

# **Administrative Hearing Notice**



**THE CITY OF KEY WEST**

**Tree Commission**

Post Office Box 1409 Key West, FL 33041-1409

Telephone: 305-809-3723

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**NOTICE OF ADMINISTRATIVE HEARING  
BEFORE THE TREE COMMISSION OF THE CITY OF KEY WEST**

August 21, 2014

Tree Commission  
City of Key West  
Petitioner,

Vs.

Key West Yacht Club  
2315 North Roosevelt Blvd  
Key West, FL 33040

An administrative hearing before the Tree Commission for the City of Key West will be held on **Tuesday, September 9, 2014**, at 5:00 p.m., at Old City Hall, 510 Green St. Key West, Florida.

This hearing will be conducted pursuant to sections 110-288 et. seq. of the Key West City Code. The purpose of this hearing will be to determine if a code violation has been committed by the above named Respondent. Your presence is required at this Tree Commission meeting.

**Date of alleged violation: prior to August 8, 2014 at 2315 N. Roosevelt Blvd**

Alleged code violation:

***Sec. 110-256. Tree abuse.***

- (a) Generally. Tree abuse is prohibited, and abused trees shall not be counted toward fulfilling landscape requirements. The city may require the abused trees to be replaced.*
- (b) Prohibited acts. A tree shall be considered abused if a person takes an action so that one of the following occurs:*
- (3) Cutting upon any tree which permanently reduces the function of the tree or causes it to go into irreversible decline.*
- (4) Cutting upon a tree which destroys its natural shape.*

***Section 110-321. Permit Required.***

*Unless a tree removal permit approved by the tree commission and issued by the urban forestry manager has been obtained, no person, whether on publicly or privately owned land, shall cause tree abuse or other harm, or major maintenance to, hatracking, transplanting, topping or removal of the following:*

- (1) Any tree listed as "specially protected" in section 110-253;*

*Key to the Caribbean – average yearly temperature 77 ° Fahrenheit.*

**Factual allegation: Approximately 10 areas of mangrove trees were cut/topped from a height of over 6 ft tall to a height of 3ft or less and several other mangrove trees were improperly trimmed.**

If the Tree Commission for the City of Key West finds that there has been a violation of the above code section, it will elect to enter into a compliance settlement agreement pursuant to section 110-291 of the Key West City Code or recommend a fine and further hearing before the Special Master of The City of Key West pursuant to section 110-294 of the Key West City Code.

Attendees are hereby notified that a complete and accurate record of the proceeding is required under Florida Statute 286.0105 if an appeal is sought. Appellants are responsible for providing transcription services.

I hereby certify that the forgoing notice has been e-mailed to the Respondent, and has been sent regular mail and certified U.S. Mail to the above named Respondent's listed address on this **22nd day of August 2014.**

If you have any questions, please call the office at (305) 809-3768.

  
\_\_\_\_\_  
Karen DeMaria  
Urban Forestry Manager  
[kkdemaria@keywestcity.com](mailto:kkdemaria@keywestcity.com)

cc (property owner): City of Key West

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**Key West Yacht Club  
2315 N Roosevelt Blvd  
Key West, FL 33040**

2. Article Number  
(Transfer from service label)

7007 3020 0000 5347 9959

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

**X***[Handwritten Signature]* Agent Addressee

B. Received by (Printed Name)

*Paul G. [Handwritten Name]*

C. Date of Delivery

*8-23-14*D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

August 11, 2014: ONE WAY ENTRANCE LINE OF SIGHT





The line of site for the is area was not marked. Vegetation has to remain below 30" in height.

ONE WAY EXIT LINE OF SIGHT





The line of site for the is area was not marked. Vegetation has to remain below 30" in height.





Removal or reducing the height of the silver buttonwood hedge would improve line of site issues for the Yacht club. Hedges are not regulated-no permit required for removal or heavy maintenance of these plants.

LOCATION OF CUT MANGROVES



Entrance to the KWYC with line of site area marked.

