



FLORIDA DEPARTMENT OF Environmental Protection

South District
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Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

July 22, 2024

Robert McDowell
9598 Shelburne Cir
Port Charlotte, FL 33981
remc72@hotmail.com

Re: Warning Letter
Site No. 337974 / Project No. 418829
Complaint No. 41067
Interceptor Lagoon, Class III Waters
Unnamed Wetlands, Class III Waters
Parcel No. 412126103010
Charlotte County – SLERC

Dear Mr. McDowell:

A complaint inspection was conducted at the above referenced site on May 17, 2024. During this inspection, possible violations of Section 373.430(1), Florida Statutes (F.S.), and Rule 62-330.020(2), Florida Administrative Code (F.A.C.) were observed.

During the inspection, Florida Department of Environmental Protection (department) personnel noted the following activity conducted without a permit from the department:

- Approximately 17,779 square feet of unauthorized impacts to wetlands via placement of fill.

Violations of Florida Statutes or administrative rules may result in liability for damages and restoration, and the judicial imposition of civil penalties, pursuant to Sections 403.121, Florida Statutes.

Please contact Xenia Alonso at (239) 344-5701 or by email Xenia.Alonso@floridadep.gov, within **15 days** of receipt of this Warning Letter to arrange a meeting to discuss this matter. The department is interested in receiving any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

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Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Sweigert".

Elizabeth Sweigert
Director of District Management
South District Office
Florida Department of Environmental Protection

Enclosures: Inspection Report
62-340, F.A.C. Data Forms (Test Points 1-3)
Test Points 1-3 Photo Logs

cc: Environmental Control Committee, Waterview POA, eccwaterview@gmail.com



Florida Department of Environmental Protection
 SOUTH DISTRICT COMPLIANCE ASSURANCE PROGRAM
 ERP Inspection Report

ALL HIGHLIGHTED FIELDS INDICATE UPDATES FOLLOWING THE 7/10/2024 FILE REVIEW

Inspection Date: 5/17/2024

Inspector: Xenia Alonso

Persons present during inspection:
 Kelly Dino

File Review: 7/10/2024

File Reviewer: Xenia Alonso

Compliance Status: In Compliance

Minor Non-Compliance

Significant Non-Compliance

Inspection Type:

Complaint

Compliance

Enforcement

Other:

Complaint No. 41067

Site No. 337974

Project: 417902 (Waterview POA)
 418829 (Robert McDowell)

Owner of Property 1: Waterview Property Owners Association, Inc

Contact: P.O. Box 298, Placida, FL 33946 -
eccwaterview@gmail.com

Owner of Property 2: Robert McDowell

Contact: 9598 Shelburne Cir, Port Charlotte, FL 33981
 (563) 920-4257 - remc72@hotmail.com

Activity/Site Location: Section of Parcel ID 412126103010 (Property 1) adjacent to 9598 Shelburne Cir, Port Charlotte, FL 33981 – Parcel ID 412123355012 (Property 2)

Waterbody: Interceptor Lagoon / Unnamed Wetlands

Class: I II III IV V

Shellfish Harvesting: Approved Conditionally Approved
 Conditionally Restricted Prohibited

Outstanding Florida Waters (OFW): Yes No

State Lands: Yes No

Aquatic Preserve: Yes No

Aquatic Preserve Name: N/A

SSL Lease Inspection Completed: N/A

Site History

The above-referenced site is a section of Parcel No. 412126103010 owned by Waterview Property Owners Association, Inc. (Property 1) adjacent to 9598 Shelburne Cir, Port Charlotte, FL 33981 – Parcel ID 412123355012 (Property 2), which is owned by Robert McDowell. This area is now referred to as the “Greenbelt section”.

9/13/2015: Jeffrey Fisher of Comdivers Marine & Salvage Corp, on behalf of the homeowner at the time, used the Florida Department of Environmental Protection (department) electronic Self Certification process to certify compliance with the terms and conditions for an exempt dock (Self Certification file No. 0337974-001 EE) at a private, single-family residence.

