

2. The Department performs all staff duties and functions related to the administration of state lands as provided in Section 253.002, Fla. Stat., including the power and duty to protect state lands from damage, trespass, depredation, or unlawful use pursuant to Section 253.05, Fla. Stat. The Department is also 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 Chapters 403 and 373 Fla. Stat., and the rules promulgated thereunder in Title 62, Fla. Admin. Code. In addition to its authority under Chapter 403, Fla. Stat., the Department is specifically authorized to administer and enforce the management and storage of surface waters and the environmental resource permitting programs in Chapter 373-Part IV, Fla. Stat.² The Department has jurisdiction over the matters addressed in this Consent Order.

3. Respondent FULCHER is the owner of real property located at 6633 Sway Drive, Fort Myers, Florida 33919 (Section 29, Township 45 South, Range 24 East) and further identified by Lee County Property Appraiser Folio ID No. 10215965, and Department Site ID No. 0349658 ("Upland Property"). Respondent FULCHER is a "person" within the meaning of Sections 253.04, 403.031(5), and 373.109(15), Fla. Stat.

4. The Upland Property is located immediately adjacent to Deep Lagoon, a class III waters of the state. The Board owns the submerged bottom of Deep Lagoon adjacent to the Upland Property, waterward of the historic, mean high-water line. The Board deraigns title to the submerged real property in the Deep Lagoon upon which Respondent's Seawall is located, from the United States under the Equal Footing Doctrine, and by Florida's admission to the Union, Act of March 3, 1845, (Chapter 48, Subsection 1, 5 Stat. 742, Art. X, s. 11, Florida Constitution). The Board holds title to the submerged real property, not otherwise alienated or conveyed, in trust for all the people of the State of Florida. See, Art. X, s. 11, Florida Constitution; Sections 253.03, 253.12, Fla. Stat.; and Rule 18-21.003(65), Fla. Admin. Code

² In part, the Department has implemented these statutes through Chapter 62-330, Fla. Admin. Code, and the *Environmental Resource Permit Applicant's Handbook* ("Applicant Handbook"), incorporated by reference in Rule 62-330.010, Fla. Admin. Code.

5. Respondent Edens Benton, Inc., formerly known as Benton & Sons Construction, Inc.³ (“EDENS BENTON”), is a Florida for-profit corporation with its principal place of business located at 49 SW Flagler Avenue, Suite 301, Stuart, Florida 34994 and is a “person” pursuant to Sections 253.04, 403.031(5), and 373.019(15), Fla. Stat. Respondent EDENS BENTON’s registered agent and Chief Executive Officer is Joshua M. Crawford, whose address for service is 49 SW Flagler Avenue, Suite 301, Stuart, Florida 34994. Roy L. Benton, III, is the President of Respondent EDENS BENTON and was the general contractor (License # GCC 1512015) who oversaw the activities described herein.

6. On December 21, 2017, the Department issued a Consolidated Environmental Resource Permit (“ERP”) No. 0349658-003 EI,⁴ to Respondent FULCHER to replace an existing, approximately 118 linear foot seawall and dredge approximately 540 cubic yards within a 7,070-square foot (0.16 acre) area to a depth of no more than -6 feet mean low water (MLW) within Deep Lagoon, directly adjacent to the Upland Property (“Project”). The ERP issued by the Department included the requisite federal authorization for the Project, pursuant to the U.S. Army Corps of Engineers State Programmatic General Permit V (SPGP”). Respondent EDENS BENTON was the contractor retained by Respondent FULCHER to construct the seawall Project.

7. An easement from the Board was required for the dredging portion of Project. On March 18, 2018, the Board granted Respondent FULCHER a non-exclusive easement (BOT File No. 360241035 / BOT Easement No. 42073) on, under and across the sovereign submerged lands of Deep Lagoon directly adjacent to the Upland Property for a 10-year period, beginning December 21, 2017 (“BOT Easement”). The terms of the BOT Easement, stated that the use of the described submerged lands shall be “solely for an access channel to a private residential single-family dock and the dredging thereof and Grantee shall not engage in any activity related to this use except as described in . . . [ERP]

³ On or about February 15, 2023, Respondent changed its corporate name from Benton & Sons Construction Company, Inc. to Edens Benton, Inc.

⁴ Corrected ERP No. 0349658-003 EI, issued by the Department on January 10, 2018, to correct Permittee Fulcher contact information.

0349658-003-EI, dated December 21, 2017, incorporated herein and made a part of this easement by reference.” (*emphasis in original*)

8. A compliance inspection of the Upland Property and submerged lands adjacent to the property conducted by the Department on July 13, 2018, and an As-Built survey of the seawall dated March 8, 2023, revealed several non-compliance issues, including the following:

- i. A new seawall and associated backfill had been installed within Deep Lagoon adjacent to the Upland Property, between approximately 4.5 and 7.0 feet waterward of the previously existing seawall. The new seawall and associated backfill encroached onto approximately 760 square feet of sovereign submerged lands of the state without authorization from the Department and/or the Board and in violation of the ERP issued by the Department;
- ii. Failure to implement appropriate best management practices (BMPs) for erosion and sedimentation control have resulted in sedimentation impacts to the adjacent waterway (Deep Lagoon); and
- iii. The existing riparian mangrove fringe at northeastern end of the Upland Property had been removed without authorization.

See Exhibit A (Seawall Fill Area Comparison), attached hereto and incorporated here.

