

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	SOUTHWEST DISTRICT
)	
)	OGC FILE NO. 22-3046
vs.)	
)	
LONG BAR POINTE, LLLP)	
)	
_____)	

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection (Department), and Long Bar Pointe, LLLP (Respondent) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits 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. Respondent is a person within the meaning of Section 373.019(15), Florida Statutes.

3. Respondent is the record owner of real property located, southwest of El Conquistador Parkway, Parcel ID: 6146901509, in Bradenton Florida 34210, Sections 17, 18, 19 and 20, Township 35 South, Range 17 East, Manatee County, and geographic coordinates latitude 27°26'01.26" / longitude -82°37'42.63" (Property).

4. Inspections of the Property by Department personnel on June 17 and August 25, 2022, revealed the following: all mangrove trimmings over 3 feet long or over 3 inches in diameter were not properly removed and disposed of offsite; remaining

mangrove trimmings were not evenly distributed; a portion of mangroves appeared to be reduced more than 25% of foliage annually; and adequate prior and post photo documentation of the trimming event was not provided. The above activities were conducted in violation of the Mitigation Bank Permit No.: 338349-002 and General Mangrove Permit No.: 41-0299496-003-MA under the Mangrove Trimming and Preservation Act. An aerial overview illustrating the areas authorized for trimming under the Mitigation Bank Permit No.: 338349-002 and General Mangrove Permit No.: 41-0299496-003-MA is attached hereto as Exhibit B.

5. The unauthorized activity was conducted on the Property within the waterward extent of a mangrove fringe located in Sarasota Bay, a Class III Florida Waterbody, as defined in Rule 62-302.400, Fla. Admin. Code.

6. The Department finds that the following violations of the Mangrove Permit No.: 41-0299496-003-MA and Mitigation Bank Permit No.: 338349-002 occurred:

- a. Respondent did not properly remove and dispose of all mangrove trimmings over 3 feet long or over 3 inches in diameter.
- b. Respondent did not evenly distribute the remaining trimmings.
- c. Respondent reduced a portion of mangrove foliage at 3 sites adjacent to Sarasota Bay, more than the authorized amount of 25% annually on waterward extent of the mangrove fringe.
- d. Respondent did not provide adequate pre and post photo documentation of the trimming event.

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

ORDERED:

7. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$8,500.00 in settlement of the matters addressed in this Consent Order. This amount includes \$1,000.00 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: \$3,000.00 for a reduction in height by more than 25% of mangrove foliage annually; \$3,000.00 for a violation of fill debris; and \$1,500.00 for a violation of proper documentation of the trimming event.

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

8. Respondent shall comply with the specific corrective actions attached hereto and incorporated herein as Exhibit A in the manner and within the timeframes specified therein.

9. 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 Paragraphs 7 and 8 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 "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order 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 paragraph 7 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated

penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

10. 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.

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

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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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, Florida Department of Environmental Protection, Southwest District Office, 13051 North Telecom Parkway, Suite 101, Temple Terrace, Florida 33637.

20. 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.

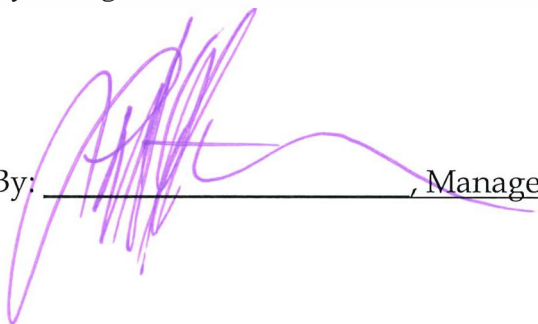
21. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation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

22. 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:


Long Bar Pointe, LLLP
By: Long Bar GP, LLC, General Partner

February 27, 2023
DATE

By:  _____, Manager

DONE AND ORDERED this 28th day of February, 2023,
in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Kelley M. Boatwright
Southwest 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

