



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Cost Code 11114

October 21, 2015

Karen DeMaria
Urban Forestry Manager-Planning Department
City of Key West
P.O. Box 1409
Key West, FL 33041

**Subject: Consent Order
City of Key West Mitigation Flow Improvement
Monroe County, PCN: 0568250006492000000**

Dear Ms. DeMaria:

As discussed with South Florida Water Management District (District) staff and yourself on October 20, 2015, a Consent Order (Order) settling the outstanding enforcement issues regarding the above-referenced violation is enclosed. Please read the entire document and have your authorized representative sign and print their name on the signature page, have a witness attest the signature of the representative, and return the entire document to this office before October 30, 2015.

Final agency action regarding this matter will then be scheduled as a Regulatory Consent Agenda item at the next available Governing Board meeting. A complete, executed copy will be provided for you upon execution of the Order by the District.

Thank you for your cooperation in this matter. Should you have any questions or require additional information, please contact the undersigned at (561) 682-6950, or via e-mail at jmarshall@sfwmd.gov, in the West Palm Beach Office.

Sincerely,

A handwritten signature in blue ink that reads "J. Jay Marshall".

J. Jay Marshall, Senior Environmental Analyst
Environmental Resource Compliance Bureau
West Palm Beach Office
South Florida Water Management District

Enclosure: Consent Order

CERTIFIED MAIL NO. 70042510000283650290

This document is filed in the ePermitting system under Cost Code 11114 via the Enforcement link under Records Search

10-20-2015

DISTRICT HEADQUARTERS: 3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • (800) 432-2045

Mailing Address: PO BOX 24680 West Palm Beach FL, 33416-4680

LOWER WEST COAST SERVICE CENTER: 2301 McGregor Boulevard, Fort Myers, FL 33901 • (239) 338-2929 • (800) 248-1201

OKEECHOBEE SERVICE CENTER: 3800 N.W. 16th Blvd, Suite A, Okeechobee, FL 34972 • (863) 462-5260 • (800) 250-4200

ORLANDO SERVICE CENTER: 1707 Orlando Central Parkway, Suite 200, Orlando FL 32809 • (407) 858-6100 • (800) 250-4250

sfwmd.gov

BEFORE THE GOVERNING BOARD
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,

Complainant,

v.

SFWMD NO. 2015-____-CO-ERP

CITY OF KEY WEST,

Respondent.

_____ /

CONSENT ORDER

This Consent Order is entered into between the Complainant, South Florida Water Management District ("District"), and the Respondent, City of Key West, a municipality existing in the State of Florida ("Respondent") by mutual consent, who agree as follows:

FINDINGS OF FACT

The District and Respondent stipulate to the following Findings of Fact:

1. The District is a government agency created under Chapter 373, Florida Statutes ("Fla. Stat."), with its principal office located at 3301 Gun Club Road, West Palm Beach, Florida 33406.
2. Respondent's mailing address for the purpose of this Consent Order is P.O. Box 1409, Key West, Florida 33041.
3. The following exhibits are attached to and are part of this Consent Order.

Exhibit A – Map of the Property

Exhibit B – Conservation Easement

Exhibit C – Notice of Violation

Exhibit D – Exhibits 2.01D, 2.01G, 2.01H, and 2.01I of the Permit

Exhibit E – Notice of Consent Order

Exhibit F – Notice of Rights

4. Respondent is the owner of property located at 1604 N. Roosevelt Boulevard (Jose Marti Building), Section 5, Township 68 South, Range 25 East in Key West, Monroe County, Florida, 33040 (“Property”). Respondent is responsible for construction and operation of the stormwater management system on the Property. The Property is shown on a location map as Exhibit A.

5. On June 7, 2007, the District issued Environmental Resource Permit number 44-00378-P (“Permit”) to the Respondent to authorize improvements and continuing maintenance for 5 existing stormwater management features, totaling 2.39 acres, all within the City of Key West. One of these stormwater management features, the Jose Marti building site, consists of a detention pond on the corner of Roosevelt Boulevard and Jose Marti Drive, which ultimately discharges to the Atlantic Ocean. Vegetation along the detention pond is dominated by red mangroves; however, black and white mangroves are also present. SFWMD Permit No. 2007-096-CO-ERP, required a Conservation Easement that only allows trimming of mangroves that impede or cause blockage to the flow of stormwater runoff. The Conservation Easement was recorded June 4, 2007 at the Monroe County Clerk of Courts Office, and is Document Number 1646148, Book Number 2298, Pages 1921-1929, attached as Exhibit B (the “Conservation Easement”).

6. On May 19, 2015, District staff inspected the Jose Marti pond littoral shelf and conservation area and found that mangrove trees were trimmed or altered contrary

to the Permit and in violation of the 1996 Mangrove Trimming and Preservation Act, Sections 403.9321-403.9333, Fla. Stat. Several white mangrove trees were cut at ground level and removed. The prop roots of several red mangroves were cut, and the canopy of a large red mangrove, fully rooted and growing within the conservation easement, was removed.