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

ORDERED:

9. The Department and the Board find that Respondents FULCHER and EDENS BENTON failed to construct the Project in accordance with ERP No. 0349658-003 EI, and failed to comply with provisions of Chapters 253, 373 Part IV, and 403, Fla. Stat., and the rules promulgated thereunder, and assess the following administrative penalties and costs for the violations:

- i. Respondent Fulcher: Regulatory penalties in the amount of \$3,000.00, State Lands penalties in the amount of \$2,500.00, and costs in the amount of \$2,000.00.
- ii. Respondent Edens Benton: Regulatory penalties in the amount of \$10,500.00, State Lands penalties in the amount of \$2,500.00, and costs in the amount of \$2,000.00.

10. Respondents FULCHER and EDENS BENTON shall comply with the following corrective actions within the stated time periods:

- (a) **Commencing immediately and henceforth**, Respondents FULCHER and EDENS BENTON shall both comply with all Department and Board rules and statutes regarding environmental resource permitting and the use of state lands, including but not limited to Chapters 253, 373 Part IV, and 403, Fla. Stat., and the rules promulgated thereunder, as well as all terms of ERP No. 0349658-003 EI issued by the Department for the Project.
- (b) **Within 180 days of the effective date of this Order, Respondents FULCHER and EDENS BENTON** (either individually or collectively) shall:
 - i. Remove all portions of (1) the current as-built seawall, depicted in the excerpt of the March 8, 2023 As-Built Survey, attached hereto as **Attachment I**, and (2) approximately **760** sq. ft. of associated backfill on SSLs within Deep Lagoon, located more than 18-inches waterward of the mean high-water line of the Upland Property located in the excerpt of the "Submerged Land Easement - Field Survey" (dated April 6, 2017) attached to BOT No. 360241035/Easement No. 42073 (dated March 1, 2018), attached hereto as **Attachment II**; AND
 - ii. Relocate the current as-built seawall so that the entirety of the seawall is located no more than 18-inches waterward of the mean high-water line of the Upland Property located in **Attachment II**.
- (c) All removal and relocation activities required by this Consent Order shall be conducted in accordance with the conditions set out in **Attachment III ("Corrective Actions & Conditions")**, attached hereto and incorporated herein.

- (d) **Within 60 days of completion of the removal and relocation activities required by this Consent Order, Respondents FULCHER and EDENS BENTON** (either individually or collectively) shall submit an updated “as built” survey and legal description prepared, signed, and sealed by a Florida registered Professional Surveyor and Mapper (“Relocated As-Built Survey”). The Relocated As-Built Survey shall clearly document the following:
- i. The location of the mean high water line at the Upland Property shown in Attachment II;
 - ii. The waterward face of the relocated “as built” seawall at the Upland Property; and
 - iii. The distance between the mean high-water line shown in Attachment II and the waterward face of the relocated as-built seawall at the Upland Property. The distance shall be measured from Respondent FULCHER’s western property line to Respondent FULCHER’s eastern property line at 10 or 20 foot intervals.

The Relocated As-Built Survey shall be submitted in accordance with Paragraph 14 herein. The Department’s Division of State Lands, Bureau of Surveying and Mapping shall review the survey and the Department shall either accept the survey or request Respondent(s) provide additional information or perform additional evaluation. If the Relocated As-Built Survey is not accepted by the Department or if the Department requests further information, Respondent(s) shall submit all requested additional information, clarification, and modifications within 15 days of receipt of written notice from the Department.

- (e) **Within 30 days of the effective date of this Order, Respondents FULCHER and EDENS BENTON** shall each submit payment in the amount of **\$2,000.00**, to the Department for costs and expenses⁵ incurred during the investigation of this matter and the preparation and tracking of this Consent Order. Payment shall be made in accordance with Paragraph 12 herein.

⁵ Section 403.141, Fla. Stat.

- (f) **Within 30 days of the effective date of this Order, Respondent FULCHER shall submit payment in the amount of \$3,000.00, to the Department for the regulatory administrative penalties⁶ imposed for the violations outlined herein. Payment shall be made in accordance with Paragraph 12 of this Order below.**
- (g) **Within 30 days of the effective date of this Order, Respondent EDENS BENTON shall submit payment in the amount of \$10,500.00, to the Department for the regulatory administrative penalties⁷ imposed for the violations outlined herein. Payment shall be made in accordance with Paragraph 12 of this Order below.**
- (h) **Within 30 days of the effective date of this Order, Respondents FULCHER and EDENS BENTON shall each submit payment in the amount of \$2,500.00, to the Department for the state lands proprietary administrative penalties⁸ imposed for the violations outlined herein. Payment shall be made in accordance with Paragraph 13 of this Order below.**
- (i) With the exception of the activities described in this Order, effective immediately and henceforth, neither Respondent FULCHER nor Respondent EDENS BENTON shall 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 other valid authorization from the Department that the activities; nor shall Respondents 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.
- (j) Commencing immediately and hence forth, both Respondents FULCHER and EDENS BENTON shall forthwith comply with all Department rules and statutes regarding mangrove trimming and shall not conduct mangrove trimming and/or alteration activities without authorization from the Department, if required, or that must be performed by a qualified Professional Mangrove Trimmer, as defined in Section 403.9329, Fla. Stat., or that results in the alteration of mangroves, as defined in Section 403.9325(1), Fla. Stat.

