



# FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, FL 32399-2400

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

March 23, 2022

## **Via Email**

J.R. Paul Properties, Inc.  
Bryan Paul  
c/o Amelia Savage, ESQ  
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
asavage@stearnsweaver.com

Re: Consent Order  
OGC Case No. 21-0623  
Tippen Bay Mitigation Bank  
Arcadia, FL  
DeSoto County – SLERC

Dear Bryan Paul:

Enclosed is the signed and executed Consent Order, 21-0623 (Order) to resolve this case. Please note that all compliance dates for the Order begin on the date of entry, March 23, 2022. Upon satisfactory completion of all conditions of the Order, the case will be closed and placed in the inactive files.

If you have any questions, please contact Donna Kendall by email at [Donna.Kendall@FloridaDep.gov](mailto:Donna.Kendall@FloridaDep.gov) or by phone at (850) 245-8488. Your cooperation in resolving this case is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Kendra F. Goff".

Kendra F. Goff, PhD, DABT, CPM, CEHP  
Florida Department of Environmental Protection  
Division of Water Resource Management  
Deputy Director

Enclosure: Consent Order

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION	)	IN THE DIVISION OF WATER RESOURCE MANAGEMENT
	)	
Complainant,	)	
	)	
vs.	)	OGC FILE NO. 21-0623
	)	
J.R. PAUL PROPERTIES, INC.,	)	
	)	
Respondent.	)	
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CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection, ("Department"), and J.R. Paul Properties, Inc. ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

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

3. Respondent is the owner of properties identified by DeSoto County Property Appraiser as Parcels 28-39-27-0000-0010-0000, 29-39-27-0000-0015-0000, 27-39-27-0000-0010-0000, 33-39-27-0000-0015-0000, 34-39-27-0000-0016-0000, 32-39-27-0000-0015-0000, 33-39-27-0000-0016-0000, 34-39-27-0000-0015-0000, 32-39-27-0000-0016-0000, 27-39-27-0000-0011-0000, 33-39-27-0000-0011-0000 located in Arcadia, Florida.

4. The Department finds that the Respondent dredged and filled without a valid permit as required by Rule 62-331.020, Florida Administrative Code. An inspection conducted by U.S. Army Corps of Engineers on December 1, 2020, revealed that multiple hydrologic control structures were constructed, and grading within wetland re-establishment areas was completed, without a Department of the Army (DA) Section 404 permit, a Mitigation Banking Instrument (MBI), or a State 404 Program authorization. Subsequent to the unauthorized activities identified above, several of the subject hydrologic control structures failed and resulted in erosion of structure-associated berms. The activities were conducted on the above described properties within the landward extent of State Assumed wetlands and surface waters, as defined by Florida Law.

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

**ORDERED:**

5. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$18,000 in settlement of the matters addressed in this Consent Order. This amount includes \$3,000 for costs and expenses incurred by the Department during the preparation and tracking of this Consent Order. The civil penalties are apportioned as follows: \$15,000 for violation of Rule 62-331.020, Florida Administrative Code and Section 373.430, Florida Statutes. 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.

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

7. With the exception of the activities described in the Restoration Actions, 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.

8. Respondent agrees to pay the Department stipulated penalties in the amount of \$500.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph 6 of this 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 5 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.



9. 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.

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

11. 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.

12. 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 criminal penalties.

13. 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](mailto:Agency_Clerk@floridadep.gov), within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office 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 Department's Consent Order identification number and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;

- (c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- (d) A statement of when and how the petitioner received notice of the Consent Order;
- (e) A statement of all material facts disputed by petitioner, if any;
- (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- (g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

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

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or received via electronic correspondence at [Agency\\_Clerk@floridadep.gov](mailto: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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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, Attention Donna Kendall, 2600 Blair Stone Road, M.S. 2500, Tallahassee, Florida 32399.

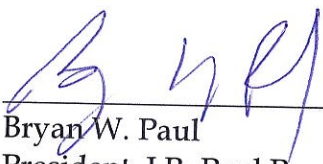
19. In the event of a sale or conveyance of the property, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property, (1) notify the Department of such sale or conveyance and (2) provide a copy of 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.

20. 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.

21. 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.

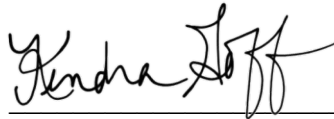
FOR THE RESPONDENT:

Feb. 9, 2022  
DATE

  
\_\_\_\_\_  
Bryan W. Paul  
President, J.R. Paul Properties, Inc.

