



# FLORIDA DEPARTMENT OF Environmental Protection

South District  
PO Box 2549  
Fort Myers FL 33902-2549  
[SouthDistrict@FloridaDEP.gov](mailto:SouthDistrict@FloridaDEP.gov)

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

## CORRECTED

October 17, 2023

West Coast Inland Navigation District (WCIND) - Justin McBride  
c/o Johanna Shifflette  
Hans Wilson & Associates, Inc.  
1938 Hill Ave  
Fort Myers, FL 33901-7929  
[Johanna@hanswilson.com](mailto:Johanna@hanswilson.com)

File No.:0440840-001 EE, Sarasota County

Dear West Coast Inland Navigation District (WCIND) - Justin McBride:

On October 6, 2023, we received your request for verification of exemption to perform the following activities:

To maintenance dredge 240,250 square feet (5.52 ac.) of the Gulf Intracoastal Waterway (GIWW), a manmade waterway from the Caloosahatchee River to the Anclote River, to a depth of -9 feet +/- 1 foot mean low water, removing approximately 1,732 cubic yards of material in Class III Waters, Section 30, Township 39 South, Range 19 East, Sarasota County. The dredged material will be contained in uplands with the final disposal location at 2350 Scenic Dr., Venice, FL 34293.

Your request has been reviewed to determine whether it qualifies for (1) a regulatory exemption, (2) proprietary authorization (related to state-owned submerged lands), and (3) federal approval that may be necessary for work in wetlands or waters of the United States.

Your project did not qualify for the **Choose an item.** of this verification request. Specifically, the activity is not covered by the State Programmatic General Permit. **Additional authorization must be obtained prior to commencement of the proposed activity.** This letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity. Please refer to the specific section(s) dealing with that portion of the review below for advice on how to proceed.

If you change the project from what you submitted, the authorization(s) granted may no longer be valid at the time of commencement of the project. Please contact us prior to beginning your project if you wish to make any changes.

[www.floridadep.gov](http://www.floridadep.gov)

If you have any questions regarding this matter, please contact us by telephone at (239) 344-5600 or by e-mail at [SouthDistrict@floridadep.gov](mailto:SouthDistrict@floridadep.gov).

### **1. Regulatory Review – VERIFIED**

Based on the information submitted, the Department has verified that the activity as proposed is exempt under Chapter 62-330.051(7)(a), Florida Administrative Code, and Section 403.813(1)(f) of the Florida Statutes from the need to obtain a regulatory permit under Part IV of Chapter 373 of the Florida Statutes.

This exemption verification is based on the information you provided the Department and the statutes and rules in effect when the information was submitted. This verification may not be valid if site conditions materially change, the project design is modified, or the statutes or rules governing the exempt activity are amended. In the event you need to re-verify the exempt status for the activity, a new request and verification fee will be required. Any substantial modifications to the project design should be submitted to the Department for review, as changes may result in a permit being required.

### **2. Proprietary Review - NOT REQUIRED**

The activity does not appear to be located on sovereign submerged lands and does not require further authorization under Chapter 253 of the Florida Statutes, or Chapters 18-20 or 18-21 of the Florida Administrative Code.

### **3. Federal Review - SPGP NOT APPROVED**

Your proposed activity as outlined on your application and attached drawings does not qualify for Federal authorization pursuant to the State Programmatic General Permit and a SEPARATE permit or authorization shall be required from the Corps. You must apply separately to the Corps using their *APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT*, ENG FORM 4345, or alternative as allowed by their regulations. More information on Corps permitting may be found online in the Jacksonville District Regulatory Division Source Book at: <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>.

Authority for review an agreement with the USACOE entitled “Coordination Agreement Between the U. S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection, or Duly Authorized Designee, State Programmatic General Permit”, Section 10 of the Rivers and Harbor Act of 1899, and Section 404 of the Clean Water Act.

### **Additional Information**

Please retain this letter. The activities may be inspected by authorized state personnel in the future to ensure compliance with appropriate statutes and administrative codes. If the activities

are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 18-14, F.A.C.

## **NOTICE OF RIGHTS**

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

### **Petition for Administrative Hearing**

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at [Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us). Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

#### Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. You cannot justifiably rely on the finality of this decision unless notice of this decision and the right of substantially affected persons to challenge this decision has been duly published or otherwise provided to all persons substantially affected by the decision. While you are not required to publish notice of this action, you may elect to do so pursuant Rule 62-110.106(10)(a).

The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C. If you do not publish notice of this action, this waiver will not apply to persons who have not received written notice of this action.

#### Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at [Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us), before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

#### Mediation

Mediation is not available in this proceeding.

#### FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this action is filed with the Clerk of the Department.

Executed in Tallahassee, Florida

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Michael Baker  
Environmental Administrator  
South District

**Enclosures:**

10 Project drawings  
62-330.051(7)(a), 403.813(1)(f)

**CERTIFICATE OF SERVICE**

The undersigned duly designated deputy clerk hereby certifies that this document and all attachments, including all copies, were sent to the addressee and to the following listed persons:

U.S. Army Corps of Engineers, Fort Myers Office, [fdep.other@usace.army.mil](mailto:fdep.other@usace.army.mil)

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Section 120.52(7), F.S., with the designated Department clerk, receipt of which is hereby acknowledged.



Clerk

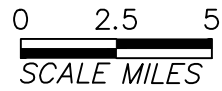
October 17, 2023

Date



**EXEMPT**  
File Number:  
0440840-001 EE

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E



***Vicinity Map***

SCALE: 1" = 5 mi.