⁶ Section 403.121(3)(c), Fla. Stat., (\$3,000 unpermitted, unauthorized dredging and filling of more than one-quarter of acre of Class III surface waters).

⁷ Section 403.121(3)(c), Fla. Stat., (\$7,500 unpermitted, unauthorized dredging and filling of Class III surface waters by a Contractor) and Section 403.121(4)(d), Fla. Stat., (\$3,500 failure construct in accordance with permit).

⁸ Rules 18-14.002(4)(a) and 18-14.005, Fla. Admin. Code (unauthorized dredging and filling of SSLs).

- (k) With the exception of the activities described in this Consent Order, effective immediately and henceforth, neither Respondent FULCHER nor Respondent EDENS BENTON shall 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 other valid authorization from the Department that the activities; nor shall Respondents 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.
- (l) Respondent FULCHER shall allow all authorized representatives of the Department access to the Upland Property and the seawall located within Deep Lagoon adjacent to the Upland Property, at reasonable times for the purpose of determining compliance with the terms of this Notice and the rules and statutes of the Department and Board.

11. Respondent(s) agree to pay the Department stipulated penalties in the amount of \$100.00 per day, per violation, for each and every day the respective Respondent(s) fails to timely comply with any of the requirements set out in Paragraph 10(a)-(l) of this Order. A separate stipulated penalty shall be assessed for each violation of this Order. Any stipulated penalties assessed under this Paragraph shall be in addition to the penalties, fees and/or costs agreed to in Paragraphs 9 and 10(e)-(h) of this Order. Within 30 days of a written demand from the Department, respective the Respondent(s) shall submit payment of the appropriate stipulated penalties in accordance with Paragraph 12 herein. The Department may demand stipulated penalties at any time after violations occur. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Should the Department be required to initiate a lawsuit to recover stipulated penalties under this Paragraph, the Department shall not be foreclosed from seeking civil penalties for violations of this Order in an amount greater than the stipulated penalties set out in this Paragraph.

12. All administrative regulatory payments required under this Order shall be made by cashier's check or money order, or online electronic payment. Cashier's check or money order payment shall be made payable to the "*State of Florida Department of*

Environmental Protection,” and shall include the notations “OGC No. 20-1445” and “Water Quality Assurance Trust Fund.” Cashier’s check or money order payment shall be sent to the State of Florida Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, Florida 33902-2549. Online payments may be made by e-check at the DEP Business Portal: <http://www.fldepportal.com/go/pay/>. Please note it will take a number of days after this Order becomes final and effective filed with the Clerk of the Department before the ability to make online payment is available.

13. All administrative state lands proprietary payments required under this Order shall be made by cashier’s check or money order, or online electronic payment. Cashier’s check or money order payment shall be made payable to the “*Internal Improvement Trust Fund*” and shall include the notations “OGC No. 20-1445” and “BOT File No. 360241035.” Cashier’s check or money order payment shall be sent to the Cashier’s check or money order payment shall be sent to: the State of Florida Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, Florida 33902-2549.

14. All submittals required under this Order shall be sent to: State of Florida Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, Florida 33902-2549, ATTN: Compliance Assurance (ERP), and shall include the notation “OGC No. 20-1445” on the submittals. When practical, submittals may be sent electronically (via e-mail) to FTMERP_Compliance@dep.state.fl.us, with the notation “Compliance: OGC No. 20-1445” in the subject line of the e-mail.

15. Respondents FULCHER and EDENS BENTON shall use all reasonable efforts to obtain any necessary access to implement the terms of this Order. If necessary, access cannot be obtained, or if obtained, is revoked by owners or entities controlling access to the properties to which access is necessary, the Respondents shall notify the Department within five (5) business days of such refusal or revocation. The Department may, at any time, seek to obtain access as is necessary to implement the terms of this Order. The Respondents shall reimburse the Department for any damages, costs, or expenses, including expert and attorney fees, that the Department is ordered to pay, or that the

Department incurs in connection with its efforts to obtain access that is necessary to implement the terms of this Order. The Respondents shall pay these sums to the Department or arrange a payment schedule with the Department within 30 days of written demand by the Department.

16. In the event any part of any of the structures authorized by this Order are determined by a final adjudication issued by a court of competent jurisdiction to encroach or interfere with riparian rights of the adjacent upland riparian owner, Respondent FULCHER agrees to either obtain written consent for the offending structure(s) or use from the affected adjacent upland riparian owner or remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this Paragraph shall constitute a material breach of this Order and be grounds for immediate termination of this Order at the sole option of the Department and the Board.

17. The sale or conveyance of the Property does not relieve either Respondents FULCHER or EDENS BENTON of the obligations imposed by this Order. In the event of a sale or conveyance of the Property, if all of the requirements of this Order have not been fully satisfied, the Respondents shall: (i) notify the Department of such sale or conveyance of the Property, at least 30 days prior to the sale or conveyance; (ii) provide the name and address of the purchaser/grantee, operator, or person(s) in control of the Property; and (iii) provide a copy of this Order with all attachments to the purchaser/grantee, operator, or person(s) in control of the Property.

