gradient on the major south breaches is eliminated; and
 - > Accelerating the development of the leading elements of the planned boat lock to serve as an interim storm water barrier until the lock is constructed.
4. This modification of Consent Order 15 provides FDEP parameters and authorization for the City to accomplish this strategy.

This consent order obligates the City to accomplish design, permitting, and construction activities as required over the next several years to accomplish removal of the existing storm water barrier, development of the interim storm water barrier and the temporary installation of the boat lift on the interim storm water barrier. It also obligates the City to develop the boat lock or a permanent storm water barrier if for some reason the boat lock is not developed.

LEGAL COMMENTS:

The Consent Order has been reviewed by the City Attorney's Office and will be routed through for final signature prior to execution by the City Manager.

EXHIBITS: (LIST)

1. STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, IN THE OFFICE OF THE SOUTH DISTRICT, OGC FILE NO. 06-2345-DF, CONSENT ORDER
2. The original Consent Order 15 is quite lengthy and is therefore available for review in the City Clerk's Office.

PREPARED BY:

SOURCE OF ADDITIONAL INFORMATION:

Oliver L. Clarke, 1/21/07

Oliver L. Clarke, Civil Engineer IV, 242.3225

SUBMITTED BY:

Terry Stewart, City Manager
T.S. / [Signature]

1/23/07
Date

Charles Pavlos, Public Works Director
CLP

1/23/2007
Date

COUNCIL ACTION:

Bonnie J. Vent, City Clerk
Date

KDB

Original attached!



Exhibit 1

Florida Department of Environmental Protection

South District
P.O. Box 2549
Fort Myers, FL 33902-2549

663e

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary - Designee

January 18, 2007
Hand Delivered

Terrance Stewart, City Manager
PO Box 150027
Cape Coral Fl 33915-0027

Re: Lee County - ERP
OGC Case No. 06-2345-DF

Dear Mr. Stewart:

Enclosed is the final copy of Consent Order OGC Case No. 06-2345-DF to resolve violations noted in the complaint.

Please sign and notarize the original and return it to this office within twenty (20) calendar days of receipt of the Consent Order. After the Consent Order has been executed by the Department, your copy will be returned to you.

If you have any questions, please contact Lucianne Blair at P.O Box 2549, Fort Myers, FL 33902 or by phone at 239/332-6975, extension 157.

Your cooperation in this matter will be appreciated.

Sincerely,

Jon M. Iglehart
Director of
District Management

JMI/LB/lb
Enclosure