



# FLORIDA DEPARTMENT OF Environmental Protection

Southwest District Office  
13051 North Telecom Parkway #101  
Temple Terrace, Florida 33637-0926

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Noah Valenstein**  
Secretary

February 24, 2021

Tom Harmer, Town Manager  
Town of Longboat Key  
501 Bay Isles Road  
Longboat Key, Florida 34228  
[THarmer@longboatkey.org](mailto:THarmer@longboatkey.org)

Re: Executed Consent Order OGC File No. 20-1261  
Longboat Key Utilities  
Facility ID# FLSS0A108  
Manatee County

Dear Mr. Harmer:

Enclosed please find the executed Consent Order OGC No. 20-1261 regarding the above referenced facility. The effective date of the Consent Order is the filing date entered by the designated Department Clerk on the signature page.

Should you have any questions or comments, please contact Derrick Hudson at (813) 470-5769 or via email at [Derrick.S.Hudson@FloridaDEP.gov](mailto:Derrick.S.Hudson@FloridaDEP.gov). Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Mary E. Yeargan".

Mary E. Yeargan, PG  
Southwest District Director  
Florida Department of Environmental Protection

cc: Isaac Brownman, Town of Longboat Key, [IBrownman@longboatkey.org](mailto:IBrownman@longboatkey.org)  
Ed Steinmeyer, Steinmeyer Fiveash LLP, [cas@steinmeyerfiveash.com](mailto:cas@steinmeyerfiveash.com)  
Maggie Mooney, Town of Longboat Key, [mmooney@longboatkey.org](mailto:mmooney@longboatkey.org)  
Mary Yeargan, FDEP/SWD, [Mary.Yeargan@FloridaDEP.gov](mailto:Mary.Yeargan@FloridaDEP.gov)  
Erica Peck, FDEP/SWD, [Erica.Peck@FloridaDEP.gov](mailto:Erica.Peck@FloridaDEP.gov)  
Hannah Westervelt, FDEP/SWD, [Hannah.Westervelt@FloridaDEP.gov](mailto:Hannah.Westervelt@FloridaDEP.gov)  
Kelley Boatwright, FDEP/SWD, [Kelley.M.Boatwright@FloridaDEP.gov](mailto:Kelley.M.Boatwright@FloridaDEP.gov)  
Lea Crandall, FDEP/TAL, [Lea.Crandall@FloridaDEP.gov](mailto:Lea.Crandall@FloridaDEP.gov)  
Derrick Hudson, FDEP/SWD, [Derrick.S.Hudson@FloridaDEP.gov](mailto:Derrick.S.Hudson@FloridaDEP.gov)

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE  
SOUTHWEST DISTRICT

v.

OGC FILE NO. 20-1261

TOWN OF LONGBOAT KEY

**CONSENT ORDER**

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and the Town of Longboat Key (Respondent) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent neither admits nor denies but, for the purposes of resolving this matter, does not contest the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (F.S.), and the rules promulgated and authorized in Title 62, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Order.

2. Respondent is a Florida municipal corporation subject to regulation under Chapter 403, F.S.

3. Respondent is the owner and is responsible for the operation of a portion of a collection system that is connected to the Manatee County Southwest Regional Water Reclamation Facility. Respondent's collection system has been assigned the identification number, FLSS0A108 (Facility), which was issued on July 6, 2020. Flow from the Facility is transported to Manatee County Utilities via a single pipe that extends underneath Sarasota Bay. The Facility is located at 5101 65th Street West, Bradenton, FL 34210 (Property). Respondent owns the Property on which the Facility is located but does not own any property within or east of Sarasota Bay or within Property 2 (as defined below).

4. On June 18, 2020, Respondent was notified by Manatee County Utilities that there was a discrepancy in Manatee County's meter flow data regarding the Facility.

5. From June 19, 2020 through June 29, 2020, Respondent and Manatee County evaluated their respective facilities and systems to determine the cause for the discrepancy in flow data with the investigation resulting in Manatee County replacing the meter in question.

6. On June 29, 2020, Respondent met with Manatee County to coordinate valve closures in order to determine the cause of Manatee's flow meter discrepancies. The behavior of the system following the valve closures indicated a system leak, so Respondent and Manatee staff immediately began physically traversing the force main route to identify any physical evidence of a leak. Respondent discovered a breach in the pipe (approximately 350 feet north of Sarasota Bay in a mangrove fringe on Property 2) that transports wastewater to Manatee County Utilities which was causing the discrepancy in flow data.

7. An access road and pad were constructed by the emergency leak repair contractor through the mangrove fringe to access the breached pipe so repairs could be made. This construction and the wastewater discharged from the force main resulted in dredge and fill activities and mangrove alteration impacting at least 0.54 acres or more. These activities took place at approximately 27°26'0.0655"x-82°37'43.7153" (Parcel ID 6146901509), Section 18, Township 35S, Range 17E, Bradenton, Florida (herein referred to as Property 2).

8. On December 30, 2020, Department staff observed that mangrove damage beyond the 0.54 acres referenced in paragraph 7 had occurred east of the access road. This additional damage was confirmed by a report submitted by Respondent on January 14, 2021 titled "Technical Memorandum dated October 5, 2020" (attached hereto as Exhibit C).

9. Property 2 is owned by the Long Bar Pointe LLLP (Property Owner). The Department has assigned Environmental Resource/Mitigation Bank Permit Site No. 338349 to Property 2. On January 21, 2021, the Department provided a preliminary draft copy of the Order to Property Owner for review and suggested Property Owner

be a signatory to this Order for site access purposes to Property 2 only. It is the Department's understanding that Property Owner prefers to negotiate a separate access agreement with Respondent upon mutually agreeable terms related to the matters set forth herein.

10. The events described in paragraphs 6 and 7 constitute violations by Respondent of Rules 62-604.500(3), and 62-604.130(1), F.A.C. for failure to maintain equipment and for the unauthorized discharge of wastewater.

11. Respondent violated Section 403.9328(1), F.S. for failure to obtain authorization from the Department for the alteration of mangroves as described in paragraphs 7 and 8. The activities were conducted within the Respondent's easement and on Property 2 which is within the landward extent (mangrove fringe) of Sarasota Bay, a Class III Outstanding Florida Waterbody, as defined by Rule 62-302.700 F.A.C.

12. Respondent violated Rule 62-330.020(2)(a), F.A.C. for failure to obtain authorization from the Department prior to conducting dredge and fill activities within wetlands as described in paragraph 7. The activities were conducted within the Respondent's easement and on Property 2 which is within the landward extent (mangrove fringe) of Sarasota Bay, a Class III Outstanding Florida Waterbody, as defined by Rule 62-302.700 F.A.C.