18. If any event, including but not limited to administrative or judicial challenges by third parties unrelated to the Respondents, supply or permitting delays, and/or potentially hazardous materials discovered at the project site, occurs which causes a delay or the reasonable likelihood of delay, in complying with the requirements of this Order, Respondents FULCHER and EDENS BENTON shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondents and could not have been or cannot be overcome by Respondents' due diligence. Economic circumstances shall not be considered circumstances beyond the control of the Respondents, nor shall the failure of a contractor, subcontractor,

materialman, or other agents (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of the Respondents unless the cause of the contractor's late performance was also beyond the contractor's control. Upon the occurrence of an event causing the delay, or upon becoming aware of a potential for delay, the Respondents shall notify the Department orally within 24 hours or by the next working day and shall, within seven (7) days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures are taken or to be taken to prevent or minimize the delay and the timetable by which the Respondents intend 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 the Respondents, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such an agreement shall adopt all reasonable measures necessary to avoid or minimize the delay. Failure of either Respondents to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of the Respondents' right to request an extension of time for compliance with the requirements of this Order.

19. This Consent Order only addresses violations of the rules and statutes of the Department and the Board. Entry of this Consent Order does not constitute a permit from the Department nor does it convey any authority from the Board of Trustees of the Internal Improvement Trust Fund involving the use of sovereignty or other lands of the State, other than the use of those lands by the Respondents set out in BOT No. 360241035/Easement No. 42073. In order to ascertain whether any authority is needed to use sovereign lands other than the lands set out BOT No. 360241035/Easement No. 42073, the Respondents must contact the Department of Environmental Protection, Division of State Lands. A copy of this Consent Order will be furnished to the Department's Division of State Lands. Respondents are hereby advised that Florida law states: "No person shall commence any excavation, construction or other activity involving the use of sovereign or other lands of the State, title to which is vested in the

Board of Trustees of the Internal Improvement Trust Fund under Chapter 253, Florida Statutes, until such person has received from the Board of Trustees of the Internal Improvement Trust Fund the required lease, license, easement or other form of consent authorizing the proposed use." If such work is done without consent, a fine for each offense in an amount of up to \$10,000.00, per day, may be imposed.

20. The entry of this Order does not relieve the Respondents of the need to comply with applicable federal, state, or local laws, regulations, or ordinances.

21. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69, 253.04, 373.129, and 403.121, Fla. Stat. Failure to comply with the terms of this Order shall constitute a violation of Sections 253.04, 373.430, and 403.161, Fla. Stat.

22. Respondents are fully aware that a violation of the terms of this Order may subject Respondents to judicial imposition of damages, civil penalties of up to \$10,000.00, per day per violation, and administrative fines of up to \$10,000.00 per day per violation, and criminal penalties.

23. The Department and the Board hereby expressly reserve 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 Order.

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

25. Respondents acknowledge and waive their right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this Order. Respondents acknowledges their right to appeal the terms of this Order pursuant to Section 120.68, Fla. Stat., and waive that right upon signing this Order.

26. This Order is a settlement of the Department and the Board'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.

27. This Consent Order is a final order of the Department and the Board pursuant to Section 120.52(7), Fla. Stat., 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 Order will not be effective until further Order of the Department. **NOTE: The Board's actions relating to proprietary requirements contained in this Consent Order are not subject to challenge under Chapter 120, Fla. Stat. Any litigation involving these proprietary requirements shall be initiated and maintained only in Leon County.**

28. 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 Consent Order identification number (20-1445) and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each petitioner;
- (c) 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;

- (d) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- (e) A statement of when and how the petitioner received notice of the Consent Order;
- (f) A statement of all material facts disputed by petitioner, if any;
- (g) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- (h) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- (i) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department and/or the Board 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 and/or the Board 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, Fla. Stat., 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, Fla. Admin. 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, Fla. Stat., or may choose to pursue mediation as an alternative remedy under Section 120.573, Fla. Stat., 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, the Board, 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, the Board, 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, Fla. Stat., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department and the Board 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 and the Board 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 and the Board shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Fla. Stat., 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.

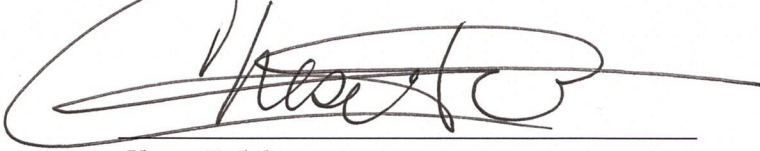
29. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals.

30. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by the Respondent, the Department and the Board.

31. Copies of Department rules referenced in this Order may be examined at any Department Office or may be obtained by written request to the District Office referenced in Paragraph 14 above. The rules referenced in this Order are also available at <https://floridadep.gov/ogc/ogc/content/rules>.

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FOR THE RESPONDENT: CHASE FULCHER

A handwritten signature in black ink, appearing to read 'Chase Fulcher', written over a horizontal line.

Chase Fulcher

2.21.24

Date

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FOR THE RESPONDENT: EDENS BENTON, INC.

The undersigned certifies that as the Chief Executive Officer of EDENS BENTON, INC he is authorized and empowered to negotiate, enter into and execute, in the name and on behalf of the Respondent, EDENS BENTON, INC., any agreements, documents, instruments, certificates, including and without limitation, this Consent Order entered into between Respondent and the State of Florida Department of Environmental Protection.



Joshua M. Crawford, CEO
Edens Benton, Inc.

