



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
Office of General Counsel
3900 Commonwealth Boulevard - MS 35
Tallahassee, Florida 32399-3000
850-245-2242


Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Herschel T. Vinyard, Jr.
Secretary

MEMORANDUM

TO: Jorge Caspary, Director
Division of Waste Management

From: Toni Sturtevant,
Senior Assistant General Counsel 

SUBJECT: Manatee County Port Authority
MEMORANDUM OF AGREEMENT FOR LAND USE CONTROLS
OGC#13-1297

DATE: May 12, 2014

I have reviewed the attached Memorandum of Agreement for Land Use Controls (MOALUC) for the above referenced site. Therefore, I recommend that you sign the document in the presence of a notary public and two witnesses.

If the attached document is executed, please ask Judith to email executed copies to my paralegal, Lisa Brown, and forward the originals to the site manager, Brian Dougherty so that he may return the MOALUC to Manatee County Port Authority for inclusion in the master plan.

Please contact me at toni.sturtevant@dep.state.fl.us or 52257, or Lisa Brown at lisa.l.brown@dep.state.fl.us or 5-2276 if you have any questions regarding this Declaration.

ec: Brian Dougherty

THIS INSTRUMENT PREPARED BY:

F. JOSEPH ULLO, JR., ESQUIRE
LEWIS, LONGMAN & WALKER, P.A.
315 SOUTH CALHOUN STREET,
SUITE 830
TALLAHASSEE, FL 32301
(850) 222-5702

MEMORANDUM OF AGREEMENT FOR LAND USE CONTROLS

This **MEMORANDUM OF AGREEMENT ("MOA")** for **LAND USE CONTROLS** pursuant to Section 376.30701, Florida Statutes ("F.S.") and Chapter 62-780 of the Florida Administrative Code ("F.A.C.") is entered into on this 12th day of May 2014, between the "Parties," **Manatee County Port Authority ("AUTHORITY")**, a dependent special District of the State of Florida created pursuant to Section 189.4041, F.S. and the Division of Waste Management, Florida Department of Environmental Protection ("**THE DEPARTMENT**"), a public agency of the State of Florida.

RECITALS:

- A. WHEREAS, Port Manatee ("PORT") plays a critical role in the State of Florida's economy by providing opportunities for job growth and additional revenue;
- B. WHEREAS, the expansion of the Panama Canal in 2015 represents potential for significant new global opportunity and increased maritime business for the State of Florida because of its geographic location;
- C. WHEREAS, THE DEPARTMENT aims to balance the interests of port expansion, the potential for growth of commerce, and the State of Florida's economy, with effectively managing present and future contamination within the PORT;
- D. WHEREAS, the Authority is the fee simple owner of that certain real property situated in the County of Manatee, State of Florida, more particularly described in Exhibit "A" attached hereto and made a part hereof ("PORT PROPERTY").
- E. WHEREAS, the PORT has controlled access in its industrial and berthing areas;
- F. WHEREAS, PORT land use is exclusively commercial and/or industrial;

