



Lawton Chiles
Governor

Florida Department of Environmental Protection

South District
2295 Victoria Avenue
Fort Myers, Florida 33901

Virginia B. Wetherell
Secretary

August 25, 1993

Mr. Clint Frick
P.O. Box 51392
Ft. Myers, FL 33905

Re: Lee County - WRR
OGC Case No. 89-0823

Dear Mr. Frick:

The Department has reviewed the above referenced OGC case and has determined that all conditions of the Consent Order have been satisfactorily completed. We will close this case and place it in the inactive file.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT JON IGLEHART AT 813/332-6975 OR WRITE TO THE LETTERHEAD ADDRESS

Your cooperation in resolving this case is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Philip R. Edwards".

Philip R. Edwards
Director of
District Management

PRE/JMI/mk



CERTIFIED MAIL RETURN RECEIPT REQUESTED

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

904-232-2907

REPLY TO
ATTENTION OF

OCT 22 1991

Regulatory Division
Enforcement Branch
1988-00901(ak)
88IPZ-20901

Mr. Clinton D. Frick
Post Office Box 51392
Fort Myers, Florida 33905

NOTICE OF NONCOMPLIANCE

Dear Mr. Frick:

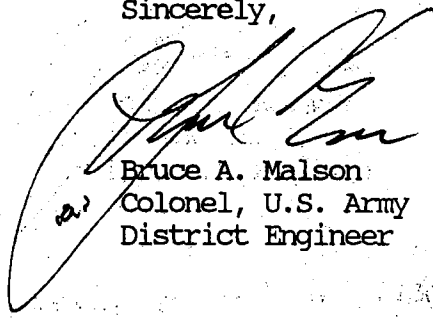
A recent inspection has indicated that you have not complied with the terms and/or conditions of your Department of the Army permit number 88IPZ-20901 for work in Section 24, Township 43 South, Range 25 East, Lee County, Florida. Specifically, the culverts required by special condition (2) of the permit have not been installed.

It is my responsibility, as District Engineer, to issue this Notice of Noncompliance. If you do not voluntarily comply with the terms and conditions of your Department of the Army permit, I will initiate suspension/revocation procedures.

It is requested that you acknowledge receipt of this letter within five days, comply with its terms, and provide any information concerning why you have not complied with the terms and conditions of your Department of the Army permit.

If you have any questions, please contact Alice Kirkland, at the letterhead address or by telephone (904) 791-3771.

Sincerely,



Bruce A. Malson
Colonel, U.S. Army
District Engineer

232-3771



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

REPLY TO
ATTENTION OF

AUG. 13 1991

Regulatory Division
Enforcement Branch
1988-00901(ak)
88IPZ-20901

Mr. Clinton D. Frick
Post Office Box 51392
Fort Myers, Florida 33905

Dear Mr. Frick:

Please find enclosed a copy of an "Assignment" which transferred Department of the Army permit number 88IPZ-20901 to you from the original permittee, Greg L. Spivey and Katherine Coulter. The permit construction period will end on January 20, 1994, although the permit itself, with its limitations, does not expire.

The permit was issued with two special conditions. A recent inspection indicated that condition (2) of the permit has not been accomplished. It is necessary that you provide evidence that both of the required culverts are installed as specified in the permit and as depicted in the permit drawings.

To avoid further enforcement action it is requested that you acknowledge receipt of this letter within ten days, and provide the requested information. Please contact Alice Kirkland, at the letterhead address or by telephone at (904)791-3771.

Sincerely,

Lawrence C. Evans
Chief, Enforcement Branch

232-3771
Spoke to
Alice Kirkland
8/16/91 8:42 AM
SEND PICTURES
OF CULVERTS
(CSF)

Enclosure

Army Corps of Engineers Permit

DEPARTMENT OF THE ARMY PERMIT

JAN 19 1989

Permittee ~~SPIVEY AND COULTER~~

Permit No. ~~88IPZ-20901~~

Issuing Office ~~U.S. Army Engineer District, Jacksonville~~

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

The project consists of the placement of approximately 1.0 acre of fill in wetlands adjacent to the Caloosahatchee River to provide for access driveways, house pads, and yards for two private single family residences.

