



FLORIDA DEPARTMENT OF Environmental Protection

South District Branch Office
2796 Overseas Highway, Suite 221
Marathon, FL 33050
SouthDistrict@FloridaDEP.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

March 2, 2022

Schulte & Schulte LLC
c/o Michael J. Schulte
183 Barry Ave.
Little Torch Key, FL 33042
mikeschulte@aol.com

Re: Consent Order
OGC Case No. 21-1318
Kiki's Sandbar Bar and Grille
Site No. 291451 / Project No. 390581
BOT Lease No. 442497015
Pine Channel, Class III Outstanding Florida Waters
Parcel No. 00214990-000000 – 183 Barry Ave., Little Torch Key, FL 33042
Monroe County – SLERC

Dear Mr. Schulte,

Enclosed is the signed and entered Consent Order, OGC No. 21-1318, to resolve this case. This copy is for your records. Upon satisfactory completion of all conditions of the Order, we will close this case and place it in our inactive file.

If you have any questions, please contact McKenzie Fraley by email at Mckenzie.Fraley@FloridaDEP.gov or by phone at 305-289-7079. Your cooperation in resolving this case is appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Iglehart", with a long horizontal stroke extending to the right.

Jon M. Iglehart
Director of District Management
South District
Florida Department of Environmental Protection

JMI/mf

Enclosures: Consent Order w/ Attachment I & Exhibit A (Restoration Plan)

cc: Lea Crandall, Agency Clerk [agency_clerk@dep.state.fl.us]

terramar.env@gmail.com

rowenafrank@gmail.com

richard@spottswoodlaw.com

ap@kikissandbar.com

Hall-Janice@MonroeCounty-FL.Gov

Franck-Bruce@MonroeCounty-FL.gov

Johnathan Pempek, USACE, Jonathan.C.Pempek@usace.army.mil

SAJ-RD-Enforcement@usace.army.mil

Stephen Werndli, NOAA, Stephen.Werndli@noaa.gov

STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL PROTECTION,)
and THE BOARD OF TRUSTEES OF THE)
INTERNAL IMPROVEMENT TRUST)
FUND,)
)
Complainants,)
)
vs.)
)
SCHULTE & SCHULTE LLC,)
)
Respondent.)

IN THE OFFICE OF THE)
SOUTH DISTRICT)
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)
)
OGC FILE NO. 21-1318)
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This Consent Order is entered into between the State of Florida Department of Environmental Protection (“Department”), and The Board of Trustees of the Internal Improvement Trust Fund (“Board”) and Schulte & Schulte LLC (“Respondent”) to reach settlement of certain matters at issue between the Department and Respondent.

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce Chapter 373, Part IV, and Chapter 403, Florida Statutes (F.S.), and the rules promulgated and authorized thereunder, Title 62, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Consent Order.

3. Respondent is the person within the meaning of Sections 373.019(15) and 403.131(5), F.S.

4. Respondent is the owner of the Property at 183 Barry Ave., Little Torch Key, FL 33042, Monroe County Parcel ID No. 00214990-000000, Section 28, Township 66 South, Range 29 East, Monroe County, Florida ("Property"). This Property is adjacent to Pine Channel, an Outstanding Florida Waterbody. Respondent operates a 3-slip commercial docking facility located on sovereignty (state-owned) submerged lands that is subject to sovereignty submerged lands lease no. 442497015 ("Lease") issued by the Board.