7. On July 30, 2015, the District issued a Notice of Violation, attached as Exhibit C, to the Respondent for Mangrove trimming and/or alteration within the Conservation Easement. The work conducted exceeded the trimming and maintenance authorization in the permit and conservation easement.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

8. Respondent is a person within the meaning of Section 373.019(15), Fla. Stat.

9. Under Sections 373.069(2)(e), 373.413, 373.414 and 373.416, Fla. Stat, the District has jurisdiction over the Respondent, the Property, the stormwater management system, and the construction and maintenance activities.

10. Pursuant to Rule 62-330.020, Fla. Admin. Code, Sections 373.413, 373.414, and 373.416, Fla. Stat., the District is authorized to require permits for construction, alteration and operation or maintenance of stormwater management systems, including activities which impact wetlands. In of its construction permits, the District is authorized to impose reasonable conditions necessary to assure the activities will comply with the provisions of Part IV of Chapter 373, Fla. Stat., and the applicable rules promulgated thereunder, and will not be harmful to the water resources of the District.

11. Pursuant to Rule 62-330.350(2), Fla. Admin. Code, the Governing Board shall impose on any permit granted such reasonable project-specific special conditions as are

necessary to ensure that the permitted activities will meet the conditions for issuance set forth in Rules 62-330.301 and 62-330.302, Fla. Admin. Code.

12. The District finds that the Respondent violated the Permit and specifically Exhibits 2.01D and 2.01G - I of the Permit, attached as Exhibit D of this Consent Order, and the Conservation Easement. Pursuant to Section 373.430(1)(b), Fla. Stat., such failure to comply with any District permit constitutes a violation of Part IV of Chapter 373, Fla. Stat.

13. The District may enforce its rules, permits and orders pursuant to Sections 120.69 and 373.129, Fla. Stat., and may recover a civil penalty for each offense in an amount not to exceed \$10,000 per offense, with each date during which such violation occurs constituting a separate offense. The District may further recover investigative costs, court costs and reasonable attorney's fees.

14. Without admitting liability, Respondent provided the District with reasonable assurances of good faith by entering into a Consent Order with the District in return for the District not initiating judicial or enforcement action for the alleged violations described above. Respondent agrees that all factual and legal matters, alleged and agreed to herein which provide the basis for this Consent Order, including all terms, provisions and matters referred to in the "Findings of Fact" and "Ultimate Facts and Conclusions of Law" sections, shall not be contested in any subsequent legal proceedings which may be brought to enforce the terms of this Consent Order.

15. The District is authorized to enter into agreements pursuant to Section 373.083, Fla. Stat.

16. The District Governing Board has authorized the Executive Director, his designee, or the General Counsel, to execute this Consent Order.

THEREFORE, having reached resolution of this matter, the District and the Respondent mutually agree and it is ordered:

ORDER

17. In lieu of civil penalties, Respondent shall develop standard operating procedures (SOP) and a training program for all maintenance staff, supervisors and management responsible for conducting and overseeing the continued maintenance of stormwater management improvements when vegetative clearing is required. The SOP shall include specific details for trimming natural vegetation in areas where stormwater management features need maintenance. The SOP shall reference, the State of Florida's 1996 Mangrove Trimming & Preservation Act, specifically Sections 403.9326, Fla. Stat., Exemptions, 403.9327, Fla. Stat., General Permits, 403.9328, Fla. Stat., Alteration and trimming of mangroves: permit requirement, and 403.9329, Fla. Stat., Professional mangrove trimmers.

18. Within 60 days of the effective date of this Consent Order, the Respondent shall submit the SOP and ensuing training program to: South Florida Water Management District, Environmental Compliance Bureau, Compliance and Enforcement Supervisor, Wayne P. Blythe, MSC2430, 3301 Gun Club Road, Post Office Box 24680, West Palm Beach, Florida 33416-4680, for review and approval prior to implementation.

19. Within 30 days of the effective date of this Consent Order, Respondent shall, in settlement of the allegations alleged in this Consent Agreement, pay the District's

reasonable investigative costs in the amount of \$2,500.00. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "South Florida Water Management District" and shall be delivered via U.S. Mail or hand delivery at the following address: South Florida Water Management District, Attention: Ms. Layle Knox, Environmental Resource Bureau, MSC2430, 3301 Gun Club Road, Post Office Box 24680, West Palm Beach, Florida 33416-4680. Respondent agrees that the amount, set forth above is reasonable and shall not contest it in any subsequent action regarding this Consent Order

20. Respondent agrees to pay the District stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraphs 16, 17 and 18 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the District, Respondent shall make payment of the appropriate stipulated penalties to the "South Florida Water Management District" by cashier's check or money order. The District may make demands for payment at any time after a violation occurs. Nothing in this paragraph shall prevent the District from filing suit to specifically enforce any of the terms of this Consent Order. Any stipulated penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in Paragraph 18 of this Consent Order. If the District is required to file a lawsuit to recover stipulated penalties under this paragraph, the District will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

21. District representatives may enter the Property during reasonable times to verify compliance with the terms of this Consent Order, Chapter 373, Fla. Stat., or the rules of the District.