13. On July 1, 2020, Respondent began sampling the surface waters of Sarasota Bay for Fecal coliform and *Enterococci*. The analyses were performed 3 times per week over a period of 4 weeks. The analyses yielded no evidence of impact from the discharge on bacteria levels in Sarasota Bay.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

**ORDERED:**

14. Respondent shall comply with the following corrective actions within the stated time periods:

a) Within 120 days of the effective date of this Order, Respondent shall submit a Sewer Overflow Response Plan (SORP) to the Department for approval. The SORP must include, but is not limited to, procedures for sampling wastewater that is discharged,

and all surface water bodies impacted by the discharge, and the number and location of samples to be obtained. Samples shall be analyzed based on appropriate surface water quality criteria in accordance with Rule 62-302, F.A.C. and analytical results shall be reported to the Department within 24 hours of obtaining said results. Daily sampling shall continue until sample results meet water quality standards for the impacted surface water body.

b) Within 60 days of the effective date of this Order, Respondent shall provide a Uniform Mitigation Assessment Method (UMAM) for the impacts described in paragraphs 6, 7, and 8 of this Order in accordance with Rule 62-345, F.A.C. to the Department for approval.

c) Within 30 days of Department approval of the UMAM, Respondent shall purchase the applicable saltwater forested UMAM credits and shall provide the Department with documentation confirming the credits have been deducted from the ledger of Nature Coast Mitigation Bank (SWFWMD ERP permit number 43-042778.000).

d) Within 90 days of the effective date of this Order, Respondent shall submit to the Department a Corrective Action Plan (Plan) signed and sealed by a Florida licensed Professional Engineer, detailing the steps the Town will take to ensure, according to reasonable and customary utility and engineering standards, the safe transmission of wastewater from Respondent's Facility to Manatee County Southwest Regional Water Reclamation Facility. The Plan shall include details of the short term and long-term steps to be taken along with a timeline of start and completion dates. If the Department requires additional information for the Plan, the Department may notify the Respondent in writing by issuing a request for additional information (RAI). The Respondent shall submit the required information identified in the RAI within the timeframe provided for in the RAI. Upon the Department's approval of the Plan, it shall become an enforceable component of this Order and Respondent shall conduct the work detailed in the approved Plan within the timeframes specified thereunder.

e) Within 365 days of the effective date of this Order, Respondent shall develop and submit to the Department, an operation and maintenance manual (O&M Manual) signed and sealed by a Professional Engineer licensed in Florida, for reliable and efficient operation and maintenance of the collection/transmission system in accordance with

Rule 62-604.500, F.A.C. The detail of the O&M Manual shall be consistent with the complexity of the system. The O&M Manual shall be developed in accordance with the technical guidance document contained in Rule 62-604.300(4) and (5)(i), F.A.C., and the unique requirements of the individual wastewater system and shall provide the operator with adequate information and description regarding the design, operation, and maintenance features of the system involved, including an emergency response plan. Upon the Department's approval of the O&M Manual, Respondent shall operate the collection/transmission system in accordance with same.

f) Every calendar quarter after the effective date of and until the requirements of this Order are completed, Respondent shall submit in writing to the Department a report containing information concerning the status and progress of projects being completed under this Order, information as to compliance or noncompliance with the applicable requirements of this Order, any reasons for noncompliance, and the status of its effort to ensure the safe transmission of wastewater from Respondent's Facility to Manatee County Southwest Regional Water Reclamation Facility according to reasonable and customary utility and engineering standards. These reports shall also include a projection of the work to be performed pursuant to this Order during the 12-month period which will follow the report. These reports shall be submitted to the Department within 30 days following the end of the quarter.

15. Respondent shall make all reasonable efforts to obtain site access from the Property Owner, as defined in Paragraph 9, specifically for the purpose of completing the following corrective actions and activities described below in sub paragraphs 15a) through 15d)

a) Respondent shall implement and complete the *Restoration Actions* attached hereto and incorporated herein as **Attachment A** in the manner and within the time frames specified therein.

b) Once the *Restoration Actions* have been completed, the Respondent shall implement and complete the *Maintenance and Monitoring Actions* attached hereto and incorporated herein as **Attachment B** in the manner and within the time frames specified therein.

c) Respondent shall remove all fill material used to gain access through the mangroves and return the area to pre-fill conditions, in the manner described and within the timeframes contained in Attachment A and Attachment B attached and incorporated herein.

d) Respondent shall continue to monitor the impacted areas identified in paragraphs 7 and 8 as well as adjacent areas as required in Attachment A, to ensure any additional impacts are properly documented. Impacts other than those described in paragraphs 7 and 8 shall be subject to the provisions of the corrective actions contained herein. Maintenance and monitoring shall be conducted in accordance with Attachment B.

e) With the exception of the activities described in the *Restoration Actions*, Respondent shall not conduct any dredging, filling, mangrove alteration, or construction activities on or within the landward extent of wetlands or surface waters without first obtaining a valid Department permit or written notification from the Department that the activities are exempt from applicable Department permitting requirements; nor shall the Respondent conduct any activities on state owned lands below the ordinary or mean high water lines without first obtaining a lease, easement, or other consent of use from the Board of Trustees of the Internal Improvement Trust Fund (Board) or the Department on the Board's behalf.

16. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions and monitoring required by paragraphs 14 and 15 within 5 years of the effective date of this Order and be in full compliance with Rules 62-330, 62-600 and 62-604, F.A.C., and Section 403.9328, F.S. regardless of any intervening events or alternative time frames imposed in this Order.

17. Within 60 days of the effective date of this Order, Respondent shall submit a written estimate of the total cost of the corrective actions required by this Order to the Department. The written estimate shall identify the information the Respondent relied upon to provide the estimate.

18. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$188,382.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$187,382.00 for civil penalties and \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of

this Order

19. In lieu of making cash payment of \$187,382.00 in civil penalties as set forth above, Respondent may elect to offset this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project and may not be a corrective action requirement of the Order or otherwise required by law. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$281,073.00. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election either electronically or by certified mail within **15 days** of the effective date of this Consent Order. **Notwithstanding the election to implement an in-kind project, payment of the remaining \$1,000.00 in costs must be paid within 30 days of the effective date of the Consent Order.**

a) If Respondent elects to implement an in-kind project as provided above, then Respondent shall comply with all the requirements and timeframes in Exhibit D entitled In-Kind Projects.

b) In the event that Respondent elects to off-set civil penalties including stipulated penalties in paragraphs 20 and 23 by implementing an in-kind penalty project which is approved by the Department, during the period that this Order remains in effect or during the effective date of any Department issued Permit to Respondent whichever is longer (Prohibited Transfer Duration), Respondent shall not transfer or use funds obtained by the Respondent from the collection of sewer rates for any purpose not related to the management, operation, maintenance, or other lawful purposes of the Sewer System or to any capital improvement needs of the Sewer System (hereinafter, Prohibited Transfer). Respondent shall annually certify to the Department using the Annual Certification Form located on Exhibit D to this Order that no Prohibited Transfer has occurred. In the event of any Prohibited Transfer, the In-Kind project option shall be forfeited, and entire civil penalty shall immediately become due and owing to the Department irrespective of any expenditures by the Respondent in furtherance of the In-Kind project. Notwithstanding anything herein to the contrary, any



financial obligations of the Respondent hereunder are secured by a lien on the Net Revenues of the System and nothing herein limits any financial obligations of the Respondent to any particular source of funds or revenues; provided, however, such obligations are junior and subordinate in all respects to the Bonds and any Parity Contract Obligations as to lien on and source and security for payment from such Net Revenues (as such terms are defined in Ordinance 2020-11 enacted by the Town Commission of the Respondent on November 2, 2020).

20. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) 14 through 16 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment and shall do so as further described in paragraphs 21 and 22, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 18 of this Order.

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

22. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Derrick Hudson, the Department's Domestic Wastewater Compliance Inspector, Department of Environmental Protection, Southwest District Office, 13051 North Telecom Parkway, Suite 101, Temple Terrace, Florida 33637, [SWD\\_DW@FloridaDep.gov](mailto:SWD_DW@FloridaDep.gov). Respondent shall also provide a copy of all submittals required by this Order to the Department's Mitigation Banking Team at [FDEPMitigationBankTeam@FloridaDEP.gov](mailto:FDEPMitigationBankTeam@FloridaDEP.gov).

23. Upon the effective date of this Order, Respondent shall pay the Department stipulated penalties for any discharges of wastewater from the wastewater collection/transmission system.

Respondent shall pay stipulated penalties as follows:

<u>Amount per Day per Discharge</u>	<u>Discharge Volume</u>
\$1,000.00	up to 5,000 gallons
\$2,000.00	5,001 to 10,000 gallons
\$5,000.00	10,001 to 25,000 gallons
\$10,000.00	25,001 to 100,000 gallons
\$15,000.00	in excess of 100,000 gallons

24. Respondent shall allow all authorized representatives of the Department access to the Facility at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

25. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor 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 be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for

performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

26. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

27. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

28. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

29. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, and criminal penalties.

30. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

31. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent

and the Department, and filed with the clerk of the Department.

32. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

33. This Consent Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

34. Respondent shall publish the following notice in a newspaper of daily circulation in Manatee County, Florida. The notice shall be published one time only within 30 days of the effective date of the Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF CONSENT ORDER

The Department of Environmental Protection ("Department") gives notice of agency action of entering into a Consent Order with THE TOWN LONGBOAT KEY pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the unauthorized discharge and mangrove alteration associated with facilities located at Parcel ID 6147110509. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Southwest District Office, 13051 North Telecom Parkway, Suite 101, Temple Terrace, Florida 33637.

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:


a) The OGC Number assigned to this Consent Order;

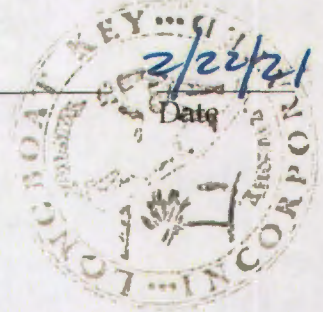
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at [Agency\\_Clerk@floridadep.gov](mailto:Agency_Clerk@floridadep.gov), within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Southwest District Office, 13051 North Telecom Parkway, Suite 101, Temple Terrace, Florida 33637. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.


35. Rules referenced in this Order are available at  
<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>

FOR THE RESPONDENT:

  
Thomas A. Harmer, Town Manager  
Town of Long Boat Key

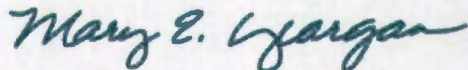


Attest:

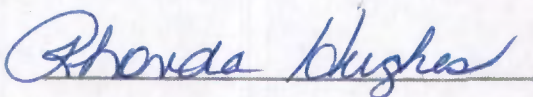
  
Trish Shinkle, Town Clerk

DONE AND ORDERED this 24th day of February, 2021, in Hillsborough County, Florida.

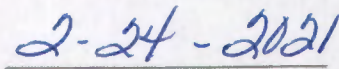
STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
Mary E. Yeargan, PG  
District Director  
Southwest District

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.



Clerk



Date

Final Clerked Copies furnished to:  
Lea Crandall, Agency Clerk  
Mail Station 35





## Attachment A

### RESTORATION ACTIONS

1. Within 30 days of the effective date of this Order, Respondent shall evaluate the impacts described in paragraphs 7 and 8 and any further mangrove mortality associated with the discharge and events described or related to those in paragraphs 6, 7, and 8 and submit the evaluation ("Evaluation Summary") to the Department for review and approval. The Evaluation Summary shall include but is not limited to the following information:
  - a. A survey which illustrates all mangrove and wetland impacts from events described above in paragraphs 6, 7 and 8.
  - b. Soil analyses of the area illustrated in Exhibit C. The analyses shall include at a minimum the area and depth of fill, any contaminants as defined in 403.031(1), F.S. and elevated nutrients.
2. Within 45 days of Department approval of the Evaluation Summary, Respondent shall submit a Restoration Plan to the Department for review and approval. The Restoration Plan is not limited to but shall at a minimum include the following items:
  - a. A survey signed and sealed by a Florida licensed surveyor with the boundaries of the restoration area explicitly illustrated.
  - b. A soil remediation plan if soil analyses documents contaminants and/or excess soil nutrient contents within the restoration area.
  - c. An exotic and nuisance vegetation removal and maintenance plan within the restoration area.
  - d. All exotic vegetation shall be removed from the restoration area using hand-held equipment in a manner that will minimize impacts to the existing wetland plants and will not cause ruts in the wetland soils which will impede or divert the flow of surface waters
  - e. A planting plan which includes:
    - I. the type of mangrove species,
    - II. the number of plants proposed,

- III. the size of the plants,
- IV. the spacing of the plants.

