



**DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
P. O. BOX 4970
JACKSONVILLE, FLORIDA 32232-0019**

REPLY TO
ATTENTION OF

FEB 28 2013

Regulatory Division

**DEPARTMENT OF THE ARMY
PROGRAMMATIC GENERAL PERMIT SAJ-91
SAJ-2005-08775(KDS)**

**BULKHEADS AND BACKFILL, AERIAL TRANSMISSION LINES, SUBAQUEOUS
UTILITY AND TRANSMISSION LINES, PRIVATE SINGLE-FAMILY PIERS AND
APPURTENANCES, OTHER MINOR STRUCTURES ASSOCIATED WITH SINGLE-
FAMILY DOCKS, AND STORMWATER OUTFALLS LOCATED WITHIN THE CITY
OF CAPE CORAL, LEE COUNTY, FLORIDA.**

Upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, general authority is hereby given to the City of Cape Coral to administer this permit for the construction of bulkheads and backfill, aerial transmission lines, subaqueous utility and transmission lines, private single-family piers and appurtenances, other minor structures associated with single-family docks, and storm water outfalls located in waters of the United States within the City of Cape Coral, Lee County, Florida. **This permit does not authorize any work or structure along the Caloosahatchee River, Matlacha Pass Aquatic Preserve or within the Cape Coral Spreader Waterways.**

This programmatic general permit is subject to the following conditions:

A. CONDITIONS FOR BULKHEADS AND BACKFILL IN RESIDENTIAL CANALS

1. The work herein authorized includes the construction, repair or maintenance of seawalls (bulkheads) and associated backfill in residential canals.
2. The seawall shall not exceed 300 feet in length and not extend any farther waterward than 18 inches from the existing seawall or Mean High Water Line (MHWL).
3. The backfill must be from upland sources and consist of suitable clean fill material free from toxic pollutants in other than trace quantities. The amount of backfill shall not exceed one (1) cubic yard per running foot below the plane of the MHWL.
4. This permit does not authorize any filling, except for backfill behind the seawall. New riprap may be placed at the toe of the existing or replacement seawall when the toe of the seawall is deeper than 3 feet at Mean Lower Low Water (MLLW). Also, replacement riprap can only be added within the same footprint of existing riprap (i.e. no waterward expansion or lateral

expansion of riprap beyond the previous footprint) in depths less than or equal to 3 feet at MLLW.

5. The removal of mangroves is prohibited.
6. In addition to the above conditions, the permittee must abide by all of the Special Conditions listed below and the attached General Conditions. These Special and General Conditions are applicable to all structures and/or work authorized under this general permit.

B. CONDITIONS FOR AERIAL TRANSMISSION LINES:

1. The work herein authorized includes the installation of aerial transmission lines and associated structures.
2. The aerial transmission lines must meet the U.S. Army Corps of Engineers clearance criteria as described in 33 CFR, Part 322.5(i)(1), (2), (3), and (4).
3. The construction of aerial transmission lines does not involve the dredging or filling of navigable waters or waters of the United States. All work will be conducted from uplands.
4. The permittee shall defend and hold the U.S. Government harmless from any and all claims by reason of the placement and installation of the transmission lines authorized by this permit.
5. In addition to the above conditions, the permittee must abide by all of the Special Conditions listed below and the attached General Conditions. These Special and General Conditions are applicable to all structures and/or work authorized under this general permit.

C. CONDITIONS FOR SUBAQUEOUS AND TRANSMISSION LINES:

1. The work herein authorized includes the installation and maintenance of subaqueous utility and transmission lines placed on, under or embedded in the bottom of navigable waters of the United States within the City of Cape Coral. The installation of utility and transmission lines by directional bore is authorized. Directional drilling used for subaqueous transmission lines will be restricted to drilling from the uplands only.
2. Dredged or fill material placed as backfill or bedding for subaqueous utility and transmission lines must not change the preconstruction bottom contours. Excess material must be removed to an upland disposal area.
3. The permittee will install signs at the shoreline to notify navigational interests of the location of subaqueous utility and transmission lines.
4. The permittee shall defend and hold the U.S. Government harmless from any and all claims by reason of the placement and installation of the transmission lines authorized by this permit.