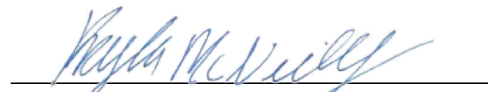
DONE AND ORDERED this 23rd day of March, 2022,  
in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



Kendra F. Goff, PhD, DABT, CPM, CEHP  
Florida Department of Environmental Protection  
Division of Water Resource Management  
Deputy Director

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

  
Clerk

03/23/2022  
Date

cc: Lea Crandall, Agency Clerk  
Mail Station 35

## ATTACHMENT A CORRECTIVE ACTIONS

The purpose of these corrective actions is to permit or restore the unauthorized activities addressed in the Order.

1. Within 60 days of the effective date of this Order, Respondent shall notify the Department whether they will complete Option A or Option B as follows:

a. Respondent intends to provide both State and Federal mitigation credits.

Respondent shall apply for and receive a State 404 Permit from the Department which shall resolve the unauthorized activities addressed in this Order. The application must contain a copy of, or a link to, the U.S. Army Corps. of Engineers (USACE) approved Mitigation Banking Instrument (MBI). This option shall be completed no more than 180 days from the effective date of this Order unless an extension is approved by the Department. The Department shall grant a requested extension as long as the Respondent is actively proceeding with the required permitting process.

b. Respondent intends to provide State-only mitigation credits. Respondent shall apply for and receive a State 404 Permit from the Department which shall resolve the unauthorized activities addressed in this Order. The application must contain a copy of, or a link to, Environmental Resource Permit 43041757, as modified, from the Southwest Florida Water Management District. This option shall be completed no more than 90 days from the effective date of this Order unless an extension is approved by the Department. The Department shall grant a requested extension as long as the Respondent is actively proceeding with the required permitting process.

2. In the event that Respondent is unable or unwilling to complete options a. or b. above, Respondent shall restore all impacts by removing water control structures and associated fill from wetlands/surface waters and restoring the grade existing prior

to the dredging and filling addressed in this Order. Respondent shall notify the Department of their intent to exercise this option upon determining that completion of a. or b. is not feasible or desired. If chosen, Respondent must exercise this option within three years from the date of this Consent Order or within 7 days of withdrawal of any MBI application, as referenced in option a. above, whichever occurs first. Within 30 days of providing notification, the Respondent shall submit a Restoration Plan for Department review and shall provide all necessary information to receive Department approval within 60 days from Restoration Plan submittal. The restoration activities shall be completed no more than 90 days after Department approval.

The plan, at a minimum, shall contain details on the following components:

- 1) Erosion and Sediment Control Plan – Provide a plan of Best Management Practices (BMPs) that shall be implemented to ensure restoration activities are conducted in a manner that does not cause or contribute to violations of state water quality standards.
- 2) Construction Schedule and Techniques for Structure Removal Plan - Provide a construction schedule and a description of construction techniques, sequencing, and equipment. This information should include, as applicable, the following:
  - a. Access and staging of equipment;
  - b. Location and details of the erosion, sediment, and turbidity control measures to be implemented during each phase of construction and all permanent control measures to be implemented in post-development conditions.
  - c. The location of disposal site(s) for any excavated material, including temporary and permanent disposal sites.
  - d. A demolition plan for existing structures to be removed.

- e. Dewatering plan. If dewatering is required, detail the dewatering proposal including the methods that are proposed to contain the discharge, methods of isolating dewatering areas, and indicate the period dewatering structures will be in place. **Note: A Consumptive Use or Water Use permit may be required for dewatering.**
  - f. Methods for transporting equipment and materials to and from the work site.
- 3) Engineer Certified, Re-grading, Stabilization Plan with Post Construction As-built Survey - Provide clear, construction level detailed plans for structure removal, regrading and stabilization. Completion of these activities shall be documented with as-built drawings certified by a registered professional. The person certifying these activities shall complete Form 62-330.310(1) and shall inform the Agency if there are substantial deviations from the plans approved as part of this Order.
- 4) Restoration Planting Plan – Provide a detailed vegetation-planting scheme if planting is proposed, and schedule for implementation.
- 5) Exotic and Nuisance Vegetation Control Plan – Provide a description of the activities proposed to control exotic and nuisance species should these become established in the restoration areas. The plan shall include reasonable measures to assure that these species do not invade the restoration areas in such numbers as to affect the likelihood of success of the project.
- 6) Maintenance and Management Plan – Provide a management plan comprising all aspects of operation and maintenance, including water management practices, vegetation establishment, exotic and nuisance species control, fire management, and control of access.



7) Monitoring and Reporting Plan - Provide a proposed monitoring plan to demonstrate restoration success. Monitoring parameters, methods, schedules, and reporting requirements will be specified in the proposed plan for Department approval.

The Respondent shall cooperate with the Department in all site inspections and requests for additional information to ensure sufficient levels of detail are included to develop, implement and complete a successful restoration plan to address and resolve the unauthorized activities addressed in the Order.