3. Within 15 days of the approval of the Restoration Plan, Respondent shall complete the following pre-restoration actions.
  - a. Respondent shall stake the boundaries of the restoration area, which is more specifically depicted on the survey approved in the Restoration Plan prior to any restoration work required in these Restoration Actions. This staked line shall remain in place during all phases of restoration and no wetlands or waters of the state outside the restoration area shall be adversely disturbed or affected by restoration.
  - b. Respondent shall ensure best management practices for erosion control shall be implemented prior to restoration commencement and shall be maintained at all times to prevent siltation and turbid discharges in excess of Outstanding Florida Waterbody water quality standards, pursuant to Rule 62-302, F.A.C. Respondent shall submit a Best Management Practice (BMP) plan prior to implementation for approval by the Department. Methods may include but are not limited to the use of staked hay bales, staked filter cloth, sodding, seeding, staged construction and the installation of turbidity screens around the restoration area.
  - c. Respondent shall request and receive approval from the Department for the activities described in subparagraphs 1a. through 1b. within 24 hours of completion.
4. Within 30 days of approval of requirements of Paragraph 3, Respondent shall complete the following actions:
  - a. Respondent shall notify the Department at least 48 hours prior to the commencement of work.
  - b. Respondent shall be responsible for ensuring erosion control devices/procedures are inspected and maintained daily during all phases of restoration authorized by this Order until areas disturbed

- during restoration are sufficiently stabilized to prevent erosion, siltation, and turbid discharges.
- c. Respondent shall remove all fill material brought onto Property 2 and the easement from both wetland and upland areas. This includes any vegetative debris and fill material that has eroded prior to the installation of silt fences.
  - d. All fill material shall be disposed of in an approved self-contained upland site to prevent water quality violations pursuant to 62-302, F.A.C.
  - e. Respondent shall restore the area to pre-fill conditions based on the approved Evaluation Summary.
  - f. Within 24 hours, Respondent shall notify the Department of completion of fill removal and request an inspection by Department staff to approve site conditions and elevations prior to planting.
  - g. Within 20 days of completion, Respondent shall submit an as-built survey with elevations documenting the fill removal to the Department for approval.
5. Upon approval by the Department of the requirements in Paragraph 4 , Respondent shall complete the planting plan included in the approved Restoration Plan described in paragraph 2.

## Attachment B

### MAINTENANCE AND MONITORING ACTIONS (MANGROVES)

1. Upon completion of all actions required in Attachment A, Respondent shall implement the following Maintenance and Monitoring Actions:
2. A "time zero" Monitoring Report shall be submitted within thirty (30) days of completion of the planting of the restoration area. It shall include the following:
  - a. Written notification that the *Restoration Actions* have been completed.
  - b. Enough color photographs to show the entire completed restoration area taken from fixed reference points shown on a plan-view drawing.
  - c. Nursery receipts for all plants used in the restoration.
  - d. Number and spacing of each species planted.
3. Subsequent monitoring reports shall be submitted for 5 years, on a semiannual basis. These reports shall be submitted to the Department within 30 days following the end of the previous 6-month period. The purpose of the monitoring shall be to determine the success of the restoration. The monitoring reports shall include the following information:
  - e. Respondent's name, address, and OGC number (File No. 20-1261).
  - f. Date of inspection.
  - g. Color photographs taken from the previously established fixed benchmark locations, to accurately depict site conditions.

- h. The number of trees planted in the restoration area that have survived.
  - i. A written summary describing the success of the restoration area including steps needed and/ or taken to promote future success such as replanting and/ or nuisance or exotic species removal.
  - j. Evaluation of any further mangrove mortality adjacent to the impacts described in paragraphs 7 and 8 in accordance with paragraph 15 and Attachment A.
4. "Success of the restoration" means that at the end of the monitoring schedule the following success criteria are met in the restoration area. At each inspection in the Monitoring Schedule, Respondent shall replace enough dead plants to ensure that at least 80 percent of the original number of each species planted in the restoration area is alive and is demonstrating normal growth and greater aerial extent coverage.
- k. Any replanting for restoration and mitigation under this Order must result in at least 80 percent survival of the planted mangroves 2 year after planting. If the survival requirement is not met, additional mangroves must be planted and maintained until 80 percent survival is achieved 1- year after the last mangrove planting.
  - l. A maximum of 1% coverage by exotic and nuisance species.
  - m. The restoration area has been inspected by the Department and the Department has informed the Respondent in writing that the restoration area has achieved the required success criteria as defined in this Order.

5. If it is determined by the Department, based on visual inspection and/or review of the monitoring reports, that the restoration is not meeting the above specified success criteria, Respondent shall identify the cause for the planting failure and an alternative restoration plan shall be submitted to the Southwest District Office and shall meet the following requirements:
  - n. Shall submit the plan within thirty (30) days of notification by the Department of failure to meet the success criteria.
  - o. Shall implement the alternative plan no later than sixty (60) days after receiving Department approval.
  - p. Shall restart monitoring and maintenance program.



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# Technical Memorandum

**date** October 5, 2020

**to** Isaac Brownman - Town of Longboat Key Public Works Director

**from** Doug Robison, PWS; Justin Saarinen, GISP; Bryan Flynn, P.E.

**subject** Longboat Key Mangrove Assessment Report

## Introduction

On June 29, 2020 a leak was discovered in the subaqueous domestic sewage force main owned and operated by the Town of Longboat Key (Town). The force main extends from Lift Station D on Longboat Key, underneath Sarasota Bay, to the Manatee County Southwest Regional Water Reclamation Facility where the sewage effluent is treated. The leak occurred underneath the mangrove fringe on the Manatee County side of Sarasota Bay. Approximately 11 millions of gallons of effluent were released from the leak before it was repaired a few days later. To repair the force main leak, it was necessary for contractors to construct a temporary fill road into the mangroves. On August 3, 2020 the Town requested a proposal from Environmental Science Associates (ESA) to assess the damage to mangroves from both the sewer leak and the repair construction activities. In addition, the scope of work included the development of a restoration plan and cost estimate to remediate the mangrove damages. This Technical Memorandum summarizes the methods and findings of this effort.

## Methods

ESA Scientists located impact area wetland lines, the edge of mangroves, including the height (DBH and type of vegetation in the area. The data collected were compared to vegetation signatures from the latest pre-force main break aerial imagery. Elevation data points were collected throughout the haul road and in the existing vegetation using an EOS Arrow Gold Real-time Kinematic (RTK) Global Positioning System (GPS) with centimeter accuracy. This GPS was linked to the Collector App that automatically saves and uploads all data points, elevations, photographs and field notes to an ArcGIS map. The horizontal datum (coordinates) were referenced to the Florida State Plane Coordinate System, East Zone, North American Datum of 1983/90 (NAD 83/90). The vertical datum (elevations) were referenced to the North American Vertical Datum of 1988 (NAVD 88) and were tied to published horizontal and vertical control points near the project area.

ESA also deployed a UAV drone to take both oblique and ortho-rectified, color-infrared aerial images of the post-leak site conditions. These aerials were utilized to compare vegetation types and coverages in the location of the haul road prior to the leak. In addition, the impact areas were carefully assessed in the field using standard methods for assessment of wetland and mangrove communities by a certified Professional Wetland Scientist (Doug Robison)

and a certified Arborist (Bradford Young). Using both site assessment observations as well as a comparison of pre- and post-leak aerial imagery, the area of mangroves impacted by the discharge of sewage as well as the construction of the fill road, were mapped and quantified using the ArcPro geospatial information system (GIS) software. This information was then applied in a pre- and post-impact analysis using the Uniform Mitigation Assessment Method (UMAM) to determine the functional loss associated with the sewer leak event. Finally, a proposed restoration/mitigation plan was developed for the damaged areas, including a probable cost estimate for the work.

