

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	_____ DISTRICT
[,and THE BOARD OF TRUSTEES OF THE))	
INTERNAL IMPROVEMENT TRUST FUND],)	
)	
Complainant[s],)	
)	OGC FILE NO.
vs.)	
)	
[For corporations, insert entire)	
name as listed in corporate)	
information records.)	
For joint owners of the property,)	
include all owners.)	
For businesses not listed in)	
corporate information, contact)	
OGC for advice on naming the)	
proper parties.],)	
)	
Respondent.)	
_____)	

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department"), [and The Board of Trustees of the Internal Improvement Trust Fund ("Board")] and _____ ("Respondent") to reach settlement of certain matters at issue between the Department [, the Board] and Respondent.

The Department [and the Board] 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. [The Board is responsible for overseeing state owned lands and ensuring they are managed in trust for the citizens of the State of Florida pursuant to Chapter 253, Florida Statutes, and the rules promulgated and authorized thereunder, Florida Administrative Code Title 18. The Department has the duty to perform all staff duties and functions related to the administration of state lands as provided in Section 253.002, Florida Statutes.]

3. Respondent is a person within the meaning of Section [253.04 and] 373.019(15), Florida Statutes.

4. Respondent is the owner of property located at [Insert latitude, longitude, or address or legal description and name of the development if applicable. Using only Section, Township, Range is insufficient].

5. [If a contractor is joined as a Respondent, insert this paragraph.] Respondent, _____, conducted the activities described in paragraph ____ below.

6. [ADD A PARAGRAPH OR PARAGRAPHS WITH FINDING OF VIOLATION LANGUAGE AND WHICH DESCRIBE THE VIOLATIONS THAT FORM THE BASIS OF THIS CONSENT ORDER. THESE PARAGRAPHS SHOULD BE STRICTLY LIMITED TO THE STATEMENT OF ONLY THOSE FACTS THAT ARE NECESSARY TO DESCRIBE THE VIOLATIONS ADDRESSED IN THE CONSENT ORDER.]
FOR EXAMPLE:

The Department finds that the Respondent dredged and filled without a valid permit.
OR The Department finds that the Respondent violated Rule XX-XXX.XXX.

An inspection by Department personnel on [date] revealed that [insert a short description of the violation] without a valid [permit, lease or other form of consent] from the Department [and the Board]. The activity was conducted on the above described property within the landward extent of [name of water body,] waters of the State, as defined by Florida Law. [If the activity occurred on state lands, describe where the state land is located. For example, "The fill was placed below the mean high water line in the Gulf of Mexico, adjacent to the Respondent's property."]

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

ORDERED:

7. [OPTIONAL - USE IF PENALTIES OR COSTS ARE REQUIRED]

Within _____ days of the effective date of this Consent Order, Respondent shall pay the Department \$_____ in settlement of the matters addressed in this Consent Order. This amount includes \$___ for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order.

[USE EITHER (A) or (B) STATEMENT: (A) The civil penalties are apportioned as follows:

{individually cite the specific rules and/or statutes along with the amount assessed for each, e.g. \$1,500.00 for violation of Rule 62-601.500(2), Florida Administrative Code; \$375.00 for violation of Rules 62-600.740(2)(e) and 62-601.300(1)(a), Florida Administrative Code; \$750.00 for violation of Rule 62-699.310, Florida Administrative Code} OR (B) The civil penalty in this case includes {insert #} violations of \$2,000.00 or more.]

Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/> It will take a number of days after this order becomes final and effective filed with the Clerk of the Department before ability to make online payment is available.

8. [IF NO PENALTIES OR COSTS ARE TO BE PAID FOR THE PROPRIETARY

VIOLATIONS, DELETE THIS PARAGRAPH] Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$_____ in settlement of the matters addressed in this Consent Order. This amount includes \$___ in administrative fines [and back lease fees] for alleged violations of Section 253.04, Florida Statutes, and of the Board's rules and \$___ for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Board of Trustees of the Internal Improvement Trust Fund" and shall include thereon the OGC number assigned to this Consent Order and the notation "Internal Improvement Trust Fund". The payment shall be sent to _____.

9. [DELETE THIS PARAGRAPH IF ONLY REQUIRING MAINTENANCE AND MONITORING ACTIONS] Respondent shall implement the Restoration Actions attached hereto and incorporated herein as Attachment(s) _____ in the manner and within the time frames specified therein.

