



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Cost Code 11204

June 15, 2020

Mr. Jimmy L. Morales
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

**Subject: Indian Creek Drive Seawall Replacement Fr 26 St to 41 St
Consent Order
Miami-Dade County
PCN: 0232260360001**

Dear Mr. Morales:

As discussed with South Florida Water Management District (District) staff and Ms. Elizabeth Wheaton on June 15, 2020, a Consent Order (Order) settling the outstanding enforcement issues regarding the above-referenced violation is enclosed. Please read the entire document and have your authorized representative sign and print their name on the signature page, have a notary attest the signature of the representative as indicated, and return the entire document to this office before July 15, 2020.

Final agency action regarding this matter will then be presented to the Division Director of Regulation for finalization. A complete, executed copy will be provided for you upon execution of the Order by the District.

Thank you for your cooperation in this matter. If you have any questions or require additional information, please contact the undersigned at (561) 682-6053, or via e-mail at gvazquez@sfwmd.gov, in the West Palm Beach Office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gregory Vazquez".

Gregory Vazquez, Environmental Analyst 4
Environmental Resource Bureau

Indian Creek Drive Seawall Replacement Fr 26 St to 41 St
Cost Code 11204
Page 2

Enclosure: Consent Order
Location Map
Notice of Rights

c: Mr. Eric Carpenter, City of Miami Beach (via Email)
Ms. Elizabeth Wheaton, City of Miami Beach (via Email)

**BEFORE THE GOVERNING BOARD OF THE
SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,

Complainant,

v.

SFWMD No. 202_ - ___ -CO-ERP

CITY OF MIAMI BEACH,

Respondent.

_____ /

CONSENT ORDER

This Consent Order is entered into between Complainant, South Florida Water Management District (“District”), and Respondent, City of Miami Beach, (“Respondent”) by mutual consent, who agree as follows:

FINDINGS OF FACT

1. The District, a government entity created under Chapter 373, Florida Statutes, is a multipurpose water management district with its principal office located at 3301 Gun Club Road, West Palm Beach, Florida 33406.

2. Respondent is a person within the meaning of Section 373.019(15), Florida Statutes. Respondent’s mailing address is 1700 Convention Center Drive, Miami Beach, FL 33139.

3. The following exhibits are attached and incorporated into this Consent Order:

Exhibit A – Location Map;

Exhibit B – Notice of Rights

4. Respondent owns or has an easement over property with Parcel Identification Numbers 02-3226-001-0751, 02-3226-033-0001, 02-3226-001-0781, 02-3226-046-0001, 02-3226-001-0781, 02-3226-001-0922, 02-3226-001-0912, 02-3226-039-0005, 02-3226-001-0990, 02-3226-001-0970, 02-3226-001-1182, 02-3226-001-1172, 02-3226-049-0760, 02-3226-019-0001, 02-3226-001-1292, 02-3226-036-0005, 02-3226-001-1340, 02-3226-001-1350, 02-3226-001-1400, 02-3226-001-1430, 02-3226-001-1470, 02-3226-011-0001, 02-3226-001-1635, 02-3226-001-1640, 02-3226-001-1760, 02-3226-044-0001, 02-3226-001-1840, 02-3226-032-0001, 02-3226-001-1952, 02-3226-017-0005, and 02-3226-001-1961. The Respondent also owns or has an easement over the western terminuses of 26th Street through 40th Street along the east side of Indian Creek. All of the above described property is located in Sections 23, 26, and 27, Township 53S, Range 42E; Miami-Dade County, Florida (“Property”). The Property is shown on the location map attached as Exhibit A.

5. The District has jurisdiction over the Respondent, the Property, any stormwater management system, wetlands, wetland impacts, all works, and maintenance activities conducted on the property, as provided in Chapter 373, Florida Statutes.

6. The District issued Environmental Resource Permit No. 13-06263-P (“Permit”) to the Respondent on September 28, 2016. The Permit authorized 4,200 linear feet of new seawall to be installed within 12 inches waterward of the existing seawall and for riprap to be installed at the toe of the new seawall.