## Results

Aerial imagery of the study area prior to the sewer leak is shown in **Figure 1**. The source of this pre-leak image is Manatee County 2020. In this image, the fill associated with the original construction of the sewer force main is evident, extending from the open water northward, approximately 300 feet into the mangrove fringe.

ESA used a UAV drone to conduct a flyover of the site in the post-leak condition in September 2020. **Figure 2** shows the aerial imagery captured from the drone. The image shows the location of the leak, the earthen fill road, and the altered mangrove canopy east and north of the leak. It should be noted that the fill road extends from uplands, through poor-quality palustrine (freshwater) wetlands, into the mangrove community.

Combining field observations with the post-leak aerial imagery analysis, ESA was able to calculate the impact areas of the affected wetlands associated with the sewer leak, the road fill, and associated vegetation clearing and clear cutting. **Table 1** below summarizes the impact area by wetland and impact type, while **Figure 3** shows the location and extent of each of the impact areas.

**TABLE 1**  
**SUMMARY OF IMPACT AREAS BY WETLAND AND IMPACT TYPE**

<b>Impact Area - Type</b>	<b>Acres</b>
Primary Intertidal Wetland – Sewage Leak	1.25
Primary Intertidal Wetland – Road Fill	0.31
Primary Freshwater Wetland – Road Fill	0.13
Secondary Intertidal Wetland – Clear Cutting	0.07
Secondary Freshwater Wetland – Clear Cutting	0.03
<b>Total</b>	<b>1.79</b>

### **Sewer Leak Impacts**

As shown in Table 1, the most significant impact associated with this event was the mortality of mangroves caused by the sewer leak itself, estimated to be 1.25 acres, which includes mangroves that were clearly dead, as well as an additional fringe of mangrove trees that exhibited physiological stress, evident as yellowing of leaves. The cause of the mangrove mortality was most likely hydrologic stress and the suffocation of mangrove pneumatophores. The vast majority of the mangroves killed by hydrologic stress were black mangroves (*Avicennia germinans*); however, both red mangroves (*Rhizophora mangle*) and white mangroves (*Laguncularia racemosa*) were also impacted on the waterward and landward edges of the impact area, respectively. As determined in the field, the average sizes of impacted black and red mangroves were 15 feet tall and 6.2-inch



diameter at breast height (DBH); while the impacted white mangroves were much smaller, averaging 5 feet tall and 2.9-inch DBH.

**Haul Road Fill Impacts**

Based on the elevation survey data collected by ESA in the field, the total surface area and volume of the haul road is estimated to 0.44 acres and 1,320 cubic yards, respectively. **Figure 4** shows the limits of the haul road and measured spot elevations along those limits.

**Clear Cutting Impacts**

In addition to the haul road fill, there are some minor clear cutting impacts along the western edge of the haul road, where mangroves and freshwater wetlands have been cut or mowed, but there is no change in the elevation or disturbance to the soils or sediments.

**UMAM Analysis**

A pre- and post-impact analysis was conducted using the Uniform Mitigation Assessment Method (UMAM) to determine the functional loss associated with the sewer leak event. **Table 2** below show the UMAM analysis table used to calculate the functional loss of the impacts.

**TABLE 2  
UMAM ANALYSIS OF FUNCTIONAL LOSS**

Impact Area/Type	Impact Area (Acres)	Landscape		Water		Community Structure		Score w/out	Score with	Delta	Functional Loss
		w/out	with	w/out	with	w/out	with				
Primary Intertidal Wetland Impact - Leak	1.25	8	8	8	3	8	0	0.80	0.37	-0.43	-0.54
Primary Intertidal Wetland Impact - Road	0.31	8	8	8	0	8	0	0.80	0.27	-0.53	-0.17
Primary Freshwater Wetland Impact - Road	0.13	7	7	6	0	4	0	0.57	0.23	-0.33	-0.04
Secondary Intertidal Wetland Impact	0.07	8	8	8	6	8	2	0.80	0.53	-0.27	-0.02
Secondary Freshwater Wetland Impact	0.030	7	7	6	4	4	3	0.57	0.47	-0.10	-0.003
<b>Total</b>	<b>1.79</b>								<b>Total</b>		<b>-0.77</b>

The functional loss times the area of impact is typically used as the starting point of calculating mitigation credits required to offset impacts. For a project where mitigation credits will be purchased to offset permanent losses, the calculation is:

**1.79 (Impact Area) x 0.77 (Functional Loss) = 1.4 (Mitigation Credits Required)**

For the sewer leak impacts, this calculation derives a mitigation credit estimate of **1.4 credits**. However, it is our understanding that the Florida Department of Environmental Protection will require the on-site restoration of the impacts as part of the pending Consent Order. Given the temporal loss in ecosystem functions associated with the maturation of the restored area, the FDEP will likely require a fine in addition to the on-site restoration, and/or the purchase of additional mitigation credits from a local mitigation bank. The fines and/or purchase of mitigation credits are matters to be negotiated with the FDEP.

## Mangrove and Wetland Restoration Plan

The components of the mangrove and wetland restoration plan include: 1) physical removal of the haul road fill and re-grading the fill areas back to natural adjacent grades; and 2) planting both the haul road fill area and the sewer leak impact areas with nursery grown 1-gallon mangroves.

The total volume of fill to be removed from the haul road fill areas is approximately 1,320 cubic yards (cy). **Figure 5** shows the haul road fill area to be excavated and re-graded. Typical costs to scrape and haul fill are \$15/cy. Therefore, the estimated cost for this restoration component is \$19,800.

Mangrove planting areas would not require any clearing or physical alterations. Rather, the restoration of these areas would involve only planting the estimated pre-leak balance of the three species of mangroves impacted. If these areas do not show successful establishment of planted mangroves within one year it may be necessary to increase tidal circulation in this area through the excavation of small drainage channels that improve hydrologic connection to Sarasota Bay.

Based on the area and the estimated percentage of the various species of mangroves impacted, the total number of mangroves required for the restoration is 8,664, to be planted on 3-foot centers in all planting areas. **Figure 6** shows the mangrove replanting areas by species. Typical costs for 1-gallon mangroves from local nurseries is \$5/plant, plus an estimated \$1/plant installation cost, for a total unit cost for mangrove planting is \$6/plant. Therefore, the estimated cost for this restoration component is \$51,984.

In addition to the construction activities, the restoration project would require project management and construction supervision, as well as long-term (e.g., 5 years minimum) monitoring and maintenance. **Table 3** below shows a summary of the restoration plan component units, unit costs and extended costs. In addition, estimated costs for project management and construction supervision as well as monitoring and maintenance are provided.