5. Respondent conducted and/or authorized the activities described in paragraphs 6, 7, 8, and 9 below.

6. Department personnel conducted an inspection on May 19, 2020, and observed:

- a. The following activities conducted without a permit from the Department:
 - i. Approximately 2,740 square feet of the riparian mangrove fringe had been altered to heights below 6 feet as measured from the substrate;
 - ii. Cut mangrove debris (fill) had been placed in the riparian mangrove fringe (wetlands);
 - iii. Two floating docks were installed along the shoreline within the riparian mangrove fringe; and
 - iv. Approximately 5,460 sq. ft. of wetlands were dredged and filled on the southern end of the shoreline;
- b. The following items of Lease non-compliance, specifically non-compliance with Special Lease Condition 29.A. which prohibits mooring along western and southern sides of the terminal platform, and along both sides of the access walkway:
 - i. Mooring cleats were installed along western and southern sides of the terminal platform;
 - ii. The required hand railing was not observed along western and southern sides of the terminal platform;
 - iii. The required "No Mooring" signs were not observed along western and southern sides of the terminal platform.

7. Department personnel conducted another inspection on August 26, 2021, and observed:

- a. The riparian mangrove fringe was being maintained at approximately 4 feet in height;

- b. The cut mangrove debris had been removed;
- c. The unauthorized floating docks were still present;
- d. The Lease non-compliance items had not been addressed; and
- e. A floating jet ski platform had been installed waterward of the Property on state-owned submerged lands without a permit and Lease modification. Wahoo Watersports In The Florida Keys, LLC, was offering jet ski tours and kayak / paddleboard rentals and operating at the Property.

8. Department personnel conducted another inspection on September 1, 2021, and observed floating jet ski platform had been removed and no evidence of Wahoo Watersports In The Florida Keys, LLC operating at the Property. Respondent confirmed via email that Wahoo Watersports In The Florida Keys, LLC was no longer operating at the Property.

9. Department personnel conducted another inspection on October 25, 2021, and observed the floating docks within the riparian mangrove fringe had been removed. The Respondent sent an email on October 28, 2021, which demonstrated that handrails had been installed along the western portion of the terminal platform.

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

ORDERED:

10. **Within 30 days of the effective date of this Consent Order**, Respondent shall pay the Department \$5,500.00 in settlement of the **regulatory** matters addressed in this Consent Order. This amount includes \$4,500.00 for the violations outlined in this Order and \$1,000.00 in costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. Respondent shall make all payments required by this Consent Order by cashier's check, money order or online payment. Cashier's check or money order shall be made payable to the *Department of Environmental Protection*, mailed to Florida Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549, and shall include both the OGC number assigned to this Consent Order, which is OGC No. 21-1318, and the notation "Water Quality Assurance Trust Fund." Online e-check payment can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/>. It will take several days after this order becomes final and

effective filed with the Clerk of the Department before ability to make online payment is available.

11. **Within 30 days of the effective date of this Order**, Respondent shall pay the Board \$1,000.00 for deposit into the Internal Improvement Trust Fund as compensation for the past and current use of the Sovereign Lands without the approval or authorization of the Board. Such payment, which shall be paid online by check, credit card or debit card at <http://www.fldepportal.com/go/pay-invoices> or in the form of a cashier's check, certified check, or money order payable to the Department of Environmental Protection shall be delivered to the Board's Accounting Office, Post Office Box 3070, Tallahassee, Florida 32315-3070.

12. Respondent shall implement the Corrective Actions attached hereto and incorporated herein as Attachment I in the manner and within the time frames specified therein.

13. With the exception of the activities described in the Corrective Actions, effective immediately and henceforth, Respondent shall not conduct any dredging, filling, mangrove trimming, mangrove alteration, mangrove removal, or construction activities on or within the landward extent of waters of the state without first obtaining a valid Department permit or written notification from the Department that the activities appear to be exempt as proposed from Department permitting requirements.

14. Respondent agrees to pay the Department stipulated penalties in the of \$100.00 per day for each and everyday Respondent fails to timely comply with any of the requirements of paragraph 12 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Order. **Within 30 days** of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the *Department of Environmental Protection* by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order, which is OGC No. 21-1318, and the notation "Water Quality Assurance Trust Fund." The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraphs 10 and 11 of this Consent Order.

15. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the

delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as 'contractor') to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner shall constitute a waiver of Respondent's rights to request an extension of time for compliance with the requirements of this Consent Order.