Exit from KWYC

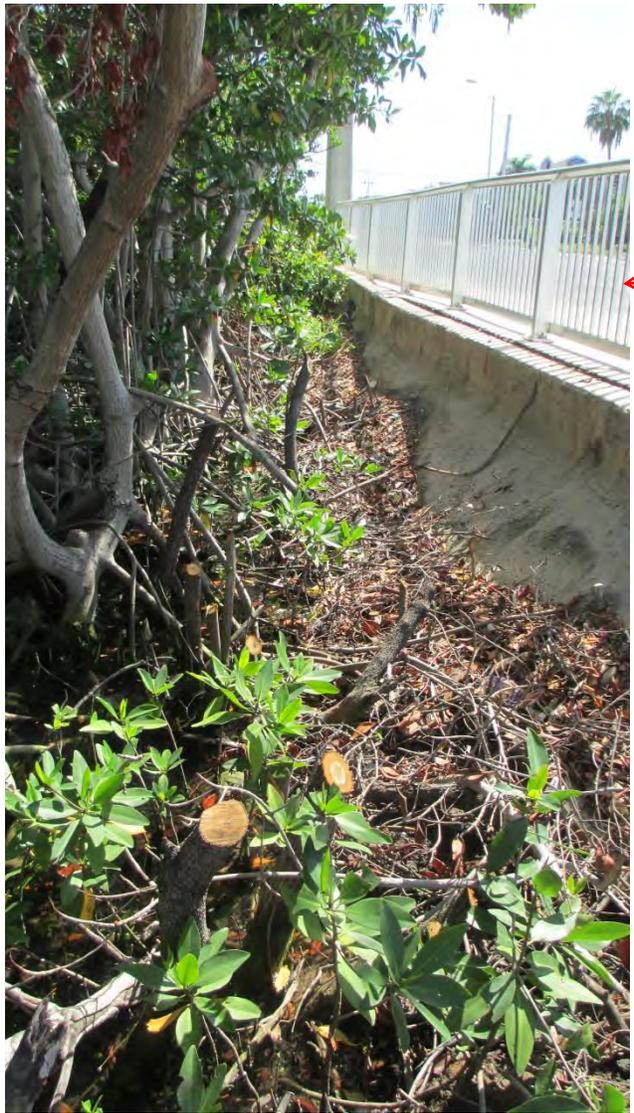
Entrance to KWYC



Unauthorized mangrove impact area.

N. Roosevelt Blvd sidewalk area

Impacted mangrove area



#4



Close up of impacted mangrove area showing remaining stumps with Tree ID numbers.





Close up of impacted mangrove area showing remaining stumps.

#4



#4

#1

DEBRIS PILES:



Debris pile 1-has been removed  
as of August 14, 2014



Debris Pile 1



Debris pile 2-  
appears to be in or  
on the wetland  
edge

August 14, 2014 Site Inspection  
Tree #1 (6" diameter):



Tree #2 (4" caliper):



Tree #3 (2 stumps-4" and 6.5" caliper):



Red Mangrove

Tree #3



Tree #3 and #4



Tree #4 (3 trunks, 4 branches-3", 4", 2.5", 2" caliper)



Tree #6 (4 trunks-2.5", 2.5", 2.5", 1.5" caliper)



Tree #7 (2" caliper)



Tree #8 (2.5" caliper)



Tree #9 (1.5" caliper prop roots also cut)



Tree #10 (3 trunks-2.5", 2.5", 2" caliper)



Photos of Improper Trimming Mangrove Trimming:







Tree branches were improperly cut.

View of Impacted Area:



These photos show the view down N. Roosevelt Blvd. Branches from the mangrove trees formally extended to where the railing is now. All trees in this area were basically the same height.