**TABLE 3  
RESTORATION COST SUMMARY**




Restoration Component	Units	Unit Cost	Extended Cost
Haul Road Fill Removal and Re-grading	1,320 cy	\$15/cy	\$19,800
Mangrove Plantings	8,664	\$6/plant	\$51,984
Project Management/Construction Supervision	Lump Sum Fee	N/A	\$10,000
Monitoring & Maintenance (4 events/year for 5-years)	20 events	\$1,200	\$24,000
		<b>Total Cost</b>	<b>\$105,784</b>

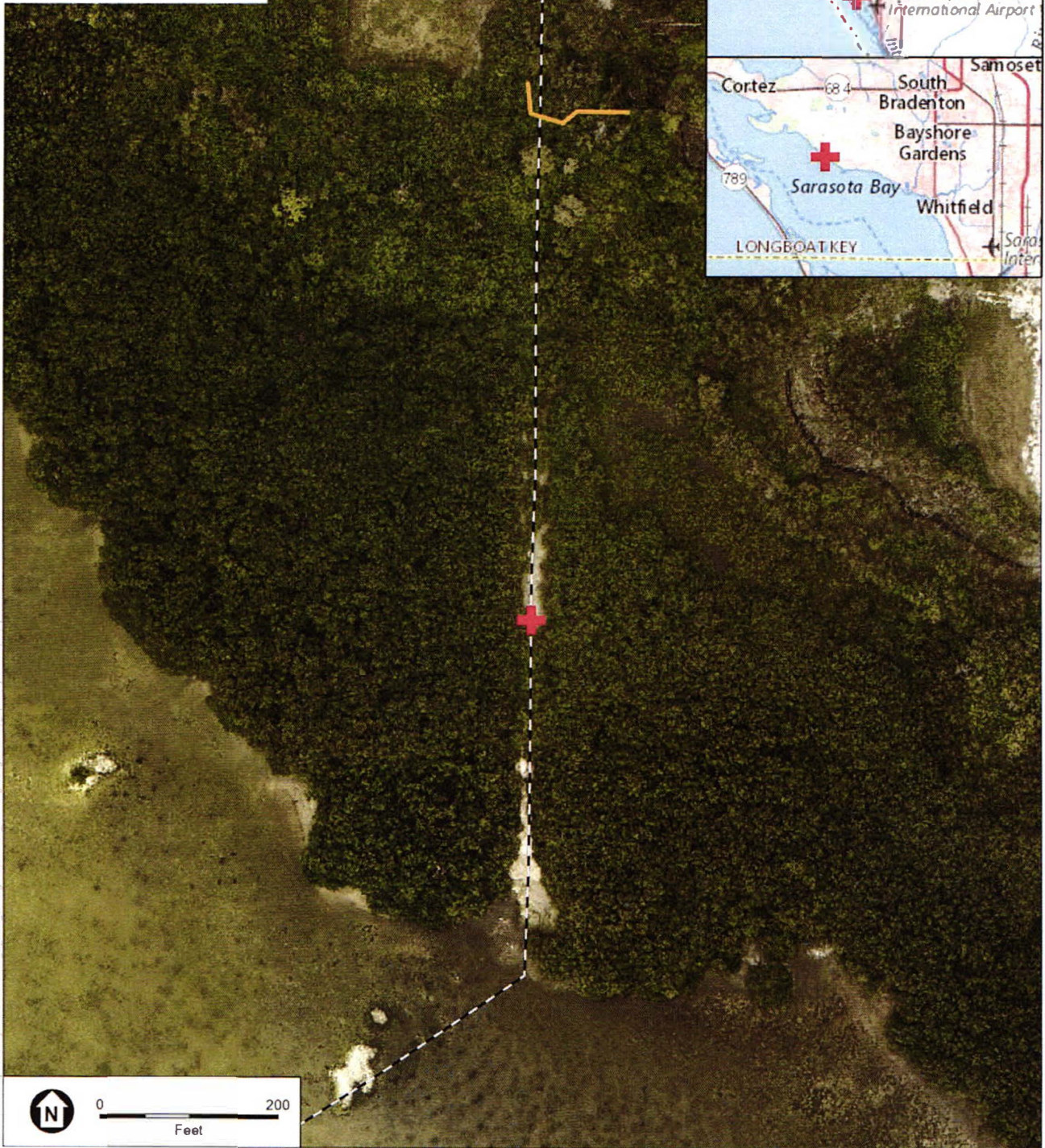
As summarized in Table 3, the total cost to implement the mangrove and wetland restoration plan is estimated to be \$105,784. This cost does not include replanting of impacted freshwater wetlands, as the freshwater wetlands areas impacted were very poor quality composed primary of nuisance and exotic species. It is anticipated that these areas would be regraded during restoration, followed by appropriate nuisance species controls. It is our understanding that this disturbed freshwater wetland area is part of a mitigation bank; therefore, it is recommended that requirements for any freshwater wetland restoration be discussed with the FDEP and the local property owner.

# Attachment 1

## **Figures**

# Legend

-  Leak
-  Existing Force Main
-  Wetland line






SOURCE: Manatee County 2020, ESA 2020

Town of Longboat Key Emergency Spill Response

**Figure 1**  
Site location with  
Pre-impact condition



# Legend

-  Leak
-  Existing Force Main
-  Wetland line



Path: C:\workspace\BFF\proj\10202000016\_2\_1\BK\_Emergency\02016a\_Wetland\ond\soakKey\_spillresponse.aprx\_8aad11012020