- G. WHEREAS, PORT is operated pursuant to its Port Manatee Master Plan which has been accepted by the Florida Department of Community Affairs and its successor agency, the Department of Economic Opportunity;
- H. WHEREAS, PORT has numerous tenants which operate separate facilities within the PORT PROPERTY, and each of these facilities is performing commercial or industrial uses;
- I. WHEREAS, Facility Name(s) and Identification Number(s), or other similar Tracking Number(s), and a Person Responsible for Site Rehabilitation (PRSR) for each contaminated Facility within the PORT subject to this MOA are more particularly described in Exhibit "B" attached hereto and made a part hereof. Contamination as defined by Rule 62-780.200, F.A.C., currently exists on the PORT PROPERTY and is documented in reports found on file with THE DEPARTMENT's electronic document management system by their respective tracking numbers. Also, these reports document that the groundwater contamination does not extend beyond the PORT PROPERTY boundaries and the groundwater contamination related to these Facilities is stable or shrinking or not creating an unacceptable exposure risk to humans and the environment;
- J. WHEREAS, PORT is geographically located in a coastal environment and PORT and other PRSRs have conducted groundwater analysis at varying locations throughout the PORT PROPERTY and immediate vicinity and determined that the shallow groundwater beneath the PORT is of Poor Quality as defined in Rule 62-780.200, F.A.C.;
- K. WHEREAS, assessments have been completed and are ongoing on PORT PROPERTY at various Facilities for existing contamination pursuant to Chapter 62-780, F.A.C., and Chapter 62-777, F.A.C., and considerable funds have been expended by the PORT, it's Tenants, and the DEPARTMENT; and it has been determined by THE DEPARTMENT that Institutional Controls are appropriate on PORT PROPERTY.
- L. WHEREAS, any assessment work will be completed on PORT PROPERTY pursuant to Rule 62-780.600, F.A.C., and any other applicable local, state, and federal requirements, and this MOA.
- M. WHEREAS, it is the purpose of this MOA to enable the PORT and other PRSRs operating within the PORT PROPERTY to expeditiously complete the assessment of contamination and reduce or eliminate the threat of migration of the contaminants.
- N. WHEREAS, THE DEPARTMENT is authorized to move the monitoring point to the edge of the plume, a PORT PROPERTY or facility boundary as appropriate while cleanup or monitoring is proceeding; and
- O. WHEREAS, PORT and THE DEPARTMENT have agreed to a procedure, set forth herein, which will allow the PORT to expedite and more cost effectively perform

contamination assessments on the PORT, use and apply Institutional Controls (IC) as part of the site rehabilitation process, and will allow THE DEPARTMENT to ensure the long-term integrity of the IC and that the risk to human health and the environment from contamination is effectively managed.

In the remaining paragraphs, all references to the "AUTHORITY" and "THE DEPARTMENT" shall also mean and refer to their respective successors and assigns. References to the PORT shall refer to the PORT or PORT PROPERTY depending on the context.

NOW THEREFORE, PORT and THE DEPARTMENT, in consideration of the recitals above and other good and valuable consideration, agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.

PART I

Institutional Controls

1. The AUTHORITY hereby imposes the following covenants, conditions, and restrictions to apply to the PORT PROPERTY:
 - a. There shall be no access to shallow groundwater under the PORT PROPERTY, with the exception of the existing wells included in Exhibit "C." For the purposes of this agreement, shallow groundwater is defined as the groundwater above the clay confining layer which is approximately 45-50 feet below land surface.
 - b. The AUTHORITY shall have the authority to replace or repair the above listed existing wells as needed.
 - c. Unless permitted by the Southwest Florida Water Management District (WMD) and pre-approved in writing by THE DEPARTMENT's Division of Waste Management (DWM), there shall be no use of the shallow groundwater in the PORT.
 - d. Any contaminated groundwater extracted as result of dewatering activities must be treated to/or meet applicable standards. If discharging to surface waters, treated water must comply with applicable surface water standards.
 - e. Attached as Exhibit "D", and incorporated by reference herein, is a map identifying the size and location of existing stormwater swales, stormwater detention or retention facilities, and ditches on the PORT PROPERTY. Such existing stormwater features, if located in a Facility listed in Exhibit "B," may be modified to accommodate PORT expansion or normal stormwater conveyance and treatment infrastructure upgrades as long as exposure to potentially

contaminated soil and groundwater is addressed in accordance with applicable regulations and it is evaluated as part of the design that the modifications do not cause migration of any known groundwater plume. The same control applies to the construction of new stormwater conveyance swales, ditches, detention, or retention facilities. This does not free or exempt the PORT from complying from any written approvals or authorizations imposed by the DWRM or WMD. Such prior written approval(s) or authorizations shall be provided to the PORT within timeframes applicable to the processing of any related permit(s) by DWRM or the WMD.