# TREE KEY

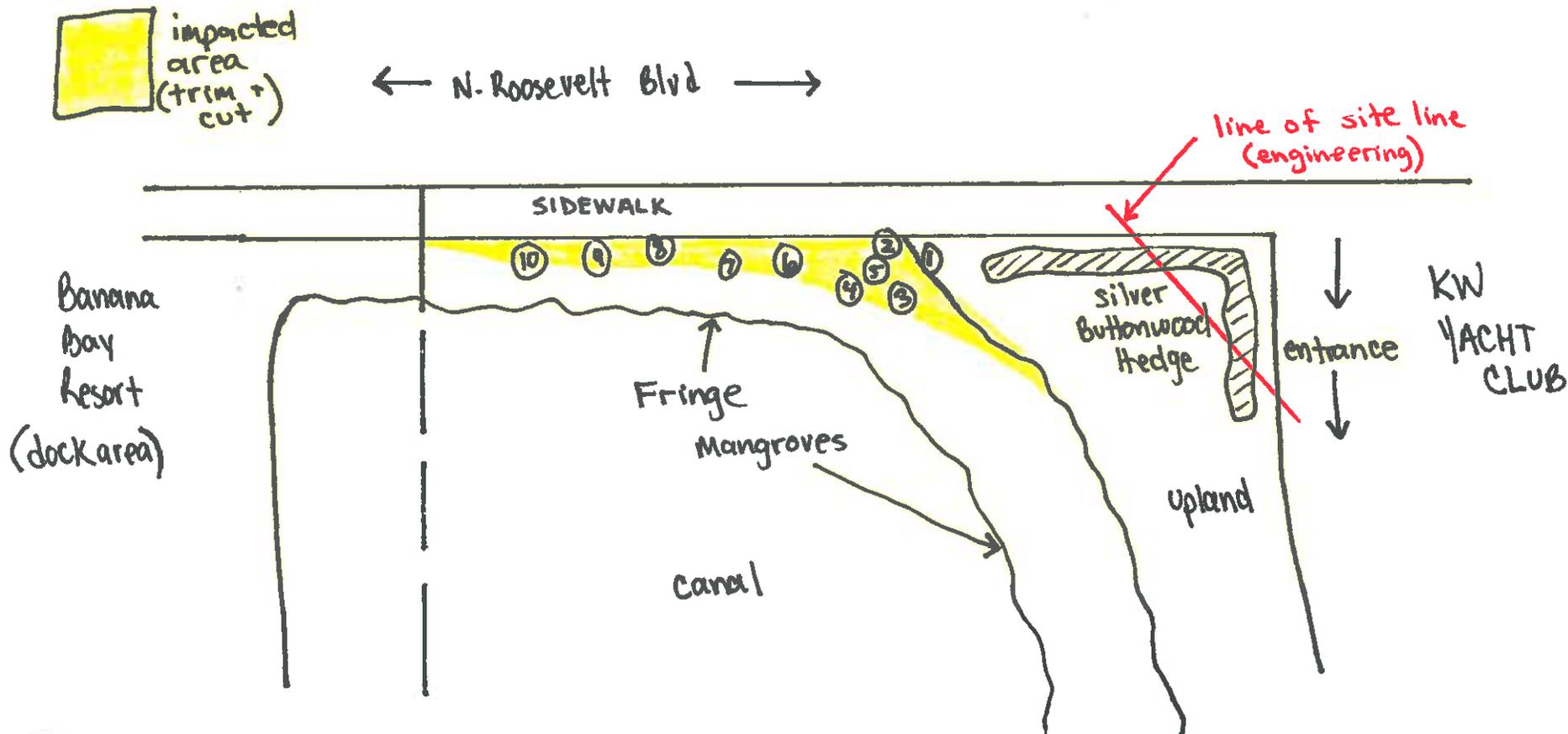
- ① Black Mangrove - 6" diameter (stump 3ft high)
- ② Mangrove - was growing against seawall - 4" caliper total
- ③ mangrove - 2 trunks (4" + 6.5" caliper)
- ④ mangrove - 3 trunks, 4 branches (3" + 4" + 2.5" + 2" caliper)
- ⑤ mangrove - 8" caliper
- ⑥ mangrove - 4 trunks (2.5" + 2.5" + 2.5" + 1.5" caliper)
- ⑦ mangrove - 2" caliper
- ⑧ mangrove - 2.5" caliper
- ⑨ mangrove - 1 trunk (1.5" caliper) and prop roots
- ⑩ mangrove - 3 trunks (2.5" + 2.5" + 2.0" caliper)

Trees were +6ft prior to cutting. Stumps now 1-3ft tall.