***Location Map***

SCALE: 1" = 2,500'

PERMIT PLANS, NOT FOR CONSTRUCTION

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



1938 Hill Avenue, Fort Myers, Florida 33901  
Office: 239-334-6870 Fax: 239-334-7810  
MARINE and ENVIRONMENTAL CONSULTANTS

JWA  
10-6-23

***West Coast Navigation District***

SHEET  
**1/10**





**EXEMPT**

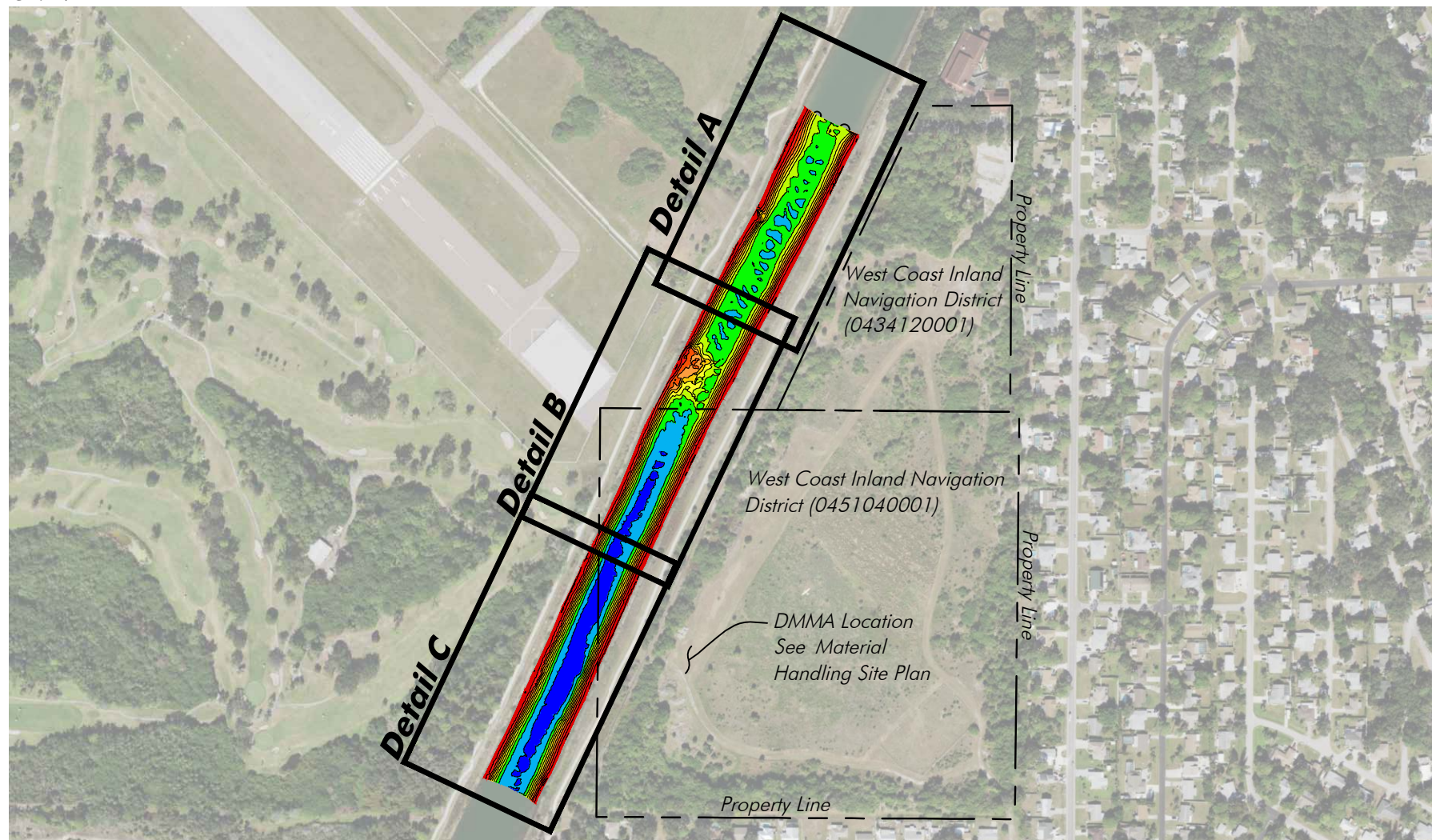
File Number:  
0440840-001 EE

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

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SCALE FEET



## Overall Aerial

SCALE: 1" = 500'