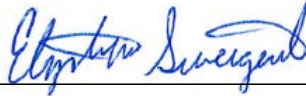
02/23/2024

Date

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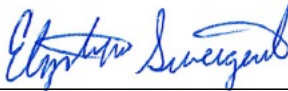
DONE AND ORDERED this 26th of February, 2024, in Lee County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Elizabeth Sweigert, Interim Director
South District
P.O. Box 2549
Fort Myers, FL 33902-2549

BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE
STATE OF FLORIDA



Elizabeth Sweigert, Interim Director
South District
Department of Environmental Protection,
*as agent for and on behalf of the Board of Trustees
of the Internal Improvement Trust Fund
of the State of Florida*

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


Clerk

February 26, 2024
Date

Executed Copies To:

Counsel for Respondent Fulcher: Edwin A. Steinmeyer, Esq. (EAS@steinmeyerfiveash.com)
Counsel for Respondent Edens Benton: W. Scott Turbull, Esq. (turnbull@crarybuchanan.com)
Lea Crandall, FDEP Agency Clerk (Lea.Crandall@FloridaDEP.gov)
Kelley F. Corbari, Esq., FDEP-Litigation (Kelley.Corbari@FloridaDEP.gov)

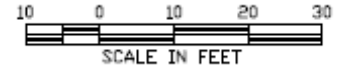
ATTACHMENT I

AS-BUILT SURVEY EXCERPT

(03/08/2023)

