



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
1520 ROYAL PALM SQUARE BLVD, SUITE 310
FORT MYERS, FLORIDA 33919

May 8, 2020

REPLY TO
ATTENTION OF

Regulatory Division
West Permits Branch
Fort Myers Permits Section
SAJ-2016-03312(NW-SJR)

Lee County Division of Natural Resources
C/o Anura Karuna-Muni
1500 Monroe St
Fort Myers, FL 33902

Dear Mr. Karuna-Muri:

The U.S. Army Corps of Engineers (Corps) assigned your application for a Department of the Army permit, which the Corps received on July 31, 2018, the file number SAJ- 2016-03312(NW-SJR). A review of the information and drawings provided indicates that the proposed work would result in the discharge of approximately 1,400 cubic yards of clean fill into 0.29 acres of freshwater forested wetlands and impact 1.33 acres of forested wetlands by placing a 5 foot high berm around a manmade water storage reservoir that will be excavated from the adjacent upland area and fed from a pump that will be located on the opposite side of Del Prado Blvd in a manmade canal. The 1.33 acres will not be dredged or filled and the adjacent storage reservoir would provide hydrology to the existing wetland area. A control structure will be located at the south side of the storage basin and allow controlled flow to an existing swale that should provide increased hydrology to Yellow Fever Creek and an existing cypress dome that has been placed under a conservation easement with the South Florida Water Management District. The project is located at Del Prado Blvd & NE 20th Pl, in Section 20, Township 43 South, Range 24 East, Cape Coral, Lee County, Florida.

Your project, as depicted on the enclosed drawings, is authorized by Nationwide Permit (NWP) Number 27. In addition, project specific conditions have been enclosed. This verification is valid until **March 18, 2022**. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have 12 months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this nationwide permit. Please access the U.S. Army Corps of Engineers' (Corps) Jacksonville District's Regulatory Internet page to access Internet links to view the Final Nationwide Permits, Federal Register Vol. 82, dated January 6, 2017, specifically pages 1983 to 2008, and the table of Regional Conditions. The Internet page address is:

<http://www.saj.usace.army.mil/Missions/Regulatory.aspx>

Please be aware this Internet address is case sensitive and should be entered as it appears above. Once there you will need to click on "Source Book"; and, then click on "Nationwide Permits." These files contain the description of the Nationwide Permit authorization, the Nationwide Permit general conditions, and the regional conditions, which apply specifically to this verification for NWP 27. Enclosed is a list of the six General Conditions, which apply to all Department of the Army authorizations. You must comply with all of the special and general conditions and any project specific condition of this authorization or you may be subject to enforcement action. In the event you have not completed construction of your project within the specified time limit, a separate application or re-verification may be required.

The following special conditions are included with this verification:

1. All reports, documentation and correspondence required by the conditions of this permit shall be submitted to the following address: U.S. Army Corps of Engineers, Regulatory Division, Special Projects and Enforcement Branch, 701 San Marco Boulevard, Jacksonville, FL 32207. The permittee shall reference this permit number, SAJ-2016-03312(NW-SJR), on all submittals. Electronic compliance documents may be submitted to the following email address: SAJ-RD-Enforcement@usace.army.mil
2. Within 10 days from the date of initiating the work authorized by this permit the Permittee shall submit a completed "Commencement Notification" Form
3. Within 60 days of completion of the work authorized by this permit, the permittee shall complete the attached "Self-Certification Statement of Compliance" form and submit it to the Corps. In the event that the completed work deviates in any manner from the authorized work, the permittee shall describe the deviations between the work authorized by this permit and the work as constructed on the "Self-Certification Statement of Compliance" form. The description of any deviations on the "Self-Certification Statement of Compliance" form does not constitute approval of any deviations by the Corps.
4. Should any other agency require and/or approve changes to the work authorized or obligated by this permit verification, the Permittee is advised a re-verification to this permit verification is required prior to initiation of those changes. It is the Permittee's responsibility to request a re-verification of this permit verification from the Fort Myers Permits Section. The Corps reserves the right to fully evaluate, amend, and approve or deny the request for re-verification of this permit verification.

5. Cultural Resources/Historic Properties:

a. No structure or work shall adversely affect impact or disturb properties listed in the National Register of Historic Places (NRHP) or those eligible for inclusion in the NRHP.

b. If during the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Corps within the same business day (8 hours). The Corps shall then notify the Florida State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions.

c. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition ; and if deemed necessary by the SHPO, THPO(s), or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO for finds under his or her jurisdiction, and from the Corps.

d. In the unlikely event that unmarked human remains are identified on non-federal lands, they will be treated in accordance with Section 872.05 Florida Statutes. All work and ground disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archeologist within the same business day (8-hours). The Corps shall then notify the appropriate SHPO and THPO(s). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume without written authorization from the State Archeologist and from the Corps.

e. Provide to the Corps a copy of the completed archaeological survey that will be completed prior to any construction activities.

6. Monitoring and Reporting Timeframes: To document achievement of the performance standards identified in the attached restoration/enhancement plan the Permittee shall complete the following:

- a. Perform a time-zero monitoring event of the wetland mitigation area(s) within 60 days of completion of the restoration/enhancement construction and implementation activities identified in the approved restoration plan.
- b. Submit the time-zero report to the Corps within 60 days of completion of the monitoring event. The report will include at least one paragraph depicting baseline conditions of the mitigation site(s) prior to initiation of the restoration/enhancement mitigation objectives and a detailed plan view drawing of all created, enhanced and/or restored mitigation areas.
- c. Subsequent to completion of the restoration/enhancement mitigation objectives, perform semi-annual monitoring of the wetland mitigation areas for the first 2 years and annual monitoring thereafter for a total of no less than 5 years of monitoring.
- d. Submit annual monitoring reports to the Corps within 60 days of completion of the monitoring event. Semi-annual monitoring will be combined into one annual monitoring report.
- e. Monitor the mitigation area(s) and submit annual monitoring reports to the Corps until released in accordance with the Mitigation Release Special Condition of this permit.

7. Reporting Format: The Permittee shall submit all monitoring documentation to the Corps on 8½-inch by 11-inch paper, and include the following:

- a. Project Overview:
 - (1) Department of the Army Permit Number
 - (2) Name and contact information of Permittee and consultant
 - (3) Name of party responsible for conducting the monitoring and the date(s) the inspection was conducted
 - (4) A brief paragraph describing the purpose of the approved project, acreage and type of aquatic resources impacted, and mitigation acreage and type of aquatic resources authorized to compensate for the aquatic impacts.
 - (5) Written description of the location, any identifiable landmarks of the compensatory mitigation project including information to locate the site perimeter(s), and coordinates

of the mitigation site (expressed as latitude, longitude, UTM, state plane coordinate system, etc.).

(6) Dates compensatory mitigation commenced and/or was complete.

(7) Short statement on whether the performance standards are being met.

(8) Dates of any recent corrective or maintenance activities conducted since the previous report submission

(9) Specific recommendations for any additional corrective or remedial actions.

b. Requirements: List the monitoring requirements and performance standards, as specified in the approved restoration/enhancement plan and special conditions of this permit, and evaluate whether the mitigation restoration/enhancement project site is successfully achieving the approved performance standards or trending towards success. A table is a recommended option for comparing the performance standards to the conditions and status of the developing mitigation site.

c. Summary Data: Summary data should be provided to substantiate the success and/or potential challenges associated with the restoration/enhancement mitigation project. Photo documentation may be provided to support the findings and recommendations referenced in the monitoring report and to assist the PM in assessing whether the restoration/enhancement mitigation project is meeting applicable performance standards for that monitoring period. Submitted photos should be formatted to print on a standard 8½-inch x 11-inch piece of paper, dated, and clearly labeled with the direction from which the photo was taken. The photo location points should also be identified on the appropriate maps.

d. Maps and Plans: Maps shall be provided to show the location of the compensatory mitigation site relative to other landscape features, habitat types, locations of photographic reference points, transects, sampling data points, and/or other features pertinent to the mitigation plan. In addition, the submitted maps and plans should clearly delineate the mitigation site perimeter(s). Each map or diagram should be formatted to print on a standard 8½-inch x 11-inch piece of paper and include a legend and the location of any photos submitted for review. As-built plans may be included.

e. Conclusions: A general statement shall be included that describes the conditions of the restoration/enhancement project. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions proposed by the Permittee or sponsor, including a timetable, shall be provided. The District Commander will ultimately determine if the mitigation site is successful for a given monitoring period.

8. The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction

materials, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.

9. Prior to the initiation of any work authorized by this permit, the Permittee shall install erosion control measures along the perimeter of all work areas to prevent the displacement of fill material outside the work area into waters of the United States. Immediately after completion of the final grading of the land surface, all slopes, land surfaces, and filled areas shall be stabilized using sod, degradable mats, barriers, or a combination of similar stabilizing materials to prevent erosion. The erosion control measures shall remain in place and be maintained until all authorized work is completed and the work areas are stabilized.

10. Permittee shall comply with U.S. Fish and Wildlife Service's "Standard Protection Measures for the Eastern Indigo Snake" dated August 12, 2013, as provided in Enclosure 4 of this permit. All gopher tortoise burrows, active or inactive, shall be evacuated prior to site manipulation in the vicinity of the burrow. If excavating potentially occupied burrows, active or inactive, individuals must first obtain state authorization via a Florida Fish and Wildlife Conservation Commission (FWC) Authorized Gopher Tortoise Agent permit. The excavation method selected shall minimize the potential for injury of an indigo snake. The Permittee shall follow the excavation guidance provided in the most current FWC Gopher Tortoise Permitting Guidelines found at <http://myfwc.com/gophertortoise>. If an indigo snake is encountered, the snake must be allowed to vacate the area prior to additional site manipulation in the vicinity. Holes, cavities, and snake refugia other than gopher tortoise burrows shall be inspected each morning before planned site manipulation of a particular area, and if occupied by an indigo snake, no work shall commence until the snake has vacated the vicinity of the proposed work.

11. The Permittee shall comply with U.S. Fish and Wildlife Service's "Appendix D of the Bat Key: Best Management Practices (BMP's) for Development Projects" and follow BMP's for Couplet Number 4b.

12. Remediation: If the restoration/enhancement of the mitigation area fails to meet the performance standards 5 years after completion of the restoration/enhancement mitigation objectives, the restoration/enhancement mitigation will be deemed unsuccessful. Within 60 days of notification by the Corps that the restoration/enhancement mitigation is unsuccessful, the Permittee shall submit to the Corps an alternate restoration/enhancement mitigation proposal sufficient to create the functional lift required under this permit verification. The alternate restoration/enhancement mitigation proposal may be required to include additional

mitigation to compensate for the temporal loss of wetland functions associated with the unsuccessful restoration/enhancement mitigation activities. The Corps reserves the right to fully evaluate, amend, and approve or reject the alternate restoration/enhancement mitigation proposal. Within 120 days of Corps approval, the Permittee will complete the alternate restoration/enhancement mitigation proposal.

13. Mitigation Release: The Permittee's responsibility to complete the required restoration/enhancement mitigation, as set forth in the restoration/enhancement plan of this permit will not be considered fulfilled until mitigation success has been demonstrated and written verification has been provided by the Corps. A mitigation area which has been released will require no further monitoring or reporting by the Permittee; however the Permittee, Successors and subsequent Transferees remain perpetually responsible to ensure that the mitigation area(s) remain in a condition appropriate to offset the authorized impacts in accordance with General Condition 2 of this permit.

