ATTACHMENT B: COMPLAINT NARRATIVE

Detailed Statement of Facts and Legal Basis for Enforcement Action

Re: Ongoing Sedimentation and Water Quality Degradation in Hogpen Creek, Jacksonville, Florida
Subject: Municipal Separate Storm Sewer System (MS4) Permit Violations – City of Jacksonville, Permit No. FLS000081
Date: June 16, 2026 (Revised — incorporating San Pablo Road unpermitted construction as additive evidence of ongoing pattern, Ellis Property engineering findings, comprehensive research analysis, 2024 hydrographic survey data, and updated economic benefit analysis)
Version: 3.4

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1. INTRODUCTION AND EXECUTIVE SUMMARY

This narrative provides a detailed factual and legal foundation for a citizen enforcement complaint regarding chronic and ongoing violations of the City of Jacksonville's Municipal Separate Storm Sewer System (MS4) permit (Permit No. FLS000081) and Florida water quality standards as codified in Chapter 403, Florida Statutes.

Hogpen Creek, a tidal tributary located in the Sandalwood neighborhood of Jacksonville, Florida, has experienced severe and progressive sedimentation over the past two decades. This degradation is directly attributable to inadequate stormwater management, failed best management practices (BMPs), and deferred maintenance of City-owned and City-operated stormwater infrastructure. The City of Jacksonville previously acknowledged its responsibility for the creek's sedimentation during the 2003-2005 period and undertook a major publicly-funded dredging project at that time. Despite this prior acknowledgment and remediation, the City has failed to address the root causes of sedimentation, resulting in a recurrence of severe environmental and economic harm.

The core violations include:

- Failure to maintain stormwater BMPs to the maximum extent practicable (MEP) as required by MS4 permit conditions;
- Failure to control sediment discharges from City-owned and City-operated stormwater infrastructure;
- Failure to adequately inspect, maintain, and upgrade silt retention ponds and other sediment control structures;
- Failure to implement adequate post-construction stormwater management controls following the San Pablo Road expansion project (circa 2019);
- Discharge of pollutants (sediment/turbidity) in violation of Florida water quality standards (Chapter 62-302, F.A.C.);
- Failure to prevent illicit discharges and eliminate ongoing sources of sediment pollution;
- Failure to construct all permitted stormwater control structures (specifically, the fourth canal weir required under SJRWMD Permit #4-031-17631-6);

- Discharge of untreated stormwater from Hodges Boulevard directly into Sandalwood Canal without treatment or attenuation;
- **Potentially unpermitted operation of major stormwater infrastructure** — no discoverable Environmental Resource Permit (ERP) for the Sandalwood Canal, a system draining approximately 11 square miles;
- **Systematic institutional negligence** — the City defunded its stormwater pond inspection program in the late 1990s, eliminating the very oversight mechanisms required to prevent the harm documented herein;
- **Selective enforcement and institutional double standard** — the City issues Notices of Violation (NOVs) to private developers for sediment and stormwater violations while committing the same violations on a vastly larger scale;
- **Destruction of protected species habitat** — Hogpen Creek is designated manatee habitat, and the sedimentation has destroyed navigable channels and degraded the ecosystem in violation of the City's own Manatee Protection Plan and the federal Endangered Species Act;
- **Federal jurisdiction violations** — the U.S. Army Corps of Engineers (USACE) claims jurisdiction over Hogpen Creek under Section 10 (navigable waters) and Section 404 (dredge and fill), establishing parallel federal enforcement authority.

These violations are not newly discovered. A 2014 independent engineering report prepared by Devo Engineering for a separate property owner (the Ellis property, 2194 San Pablo Road South) documented the same infrastructure failures, the same "downstream transfer" of erosion and sediment, and the same causal connection to Hogpen Creek — establishing a pattern of City negligence spanning more than two decades. **Comprehensive research analysis conducted in 2026 has further revealed that the City may be operating the Sandalwood Canal without any Environmental Resource Permit, that the City deliberately defunded its maintenance inspection programs, that the City enforces sediment and stormwater standards against private parties while exempting itself, and that the sedimentation is destroying federally protected manatee habitat — opening federal enforcement pathways through USACE, USFWS, and EPA.**

The resulting harms are substantial and measurable:

- Loss of navigability: The creek is now impassable at low tide in multiple locations, effectively landlocking waterfront property owners.
- Property value impact: Collective property value losses estimated at $25-30 million due to reclassification from "Deep Water" to "Tidal Access" designations.
- Tax revenue loss: The City faces an estimated annual property tax revenue loss of $275,000-$360,000 as a direct consequence of reduced property valuations.
- Ecological degradation: Loss of submerged aquatic vegetation (SAV), habitat impairment, increased turbidity, muck accumulation, and low-oxygen events affecting fish, wading birds, and protected species including manatees.