10. [DELETE THIS PARAGRAPH IF THERE IS NO TUA ASSOCIATED WITH THIS SETTLEMENT.] In addition to the requirements of this Consent Order, Respondent has also entered a Temporary Use Agreement, OGC No. _____, which addresses the payment of lease fees in arrears plus interest and the requirement that Respondent apply for a lease from the Board within the time frames specified in the Temporary Use Agreement.

11. With the exception of the activities described in the Restoration Actions, effective immediately and henceforth, Respondent shall not conduct any dredging, filling, or construction activities on or within the landward extent of waters of the state 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.

12. [IF MAINTENANCE AND MONITORING ARE REQUIRED, INSERT THIS PARAGRAPH.] Once the Restoration Actions have been completed, the Respondent shall implement the Maintenance and Monitoring Actions attached hereto and incorporated herein as Attachment _____ in the manner and within the time frames specified therein.

13. Within _____ days of the effective date of this Order, Respondent shall submit a written estimate of the total cost of the corrective actions required by this Order to the Department. The written estimate shall identify the information the Respondent relied upon to provide the estimate.

14. [IF NO STIPULATED PENALTIES ARE TO BE PAID, DELETE THIS PARAGRAPH] Respondent agrees to pay the Department stipulated penalties in the amount of ___ per day for each and every day Respondent fails to timely comply with any of the requirements of

paragraphs __ [Insert appropriate paragraph numbers] of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Order. Within 30 days of written demand from the Department, Respondent shall 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. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph __ of this Consent Order. [OPTIONAL SENTENCE] 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.

15. **[OPTIONAL - EXCUSABLE DELAY CLAUSE]** 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.

16. 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.

17. [Insert this paragraph if there is an unresolved question concerning the authorized use of state lands.] This Consent Order only addresses violations of the rules and statutes of the Department and does not address potential violations of the rules and statutes of the Board of Trustees of the Internal Improvement Trust Fund for the use of lands owned by the State of Florida. Entry of this Consent Order does not constitute a permit from the Department nor does it convey any authority from the Board of Trustees of the Internal Improvement Trust Fund involving the use of sovereignty or other lands of the State. In order to ascertain whether any authority is needed to use sovereign lands, the Respondent must contact the Department of Environmental Protection, Division of State Lands. A copy of this Consent Order will be furnished to the Division of State Lands. The Respondent is hereby advised that Florida law states: "No person shall commence any excavation, construction or other activity involving the use of sovereign or other lands of the State, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund under Chapter 253, Florida Statutes, until such person has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement or other form of consent authorizing the proposed use." If such work is done without consent, a fine for each offense in an amount of up to \$10,000.00 may be imposed.

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

19. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 [253.04] and 373.129, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section [253.04 and] 373.430, Florida Statutes.

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

21. [OPTIONAL-USE THIS NOTICE IF YOU DON'T WANT TO REQUIRE PUBLICATION. THE CONSENT ORDER MUST EITHER CONTAIN THE NOTICE IN THIS PARAGRAPH OR THE PARAGRAPH REQUIRING PUBLIC NOTICE.]

[THERE NEEDS TO BE A NOTICE SECTION OR MODIFICATIONS TO THE PREVIOUS SECTION WHICH ADDRESSES THE RIGHT TO CHALLENGE THE BOARD'S ACTIONS IN ENTERING THIS CONSENT ORDER.]

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 Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

- (a) The Department's Consent Order identification number 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 during the course of the proceeding;

- (c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- (d) A statement of when and how the petitioner received notice of the Consent Order;
- (e) A statement of all material facts disputed by petitioner, if any;
- (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- (g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes 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 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, 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.

22. [OPTIONAL-USE THIS NOTICE IF YOU WANT TO REQUIRE PUBLICATION.] **[THERE NEEDS TO BE A NOTICE SECTION OR MODIFICATIONS TO THE PREVIOUS SECTION WHICH ADDRESSES THE RIGHT TO CHALLENGE THE BOARD'S ACTIONS IN ENTERING THIS CONSENT ORDER.]**

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

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Consent Order with _____ pursuant to Section 120.57(4), Florida Statutes. The Consent Order addresses the [describe nature of activities] at [describe location of the property] _____. The 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, [Enter address of District Office].