14. Conservation Easement: The Permittee shall have a legally sufficient conservation easement prepared to ensure to the Corps' satisfaction the areas referenced in the Compensatory Mitigation Special Condition will remain in their natural state in perpetuity. The conservation easement will encompass the 13.01 acres of wetlands associated with the mitigation enhancement/restoration area. These natural preserve areas will not be disturbed by any dredging, filling, land clearing, agricultural activities, planting, or other construction work whatsoever except as required or authorized by this permit. The Permittee agrees that the only future utilization of the preserved areas in question will be as a purely natural area. To show compliance with this condition the Permittee shall complete the following:

a. Within 30 days from the date of initiating the authorized work submit to the Corps a completed amendment of conservation easement with the South Florida Water Management District which will be attached to this letter. The Corps shall have all rights of the Grantee in the conservation easement. The following paragraph shall be incorporated in the conservation easement document:

Rights of U.S. Army Corps of Engineers (Corps). The Corps, as a third-party beneficiary, shall have the right to enforce the terms and conditions of this Conservation Easement, including:

(1) The right to take action to preserve and protect the environmental value of the Property;

(2) The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;

(3) The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement;

(4) The right to enforce this Conservation Easement by injunction or proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and the right to require Grantor, or its successors or assigns, to restore such areas or features of the Property that may be damaged by any inconsistent activity or use or unauthorized activities; and

The Grantor, including their successors or assigns, shall provide the Corps at least 60 days advance notice in writing before any action is taken to amend, alter, release, or revoke this Conservation Easement. The Grantee shall provide reasonable notice and an opportunity to comment or object to the release or amendment to the Corps. The Grantee shall consider any comments or objections from the U.S. Army Corps of Engineers when making the final decision to release or amend this Conservation Easement.

b. Within 30 days from the date of initiating the authorized work submit to the Corps a title insurance commitment with the draft conservation easement document, **IN FAVOR OF THE GRANTEE**, for the property which is being offered for preservation to show that the Permittee has clear title to the real property and can legally place it under a conservation easement. Any existing liens or encumbrances on the property shall be subordinated to the conservation easement. At the time of recordation of the conservation easement, a title insurance policy shall be provided to the Corps in an amount equal to the current market value of the property.

c. Within 30 days of Corps' approval of the draft conservation easement, the Permittee will record the easement in the public records of name of county County, Florida. A certified copy of the recorded document, plat, and verification of acceptance from the grantee shall be forwarded to the Corps within 60 days of Corps' approval of the draft conservation easement.

d. In the event this permit is transferred, proof of delivery of a copy of the recorded conservation easement to the subsequent Permittee or Permittees shall be submitted to the Corps together with the notification of permit transfer.

The Grantee shall not assign its rights or obligations under this conservation easement except to another organization qualified to hold such interests under the applicable state and federal laws, including §704.06 Florida Statutes, and committed to holding this conservation easement exclusively for conservation purposes. The Corps shall be notified in writing of any intention to reassign the conservation easement to a new grantee and shall approve the selection of the grantee. The new grantee shall accept the assignment in writing and a copy of this acceptance delivered to the Corps. The conservation easement shall then be re-recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the recorded conservation easement furnished to the Corps.

15. The Permittee will respect and honor the inter-local agreement made between Lee County and the City of Cape Coral that will be made part of this permit verification. The Permittee must coordinate all efforts to ensure that there is cooperation to comply with the general and special conditions of the permit verification.

This letter of authorization does not give absolute Federal authority to perform the work as specified on your application. The proposed work may be subject to local building restrictions mandated by the National Flood Insurance Program. You should contact your local office that issues building permits to determine if your site is located in a flood-prone area, and if you must comply with the local building requirements mandated by the National Flood Insurance Program.

If you are unable to access the internet or require a hardcopy of any of the conditions, limitations, or expiration date for the above referenced NWP, please contact me by telephone at 239-334-1975 x0009.

Thank you for your cooperation with our permit program. The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to complete our automated Customer Service Survey at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. Please be aware this Internet address is case sensitive; and, you will need to enter it exactly as it appears above. Your input is appreciated – favorable or otherwise.

Sincerely,



Steven Rabney
Project Manager

Enclosures

- 1) General Conditions
- 2) Department of The Army Transfer Request
- 3) Commencement Notification
- 4) Self Certification Statement of Compliance
- 5) Standard Protection Measures for the Eastern Indigo Snake
- 6) U.S. Fish and Wildlife Service's "Appendix D of the Bat Key: Best Management Practices (BMP's) for Development Projects"
- 7) Amendment of Conservation Easement
- 8) Lee County and City of Cape Coral Interlocal Agreement
- 9) Project Plans

GENERAL CONDITIONS
33 CFR PART 320-330

1. The time limit for completing the work authorized ends on **March 18, 2022**.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow a representative from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

DEPARTMENT OF THE ARMY PERMIT TRANSFER REQUEST

PERMIT NUMBER: SAJ-2016-03312(NW-SJR)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. Although the construction period for works authorized by Department of the Army permits is finite, the permit itself, with its limitations, does not expire.

To validate the transfer of this permit and the associated responsibilities associated with compliance with its terms and conditions, have the transferee sign and date below and mail to the U.S. Army Corps of Engineers, Enforcement Section, Post Office Box 4970, Jacksonville, FL 32232-0019.

(TRANSFEREE-SIGNATURE)

(SUBDIVISION)

(DATE)

(LOT)

(BLOCK)

(NAME-PRINTED)

(STREET ADDRESS)

(MAILING ADDRESS)

(CITY, STATE, ZIP CODE)

COMMENCEMENT NOTIFICATION

*Within ten (10) days of initiating the authorized work, submit this form via electronic mail to saj-rd-enforcement@usace.army.mil (preferred, not to exceed 15 MB) **or** by standard mail to U.S. Army Corps of Engineers, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019.*

1. **Department of the Army Permit Number:** SAJ-2016-03312(NW-SJR)

2. **Permittee Information:**

Name: _____

Email: _____

Address: _____

Phone: _____

3. **Construction Start Date:** _____

4. **Contact to Schedule Inspection:**

Name: _____

Email: _____

Phone: _____

Signature of Permittee

Printed Name of Permittee

Date

SELF-CERTIFICATION STATEMENT OF COMPLIANCE

*Within sixty (60) days of completion of the authorized work, submit this form via electronic mail to saj-rd-enforcement@usace.army.mil (preferred, not to exceed 15MB) **or** by standard mail to U.S. Army Corps of Engineers, Enforcement Section, P.O. Box 4970, Jacksonville, FL 32232-0019.*

1. **Department of the Army Permit Number:** SAJ-2016-03312(NW-SJR)

2. **Permittee Information:** Name: _____

Email: _____

Address: _____

Phone: _____

3. **Date Authorized Work Started:** _____ **Completed:** _____

4. **Contact to Schedule Inspection:** Name: _____

Email: _____

Phone: _____

5. **Description of Authorized Work (e.g. bank stabilization, fill placed within wetlands, docks, dredging, etc.):** _____

6. **Acreage or Square Feet of Impacts to Waters of the United States:** _____

7. **Describe Mitigation completed (if applicable):** _____

8. **Describe any Deviations from Permit (attach drawing(s) depicting the deviations):**

I certify that all work and mitigation (if applicable) was done in accordance with the limitations and conditions as described in the permit. Any deviations as described above are depicted on the attached drawing(s).

Signature of Permittee

Printed Name of Permittee

Date

STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE
U.S. Fish and Wildlife Service
August 12, 2013

The eastern indigo snake protection/education plan (Plan) below has been developed by the U.S. Fish and Wildlife Service (USFWS) in Florida for use by applicants and their construction personnel. At least **30 days prior** to any clearing/land alteration activities, the applicant shall notify the appropriate USFWS Field Office via e-mail that the Plan will be implemented as described below (North Florida Field Office: jaxregs@fws.gov; South Florida Field Office: verobeach@fws.gov; Panama City Field Office: panamacity@fws.gov). As long as the signatory of the e-mail certifies compliance with the below Plan (including use of the attached poster and brochure), no further written confirmation or “approval” from the USFWS is needed and the applicant may move forward with the project.

If the applicant decides to use an eastern indigo snake protection/education plan other than the approved Plan below, written confirmation or “approval” from the USFWS that the plan is adequate must be obtained. At least 30 days prior to any clearing/land alteration activities, the applicant shall submit their unique plan for review and approval. The USFWS will respond via e-mail, typically within 30 days of receiving the plan, either concurring that the plan is adequate or requesting additional information. A concurrence e-mail from the appropriate USFWS Field Office will fulfill approval requirements.

The Plan materials should consist of: 1) a combination of posters and pamphlets (see **Poster Information** section below); and 2) verbal educational instructions to construction personnel by supervisory or management personnel before any clearing/land alteration activities are initiated (see **Pre-Construction Activities** and **During Construction Activities** sections below).

POSTER INFORMATION

Posters with the following information shall be placed at strategic locations on the construction site and along any proposed access roads (a final poster for Plan compliance, to be printed on 11” x 17” or larger paper and laminated, is attached):

DESCRIPTION: The eastern indigo snake is one of the largest non-venomous snakes in North America, with individuals often reaching up to 8 feet in length. They derive their name from the glossy, blue-black color of their scales above and uniformly slate blue below. Frequently, they have orange to coral reddish coloration in the throat area, yet some specimens have been reported to only have cream coloration on the throat. These snakes are not typically aggressive and will attempt to crawl away when disturbed. Though indigo snakes rarely bite, they should NOT be handled.

SIMILAR SNAKES: The black racer is the only other solid black snake resembling the eastern indigo snake. However, black racers have a white or cream chin, thinner bodies, and WILL BITE if handled.

LIFE HISTORY: The eastern indigo snake occurs in a wide variety of terrestrial habitat types throughout Florida. Although they have a preference for uplands, they also utilize some wetlands

and agricultural areas. Eastern indigo snakes will often seek shelter inside gopher tortoise burrows and other below- and above-ground refugia, such as other animal burrows, stumps, roots, and debris piles. Females may lay from 4 - 12 white eggs as early as April through June, with young hatching in late July through October.

PROTECTION UNDER FEDERAL AND STATE LAW: The eastern indigo snake is classified as a Threatened species by both the USFWS and the Florida Fish and Wildlife Conservation Commission. “Taking” of eastern indigo snakes is prohibited by the Endangered Species Act without a permit. “Take” is defined by the USFWS as an attempt to kill, harm, harass, pursue, hunt, shoot, wound, trap, capture, collect, or engage in any such conduct. Penalties include a maximum fine of \$25,000 for civil violations and up to \$50,000 and/or imprisonment for criminal offenses, if convicted.

Only individuals currently authorized through an issued Incidental Take Statement in association with a USFWS Biological Opinion, or by a Section 10(a)(1)(A) permit issued by the USFWS, to handle an eastern indigo snake are allowed to do so.

IF YOU SEE A LIVE EASTERN INDIGO SNAKE ON THE SITE:

- Cease clearing activities and allow the live eastern indigo snake sufficient time to move away from the site without interference;
- Personnel must NOT attempt to touch or handle snake due to protected status.
- Take photographs of the snake, if possible, for identification and documentation purposes.
- Immediately notify supervisor or the applicant’s designated agent, **and** the appropriate USFWS office, with the location information and condition of the snake.
- If the snake is located in a vicinity where continuation of the clearing or construction activities will cause harm to the snake, the activities must halt until such time that a representative of the USFWS returns the call (within one day) with further guidance as to when activities may resume.

IF YOU SEE A DEAD EASTERN INDIGO SNAKE ON THE SITE:

- Cease clearing activities and immediately notify supervisor or the applicant’s designated agent, **and** the appropriate USFWS office, with the location information and condition of the snake.
- Take photographs of the snake, if possible, for identification and documentation purposes.
- Thoroughly soak the dead snake in water and then freeze the specimen. The appropriate wildlife agency will retrieve the dead snake.