4/14/2021: John Sturm of Florida Marine Works, LLC, on behalf of Robert McDowell, used the department’s electronic Self Certification process to certify compliance with the terms and conditions for an exempt dock general modification (Self Certification file No. 0402169-001 EE) at a private, single-family residence.

11/30/2023: The department received a complaint (No. 41067) regarding fill in wetlands and riprap on the Greenbelt section adjacent to Property 2.

5/17/2024: Department staff conducted a compliance inspection in reference to complaint No. 41067. The following department staff were present during the inspection: Xenia Alonso and Kelly Dino.

6/10/2024: The department issued a Warning Letter to Waterview Property Owners Association, Inc. regarding 17,779 square feet of wetland impacts via placement of fill.

6/24/2024: The department received documentation from Waterview Property Owners Association, Inc. showing Robert McDowell had conducted the observed non-compliance and was notified of potential violations by the association. The documents can be found here:

[https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&\[guid=23.1467032.1\]&\[profile=Discovery Compliance](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&[guid=23.1467032.1]&[profile=Discovery+Compliance)

Inspection Findings

During the inspection, department staff observed the Greenbelt section adjacent to Property 2 had been cleared and sodded. Department staff also observed boulders along the shoreline and a dock with a covered boatlift.

Wetlands

Pursuant to Chapter 62-340, F.A.C. the Greenbelt section adjacent to Property 2 was determined to contain wetlands. Pursuant Chapter 62-340, F.A.C. Property 2 was determined to be uplands. This determination was made using reasonable scientific judgement, conducting a review of historical aerial maps of this area, on site visual inspection, ground truthing, and the altered site methodology described in Chapter 62-340.300(3), F.A.C. Wetland delineations pertaining to potentially non-compliant activities do not consider the alterations as they exist but rather what they were immediately before the non-compliant activities took place. Thus, the information used for the wetland delineation was collected from three test points (“Test Point 1”, “Test Point 2”, and “Test Point 3”) and utilized in a forensic manner.

Test Point 1 is a location where the vegetation was undisturbed, and the ground surface was left at original grade. Test Point 1 met the wetland definition, and D test requirements for wetlands under the guidelines provided by Chapter 62-340, F.A.C. Test Point 2 is a location that was cleared of vegetation and sodded. Immediately prior to impacts, Test Point 2 would have met the wetland definition, and D test as referenced by Test Point 1. Test Point 3 is a location within a historically filled area (pre-1994) and was found to be uplands under the guidelines provided by Chapter 62-340, F.A.C. Additional information on how this delineation was made is attached. The approximate location where the Test Points were taken is shown in Figure 6 below.

Per aerial review, the first wetland impacts occurred sometime between 1/23/2013 and 2/17/2014 (Figures 2-3). On site observations included approximately 17,779 square feet (0.41 acres) of unauthorized impacts to wetlands via clearing of vegetation, placement of sod, and a brick pathway (Figure 7). Additionally, department staff observed boulders along the shoreline (Photos 3-4).

The dredge and fill activities on the Greenbelt section adjacent to Property 2 occurred entirely in wetlands and therefore requires an Environmental Resource Permit prior to activity commencement pursuant to 62-330.020, F.A.C. Record of an Environmental Resource Permit for the activities observed on the Greenbelt section could not be located in the department’s files.

Dock

During the inspection, department staff observed a dock with a covered boatlift. The overwater surface area of the dock and the covered boatlift combined was measured to be approximately 847 square feet. Per aerial review, the dock is located 65 feet from the neighboring dock.

Construction of a dock with an overwater area of 1,000 square feet or less, with a minimum distance of 65 feet from another dock, is exempt from the need to obtain an ERP permit under Chapter 62-330.051(5)(b), F.A.C. and 403.813(1)(b), F.S. Therefore, the dock is considered exempt.