- f. Soil contamination has been identified on the PORT PROPERTY and is described in the documents on file for listed contaminated Facilities. Should soil contamination levels exceed the Commercial/Industrial Direct Exposure, PORT or the Responsible Party shall address through remediation or engineering controls approved by THE DEPARTMENT. Engineering controls and engineering controls management plans shall be attached to this MOA as Exhibit "D" when approved by THE DEPARTMENT.
- g. Excavation and construction is not prohibited on the PORT PROPERTY provided any known contaminated soils that are excavated are properly managed or disposed of pursuant to applicable local, state, and federal requirements. Nothing herein shall limit any other legal requirements regarding construction methods and precautions that must be taken to minimize risk of exposure while conducting work in contaminated areas. Temporary storage or stockpiling of contaminated soil or sediment shall be conducted in accordance with Rule 62-780.500(5)(a)(7), F.A.C. in the same area where the contaminated soils were removed. Returning contaminated soils to the excavation within a Soil Contamination Area shall be allowed by THE DEPARTMENT, provided that PORT ensures that a completed exposure pathway does not exist.
- h. The PORT PROPERTY shall only be used for industrial/commercial and Port and Port related uses. The loading, unloading, and packaging of meats, plants, or food products are industrial uses. Land uses other than industrial must consider the restrictions in this document and be notified to the Department.

PART II

Assessment and Points of Compliance

- 1. PORT surface waters shall meet the applicable surface water CTLs as specified in Chapter 62-777, F.A.C., Table I freshwater surface water criteria column or marine surface water criteria column. Where surface water or wetlands are or may be exposed to contaminated groundwater, the point of measuring compliance with the surface water or wetland standards shall be in the groundwater from the landward side immediately adjacent to the surface water body or wetland.

2. During the assessment of a facility, the AUTHORITY or other Responsible Party, with PORT's permission, conducting the assessment can move the monitoring point to the edge of a facility boundary so long as the following criteria are met:
 - a. Soil contamination levels do not exceed the Commercial/Industrial Direct Exposure criteria set forth in Rule 62-777.170, Table II, DEPARTMENT approved alternative Soil Cleanup Target Levels for a given facility, or engineering controls approved by the DEPARTMENT and incorporated herein are in effect;
 - b. The source of discharge has been abated and the AUTHORITY or PRSR can show that the groundwater plume is stable or shrinking and the AUTHORITY or the PRSR can demonstrate that surface water and wetlands are not negatively affected.
 - c. If extending the monitoring point to a PORT BOUNDARY, contamination above applicable cleanup target levels in any medium does not extend beyond a PORT PROPERTY boundary.
3. Should the AUTHORITY elect to move the monitoring point to a facility or a PORT PROPERTY boundary, the AUTHORITY or designated Responsible Party must evaluate groundwater plume migration and groundwater quality at the monitoring point at an agreed upon frequency of time.
4. Assuming the criteria of Paragraph II.2 are met, the assessment of the degree and extent of soil contamination is considered complete so long as soil contamination levels are less than the Commercial/Industrial Direct Exposure criteria or approved alternative Soil Cleanup Target Levels for a given facility provided that soil contamination levels at the PORT PROPERTY boundary do not exceed the Residential Direct Exposure criteria or background for the contaminant(s) of concern.
5. For the purposes of expediting assessment and cleanup, the DEPARTMENT shall accept Combined Documents in accordance with Rule 62-780.450, F.A.C.
6. The AUTHORITY reserves the right to apply the terms of this MOA to facilities within the PORT PROPERTY. By reserving this right, PRSRs responding to releases on the PORT PROPERTY require the AUTHORITY'S express authorization to utilize this MOA when conducting site rehabilitation pursuant to DEPARTMENT rules.

PART III

General

1. The AUTHORITY shall reference the MOA and enumerate the MOA restrictions in the master plan that is prepared pursuant to Section 163.3245, F.S. Such master plan shall be publicly available either through the PORT's or THE DEPARTMENT's web sites.