16. Respondent shall allow all authorized representatives of the Department access to the Property at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

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

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

19. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$15,000 per day per violation, and administrative fines of up to \$10,000 per day per violation, and criminal penalties.

20. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this Notice. A copy of the Petition must also be mailed at the time of filing to the District Office named about at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

- (a) The Department's Consent Order identification number and the county in which the subject matter or activity is located;
- (b) The name, address and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the proceeding;
- (c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- (d) A statement of when and how the petitioner received notice of the Consent Order;
- (e) A statement of all material facts disputed by petitioner, if any;
- (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- (g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this Notice in the Office of General Counsel at the

above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses and telephone numbers of any persons who may attend the mediation;
- (b) The name, address and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all Parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this Notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the Notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

21. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order.

22. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations addressed in this Consent Order.

23. Respondent acknowledges and waives his right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges his right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waive that right upon signing this Consent Order.

24. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of

this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

25. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549. Online e-check payment can be made by going to the DEP Business Portal at <http://www.fldepportal.com/go/pay/>.

26. In the event of a sale or conveyance of the Property, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Property, (1) notify the Department of such sale or conveyance and (2) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the Property shall not relieve the Respondent of the obligations imposed in this Consent Order.

27. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

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

FOR THE RESPONDENT:
SCHULTE & SCHULTE LLC

February 22, 2022

DATE

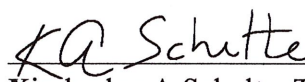


Michael J Schulte, Registered Agent, Title Manager

FOR THE RESPONDENT:
SCHULTE & SCHULTE LLC

February 22, 2022

DATE



Kimberlee A Schulte, Title Manager

Please do not write below this line. For DEP use only.

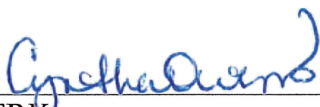
DONE AND ORDERED this 2nd day of March, 2022, in Lee
County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jon M. Iglehart
Director of District Management
South Florida District
P.O. Box 2549
Fort Myers, Florida 33902-2549
Telephone: (239) 344-5600

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated
Department Clerk, receipt of which is hereby acknowledged.


CLERK

March 2, 2022
DATE

cc: Lea Crandall, Agency Clerk (Mail Station 35)

ATTACHMENT I
OGC Case No. 21-1318
CORRECTIVE ACTIONS

PROPRIETARY (LEASE) CORRECTIVE ACTIONS

1. **Within 30 days of the effective date of this Consent Order**, Respondent shall address the non-compliance with Special Lease Condition 29.A. which prohibits mooring along western and southern sides of the terminal platform, and along both sides of the access walkway, by completing the following:
 - a. Remove mooring cleats along western and southern sides of the terminal platform;
 - b. Install the required hand railing along western and southern sides of the terminal platform; and
 - c. Install “No Mooring” signs advising boaters that mooring either on a temporary or permanent basis is prohibited along the western and southern sides of the terminal platform and both sides of the access walkway.
2. **Within 60 days of the effective date of this Consent Order**, Department personnel shall conduct an inspection to verify that the handrails and signs were properly installed, and the mooring cleats were removed.