5. In addition to the above conditions, the permittee must abide by all of the Special Conditions listed below and the attached General Conditions. These Special and General Conditions are applicable to all structures and/or work authorized under this general permit.

D. CONDITIONS FOR PRIVATE SINGLE-FAMILY DOCKS AND APPURTENANCES:

1. Structures authorized under this general permit are private single-family piers not to exceed 4 slips. This would include normal appurtenances such as boat hoists, boat shelters with open sides, stairways, walkways, mooring piles, dolphins, and maintenance of these appurtenances. Upland-cut boat slips are not authorized by this general permit.

2. No living, fueling, or storage facilities over navigable waters of the United States are authorized under this general permit.

3. The structure shall be consistent with other structures in the area.

4. Where practicable, unless sealed or wrapped, the use of CCA-treated wood should be avoided.

5. A structure which by its size or location may adversely affect water quality, fish and wildlife habitat, wetlands or submerged aquatic vegetation shall not be authorized by this general permit. Impacts to submerged aquatic vegetation cannot be authorized by SAJ-91.

6. No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

7. In addition to the above conditions, the permittee must abide by all of the Special Conditions listed below and the attached General Conditions. These Special and General Conditions are applicable to all structures and/or work authorized under this general permit.

E. CONDITIONS FOR MINOR STRUCTURES ASSOCIATED WITH SINGLE-FAMILY DOCKS:

1. The work herein authorized will be for minor structures to include:

- a. Single mooring piles;
- b. Small mooring dolphins (limited to one cluster of 4 or fewer pilings);
- c. Non-commercial information signage;
- d. Boat lifts, hoists, davits; and,

- e. Other minor structures that would have less environmental impact than a small dock.
2. Where practicable, unless sealed, or wrapped, the use of CCA-treated wood should be avoided.
3. The structure shall be consistent with other structures in the area.
5. A structure which by its size or location may adversely affect water quality, fish and wildlife habitat, wetlands or submerged aquatic vegetation shall not be authorized by this general permit. Impacts to submerged aquatic vegetation cannot be authorized by SAJ-91.
6. No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
3. In addition to the above conditions, the permittee must abide by all of the Special Conditions listed below and the attached General Conditions. These Special and General Conditions are applicable to all structures and/or work authorized under this general permit.

F. CONDITIONS FOR STORM WATER OUTFALLS:

1. Structures authorized under this general permit are storm water outfalls and appurtenances.
2. Authorization is contingent upon issuance of lawfully required National Pollutant Discharge Elimination System permits (Section 402 of the Clean Water Act) from the U.S. Environmental Protection Agency, Florida Department of Environmental Protection, State Water Management District, or their legally authorized delegate.
3. This general permit authorizes dredging at storm water outfalls. Maintenance dredging shall be limited to a depth of no more than 5 feet below mean or ordinary high water. No additional dredging is authorized under this general permit other than that which would be necessary to restore the discharge structure to its original permitted excavated depth.
4. Excavated spoil material shall be deposited at self-contained upland areas that will prevent spoil material and/or return water from reentering any water of the United States (including wetlands) or interfering with natural drainage.
5. In canals with open access to the Caloosahatchee River or Matlacha Pass Aquatic Preserve, grating shall be installed over the outfall to reduce the risk of entrapment and drowning of manatees. Grating shall be installed over pipes greater than eight 8 inches, but smaller than 8 feet in diameter. Bars or grates no more than 8 inches apart shall be placed on the accessible end(s) to restrict manatee access. For new culverts, grates must be attached prior to installation of the culverts. The installation of grates applies to submerged or partially submerged pipes and culverts reasonably accessible to manatees.

6. In addition to the above conditions, the permittee must abide by all of the Special Conditions listed below and the attached General Conditions. These Special and General Conditions are applicable to all structures and/or work authorized under this general permit.

G. SPECIAL CONDITIONS FOR ALL WORK:

1. No work shall be performed until the permittee submits satisfactory plans for the proposed activity and receives written authorization from the City of Cape Coral.

2. The work authorized herein is limited to existing canals within the City of Cape Coral and does not include the Caloosahatchee River, Matlacha Pass Aquatic Preserve, and the Cape Coral Spreader Waterways.

3. No activity shall be authorized under this general permit that may adversely affect water quality, fish and wildlife habitat, wetlands, or emergent or submerged aquatic vegetation.