February 28, 2023

Date

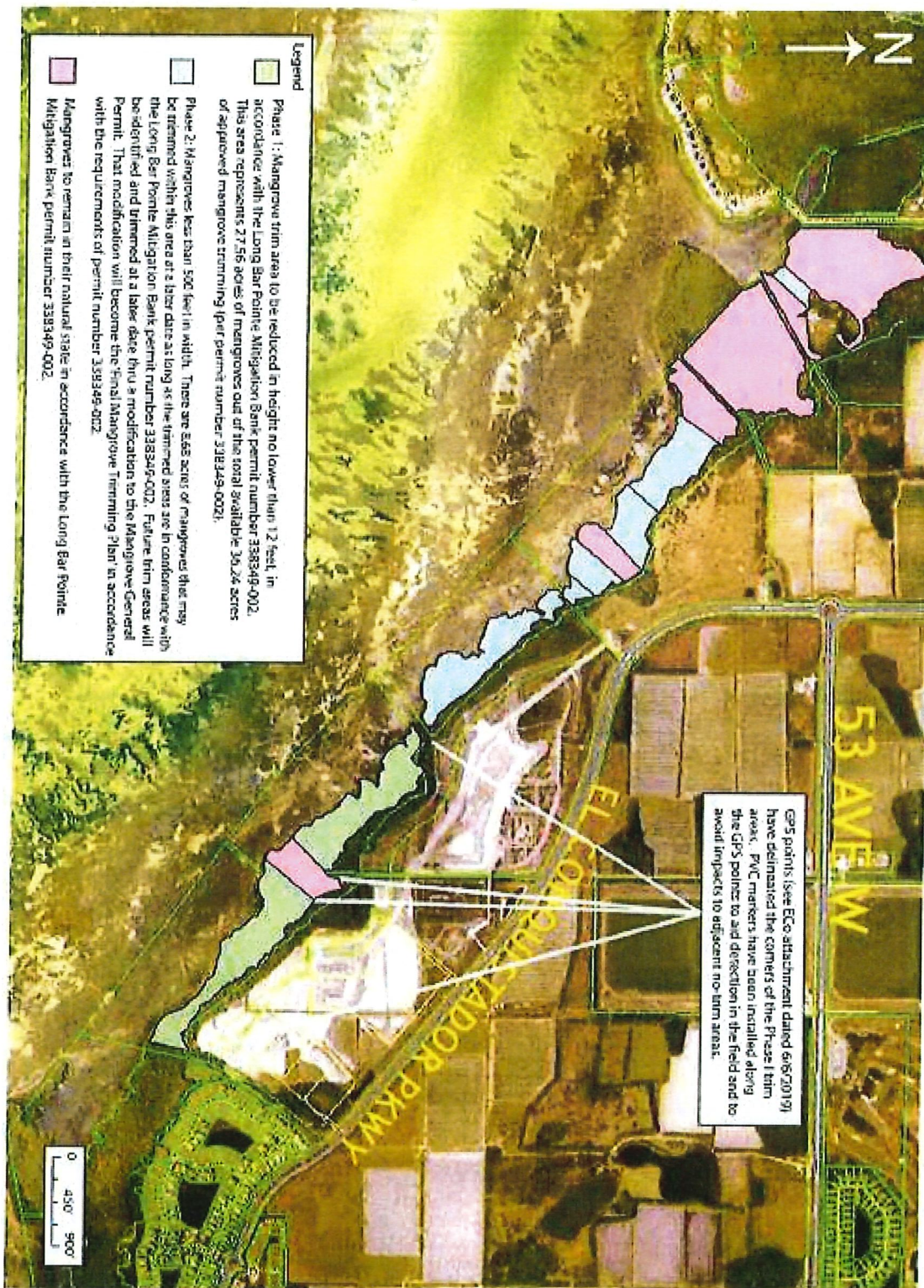
cc: Lea Crandall, Agency Clerk
Mail Station 35

EXHIBIT A
CORRECTIVE ACTIONS

Within 120 days of the effective date of this Order, Respondent shall implement the following Maintenance and Monitoring Actions, as stated in Mangrove Permit No.: 41-0299496-003-MA:

1. Respondent shall remove all trimmings over 3 feet long and/or over 3 inches in diameter from the area and placed in an offsite common ownership uplands or taken to a landfill.
2. Respondent will make all reasonable efforts to remove as much trimmed material as possible. Any remaining trimmings will be evenly distributed so as to not cause adverse shading impacts or impediments to water flow.
3. A notice and photographs 14 days prior and within 14 days following the activities will be submitted to the Department. A joint site visit between staff and the Department, along with a statement of site visit verification by Department personnel is required within 30 days.
4. Respondent shall ensure all future trimming events are in compliance with Permit No. 41-0299496-003-MA and all applicable rules and statutes.

EXHIBIT B



**Long Bar Pointe , LLLP
 Mangrove Trimming Plan**