

Subject: Request for Review and Correction – Inaccurate DERM Memorandum (EQCB Case 2025-EQCB-00050)

Dear Loren and Lazaro,

I am writing to formally address serious inaccuracies contained in the DERM pre-hearing memorandum for *Scott Kobrick (2025-EQCB-00050)*, which I received on October 6, **less than 72 hours prior** to the October 9 EQCB hearing. I had requested a continuance due to that late delivery, but the matter was nevertheless heard and decided.

1. Materially Inaccurate Statements Regarding Tree Status

The memorandum states that the subject specimen trees were “effectively destroyed” and “the requested relief is moot because the trees have already been removed.”

As per my email from October 6, this is **factually false**.

Per an October 8 site evaluation by certified arborist Ian Wogan (**Treesources, ISA FL-6746A**):

“I observed (2) Specimen *Ficus aurea* onsite at 8300 NE 4th Place, Miami, Florida 33138. Approximately 25% of each canopy has been removed, referencing aerial overhead imagery. Given the tolerance of this species, **both trees remain viable for preservation**. Corrective pruning and application of soil amendments/nutrient drench are highly recommended to improve overall health and vitality of the two trees.”

The October 9 memorandum cites subsections (e) and (f) of § 24-49.2(4)(II)(1) of the Miami-Dade County Code as justification for authorizing the removal of the remaining specimen figs, asserting poor condition and potential hazard. However, the supporting arborist report provides no evidence of structural failure or imminent danger. Tree #13 is described as having “moderate foliage and scaffold branches with sufficient spacing for healthy lateral branch growth,” while Tree #12 shows only surface roots and minor bark inclusion—conditions typical of mature *Ficus* species that do not, by themselves, indicate instability or decline. No engineering analysis, decay mapping, or target-area assessment was conducted to substantiate a hazard determination.

By contrast, subsection (d) of the same provision requires the Department to evaluate whether a specimen tree “can be preserved under the proposed plan or any alternative plan.” The record reflects no consideration of alternatives such as partial seawall setback, root bridging, or corrective pruning that would allow preservation. Reliance solely on (e) and (f), without the required analysis under (d), renders the decision incomplete and inconsistent with the Code’s directive that specimen trees “shall be preserved whenever reasonably possible.”

The arborist report relied upon by DERM was prepared by an arborist retained by the developer, creating a clear conflict of interest. As stated in my original appeal, the report was biased toward removal, as its conclusions were aligned with facilitating the developer's site plan rather than objectively evaluating the trees' health and potential for preservation.

While DERM staff subsequently conducted limited field inspections, these visits did not result in a comprehensive, independent written analysis assessing the viability of preservation, alternative design options, or restorative measures. Instead, the Department's findings merely concurred with the developer's arborist report, effectively adopting its conclusions without critical review or independent justification.

This approach undermines the Department's obligation to make an objective and good-faith environmental determination—particularly where protected specimen trees and natural canal banks are involved—and raises serious questions about the sufficiency and impartiality of the evaluation process.

Under § 24-49.1 and § 24-49.2(II)(3) of the Miami-Dade County Code, a tree is considered “destroyed” only if it has been damaged to such an extent that it cannot recover and will die, and “effectively destroyed” only where girdling, trunk or root damage, or pruning and cutting not performed in accordance with the most recent ANSI A-300 Tree Care Standards has occurred.

No such finding or evidence appears in this record. The pruning observed on Trees #12 and #13 does not meet the threshold of girdling, trunk damage, or non-compliant cutting under ANSI A-300 standards. On the contrary, independent arborist Ian Wogan confirmed both trees remain viable for preservation and can recover with corrective pruning. DERM's characterization that the trees were “effectively destroyed” or “removed” is therefore inconsistent with these definitions and should be corrected in the official record.

There are comprehensive before and after photographs. Photographs taken October 8 (**Exhibits A-D**) confirm vigorous growth and healthy canopy. The statement that they were “destroyed” and “removed” is **demonstrably inaccurate**.

Additionally, DERM issued a stay pending this appeal. However, Tree #12 was cut *after* the developer and its tree contractor had been informed that a stay was in effect and while DERM officials were en route to serve it. That unauthorized work caused limited canopy loss but did not render the tree non-viable. Using this damage as a basis for mootness rewards non-compliance and undermines the purpose of the stay.

Both remaining trees are *viable for preservation* and should receive stabilization and corrective care consistent with DERM's own Tree Protection Guidelines. The record should reflect that they are **not destroyed, nor removed** within the meaning of Miami-Dade Code § 24-5(104).

