Background on the Cape Coral North Spreader Ecosystem Management Agreement Process

In the 1970's the Florida Department of Environmental Resources (a predecessor of today's Department of Environmental Protection, or FDEP), required General Development Corporation, principal developer of the area that would become the City of Cape Coral, to cease dredging canals through the mangrove fringe as part of its residential developments, and to install a system to collect and treat water from areas it had already developed. This system became known as the North Spreader Canal. It consists of a seven-mile long canal; roughly parallel to the coast, with a western "spreader" bank, a barrier to flow near the southern end, and a boatlift at the barrier. The project was designed so the spreader collected water from the developed area and canals and distributed it in an even "sheet flow" through the mangrove fringe to its west, in order to filter it before it reached Matlacha Pass and the larger Charlotte Harbor ecosystem. This system, and some of the legal obligations that flowed from the state's enforcement action against GAC (described in a document known as a Consent Order 15), were inherited by the City of Cape Coral.

Over time, as development in the North Spreader watershed increased and as water from other areas was redirected to it, a number of breaches (thirteen by 2008) developed in the western spreader wall of the canal. The largest breach developed around the western edge of the boatlift. An aerial assessment of the North Spreader in July 2006 by FDEP showed accelerated growth of several of the breaches into the tidal wetlands to the west. FDEP therefore undertook enforcement action against the City of Cape Coral to remedy the situation.

In discussions with FDEP in 2007, the City initially planned to address the large breach around the current barrier and boat lift by building a new, better engineered, storm water barrier and lift north of the current location. In subsequent discussions, however, Cape Coral argued, and FDEP agreed, that relocation of the barrier and lift was unlikely to address the underlying problems with the spreader. These resulted largely from the greater volumes of water directed to the spreader as a result of development since the 1970s, and as a result of the hydrologic tidal connection to areas west of the spreader. Relocation, they believed, would simply lead to greater hydrologic pressure north of the new structure, and result in additional breaches in the western spreader bank, with corresponding additional damage to tidal wetlands and mangroves.

Cape Coral and FDEP therefore agreed to amend the consent order to undertake an Ecosystem Management Agreement Process, as described in Florida Statutes. The EMA process allows a state agency and a regulated party to convene the full range of stakeholders affected by a potential enforcement issue, and to jointly develop with them a package of measures or projects that collectively provide a **net ecosystem benefit**, an outcome better for the environment, when compared with the results of conventional enforcement action. To arrest further erosion damage to the tidal wetlands while the EMA process is underway, the amended consent order provided for the, potentially temporary, removal of the existing barrier and boatlift. If the EMA process doe not

reach agreement on measures that would provide a better outcome for the environment, Cape Coral would be required to rebuild the barrier.

An initial version of this amendment to the consent order was adopted in early 2008, and was subsequently challenged by petitioners, including individuals, citizen and environmental organizations, and Lee County. The petitioners were concerned that removing the stormwater barrier would allow large amounts of freshwater into Matlacha Pass at a single point, potentially causing more harm than the breaches in the spreader wall. They also believed safeguards should be included in the consent order to ensure that the barrier would be rebuilt if agreement on NEBs were not reached through the EMA process. After further discussions between Cape Coral, FDEP and the petitioners, all agreed to a second amendment of the consent order that allows the EMA process to go forward, and that provides strong assurances that Cape Coral will rebuild the barrier and boatlift if no package of measures can be found that would provide a net ecosystem benefit. If Cape Coral is required to rebuild the structures, the City will not have any obligation to undertake the design and construction of any other work along the spreader canal.

The stakeholder group will meet for twelve months. It includes representatives of local, regional, state and federal governmental agencies, citizen and environmental groups, and communities affected by the North Spreader. The stakeholders bring very different initial perspectives on the wisdom of removing the barrier and on the best approach to solving the problems. They share, however, a commitment to working together to find the best solutions for the problems of the North Spreader and the ecosystems it was intended to protect.

If, at the end of twelve months they do not reach consensus on a package of realistic measures that they believe would provide a greater ecosystem benefit than rebuilding the barrier and boatlift, then Cape Coral will be required to rebuild the barrier and boatlift. If the group does reach consensus, the city and other stakeholders will proceed with implementation of the alternative measures.