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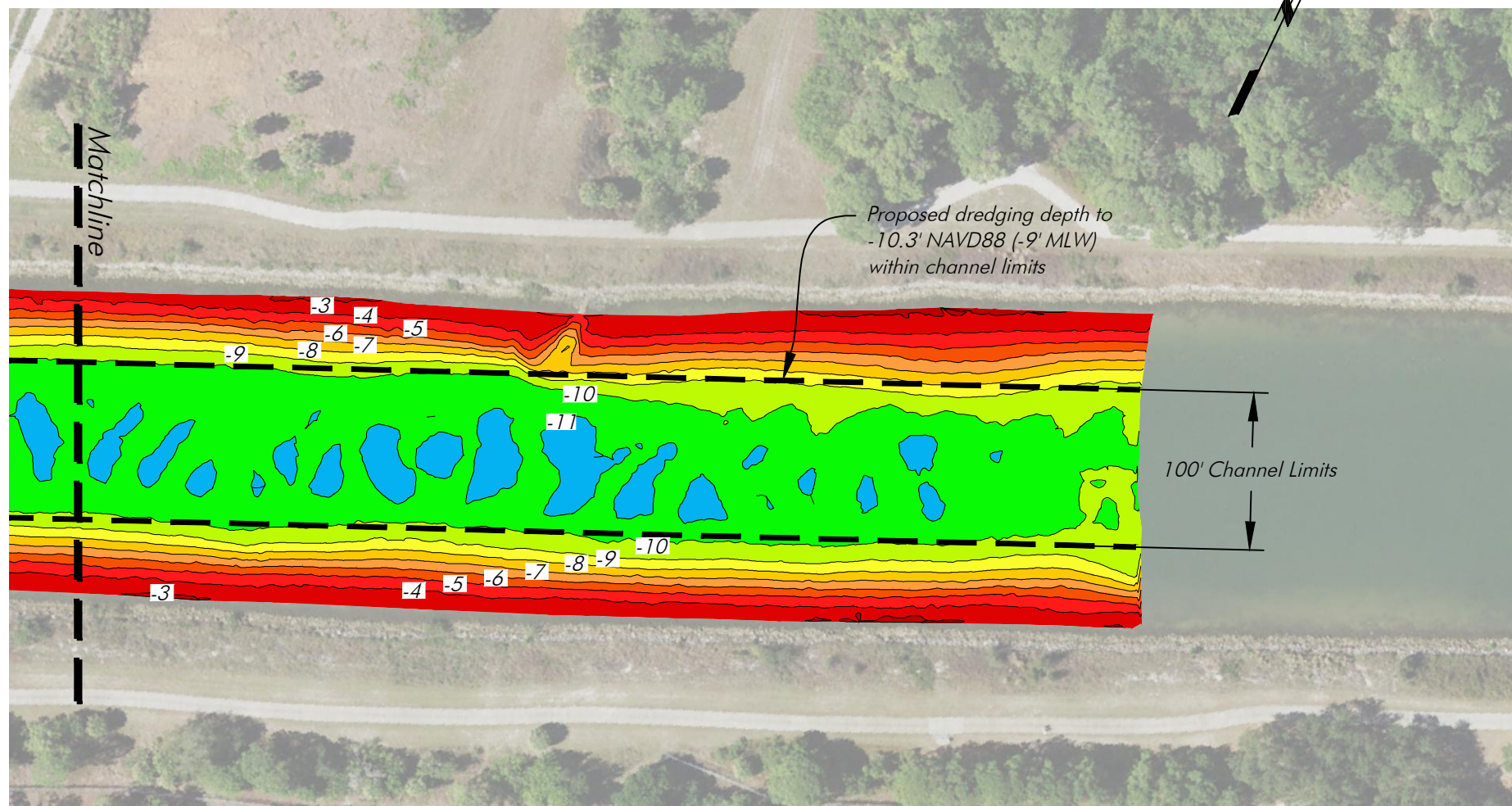
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File Number:  
0440840-001 EE

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

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SCALE FEET



Note: Bathymetric survey completed by AIM  
Engineering & Surveying on 5-24-23. All  
depths reference NAVD88. Benthic survey  
completed 8-4-23 by HWA, Inc.

**Detail A**  
SCALE: 1" = 100'

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October 06, 2023 9:27:34 a.m.  
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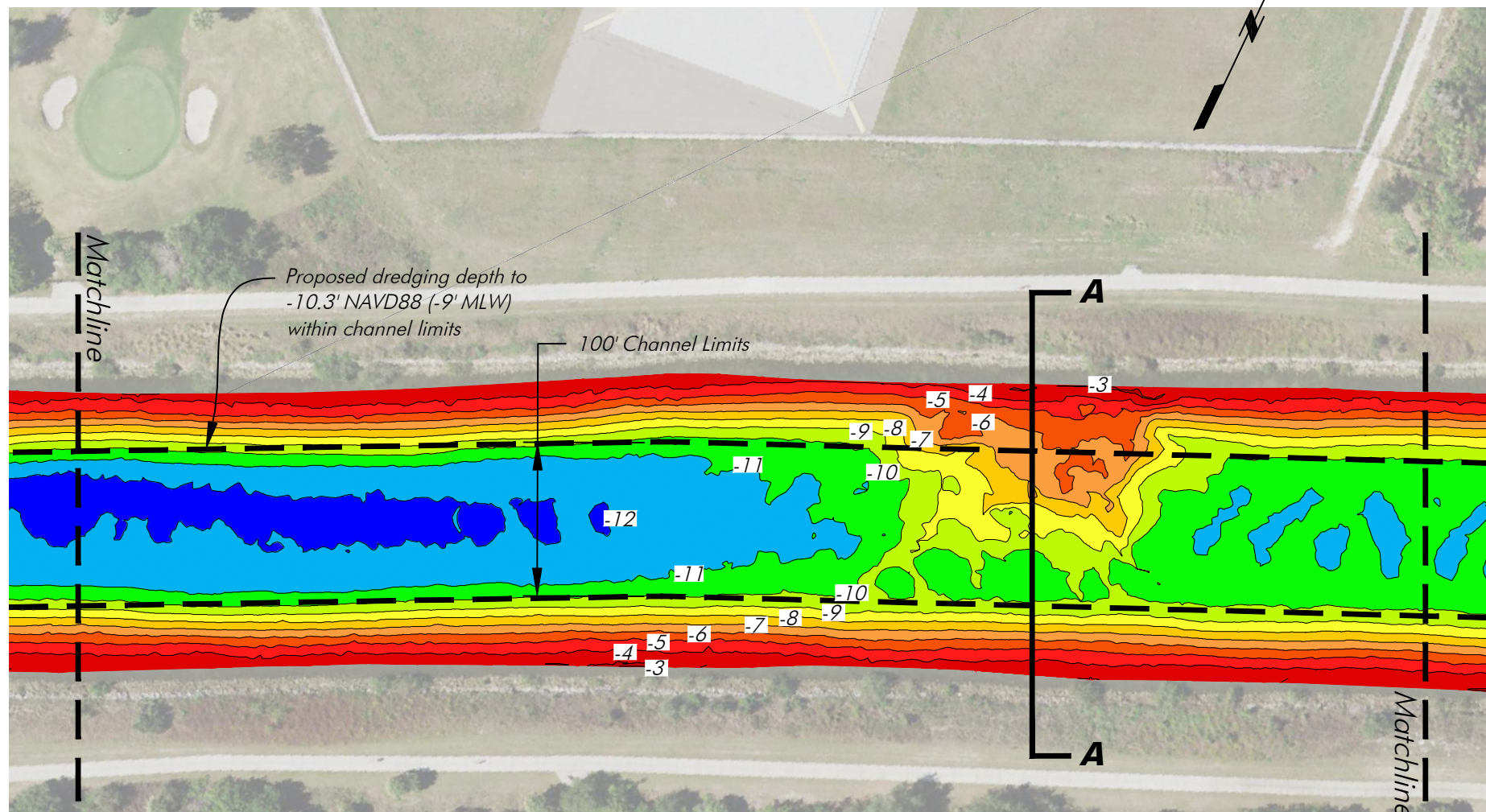
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File Number:  
0440840-001 EE