The work described above is shown on the attached plans numbered 88IPZ-20901 in five sheets; dated July 1988.

Project Location:

The project is located in wetlands adjacent to the Caloosahatchee River, on Bayshore Road (SR 78), in Section 24, Township 43 South, Range 25 East, Fort Meyers, Lee County, Florida.

General Conditions:

JAN 20 1994

1. The time limit for completing the work authorized ends on _____ . If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
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 this office 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 representatives from this office 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.

Special Conditions:

1. With 60 days of permit issuance, the applicants shall remove approximately 160 cubic yards of fill along the creek bank and plant the area with leather fern. (PI)
2. Within 60 days of permit issuance, the applicants shall install a culvert in each of the access driveways. (LR)

Further Information:

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

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

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 project.

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.

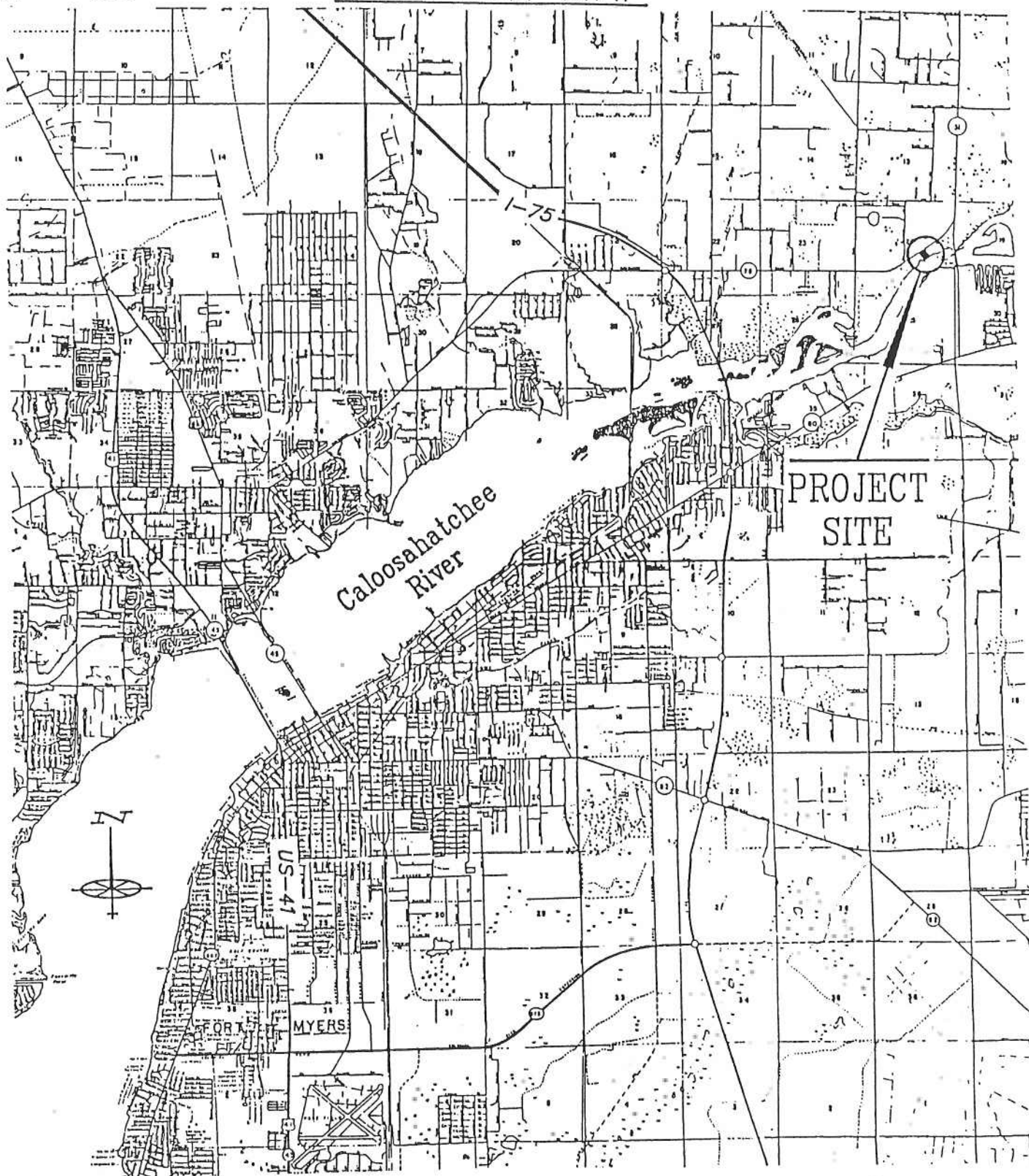
c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