Resource Assessment

FLUCCS/FNAI Community Type(s):	Hydric Hammock
Wetlands/Other Surface Waters (OSW) Present:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Other Resources Present:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," identify: <i>submerged aquatic vegetation</i>
Resource Impacts:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Area of Authorized Impacts (ft ²):	0
Area of Unauthorized Impacts (ft ²):	17,779 square feet (0.41 acres)

DOCK

Dock Over-Water Area (sq. ft.):	847 sq ft
Number of Slips:	1 Covered 0 Uncovered
Unauthorized Structures:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA

Recommendations for Corrective Action

For Waterview Property Owners Association, Inc. and Robert McDowell:

- 1. Cease any further unauthorized activities, construction, and discharge of fill materials in wetlands; and**
- 2. Enter into a Consent Order with the department to resolve the unauthorized wetland dredge and fill on the Greenbelt section adjacent to Property 2; and**
- 3. Obtain the appropriate regulatory authorization from the department for any future construction in wetlands, pursuant to Chapter 62-330, F.A.C.**

Statute/Rule Reference(s)

Chapter 62-330, F.A.C.

Chapter 62-340, F.A.C.

Section 373.430, Florida Statutes (F.S.)

Links to Additional Documentation and/or Resources

Florida Statutes: <http://www.leg.state.fl.us/STATUTES/>

Florida Administrative Code: <https://www.flrules.org/>

Mangrove Trimming and Preservation Act: https://floridadep.gov/sites/default/files/mtpa96_0.pdf



Xenia Alonso, Environmental Specialist III

7/10/2024

Date



Qiara Perez, Environmental Manager

7/16/2024

Date

Site Inspection Figures

Inspection Date: 5/17/2024

Inspector: Xenia Alonso



Figure 1: Aerial photograph dated 12/20/1985 showing the historically filled area. Property 2 location shown by red arrow. Source: Florida Department of Transportation.



Figure 2: Aerial photograph dated 1/23/2013. The Greenbelt section is outlined in yellow, and Property 2 is outlined in white. Source: Google Earth.



Figure 3: Aerial photograph dated 2/17/2014 showing first impacts to wetlands via clearing of vegetation. The Greenbelt section is outlined in yellow, and Property 2 is outlined in white. Source: Google Earth.

Site Inspection Figures

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Figure 4: Aerial photograph dated 1/5/2021 showing further impacts to wetlands via clearing and placement of sod. A dock with a boatlift can also be observed. The Greenbelt section is outlined in yellow, and Property 2 is outlined in white. Source: Google Earth.



Figure 5: 2024 aerial photograph showing impacts to wetlands via clearing, sodding, and a brick pathway to the dock. The Greenbelt section is outlined in red, and Property 2 is outlined in yellow. Source: Charlotte County Property Appraiser.

Site Inspection Figures

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Figure 6: Aerial photography dated 1/23/2013 showing the approximate location of the test points taken. The Greenbelt section adjacent to Property 2 was determined to contain wetlands (blue). Property 2 was determined to be uplands (brown).



Figure 7: 2023 Aerial photograph showing the unauthorized fill in wetlands (red).

Site Inspection Photos

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Photo 1: Facing East, view of sod and brick pathway on wetlands.



Photo 2: Facing West, view of sod and brick pathway on wetlands.



Photo 3: Facing South, view of boulders along the shoreline.



Photo 4: Facing North, view of boulders along the shoreline and dock.



Photo 5: Facing East, view of dock and covered canopy.



Photo 6: Facing Southeast, view of dock and covered canopy.

Site Inspection Photos

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Photo 7: View of boulders along the shoreline. Note presence of submerged aquatic vegetation.



Photo 8: View of submerged aquatic vegetation on site.



Photo 9: Facing North, view of impacted wetlands via placement of sod. Unimpacted wetlands can be observed in the background.