2. The AUTHORITY shall provide notice to tenants under leases, leasehold or easement holders in the PORT PROPERTY to be encumbered by the MOA. Such notice must include information regarding the owner's intention to enter into this MOA, the type and location of the restriction(s) on the PORT PROPERTY, and THE DEPARTMENT's contact information. Where an easement materially conflicts with the terms of this MOA, then in addition to notice, PORT shall obtain a "Joinder and Consent" of the easement holder to this MOA.
3. THE DEPARTMENT shall include these restrictions in THE DEPARTMENT'S Division of Waste Management online Institutional Controls Registry.
4. The AUTHORITY shall grant THE DEPARTMENT right of entry upon and access to PORT PROPERTY at reasonable times and with three (3) business days notice to PORT for the purpose of monitoring the requirements contained herein.
5. It is the intention of the AUTHORITY that this MOA shall touch and concern the PORT PROPERTY, run with the land and with the title to the PORT PROPERTY, and shall apply and be binding upon and inure to the benefit of PORT and THE DEPARTMENT. Should the PORT convey PORT PROPERTY or any portion thereof where contamination remains in place, the AUTHORITY shall record a Declaration of Restrictive Covenant for that land consistent with the requirements of Chapter 62-780, F.A.C., as well as the intended land use for that property which shall be recorded in the public records of Manatee County.
6. THE DEPARTMENT may enforce the terms and conditions of this MOA by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of THE DEPARTMENT to exercise its rights in the event of the failure of PORT to comply with the provisions of this MOA shall not be deemed or construed to be a waiver of THE DEPARTMENT's rights hereunder. This MOA shall continue in perpetuity, unless otherwise modified in writing by PORT and THE DEPARTMENT. This MOA may also be enforced in a court of competent jurisdiction. If the AUTHORITY does not or will not be able to comply with any or all of the provisions of this MOA, the AUTHORITY shall notify THE DEPARTMENT in writing within three (3) calendar days. Additionally, PORT shall notify THE DEPARTMENT thirty (30) days prior to any conveyance or sale, granting or transferring of PORT PROPERTY or portion thereof, of any heirs, successors, assigns, or grantees, including without limitation, the conveyance of any security interest in PORT PROPERTY.
7. In order to ensure the perpetual nature of this MOA, the AUTHORITY shall reference this MOA in any future deed of conveyance or lease. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the PORT PROPERTY, PORT agrees to notify in writing all proposed tenants of PORT PROPERTY of the existence and contents of this MOA.
8. If any provision of this MOA is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the

MOA. All such other provisions shall continue unimpaired in full force and effect.

9. The AUTHORITY covenants and represents that on the date of execution of this MOA that the AUTHORITY is seized of the PORT PROPERTY in fee simple and has good right to create, establish, and impose this MOA on the use of the PORT PROPERTY. The AUTHORITY also covenants and warrants that the PORT PROPERTY is free and clear or any and all liens, mortgages, or encumbrances that could impair PORT's rights to impose these requirements described in this MOA.

PART IV

Modification or Termination of Agreement

1. This MOA contains the entire agreement of the parties hereto, with respect to the subject hereof and no modification of this Agreement shall be effective unless executed in writing by the parties.
2. Any party who wishes to terminate this MOA with or without cause shall provide 60 days prior written notice to the other parties. The notice submitted by THE DEPARTMENT shall be signed by the Secretary. The notice submitted by the PORT shall be signed by the chairman. By mutual agreement of all parties, the 60 day notice period may be reduced. Within 30 days of a notice of intent to terminate this MOA, all parties shall make good faith efforts to preserve the agreement by attempting to resolve any basis for the termination. This agreement also may be terminated by future agreements between the parties which expressly supersede this MOA.
3. The AUTHORITY with concurrence of the department may amend this MOA on an annual basis or as necessary. Such amendments may include but not be limited to the listing of new facilities and/or PRSRs that are subject to the MOA, the documentation of any engineering controls that are approved by the DEPARTMENT, and updating the status of the Facilities listed in Exhibit "B." Annual amendments shall be made in accordance with Paragraph IV.1.