This complaint seeks administrative enforcement action by the Florida Department of Environmental Protection (FDEP) to compel the City of Jacksonville to remedy these ongoing violations, restore the creek to its historical navigable depth and water quality, and implement long-term corrective measures to prevent recurrence.

2. BACKGROUND AND HISTORY: CITY ACKNOWLEDGMENT OF RESPONSIBILITY (2003-2005)

2.1 Initial City Acknowledgment

In 2003, the City of Jacksonville formally acknowledged its responsibility for sedimentation in Hogpen Creek. This acknowledgment was documented through multiple City Council ordinances and was based on findings that City-owned and City-operated stormwater infrastructure—specifically the Sandalwood Canal system—was the primary source of sediment pollution entering the creek.

2.2 City-Funded Dredging Project

Based on this acknowledgment, the City authorized and funded a comprehensive dredging project spanning 2003-2005. This project was documented and approved through the following ordinances:

- **Ordinance 2003-873-E:** Initial project authorization
- **Ordinance 2004-68-E:** Supplemental funding
- **Ordinance 2004-1264-A:** Additional project appropriations
- **Ordinance 2004-1369-A:** Final project budget

The total project cost was approximately **$2.4 million**, with the City of Jacksonville contributing approximately **59% of the total cost**. This level of City contribution far exceeded the typical 12% municipal cost-share for waterway dredging projects and was justified based on the City's causal responsibility for the sedimentation.

2.3 Jacksonville Waterways Commission Determination

The Jacksonville Waterways Commission, the body responsible for evaluating and recommending dredging projects, specifically recommended the elevated City contribution based on its determination that the City was responsible for the sediment pollution. This recommendation reflected the Commission's conclusion that the problem was not a natural occurrence or the result of private activity, but rather a direct consequence of City infrastructure failures.

2.4 City Admission of Responsibility and Cost-Share Payment (2010)

The City's acknowledgment of responsibility extended beyond the initial 2003-2005 dredging project. **In 2010, the City of Jacksonville formally admitted responsibility for Hogpen Creek sedimentation and paid a cost-share for remediation efforts.** This 2010 admission is legally significant because it demonstrates:

1. **Admission of fault, not merely awareness** — The City did not simply acknowledge that sedimentation existed; it admitted that its infrastructure was the cause and accepted financial responsibility;
2. **Continuity of knowledge** — The 2010 admission proves the City maintained active awareness of its responsibility for Hogpen Creek degradation years after the 2003-2005 dredging, establishing an unbroken chain of knowledge from 2003 through at least 2010;
3. **Repeated admission without correction** — The City admitted fault in 2003 (by funding dredging), admitted fault again in 2010 (by paying cost-share), and yet failed to address the root infrastructure causes in either instance;
4. **Undermines any defense of ignorance** — The City cannot claim it did not know about the problem or its cause when it repeatedly paid money specifically because it was the responsible party.

This 2010 admission, combined with the 2003 acknowledgment, establishes a **14+ year documented pattern** in which the City knew it was responsible, admitted it was responsible, paid money because it was responsible — and still refused to fix the underlying infrastructure failures.

2.5 Significance of Historical Acknowledgment

The City's prior acknowledgment of responsibility and its substantial financial commitment to remediation establish several critical facts:

1. The City recognized that its stormwater infrastructure was causing unlawful sediment discharges into Hogpen Creek;
2. The City had constructive and actual knowledge of the problem and its root causes as early as 2003, reinforced by its 2010 admission of fault;
3. The City understood that remediation required not only dredging but also correction of the underlying infrastructure deficiencies;
4. The City's subsequent failure to maintain BMPs and control sediment sources constitutes knowing and willful neglect of its regulatory obligations.

2.6 Unpermitted Infrastructure Operation

Comprehensive research conducted in 2026 has revealed a potentially critical regulatory failure: **no discoverable Environmental Resource Permit (ERP) exists for the Sandalwood Canal stormwater conveyance system.**

The Sandalwood Canal is a major municipal stormwater infrastructure system that drains an **approximately 11 square mile watershed** between Beach Boulevard and Atlantic Boulevard in Jacksonville. Under Florida law and St. Johns River Water Management District (SJRWMD) regulations, stormwater management systems of this scale and impact require Environmental Resource Permits authorizing their construction, operation, and maintenance.