4. No work shall be performed until after the permittee provides notification to the owner(s) or operator(s) of any marked utilities in the work area.

5. Cultural Resources/Historic Properties:

a. No structure or work shall adversely affect impact or disturb properties listed in the National Register of Historic Places (NRHP) or those eligible for inclusion in the NRHP.

b. If during the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), the Permittee shall immediately stop all work in the vicinity and notify the Corps. The Corps shall then notify the Florida State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions.

c. A cultural resources assessment may be required of the permit area, if deemed necessary by the SHPO, THPO(s), or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO and the Corps.

d. In the unlikely event that unmarked human remains are identified on non-federal lands, they will be treated in accordance with Section 872.05 Florida Statutes. All work in the vicinity shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archeologist. The Corps shall then notify the appropriate SHPO and THPO(s). Based, on

the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume without written authorization from the State Archeologist, SHPO and the Corps.

e. In the unlikely event that human remains are encountered on federal or tribal lands, or in situations where Archaeological Resources Protection Act of 1979, or Native American Graves Protection Repatriation Act of 1990 applies, all work in the vicinity shall immediately cease and the Permittee immediately notify the Corps. The Corps shall then notify the appropriate THPO(s) and SHPO. Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. After such notification, project activities on federal lands shall not resume without written authorization from the Corps, and/or appropriate THPO(s), SHPO, and federal manager. After such notification, project activities on tribal lands shall not resume without written authorization from the appropriate THPO(s) and the Corps.

6. Conformance with descriptions and quantities contained herein does not necessarily guarantee authorization under this general permit and the District Engineer reserves the right to evaluate any proposed work in waters of the United States as a Standard Permit.

7. Any structure or work authorized under this general permit must not interfere with general navigation.

8. Projects proposing installation of any type of piling greater than 24 inches in diameter, or installation of any size of metal piling or sheet piling by impact hammer cannot be authorized under SAJ-91.

9. Projects proposing installation of any type or size of piling or sheet piling by impact hammer cannot be authorized under SAJ-91 during the period March 1 through June 30 in the noise restriction areas as contained within the polygons described by the latitudinal/longitudinal coordinates listed in Appendix 1 and shown in Appendix 2.

10. In canals with open, lift, or lock access to the Caloosahatchee River or Matlacha Pass Aquatic Preserve, prior to verification of authorization, the dichotomous key entitled “The Corps of Engineers, Jacksonville District, and the State of Florida Effect Determination Key for the Manatee in Florida – March 2011”, will be used to determine potential manatee impacts. Projects determined to be a “may affect” or “may affect, not likely to adversely affect” further consultation with U.S. Fish and Wildlife Service is required are not authorized by this general permit and will be coordinated with the U.S. Fish and Wildlife Service by the Corps in accordance with the Endangered Species Act. Projects determined to be “may affect not likely to adversely affect” no further consultation required must follow all additional, specific conditions related to the pertinent activities as outlined in the Key and its associated maps. *Note: The manatee key may be subject to revision at any time. It is our intention that the most recent version of this technical tool will be utilized during the evaluation of the permit application.*

11. In canals with open, lift, or lock access to the Caloosahatchee River or Matlacha Pass Aquatic Preserve, the permittee will utilize the “Standard Manatee Conditions for In-Water

Work, 2011” (see

http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/endangered_species/Manatee/20110321_Manatee_Key_Final_with_modifications_for_PBO.pdf).

12. In canals with open, lift, or lock access to the Caloosahatchee River or Matlacha Pass Aquatic Preserve, the permittee will utilize the “Sea Turtle and Smalltooth Sawfish Construction Conditions” see

http://www.saj.usace.army.mil/Portals/44/docs/regulatory/sourcebook/endangered_species/sea_turtles/inwaterWorkSeaTurtle032306.pdf) and/or requirements, as appropriate for the proposed activity. *Note: These conditions may be subject to revision at any time. It is our intention that the most recent version of this technical tool will be utilized during the evaluation of the permit application.*

13. Turbidity control measures will be used to control water quality and the work must be in accordance with State Water Quality Standards as outlined in Florida Statute 62-302. Turbidity control measures may include but are not limited to, turbidity control curtains, the exclusive use of suction dredging, the exclusive use of closed “clam shell” dredging, or any other technique necessary to reduce turbidity to no more than background turbidity. The Florida Department of Environmental Protection (FDEP) may require the applicant to submit a daily turbidity report which may be verified by state or local government inspectors.