Persons whose substantial interests are affected by this Consent Order have a right to petition for an administrative hearing on the 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 Consent Order identification number 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 during the course of the proceeding; (c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order; (d) A statement of when and how the petitioner received notice of the Consent Order; (e) A statement of all material facts disputed by petitioner, if any; (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order; (g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes 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.

[THERE NEEDS TO BE A NOTICE SECTION OR MODIFICATIONS TO THE PREVIOUS SECTION WHICH ADDRESSES THE RIGHT TO CHALLENGE THE BOARD'S ACTIONS IN ENTERING THIS CONSENT ORDER.]

23. 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.

24. 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. [INSERT THIS SENTENCE IF ANY VIOLATIONS ON STATE LANDS ARE NOT BEING ADDRESSED IN THIS CONSENT ORDER: **This waiver does not affect any claim the Department or the Board of Trustees of the Internal Improvement Trust Fund may have for**

violations not addressed herein, notwithstanding that the other claims may involve the same activities addressed herein.]

25. 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.

26. 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.

27. 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, **[INSERT TITLE AND ADDRESS]**.

28. [USE THIS PARAGRAPH IF THE RESPONDENT IS THE PROPERTY OWNER] In the event of a sale or conveyance of the property, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property, (1) notify the Department of such sale or conveyance and (2) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the property shall not relieve the Respondent of the obligations imposed in this Consent Order.

29. 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.

30. 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

(Name)

(Title) _____

DONE AND ORDERED this _____ day of _____, 20__,
in _____, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

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

RESTORATION ACTIONS
(MANGROVES)

1. Within ____ days of the effective date of this Order, Respondent shall complete the following Restoration Actions:
 - a. [Optional] Respondent shall notify the Department at least 48 hours prior to the commencement of work under these Restoration Actions.
 - b. [Optional] Prior to planting, Respondent shall restore the restoration area to the grade existing prior to the dredging or filling addressed in this Order. All fill removed from the restoration area shall be placed in a contained upland location which will not discharge to waters of the state. During re-grading, turbidity and erosion control measures shall be used to ensure that Florida Administrative Code Rule 62-302 is not violated.
 - c. [Optional] Respondent shall stake the boundaries of the Restoration Area for approval by the Department, prior to undertaking any restoration work required in these Restoration Actions. This staked line shall remain in place during all phases of restoration and no wetlands or waters of the state shall be disturbed or affected by restoration activities.
 - d. [Optional] Turbidity barriers such as staked hay bales and staked silt screen shall be installed no more than __ feet from the waterward or downstream edge of the restoration area to control turbidity during all restoration activities. The turbidity barriers shall be maintained and shall remain in place until the restoration actions are completed and the turbidity is measured at less than 25 NTU's over background levels.
 - e. [Optional] During and after re-grading, Respondent shall stabilize all side slopes as soon as possible to prevent erosion, siltation, or turbid run-off into waters of the State, but, in any event, no later than 72 hours after attaining final grade.
 - f. [Optional] Any re-grading or planting of the restoration area shall be conducted so as not to affect wetland areas outside the restoration area.

- g. [Optional] Within _ days of re-grading but prior to replanting the restoration area, Respondent shall survey the restoration area and submit a topographic map to the Department. The topographic map shall show _ foot intervals and be certified by a registered land surveyor or professional engineer. The Department shall notify the Respondent if the re-grading is acceptable and whether the re-grading is at the correct elevation to ensure that the restoration area will survive as a wetland. Respondent shall not plant the restoration area until the Department has approved the re-grading. If the re-grading is unacceptable to the Department, Respondent shall have _ days in which to correct the problems identified by the Department and submit a new survey.
- h. [Optional] Prior to planting but after any required re-grading, Respondent shall remove all exotic and nuisance vegetation. Nuisance and exotic vegetation includes ____ [List all species you want removed. Species left off this list will not be required to be removed.]
- i. [Optional] All exotic vegetation shall be removed from the restoration area using hand-held 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.
- j. [Optional] The stumps of exotic plants previously removed shall be treated annually or as necessary to prevent regrowth, with an appropriate systemic herbicide approved by the Department in advance.
- k. [Optional] Prior to planting, debris from earlier trimming and cutting shall be removed from the restoration area and placed in an upland location.
- l. Plant ____ [insert numbers and types of mangroves] in the restoration area which is depicted on the attached site map. [the site map must specifically describe the location of the restoration area on the property using accurate areal measurements from reliable points of reference and must identify where the different species should be planted.]