Telephone numbers of USFWS Florida Field Offices to be contacted if a live or dead eastern indigo snake is encountered:

North Florida Field Office – (904) 731-3336
Panama City Field Office – (850) 769-0552
South Florida Field Office – (772) 562-3909

PRE-CONSTRUCTION ACTIVITIES

1. The applicant or designated agent will post educational posters in the construction office and throughout the construction site, including any access roads. The posters must be clearly visible to all construction staff. A sample poster is attached.
2. Prior to the onset of construction activities, the applicant/designated agent will conduct a meeting with all construction staff (annually for multi-year projects) to discuss identification of the snake, its protected status, what to do if a snake is observed within the project area, and applicable penalties that may be imposed if state and/or federal regulations are violated. An educational brochure including color photographs of the snake will be given to each staff member in attendance and additional copies will be provided to the construction superintendent to make available in the onsite construction office (a final brochure for Plan compliance, to be printed double-sided on 8.5" x 11" paper and then properly folded, is attached). Photos of eastern indigo snakes may be accessed on USFWS and/or FWC websites.
3. Construction staff will be informed that in the event that an eastern indigo snake (live or dead) is observed on the project site during construction activities, all such activities are to cease until the established procedures are implemented according to the Plan, which includes notification of the appropriate USFWS Field Office. The contact information for the USFWS is provided on the referenced posters and brochures.

DURING CONSTRUCTION ACTIVITIES

1. During initial site clearing activities, an onsite observer may be utilized to determine whether habitat conditions suggest a reasonable probability of an eastern indigo snake sighting (example: discovery of snake sheds, tracks, lots of refugia and cavities present in the area of clearing activities, and presence of gopher tortoises and burrows).
2. If an eastern indigo snake is discovered during gopher tortoise relocation activities (i.e. burrow excavation), the USFWS shall be contacted within one business day to obtain further guidance which may result in further project consultation.
3. Periodically during construction activities, the applicant's designated agent should visit the project area to observe the condition of the posters and Plan materials, and replace them as needed. Construction personnel should be reminded of the instructions (above) as to what is expected if any eastern indigo snakes are seen.

POST CONSTRUCTION ACTIVITIES

Whether or not eastern indigo snakes are observed during construction activities, a monitoring report should be submitted to the appropriate USFWS Field Office within 60 days of project completion. The report can be sent electronically to the appropriate USFWS e-mail address listed on page one of this Plan.



ATTENTION:

THREATENED EASTERN INDIGO SNAKES MAY BE PRESENT ON THIS SITE!!!

IF YOU SEE A LIVE EASTERN INDIGO SNAKE ON THE SITE:

- Cease clearing activities and allow the eastern indigo snake sufficient time to move away from the site without interference.
- Personnel must NOT attempt to touch or handle snake due to protected status.
- Take photographs of the snake, if possible, for identification and documentation purposes.
- Immediately notify supervisor or the applicant's designated agent, **and** the appropriate U.S. Fish and Wildlife Service (USFWS) office, with the location information and condition of the snake.
- If the snake is located in a vicinity where continuation of the clearing or construction activities will cause harm to the snake, the activities must halt until such time that a representative of the USFWS returns the call (within one day) with further guidance as to when activities may resume.

IF YOU SEE A DEAD EASTERN INDIGO SNAKE ON THE SITE:

- Cease clearing activities and immediately notify supervisor or the applicant's designated agent, **and** the appropriate USFWS office, with the location information and condition of the snake.
- Take photographs of the snake, if possible, for identification and documentation purposes.
- Thoroughly soak the dead snake in water and then freeze the specimen. The appropriate wildlife agency will retrieve the dead snake.

USFWS Florida Field Offices to be contacted if a live or dead eastern indigo snake is encountered:

North Florida Field Office – (904) 731-3336

Panama City Field Office – (850) 769-0552

South Florida Field Office – (772) 562-3909

Killing, harming, or harassing indigo snakes is strictly prohibited and punishable under State and Federal Law.

DESCRIPTION: The eastern indigo snake is one of the largest non-venomous snakes in North America, with individuals often reaching up to 8 feet in length. They derive their name from the glossy, blue-black color of their scales above and uniformly slate blue below. Frequently, they have orange to coral reddish coloration in the throat area, yet some specimens have been reported to only have cream coloration on the throat. These snakes are not typically aggressive and will attempt to crawl away when disturbed. Though indigo snakes rarely bite, they should NOT be handled.

SIMILAR SNAKES: The black racer is the only other solid black snake resembling the eastern indigo snake. However, black racers have a white or cream chin, thinner bodies, and WILL BITE if handled.

LIFE HISTORY: The eastern indigo snake occurs in a wide variety of terrestrial habitat types throughout Florida. Although they have a preference for uplands, they also utilize some wetlands and agricultural areas. Eastern indigo snakes will often seek shelter inside gopher tortoise burrows and other below- and above-ground refugia, such as other animal burrows, stumps, roots, and debris piles. Females may lay from 4 - 12 white eggs as early as April through June, with young hatching in late July through October.

PROTECTION: The eastern indigo snake is classified as a Threatened species by both the USFWS and the Florida Fish and Wildlife Conservation Commission. "Taking" of eastern indigo snakes is prohibited by the Endangered Species Act without a permit. "Take" is defined by the USFWS as an attempt to kill, harm, harass, pursue, hunt, shoot, wound, trap, capture, collect, or engage in any such conduct. Penalties include a maximum fine of \$25,000 for civil violations and up to \$50,000 and/or imprisonment for criminal offenses, if convicted.

Only individuals currently authorized through an issued Incidental Take Statement in association with a USFWS Biological Opinion, or by a Section 10(a)(1)(A) permit issued by the USFWS, to handle an eastern indigo snake are allowed to do so.

**IF YOU SEE A LIVE EASTERN
INDIGO SNAKE ON THE SITE:**

- Cease clearing activities and allow the eastern indigo snake sufficient time to move away from the site without interference.
- Personnel must NOT attempt to touch or handle snake due to protected status.
- Take photographs of the snake, if possible, for identification and documentation purposes.
- Immediately notify supervisor or the applicant's designated agent, **and** the appropriate U.S. Fish and Wildlife Service (USFWS) office, with the location information and condition of the snake.
- If the snake is located in a vicinity where continuation of the clearing or construction activities will cause harm to the snake, the activities must halt until such time that a representative of the USFWS returns the call (within one day) with further guidance as to when activities may resume.

**IF YOU SEE A DEAD EASTERN
INDIGO SNAKE ON THE SITE:**

- Cease clearing activities and immediately notify supervisor or the applicant's designated agent, **and** the appropriate USFWS office, with the location information and condition of the snake.
- Take photographs of the snake, if possible, for identification and documentation purposes.
- Thoroughly soak the dead snake in water and then freeze the specimen. The appropriate wildlife agency will retrieve the dead snake.

**USFWS Florida Field Offices to be
contacted if a live or dead eastern indigo
snake is encountered:**

North Florida ES Office – (904) 731-3336
Panama City ES Office – (850) 769-0552
South Florida ES Office – (772) 562-3909

DESCRIPTION: The eastern indigo snake is one of the largest non-venomous snakes in North America, with individuals often reaching up to 8 feet in length. They derive their name from the glossy, blue-black color of their scales above and uniformly slate blue below. Frequently, they have orange to coral reddish coloration in the throat area, yet some specimens have been reported to only have cream coloration on the throat. These snakes are not typically aggressive and will attempt to crawl away when disturbed. Though indigo snakes rarely bite, they should NOT be handled.

SIMILAR SNAKES: The black racer is the only other solid black snake resembling the eastern indigo snake. However, black racers have a white or cream chin, thinner bodies, and WILL BITE if handled.

LIFE HISTORY: The eastern indigo snake occurs in a wide variety of terrestrial habitat types throughout Florida. Although they have a preference for uplands, they also utilize some wetlands and agricultural areas. Eastern indigo snakes will often seek shelter inside gopher tortoise burrows and other below- and above-ground refugia, such as other animal burrows, stumps, roots, and debris piles. Females may lay from 4 - 12 white eggs as early as April through June, with young hatching in late July through October.

Killing, harming, or harassing indigo snakes is strictly prohibited and punishable under State and Federal Law.

Only individuals currently authorized through an issued Incidental Take Statement in association with a USFWS Biological Opinion, or by a Section 10(a)(1)(A) permit issued by the USFWS, to handle an eastern indigo snake are allowed to do so.

LEGAL STATUS: The eastern indigo snake is classified as a Threatened species by both the USFWS and the Florida Fish and Wildlife Conservation Commission. “Taking” of eastern indigo snakes is prohibited by the Endangered Species Act without a permit. “Take” is defined by the USFWS as an attempt to kill, harm, harass, pursue, hunt, shoot, wound, trap, capture, collect, or engage in any such conduct. Penalties include a maximum fine of \$25,000 for civil violations and up to \$50,000 and/or imprisonment for criminal offenses, if convicted.



August 12, 2013

ATTENTION:
THREATENED EASTERN INDIGO
SNAKES MAY BE PRESENT ON
THIS SITE!!!



Please read the following information provided by the U.S. Fish and Wildlife Service to become familiar with standard protection measures for the eastern indigo snake.

Appendix D: Best Management Practices (BMPs) for Development Projects

Ongoing research and monitoring will continue to increase the understanding of the Florida bonneted bat and its habitat needs and will continue to inform habitat and species management recommendations. These BMPs incorporate what is known about the species and also include recommendations that are beneficial to all bat species in Florida. These BMPs are intended to provide recommendations for improving conditions for use by Florida bonneted bats, and to help conserve Florida bonneted bats that may be foraging or roosting in an area.

The BMPs required to reach a “may affect, but is not likely to adversely affect” (MANLAA) determination vary depending on the couplet from the Consultation Key used to reach that particular MANLAA. The requirements for each couplet are provided below followed by the list of BMPs. If the applicant is unable or does not want to do the required BMPs, then the Corps (or other Action Agency) will not be able to use this Guidance and formal consultation with the Service is required.

Couplet Number for MANLAA from Consultation Key	Required BMPs
4b	BMP number 1 if more than 3 months has occurred between the survey and start of the project, and any 3 BMPs out of BMPs 4 through 13
5b	BMP number 2, and any 3 BMPs out of BMPs 3 through 13
9b	BMPs number 2 and 3, and any 4 BMPs out of BMPs 5 through 13
11b	BMPs number 1 and 4, and any 4 BMPs out of BMPs 5 through 13
12b	BMP number 1, and any 3 BMPs out of BMPs 3 through 13
14b	Any 2 BMPs out of BMPs 3 through 13
15b	Any 3 BMPs out of BMPs 3 through 13
17b	Any 4 BMPs out of BMPs 3 through 13

BMPs for development, construction, and other general activities:

1. If potential roost trees or structures need to be removed, check cavities for bats within 30 days prior to removal of trees, snags, or structures. When possible, remove structure outside of breeding season (*e.g.*, January 1 – April 15). If evidence of use by any bat species is observed, discontinue removal efforts in that area and coordinate with the Service on how to proceed.
2. When using heavy equipment, establish a 250 foot (76 m) buffer around known or suspected roosts to limit disturbance to roosting bats.
3. For every 5 acres of impact, retain a minimum of 1.0 acre of native vegetation. If upland habitat is impacted, then upland habitat with native vegetation should be retained.
4. For every 5 acres of impact, retain a minimum of 0.25 acre of native vegetation. If upland habitat is impacted, then upland habitat with native vegetation should be retained..
5. Conserve open freshwater and wetland habitats to promote foraging opportunities and avoid impacting water quality. Created/restored habitat should be designed to replace the function of native habitat.