RESTORATION OF MANGROVE ALTERATION AREAS

3. Mangroves that have recruited into, or are currently growing, in the area where mangroves were previously altered shall be allowed to grow to a minimum of 6 feet, as measured from the substrate.
4. **Within 90 days of the effective date of this Consent Order**, Respondent shall complete the restoration on the Property in accordance with the plans and specifics detailed Exhibit A (Restoration Plan), attached and incorporated by reference. This Consent Order includes a verification of exemption from the need to obtain an Environmental Resource Permit, pursuant to Rule 62-330.051(12)(e), F.A.C., and a Letter of Consent to use state owned submerged lands for the installation of a temporary wave energy attenuator consisting of staked filter fabric or similar to prevent washout of the restoration area no more than 10 feet waterward of the approximate MHWL and as indicated in the attached Site Restoration Plan (Exhibit A).
5. Prior to the restorative planting described in Exhibit A, Respondent shall ensure the substrate is level with the adjacent substrate where mangroves currently exist. Any fill that is removed for this process shall be disposed of properly and/ or used as beneficial reuse on the uplands.
6. Floating turbidity curtains with weighted skirts that extend to within 1 ft. of the bottom shall be placed to surround the work area prior to the initiation of work authorized by this Consent Order. The screens shall be maintained and remain in place for the duration of the construction to ensure turbidity levels outside the construction area do not degrade the ambient water quality of Outstanding Florida Waters. The Respondent shall be responsible for inspecting and maintaining turbidity control devices so no degradation of the ambient water quality of Outstanding Florida Waters outside of the turbidity screens occurs.
7. The following measures shall be taken immediately by the permittee when turbidity levels within waters of the State surrounding the project site, exceed the ambient water quality levels of the Outstanding Florida Waters:
 - a. Immediately cease work contributing to the water quality violation;

- b. Stabilize exposed soils contributing to the violation. Modify the work procedures responsible for the violation, install additional turbidity containment devices and repair non-functioning turbidity containment devices; and
 - c. Notify the Department within 24 hours of the time the violation is first detected.
8. Respondent shall protect all wetland areas or water bodies which are outside the specific limits of construction from erosion, siltation, scouring, excess turbidity, or dewatering. Turbidity curtains and other such erosion/turbidity control devices shall be installed pursuant to State of Florida Erosion and Sedimentation Control Inspectors Manual, FDEP (2008), available on the Department's website at <http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf>, prior to the commencement of dredging, filling, or construction activity. The devices shall remain functional at all times and shall be maintained on a regular basis. Turbidity and/or sedimentation resulting from any activities associated with the project shall not be allowed to enter waters of the State. Floating turbidity curtains (FDOT Type II or equivalent) shall be used to surround all open water work areas and shall remain in place until such time as turbidity levels within these work areas have reduced sufficiently so as not to exceed the State water quality standards.
9. Should the terms in the attached Exhibit A (Restoration Plan) conflict with any terms of the Consent Order and Attachment I, the terms within the Consent Order and Attachment I shall prevail.

MONITORING & SUCCESS CRITERIA:

10. **A "Baseline" Monitoring Report shall be submitted within 120 days of the effective date of this Consent Order** and shall include the following:
 - a. The "OGC Case No. 21-1318" and name of Respondent exactly as it appears on the first page of this Order;
 - b. Dates of all work completed;
 - c. Color photographs to provide an accurate representation of the mangrove alteration areas. The photographs shall be taken from fixed reference points and directions which are shown on a scaled plan-view of the Property; and
 - d. A table depicting numbers, spacing, and sizes (including tree height) of each species planted.
11. **Until the success criteria are achieved as described in Paragraph 13**, the Respondent shall inspect the mangrove alteration areas annually. The purpose of the monitoring shall be to determine the success of the restoration. During each inspection, Respondent shall remove all exotic and nuisance vegetation without disturbing the other existing vegetation in the mangrove alteration areas. Exotic and nuisance vegetation shall include vegetation is listed in the most recent published list of invasive species by the Florida Exotic Pest Plant Council (FLEPPC). Internet website for FLEPPC is <http://www.fleppc.org/list/list.htm>. Exotic and nuisance vegetation shall include, but not be limited to, vines, Brazilian Pepper (*Schinus terebinthifolius*), Punk tree (*Melaleuca quinquenervia*), and Australian pine (*Casuarina equisetifolia*).
12. **Within 30 days after the completion of each annual inspection in the monitoring schedule**, Respondent shall complete a monitoring report and submit it to the Department. The monitoring reports shall also include the following information:
 - a. The "OGC Case No. 21-1318" and name of Respondent exactly as it appears on the first page of this Order;