IN WITNESS WHEREOF, the lawful representations of the parties has caused this MOA to be signed as follows:

ATTEST: R.B. SHORE
Clerk of Circuit Court

MANATEE COUNTY PORT AUTHORITY

By: Robin Liberty DC
Printed: Robin Liberty



[Signature]
Name: Carol Whitmore
Title: Chairman

4/17/14

Approved as to form by the Florida Department of Environmental Protection, Office of General Counsel. *Darryl Sturtevant*

IN WITNESS WHEREOF, the Florida Department of Environmental Protection has executed this instrument, this 16th day of MAY, 2014.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: *Jorge Caspary*

Jorge Caspary, P.G.
Director, Division of Waste Management
Florida Department of Environmental Protection
2600 Blainstone Road
Tallahassee, Florida 32399-2400

Signed, sealed and delivered in the presence of:

Witness: *Steve Shores* Date: 05/16/2014

Print Name: Steve Shores

Witness: *John A. Coates* Date: 5/16/2014

Print Name: John A. Coates

STATE OF FLORIDA)
COUNTY OF LEON)

The foregoing instrument was acknowledged before me this 16th day of MAY, 2014,
by JORGE R. CASPARY as representative for the Florida Department of
Environmental Protection. Personally Known ☒ OR Produced Identification
N/A.

Type of Identification Produced N/A



JUDITH PENNINGTON
MY COMMISSION # EE 022582
EXPIRES: September 10, 2014
Bonded Thru Budget Notary Services

Judith Pennington
Signature of Notary Public

JUDITH PENNINGTON
Print Name of Notary Public

Commission No. EE 22582

Commission Expires: SEPTEMBER 10, 2014

Exhibit List:

Exhibit "A": Legal Description of PORT PROPERTY and Sketch

Exhibit "B": Listing of FDEP Facility Name(s), Facility Identification Number(s), or other similar FDEP Tracking Number(s), at the time of this MOA.

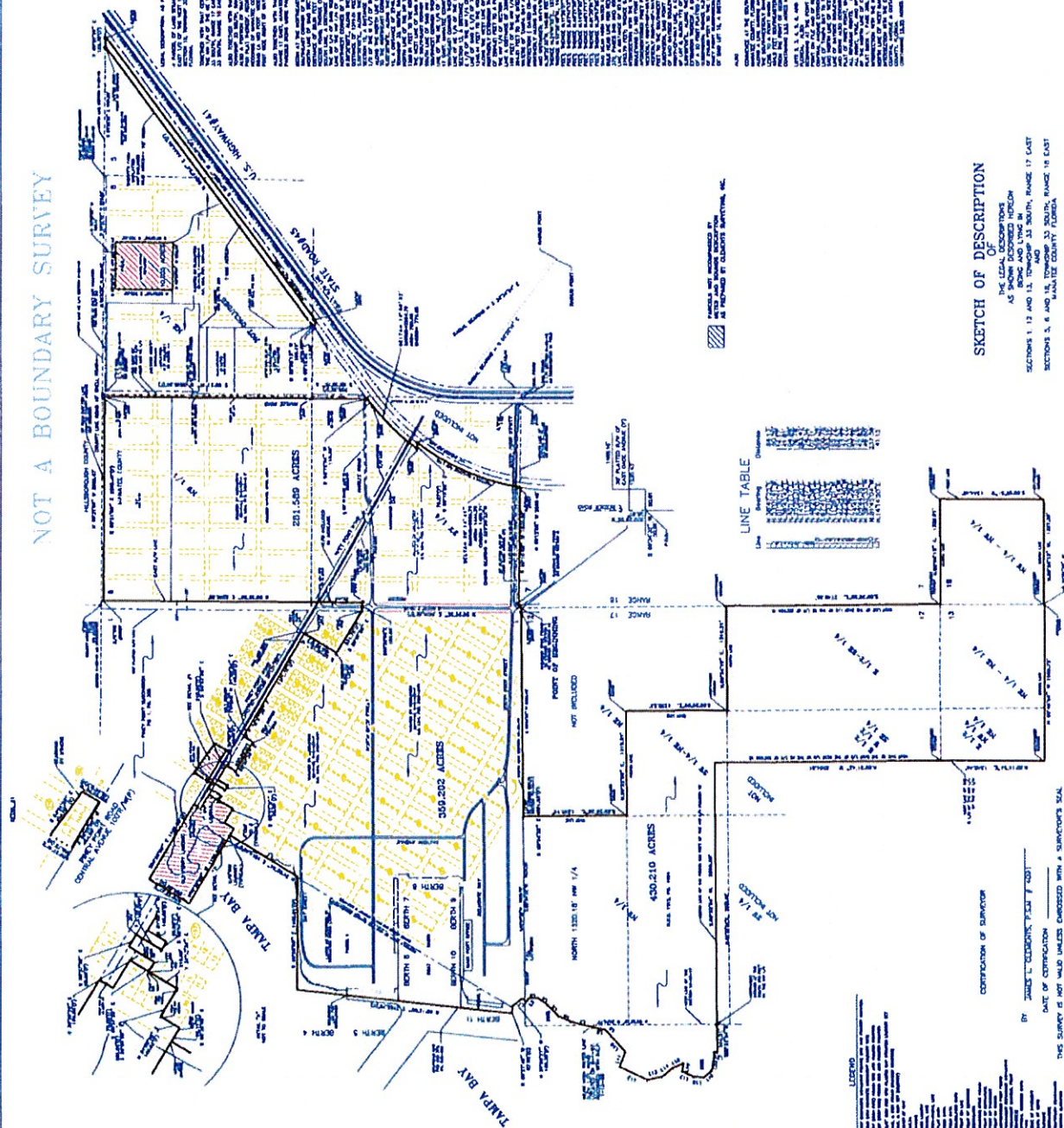
Exhibit "C": Well use on the PORT PROPERTY