DERM's memorandum thus contains material misstatements that formed the basis for declaring the appeal moot. These errors should be corrected to maintain an accurate record for review.

2. Lack of Time to Respond

The late delivery of the memorandum — less than 72 hours before the hearing — deprived me of a meaningful opportunity to review, obtain expert input, and submit rebuttal materials, constituting a procedural deficiency inconsistent with the principles of administrative due process.

Because the memorandum was delivered so close to the hearing, I had no reasonable opportunity to provide rebuttal evidence, such as the arborist evaluation, prior to the hearing. This effectively denied me the ability to present an informed defense to DERM’s findings and recommendation, or for the board to review anything.

3. Request for Corrective Action

Accordingly, I respectfully request the following corrective actions

- DERM conduct or authorize a follow-up inspection by an independent or alternate DERM arborist to verify current conditions onsite;
- The official record for EQCB Case No. 2025-EQCB-00050 be **corrected** to reflect that two specimen *Ficus aurea* remain on site, viable, and **were not** “effectively destroyed” or “completely removed”;
- Pending such correction, I request that DERM maintain the stay and ensure that no additional work or removal occurs until an accurate, independent evaluation is completed.

4. Broader Context and Legal Relevance

As DERM is aware, the seawall and tree removal are intertwined with a pending judicial review concerning the Village of El Portal’s local development approval. El Portal’s Comprehensive Plan and Code expressly mandate **preservation of natural canal banks** and native specimen trees, **in this specific location (Exhibit E)**.

This mandate is established under **Florida law**, including Fla. Stat. § 163.3243, which requires local governments to uphold their adopted comprehensive plans.

Section 24-2 of the Miami-Dade County Code makes clear that County environmental standards are intended as *minimums* and expressly preserve the authority of municipalities to adopt and apply more stringent protections. DERM therefore must exercise its permitting authority in a way that respects and does not undermine the Village of El Portal’s stricter requirements—particularly while their applicability is under judicial review pursuant to § 163.3243, Florida Statutes.

This cooperative-governance principle has been reaffirmed by *Brevard County v. City of Palm Bay*, 268 So.3d 708 (Fla. 5th DCA 2019), which held that governmental entities with overlapping jurisdiction must coordinate their actions so as not to frustrate the legitimate authority of the other.

Coordination between DERM and the Village is not just best practice but required to avoid decisions that undermine local law.

At the time of its approval, the village council was provided with both misinformation and inconclusive evidence to make a determination of compliance for site plan approval and development agreement. For example, El Portal code Section 24-19(c) *Little River Canal Bank Preservation*, contemplates coordination with DERM- yet, **the only correspondence on record and included in the approval package from DERM at that time, was a letter recommending disapproval, specifically tied to preservation of the specimen trees** (or insufficient plans for removal that met the requirements).

It is now following the proper process of legal review, in the Florida Court system, to confirm and uphold those municipal laws.

A letter from El Portal mayor Omar Nickerson (**Exhibit F**) was provided to express why the village would want to see the outcome of the lawsuit- regarding the municipal laws being upheld- prior to the trees being cut and irreparable harm done to the ecosystem, climate resilience, flood mitigation, etc.

The Miami Dade Office of Resilience collaborated **Little River Adaptation Action Area Plan** and the **Stormwater Master Plan** reinforce these principles and are linked via El Portal Comprehensive Plan. A landscape designer that worked on the Little River AAA Plan spoke at the January 28th council meeting and proposed to the developers, solutions to increase the climate resiliency and align with the plan. Alternative designs, including living shorelines, and increased waterfront setbacks with secondary, set back seawalls- (of which there are now many wonderful green infrastructure local examples, e.g. Brittany Bay Park in Miami Beach)- were suggested by many- to align with these principles, and our laws.

Authorizing further cutting or seawall construction at this stage undermines both the Village's established environmental protections and DERM's stated mission of *ecosystem protection and safeguarding wildlife*. The Village of El Portal and its residents seek preservation of these trees and natural banks under their more stringent laws, confirmed through lawful judicial process. Proceeding before that determination would risk pre-empting municipal authority and defeating the very purpose of the County's cooperative framework under § 24-2.

5. Seawall

Based on the El Portal Comprehensive Plan and Code, the natural banks of the river are mandated to be preserved in this location. Construction of a new seawall, or covering the bank with impervious surface, would directly conflict with those requirements—laws that were adopted precisely to prevent such alteration.