6. Conserve and/or enhance riparian habitat. A 50-ft (15.2 m) buffer is recommended around water bodies and stream edges. In cases where artificial water bodies (*i.e.*, stormwater ponds) are created, enhance edges with native plantings especially in cases in which wetland habitat was affected.
7. Avoid or limit widespread application of insecticides (*e.g.*, mosquito control, agricultural pest control) in areas where Florida bonneted bats are known or expected to forage or roost.
8. Conserve natural vegetation to promote insect diversity, availability, and abundance. For example, retain or restore 25% of the parcel in native contiguous vegetation.
9. Retain mature trees and snags that could provide roosting habitat. These may include live trees of various sizes and dead or dying trees with cavities, hollows, crevices, and loose bark. See “Roosting Habitat” in “Background” above.
10. Protect known Florida bonneted bat roost trees, snags or structures and trees or snags that have been historically used by Florida bonneted bats for roosting, even if not currently occupied, by retaining a 250 foot (76 m) disturbance buffer around the roost tree, snag, or structure to ensure that roost sites remain suitable for use in the future.
11. Avoid and minimize the use of artificial lighting, retain natural light conditions, and install wildlife friendly lighting (*i.e.*, downward facing and lowest lumens possible). Avoid permanent night-time lighting to the greatest extent practicable.
12. Incorporate engineering designs that discourage bats from using buildings or structures. If Florida bonneted bats take residence within a structure, contact the Service and Florida Fish and Wildlife Conservation Commission prior to attempting removal or when conducting maintenance activities on the structure.
13. Use or allow prescribed fire to promote foraging habitat.

Amendment of Conservation Easement

This Amendment of Conservation Easement ("Amendment of Conservation Easement") is made this _____ day of _____, 20____ by the **South Florida Water Management District** ("District") having an address of 3301 Gun Club Road, West Palm Beach, Florida 33406 and a mailing address of Post Office Box 24680, West Palm Beach, Florida 33416-4680.

WITNESSETH:

WHEREAS, _____ granted in favor of the District that certain Deed of Conservation Easement dated _____ and recorded in Official Record Book _____ at Page _____ of the Public Records of _____ County, Florida hereinafter referred to as the ("Conservation Easement") encumbering the real property Described on Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Original Premises"); and

WHEREAS, the District has been requested to modify the Conservation Easement to (include) the following language:

Rights of the U.S. Army Corps of Engineers ("Corps"). The Corps, as a third-party beneficiary, shall have the right to enforce the terms and conditions of this Conservation Easement, including:

- a. The right to take action to preserve and protect the environmental value of the Conservation Easement Area;
- b. The right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use;
- c. The right to enter upon and inspect the Conservation Easement Area in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement; and
- d. The right to enforce this Conservation Easement by injunction or proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and the right to require Grantor, or its successors or assigns, to restore such areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use or unauthorized activities.

The Grantor, including their successors or assigns, shall provide the Corps at least 60 days advance notice in writing before any action is taken to amend, alter, release, or revoke this Conservation Easement. The Grantee shall provide reasonable notice and an opportunity to comment or object to the release or amendment to the U.S. Army Corps of Engineers. The Grantee shall consider any comments or objections from the U.S. Army Corps of Engineers when making the final decision to release or amend this Conservation Easement.

WHEREAS, the District is amenable to modifying the Conservation Easement to include the above language.

WHEREAS, all terms of the Conservation Easement remain in full force and effect. The priority of the recording of the Conservation Easement is not affect by this amendment.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the District hereby amends the Conservation Easement to (include/delete) the above language.

IN WITNESS WHEREOF, the South Florida Water Management District has caused this Amendment of Conservation Easement to be executed in its name and its official seal affixed hereto by _____, and attested by the Clerk of the South Florida Water Management District, this _____ day of _____, 20_____.

ATTEST:

**SOUTH FLORIDA WATER
MANAGEMENT DISTRICT**

By: _____

(Corporate Seal)

Clerk of the South Florida
Water Management District

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, by _____ of the South Florida Water Management District, a public corporation of the State of Florida, on Behalf of the Corporation, who is personally known to me or produced driver's license number: _____.

Notary Public: _____

Print: _____

My Commission Expires: _____

LEGAL FORM APPROVED
BY OFFICE OF COUNSEL

OWNER:

Name (sign)

Name (print)

WITNESSES:

Name (print)

Name (print)

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, by _____, who has produced _____ as identification.

Notary Public: _____

Print: _____

My Commission Expires: _____

INTERLOCAL AGREEMENT FOR INTERCONNECTION TO YELLOW FEVER CREEK

THIS Interlocal Agreement for Interconnection to Yellow Fever Creek (“Agreement”) is made and entered into this 19th day of February of 2019, by and between, Lee County, a political subdivision of the State of Florida (“County”), and the City of Cape Coral, a Florida municipal corporation, of the State of Florida (“City”), collectively known as the parties (“Parties” or “Party”).

RECITALS:

WHEREAS, the construction of Gator Slough Canal in North Fort Myers and northeast Cape Coral has altered the historic flow patterns to the Caloosahatchee River and Charlotte Harbor, including Yellow Fever Creek; and

WHEREAS, there is a desire to restore such flows to the extent reasonably practicable without negatively impacting the City’s surface water supplies; and

WHEREAS, the County and the City desire to enter into this Agreement for the purpose of outlining the responsibilities for design, permitting, construction, operation and maintenance of those certain surface water management systems within Yellow Fever Creek, known as the YFC Interconnect System (“YFC” or “YFC System”) and Weir #29 Interconnect System (“Weir 29” or “Weir 29 System”), collectively known as the Interconnect System (“Interconnect System”) and generally depicted on the concept plans attached as Exhibits “A” and “B”, both being incorporated herein by reference and collectively known as the Concept Plan (“Concept Plan”); and

WHEREAS, the Concept Plan also depicts the following system components to be constructed and utilized for the Interconnect System: 1) a pump station on the 0.3 ± acre City-owned parcel on the north side of Del Prado Boulevard; 2) a 15.0± acre lake/reservoir to be constructed on City-owned property; 3) a 5.0± acre fill storage area for excavated material from the lake/reservoir, located on City-owned property to the east of the lake/reservoir; 4) a companion temporary haul path between the lake/reservoir and the fill storage area; and Weir 29 (collectively known as the “System Components”); and

WHEREAS, the Concept Plan also depicts the intended outfall from the depicted lake/reservoir, extending in a generally southerly direction to Yellow Fever Creek, and the outfall from Weir 29, that will also flow to Yellow Fever Creek; and

WHEREAS, the Interconnect System will be designed, constructed and operated to help reduce excess water at the North Spreader Waterway System and Matlacha Pass; and

WHEREAS, the Interconnect System will be designed, constructed and operated to also help reduce excess water and the reduction of fresh water flow into Matlacha Pass; and

WHEREAS, such excess waters will be stored and treated prior to discharge into the Caloosahatchee River; and

WHEREAS, the City's irrigation system is recognized by the South Florida Water Management District ("*SFWMD*") as an Alternative Water Supply ("*AWS Irrigation System*"); and

WHEREAS, the Weir 29 System will be designed, constructed and operated to store excess waters and will be utilized in the City's AWS Irrigation System; and

WHEREAS, the YFC System may will be designed, constructed and operated to help to restore the natural hydrologic flow to Matlacha Pass and provide for wetland enhancement; and

WHEREAS, the YFC System will provide enhancement of groundwater recharge; and

WHEREAS, the Interconnect System will provide an overall improvement to the water quality of Matlacha Pass, Charlotte Harbor, the Caloosahatchee River and additional estuaries and water bodies in Lee County; and

WHEREAS, the City and County will cooperate in the permitting process, when necessary, joining as co-permittees to achieve the intended purposes of this Agreement; and

WHEREAS, both the City and County must agree on the approval of designs and any future modifications to the Interconnect System as depicted on the Concept Plan; and

WHEREAS, the County intends to obtain water quality credits from Florida Department of Environmental Protection ("*FDEP*") towards the County's Total Maximum Daily Load ("*TMDL*") obligation as a result of implementation of the YFC System; and

WHEREAS, the City and County are duly empowered pursuant to Florida Statutes §163.01, to enter into this Agreement for the sharing of certain governmental powers and obligations.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

I. INCORPORATION OF RECITALS.

The Recitals as set forth above are true and are incorporated into the terms of this Agreement as if set out herein at length.

II. OWNERSHIP.

The County will be granted an easement and will be responsible for maintenance and operation of the YFC System located in the City of Cape Coral. This will include, but is not be limited to, use of telemetry monitoring instruments, a pump operated storm water transfer station (with electrical control panel), and additional components. A portion of the resulting Interconnect System will be placed within City's public road rights-of-way.

The City will own and be responsible for maintenance and operation of the Weir 29 System. The will include, but not be limited to, any weir structure(s), gates, motor control systems, telemetry monitoring instrument, system control instruments and additional appurtenant components. The Weir 29 structure will be constructed within the City's road rights-of-way.

III. OPERATION SCHEDULE FOR THE INTERCONNECT SYSTEM.

The City and County agree to the System Operation and Maintenance Protocol ("*Operation Protocol*") as detailed in Exhibit "C", attached hereto and incorporated herein by reference. This Operation Protocol will be subject to an annual review by both the City and County. Should any term or requirement within the Operation Protocol be changed as a result of the aforesaid annual review, both the City and County must agree in writing to any resulting change to the Operation Protocol. The Lee County Division of Natural Resources Director and the City of Cape Coral Utilities Director will have the authority to mutually approve any changes to the Operation Protocol.

IV. MAINTENANCE AND OPERATION OF THE INTERCONNECT SYSTEM.

- A. The County will, at its sole cost and expense, maintain and operate the YFC System throughout its expected useful life.
- B. The City will, at its sole cost and expense, maintain and operate the Weir 29 System throughout its expected useful life.

- C. In maintaining the YFC System, the County will be responsible to perform all activities necessary to keep the YFC System fully and properly functioning at all times for its normal expected useful life in accordance with the original design thereof, whether necessitated by normal wear and tear, accidental or intentional damage, or acts of nature. Said maintenance will include, but not be limited to, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the YFC System, and the locating/relocating of facilities as may be necessary.
- D. In maintaining the Weir 29 System, the City will be responsible to perform all activities necessary to keep the Weir 29 System fully and properly functioning at all times for its normal expected useful life in accordance with the original design thereof, whether necessitated by normal wear and tear, accidents or intentional damage, or acts of nature. Said maintenance will include, but not be limited to, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the Weir 29 System, and the locating/relocating of facilities as may be necessary.
- E. As the owner and operator of the YFC System, the County will be solely responsible for any local, state or federal permit violations and fines or penalties that may be assessed. The County will promptly remedy any permit violation(s) and failure to do so will constitute a material breach of this Agreement.
- F. As the owner and operator of the Weir 29 System, the City will be solely responsible for any local, state or federal permit violations and fines or penalties that may be assessed. The City will promptly remedy any permit violation(s) and failure to do so will constitute a material breach of this Agreement.

V. **TOTAL MAXIMUM DAILY LOAD.**

The County intends to obtain water quality credits from FDEP for the TMDL's resulting for the implementation of the YFC System as depicted in the Concept Plan. The County will construct the lake and receive the TMDL credits and agrees to offset the City's decreased flows from the Weir 29 System. As approved by Florida permitting agencies.

VI. ACCESS AND EASEMENTS.

- A. To the extent any portion of the resulting YFC System is located on City property, the City agrees to timely provide those easements necessary for access, maintenance and operation of the YFC System.
- B. The City will be responsible for acquiring easements necessary for access maintenance and operation of the Weir 29 System.
- C. In the event either the YFC System or the Weir 29 System must be relocated or removed due to other infrastructure installation, the cost of relocation or removal of these systems will become the responsibility of the party requesting relocation or removal.

VII. OPERATING COSTS.

- A. In addition to the costs of maintaining the YFC System, the County will be responsible for all costs of operating the YFC System, including, but not limited to, all costs for electrical power consumed by the YFC System and all other electrical charges.
- B. In addition to the costs of maintaining the Weir 29 System, the City will be responsible for all costs of operating the Weir 29 System, including, but not limited to, all costs for electrical power consumed by the Weir 29 System and all other electrical charges.