Exhibit "D": Survey or accurate map identifying the size and location of existing stormwater swales, stormwater detention or retention facilities, and ditches.

Exhibit "E": Engineering Control Maintenance Plan(s) ("ECMPs") {{For multiple ECMPs, label E-1, E-2, etc.}}

EXHIBIT "A"

Legal Description of PORT PROPERTY and Sketch



SKETCH OF DESCRIPTION

Of
THE LEGAL DESCRIPTIONS
AS SHOWN DISCLOSED HEREON
BEING AND LYING IN
SECTIONS 1, 12 AND 13, TOWNSHIP 33 SOUTH, RANGE 17 EAST
AND
SECTIONS 5, 6 AND 18, TOWNSHIP 33 SOUTH, RANGE 16 EAST
MANATEE COUNTY, FLORIDA

TOTAL OVERALL ACREAGE = 1,112.89 ACRES MORE OR LESS

CLEMENTS SURVEYING, INC.

CLEMENTIS CORVE
608 5TH AVENUE WEST
SUITE 140
PALM BEACH, FLORIDA 33421

SCALE: 1" = 500' JOB NO. 02-00000000
DRAWN BY: SC/VM DATE: 8-21-99 / 7-27-03 APPROVED BY: JG
DATE OF FIELD SURVEY: N/A VS: N/A PG: N/A

EXHIBIT "B"

Listing of Facilities Undergoing Site Rehabilitation

Facility Name	Facility No.	Responsible Party
Mill Scale Vulcan and Ballast	COM_216176	Port Manatee
Mill Scale Grove Street	COM_216176	Port Manatee
No. 6 Fuel Oil Release	COM_285252 (SRCO Issued 1/2013)	TransMontaigne
TransMontaigne Partners LP Port Manatee Terminal, Tank Farm	41/8510770	TransMontaigne (Storage Tank Program Site)

EXHIBIT "C"

Wells in Use on PORT PROPERTY

Exhibit "C"

Well Inventory

Known existing wells at the port:

- Well 1: Irrigation. South side of Warehouse 10. Submersible pump. Plumbed. Labeled no. 1 on SWFWMD's map. SWFWMD permits 11648 (Port) and 13343 (County). Lat 27.631728°, Lon -82.553730°.
- Well 2: Irrigation. The east of two wells south of the Zone C crushed concrete runways. A stand pipe with a valve is visible. No pump. Labeled no. 2 on SWFWMD's map. SWFWMD permits 11648 (Port) and 13343 (County). Lat 27.631906°, Lon -82.544526°.
- Well 3: Irrigation. Northeast of the crushed concrete runways at Zone C. A stand pipe with a valve is visible. No pump. Labeled no. 3 on SWFWMD's map. SWFWMD permits 11648 (Port) and 13343 (County). Lat 27.634578°, Lon -82.543079°.
- Well 4: Irrigation. South side of Grove Street, east of TransMontaigne tank farm. A stand pipe with a valve is visible. No pump. Labeled no. 4 on SWFWMD's map. SWFWMD permits 11648 (Port) and 13343 (County). Lat 27.637678°, Lon -82.552220°.
- Well 5: Irrigation. South side of Warehouse 11. Submersible pump. Plumbed. Labeled no. 5 on SWFWMD's map. SWFWMD permits 11648 (Port) and 13343 (County). Lat 27.630100°, Lon -82.559679°.
- Well 6: Irrigation and gate house toilet, not drinking. East side of the south gate house. Has a surface pump and is plumbed. Lat 27.631078°, Lon -82.546674°.
- Well 7: Irrigation. The west of two wells south of the Zone C crushed concrete runways. A PVC stand pipe with cap is visible. No pump. We think it has been capped. Labeled no. 7 on SWFWMD's map. SWFWMD permits 11648 (Port) and 13343 (County). Lat 27.631556°, Lon -82.545310°.
- Well 8: South of the railroad in the vicinity of the Access Control exit. A stand pipe with a valve and plumbing is visible. No pump. Lat 27.635694°, Lon -82.544542°.
- Well 9: Unknown use. Probably irrigation or gate house toilet or both. East of exit gate at Access Control. Has a surface pump and is plumbed. Lat 27.636107°, Lon -82.546162°.

- Well 10: Irrigation. South of Piney Point road near the boat ramp. A stand pipe with a valve is visible. No pump. Lat 27.641607°, Lon -82.555488°.
- Well 11: Unknown use. Probably irrigation. Southwest corner of the O&M building. Submersible pump. Plumbed. Lat 27.634264°, Lon -82.547485°.
- Well 12: Irrigation. Behind the dumpster at the north side of the Intermodal Center. Has a surface pump and is plumbed. Lat 27.633521°, Lon -82.546966°.
- Fish hatchery well 1: Not verified. On the exterior slope of the dike of the port's DMMF, near the northeast corner, as shown on SWFWMD's map. Labeled no. 1 on SWFWMD's map. SWFWMD permits 8470 (Port) and 13343 (County). Lat 27.642319°, Lon -82.540404° (location not verified).
- Fish hatchery well 2: Fresh water for salt water dilution for fish hatchery. Larger, west of two wells at the FWC fish hatchery site. Labeled no. 2 on SWFWMD's map. SWFWMD permits 8470 (Port) and 13343 (County). Lat 27.643791°, Lon -82.545743° (location not verified)
- Fish hatchery well 3: Fresh water for salt water dilution for fish hatchery (backup). Smaller, east of two wells at the FWC fish hatchery site. Labeled no. 3 on SWFWMD's map. SWFWMD permits 8470 (Port) and 13343 (County). Lat 27.643731°, Lon -82.542060°.
- Exploratory deep injection well at fish hatchery: An exploratory deep well was drilled at the FWC fish hatchery site for siting of the proposed wastewater and recharge wells to be installed in the vicinity.
- Jack Lavender well: Water for fish farm tank. North side of Piney Point Road at the Sipe property purchased by the port. Manatee County permit no. 85-51 (see the County's Class V RAI 1 response). Lat 27.641300°, Lon -82.553809° (location not verified).

EXHIBIT "D"
Stormwater Features Map

PORT
Manatee
"The right turn on Tampa Bay"

The purpose of this site map is to show initial locations, on-site drainage areas for each facility, assessed pollutants, and the locations of the following: (1) existing and proposed pollution control measures, water bodies, major roads and utilities and locations of the following: (2) existing and proposed activities, including engine maintenance and repair, vessel maintenance and repair, pressure washing, painting, sanding, blasting, welding, metal fabrication, liquid storage areas (i.e., paint, solvents, resins), and materials storage areas (i.e., blasting media, aluminum, steel, etc.); (3) existing and proposed solid waste storage areas (i.e., waste oil, waste paint, waste solvents, etc.); (4) existing and proposed stormwater management, access roads, and other site features. The map should be updated as conditions change to maintain a useful map of current conditions.