7. On December 18, 2017, District staff inspected the Property and discovered that portions of the new seawall were installed greater than 12 inches waterward from the existing seawall. District staff also observed evidence of unauthorized dredging and filling of submerged lands that contained seagrasses.

8. On December 22, 2017, District staff issued a Notice of Violation (“NOV”) to the Respondent for violating General Conditions 1 and 3 of the Permit, Special Condition 8 of the Permit, and for the unauthorized dredging and filling of surface waters.

9. Respondent discontinued the activities described in the NOV and stopped all work authorized by the Permit.

10. On January 24, 2019, Respondent applied (Application No. 190124-16) for a modification of the Permit to authorize the new seawall to be installed up to 18 inches waterward of the existing seawall, to remove and replace previously installed sections of the new seawall that were installed greater than 18 inches waterward of the existing seawall, and to mitigate for the unauthorized seagrass impacts.

11. On April 21, 2020, the District approved Application No. 190124-16 and issued the modified Permit.

12. By entering into this Consent Order, Respondent provides the District with reasonable assurances of good faith and the District agrees not to initiate an enforcement action for the violations described. Respondent agrees that all factual and legal claims providing the basis for this Consent Order, including all terms, provisions, and matters referred to in the Findings of Fact and Conclusions of Law, shall not be contested in any

subsequent legal proceeding that may be brought to enforce the terms of this Consent Order.

CONCLUSIONS OF LAW

13. As provided in Rule 62-330.020, Florida Administrative Code, and Sections 373.413 and 373.416, Florida Statutes, the District requires permits to construct, alter, operate, or maintain stormwater management systems or works, including activities that impact wetlands. The activity must not harm the District's water resources.

14. The District finds that Respondent violated Chapter 373, Florida Statutes, and its corresponding rules, by not obtaining a modification to the existing Permit prior to installing sections of the new seawall greater than 12 inches waterward of the existing seawall, and dredging and filling submerged land that contained seagrasses.

15. The District may initiate and maintain legal action to enforce its rules, permits and orders, or to protect and preserve the state's water resources in accordance with Section 373.129, Florida Statutes. The District may recover a civil penalty for each offense in an amount not to exceed \$10,000.00 per offense. Each additional day in which a violation occurs will constitute a separate offense. The District may further recover investigative costs, court costs, and reasonable attorney's fees.

THEREFORE, having reached resolution of this matter, it is ORDERED:

ORDER

16. On September 16, 2019, Respondent paid the District a total of \$7,700.00 in civil penalties and costs for settlement of the violations identified in this Consent Order. This amount included \$5,200.00 in civil penalties and \$2,500.00 for the District's costs

and attorney's fees incurred during the investigation of this matter and for preparing and tracking this Consent Order. Respondent agrees that these amounts are reasonable and shall not contest them in any subsequent action regarding this Consent Order.

GENERAL PROVISIONS

17. District representatives may enter the Property to verify compliance with this Consent Order. Respondent's failure to comply with this Consent Order shall constitute a violation of Chapter 373, Florida Statutes.

18. Should Respondent fail to meet the requirements set forth in this Consent Order, the District reserves the right to petition for judicial or administrative enforcement of its terms. In such event, Respondent shall not contest or deny any fact, legal conclusion, or any other matter set forth in this Consent Order, including the Findings of Fact, Conclusions of Law, penalties, fees, and costs. In exchange for the District not initiating legal proceedings and by signing below, Respondent waives all rights set forth in the Notice of Rights, attached as Exhibit B.

19. If the District successfully petitions or sues for enforcement of this Consent Order, Respondent agrees to and must pay the District's attorneys' fees, including, but not limited to, the fair market value of in-house counsel fees as if performed by outside or private counsel, court costs, and any other damages.

20. The District expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violation of applicable statutes or the corresponding rules, or to alleviate an immediate serious danger to the public health, safety, or welfare. If Respondent's non-compliance with this Consent Order leads to the District bringing an

enforcement action, Respondent consents to receive service of process by registered mail with no signature required, delivered to the Respondent's address.