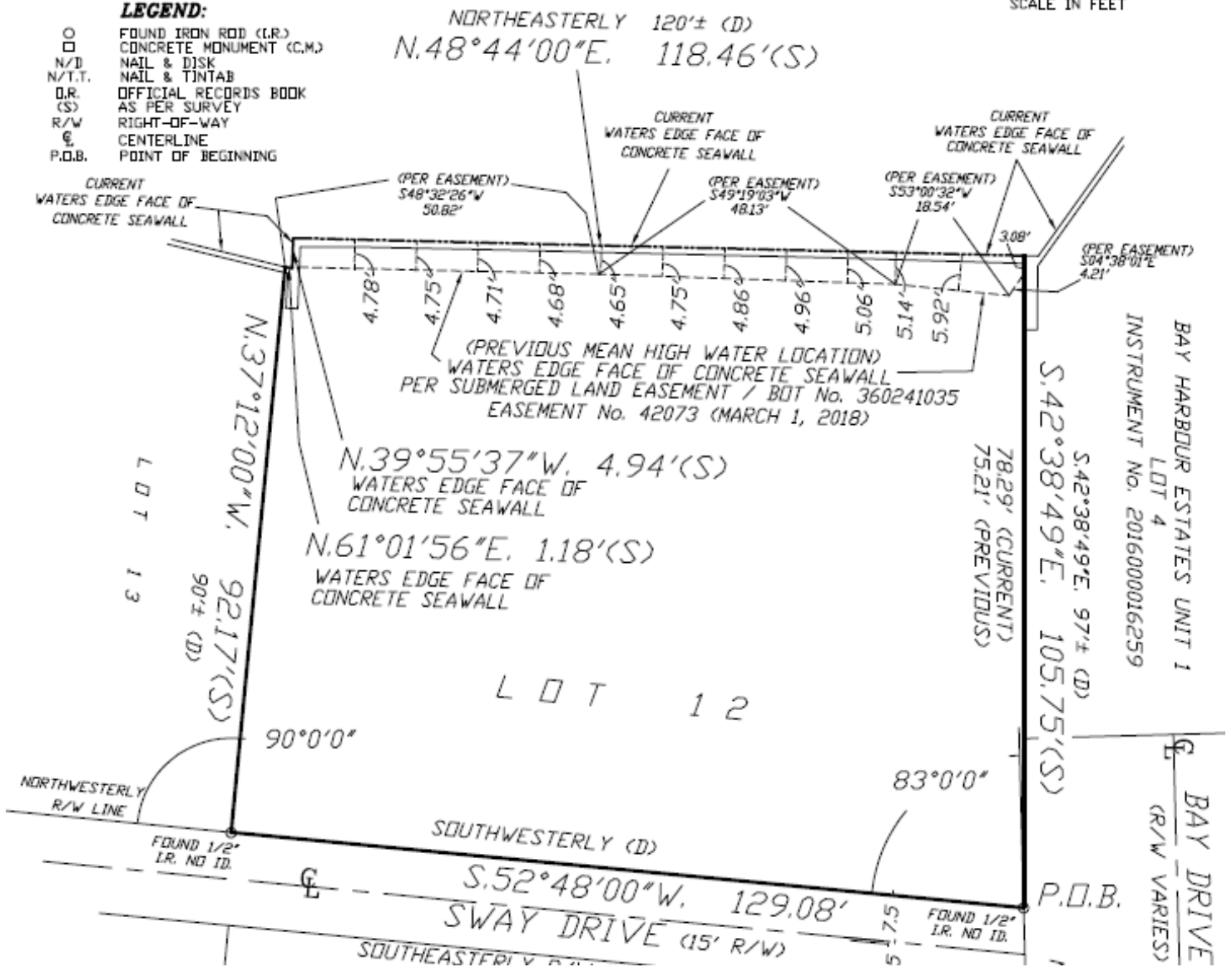
****THIS IS NOT A BOUNDARY SURVEY****

W A T E R W A Y



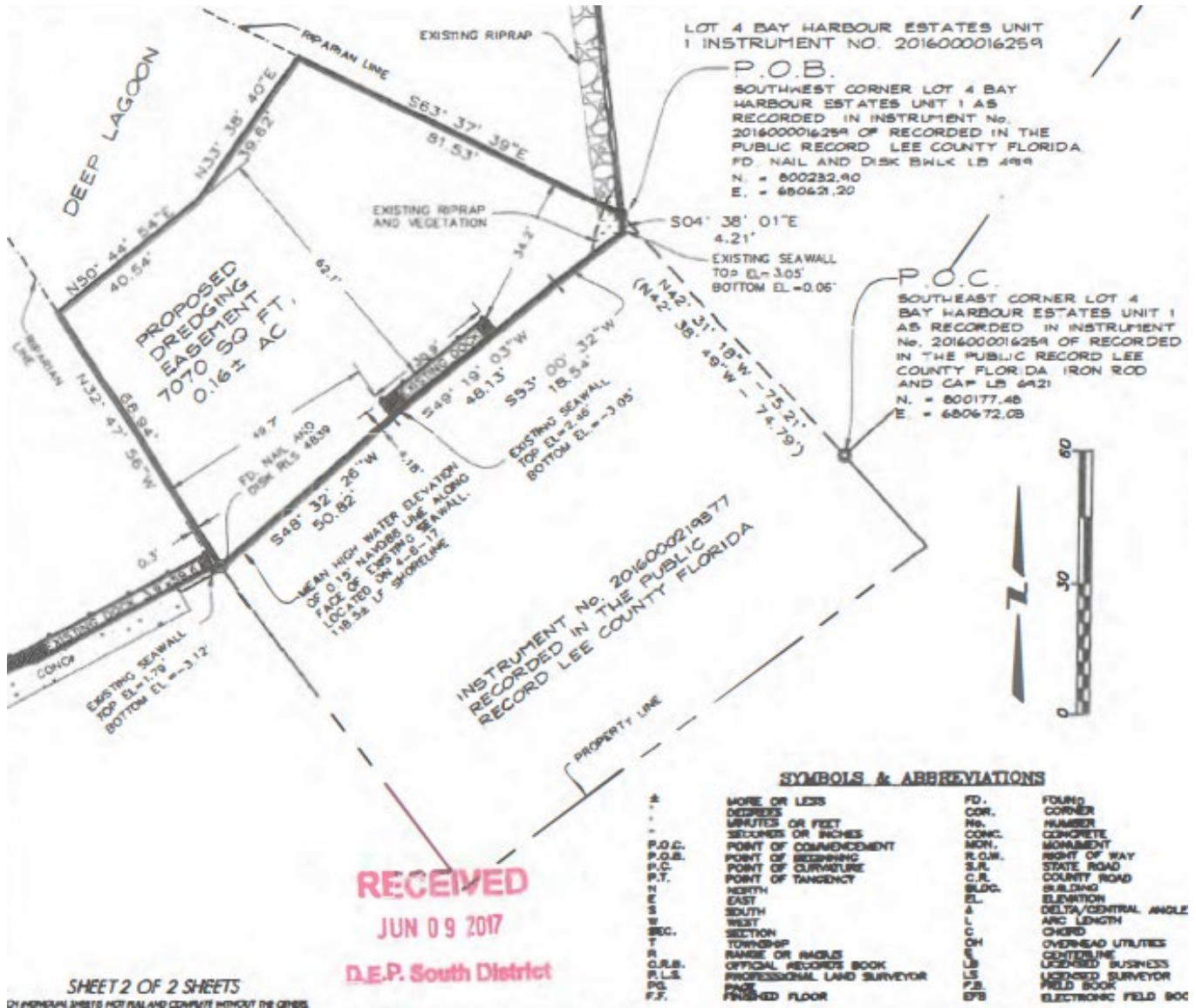
LEGEND:

- FOUND IRON ROD (I.R.)
- CONCRETE MONUMENT (C.M.)
- N/D NAIL & DISK
- N/T.T. NAIL & TINTAB
- O.R. OFFICIAL RECORDS BOOK
- (S) AS PER SURVEY
- R/W RIGHT-OF-WAY
- ⊕ CENTERLINE
- P.O.B. POINT OF BEGINNING



ATTACHMENT II

SUBMERGED LAND EASEMENT SURVEY (04/06/2017)



ATTACHMENT III **CORRECTIVE ACTIONS & CONDITIONS**

1. **Within 180 days of the effective date of this Consent Order**, Respondents FULCHER and EDENS BENTON (collectively or individually) shall conduct the following activities in accordance with the Conditions specifically set out herein and the permitting conditions set out in ERP No. 0349658-003 EI:
 - i. Remove all portions of (1) the current as-built seawall, depicted in the excerpt of the March 8, 2023 Survey, attached hereto as **Attachment I**, and (2) approximately 759.04 sq. ft of associated backfill on SSLs of Deep Lagoon located more than 18-inches waterward of the mean high-water line of the Upland Property located in the “Submerged Land Easement - Field Survey” (dated April 6, 2017) attached to BOT No. 360241035/Easement No. 42073 (dated March 1, 2018), attached hereto as **Attachment II**; AND
 - ii. Relocate the current as-built seawall so that the entirety of the seawall is located no more than 18-inches waterward of the mean high-water line of the Upland Property located in **Attachment II**; AND

2. **Within 20 days of the effective date of this Consent Order**, Respondents FULCHER and EDENS BENTON (collectively or individually) shall submit the following information to the Department:
 - i. A proposed upland disposal location to be approved by the Department for the proper disposal of fill removed, and seawall and/or other construction debris resulting from required corrective actions;
 - ii. An estimated timeline for completing the required corrective actions, including the date the activities required in this Consent Order shall commence;
 - iii. The contractors/vendors retained for performing the corrective actions; and
 - iv. Written cost estimates for conducting the corrective actions required by this Consent Order.