SECTION: 24
TOWNSHIP: 43S
RANGE: 25E

LEE COUNTY LOCATION MAP

LATITUDE: 26° 43' 00"
LONGITUDE: 81° 45' 55"



ADJACENT PROPERTY OWNERS:

1. ELSIE GRUNWALD
2. ELSIE GRUNWALD

IN: UN-NAMED WETLANDS
AT: CALOOSAATCHEE RIVER
LEE COUNTY, FLORIDA

PERMIT USE ONLY, NOT FOR CONSTRUCTION

DRAWN BY
D A F
SHEET OF

GREG L. SPIVEY
KATHERINE COULTER

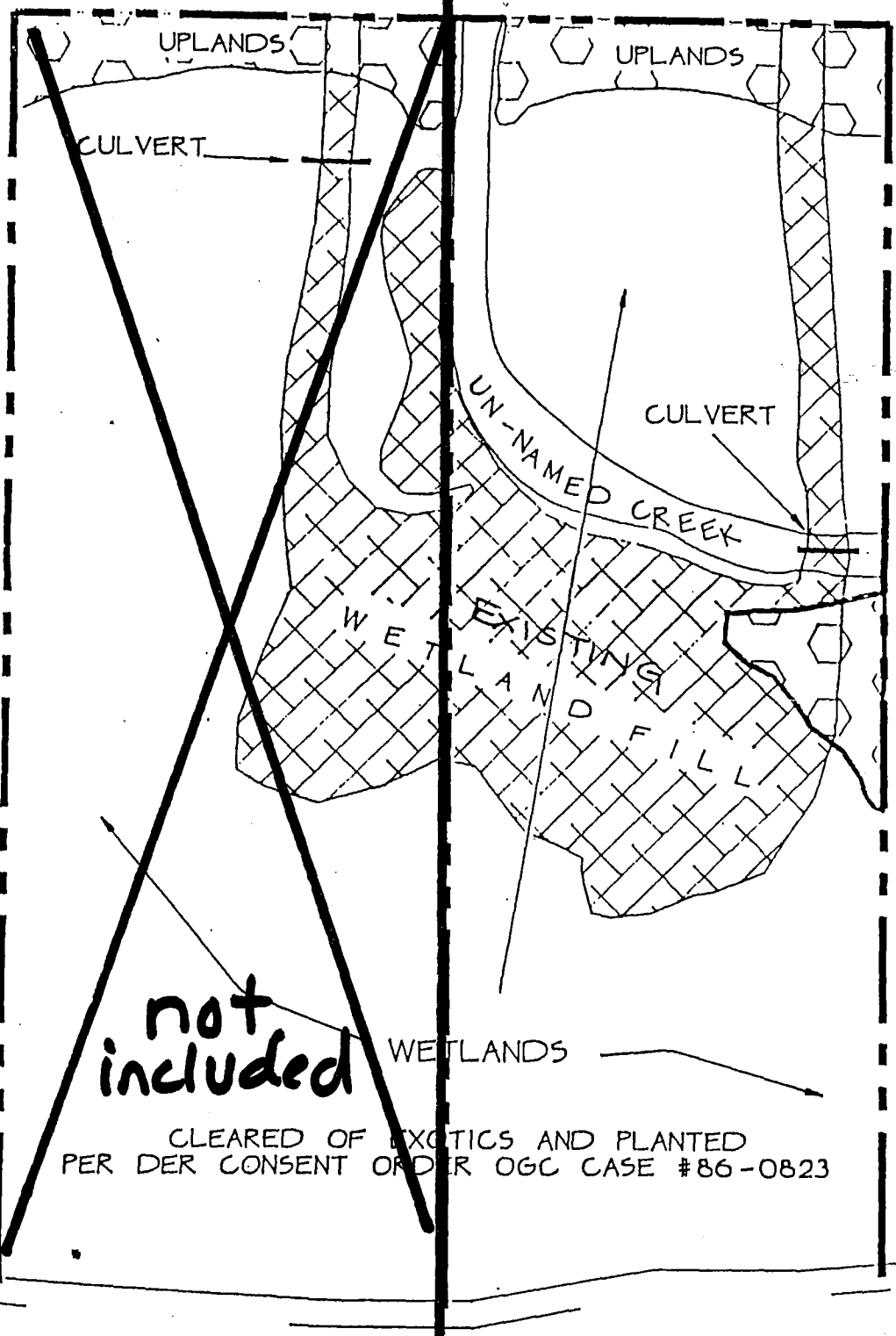
7/26/88

W. DEXTER BENDER
AND ASSOCIATES
1533 HENDRY ST., SUITE 302
FORT MYERS, FL 33901

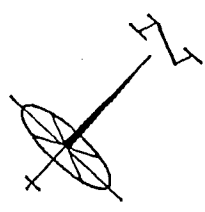


DN: 24
SHIP: 43S
E: 25E

BAYSHORE RD. SR-78



EXISTING
SITE



1"=60'