21. This Consent Order shall take effect after the Respondent's and the District's execution, and shall remain in full force and effect until its terms and conditions are completed to the District's satisfaction.

22. Entry of this Consent Order does not relieve the Respondent of the need to comply with all applicable federal, state, and local laws, regulations, or ordinances, including District permitting requirements. This Consent Order does not give Respondent the authority to conduct any activities on the Property that are under the District's jurisdiction without first obtaining District authorization.

23. In the event it is necessary for the District to initiate legal action regarding this Consent Order, such action may be initiated in the Fifteenth Judicial Circuit in Palm Beach County, Florida. The District also reserves the right to seek administrative enforcement by issuing an Administrative Complaint and Order for Corrective Action. If the District pursues administrative enforcement, any final hearing shall be located at the closest District facility to the subject Property, unless the District agrees otherwise.

DONE AND SO ORDERED in West Palm Beach, Palm Beach County, Florida, this ____ day of _____, 202__.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

Regulation Division

Jill S. Creech, P.E., Director

Date

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ by _____.

Signature of Notary Public – State of Florida

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known _____ OR Produced Identification
Type of Identification Produced

General Counsel Concurrence

Paula L. Cobb

Date

RESPONDENT – CITY OF MIAMI BEACH

BY: _____
Jimmy L. Morales, City Manager
Signature

DATE: _____

PRINT NAME: _____

TITLE: _____

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this _____ by _____.

Signature of Notary Public – State of Florida

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known _____ OR Produced Identification
Type of Identification Produced