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

0 50 100  
SCALE FEET



Note: Bathymetric survey completed by AIM  
Engineering & Surveying on 5-24-23. All  
depths reference NAVD88. Benthic survey  
completed 8-4-23 by HWA, Inc.

**Detail B**  
SCALE: 1" = 100'

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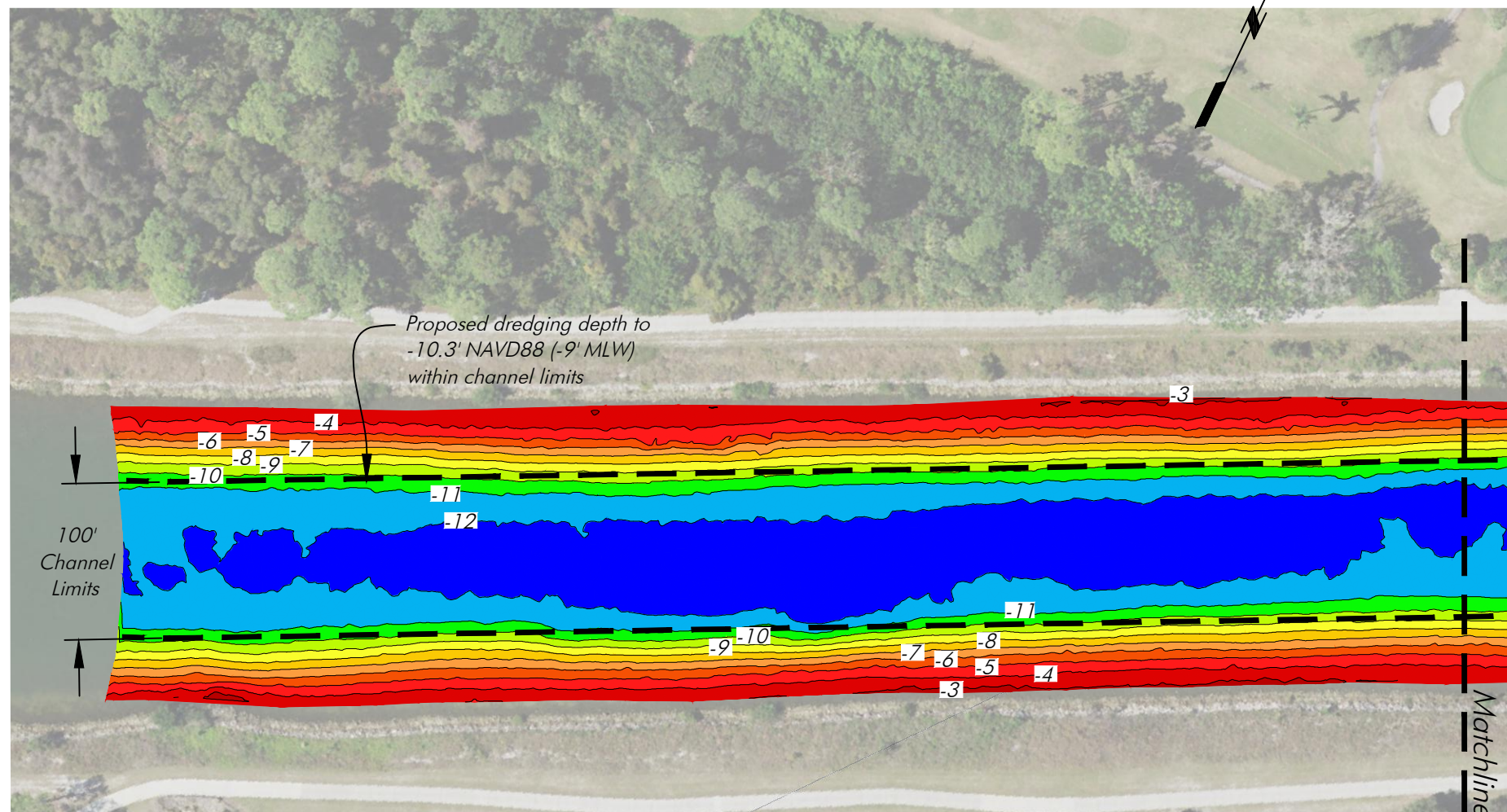
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File Number:  
0440840-001 EE