SOURCE: ESA, September 2020 and Manatee County 2020

Town of Longboat Key Emergency Spill Response



**Figure 2**  
Post-leak impact  
UAV imagery, Sept 2020

### Legend

-- Existing Force Main

— Wetland line

### Areas of Impact (acres)

Primary Intertidal Wetland Impact- Spill

Primary Intertidal Wetland Impact- Road

Primary Freshwater Wetland Impact- Road

Secondary Intertidal Wetland Impact

Secondary Freshwater Wetland Impact

### Spill

### Note

Spill



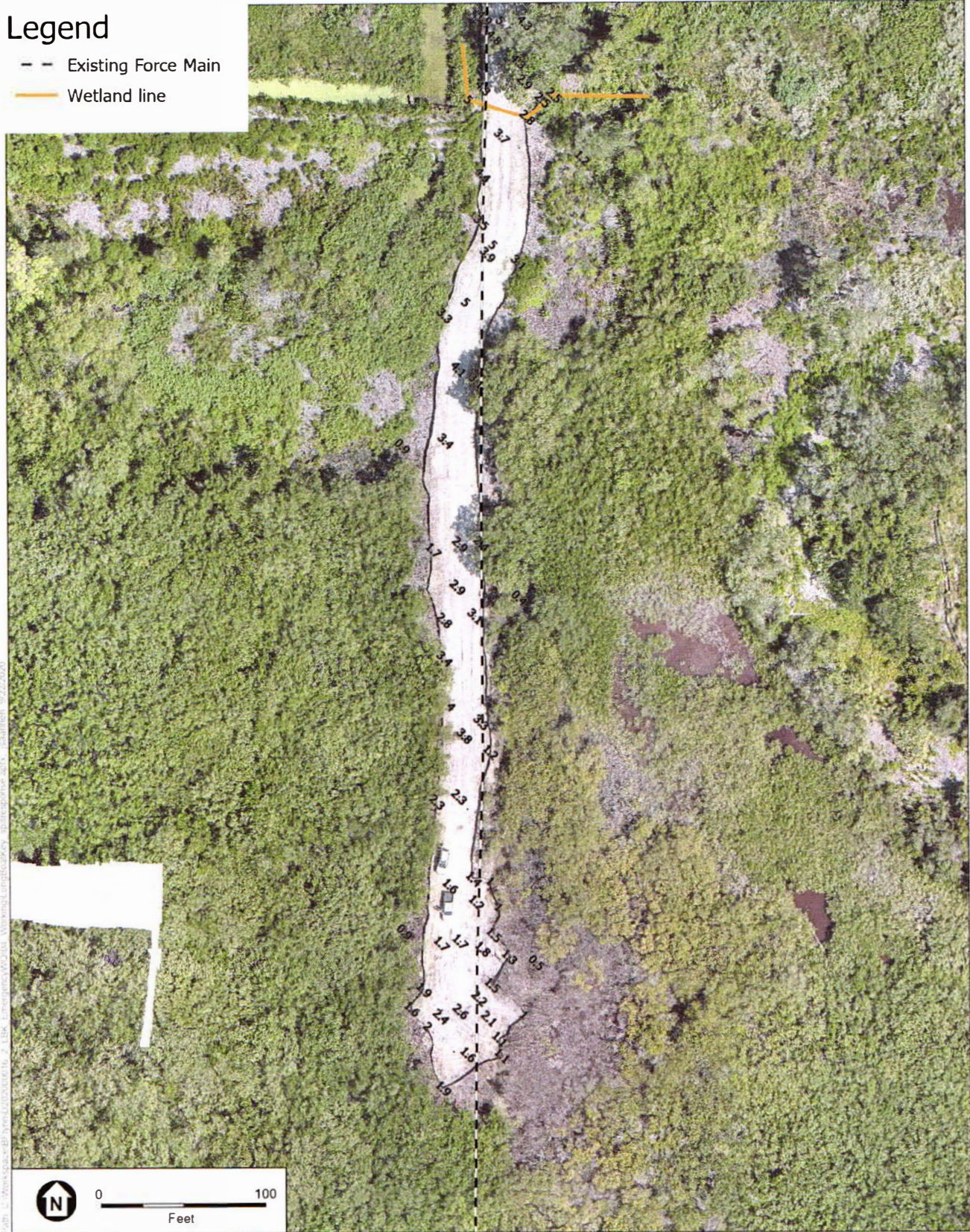
SOURCE: ESA, 2020

Town of Longboat Key Emergency Spill Response

**Figure 3**  
Estimated Impact Area  
in Acres

# Legend

- - Existing Force Main
- Wetland line



SOURCE: ESA, 2020.

Town of Longboat Key Emergency Spill Response

## DISCLAIMER FOR SURVEYING

ESA performs land surveys and collects hydrographic data to augment traditional surveying services for the purposes of engineering, geomorphic interpretation, monitoring of project performance, and other specific uses consistent with Geologic and Landscape Surveys as defined in Florida Regulations of Professions and Occupations Chapters 471, Engineering and 472 Surveying and Mapping; Alabama Law: Regulating the Practice of Engineering and Surveying.

ESA does not provide traditional land survey services such as property boundaries and maps for general use by others. ESA recommends that these traditional surveying services be accomplished by a licensed, professional land surveyor either under direct contact with the client or as a sub-consultant to ESA.

**Figure 4**  
Haul road elevations  
NADV88 feet





C-101 1 of 2

MANGROVE RESTORATION PROJECT

GRADING PLAN

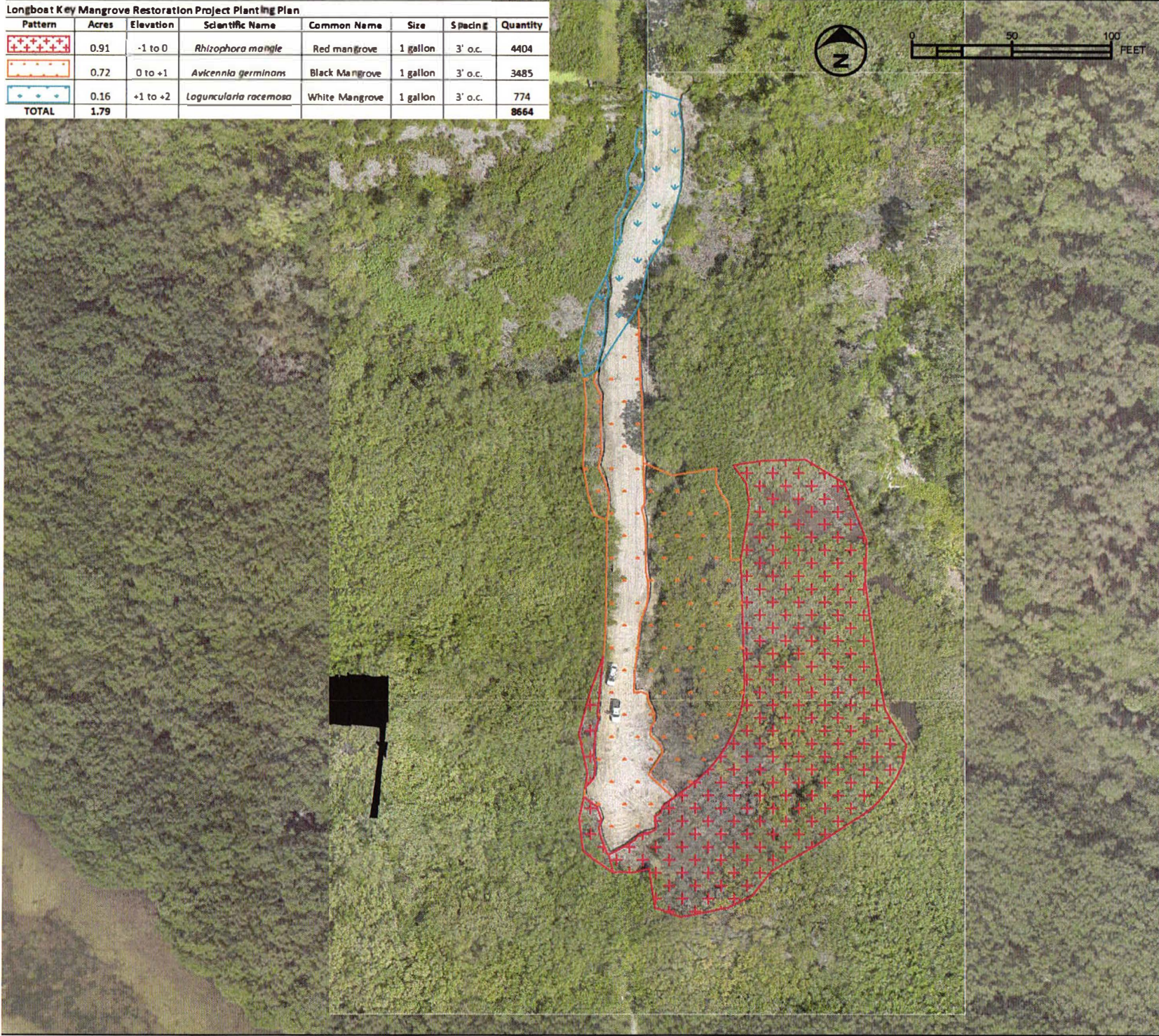
TOWN OF LONGBOAT KEY  
 600 GENERAL HARRIS STREET  
 LONGBOAT KEY, FLORIDA 34228