**not
included**

CLEARED OF EXOTICS AND PLANTED
PER DER CONSENT ORDER OGC CASE #86-0823

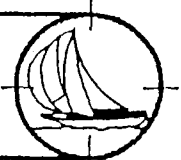
CALOOSA HATCHEE RIVER

PERMIT USE ONLY, NOT FOR CONSTRUCTION

DRAWN BY
D A
GREG L. SPIVEY
KATHERINE COULTER

7/26/88

W. DEXTER BENDER
AND ASSOCIATES
1533 HENDRY ST., SUITE 302
FORT MYERS, FL 33901



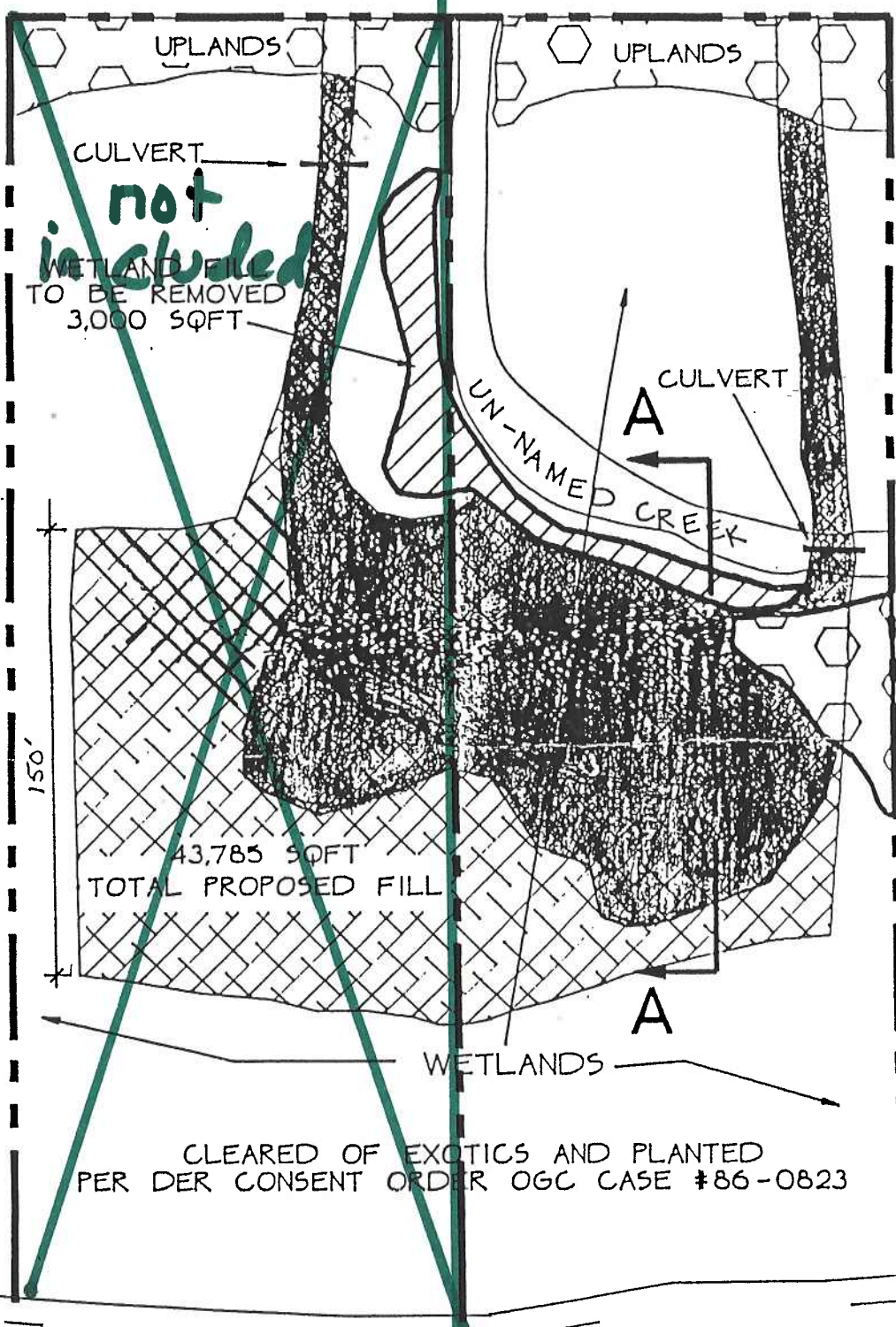
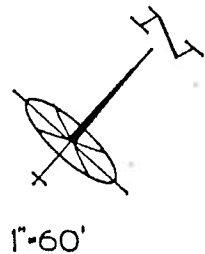
SECTION: 24
TOWNSHIP: 43S
RANGE: 25E

BAYSHORE RD. SR-78

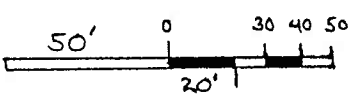
150' 150'

PROPOSED SITE

PROPOSED FILL IS FOR TWO SINGLE-FAMILY HOMES AND YARDS.