VIII. RECORD KEEPING.

- A. For YFC System, the County agrees to keep records of all activities performed and costs expended pursuant to this Agreement. All such records will be deemed to be public records subject to the provisions of Chapter 119, Florida Statutes
- B. For Weir 29 System, the City agrees to keep records of all activities performed and costs expended pursuant to this Agreement. All such records will be deemed to be public records subject to the provisions of Chapter 119, Florida Statutes.

IX. DEFAULT.

If either Party fails to fulfill its obligations under this Agreement, that party will be considered to be in default. The other Party to the Agreement must provide written notice of the default and an opportunity to cure the default within 30 days of receipt of said notice. If the defaulting Party fails to cure the default within said time period, the other party may terminate this Agreement for cause or breach. The failure of either party to exercise its rights in the event of any breach will not constitute a waiver of such rights. Neither the City nor the County will be deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the waiving Party. In any litigation arising out of this Agreement, the prevailing Party will be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

X. ASSUMPTION OF LIABILITY.

- A. Each Party hereby agrees to assume liability for the negligent acts of its own officers, employees and agents arising directly, or indirectly, from that Party's activities pursuant to the terms of this Agreement and will defend all claims, causes of action, damages, suits or other actions which any person may pursue based on the willful or negligent acts of that Party's officers, employees or agents during the term of this Agreement. Neither Party assumes any liability beyond that allowed by §768.28, Florida Statutes.
- B. Additionally, both Parties agree when project construction, maintenance or monitoring is not performed by either County or City employees, only licensed and insured consultants and contractors with an insurance policy in an amount not less than One Million Dollars, will be used. Further, either Party may request to be named as an "*additional insured*" if the work is being performed on their respective property by a consultant or contractor engaged by the other Party.

XI. FORCE MAJEURE.

Neither the City nor the County will be liable to the other for any failure to perform under the terms of this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence, provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent reasonably possible, and (c) resumed performance as soon as possible.

XII. TIME AND NOTICES.

- A. Time is of the essence in the performance of all obligations under this Agreement.
- B. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and will be deemed to have been received by the end of 5 business days from the proper sending thereof unless proof of prior actual receipt is provided.
- C. Unless otherwise notified in writing, notices will be sent to the following addresses:

If to City of Cape Coral:

Utilities Director
City of Cape Coral
Post Office Box 150027
Cape Coral, Florida 33915-0027

With a copy to the City Attorney.

If to Lee County:

Director, Division of Natural Resources
Lee County Board of County Commissioners
Post Office Box 398
Fort Myers, Florida 33902-0398

With a copy to the County Attorney.

XIII. TERM OF AGREEMENT.

The term of this Agreement will be from the date first written above, and will continue until terminated according to the provisions contained herein.

XIV. NO THIRD PARTY BENEFICIARIES.

Nothing in this Agreement may be construed as creating any rights or entitlement that inure to the benefit of any person or entity not a party of this Agreement.

XV. ASSIGNMENT.

Neither party has the right to assign or transfer this Agreement, in whole or in part, without the prior written agreement of the other party.

XVI. TERMINATION.

This Agreement may only be terminated by mutual agreement of the Parties. If the Interconnect System is intended to continue to be operated after termination of this Agreement, the resulting agreement to terminate must include a mutual agreement concerning responsibility for operation and maintenance of the Interconnect System. If the Parties contemplate that the Interconnect System will no longer be operated and maintained upon termination of this Agreement, then such agreement to terminate will be subject to the consent of any and all state and federal agencies with jurisdiction over the Interconnect System. If all or any portion of the Interconnect System is to be removed upon termination of this Agreement, the cost of removal will be shared equally unless otherwise agreed.

XVII. AMENDMENTS.

With exception to an annual change in Operation Schedule as provided herein, this Agreement may only be amended by written amendment approved with the same formalities as this Agreement. All unchanged terms and conditions of this Agreement will be incorporated into any such amendment and will otherwise remain in full force and effect.

XVIII. GOVERNING LAWS.

This Agreement will be controlled and interpreted according to the laws, rules and regulations of the State of Florida. Any provision hereof found to be unlawful or unenforceable will be severable and will not affect the validity of the remaining provisions hereof.

XIX. EFFECTIVE DATE.

This Agreement will become effective on upon date first written above. This Agreement, and any subsequent amendment(s) thereto, will be filed with the Clerk of the Circuit Court for Lee County.

[End of provisions.]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers and their official seals affixed hereto.

ATTEST:

BY: Kimberly Bruns
[Signature]
Kimberly Bruns
[Type or print name]
City Clerk (Interim)

CITY OF CAPE CORAL

BY: [Signature]
[Signature]
Joe Coviello
[Type or print name]
Mayor

APPROVED AS TO LEGAL FORM:

BY: [Signature]
[Signature]
Mark Marinsky
[Type or print name]
for City Attorney

ATTEST:
LINDA DOGGETT, CLERK

BY: Chris Du
Deputy Clerk
CHRIS DU
[Type or print name]

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

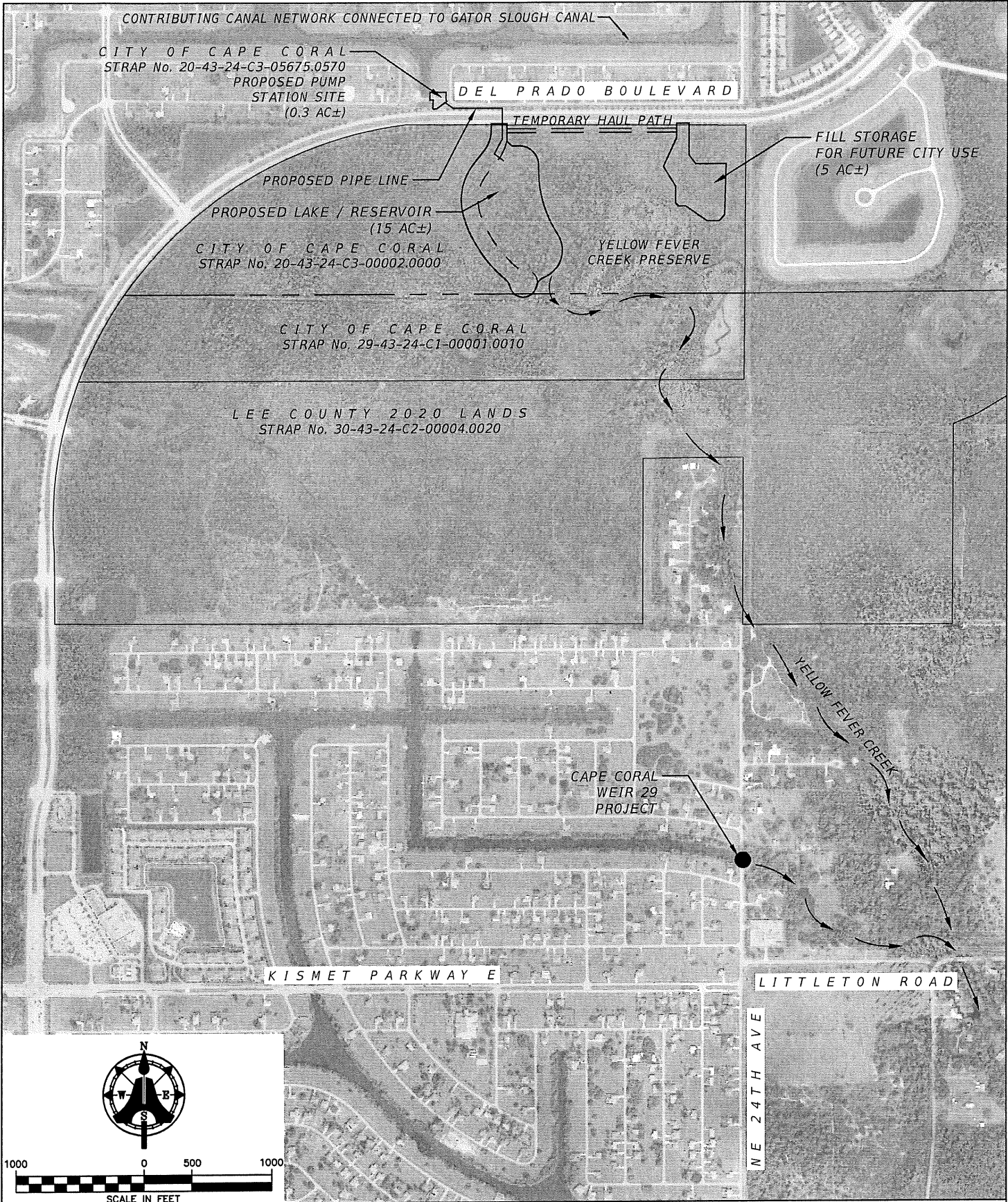
By: [Signature]
[Signature]
Brian Hamman
[Type or print name]
~~Chair~~ Vice-Chair



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

By: [Signature]
[Signature]
JOHN J. FREDYMA
[Type or print name]
Lee County Attorney's Office

Attachments: Exhibit "A" and "B" - YFC and Weir #29 Concept Plan(s)
Exhibit "C" - System Operation and Maintenance Protocol

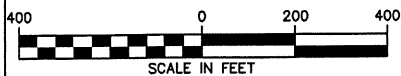
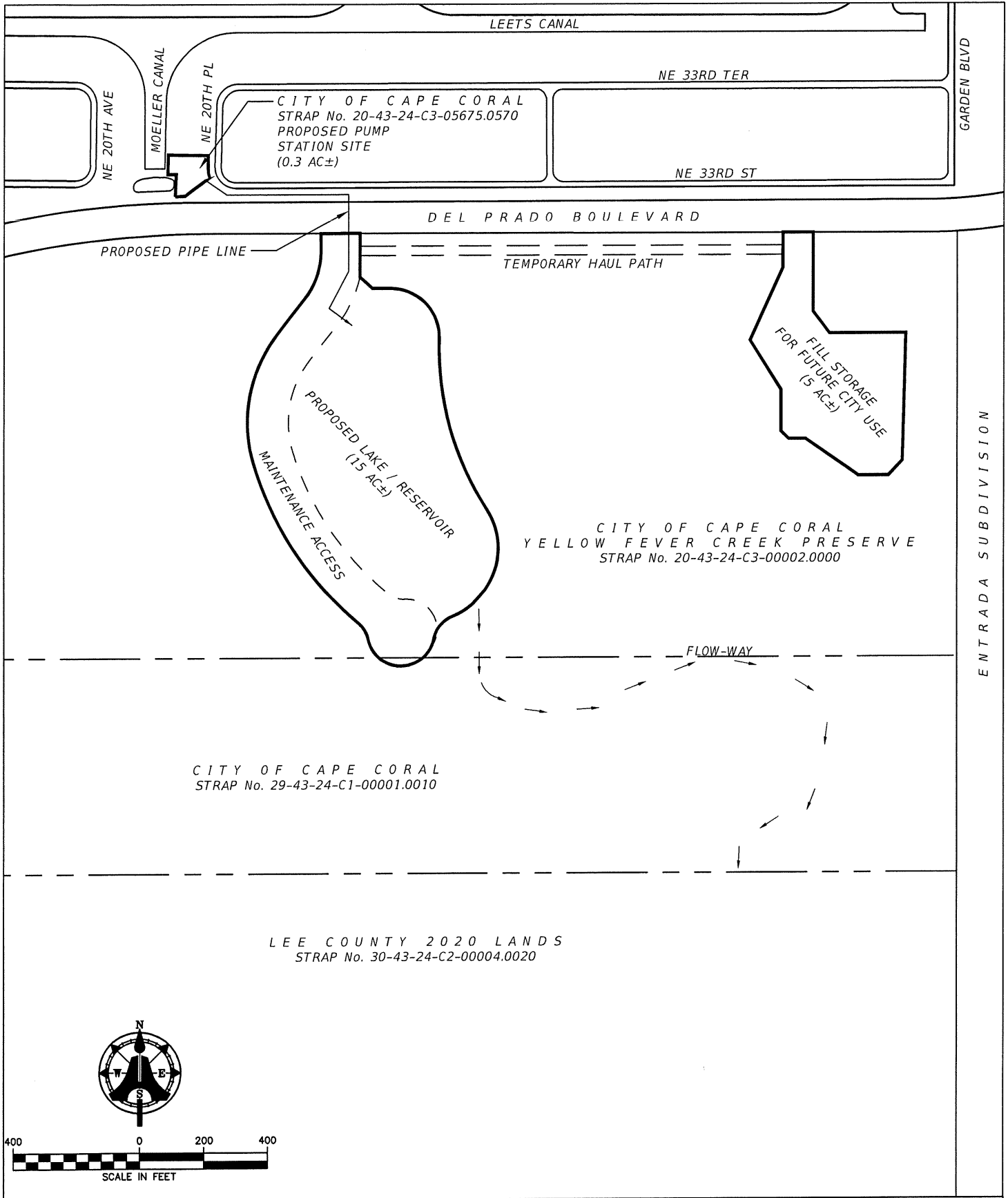