- m. The mangroves shall be one-gallon, well-rooted, nursery-grown stock.
 - n. The [describe species] shall be planted on _____ foot centers [Describe for each species where they are to be planted, i.e. "throughout the restoration area", "in the areas indicated on the site map", "as set forth on the following table." Repeat this for each species required.]
2. Within 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 area taken from fixed reference points shown on a plan-view drawing.
 - c. [Optional] Nursery receipts for all plants used in the Restoration Actions.
 - d. Number and spacing of each species planted.

RESTORATION ACTIONS
(FRESHWATER)

1. Within ____ days of the effective date of this Order, Respondent shall complete the following Restoration Actions:
 - a. [Optional] Respondent shall notify the Department at least 48 hours prior to the commencement of work under these Restoration Actions.
 - b. [Optional] Prior to planting, Respondent shall restore the restoration area to the grade existing prior to the dredging or filling addressed in this Order. All fill removed from the restoration area shall be placed in a contained upland location which will not discharge to waters of the state. During re-grading, turbidity and erosion control measures shall be used to ensure that Florida Administrative Code Rule 62-302 is not violated.
 - c. [Optional] Respondent shall stake the boundaries of the Restoration Area for approval by the Department, prior to undertaking any restoration work required in these Restoration Actions. This staked line shall remain in place during all phases of restoration and no wetlands or waters of the state shall be disturbed or affected by restoration activities.
 - d. [Optional] Turbidity barriers such as staked hay bales and staked silt screen shall be installed no more than __ feet from the waterward or downstream edge of the restoration area to control turbidity during all restoration activities. The turbidity barriers shall be maintained and shall remain in place until the restoration actions are completed and the turbidity is measured at less than 25 NTU's over background levels.
 - e. [Optional] During and after re-grading, Respondent shall stabilize all side slopes as soon as possible to prevent erosion, siltation, or turbid run-off into waters of the State, but, in any event, no later than 72 hours after attaining final grade.
 - f. [Optional] Any re-grading or planting of the restoration area shall be conducted so as not to affect wetland areas outside the restoration area.

- g. [Optional] Within _ days of re-grading but prior to replanting the restoration area, Respondent shall survey the restoration area and submit a topographic map to the Department. The topographic map shall show _ foot intervals and be certified by a registered land surveyor or professional engineer. The Department shall notify the Respondent if the re-grading is acceptable and whether the re-grading is at the correct elevation to ensure that the restoration area will survive as a wetland. Respondent shall not plant the restoration area until the Department has approved the re-grading. If the re-grading is unacceptable to the Department, Respondent shall have _ days in which to correct the problems identified by the Department and submit a new survey.
- h. [Optional] Prior to planting but after any required re-grading, Respondent shall remove all exotic and nuisance vegetation. Nuisance and exotic vegetation includes _____ [List all species you want removed. Species left off this list will not be required to be removed.]
- i. [Optional] All exotic vegetation shall be removed from the restoration area using hand-held 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.
- j. [Optional] The stumps of exotic plants previously removed shall be treated annually or as necessary to prevent regrowth, with an appropriate systemic herbicide approved by the Department in advance.
- k. [Optional] Prior to planting, debris from earlier trimming and cutting shall be removed from the restoration area and placed in an upland location.
- l. Plant _____ [insert numbers and types of plants] in the restoration area which is depicted on the attached site map. [the site map must specifically describe the location of the restoration area on the property using accurate areal measurements from reliable points of reference and must identify where the different species should be planted.]

