



FLORIDA DEPARTMENT OF Environmental Protection

Northwest District
160 W. Government Street, Suite 308
Pensacola, FL 32502

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

August 9, 2022

Elva Peppers, Florida Environmental &
Land Services, Inc.
221-4 Delta Court
Tallahassee, FL 32303
elvapeppers@felsi.org

Jeff Phipps, Orchard Pond LLC
400 Cedar Hill Road
Tallahassee, FL 323112
jflipps@gmail.com

Subject: Executed Consent Order; DEP vs. Orchard Pond, LLC and Jeffery S. Phipps;
ERP No. 394041, Leon County

Dear Ms. Peppers and Mr. Phipps:

Enclosed is the Executed Consent Order, which addresses ERP issues related to the Orchard Pond, LLC site located at the Lake Jackson Aquatic Preserve, Lake Carr site.

Please note the requirements of the Order for which you are responsible and fulfill all pertinent actions accordingly. Unless otherwise noted, all deadlines for completing requirements and actions in the Order are to be calculated from its effective date, which is the date the Order was filed with the Department Clerk, as noted on the signature page.

Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Kenneth Dickey at 850-595-0580 or Kenneth.Dickey@floriddep.gov.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Mullins Orr".

Elizabeth Mullins Orr
Director
Northwest District

EO/kd

Enclosure: Consent Order
Attachment I

c: John T. LaVia, III, jlavia@gbwlegal.com
Lea Crandall lea.crandall@dep.state.fl.us

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION
and THE BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST FUND,

IN THE OFFICE OF THE
NORTHWEST DISTRICT

Complainants,

OGC FILE NO. 22-1882

vs.

ORCHARD POND, LLC,

Respondent.

CONSENT ORDER

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 Orchard Pond, LLC ("Respondent") to reach settlement of certain matters at issue between the Department, the Board, and Respondent.

The Department and the Board find, and the Respondent neither admits nor denies 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 Chapter 373, Part IV, and Chapter 403, Florida Statutes, and the rules promulgated and authorized thereunder, Title 62, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Consent Order.

2. The Board is responsible for overseeing state owned lands and ensuring they are managed in trust for the citizens of the State of Florida pursuant to Chapter 253, Florida Statutes, and the rules promulgated and authorized thereunder, Florida Administrative Code Title 18. The Department has the duty to perform all staff duties

and functions related to the administration of state lands as provided in Section 253.002, Florida Statutes.

3. Respondent is a person within the meaning of Section 253.04 and 373.019(15), Florida Statutes.

4. Respondent is the owner of property located at 1991 Orchard Pond and 8960 N. Meridian Road, Tallahassee, FL 32312 in Leon County.

5. Respondent's property is located adjacent to Carr Lake and Mallard Pond in the vicinity of latitude 30°34'35.24" and longitude -84°17'57.25" and latitude 30°34'44.10" and longitude -84°18'08.87" both of which lie within the Lake Jackson Aquatic Preserve.

6. The Department finds that the Respondent allowed the dredging and filling without a valid permit. An inspection by Department personnel on October 23, 2020, revealed that wetland vegetation had been dredged to create a pathway; 0.195 acres of gravel fill had been used to elevate the lake bottom to create an elevated path, up to 1' of fill in some areas without a valid Environmental Resource Permit or Submerged Land Lease from the Department and The Board. The activity was conducted on the above-described property within the landward extent of Lake Carr, within the Lake Jackson Aquatic Preserve waters of the State, as defined by Florida Law. The fill was placed below the ordinary or mean high-water line within the Lake Jackson Aquatic Preserve, adjacent to the Respondent's property.

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

ORDERED:

7. Within 60 days of the effective date of this Consent Order, Respondent shall pay the Department \$ 5,000.00 in settlement of the matters addressed in this Consent Order. This amount includes \$ 500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalties are apportioned as follows: \$ 4,500.00 for violation of Rule 62-330.020, Florida Administrative Code.