## SITE MAP

8.14.14

KKD/plan-NTS



## MEMORANDUM

DATE: August 8, 2014

RE: Cutting of Mangroves along N. Roosevelt Blvd near Key West Yacht Club entrance

FROM: Karen DeMaria, Urban Forestry Manager, City of Key West 

On July 30, 2014, I was informed by several members of the public that mangroves had been cut between Banana Bay resort and the entrance to the Key West Yacht Club along N. Roosevelt Blvd. An inspection later that day revealed that mangroves had been cut. These cuts do not appear to be arborist standard cuts or cuts done by a professional mangrove trimmer, as required by the State Mangrove Trimming and Preservation Act (s.403.9329) (see attached photos).

On August 8, 2014, correspondence with FDOT representatives determined that the cutting work was not done by the FDOT contractor or any of their contractors (see attached e-mails).

The property where the mangroves were cut is owned by the City of Key West and leased to the Key West Yacht Club (KWYC).

City staff was spoken to in order to determine who might have cut the mangroves:

1. Jim Bouquet and Karen Olson (Engineering-line of site issues): neither person had been out to the area or knew anything about any potential issues.
2. Richard Sarver (Community Services): city crews did not cut any mangroves in that area. According to Richard, Bill Collins (landscape foreman) did meet with KWYC representatives but informed them that the KWYC was responsible for maintaining that property, not City staff.
3. Bill Collins has not been spoken to regarding this issue as he was off today.

It appears that city staff was not involved in the cutting of the mangroves nor were FDOT contractors.

The area consists of red and black mangroves, both of which are regulated under Key West Code of Ordinances (Sec 110-253). They are also regulated by the State of Florida. Minor trimming of the mangroves would not have required a permit from the Tree Commission but it appears that major trimming and tree removal has occurred which would have required a permit from the Tree Commission (Sec 110-321). No permits have been issued for this work.

FDOT-N. Roosevelt Blvd sidewalk area next to Yacht Club entrance 7-30-14







Karen DeMaria &lt;kdemaria@keywestcity.com&gt;

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## Mangroves next to Banana Bay and KW Yacht Club

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Karen DeMaria &lt;kdemaria@keywestcity.com&gt;

Fri, Aug 8, 2014 at 10:38 AM

To: "Medico, Peter" &lt;peter.medico@amec.com&gt;, "Hart, Jacki" &lt;Jacki.Hart@amec.com&gt;

Cc: Phil Frank &lt;terramar@bellsouth.net&gt;

All:

I received some phone calls regarding damage to mangroves next to the entrance to Banana Bay and the Key West Yacht Club. I went to the area and discovered that mangrove have been damaged and cut. Any idea of what happened here? Is this part of the N. Roosevelt project and the installation of the rail next to the sidewalk? Or was there an accident of some sort here? I remember a year ago this area being an issue and the discussion that the mangroves at that time were not authorized to be cut.

Please comment so I know how to respond.

Sincerely,

Karen

—  
Karen DeMaria  
Urban Forestry Manager  
Certified Arborist  
City of Key West  
305-809-3768



**FDOT Yacht club entrance.docx**  
1853K



Karen DeMaria <kdemaria@keywestcity.com>

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## Mangroves next to Banana Bay and KW Yacht Club

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Phil Frank <terramar@bellsouth.net>

Fri, Aug 8, 2014 at 11:03 AM

To: Karen DeMaria <kdemaria@keywestcity.com>, "Medico, Peter" <peter.medico@amec.com>, "Hart, Jacki" <Jacki.Hart@amec.com>

Cc: Michael McCoy <MMcCoy@metriceng.com>, Pietro Taballione <Pietro.Taballione@metriceng.com>, Phil Frank <terramar@bellsouth.net>

Peter, Jackie:

I was under the impression that all mangrove trimming and removal had been completed in this section of NRB, and that the only remaining mangrove impacts we would have would be those impacted at the Riviera Canal outfall site. These cuts look rough, certainly not overseen by a certified arborist, so I am hopeful that this is not associated with our job. Please let us know if this was associated with our job, and if so, what the purpose was, and who did the work.