- m. The plants shall be well-rooted, nursery-grown stock or plants collected from the wild. If the plants are collected from the wild, Respondent must comply with the requirements of paragraph 3 below.
 - n. The [describe species] shall be planted on _____ foot centers [Describe for each species where they are to be planted, i.e. "throughout the restoration area", "in the areas indicated on the site map", "as set forth on the following table." Repeat this for each species required.]
2. Within 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 area taken from fixed reference points shown on a plan-view drawing.
 - c. Either nursery receipts for all plants used in the Restoration Actions or a copy of the Wetlands Resource Management Permit issued by the Department authorizing the collection of plants from the landward extent of state waters.
 - c. [Optional] Nursery receipts for all plants used in the Restoration Actions.
 - d. Number and spacing of each species planted.
3. [Optional] If Respondent is using plants collected from the wild to complete these Restoration Actions then Respondent must meet all of the following conditions:
- a. The plants shall be collected from locations no greater than 50 miles from the restoration area.
 - b. The plants must be collected pursuant to a Wetlands Resource Management Permit issued by the Department if they are collected within the landward extent of waters of the state.
 - c. If the plants are collected from state-owned lands, Respondent must first obtain all necessary authorizations from the Department.

MAINTENANCE AND MONITORING ACTIONS
(WITHOUT PLANTING)

Within ___ days of the effective date of this Order, Respondent shall implement the following Maintenance and Monitoring Actions:

1. [Optional. If re-grading is necessary use the appropriate paragraphs.] Within _ days Respondent shall re-grade the restoration area according to the following requirements:

a. [Optional] Respondent shall restore the restoration area to the grade existing prior to the dredging or filling addressed in this Order. All fill removed from the restoration area shall be placed in a contained upland location which will not discharge to waters of the state. During re-grading, turbidity and erosion control measures shall be used to ensure that Florida Administrative Code Rule 62-302 is not violated.

b. [Optional] Respondent shall stake the boundaries of the restoration area for approval by the Department, prior to undertaking any re-grading required in these Restoration Actions. This staked line shall remain in place during all phases of restoration and no wetlands or waters of the state shall be disturbed or affected by restoration activities.

c. [Optional] Turbidity barriers such as staked hay bales and staked silt screen shall be installed no more than ___ feet from the waterward or downstream edge of the restoration area to control turbidity during all restoration activities. The turbidity barriers shall be maintained and shall remain in place until the restoration actions are completed and the turbidity is measured at less than 25 NTU's over background levels.

d. [Optional] During and after re-grading, Respondent shall stabilize all side slopes as soon as possible to prevent erosion, siltation, or turbid run-off into waters of the State, but, in any event, no later than 72 hours after attaining final grade.

e. [Optional] Any re-grading of the restoration area shall be conducted so as not to affect wetland areas outside the restoration area.

- f. [Optional] Within _ days of re-grading the restoration area, Respondent shall survey the restoration area and submit a topographic map to the Department. The topographic map shall show _ foot intervals and be certified by a registered land surveyor or professional engineer. The Department shall notify the Respondent if the re-grading is acceptable and whether the re-grading is at the correct elevation to ensure that the restoration area will survive as a wetland. If the re-grading is unacceptable to the Department, Respondent shall have _ days in which to correct the problems identified by the Department and submit a new survey.
- g. [Optional] After re-grading, Respondent shall remove all exotic and nuisance vegetation. Nuisance and exotic vegetation includes _____ [List all species you want removed. Species left off this list will not be required to be removed.]
- h. [Optional] All exotic vegetation shall be removed from the restoration area using hand-held 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.
- i. [Optional] The stumps of exotic plants previously removed shall be treated annually or as necessary to prevent regrowth, with an appropriate systemic herbicide approved by the Department in advance.
- j. [Optional] Prior to re-grading, debris from earlier trimming and cutting shall be removed from the restoration area and placed in an upland location.
2. For ___ years following the entry of this Order, Respondent shall inspect the restoration area [Insert the appropriate monitoring schedule, i.e. semiannually, annually, quarterly the first year, etc.]. The purpose of the monitoring shall be to determine the success of the natural revegetation.
3. During each inspection, Respondent shall remove all nuisance and exotic vegetation without disturbing the other existing vegetation in the restoration area. Nuisance

and exotic vegetation shall include [list all species you want removed. Any species not listed will not be required to be removed.]

4. Within 30 days after the completion of each inspection in the monitoring schedule, 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 enough locations to cover the entire restoration area.
- c. Either an actual count or a statistically valid estimate* of the percentage of cover of each species in the restoration area.
- d. Description of any nuisance or exotic species removal.

* 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.