AIM Engineering & Surveying, Inc.
 2161 FOWLER ST. FORT MYERS, FL 33901
 Phone: 239.332.4569 www.aimengr.com
 Engineering Business Certificate of Authorization No. 3114

EXHIBIT A

LEE COUNTY DIVISION OF NATURAL RESOURCES
YELLOW FEVER CREEK HYDROLOGIC RESTORATION PROJECT /
GATOR SLOUGH TRANSFER FACILITY

SCALE: 1"=1000' | BY: JS | DATE: 05/23/18 | REV.: | SHEET: 1 OF 1



AIM Engineering & Surveying, Inc.
 2161 FOWLER ST. FORT MYERS, FL 33901
 Phone: 239.332.4569 www.aimengr.com
 Engineering Business Certificate of Authorization No. 3114

EXHIBIT B
LEE COUNTY DIVISION OF NATURAL RESOURCES
YELLOW FEVER CREEK HYDROLOGIC RESTORATION PROJECT /
GATOR SLOUGH TRANSFER FACILITY

SCALE: 1"=400' | BY: JS | DATE: 04/30/18 | REV.: 5/23/2018 | SHEET: 1 OF 1

EXHIBIT C

Operating Plan for Weir 29 and Gator Slough/Yellow Fever Interconnect

Weir 29 Operation. Weir 29 is proposed to be a gated weir that will be constructed in Cape Coral Surface Water Basin 3 on the Midsummer Canal at NE 24th Ave (see **Figure 1**). The structure will have a 60-ft wide weir with a fixed top elevation of 9.83 ft-NGVD and two 8-ft wide overflow gates that have a closed top position of 9.83 ft-NGVD, and a fully-open position of 8.33 ft-NGVD. The gates will typically be maintained in a fully open position during a normal wet season (considered to be June 1 – September 15) and closed in a normal dry season (considered to be September 16 – May 31). Gate adjustment dates may be modified depending upon actual seasonal weather conditions. The overflow gates will generally stay closed in the dry season when the Yellow Fever Interconnect (YFI) is operational. However, until the YFI is operational, Weir 29's gates will be routinely adjusted to release approximately 2 cfs until the canal water level reaches the fixed weir elevation (9.83ft-NGVD) at which time the overflow gates will be closed. The systematic adjustment of the weir gates may resume upon a rise in canal levels.

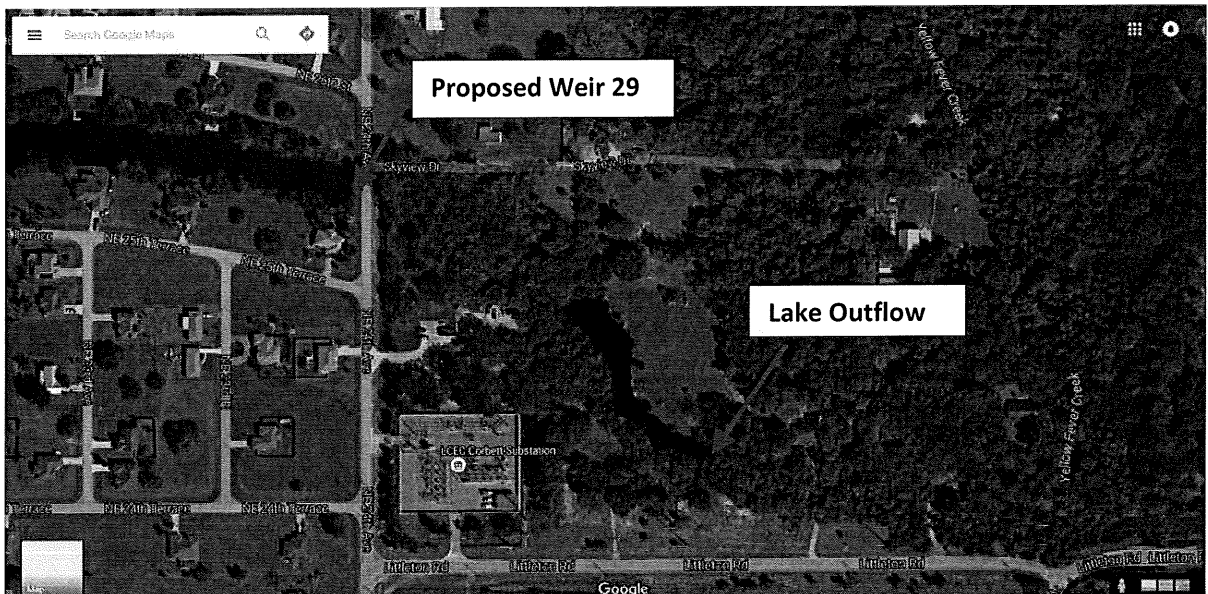


Figure 1 - Proposed Weir 29 and Downstream Lake

Gator Slough/Yellow Fever Interconnect. The Gator Slough/Yellow Fever Interconnect is a proposed 10-cfs pump station designed to transfer water from Leets Canal in Cape Coral Surface Water Basin 1, south under Del Prado Boulevard N to the Yellow Fever Creek Preserve (see **Figure 2**). Leets Canal connects to Gator Slough, so the Interconnect will act as an inter-basin transfer from the Gator Slough basin to the Yellow Fever Creek basin. The proposed interconnect will discharge from Leets Canal through the pump station into a shallow reservoir that is proposed to be constructed on the Yellow Fever Creek Preserve. The proposed plan is to operate the interconnect pump during seasonal periods when there is positive flow over the weir in Gator Slough at Burnt Store Road (Weir 11 – top elevation of 3.33 ft-NGVD) and Gator Slough at Andalusia Boulevard (Weir 19 - top elevation of 12.0 ft-NGVD). Another condition governing the operation of the interconnect pump will be when the receiving body downstream of the transfer pump system has an elevation less than 21.3 ft-NGVD.

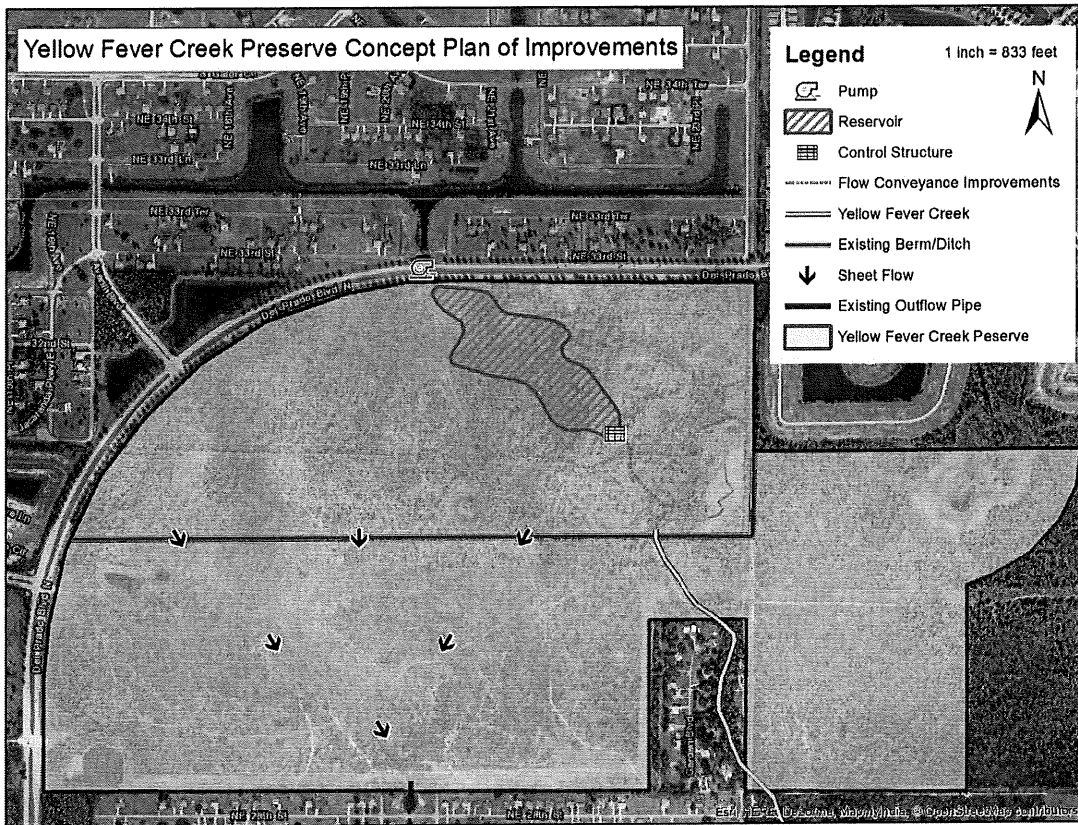


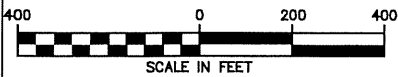
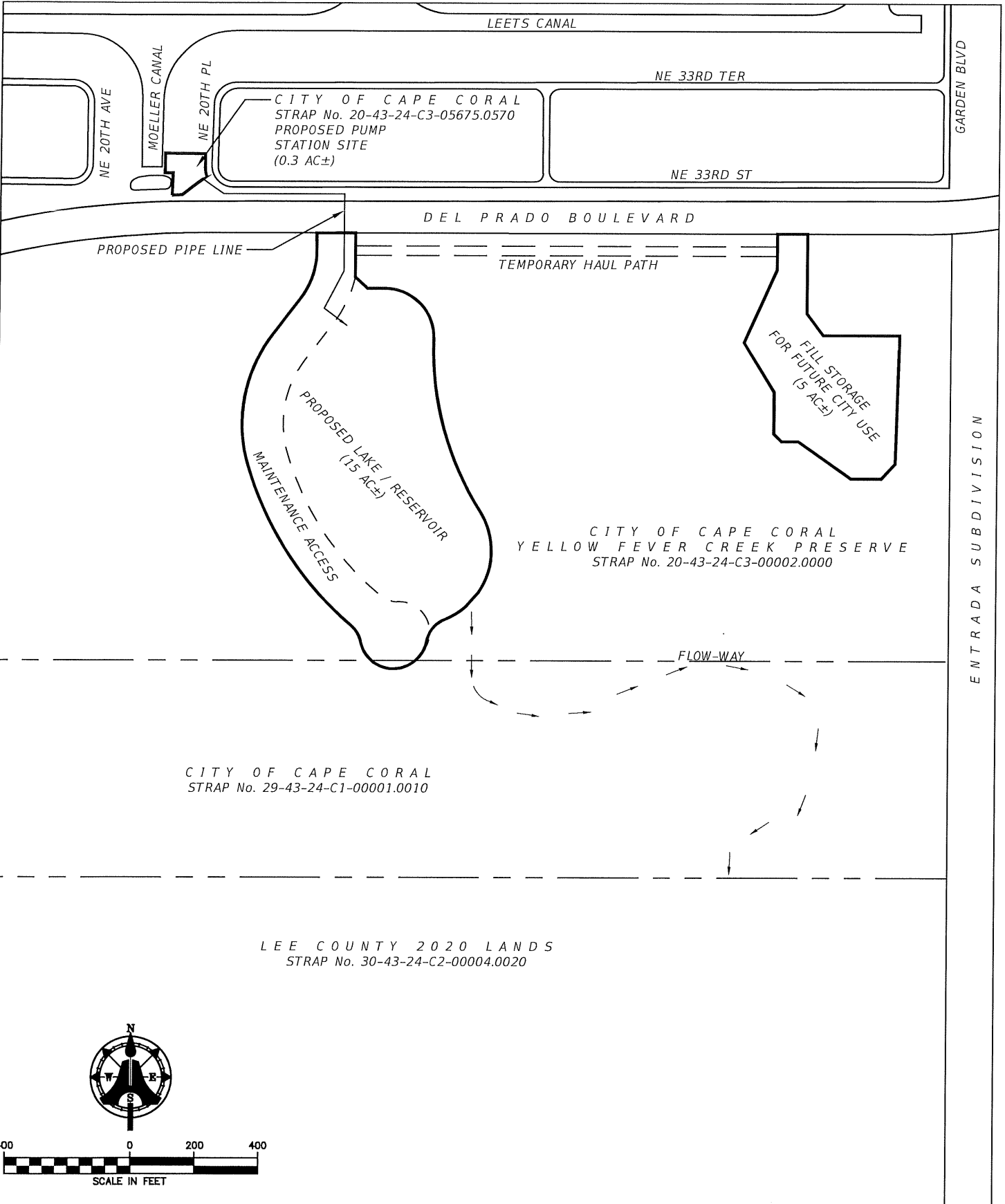
Figure 2 - Proposed Components of the Gator Slough/Yellow Fever Creek Interconnect