We have a scheduled FDOT environmental inspection next week, Thursday, and will check this out then.

Thanks.

Philip A. Frank, Ph.D.

Terramar Environmental Services, Inc.  
1241 Crane Boulevard  
Sugarloaf Key, Florida 33042  
(305) 393-4200 FAX (305) 745-1192  
terramar@bellsouth.net



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**From:** Karen DeMaria [mailto:[kdemaria@keywestcity.com](mailto:kdemaria@keywestcity.com)]  
**Sent:** Friday, August 08, 2014 10:39 AM  
**To:** Medico, Peter; Hart, Jacki  
**Cc:** Phil Frank  
**Subject:** Mangroves next to Banana Bay and KW Yacht Club

[Quoted text hidden]



This email is free from viruses and malware because [avast! Antivirus](#) protection is active.



Karen DeMaria &lt;kdemaria@keywestcity.com&gt;

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## Mangroves next to Banana Bay and KW Yacht Club

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Hart, Jacki &lt;Jacki.Hart@amec.com&gt;

Fri, Aug 8, 2014 at 11:36 AM

To: Phil Frank &lt;terramar@bellsouth.net&gt;, Karen DeMaria &lt;kdemaria@keywestcity.com&gt;, "Medico, Peter" &lt;peter.medico@amec.com&gt;

Cc: Michael McCoy &lt;MMcCoy@metriceng.com&gt;, Pietro Taballione &lt;Pietro.Taballione@metriceng.com&gt;, John Allen &lt;john.allen@demoya.com&gt;

Phil, you are correct.. the contractor brought this to our attention as soon as it was observed. de Moya and their subs were not involved in any mangrove cutting in that area referenced by your email. We did not observe who cut them but noticed it after the fact.

This is not the first time that other parties have performed work or tree cutting on private property during construction where the contractor was not involved. If you see other issues that are of a concern, let me know and we will address it. Thank you.

Jacki Hart, EI

AMEC Environment &amp; Infrastructure

3142 Boog Powell Ct.

Key West, FL 33040

Project Engineer/Sr. Project Manager

cell 954-775-6949

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**From:** Phil Frank [mailto:terramar@bellsouth.net]  
**Sent:** Friday, August 08, 2014 11:03 AM  
**To:** 'Karen DeMaria'; Medico, Peter; Hart, Jacki  
**Cc:** 'Michael McCoy'; 'Pietro Taballione'; 'Phil Frank'  
**Subject:** RE: Mangroves next to Banana Bay and KW Yacht Club

[Quoted text hidden]

AK 8757760

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**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

Marathon Branch Office  
2796 Overseas Highway, Suite 221  
Marathon FL 33050

RICK SCOTT  
GOVERNOR

CARLOS LOPEZ-CANTERA  
LT. GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

August 21, 2014

Paul Gallagher  
Key West Yacht Club  
2315 N. Roosevelt Blvd  
Key West, FL 33040  
[paul@keywestyachtclub.com](mailto:paul@keywestyachtclub.com)

COMPLIANCE ASSISTANCE  
Complaint # 26503

Monroe County- ERP  
Parcel No. 0072082-001001

Dear Mr. Gallagher:

On August 18, 2014, Department staff visited the Key West Yacht Club property at 2315 N. Roosevelt Boulevard in Key West. During this visit, staff observed activities that may not be in compliance with Chapter 373 and Sections 403.9326 and 403.9328, Florida Statutes (F.S.) and Rule 62-343.050, Florida Administrative Code (F.A.C.), which provide that Department authorization is required for all dredging and filling activities in wetlands or surface waters and for mangrove alteration. The Department would like to bring this to your immediate attention and work with you to remediate the situation through this Compliance Assistance Offer, without formal enforcement.