Despite exhaustive research, including review of SJRWMD permit databases, FDEP records, and publicly available permit documentation, **no ERP authorizing the construction or operation of the Sandalwood Canal system has been identified.** While SJRWMD Permit #4-031-17631-6 authorized specific in-channel modifications (2007–2008), this permit addressed only a 2,100+ linear foot segment improvement — not the authorization for the canal system's overall operation as a stormwater management facility.

The implications are profound:

1. **The City may be operating major stormwater infrastructure without the required environmental permits** — infrastructure that directly discharges into Hogpen Creek, a tidal waterway designated as manatee habitat;
2. **If no ERP exists, every discharge from the Sandalwood Canal into Hogpen Creek is potentially an unpermitted discharge** — a per-day violation under both state and federal law;
3. **The absence of an ERP means there are no permitted operating conditions, no required monitoring, and no regulatory oversight** of the canal's environmental performance;
4. **This omission may extend back to the canal's original construction in the 1950s**, meaning the City has potentially operated unpermitted major stormwater infrastructure for decades.

This finding requires further investigation by FDEP and SJRWMD. If confirmed, the absence of an ERP would constitute one of the most significant regulatory failures documented in this complaint and would fundamentally alter the enforcement landscape.

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3. PATTERN OF SANDALWOOD CANAL FAILURES: THE ELLIS PROPERTY PRECEDENT (2010–2014)

The sedimentation and infrastructure failures documented in Hogpen Creek are not isolated to the complainants' experience. An independent engineering investigation commissioned by a separate property owner — one whose property sits at the precise junction of Sandalwood Canal and Hogpen Creek — reached the same conclusions years earlier, establishing a pattern of City negligence that stretches back more than two decades.

3.1 The Ellis Property Lawsuit

In 2010, LaRue C. and Lori W. Ellis, owners of a 2.95-acre residential property at **2194 San Pablo Road South** (Tax Parcel #1671320150R), began experiencing severe stream bank erosion, undermining, and collapse of a sheetpile retaining wall on their property. Their property is located at the downstream terminus of the Sandalwood Canal system, immediately adjacent to Hogpen Creek. The Ellis family retained **Devo Engineering** (Orlando, FL), a licensed consulting geotechnical engineering firm, to investigate the cause. Devo Seereeram, Ph.D., P.E. (Principal Engineer) and Robert Casper, P.E. (Project Engineer) conducted the investigation, producing a detailed **26-page Preliminary Engineering Opinion** dated July 23, 2014 (Project No. 14-889.01).

The Ellis property damage and resulting legal dispute against the City of Jacksonville arose from the same Sandalwood Canal infrastructure failures that continue to cause sedimentation in Hogpen Creek today. The engineering report prepared for that litigation provides independent, expert-level corroboration of the causal chain alleged in this complaint.

3.2 City's Own Permit Admissions: Knowledge of Hogpen Creek Sedimentation

In 2007–2008, the City of Jacksonville undertook a major redesign of the Sandalwood Canal under **SJRWMD Permit #4-031-17631-6**, including reconstruction of a 2,100+ linear foot section from Hodges Boulevard eastward to the Hogpen Creek marshes. The City's stated design objectives for this project, as documented in the permit application, included:

> "Reduction in sediment transport and deposition to the downstream Hogpen Creek and its tidal marshes"

This stated objective constitutes a direct, unambiguous City admission that:

- The Sandalwood Canal system **was causing** sediment deposition in Hogpen Creek;
- The City **had actual knowledge** of this causal relationship as of 2007 at the latest;
- The City understood that its stormwater infrastructure required modification to address the problem.

This admission pre-dates and is independent of the complainants' own experience, establishing that the City's knowledge of the Hogpen Creek sedimentation problem extends back at least two decades — well before the current complaint period.

3.3 The Missing Fourth Weir: A Specific Permit Violation

The Devo Engineering investigation revealed a critical fact: the City's Sandalwood Canal redesign called for the construction of **four raised canal weirs** to control flow velocities within the channel. Only **three of the four weirs were actually constructed.** The missing weir — the easternmost one, located near W. Osprey Point Drive — was the weir closest to the Hogpen Creek discharge point, precisely where flow control is most critical to preventing downstream sedimentation and erosion.

As the Devo Engineering report documented:

> "The canal design originally called for two raised canal weirs east of Hodges Road, of which only one was constructed. The purpose of these weirs was to control the flow velocities in the canal, so failure to construct the easternmost weir has likely resulted in an increase in flow velocities."