GENERAL PROVISIONS

22. The District hereby expressly reserves the right to petition for judicial enforcement of the terms of this Consent Order. In such event, the Respondent and its successors or assigns in interest, shall not contest or deny any fact, legal conclusion, or any other matter or fact set forth in this Consent Order, including the Findings of Fact, Ultimate Facts and Conclusions of Law, penalties, fees or costs set forth herein. If the District successfully petitions or sues for enforcement of this Consent Order, the Respondent, its heirs, successors and/or assigns hereby agree to and shall pay all attorneys' fees (including, but not limited to, the fair market value of in-house counsel fees, as if performed by outside or private counsel, court costs and any other damages sustained by the District). In addition, the District hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violation of applicable statutes or the rules promulgated thereunder, or to alleviate an immediate serious danger to the public health, safety or welfare.

23. Failure to comply with this Consent Order shall constitute a violation of Chapter 373, Fla. Stat., and enforcement proceedings may be brought in any appropriate administrative or judicial forum. If Respondent's non-compliance with this Consent Order leads to an enforcement action by the District, the Respondent consents to the receipt of service of process by registered mail, no signature required, delivered to the Respondent's address.

24. This Consent Order shall take effect after adoption by and execution on behalf of the Governing Board of the District, when the Consent Order is filed with and acknowledged by the Clerk of the District immediately thereafter, and shall remain in full force and effect until its terms and conditions are completed to the satisfaction of the District. The requirements of this Consent Order shall bind and inure to the benefit of the successors and assigns of the Respondent, unless this consent order is modified by the parties hereto. In addition, prior to any sale, transfer, conveyance or lease of the Property, the Respondent shall provide a copy of this Consent Order to any prospective successor in interest. Additionally, the Respondent shall provide notification to the District of the sale, transfer or conveyance of the Property.

25. Respondent, as the owner of the Property, hereby consents to the District recording notice of this Consent Order at the Monroe County Clerk of Court's Office. A copy of this notice is attached as Exhibit E. The terms, conditions, covenants, and provisions of this Consent Order encumber the Property, runs with the Property, and is binding upon and inures to the benefit of the parties hereto, their heirs, successors, and assigns, and all subsequent owners of the Property.

26. Respondent hereby waives the right to request an administrative hearing on the terms of this Consent Order under Sections 120.569 and 120.57, Fla. Stat., and its right to appeal this Consent Order pursuant to Section 120.68, Fla. Stat.

27. Entry of this Consent Order does not relieve the Respondent of the need to comply with all applicable federal, state or local laws, regulation or ordinances, including any District permitting requirements. Also, the Consent Order does not give the Respondent the

authority to conduct any activities on the Property which are under District jurisdiction without first obtaining District authorization, except as authorized herein.

28. Respondent is fully aware that a violation of the terms of this Consent Order may subject the Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per offense per day, costs, reasonable attorney's fees and criminal penalties.

29. Persons who are not parties to this Consent Order, but whose substantial interests may be affected by this Consent Order, may have a right to petition this Consent Order. A notice of rights is incorporated herein and attached hereto as Exhibit F.

30. This Consent Order is a final order from the District, pursuant to Section 120.52(7), Fla. Stat., and is final and effective on the date filed with the Clerk of the District, unless a petition for administrative hearing is filed in accordance with Chapter 120, Fla. Stat., or any other applicable state law. Upon the timely filing of a petition, the Consent Order will not be effective until further order from the District.

31. If any event occurs which causes delay or reasonable likelihood of delay in complying with the requirements or deadlines of this Consent Order, the Respondent shall have the burden of proving that the delay was, or will be, caused by circumstances beyond the control of the Respondent. The failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall not be considered a cause beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, the Respondent shall notify the District orally within 24 hours, or by the next working day and shall, within seven days of oral notification to the District, notify the District in writing of the anticipated length and cause of the delay, the

measures taken or to be taken to prevent or minimize the delay, and the timetable by which the Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay was, or will be, caused by circumstances beyond the reasonable control of the Respondent, the time for performance hereunder shall be extended for a period equal to the time of the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of the Respondent to comply with the notice requirements of this paragraph in a timely manner shall constitute a waiver of the Respondent's right to request an extension of time for compliance with the requirements or deadlines in this Consent Order.

32. In the event it is necessary for the District to initiate legal action regarding this Consent Order, the District may initiate such action in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

DONE AND SO ORDERED in West Palm Beach, Palm Beach County, Florida, this
_____ day of _____, 2015.