14. No activity shall be authorized under this general permit which is likely to adversely affect a Federally-listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat.

15. Activities qualifying for this programmatic general permit (PGP) must be authorized by the applicable permit or exemption under Part IV of Chapter 373, F.S., and by any authorization required to use or occupy state-owned submerged lands (SSL) under Chapter 253, F.S., and, as applicable Chapter 258 F.S. Such permit, issued by the Department of Environmental Protection, a water management district under s. 373.069, F.S., or a local government with delegated authority under s. 373.441, F.S., will provide the applicable Water Quality Certification (WQC) or waiver thereto, and Coastal Zone Consistency Concurrence (CZCC). WQC is waived for activities authorized under this PGP that qualify for an exemption under s. 403.813(1) or 373.406, F.S., or the rules of Florida Administrative Code (F.A.C.) adopted under Part IV of Chapter 373, F.S. The Corps, or any designated Federal, State, or local agency administering general permits on behalf of the Corps under C.F.R. § 325.2(b)(2) may presume CZCC for the above exempt activities by operation of s. 380.23(7), F.S., provided the activity receives the applicable authorization to use and occupy SSL under Chapter 253, F.S., and, as applicable, Chapter 258, F.S., and the rules F.A.C. adopted thereunder. The Corps, or any designated Federal, State, or local agency administering general permits on behalf of the Corps under shall not be precluded from acting on a request to use this PGP before the applicable SSL authorization is granted.

16. This PGP does not include conditions that would prevent the ‘take’ of a state-listed fish or wildlife species. These species are protected under sec. 379.411, Florida Statutes, and listed under Rule 68A-27, Florida Administrative Code. With regard to fish and wildlife species designated as species of special concern or threatened by the State of Florida, you are responsible for coordinating directly with the Florida Fish and Wildlife Conservation Commission (FWC).

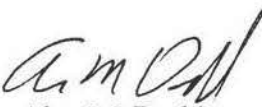
You can visit the FWC license and permitting webpage (<http://www.myfwc.com/license/wildlife/>) for more information, including a list of those fish and wildlife species designated as species of special concern or threatened. The Florida Natural Areas Inventory (<http://www.fnai.org/>) also maintains updated lists, by county, of documented occurrences of those species.

16. For projects authorized under this permit in navigable waters of the U.S., the permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

17. This programmatic general permit will be valid for a period of 5 years from the date specified above unless suspended or revoked by the District Engineer prior to that date. If SAJ-91 expires or is revoked prior to completion of the authorized work, authorization of activities that have commenced or are under contract to commence in reliance on SAJ-91 will remain in effect provided the activity is completed with 12 months of the date SAJ-91 expired or was revoked.

18. The General conditions attached hereto are made a part of this permit and must be attached to all authorizations processed under this permit.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:


Alan M. Dodd,
Colonel, U.S. Army
District Commander

GENERAL CONDITIONS

1. The time limit for completing the work authorized ends on February 28, 2018.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit you must obtain the signature of the new owner in the space provided and forward a copy of the permit to the Fort Myers Regulatory Office at 1520 Royal Palm Square Boulevard, Suite 310, Fort Myers, Florida 33919 to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow a representative from the Corps or its delegated authority to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

- b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal projects.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit verification is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Verification Decision: This office may reevaluate its decision on this permit verification at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.