- b. Dates of inspection;
 - c. Plant species composition with estimates of the contribution of each species to percent cover; and
 - d. Plan view depicting the locations of any specimens replanted (indicate numbers of each species replanted).
13. Restoration of the mangrove alteration areas shall be deemed successful when the following criteria has been met for a period of at least one (1) year, without intervention in the form of irrigation, removal of undesirable vegetation, or replanting of desirable vegetation:
- a. Planted species have achieved a minimum 80% survival;
 - b. Planted species and naturally recruited native wetland species have achieved a minimum 80% cover;
 - c. Total contribution to percent cover by exotic, non-native wetland species, and species not listed in 62-340, F.A.C. shall be maintained below 5%;
 - d. The planted mangrove species have achieved an average height of at least 6 feet and all are exhibiting natural, vigorous growth consistent with the species and target plant community; and
 - e. The mangrove alteration areas have been inspected by the Department and the Department has informed the Respondents in writing that the mangrove alteration areas have achieved the described success criteria.
14. If it is determined by the Department, based on visual inspection and/or review of the monitoring reports, that the mangrove alteration areas are not meeting the success criteria (described in paragraph 13 above) after three years, Respondent shall submit an alternative Restoration Plan to the Department for review and approval, which shall meet the following requirements:
- a. Respondents shall submit the plan within 30 days of notification by the Department of failure to meet the performance criteria;
 - b. The Revised Restoration Plan shall include a plan, including time schedule for planting the Restoration Area with enough plants representative of the naturally occurring habitat approved by the Department in advance to meet the success criteria. The revised plan shall also include maintenance and monitoring schedule to ensure that the replanting is successful.
 - c. The Respondent(s) shall implement the alternative restoration plan, including any changes required by the Department, no later than 90 days after receiving Department approval.

GENERAL CONDITIONS:

15. This Consent Order or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the ordered activity. The complete Consent Order shall be available for review at the work site upon request by the Department staff. The Respondent shall require the contractor to review the complete Consent Order prior to commencement of the activity authorized by this Consent Order.
16. Activities approved by this Consent Order shall be conducted in a manner, which does not cause violations of state water quality standards. The Respondent shall implement best management practices for erosion and pollution control to prevent violations of state water quality standards. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the ordered work. Turbidity barriers shall remain in place at all locations until construction is completed and soils

are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in the State of Florida Erosion and Sedimentation Control Inspectors Manual, FDEP (2008), available on the Department's website at <http://www.dep.state.fl.us/water/nonpoint/docs/erosion/erosion-inspectors-manual.pdf> unless a project-specific erosion and sediment control plan is approved as part of this Order. Thereafter the Respondent shall be responsible for the removal of the barriers. The Respondent shall correct any erosion or shoaling that causes adverse impacts to the water resources.