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 Consent Order (File No. 22-1882) 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 becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

8. Within 60 days of the effective date of this Consent Order, the Respondent shall make a \$ 5,000.00 monetary donation, as contribution to restoration efforts in the Aquatic Preserve Society, Inc. A copy of the receipt and/or letter from Aquatic Preserve Society, Inc. illustrating receipt of the donation shall be provided to the Florida Department of Environmental Protection, NORTHWEST DISTRICT OFFICE at 160 West Government Street, Suite 308, Pensacola, Florida, 32502 and shall include the OGC number assigned to this Consent Order (File No. 22-1882). Donations to Aquatic Preserve Society, Inc. should be remitted as follows: Cashier's check or money order payable to the "Aquatic Preserve Society, Inc." mailed to "Aquatic Preserve Society, Inc. 2800 S. Adams St., #5969, Tallahassee, FL 32314 and shall include the OGC file number assigned to this Consent Order (File No. 22-1882).

9. Within 60 days of the effective date of this Consent Order, Respondent shall implement the restoration actions in the manner and timeframes of Attachment I.

10. With the exception of the activities described in Attachment I, effective immediately and henceforth, Respondent shall not conduct any dredging, filling, 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; nor shall 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 Department. Nothing in this Consent Order represents an

admission by Respondent concerning the ownership of title to lands below the ordinary or mean high water line and Respondent reserves the right to assert any claim it may have concerning the ownership of lands below the ordinary or mean high water mark in any future proceedings.

11. 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 the 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 right to request an extension of time for compliance with the requirements of this Consent Order.

12. 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.

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

14. 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 Sections 253.04 and 373.430, Florida Statutes.

15. 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.

16. 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, or received via electronic correspondence at 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 named above 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 name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney

or a qualified representative; 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; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

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, or received via electronic correspondence at Agency_Clerk@floridadep.gov, 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.

17. 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.

18. 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.

19. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order. However, Respondent does not waive its right to contest or challenge subsequent enforcement of this Consent Order.

20. 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.

21. 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, 160 West Government Street, Suite 308, Pensacola, Florida, 32502.

22. 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.

23. 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.

24. 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.


25. This Consent Order expires when the activities set forth in Paragraphs 7, 8, and 9 are completed. Respondent may request the Department to confirm in writing that the Consent Order has expired.

FOR THE RESPONDENT:

Orchard Pond, LLC


By: SMan Management, LLC
Its: Manager

8/5/22
DATE


By: Jeffery S. Phipps
Its: Manager

DONE AND ORDERED this 9th day of August, 2022
in Orlando, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Elizabeth Mullins Orr
District Director

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


Clerk

August 9, 2022
Date

cc: Lea Crandall, Agency Clerk
Mail Station 35

Attachment I

Restoration Plan

Project Location

Lake Carr, Leon County Florida. Vicinity of latitude 30°34'35.24" and longitude -84°17'57.25" and latitude 30°34' 44.10" and longitude -84°18'08.87".

Summary of Proposed Work

Gravel Fill Path within Wetlands or Below Ordinary High Water

The gravel fill path below ordinary high water has two components for restoration. The fill within the vicinity of latitude 30°34'35.24" and longitude -84°17'57.25", consists of 4" rock gravel. See Figures 2 and 3 for location aerials. The fill extends from higher lands through wetlands, across the boat path and open water to an island to the south. Orchard Pond LLC proposes to remove 100% of the rock gravel from this area. The rocks will be removed by a mini-excavator, and it will be transported to an upland location on Orchard Pond LLC parcel ID number 241120002000 or other offsite uplands and clearly outside of any area that is not clearly in the ownership of Orchard Pond LLC. It is estimated that the fill amount within this area is approximated upon dimensions of 785.5' in length by 6' in width by 8" in depth or 4,713 square feet (0.11 acre).

In order to reduce the potential for sedimentation within the wetlands and waterbody, attempts will be made to complete the work during a period of low water. Prior to commencement of the proposed work temporary silt fence will be installed within the wetlands adjacent to the work area as needed. Within areas that are inundated, a floating turbidity curtain will be installed during the active work period. The boat path will not be blocked in order to accommodate passing boats. Once the area has become stabilized, the BMPs will be removed.

Fence Across Boat Path and Fill

There was a collapsible fence/boat gate located within the boat path at approximate location latitude 30°34' 44.10" and longitude -84°18'08.87". Refer to the map included as Figure 4 for a location aerial. The fence traversed across the wetland and a floating bar was in the boat path to allow boat crossings. The bar and support posts within a 10' width using the centerline of the path were removed to allow free boat passage. The wire fence and posts within this area will also be removed.