	BY	DATE	REVISIONS		
			NO.	DATE	DESCRIPTION
DESIGNED:	BCF	10/1/20			
DRAWN:	BCF	10/1/20			
CHECKED:	DR	10/1/20			
APPROVED:	BCF	10/1/20			

**ESA**  
 4200 West Cypress Street, Suite 400  
 Tampa, FL 33607  
 Office - 813.267.7200  
 www.esa-inc.com



Longboat Key Mangrove Restoration Project Planting Plan							
Pattern	Acres	Elevation	Scientific Name	Common Name	Size	Spacing	Quantity
	0.91	-1 to 0	<i>Rhizophora mangle</i>	Red mangrove	1 gallon	3' o.c.	4404
	0.72	0 to +1	<i>Avicennia germinans</i>	Black Mangrove	1 gallon	3' o.c.	3485
	0.16	+1 to +2	<i>Laguncularia racemosa</i>	White Mangrove	1 gallon	3' o.c.	774
<b>TOTAL</b>	<b>1.79</b>						<b>8664</b>



<b>USA</b>	420 West Orange Street, Suite 101 Clearwater, FL 34615 813.437.2729 www.usa.com	<b>TOWN OF LONGBOAT KEY</b> 600 GENERAL HARRIS STREET LONGBOAT KEY, FLORIDA 34228	<b>MANGROVE RESTORATION PROJECT</b>  <b>PLANTING PLAN</b>	2 of 2 <b>C-102</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>BY</th> <th>DATE</th> <th>DESIGNED</th> <th>CHECKED</th> <th>APPROVED</th> </tr> </thead> <tbody> <tr> <td>DESIGNED</td> <td>10/1/20</td> <td>BY</td> <td>DATE</td> <td>BY</td> </tr> <tr> <td>CHECKED</td> <td>10/1/20</td> <td>BY</td> <td>DATE</td> <td>BY</td> </tr> <tr> <td>APPROVED</td> <td>10/1/20</td> <td>BY</td> <td>DATE</td> <td>BY</td> </tr> </tbody> </table>	BY	DATE	DESIGNED	CHECKED	APPROVED	DESIGNED	10/1/20	BY	DATE	BY	CHECKED	10/1/20	BY	DATE	BY	APPROVED	10/1/20	BY	DATE	BY
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# Attachment 2

## **Photographs**



**Photo #1** – Heart of mangrove die-off (predominantly black mangroves) – looking Southwest from the southern silt fence line.



**Photo #2** – Heart of mangrove die-off – looking North toward southern silt fence line.



**Photo #3** – Southwest corner of silt fence looking West. Mechanical disturbance.



**Photo #4** – Eastern edge of mangrove die-off looking East (mature black and red mangroves in foreground, and immature white mangroves in background)



**Photo #5** – Edge of mangrove die-off/area under stress looking North into heart of die-off area (red and black mangroves in die-off/stress area).



**Photo #6** – Southern limits of temporary haul road looking North.



Photo #7 – Temporary repair haul road looking North (towards intertidal and freshwater interface).



Photo #8 – Temporary repair haul road looking South.

**Exhibit - D**

**In-Kind Projects**

**I. Introduction**

**Proposal**

a. Within 60 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable, Respondent shall submit, either electronically or by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

**Proposal Certification Form**

b. The proposal shall also include a Certification by notarized affidavit from a senior management official for the Town of Longboat Key who shall testify as follows:

My name is \_\_\_\_\_ (print or type name of senior management official) and do hereby testify under penalty of law that:

A. I am a person with management responsibilities for the Town of Longboat Key budget and finances. In accordance with terms of paragraph 19.b. of the Consent Order Case No.: 20-1261, during the eighteenth month period prior to the effective date of Consent Order OGC Case No.:20-1261 there has not been any transfer or use of funds obtained by the Town of Longboat Key from the collection of sewer rates for any purpose not related to the management, operation, maintenance, or other lawful purposes of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by

\_\_\_\_\_

Personally known, or by Production of the following Identification \_\_\_\_\_

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: \_\_\_\_\_

Commission/Serial No.: \_\_\_\_\_

**Annual Certification Form**

My name is \_\_\_\_\_ (print or type name of senior management official) and do hereby testify under penalty of law that:

A. I am a person with management responsibilities for the Town of Longboat Key budget and finances. In accordance with terms of paragraph 19.b. of the Consent Order Case No.: 20-1261, during the twelve-month period immediately preceding the notary date on this Certification, there has not been any transfer or use of funds obtained by the Town of Longboat Key from the collection of sewer rates for any purpose not related to the management, operation, maintenance, or other lawful purposes of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by

\_\_\_\_\_

Personally known, or by Production of the following Identification \_\_\_\_\_



Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: \_\_\_\_\_

Commission/Serial No.: \_\_\_\_\_

c. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, either electronically or by certified mail, all requested additional information, clarification, and modifications within 15 days of receipt of written notice.

d. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all the matters at issue and submit, either electronically or by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the Department, Respondent shall make cash payment of the civil penalties as set forth in the Consent Order, within 30 days of Department notice.

e. Within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable, Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-

kind project is acceptable then Respondent shall make cash payment of the penalties as set forth in the Consent Order, within 30 days of Department notice.

f. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to (a) above, Respondent shall complete the entire in-kind project.

g. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

h. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited, and the entire amount of penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the penalty, no additional penalties shall be assessed for failure to complete the requirement of this paragraph.

i. Within 15 days of completing the in-kind project, Respondent shall notify the Department, either electronically or by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and

documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

j. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all the matters at issue and submit, either electronically or by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of the penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the penalty, no additional penalties shall be assessed for failure to complete the requirements of this paragraph.