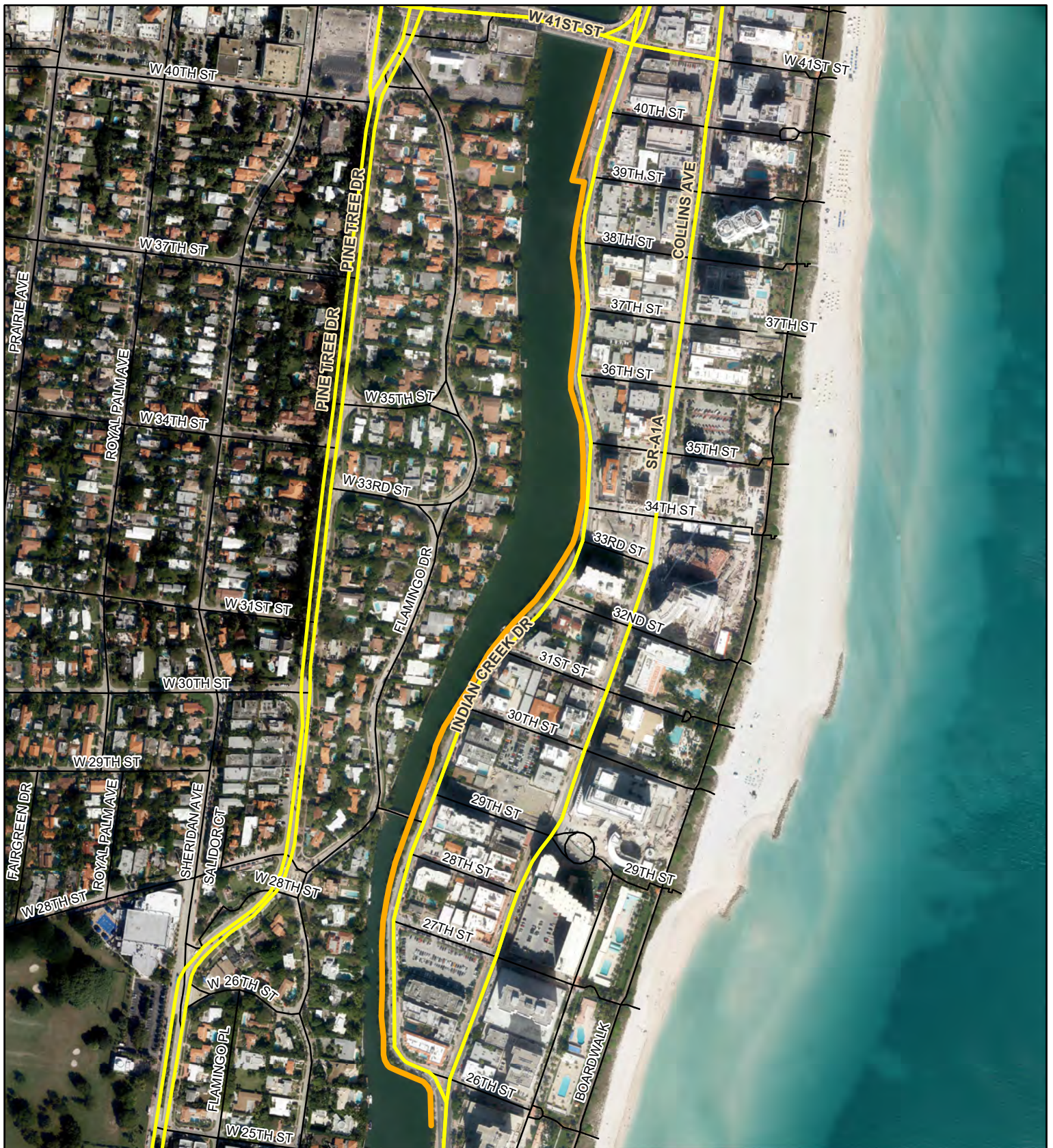


Exhibit No: A

Exhibit Created On:
2017-12-19

MIAMI-DADE COUNTY, FL

Property

Permit No: 13-06263-P

Application Number: 160722-5

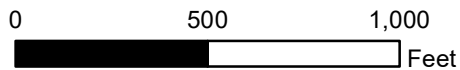
Cost Code: 11204



REGULATION DIVISION

Project Name: INDIAN CREEK DRIVE SEAWALL
REPLACEMENT FR 26 ST TO 41 ST

N



South Florida Water Management District
EXHIBIT A, Page 1 of 1

NOTICE OF RIGHTS

As required by Sections 120.569 and 120.60(3), Fla. Stat., the following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all of the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be **affected by the South Florida Water Management District's** (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a SFWMD decision which affects or may affect their substantial interests shall file a petition for hearing with the Office of the District Clerk of the SFWMD, in accordance with the filing instructions set forth herein, within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: (1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, or posting that the SFWMD has or intends to take final agency action, or publication of notice that the SFWMD has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

If the District takes final agency action which materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional Rule 28-106.111, Fla. Admin. Code, point of entry.

Any person to whom an emergency order is directed pursuant to Section 373.119(2), Fla. Stat., shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

FILING INSTRUCTIONS

A petition for administrative hearing must be filed with the Office of the District Clerk of the SFWMD. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at SFWMD headquarters in West Palm Beach, Florida. **The District's normal business hours are 8:00 a.m. – 5:00 p.m.,** excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, 3301 Gun Club Road, West Palm Beach, Florida 33406.

- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the SFWMD's security desk does not constitute filing. It will be necessary to request that the SFWMD's security officer contact the Office of the District Clerk. An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at clerk@sfwmd.gov. The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document. A party who files a document by e-mail shall (1) represent that the original physically signed document will be retained by that party for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause and that the party shall produce it upon the request of other parties; and (2) be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed.

INITIATION OF AN ADMINISTRATIVE HEARING

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Fla. Stat., and Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, SFWMD file number or any other SFWMD identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner and **petitioner's representative, if any.**
3. An explanation of how the **petitioner's substantial interests will be affected by the agency determination.**
4. A statement of when and how the petitioner received notice of the SFWMD's **decision.**
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's **proposed action.**
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's **proposed action.**
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's **proposed action.**

MEDIATION

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401–.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Section 120.68, Fla. Stat., and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal with the Office of the District Clerk of the SFWMD in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the clerk of the appropriate district court of appeal.