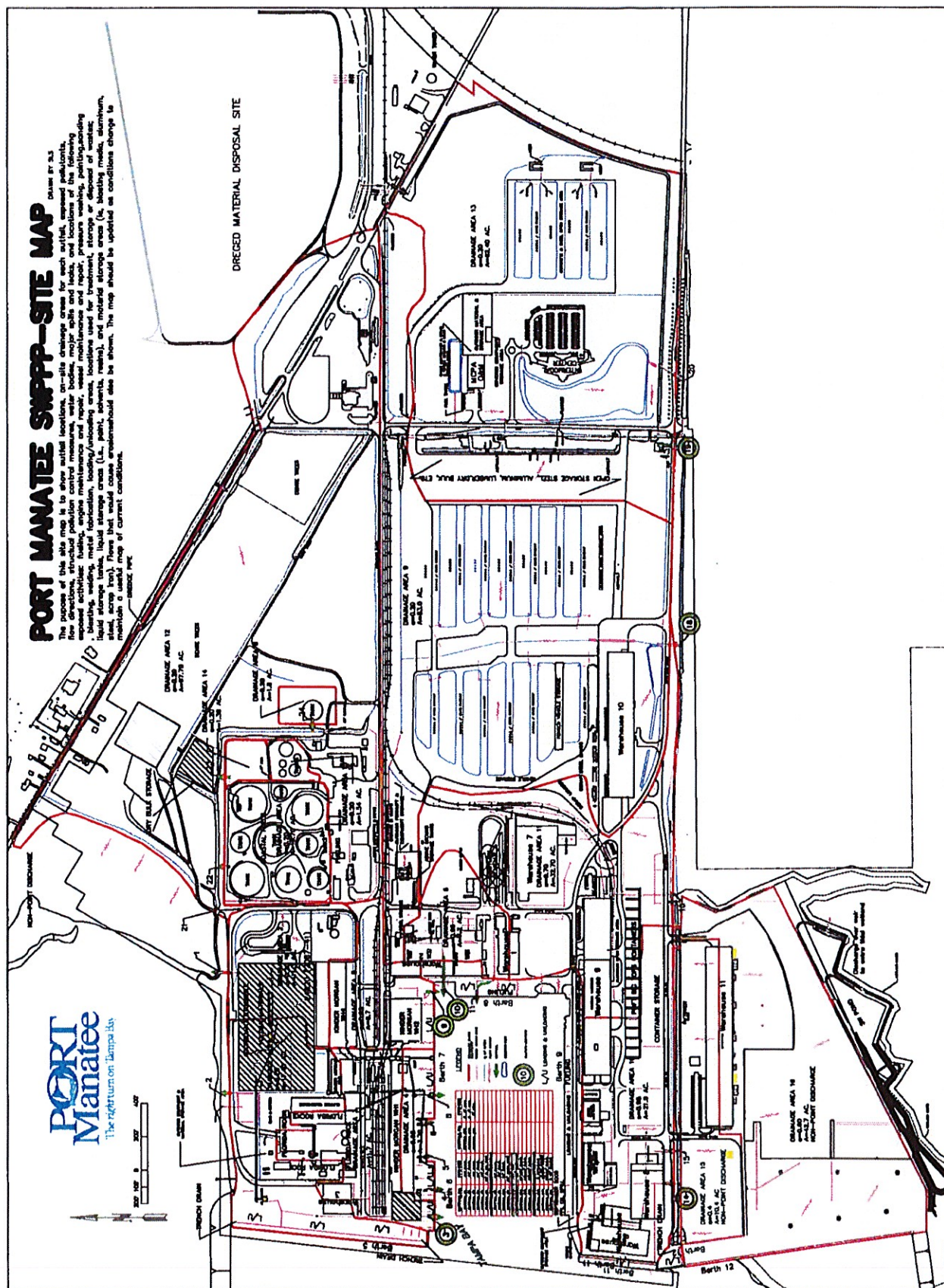


EXHIBIT "E"

Engineering Control and Maintenance Plans

{TO BE DEVELOPED AS NEEDED}