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

0 50 100  
SCALE FEET



Note: Bathymetric survey completed by AIM Engineering & Surveying on 5-24-23. All depths reference NAVD88. Benthic survey completed 8-4-23 by HWA, Inc.

**Detail C**  
SCALE: 1" = 100'

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October 06, 2023 9:27:34 a.m.  
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**5/10**





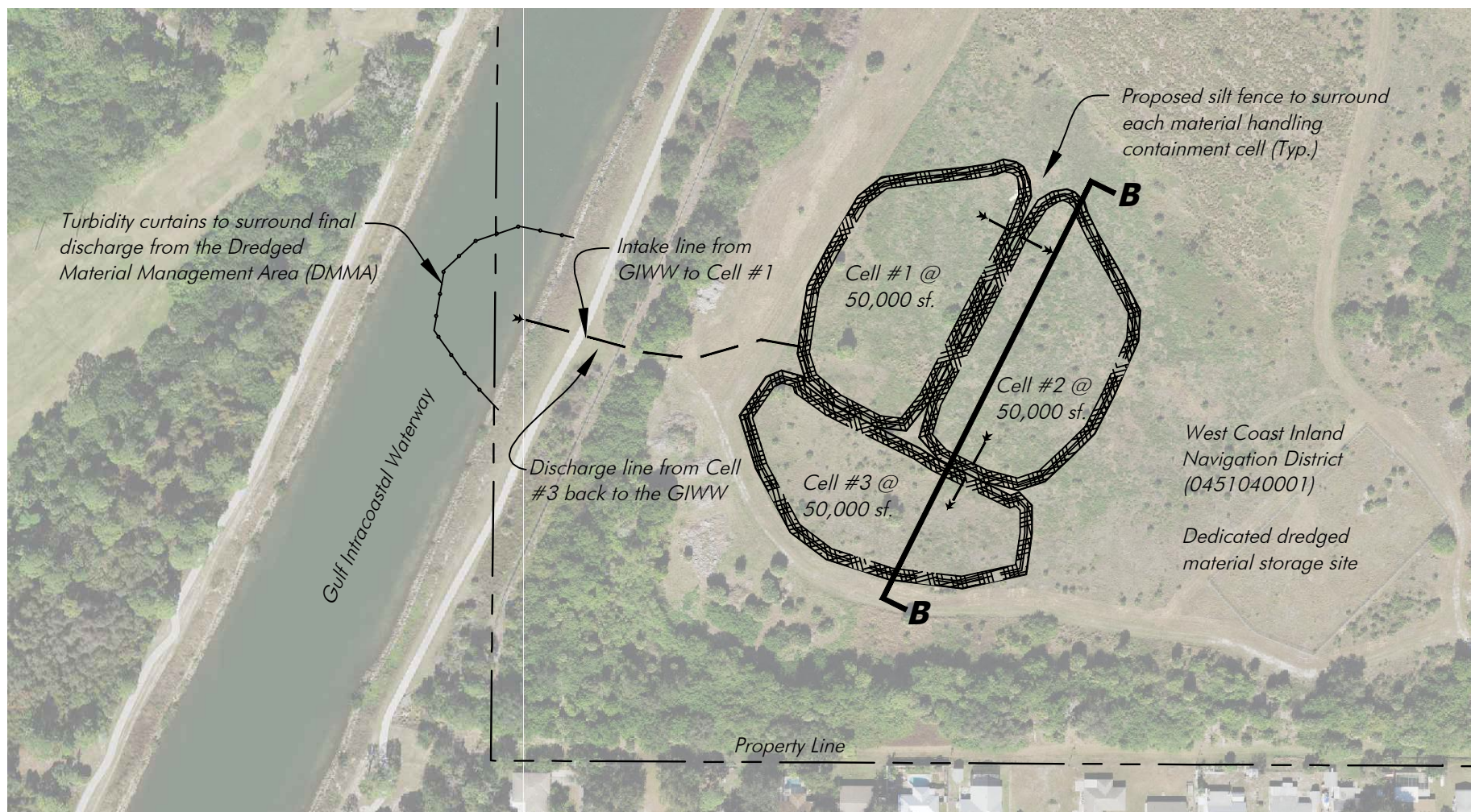
**EXEMPT**

File Number:  
0440840-001 EE

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

0 100 200  
SCALE FEET



## ***Hydraulic Dredging Site Plan***

SCALE: 1" = 200'

**PERMIT PLANS, NOT FOR CONSTRUCTION**

October 06, 2023 9:27:34 a.m.  
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**EXEMPT**