Attached is the site visit report completed by Department staff. Specifically, the Department observed the following activities:

1. Trimming or alteration of mangroves along the sidewalk within the Roosevelt Boulevard right-of-way not conducted by a governmental agency pursuant to Section 403.9326, F.S., or with a permit from the Department pursuant to Section 403.9328, F.S.

Section 403.9326(1) (f), F.S., states that the following activity is exempt from permitting requirements: "The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company, or by a federal, state, county, or municipal agency, or by an engineer or a surveyor and mapper working under a contract with such utility company or agency, when the trimming is done as a governmental function of the agency."

Future trimming of mangroves along the sidewalk within the Roosevelt Boulevard right-of-way by the appropriate entity stated in the statute would appear to be

consistent with the intent of the statute. Therefore, in the future, we encourage you to work with the appropriate entity stated in the statute to ensure that the affected mangroves are trimmed in a manner that is consistent with the statute.

**In light of the above, the Department is not pursuing formal enforcement for the above-described non-compliance provided the mangroves are allowed to grow back to a minimum height of six feet above the substrate (ground) and the cut Buttonwood branches removed from the fringe and discarded in an upland location. Any future works involving mangroves shall be done in accordance with the 1996 Mangrove Preservation and Trimming Act (enclosed)**

It is the Department's desire that you are able to comply with this request concerning the possible non-compliance so that this matter can be closed without enforcement. Please receive this as a notice for future projects similar in nature. If further non-compliance is found at this site or an on-going pattern of non-compliance at this site is documented, appropriate enforcement action will be taken against the responsible party. Please be advised that this letter is part of an agency investigation, preliminary to any agency action deemed necessary in the future in accordance with Section 120.57(5), F.S.

Please feel free to contact Yanett Langley at the letterhead address, by phone at (305) 289-7085, or by email at [Yanett.Langley@dep.state.fl.us](mailto:Yanett.Langley@dep.state.fl.us) for assistance or if you have any questions concerning this matter.

Sincerely,



For Jennifer Carpenter  
Asst. Director of District Management  
South District Office

EG/yl

Enclosure: Inspection Report  
1996 Mangrove Protection Act  
Mangrove Trimming Guidelines for Homeowners

cc: Mark Miller, DEP

Key West Yacht Club Complaint 26503  
08/14/2014

I certify that these photos represent the true  
on-site conditions observed  
and have not been altered in any way.  
Yanett Langley



1

Sidewalk reduced from aprox 12' to aprox 7' wide



2

Current traffic view from Marina's exit



3

Former view from marina's exit



4

Trimmed Butonwood to better view



5

Butonwood set back to better view



6

Altered Black Mangroves (4 trees)

Key West Yacht Club Complaint 26503  
08/14/2014

I certify that these photos represent the true  
on-site conditions observed  
and have not been altered in any way.  
Yanett Langley



7



8

Altered Red Mangrove



9



10

Altered Red and Black Mangrove



11



12

Key West Yacht Club Complaint 26503  
08/14/2014

I certify that these photos represent the true  
on-site conditions observed  
and have not been altered in any way.  
Yanett Langley



13



14

View from Altered Mangroves to Marina



15

Fill in wetlands



16

Fill in wetlands



17

Closer view of fill



18

Key West Yacht Club Complaint 26503  
08/14/2014

I certify that these photos represent the true  
on-site conditions observed  
and have not been altered in any way.  
Yanett Langley



19

Healthy Mangroves



20

Healthy Mangroves encroaching slip



21

Undisturbed mangroves encroaching into  
slip



22



23



24

Key West Yacht Club Complaint 26503  
08/14/2014

I certify that these photos represent the true  
on-site conditions observed  
and have not been altered in any way.  
Yanett Langley



25

Exiting marina and checking traffic



26



27

In red where the mangroves were altered



28

Aerial showing the growth of the mangroves before the trimming

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**TRIP REPORT**

Name of Facility: Key West Yacht Club. Complaint No. 26503 Travel Date: 08/14/2014

Time Arrived At Sites: 11:00 AM

Results: Minor out of COMPLIANCE

File No.: ERPce Site.: 328691

Name of Traveler: Yanett Langley Accompanied By: N/A

Purpose of Trip: Responding to a complaint for Mangrove Alteration

Person(s) Contacted and Title: General Manager, Paul Gallagher.