17. Should any other regulatory agency require changes to the herein authorized act, the Respondent shall notify the Department in writing of the changes prior to implementation so that a determination can be made whether a Consent Order modification is required.
18. This Consent Order does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this Consent Order. This Consent Order does not convey to the Respondent or create in the Respondent any property right or any interest in real property, nor does it authorize any entrance upon or activities on property, which is not owned or controlled by the Respondent, or convey any rights or privileges other than those specified in the Consent Order and Chapter 62-330, F.A.C.
19. The Respondent shall hold and save the Department harmless from any and all damages, claims, or liabilities, which may arise by reason of the ordered activities, authorized by this Consent Order.
20. If historical or archaeological artifacts are discovered at any time on the project site, the Respondent shall immediately notify the Department's South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549.
21. The Respondent shall immediately notify the Department in writing of any previously submitted information that is later discovered to be inaccurate.
22. The Respondent is hereby advised that Department authorization is required for all dredging and filling activities in wetlands or surface waters and for mangrove trimming, alteration and/or removal, pursuant to Chapters 403 and 373, Florida Statutes (F.S.). In addition, water quality standards, as stipulated in Chapter 62-302, F.A.C., shall be upheld. Respondent shall not commence any excavation, construction, or other activity within any wetland areas until Respondent has received from the Department (or the appropriate Water Management District) the required permit authorizing the activity. Pursuant to Chapter 373.129 and 403.141, if such work is done without authorization, the Department may levy civil penalties of up to \$10,000 per offense. Each date during which such violation occurs may constitute a separate offense.
23. The project shall comply with applicable State Water Quality Standards, namely:
 - a. Rule 62-302.500, F.A.C. - Surface Waters: Minimum Criteria, General Criteria;
 - b. Rule 62-302.530, F.A.C. - Table: Surface Water Quality Criteria – Class III Waters;
 - c. Rule 62-302.700, F.A.C. - Special Protection, Outstanding Florida Waters, Outstanding National Resource Waters; and
 - d. Rule 62-4.242, F.A.C. - Antidegradation Permitting Requirements; Outstanding Florida Waters; Outstanding National Resource Waters.



Terramar Environmental Services, Inc.
1241 Crane Boulevard
Sugarloaf Key, Florida 33042
(305) 393-4200 terramar.env@gmail.com

OGC Case No. 21-1318
Exhibit A
pg 1 of 5

MEMORANDUM

Date: November 27, 2021

To: Mckenzie Fraley, Florida Department of Environmental Protection, South District

From: Philip A. Frank

RE: Restoration Plan – Kiki’s Sandbar Restaurant

Kiki’s Sandbar Bar and Grille
Site No. 291451 / Project No. 390581
BOT Lease No. 442497015
Pine Channel, Class III Outstanding Florida Waters
Parcel No. 00214990-000000 – 183 Barry Ave., Little Torch Key, FL 33042

As a follow-up to the Department’s September 17, 2021 Warning Letter regarding the subject property, please accept this wetland restoration plan for the property. The following summarizes our understanding of the impacted area and recent coordination with the Department.

- The wetland impact area is located at Kiki’s Sandbar and Grille, 183 Barry Ave, Little Torch Key, Monroe County, Florida (Figure 1). The impacts identified include removal of mangrove vegetation along a section of the shoreline during the post-hurricane cleanup from Hurricane Irma, September 2017.
- The restoration area identified in the field based on current conditions consists of a polygon approximately 50’ x 15’ (750 sf) located along the open water shoreline facing Pine Channel. The impacted area previously supported trimmed mangrove wetlands consisting of red, black and white mangroves growing along the open waters of Pine Channel. The adjacent habitats are trimmed mangrove wetlands.

Restoration and Monitoring Plan

The restoration plan proposes the following actions:

1. All work to be supervised by a qualified biologist working for the Owner, with documented experience working in wetlands restoration in the Florida Keys.

2. The restoration site will be prepared for planting of mangrove vegetation. Planting preparation will include establishing mangrove planting holes in the substrate using hand tools at the desired spacing.
3. Following all site prep work, the planting plan will be implemented following the Planting Plan. Plants will be installed under the direction of the Owner's biologist, and field-located to best fit site conditions.
4. Wave energy is a concern at this location, exposed to the north and east. A temporary wave energy attenuator consisting of staked filter fabric or similar may be implemented to prevent washout of the restoration area.
5. Once the site is fully prepped for planting, two (2) restoration area signs will be installed. Restoration Area signs will be no smaller than 8" x 10" and placed along the front of the site along the upland to prevent future encroachments. In addition, the restoration area will be delineated by a decorative fence (post and rope) to inform visitors of the protected status of the restoration area.
6. A Baseline report will be prepared by the Owner's biologist and submitted to FDEP documenting the restoration actions including dates of all work completed, and list of plants installed.
7. Performance criteria for planting include 80% survival of planted mangroves at 12 months following completion of restoration. Any plants needed to be replaced to maintain the 80% survival will be planted annually following monitoring events.
8. Monitoring will be conducted quarterly for one (1) year. Each monitoring report will provide documentation of the status of the restoration effort (e.g. plant survival, presence of signage and fencing). Reports will be prepared by the Owner's biologist and submitted to FDEP to document compliance.