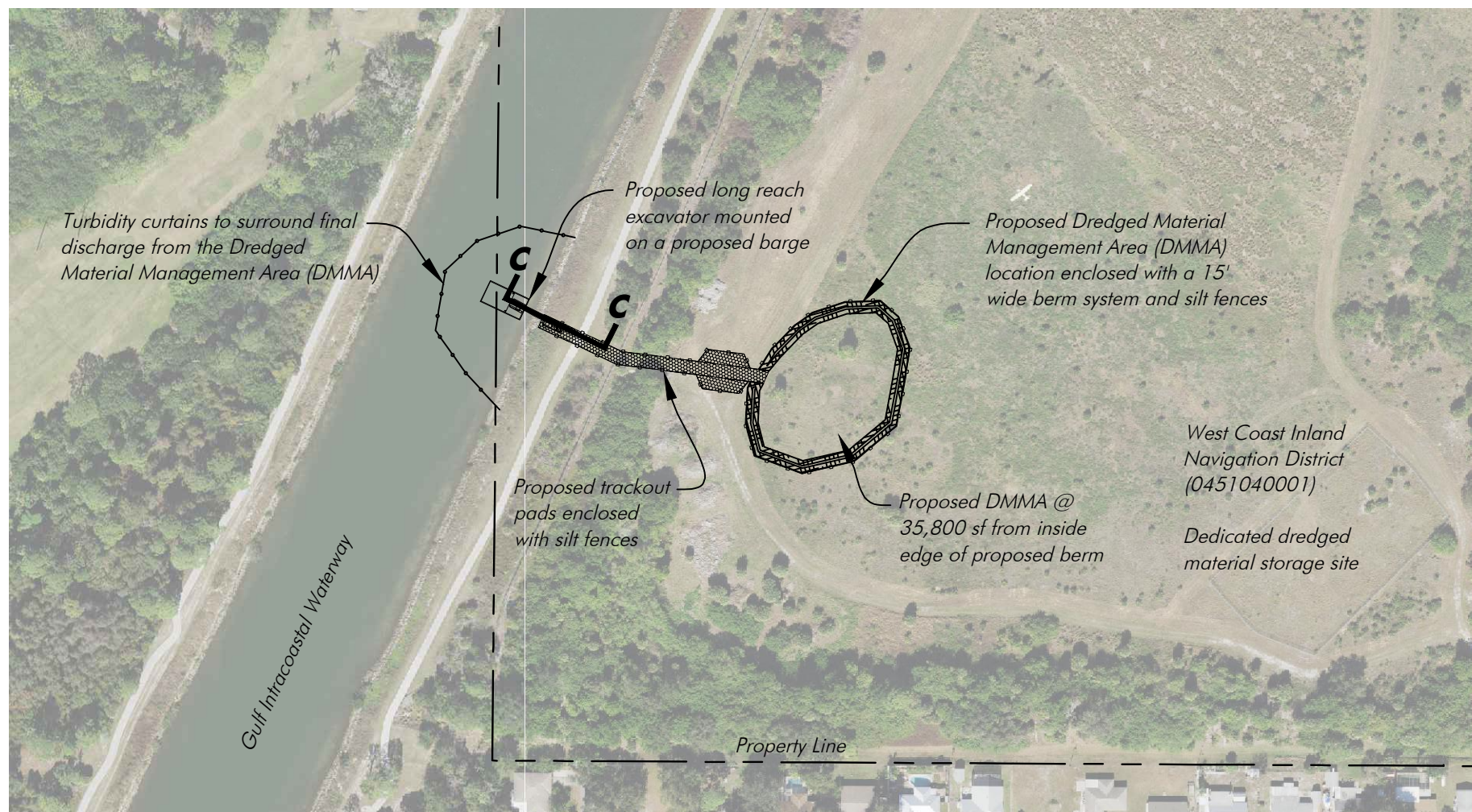
File Number:  
0440840-001 EE

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

Sarasota County Aerial 2020

0 100 200

SCALE FEET



## **Mechanical Dredging Site Plan**

SCALE: 1" = 200'