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
BY ITS GOVERNING BOARD**

BY: _____
Sharon M. Trost, P.G., AICP
Director, Regulation Division

ATTEST:

BY: _____

_____ ERC Bureau Approval



_____ Legal Form Approval

RESPONDENT

BY: _____
Signature of Authorized Representative

DATE: _____

Type Name: James K. Scholl

Title: City Manager

ATTEST:

BY: _____
Signature

Type Name: Cheryl Smith

Title: City Clerk

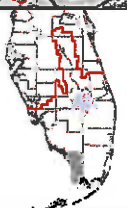


Exhibit : A

Exhibit Created On:
2015-08-21

MONROE COUNTY, FL

 Site Location



Permit No: 44-00378-P
Cost Code: 11114
Application No: 070426-5

REGULATION DIVISION

Project Name: CITY OF KEY WEST
MITIGATION FLOW IMPROVEMENT



South Florida Water Management District

RESOLUTION NO. 07-114

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED DEED OF CONSERVATION EASEMENT BETWEEN THE CITY OF KEY WEST AND THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AT THE JOSE MARTI RETENTION POND; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Deed of Conservation Easement is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3 day of April, 2007.

Authenticated by the presiding officer and Clerk of the Commission on April 4, 2007.

Filed with the Clerk April 4, 2007.


MORGAN McPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

Exhibit B

Return recorded document to:
South Florida Water Management District
3301 Gum Club Road, MSC _____
West Palm Beach, FL 33406

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this 12 day of April, 2007, by the City of Key West ("Grantor") whose mailing address is P.O. Box 1409, Key West, FL 33041

_____ to the South Florida Water Management District ("Grantee"). As used herein, the term "Grantor" shall include any and all heirs, successors or assigns of the Grantor, and all subsequent owners of the "Property" (as hereinafter defined) and the term "Grantee" shall include any successor or assignee of Grantee.

WITNESSETH

WHEREAS, the Grantor is the owner of certain lands situated in Monroe County, Florida, and more specifically described in Exhibit "A" attached hereto and incorporated herein ("Property"); and

WHEREAS, the Grantor desires to provide mitigation to address certain unauthorized activities at sites in Monroe County, which are subject to the regulatory jurisdiction of South Florida Water Management District ("District"); and

WHEREAS, District Consent Order No. SFWM 2007 096 CO ERP ("Consent Order") authorizes this mitigation; and

WHEREAS, this Consent Order requires that the Grantor preserve, enhance, restore and mitigate wetlands and uplands under the District's jurisdiction; and

WHEREAS, the Grantor, in consideration of resolution of the enforcement case against Grantor as addressed in the Consent Order, is agreeable to granting and securing to the Grantee a perpetual Conservation Easement as defined in Section 704.06, Florida Statutes, over the area described on Exhibit "B" ("Conservation Easement").

NOW, THEREFORE, Grantor hereby grants, creates, and establishes a perpetual Conservation Easement for and in favor of the Grantee upon the property described on Exhibit "B" which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. Recitals. The recitals hereinabove set forth are true and correct and are hereby incorporated into and made a part of this Conservation Easement.

2. Purpose. It is the purpose of this Conservation Easement to retain land or water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife.

To carry out this purpose, the following rights are conveyed to Grantee by this easement:

a. To enter upon the Property at reasonable times with any necessary equipment or vehicles to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor at the time of such entry; and

b. To enjoin any activity on or use of the Property that is inconsistent with this Conservation Easement and to enforce the restoration of such areas or features of the Conservation Easement that may be damaged by any inconsistent activity or use.

3. Prohibited Uses. Except for restoration, creation, enhancement, maintenance and monitoring activities, or surface water management improvements, or other activities described herein that are permitted or required by the Consent Agreement, the following activities are prohibited in or on the Conservation Easement:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic or nuisance vegetation in accordance with a District approved maintenance plan;

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

e. Surface use except for purposes that permit the land or water area to remain in its natural or enhanced condition;

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking and fencing;

g. Acts or uses detrimental to such aforementioned retention of land or water areas;

h. Acts or uses which are detrimental to the preservation of the structural integrity

or physical appearance of sites or properties having historical, archaeological, or cultural significance.

4. **Passive Recreational Facilities.** Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any District rule, criteria, the Consent Agreement and the intent and purposes of this Conservation Easement. Passive recreational uses that are not contrary to the purpose of this Conservation Easement may be permitted upon written approval by the District.

a. The Grantor may conduct limited land clearing for the purpose of constructing such pervious facilities as docks, boardwalks or mulched walking trails.

b. The construction and use of the approved passive recreational facilities shall be subject to the following conditions:

i. Grantor shall minimize and avoid, to the fullest extent possible, impact to any wetland or upland buffer areas within the Conservation Easement Area and shall avoid materially diverting the direction of the natural surface water flow in such area;

ii. Such facilities and improvements shall be constructed and maintained utilizing Best Management Practices;

iii. Adequate containers for litter disposal shall be situated adjacent to such facilities and improvements and periodic inspections shall be instituted by the maintenance entity, to clean any litter from the area surrounding the facilities and improvements;

iv. This Conservation Easement shall not constitute permit authorization for the construction and operation of the passive recreational facilities. Any such work shall be subject to all applicable federal, state, District or local permitting requirements

5. **Grantor's Reserved Rights.** Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and which are not inconsistent with any District rule, criteria, permit and the intent and purposes of this Conservation Easement.