Also referenced within this area is rock fill that is proposed for removal. It is estimated that the fill amount within this area is approximated upon dimensions of 181' in length by 6' in width by 8" in depth or 1,086 square feet (0.02 acre). A portion of this (22') is within an upland area, however that section is also proposed for removal.

In order to reduce the potential for sedimentation within the wetlands and waterbody, attempts will be made to complete the work during a period of low water. Prior to commencement of the proposed work temporary silt fence will be installed within the wetlands adjacent to the work area as needed. Within areas that are inundated, a floating turbidity curtain will be installed during the active work period. The boat path will not be blocked in order to accommodate passing boats. Once the area has become stabilized, the BMPs will be removed.

Completion Report

Within 30 days of completion of the rock removal a work completion report will occur. The report will include:

1. Pre-construction and post construction photographs of the rock removal areas (2 locations) taken from the same photo points. A minimum of two photo points at each work

area will be presented. The locations of the points will be shown on a map and the direction of the photo will be noted. Photo station location coordinates will be included.

2. A statement indicating that the signs and fencing have been removed from the required area will be provided, with photographic evidence.



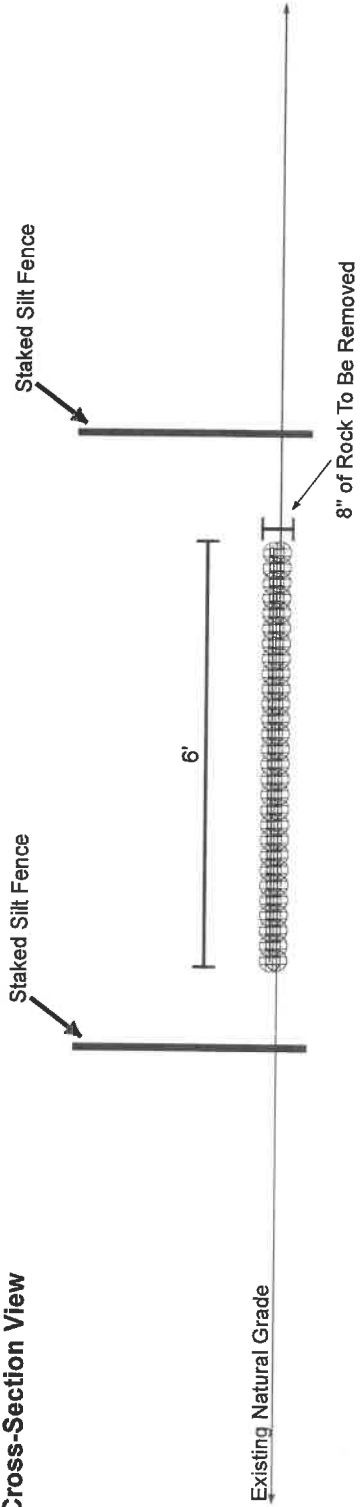
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|---|--|--|---|---------------------------|------------------|---------------------|------------------------------|---|---|---------------------------------------|-------------------|
| <p>Florida Environmental & Land Services Inc. 2314 DELTA COURT TALLAHASSEE, FL 32303 (850) 385-6255</p> | PROJECT: Carr Lake Compliance LEON COUNTY, FLORIDA | | TITLE: Figure 2 - Overall Aerial | DATE: 7/29/2021 | BY: NC | CHECK: EP | PROJECT #: 21-1887 | Parcel Boundary (Approx. 1,274 Acres) Estimated Ordinary High Water (Elev. Approx. 87') Fill To Be Removed (0.13 Acres Wetland; 0.003 Acres Upland) Existing Fenceline | Legend: Wetland Line 2' Contours (TLGIS) GPS Points | Scale: 0 40 80 160 240 Feet | PAGE: 1 |
| | AERIAL IMAGERY 2020 | | | | | | | | | | |