Findings: I arrived to the site and waited for the Marina Manager, Paul Gallagher. At his arrival, we proceeded with the inspection and walked to the area where the mangroves were altered. I asked Mr. Gallagher if he knew who trimmed the mangroves and he said he did. I asked him why and he responded that the mangroves were impeding a traffic view making exiting the marina very difficult and dangerous. He also said that after the trimming the ability to see oncoming traffic when exiting the Marina have greatly improved.

Please refer to pictures 1 to 3 to observe the restricted line of sight with oncoming traffic when exiting the Marina. During the investigation Mr. Gallagher added that two months ago, he had contacted Jim Young of the City's Code Compliance Dept. and Dean Walters, Public Information Specialist looking for some type of help. Since he did not receive any response, he cut the mangroves himself. I explained to him that DEP is the only agency in the Keys that issues the authorizations for mangrove trimming.

He also added that since the sidewalk was reduced almost half of what it used to be, the traffic view is even more limited. DOT is doing work (Boulevard construction project) on the sidewalks in order to facilitate a lane on the road for bicyclists narrowing the width of the sidewalks (refer to pictures 1 & 2)

We proceeded to walk to the area where the mangroves were trimmed and I noticed few Black and one Red mangroves trimmed to the root with very minimal surviving possibilities (pictures 6 & 9). I provided compliance assistance to inform Mr. Gallagher that the Yacht Club must contact DEP to request authorization for any future mangrove trimming. He said he did not know and accepted the assistance.

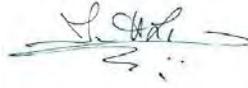
I continued walking the site and noticed few more trimmed Red mangroves along the sidewalk (pictures 7, 8, 12, & 14). These mangroves were improperly cut; however, not under 6 feet in height. I took pictures and documented the possible violation.

To determine the dimension and percentage of the possible damage, I walked all the wetlands in the Marina to observe the health of the rest of the mangroves (refer to pictures No. 27 & 28). I noticed fill (trimmed Buttonwood branches) in two sections in the northwestern area from the trimmed mangroves (pictures 15 to 18). I called Mr. Paul Gallagher and asked him to remove the trimmed Buttonwood branches that were dumped in the wetlands and to send photo documentation to the Department showing the fill (the dead branches) were removed. I continued walking the site and inspected the docking facilities as well. The mangroves in this area looked healthy and undisturbed (pictures 19 -24). In the northern docking facility, Red Mangroves were encroaching two slips making it difficult for the boats to moor (pictures 20, 21, 23 & 24). Mr. Gallagher asked if he needed authorization to trim the branches of the Mangroves encroaching and I responded that according to

1996 Mangrove Trimming and Preservation Act, maintenance trimming was allowed as long as the maintenance trimming did not exceed the height and the configuration previously established. I explained to Mr. Gallagher the importance of Mangroves to the environment and the Mangrove Preservation Act. He added that he was sorry for trimming the mangroves and that he will not do it again. He also said that in the future if any mangrove alteration is needed he will contact DEP.

According to my observations, Mr. Gallagher cut (defoliated and removed) what seemed to be 4 mature *Avicennia Germinans* (Black Mangrove) and 1 mature *Rhizophora Mangle* (Red mangrove). These trees will eventually die. Mr. Gallagher also trimmed few branches of some *Rhizophora Mangle* that with time, if left alone, will grow and recuperate the former size. The percentage of the trimmed trees below 6 feet in height, defoliated or removed trees as a result of the mangrove alteration is less than 5% of the total mangrove habitat in the Marina. Consequently, Mitigation and Enforcement will not be imposed at this time.

As part of the Department investigation process a Letter will be sent to Mr. Gallagher containing corrective actions to alleviate the damaged caused.



**Environmental Specialist II**