6. **No Dedication.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement.

7. **Grantee's Liability.** Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep or maintenance of the Property.

8. Property Taxes. Grantor shall keep the payment of taxes and assessments on the Easement Parcel current and shall not allow any lien on the Easement Parcel superior to this Easement. In the event Grantor fails to extinguish or obtain a subordination of such lien, in addition to any other remedy, the Grantee may, but shall not be obligated to, elect to pay the lien on behalf of the Grantor and Grantor shall reimburse Grantee for the amount paid by the Grantee, together with Grantee's reasonable attorney's fees and costs, with interest at the maximum rate allowed by law, no later than thirty days after such payment. In the event the Grantor does not so reimburse the Grantee, the debt owed to Grantee shall constitute a lien against the Easement Parcel which shall automatically relate back to the recording date of this Easement. Grantee may foreclose this lien on the Easement Parcel in the manner provided for mortgages on real property.

9. Enforcement. Enforcement of the terms, provisions and restrictions of this Conservation Easement shall be at the reasonable discretion of Grantee, and any forbearance on behalf of Grantee to exercise its rights hereunder in the event of any breach hereof by Grantor, shall not be deemed or construed to be a waiver of Grantee's rights hereunder.

10. Assignment. Grantee will hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement except to another organization or entity qualified to hold such interests under the applicable state laws.

11. Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

12. Terms and Restrictions. Grantor shall insert the terms and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Conservation Easement. The Grantor shall comply with all the provisions of the Quitclaim Deed conveyed from United States Department of Interior and the Department of Defense (Exhibit C) and be subject to all applicable provisions of the Clean Water Act of 1977, Executive Order 11990 for Protection of Wetlands, Executive Order 11988 for Floodplain Management and Title 14, Code of Federal Regulations (CFR) Part 77, entitled "Objects Affecting Navigable Airspace".

13. Written Notice. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

14. Modifications. This Conservation Easement may be amended, altered, released or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Monroe County.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions,

restrictions and purposes imposed with this Conservation Easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Conservation Easement is free and clear of all encumbrances that are inconsistent with the terms of this Conservation Easement; and all mortgages and liens on the Conservation Easement area, if any, have been subordinated to this Conservation Easement; and that Grantor has good right and lawful authority to convey this Conservation Easement; and that it hereby fully warrants and defends the title to the Conservation Easement hereby conveyed against the lawful claims of all persons whomsoever.

"A"

Proposed Jose Marti Conservation Easement



Legend

- Conservation Easement GPS Points
- Jose Marti Easement Area

0 60 120 240 Feet



Figure for visualization purposes only.
See GPS coordinates for locations.

Source: 2005 NOAA Post-Wiima Aerials,
Adapted by Chris Boland, SWC 3/2007.

Exhibit B

'B'

Jose Marti Proposed Conservation Easement GPS Points

| Point # | Latitude | Longitude |
|---------|----------------|-----------------|
| 1 | 24.55731468560 | -81.78733374490 |
| 2 | 24.55735963140 | -81.78733611050 |
| 3 | 24.55740457720 | -81.78737395960 |
| 4 | 24.55742823290 | -81.78738815300 |
| 5 | 24.55757016700 | -81.78743309880 |
| 6 | 24.55780672390 | -81.78751352810 |
| 7 | 24.55775468140 | -81.78749460360 |
| 8 | 24.55770500440 | -81.78748277580 |
| 9 | 24.55766242420 | -81.78746621680 |
| 10 | 24.55761984400 | -81.78745202340 |
| 11 | 24.55785166970 | -81.78752535600 |
| 12 | 24.55789661550 | -81.78752535600 |
| 13 | 24.55796048590 | -81.78753481830 |
| 14 | 24.55816392480 | -81.78735266950 |
| 15 | 24.55808586100 | -81.78743546440 |
| 16 | 24.55822542950 | -81.78729826140 |
| 17 | 24.55828456880 | -81.78726277790 |
| 18 | 24.55829876220 | -81.78732901380 |
| 19 | 24.55822542950 | -81.78745438890 |
| 20 | 24.55814500020 | -81.78751352810 |
| 21 | 24.55810478550 | -81.78754901170 |
| 22 | 24.55802908730 | -81.78754901170 |
| 23 | 24.55794865800 | -81.78759159190 |
| 24 | 24.55789424990 | -81.78759159190 |
| 25 | 24.55783274510 | -81.78758686080 |
| 26 | 24.55777833710 | -81.78757739850 |
| 27 | 24.55774995020 | -81.78755137720 |
| 28 | 24.55770973560 | -81.78753008710 |
| 29 | 24.55760328500 | -81.78749460360 |
| 30 | 24.55750866220 | -81.78750406590 |
| 31 | 24.55739748050 | -81.78744019550 |
| 32 | 24.55732651340 | -81.78738578740 |