3. At least five (5) business days prior to the commencement of the activities required under this Consent Order, **Respondents FULCHER and EDENS BENTON** (either individually or collectively) shall notify the Department, in writing, of the date the activities required herein shall commence.

4. At least **seven (7) business days after the completion** of the activities required under this Consent Order, **Respondents FULCHER and EDENS BENTON** (either individually or collectively) shall notify the Department, in writing, of the date the removal and relocation activities were completed and provide a sufficient number of color photographs to demonstrate the removal and relocation activities have been completed.

GENERAL CONDITIONS FOR ALL CORRECTIVE ACTIONS AND CONSTRUCTION ACTIVITIES:

1. All activities required by this Consent Order shall be conducted in accordance with the General Conditions for Individual Permits set out in ERP No. 0349658-003 EI, issued on December 21, 2017.
2. All submittals required in these Conditions shall be sent to the Department's South District Office in accordance with Paragraph 14 of this Consent Order. Submittals may be sent electronically (via e-mail) when practicable and shall include the Respondents' name and the notation "OGC No. 20-1445". Email submittals shall be sent to FTMERP_Compliance@dep.state.fl.us with a subject line of "Compliance: OGC No. 20-1445."
3. In the event that either Respondents FULCHER and/or EDENS BENTON files for bankruptcy prior to completion of all activities required by this Consent Order, the respective Respondent(s) must notify the Department within 30 days of filing the bankruptcy action. The notification shall identify the bankruptcy court and case number and shall include a copy of the bankruptcy petition.
4. A copy of this Consent Order, complete with all conditions, attachments, exhibits, and/or modifications, shall be kept at the Project Site of the ordered activity. The complete Consent Order shall be available for review at the Project Site upon request by the Department staff. **The Respondent(s) shall require any and all contractors performing any of the actions required by this Consent Order, to review the complete Consent Order, including all conditions and attachments, prior to the commencing any activity required by this Consent Order.**
5. Activities required by this Consent Order shall be conducted in a manner, which does not cause violations of state water quality standards. Respondent(s) 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 Consent Order. Thereafter, Respondent(s) shall be responsible for the removal of the barriers. Respondent(s), including any contractor engaged to complete the activities required by this Consent Order, shall correct any erosion or shoaling that causes adverse impacts to the water resources.

6. Should any other regulatory agency require changes to the herein authorized act, Respondent(s) shall notify the Department in writing of the changes prior to implementation so that a determination can be made whether modification to this Consent Order is required.
7. 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.
8. This Consent Order does not convey to any Respondent(s) or create in any Respondent(s) any property right or any interest in real property, nor does it authorize any entrance upon or activities on any property, which is not owned or controlled by the Respondent(s), or convey any rights or privileges other than those specified in this Consent Order.
9. Respondent(s) shall hold and save the Department and Board harmless from any and all damages, claims, or liabilities, which may arise by reason of the ordered activities required by this Consent Order.
10. If historical or archaeological artifacts or potentially hazardous items/structures are discovered/uncovered at any time on the project site, Respondent(s) and/or Respondent's contractor shall immediately cease all construction activities at the site and notify the Department's South District Office, P.O. Box 2549, Fort Myers, FL 33902-2549.
11. The removal/relocations activities required by this Consent Order shall comply with applicable State Water Quality Standards, including but not limited to, Rule 62-302.500, Fla. Admin. Code - Surface Waters: Minimum Criteria, General Criteria, and Rule 62-302.530, Fla. Admin. Code - Table: Surface Water Quality Criteria - Class III Waters.

**SPECIFIC CONDITIONS PRIOR TO COMMENCEMENT OF ANY
REMOVAL/RELOCATION CONSTRUCTION ACTIVITIES:**

1. 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 the adjacent surface waters. Respondent(s) shall be responsible for inspecting and maintaining turbidity control devices so no degradation of the ambient water quality of adjacent surface waters outside of the turbidity screens occurs.

**SPECIFIC CONDITIONS REMOVAL/RELOCATION
CONSTRUCTION ACTIVITIES:**

1. All removal/relocation construction activities required by this Consent Order shall be conducted in accordance with the Specific Conditions - Construction Activities set out in ERP No. 0349658-003 EI, issued on December 21, 2017.
2. All portions of the as-built seawall shall be removed and relocated no more than 18 inches waterward of the location of the seawall prior to the commencement of construction activities authorized by ERP No. 0349658-003-EI, as shown in Attachment II.
3. Dredging shall be limited to day light; no dredging (or dewatering) activities are authorized to be conducted at night. Turbidity plumes are not visible at night.
4. Best management practices for turbidity control, including but not limited to the use of turbidity curtains around the immediate project site shall be used and maintained as necessary at all times during project construction.
5. Respondent(s) shall be responsible for ensuring that erosion control devices and procedures are inspected and maintained daily during all phases of structural removal activities required by this Consent Order until all areas that were disturbed during construction are sufficiently stabilized to prevent siltation and turbid discharges.
6. If a barge or other watercraft is used to facilitate removal of structures, the barge or other watercraft shall be of an appropriate draft and operated in a manner that prevents prop scouring or other disturbance to submerged lands and associated benthic resources surrounding the Project Site.