5. If after the Monitoring Schedule is completed, the restoration area is not successfully revegetated as defined above, Respondent shall submit a Restoration Plan to the Department for its review and approval. The Restoration Plan shall be submitted within ___ days of the submittal of the final monitoring report and shall include a plan, including time schedule, for planting the restoration area with enough native wetland vegetation to meet the success criteria in paragraph _ within ___ years of planting. The Restoration Plan shall also include a monitoring and maintenance schedule to ensure that the replanting is successful.

6. Respondent shall implement the Restoration Plan, including any changes required by the Department, upon notice of approval by the Department.

MAINTENANCE AND MONITORING ACTIONS
(WITH PLANTING)

Within ___ days of the completion of the Restoration Actions, Respondent shall implement the following Maintenance and Monitoring Actions:

1. For ___ years following completion of the Restoration Actions, Respondent shall inspect the restoration area [Insert the appropriate monitoring schedule, i.e. semiannually, annually, quarterly the first year, etc.]. The purpose of the monitoring shall be to determine the success of the restoration.

2. "Success of the restoration" means that at the end of the monitoring schedule the following success criteria are met in each restoration area required in the Restoration Actions. At each inspection in the Monitoring Schedule, Respondent shall replace enough dead plants to ensure that at least _ percent of the original number of each species planted in the restoration areas is alive.

a. If wetland herbaceous species were planted, they have covered at least percent of the restoration areas.

b. If wetland trees were planted, at least _ percent have survived and the survivors have achieved at least a 30% mean annual growth rate as measured by the statistically methods approved in paragraph _.

c. The total contribution to percent cover by the following wetland species or species not listed in Florida Administrative Code Rule 62-301.400 is less than 10%: [List all species from Rule 62-301.400 which you do want to exclude from the calculations of percent cover.]

d. The restoration areas have been inspected by the Department and the Department has informed the Respondent in writing that all the restoration areas are within the landward extent of waters of the state as defined in Florida Administrative Code Rule 62-301.

3. During each inspection, Respondent shall remove all nuisance and exotic vegetation listed in the Restoration Actions without disturbing the other existing vegetation in the restoration area.

4. Within 30 days after the completion of each inspection in the monitoring schedule, 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.
- c. Either an actual count or a statistically valid estimate* of the percentage of each species planted in the Restoration Actions that has survived compared to the total number of plants in the restoration areas.
- d. The number of each species replanted to reach the _ percent survival rate.
- e. Description of any nuisance or exotic species removal.
- f. [Optional] A plan view noting the locations of all re-plantings.
- g. [Optional] Growth data for a statistically valid subsample* of trees including height, diameter at breast height, and mean annual growth rate.
- h. [Optional] Data describing the hydrologic regime of each restoration area including [choose appropriate description - seasonal high and normal pool; ordinary high; mean high and low water elevations].

* 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.

RESTORATION ACTIONS
(FRESHWATER FORESTED)

1. Within ____ days of the effective date of this Order, Respondent shall complete the following Restoration Actions:
 - a. Plant ____ [insert numbers and types of trees] in the restoration area which is depicted on the attached site map. [the site map must specifically describe the location of the restoration area on the property using accurate areal measurements from reliable points of reference and must identify where the different species should be planted.]
 - b. The trees shall be well-rooted, two year old, nursery-grown stock.
 - c. The trees shall be planted on ____ foot centers [Describe where they are to be planted, i.e. "throughout the restoration area", "in the areas indicated on the site map."]
 - d. [Optional] Prior to planting, debris from earlier trimming and cutting shall be removed from the restoration area and placed in an upland location.
 - e. [Optional] Prior to planting, Respondent shall restore the restoration area to the grade existing prior to the dredging or filling addressed in this Order. All fill removed from the restoration area shall be placed in a contained upland location which will not discharge to waters of the state. During re-grading, turbidity and erosion control measures shall be used to ensure that Florida Administrative Code Rule 62-302 is not violated.
 - f. Any re-grading or planting of the restoration area shall be conducted so as not to affect areas outside the restoration area.
 - g. [Optional] Prior to planting but after any required re-grading, Respondent shall remove all exotic and nuisance vegetation. Nuisance and exotic vegetation includes ____ [List all species you want removed. Species left off this list will not be required to be removed.]

2. Within 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 area.
- c. Nursery receipts for all plants used in the Restoration Actions.
- d. Number of each species planted.