Doc# 1646148
Bk# 2298 Pg# 1929

MONROE COUNTY
OFFICIAL RECORDS

Exhibit B



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Cost Code 11114

July 30, 2015

Mr. Gary Bowman
City of Key West
604 Simonton Street
Key West, FL 33040

**Subject: Notice of Violation for Environmental Resource Permit Noncompliance
City of Key West Mitigation Flow Improvement
Permit No. 44-00378-P
Application No. 070426-5
Monroe County
PCN: 0568250006492000000**

Dear Mr. Bowman:

As discussed with South Florida Water Management District (District) staff and Karen DeMaria of the City of Key West on May 19, 2015, and as noted at field inspections of the site, this correspondence is to provide notification that the referenced project is in violation of Section 373.430(1)(b), Florida Statutes (FS), and Rule 62-330.350(2), Florida Administrative Code (FAC), as a result of noncompliance with the conditions of the above-referenced Environmental Resource Permit. The activities that are presently not in compliance with the permit include the following:

Mangrove trimming and/or alteration within the recorded Conservation Easement area has been conducted and is not a permitted activity. While trimming had been authorized for areas which were growing beyond the limits of the Conservation Easement Area as normal maintenance of the stormwater management area, the work conducted has exceeded that which was authorized and has jeopardized several mangroves.

As a result of this violation, the District will seek civil penalties, recovery of staff investigative costs and require remediation of the noncompliance issues. The specific terms for resolution of this violation will be forwarded to you after your response to this Notice. The District is authorized under Section 373.129, FS, to seek civil penalties and to recover costs such as staff investigative time and attorney fees.

DISTRICT HEADQUARTERS: 3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • (800) 432-2045

Mailing Address: PO BOX 24680 West Palm Beach FL, 33416-4680

LOWER WEST COAST SERVICE CENTER: 2301 McGregor Boulevard, Fort Myers, FL 33901 • (239) 338-2929 • (800) 248-1201

OKEECHOBEE SERVICE CENTER: 3800 N.W. 16th Blvd, Suite A, Okeechobee, FL 34972 • (863) 462-5260 • (800) 250-4200

ORLANDO SERVICE CENTER: 1707 Orlando Central Parkway, Suite 200, Orlando FL 32809 • (407) 858-6100 • (800) 250-4250

RAV
07/30/2015

sfwmd.gov

Exhibit C

City of Key West Mitigation Flow Improvement
Cost Code 11114
Page 2

Please respond, in writing, within ten (10) days of receipt of this letter with your intentions regarding this matter. Should you have any questions or require additional information, please contact Wayne Blythe at (561) 682-6596, or via e-mail at wblythe@sfwmd.gov, in the West Palm Beach Office.

Sincerely,



Wayne Blythe, Environmental Analyst Supervisor
Environmental Resource Compliance Bureau
West Palm Beach Office
South Florida Water Management District

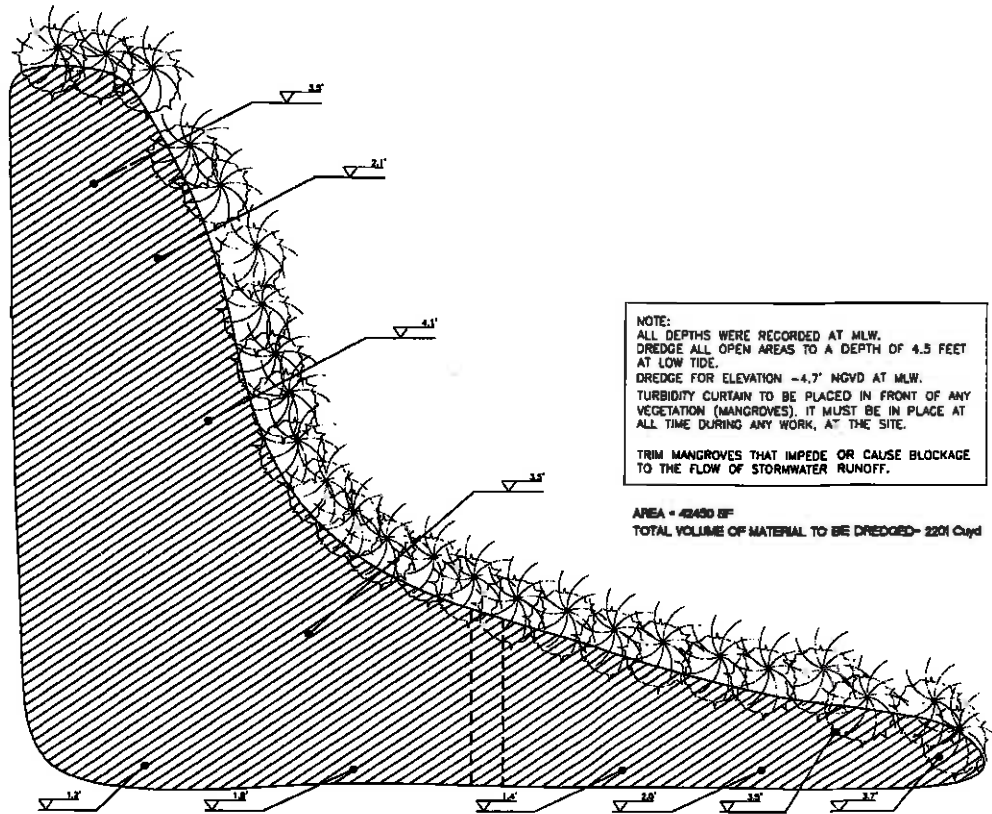
Enclosure:

CERTIFIED MAIL NO. 70042510000283654830

This document is filed in the ePermitting system under Cost Code 11114 via the Enforcement link under Records Search

Exhibit C

EXHIBIT
2.01D



NOTE:
ALL DEPTHS WERE RECORDED AT MLW.
DREDGE ALL OPEN AREAS TO A DEPTH OF 4.5 FEET AT LOW TIDE.
DREDGE FOR ELEVATION -4.7' NGVD AT MLW.
TURBIDITY CURTAIN TO BE PLACED IN FRONT OF ANY VEGETATION (MANGROVES). IT MUST BE IN PLACE AT ALL TIME DURING ANY WORK, AT THE SITE.
TRIM MANGROVES THAT IMPEDE OR CAUSE BLOCKAGE TO THE FLOW OF STORMWATER RUNOFF.

AREA = 42430 SF
TOTAL VOLUME OF MATERIAL TO BE DREDGED= 2201 Cuyd

CHANNEL TOP VIEW



C. M. SELBY Inc.

5906 N. WATERWAY DR.
MIAMI FL 33155
TEL : (305) 882-0715
FAX : (305) 882-0724

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PLAN SHEET NO. FWC(42281)
DATE OF P.L.C. 12-12-07
DESIGNED BY
CHECKED BY
ISSUED BY
DATE

63 3/14/07

| NO. | REVISIONS |
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**JOSE MARTI
DRAINAGE
POND**

SHEET TITLE
CHANNEL DETAIL

SHEET NO.
C-3

Exhibit D



G.M. SELBY, Inc.

ENVIRONMENTAL ASSESSMENT

FOR THE JOSE MARTI STORMWATER DETENTION POND



EXHIBIT *2.01 G*

PREPARED FOR THE CITY OF KEY WEST

MARCH 2007

SCOPE

The primary responsibility of governmental agencies is to their citizens, and their health and safety. After the devastating hurricane season of 2005, the City of Key West became acutely aware of its drainage problems. Standing water, especially in the tropical climate of Key West, is a well-known breeding ground for diseases and their vectors. Standing water also impairs the City's ability to provide emergency services to its citizens. The City of Key West has proposed several projects to relieve its city-wide drainage problems. Below, is one of the proposed projects. Project plans call for the improvement and continuing maintenance of existing drainageways.

- 1- Jose Marti Stormwater Detention Pond- The Jose Marti stormwater detention pond project plans call for the improvement and continuing maintenance of the existing stormwater detention pond by dredging the existing open water area of the stormwater detention pond to a depth not to exceed four (4) feet, six (6) inches. Existing mangroves are to remain.

Location

The corner of Roosevelt Boulevard and Jose Marti Drive.
24°33'28.74"N; 81°47'15.50"W.

Existing Features

The Jose Marti Drainage detention pond site was visited on March 4, 2007. Water from Jose Marti drainage detention pond drains directly to the Atlantic Ocean via Garrison Bight. The existing vegetation of the detention pond shoreline appeared to be dominated by red mangrove (*Rhizophora mangle*). Black mangrove (*Avicennia germinans*), white mangrove (*Laguncularia racemosa*), and Brazilian Pepper (*Schinus terebinthifolius*) were also observed. Except for heavy growth of green alga, the unconsolidated nature of the bottom in the pond allowed for little benthic growth. Mangrove upside down jelly fish (*Cassiopea xamachana*) was observed. All existing mangroves are to remain.

EXHIBIT 2.01 H

Environmental Impacts

The project plans for the Jose Marti stormwater detention pond call for the improvement and continuing maintenance of the existing stormwater detention pond by dredging the existing open water area of the stormwater detention pond to a depth not to exceed four (4) feet, six (6) inches. All existing native vegetation is to remain.

An estimated two-thousand two-hundred (2201) cubic yards of material will be dredged from the Poinciana pond. There should be no, or limited temporary damage, to the mangroves at the Jose Marti stormwater detention pond. All existing mangroves are to remain.

Continuing and on-going maintenance will include trimming of mangrove roots and limbs that encroach into the drainageway impeding the flow of stormwater. Periodic maintenance to remove debris and maintain the depth of drainageway may also impact mangroves.

Recommendations

Plans should specify turbidity screens that go across the canals, crossing screens should be as close to the work as possible, and move upstream as the work does. Outfalls and culverts should be closed-off during construction.