7. All removed seawall materials shall be deposited on a self-contained upland disposal site that prevents discharge of turbid material into surface waters.
8. Respondent(s) 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. **Within seven (7) business days of completion** of all removal activities, Respondent(s) shall submit to the Department sufficient documentation, including but not limited to photographs, videos, etc., demonstrating that the removal/relocation of the seawall and associated backfill described in the paragraphs above have been completed. All submittals shall be sent to the Department's South District Office in accordance with Paragraph 14 of this Consent Order.

SPECIFIC CONDITIONS - MANATEE PROTECTION:

All of the Specific Conditions for Manatee Protection set out in ERP No. 0349658-003 EI, issued on December 21, 2017, shall apply to the activities required by this Consent Order.

GENERAL CONDITIONS FOR SOVEREIGNTY SUBMERGED LAND AUTHORIZATION:

All of the Conditions for Sovereignty Submerged Land Authorization set out in ERP No. 0349658-003 EI, issued on December 21, 2017, shall apply to the activities required by this Consent Order.

EXHIBIT A

FULCHER SEAWALL FILL AERIAL COMPARISON

**6633 SWAY DRIVE
FORT MYERS, FLORIDA
LEE COUNTY PROPERTY APPRAISER
PARCEL/FOLIO ID No.: 10215965**

(3 pages)

Deep Lagoon

APPROXIMATELY
760 SQUARE FEET

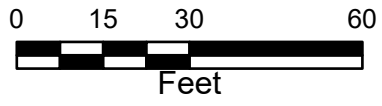
2017 MHWL/Seawall

Sway Dr

Sway Dr

Bay Dr

Fulcher



FULCHER

Lee County, Florida

FULCHER SEAWALL COMPARISON

2017



2018



2019



2020

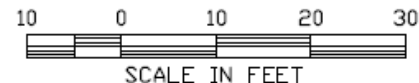


FULCHER SEAWALL COMPARISON AS-BUILT SURVEY

(Date: 03/08/2023)

****THIS IS NOT A BOUNDARY SURVEY****

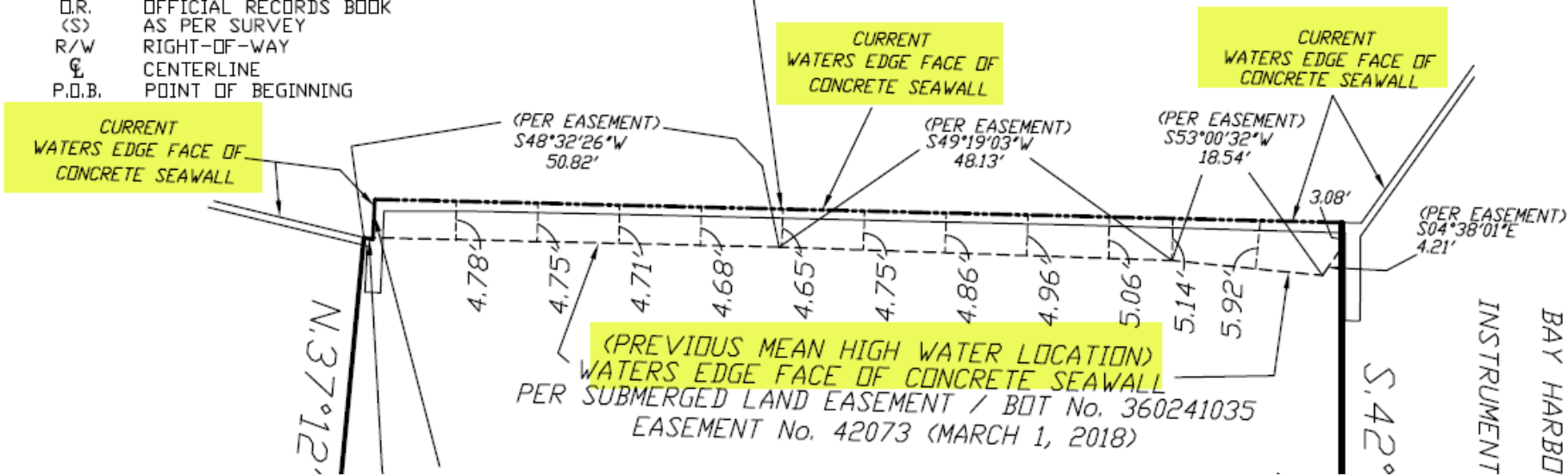
W A T E R W A Y



LEGEND:

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- CONCRETE MONUMENT (C.M.)
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- ,R. OFFICIAL RECORDS BOOK
- (S) AS PER SURVEY
- R/W RIGHT-OF-WAY
- ⊕ CENTERLINE
- P.O.B. POINT OF BEGINNING

NORTHEASTERLY 120'± (D)
N. 48°44'00"E. 118.46' (S)



ERP 0349658-003 EI

(Date: 01/10/2018)

SPECIFIC CONDITIONS – CONSTRUCTION ACTIVITIES

3. The seawall shall be installed **no more than 18 inches waterward** of the existing seawall, as measured from the waterward face of the existing seawall to the waterward face of the proposed seawall.