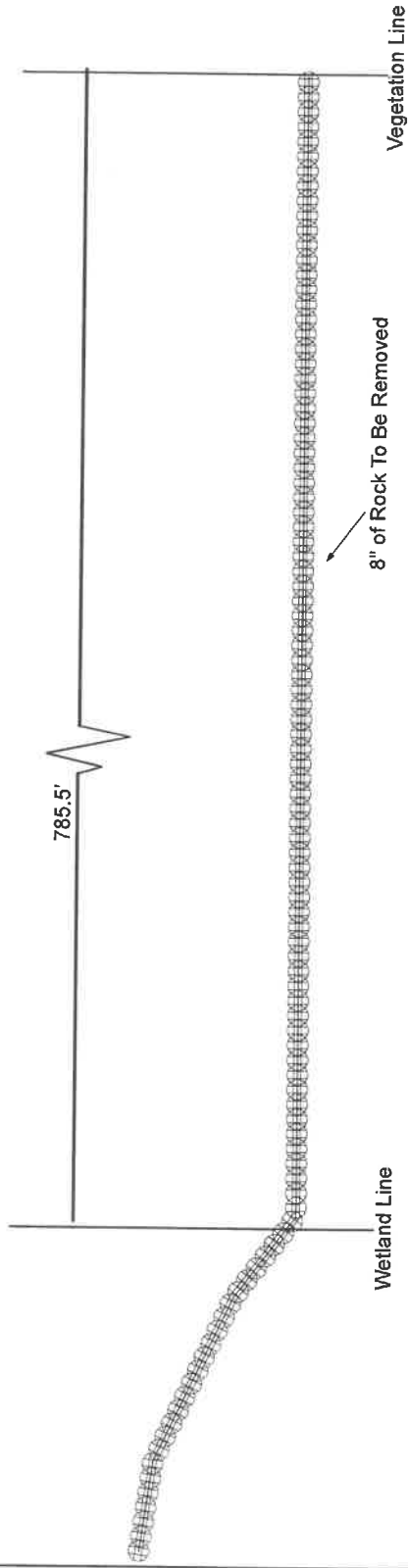
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|---|--|---------------|------------------|---------------------------|--|------------------------------------|----------------|
| Florida Environmental & Land Services Inc. 221-A DELTA COURT TALLAHASSEE, FL 32303 (850) 385-6255 | PROJECT: Carr Lake Compliance - LEON COUNTY, FLORIDA | | | | TITLE: Figure 3 - Location 1 | PROJECT #: 21-1857 | PAGE: 1 |
| | DATE: 4/16/2022 | BY: NC | CHECK: EP | PROJECT #: 21-1857 | Legend: [] Estimated Ordinary High Water (Elev. Approx. 87') [] Wetland Line [] Fill To Be Removed (4,719 Sq. Ft.; 0.51 Aci; 117 cu Yd) [] 2' Contours (TLCC015) [] Sign to be removed [] Proposed Floating Turbidity Curtain [] Proposed silt fence [] GPS Points [] Existing fence line | Scale: 0 30 60 120 180 Feet | PAGE: 1 |

AERIAL IMAGERY 2020

Cross-Section View



Profile View



Drawing Not To Scale

Florida Environmental
& Land Services Inc.
221-4 DELTA COURT
TALLAHASSEE, FL 32303
(850) 385-6255

PROJECT:
Carr Lake Compliance
LEON COUNTY, FLORIDA

TITLE:
Crossing #1

DATE: 4/6/2022
BY: NC
CHECK: EP
PROJECT #: 21-1956

Rock Fill To Be Removed
(4,713 Sq. Ft., 0.11 Acres, 117 Cu Yd)