- /// FILL TO BE REMOVED
- XX PROPOSED WETLAND FILL
- XX EXISTING WETLAND FILL



CALOOSA HATCHEE RIVER

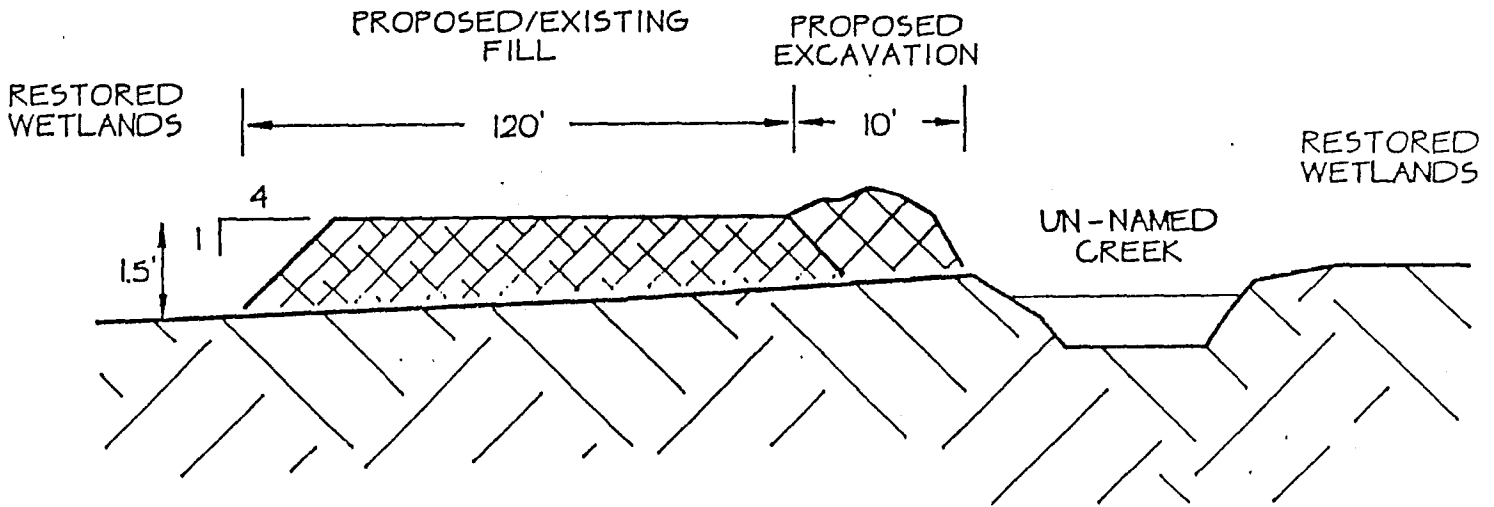
PERMIT USE ONLY, NOT FOR CONSTRUCTION

DRAWN BY DAF	GREG L. SPIVEY KATHERINE COULTER	7/26/88	W. DEXTER BENDER AND ASSOCIATES 1533 HENDRY ST., SUITE 302 FORT MYERS, FL 33901	
		9/7		

00707 21041

SECTION: 24
TOWNSHIP: 43S
RANGE: 25E

ALL PROPOSED FILL WILL BE CLEAN SAND/SHELL
FILL WILL COME FROM OFF-SITE UPLANDS AND ON-SITE FILL REMOVAL AREA
AREAS OF FILL REMOVAL WILL BE PLANTED WITH 85 LEATHER FERN 6' O.C.
ALL FILL SLOPES WILL BE STABILIZED WITH SOD



SECTION A-A

N.T.S.

PERMIT USE ONLY, NOT FOR CONSTRUCTION

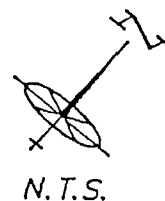
DRAWN BY DAF	GREG L. SPIVEY KATHERINE COULTER	7/26/88	W. DEXTER BENDER AND ASSOCIATES 1533 HENDRY ST., SUITE 302 FORT MYERS, FL 33901	