Restoration Planting Plan

Common Name	Size	Spacing	Count
Mangroves			
Red & Black Mangrove Trees 80% red mangroves 20% black mangroves	One gallon	24"	188
Total Plants			188

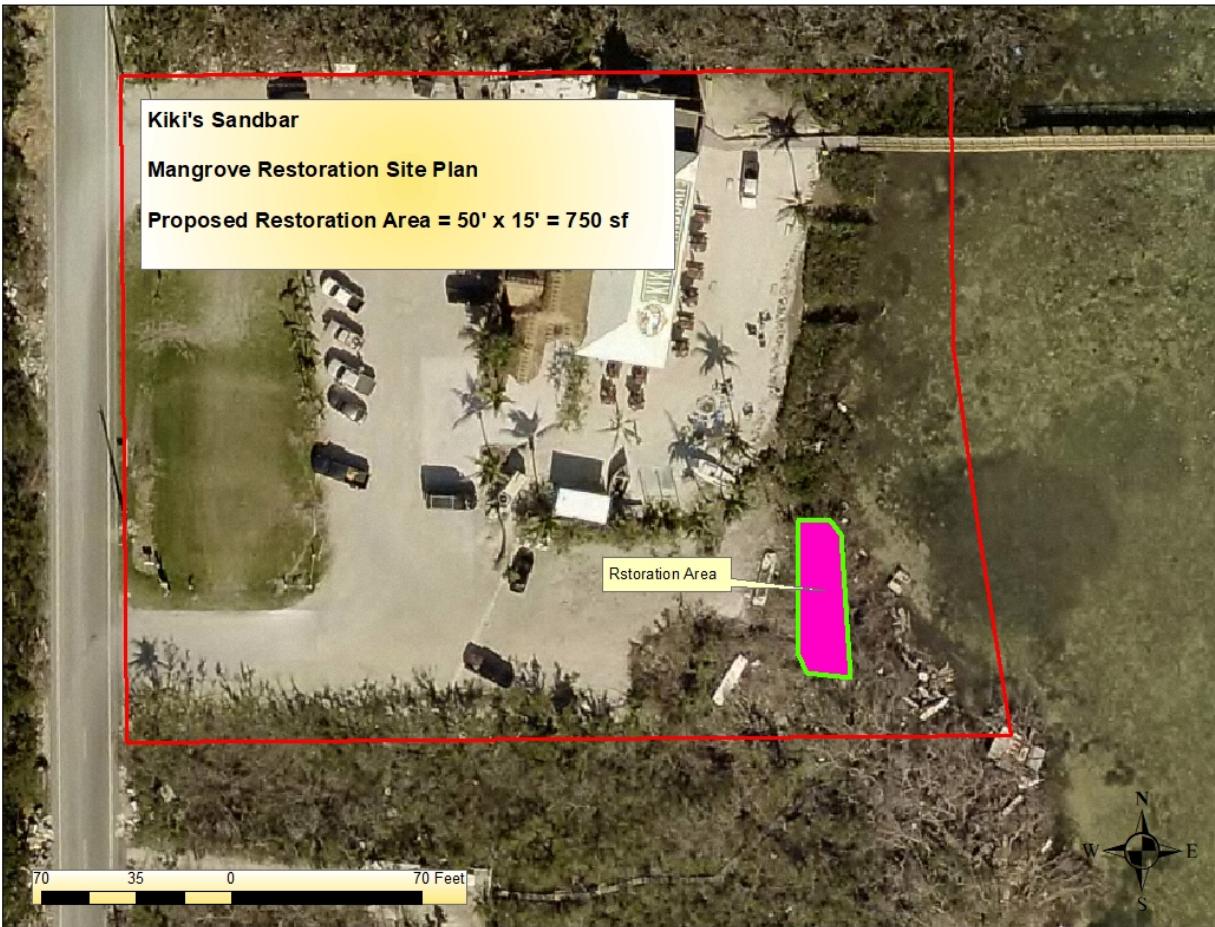
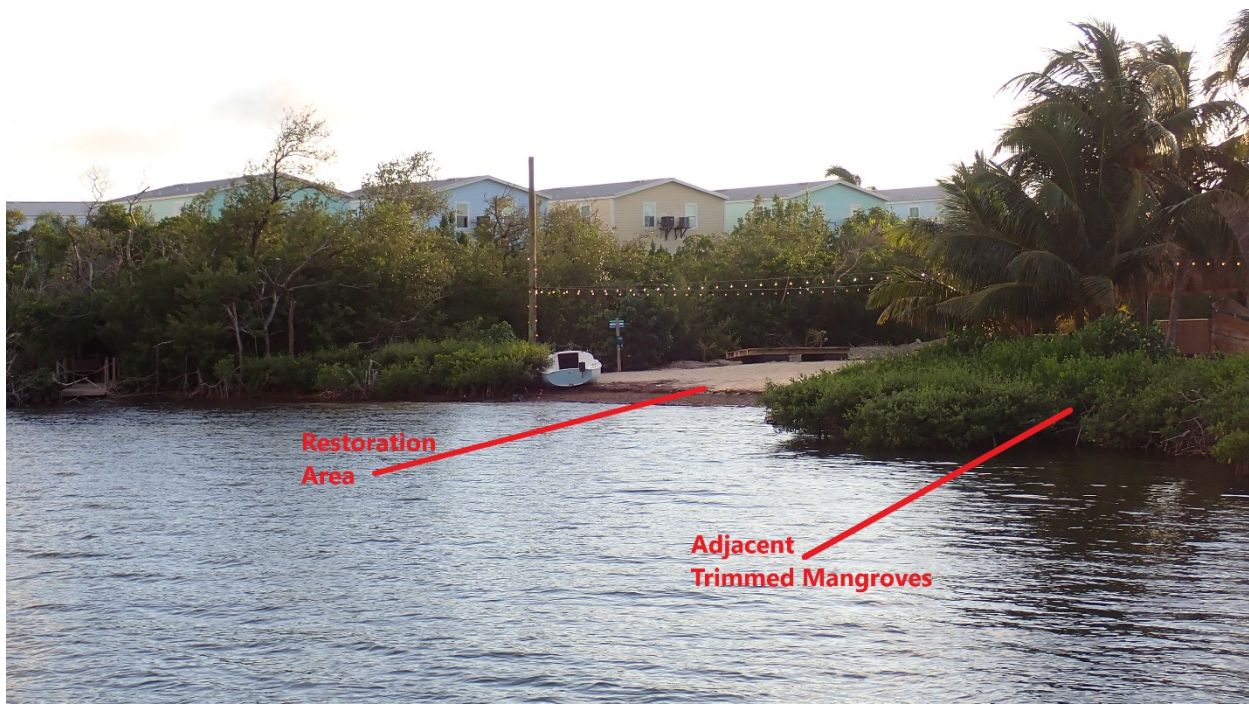


Figure 1. Restoration area location, Kiki's Sandbar.



Restoration area showing areas to the north and south with existing mangroves. The proposed restoration will match the width of the existing area, connecting the two mangrove areas.



Restoration area showing areas to the north and south with existing mangroves. The proposed restoration will match the width of the existing area, connecting the two mangrove areas.



Restoration area showing the area to the north with existing mangroves. The proposed restoration will match the width of the existing area.



Restoration area showing the area to the south with existing mangroves. The proposed restoration will match the width of the existing area.