**PERMIT PLANS, NOT FOR CONSTRUCTION**

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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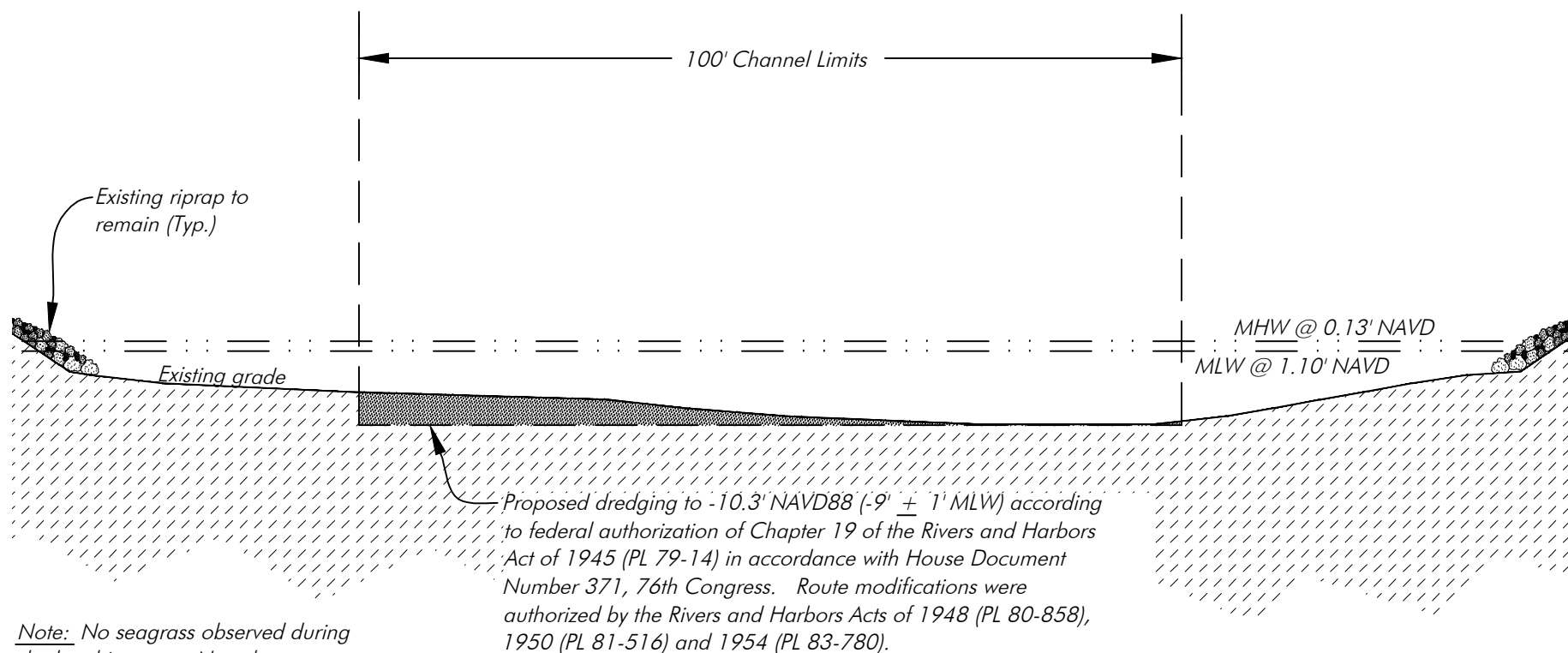
JWA

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**West Coast Navigation District**

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**7/10**



**EXEMPT**File Number:  
0440840-001 EESECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E0 10 20  
SCALE FEET

Note: No seagrass observed during the benthic survey. Nearshore areas are sand and riprap.

Note: Bathymetric survey completed by AIM Engineering & Surveying on 5-24-23. All depths reference NAVD88.  
Benthic survey completed 8-4-23 by HWA, Inc. MHW and MLW depths reference DEP MHW Survey File No. 1339.

## Cross Section A-A

SCALE: 1" = 20'

**PERMIT PLANS, NOT FOR CONSTRUCTION**October 06, 2023 9:27:34 a.m.  
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**8/10**

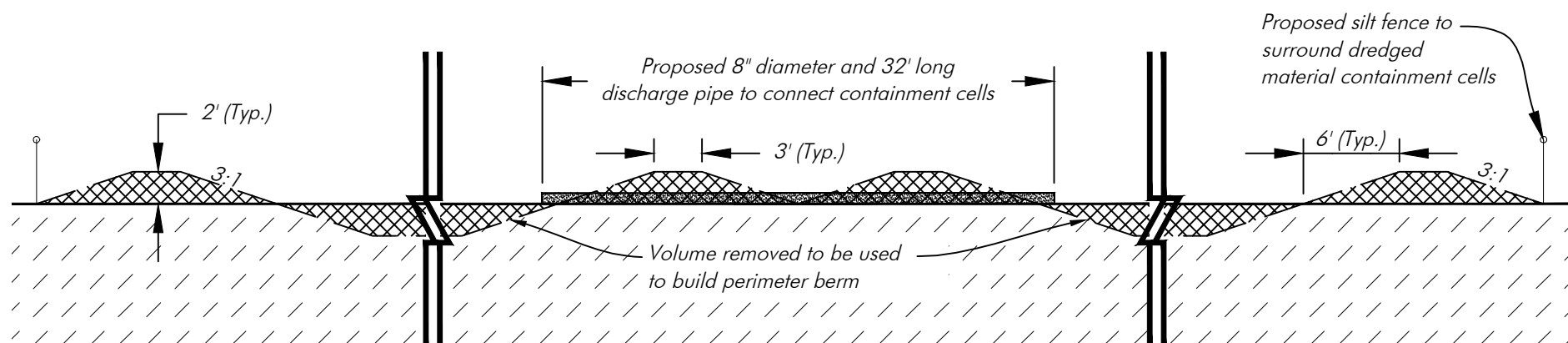


EXEMPT

File Number:  
0440840-001 EE

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

0 5 10  
SCALE FEET



## Cross Section B-B

SCALE: 1" = 10'

PERMIT PLANS, NOT FOR CONSTRUCTION

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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**9/10**