City of Cape Coral electronically monitors the levels of Weir 11 and Weir 19. This continuous level recording will be utilized by the City to dictate the overall operational control of the system. This information will be shared with the County. In addition, the County will use strategically located level indicators to indicate the capacity of the Yellow Fever Creek system relative to its ability to accept additional flow. When Weir 11 and Weir 19 are indicating flow over the respective weirs the County will be notified by a system control dashboard or by monthly reports that transfer pumping into the Yellow Fever Creek basin may occur. If the County determines the Yellow Fever Creek basin is able to absorb the additional flow the interconnect pump system may be placed into operation. If the County determines the Yellow Fever Creek basin cannot absorb additional flow then the interconnect transfer pump will be placed in the off position. When Weir 11 and Weir 19 are not indicating a flow over the respective weirs then the interconnect transfer pump will normally be in the off position. Because flows over Weir 11 are rare during December through May, the Interconnect transfer pump may operate during only a portion of the early dry season. However, if the City determines that available capacity in the canal system can support additional flow and the County's control system indicates that it can accept flow into the Yellow Fever Creek basin then the interconnect transfer pump system may be placed into operation.

The water that will be transferred via the Interconnect will increase overall water inputs to the Yellow Fever Creek Preserve thereby restoring flows to the Yellow Fever Creek watershed, which historically was larger than the present boundaries. Initially discharging the imported water into the proposed shallow reservoir is expected to increase groundwater elevations in the headwaters of the Yellow Fever Creek watershed. This action is expected to result in higher baseflows during at least a portion of the dry season.

The County will be responsible for, but limited to, the maintenance and support of all functions of the pump station, electrical system, electrical usage, downstream telemetry and the flow meter.

The City will be responsible for, but not limited to, the maintenance and support of all functions of the SCADA system, software programming and upstream telemetry.



AIM Engineering & Surveying, Inc.
 2161 FOWLER ST. FORT MYERS, FL 33901
 Phone: 239.332.4569 www.aimengr.com
 Engineering Business Certificate of Authorization No. 3114

EXHIBIT B
LEE COUNTY DIVISION OF NATURAL RESOURCES
YELLOW FEVER CREEK HYDROLOGIC RESTORATION PROJECT /
GATOR SLOUGH TRANSFER FACILITY

SCALE: 1"=400' | BY: JS | DATE: 04/30/18 | REV.: 5/23/2018 | SHEET: 1 OF 1

EXHIBIT C

Operating Plan for Weir 29 and Gator Slough/Yellow Fever Interconnect

Weir 29 Operation. Weir 29 is proposed to be a gated weir that will be constructed in Cape Coral Surface Water Basin 3 on the Midsummer Canal at NE 24th Ave (see Figure 1). The structure will have a 60-ft wide weir with a fixed top elevation of 9.83 ft-NGVD and two 8-ft wide overflow gates that have a closed top position of 9.83 ft-NGVD, and a fully-open position of 8.33 ft-NGVD. The gates will typically be maintained in a fully open position during a normal wet season (considered to be June 1 – September 15) and closed in a normal dry season (considered to be September 16 – May 31). Gate adjustment dates may be modified depending upon actual seasonal weather conditions. The overflow gates will generally stay closed in the dry season when the Yellow Fever Interconnect (YFI) is operational. However, until the YFI is operational, Weir 29's gates will be routinely adjusted to release approximately 2 cfs until the canal water level reaches the fixed weir elevation (9.83ft-NGVD) at which time the overflow gates will be closed. The systematic adjustment of the weir gates may resume upon a rise in canal levels.



Figure 1 - Proposed Weir 29 and Downstream Lake

Gator Slough/Yellow Fever Interconnect. The Gator Slough/Yellow Fever Interconnect is a proposed 10-cfs pump station designed to transfer water from Leets Canal in Cape Coral Surface Water Basin 1, south under Del Prado Boulevard N to the Yellow Fever Creek Preserve (see Figure 2). Leets Canal connects to Gator Slough, so the Interconnect will act as an inter-basin transfer from the Gator Slough basin to the Yellow Fever Creek basin. The proposed interconnect will discharge from Leets Canal through the pump station into a shallow reservoir that is proposed to be constructed on the Yellow Fever Creek Preserve. The proposed plan is to operate the interconnect pump during seasonal periods when there is positive flow over the weir in Gator Slough at Burnt Store Road (Weir 11 – top elevation of 3.33 ft-NGVD) and Gator Slough at Andalusia Boulevard (Weir 19 - top elevation of 12.0 ft-NGVD). Another condition governing the operation of the interconnect pump will be when the receiving body downstream of the transfer pump system has an elevation less than 21.3 ft-NGVD.

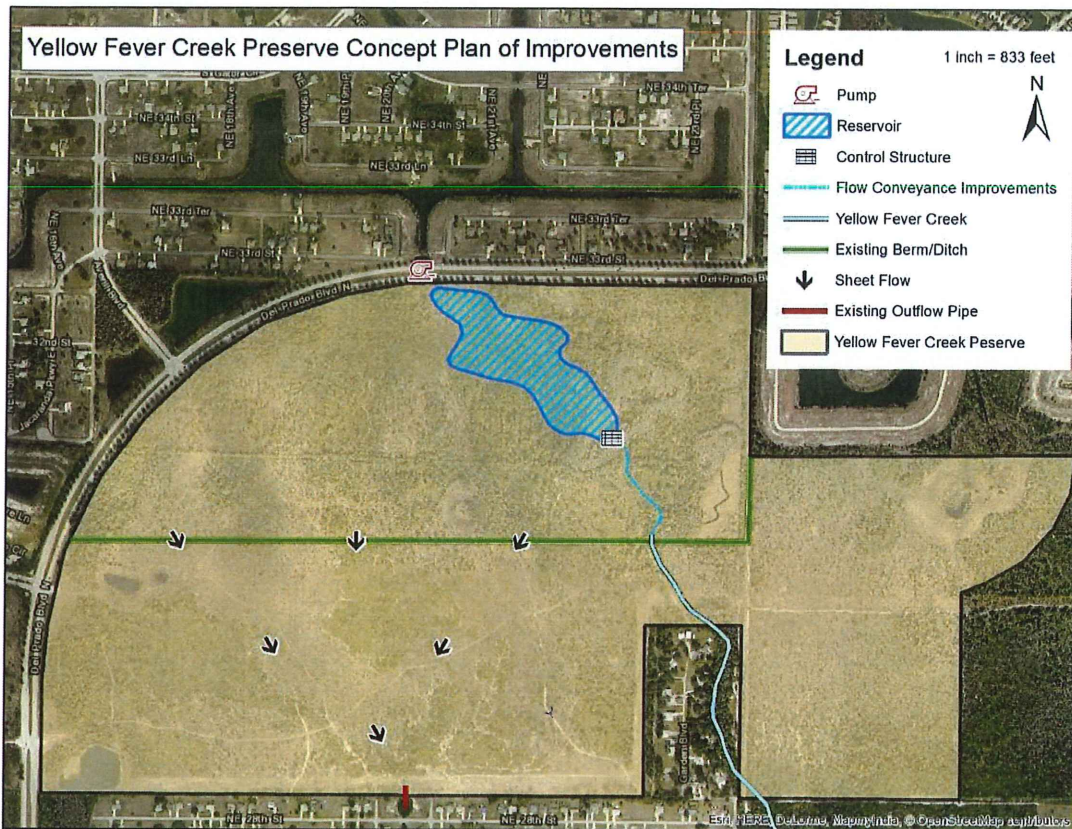


Figure 2 - Proposed Components of the Gator Slough/Yellow Fever Creek Interconnect

City of Cape Coral electronically monitors the levels of Weir 11 and Weir 19. This continuous level recording will be utilized by the City to dictate the overall operational control of the system. This information will be shared with the County. In addition, the County will use strategically located level indicators to indicate the capacity of the Yellow Fever Creek system relative to its ability to accept additional flow. When Weir 11 and Weir 19 are indicating flow over the respective weirs the County will be notified by a system control dashboard or by monthly reports that transfer pumping into the Yellow Fever Creek basin may occur. If the County determines the Yellow Fever Creek basin is able to absorb the additional flow the interconnect pump system may be placed into operation. If the County determines the Yellow Fever Creek basin cannot absorb additional flow then the interconnect transfer pump will be placed in the off position. When Weir 11 and Weir 19 are not indicating a flow over the respective weirs then the interconnect transfer pump will normally be in the off position. Because flows over Weir 11 are rare during December through May, the Interconnect transfer pump may operate during only a portion of the early dry season. However, if the City determines that available capacity in the canal system can support additional flow and the County's control system indicates that it can accept flow into the Yellow Fever Creek basin then the interconnect transfer pump system may be placed into operation.