Ripraping along the shore edge and mangrove margin in the pond will define the maintenance area within the main drainage channel, and may slow the rate of mangrove growth out into it. Riprap will provide some habitat in the pond, and may help reduce turbidity in the pond.

EXHIBIT 2.01 I



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
Notice of Consent Order**

Document Prepared By:
South Florida Water Management District

Return Recorded Document To:
Regulation Division
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406
MSC 2430

RE: Respondent: City of Key West
Parcels: 0568250006492000000
County: Monroe

A Consent Order between City of Key West and the South Florida Water Management District ("SFWMD") Regulation Division, District Order Number _____; Cost Code 11114.

Notice

The SFWMD hereby gives notice that a Consent Order has been entered into between City of Key West, a ("Respondent") and the SFWMD pertaining to the real-property described on Exhibit E-1, attached hereto and made a part hereof ("Property"). This Property is subject to the requirements and restrictions set forth in Chapter 373, Florida Statutes, and the provisions of the Consent Order.

Within thirty (30) days of any transfer of interest or control of any portion of the property described in the attached Consent Order, the Respondent must notify the SFWMD in writing of the property transfer.

The Property identified in the Consent Order is subject to restoration plans or other requirements such as obtaining a permit. Purchasers are put on notice that such restoration plans or permit requirements exist. The purchasers are subject to compliance with all permitting and other requirements under Chapter 373, and Chapter Rule 62.330 Florida Statutes and Title 40E Florida Administrative Code, for activities occurring on the Property.

Conflict Between Notice And Consent Order

This Notice of Consent Order does not include all of the information contained in the Consent Order. The entire Consent Order may be obtained by contacting the Environmental Resource Compliance Bureau, 3301 Gun Club Road, West Palm Beach, FL 33406. Provisions in this Notice of Consent Order shall not be used in interpreting the Consent Order provisions. In the event of conflict between this Notice of Consent Order and the Order itself, the Consent Order shall control.

Exhibit E

Release

This Notice may not be released or removed from the public records without the prior written consent of the South Florida Water Management District. The contact for this release is Wayne Blythe, Supervisor - Environmental Resource Compliance Bureau, 3301 Gun Club Road, West Palm Beach, FL 33406.

The terms, conditions, covenants, and provisions of the Consent Order encumber the real property described above Parcels, herein ("Property"), shall run with the Property, and shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors, and assigns, and all subsequent owners of the Property.

This Notice is executed on this _____ day of _____, 20_____.

South Florida Water Management District

District Clerk

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____ by _____, as District Clerk of the South Florida Water Management District a public corporation, on behalf of the public corporation. He/She is personally known to me or has produced _____ as identification.

(seal)

Notary Public

Print

My Commission Expires: _____

Exhibit E

Legal Description

A tract of land located on the Island of Key West, Monroe County, Florida and being more particularly described as follows:

Begin at the intersection of the Northeasterly Right-of-Way Line of Leon Street and the extension of the Northwesterly Right-of-Way Line of Virginia Street (said point also being the Northeasterly Right-of-Way Line of Jose Marti Drive; thence N 53°31'38" E along the said extension of the Northwesterly Right-of-Way Line of Virginia Street for 402.95 feet; thence S 36°31'38" E for 6.07 feet; thence S 53°31'38" W for 402.95 feet to the said Northeasterly Right-of-Way Line of Leon Street; thence N 36°28'00" W along the said Northeasterly Right-of-Way Line of Leon Street for 6.07 feet to the Point of Beginning. Containing 2445.91 Square Feet, more or less.

NOTICE OF RIGHTS

As required by Sections 120.569 and 120.60(3), Fla. Stat., the following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all of the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a SFWMD decision which affects or may affect their substantial interests shall file a petition for hearing with the Office of the District Clerk of the SFWMD, in accordance with the filing instructions set forth herein, within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: (1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, or posting that the SFWMD has or intends to take final agency action, or publication of notice that the SFWMD has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

If the District takes final agency action which materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional Rule 28-106.111, Fla. Admin. Code, point of entry.

Any person to whom an emergency order is directed pursuant to Section 373.119(2), Fla. Stat., shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

FILING INSTRUCTIONS

A petition for administrative hearing must be filed with the Office of the District Clerk of the SFWMD. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at SFWMD headquarters in West Palm Beach, Florida. The District's normal business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.

Exhibit F

- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the SFWMD's security desk does not constitute filing. It will be necessary to request that the SFWMD's security officer contact the Office of the District Clerk. An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at clerk@sfwmd.gov. The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document. A party who files a document by e-mail shall (1) represent that the original physically signed document will be retained by that party for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause and that the party shall produce it upon the request of other parties; and (2) be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed.

INITIATION OF AN ADMINISTRATIVE HEARING

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Fla. Stat., and Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, SFWMD file number or any other SFWMD identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

MEDIATION

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401–.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Section 120.68, Fla. Stat., and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal with the Office of the District Clerk of the SFWMD in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the clerk of the appropriate district court of appeal.

Exhibit F