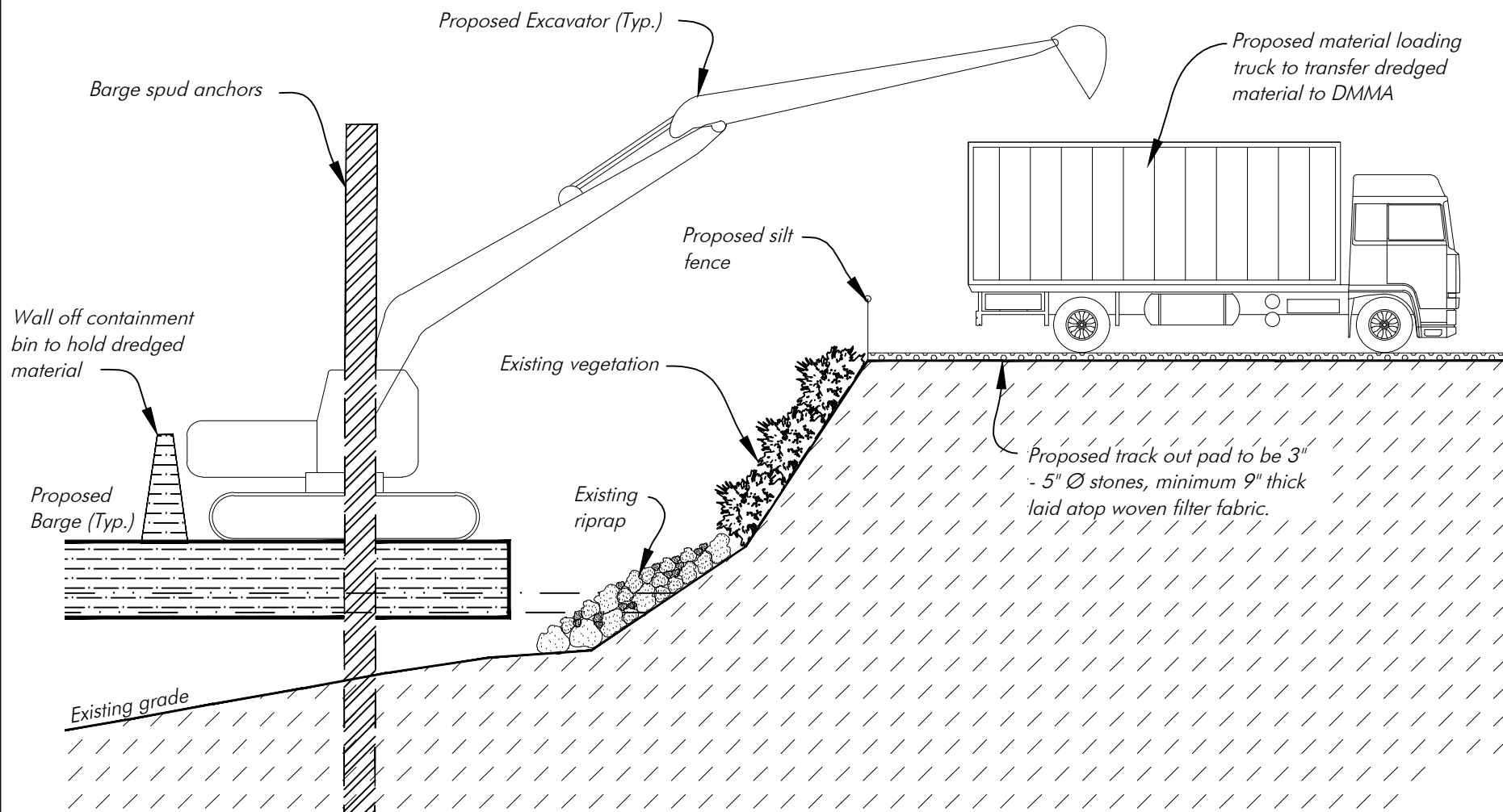


**EXEMPT**

File Number:  
0440840-001 EE

SECTION: 20, 29, & 30  
TOWNSHIP: 39 S  
RANGE: 19 E

0 5 10  
SCALE FEET



## ***Cross Section C-C***

SCALE: 1" = 10'

**PERMIT PLANS, NOT FOR CONSTRUCTION**

October 06, 2023 9:27:34 a.m.  
Drawing: WCIND4MASTER.DWG



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JWA

10-6-23

***West Coast Navigation District***

SHEET

**10/10**

#### **62-330.051 Exempt Activities.**

The activities meeting the limitations and restrictions below are exempt from permitting. However, if located in, on, or over state-owned submerged lands, they are subject to a separate authorization under chapters 253 and 258, F.S., as applicable.

(7) Maintenance and Restoration –

(a) Maintenance dredging under section 403.813(1)(f), F.S.

*Rulemaking Authority 373.026(7), 373.043, 373.4131, 373.4145, 403.805(1) FS. Law Implemented 373.406, 373.4131, 373.4145, 373.415, 403.813(1) FS. History—New 10-1-13, Amended 6-1-18.*

#### **403.813 Permits issued at district centers; exceptions.—**

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, this subsection does not relieve an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(f) The performance of maintenance dredging of existing manmade canals, channels, intake and discharge structures, and previously dredged portions of natural water bodies within drainage rights-of-way or drainage easements which have been recorded in the public records of the county, where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state, provided that no more dredging is to be performed than is necessary to restore the canals, channels, and intake and discharge structures, and previously dredged portions of natural water bodies, to original design specifications or configurations, provided that the work is conducted in compliance with s. [379.2431](#)(2)(d), provided that no significant impacts occur to previously undisturbed natural areas, and provided that control devices for return flow and best management practices for erosion and sediment control are utilized to prevent bank erosion and scouring and to prevent turbidity, dredged material, and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. Further, for maintenance dredging of previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements, an entity that seeks an exemption must notify the department or water management district, as applicable, at least 30 days prior to dredging and provide documentation of original design specifications or configurations where such exist. This exemption applies to all canals and previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements constructed prior to April 3, 1970, and to those canals and previously dredged portions of natural water bodies constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption does not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent waters. When no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water. The Board of Trustees of the Internal Improvement Trust Fund may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed during such maintenance dredging. However, no charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority. The removing party may subsequently sell such material; however, proceeds from such sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Internal Improvement Trust Fund.