SECTION: 24.
 TOWNSHIP: 43S
 RANGE: 25E

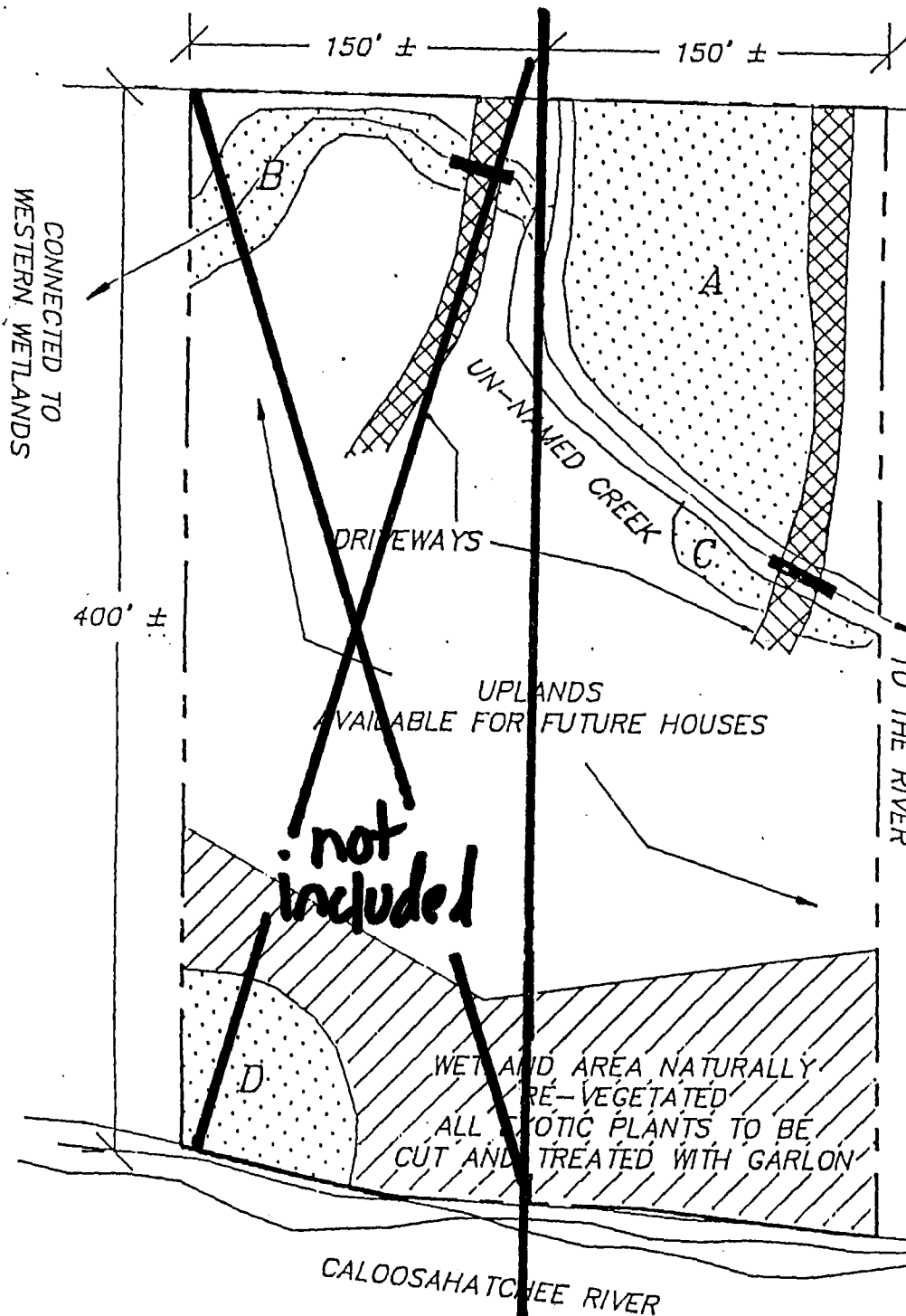
MITIGATION PLAN

LEE COUNTY, FLORIDA

APPROVED IN DER CONSENT ORDER
 OGC CASE #86-0823



BAYSHORE ROAD
 SR-78



THIS PLAN HAS BEEN
 IMPLEMENTED AND
 ALL WORKS COMPLETE

NOTES

- A** MITIGATION AREA - Excavation 6-12" avoiding existing trees. Re-planting w/ 48 bay trees on 20' centers & 297 leather fern on 8' centers. 19,000 sqft total area.
- B** MITIGATION AREA - Excavation 6-12" avoiding existing trees. Re-planting w/ 37 leather fern on 8' centers. 2,371 sqft total area.
- C** MITIGATION AREA - Excavation 6-12" avoiding existing trees. Re-planting w/ 31 leather fern on 8' centers. 1,975 sqft total area.
- D** MITIGATION AREA - Excavation 6-12" & planted w/ 56 leather fern on 8' centers. 3,600 sqft total area.

Culvert crossings will be 1-12" RCP each location.

Driveways to avoid existing trees and follow piles of up-rooted exotic trees.

PERMIT USE ONLY, NOT FOR CONSTRUCTION

SHEET OF	DATE	DRAWN BY:	W. DEXTER BENDER AND ASSOCIATES 1533 HENRY ST., SUITE 302 FORT MYERS, FL 33901
	4/14/87		
GREG SPIVEY KATHERINE COULTER			



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 is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit 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 to 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.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Katherine D. Coulter
(PERMITTEE) Katherine D. Coulter
Greg L. Spivey
Greg L. Spivey

1/18/88
1-18-1988 (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Robert L. Herndon
(DISTRICT ENGINEER)

JAN 19 1989
(DATE)

Robert L. Herndon
Colonel, Corps of Engineers

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFeree)

(DATE)

JAX DISTRICT JAN 19 '89 0830