We have established laws in our municipality that are more stringent than Miami Dade. Laws that mandate the preservation of the **natural bank** and native, specimen trees, **in that specific location** to provide for ecosystem, canopy, wildlife protections, and climate resilience.

The Little River AAA Plan provides direction on this- including increased waterfront setbacks and increased living shorelines. There is also potential for a set-back seawall, beyond the natural bank and native trees and vegetation that are required by the established laws of El Portal to be preserved.

A new seawall is illegal to be constructed in that location. Again, our municipality's established laws are very clear that the natural bank must be preserved (and be restored), and that the native vegetation (“including retention of native trees”) must be preserved.

Conflict with construction of a new seawall, that is expressly against our municipal laws, under legal review, and highly likely will not be able to be constructed- should not, in any way- affect an assessment of the health of a tree.

That should be a completely separate analysis. Health of tree, and conflict with site plans should – under normal circumstances- be evaluated separately. Given the circumstances of this case, that is integral for DERM to fulfill its intended function and role in this process, as well as its own mission.

The original arborist report was flawed for the same reasons, focusing on conflict with site plans, and proposed seawall construction- not solely on the health of the tree, mitigation, and preservation- as per our local laws.

The observation that there is an archaic, collapsed seawall in some places where the trees have developed decades of progress toward our goals of natural bank stabilizing root systems, should not affect evaluation of the tree’s health or viability. That is a contradiction to our municipality’s Comprehensive Plan and laws, and their respective stated goals.

DERM’s inspection reports, repeatedly describe the shoreline as a “seawall” and state that “no natural canal bank was observed.” However, the accompanying photographs clearly depict large sections where the original concrete structure has deteriorated and where soil, native vegetation, and extensive tree root systems have re-established a functional natural bank. These naturalized segments serve the same hydrological and ecological purposes as an intact natural shoreline, providing pervious surface, native canopy, and wildlife habitat.

Classifying these living banks as simply “collapsed seawall” overlooks their regulatory significance under El Portal Code § 24-19(b)–(c) and the Village’s Comprehensive Plan, which mandate the retention and restoration of natural canal banks and vegetation. These areas are not construction failures—they are evidence of the ecosystem’s recovery- the governing environmental policies are designed to protect.

6. Request for Follow-Up

Please advise whether DERM or RER can correct the materially inaccurate pre-hearing memorandum and initiate an independent reassessment of the trees' condition.

I further request that DERM leadership review the circumstances of this permit and hearing for compliance with the Department's own mission of ecosystem protection and public transparency. A corrected evaluation by a neutral ISA-certified arborist would also ensure an accurate public record and restore public confidence in the Department's environmental oversight.

A prompt review and correction would demonstrate DERM's commitment to accuracy, transparency, and intergovernmental cooperation

7. Conclusion

The memorandum issued by DERM asserts that "the requested relief is moot because the trees have already been removed." That statement is factually incorrect and legally unsound. Two specimen native figs remain standing and viable, and an independent arborist has confirmed that both trees can recover with proper mitigation and care.

Even if partial cutting occurred, the appeal cannot be deemed moot when living, recoverable native trees—and the ecosystem they anchor—still exist and remain under threat of further harm. Administrative agencies are obligated to base decisions on accurate, up-to-date facts, particularly where environmental resources are at stake.

Moreover, the procedural deficiencies—late notice of the hearing memorandum, lack of opportunity to present rebuttal evidence, and reliance on inaccurate or incomplete information—further require corrective action to ensure the integrity of the process and the record.

Reconsideration or administrative correction is necessary to protect the remaining trees, uphold the more stringent environmental protections mandated by the Village of El Portal, and preserve the ecological integrity of the Little River canal and its banks.

For these reasons, I respectfully request that DERM and the EQCB correct the record and initiate an independent reevaluation of the trees to ensure compliance with County and municipal environmental protections. Immediate corrective action is necessary to prevent further harm.

I appreciate your attention to this serious matter and your efforts to ensure that DERM's findings and actions reflect accurate, verified environmental conditions.

Thank you.

Best regards,

Scott Kobrick

400 NE 85th Street
El Portal, FL 33138

scottkobrick@gmail.com

Exhibits A–D: Photographs of Specimen Trees

Exhibit E: El Portal Code §24-19 and Comprehensive Plan excerpts

Exhibit F: Mayor Omar Nickerson letter