GULF OF MEXICO

CAPTIVA ISLAND

SANIBEL ISLAND

PINE ISLAND

CAPE CORAL

BURNT STORE ROAD

PINE ISLAND ROAD

VETERANS MEMORIAL PKWY

CAPE CORAL PKWY

SKYLINE BLVD

DEL PRADO BLVD

CALOOSAHATCHEE RIVER

41

75

NORTH FORT MYERS

FORT MYERS

41

ESTERO

BONITA SPRINGS

41

75

North →

FLORIDA GULF COAST UNIVERSITY

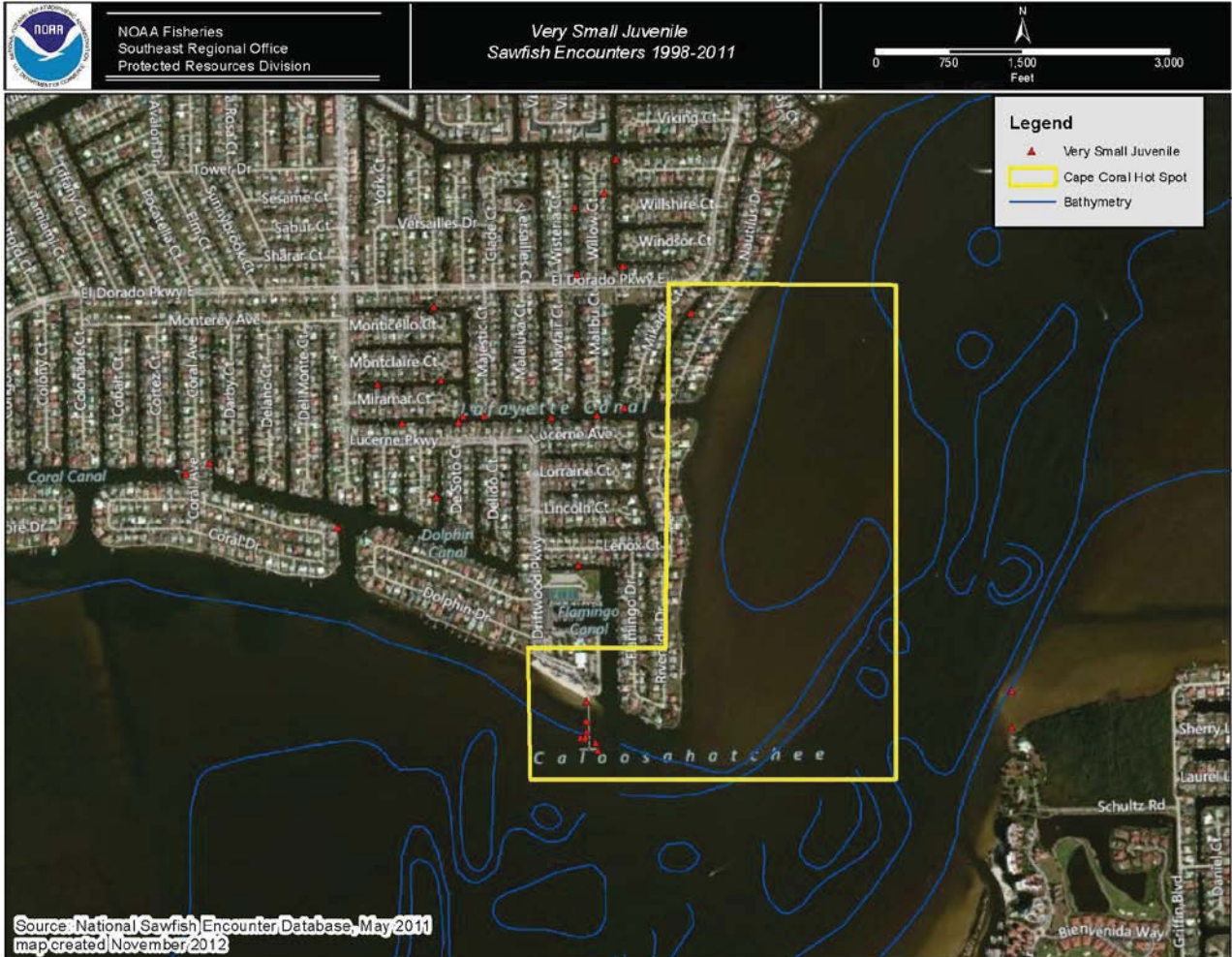
SWF INTL AIRPORT

SAJ-2005-08775(KDS)
SAJ-91
Attachment 1
Map of Cape Coral

Map courtesy of
www.capecoral.net

Appendix 1: Noise restriction zones in smalltooth sawfish critical habitat.

Name	Latitude	Longitude
Cape Coral		
CC 1	26.551662°	-81.947412°
CC 2	26.551561°	-81.940683°
CC 3	26.539075°	-81.940916°
CC 4	26.539205°	-81.951049°
CC 5	26.542181°	-81.951047°
CC 6	26.542133°	-81.947776°



Appendix 2: Cape Coral Canals with very small juvenile sawfish encounters