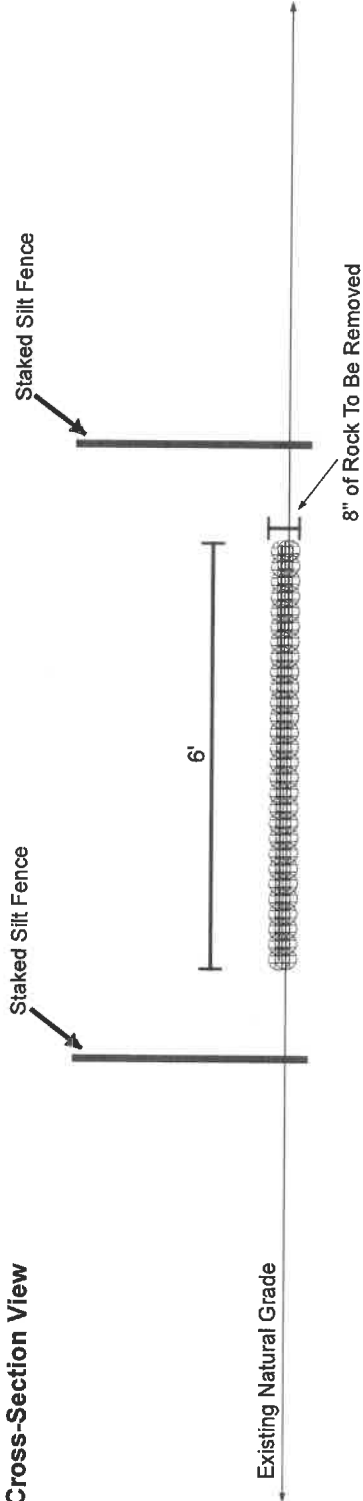


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|---|--|--|--|---|--|---|--|--|--|---|--|----------------------------------|
| Florida Environmental & Land Services Inc. 221-4 DELTA COURT TALLAHASSEE, FL 32303 (850) 385-6255 | | PROJECT: Carr Lake Compliance LEON COUNTY, FLORIDA | | TITLE: Figure 4 - Location 2 | | DATE: 4/6/2022 BY: NC CHECK: EP PROJECT #: 21-1867 | | Estimated Ordinary High Water (Elev. Approx. 87') Fill To Be Removed (1,086 Sq. Ft., 0.02 Ac, 26.8 Cu Yd) Proposed Bill Fence Proposed Floating Turbidity Curtain | | Existing Fenceline Wetland Line 2' Contours (TLGCS) GPS Points | | PAGE: 1 PAGE: 1 |
|---|--|--|--|---|--|---|--|--|--|---|--|----------------------------------|

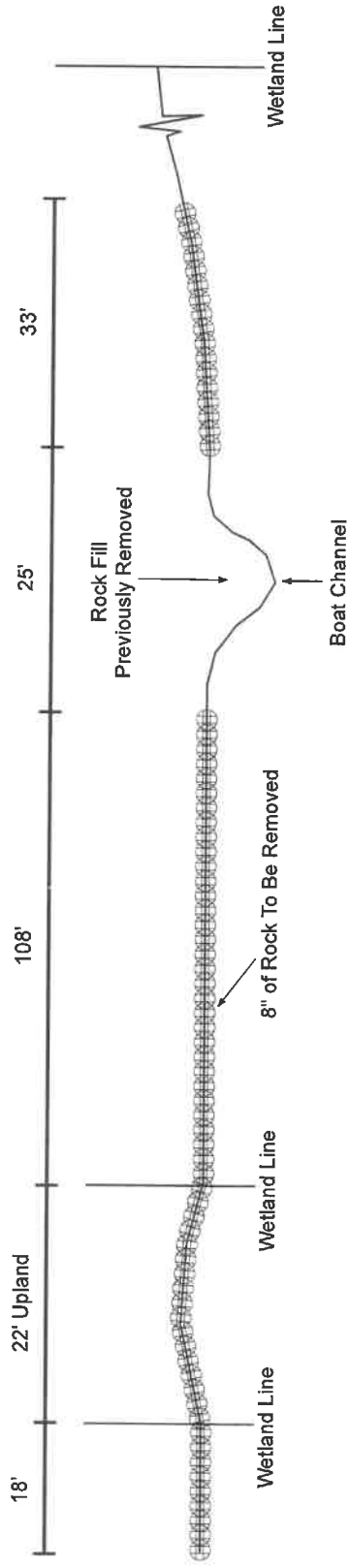


AERIAL IMAGERY 2020

Cross-Section View



Profile View



Drawing Not To Scale

Florida Environmental & Land Services Inc.
 2214 DELTA COURT
 TALLAHASSEE, FL 32303
 (850) 385-6255

PROJECT: **Carr Lake Compliance**
 LEON COUNTY, FLORIDA

TITLE: **Crossing #2**

DATE: 4/6/2022

B'Y: NC

CHECK: EP

PROJECT # 21-1956

Rock Fill To Be Removed
 (1,086 Sq. Ft.; 0.02 Acres; 26.8 Cu Yd)

PAGE: 1 OF: 1