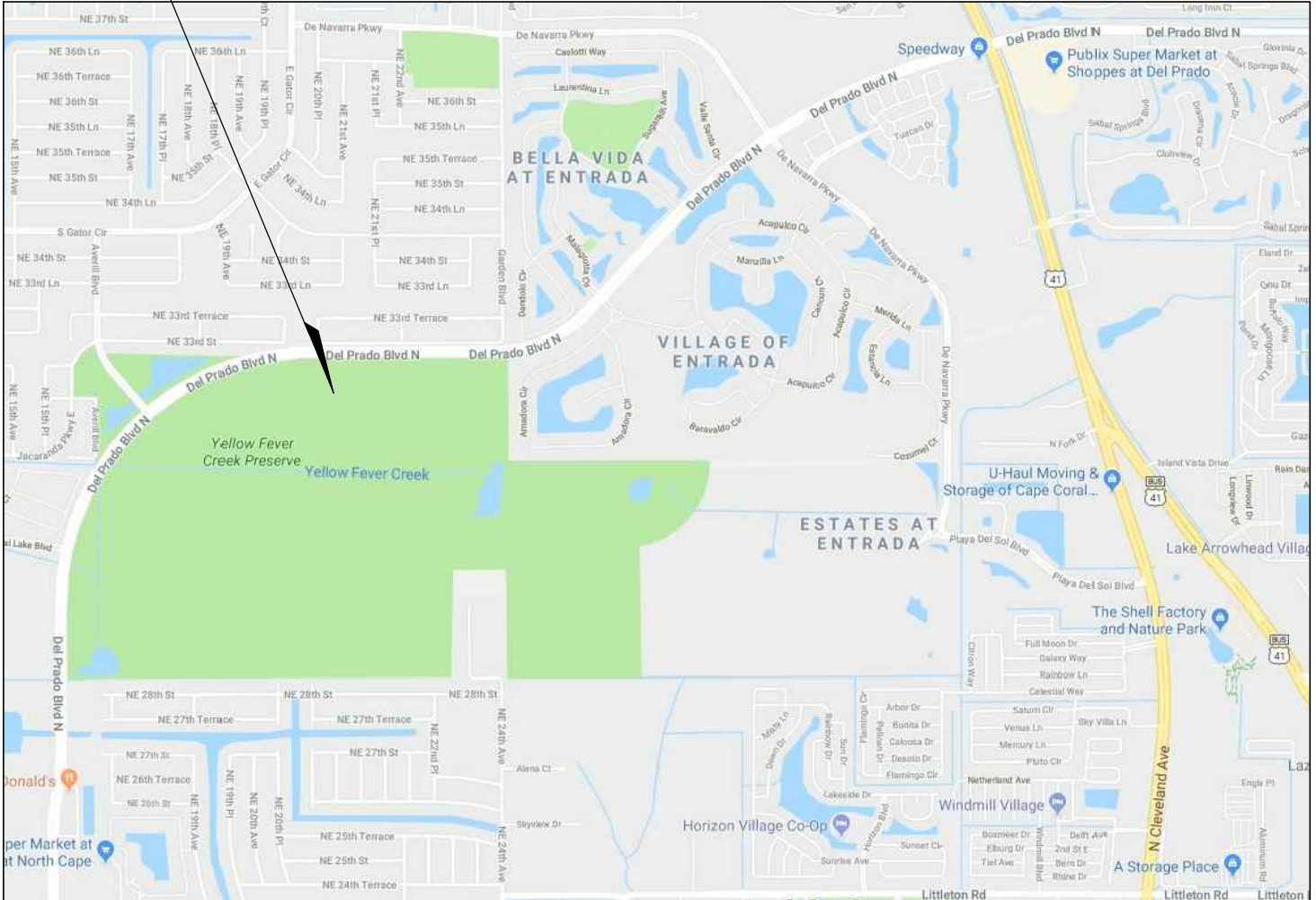
The water that will be transferred via the Interconnect will increase overall water inputs to the Yellow Fever Creek Preserve thereby restoring flows to the Yellow Fever Creek watershed, which historically was larger than the present boundaries. Initially discharging the imported water into the proposed shallow reservoir is expected to increase groundwater elevations in the headwaters of the Yellow Fever Creek watershed. This action is expected to result in higher baseflows during at least a portion of the dry season.

The County will be responsible for, but limited to, the maintenance and support of all functions of the pump station, electrical system, electrical usage, downstream telemetry and the flow meter.

The City will be responsible for, but not limited to, the maintenance and support of all functions of the SCADA system, software programming and upstream telemetry.

PERMIT DRAWINGS
YELLOW FEVER CREEK
 HYDROLOGIC RESTORATION /
GATOR SLOUGH TRANSFER FACILITY
 IN COOPERATION WITH THE CITY OF CAPE CORAL
 SECTION 20, TOWNSHIP 43S, RANGE 24E
 CITY OF CAPE CORAL
 LEE COUNTY, FLORIDA

PROJECT LOCATION



LOCATION MAP
 NOT TO SCALE

PREPARED FOR:
LEE COUNTY DIVISION OF NATURAL RESOURCES

1500 MONROE STREET
 FORT MYERS, FLORIDA 33901

PREPARED BY:
AIM ENGINEERING & SURVEYING, INC.

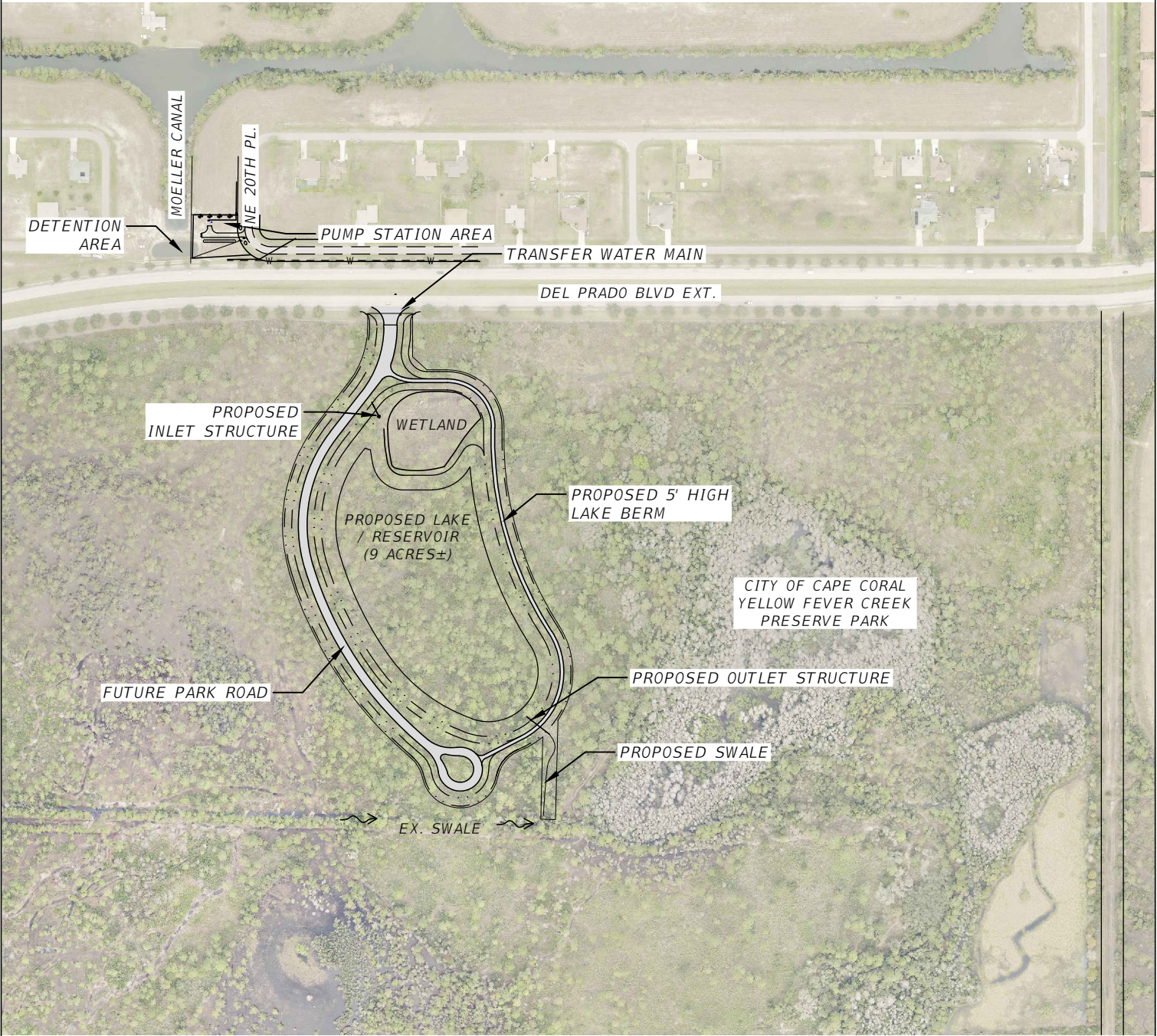
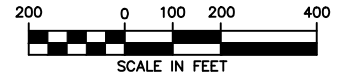


2161 FOWLER STREET
 FORT MYERS, FLORIDA 33901
 PHONE (239) 332-4569
 CERTIFICATE OF AUTHORIZATION NO. 3114



DIGITALLY SIGNED:

RONALD KERFOOT P.E. 20768
 ENGINEER OF RECORD



AIM Engineering & Surveying, Inc.

2161 FOWLER ST. FORT MYERS, FL 33901
Phone: 239.332.4569 www.aimengr.com

Engineering Business Certificate of Authorization No. 3114

MASTER PLAN

LEE COUNTY DIVISION OF NATURAL RESOURCES
YELLOW FEVER CREEK RESTORATION PROJECT



DEL PRADO BOULEVARD

625
4.89±AC

625R
1.33±AC

WETLAND R
(0.06 AC)

625R
1.45±AC

411
3.73±AC

625
4.90±AC

FILL
0.26 AC

FILL
0.03 AC

RIP-RAP
INFLUENT
PATH

WETLAND 1
(1.01 AC)

411
15.04±AC

630
9.14±AC

WETLAND
(NO EXCAVATION)

630R
1.01±AC

TOTAL WETLAND IMPACTS
FILL: 0.29 AC
EXCAVATION: 0.00 AC
FILL: 1,400 CY
EXCAVATION: 0.00 CY

FLUCFCS LEGEND

CODE	COMMUNITY
411	PINE FLATWOODS
621	CYPRESS
625	HYDRIC PINE
625R	HYDRIC PINE (REST.)
630	PINE - OAK - CABBAGE
	PALM - CYPRESS
630R	PINE - OAK - CABBAGE
	PALM - CYPRESS (REST.)

REHYDRATION
SWALE

EX. SWALE

621
12.56±AC



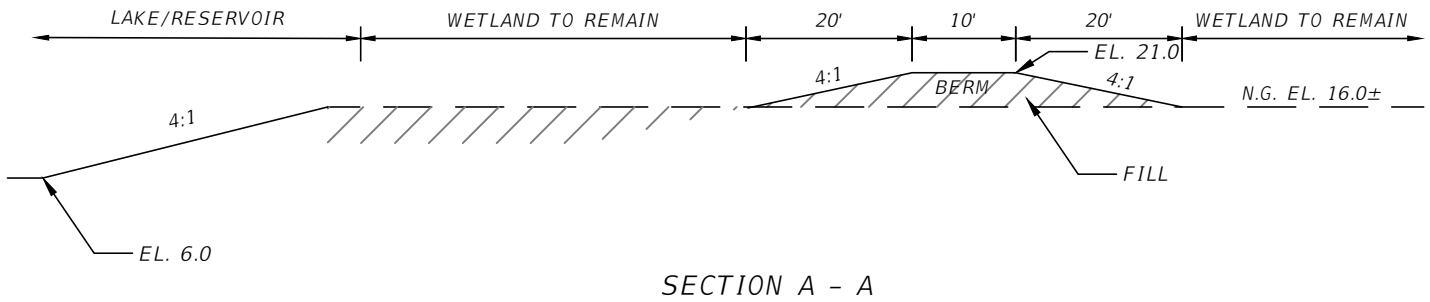
AIM Engineering & Surveying, Inc.

2161 FOWLER ST. FORT MYERS, FL 33901
Phone: 239.332.4569 www.aimengr.com

Engineering Business Certificate of Authorization No. 3114

IMPACT AREAS

LEE COUNTY DIVISION OF NATURAL RESOURCES
YELLOW FEVER CREEK RESTORATION PROJECT



**AIM Engineering
& Surveying, Inc.**

2161 FOWLER ST. FORT MYERS, FL 33901
Phone: 239.332.4569 www.aimengr.com

Engineering Business Certificate of Authorization No. 3114

CROSS SECTIONS

LEE COUNTY DIVISION OF NATURAL RESOURCES
YELLOW FEVER CREEK RESTORATION PROJECT

SCALE: N.T.S. | BY: JS | DATE: 02/22/18 | REV.: 9/10/2019 | SHEET: 4 OF 4