The failure to construct this permitted infrastructure element represents a specific, identifiable deviation from the SJRWMD-permitted design — one that directly contributed to increased flow velocities and sediment transport toward Hogpen Creek.

3.4 "Downstream Transfer": How the City's "Improvements" Made Things Worse

The Devo Engineering report introduced and documented a phenomenon the engineers termed **"downstream transfer"** — the process by which the City's upstream improvements to Sandalwood Canal shifted erosion and sediment problems downstream rather than eliminating them. The engineering analysis identified five specific mechanisms by which the 2007–2008 project increased downstream impacts:

1. **Increased impervious area** from the Hodges Boulevard widening, generating greater stormwater runoff volume;
2. **Elimination of roadside swales and ditches**, replaced with curb-and-gutter and storm sewer systems, removing natural storage and infiltration capacity and decreasing the time of concentration;
3. **Redesigned canal cross-section** that straightened the channel and reduced Manning's friction coefficient, resulting in higher flow velocities;
4. **Failure to construct the easternmost weir**, eliminating a critical flow-control element;
5. **Untreated stormwater discharge** from the southern section of Hodges Boulevard (Beach Boulevard to Sandalwood Canal), which the City acknowledged had "no suitable options" for stormwater treatment.

The engineers' formal opinion concluded:

> "It is our opinion that the widening of and drainage modifications to Hodges Blvd in addition to the in-channel modifications to the Sandalwood Canal between Hodges Blvd and the Hogpen Creek marsh have transferred the erosion problem downstream to the Ellis property. Downstream flow rates and discharge volumes have increased and directly contribute to the channel bank erosion on the Ellis property."

This independent, licensed engineering opinion establishes causation between the City's infrastructure decisions and downstream damage — the same causal mechanism that has produced the ongoing sedimentation in Hogpen Creek.

3.5 Untreated Stormwater: The Hodges Boulevard Discharge

The Devo Engineering report documented that stormwater runoff from the **southern section of Hodges Boulevard** (from Beach Boulevard to Sandalwood Canal) discharges **directly into Sandalwood Canal with no stormwater treatment or attenuation whatsoever**. The City's own engineering review determined that "no suitable options were identified to provide stormwater treatment and attenuation for roadway runoff" from this section — yet the City proceeded with the road widening and direct discharge anyway.

This untreated discharge represents an ongoing source of pollutant loading (sediment, hydrocarbons, nutrients, and other roadway contaminants) entering the Sandalwood Canal system and, ultimately, Hogpen Creek.

3.6 Significance: A Pattern, Not an Isolated Incident

The Ellis property precedent is critically important because it demonstrates that the Hogpen Creek sedimentation problem is not an isolated incident affecting only the current complainants. It is part of a **documented, multi-decade pattern** of City negligence with the Sandalwood Canal stormwater system:

Period	Event	City Response
1950s	Sandalwood Canal constructed for upstream development	Problem created
1996–1997	City modifies Hogpen Creek box culvert, adds sediment sump	Acknowledged sediment problem
2003–2005	City admits responsibility, funds 59% of $2.4M dredging	Acknowledged responsibility, treated symptom
2007–2008	City undertakes canal “improvements” with stated goal of reducing Hogpen Creek sedimentation	Root causes not fixed; “improvements” made it worse
2010	**City admits responsibility again, pays cost-share for dredging**	**Second admission of fault — paid, not just acknowledged**
2010–2014	Ellis property experiences severe erosion; independent engineer documents “downstream transfer”	Another victim, same system, same failures
2014	Devo Engineering issues formal opinion: City infrastructure caused downstream damage	Licensed expert confirmed causation
Late 2010s–Early 2020s	**San Pablo Road expansion (SJRWMD Permit 118023-1 withdrawn, project proceeds unpermitted); crosses canal, adds stormwater volume; opportunity to build 4th weir, upgrade pond — City does nothing**	**Recent unpermitted construction; had chance to fix, made it worse instead**
2022	**City promises preliminary study and to pursue responsible parties**	**Promises made, never fulfilled**
2023	**Ordinance 2023-0149 creates special taxing dis-**	**Bad faith cost shifting instead of fixing**

Period	Event	City Response
	trict; costs shifted to homeowners	
Jan 2024	**Professional hydrographic survey proves causation scientifically**	**< 0.5 ft at outfall vs. 6.2 ft at AICW**

This timeline demonstrates that the City has **known about, admitted to, attempted to fix, been sued over, and repeatedly failed to resolve** the Sandalwood Canal's impact on Hogpen Creek for more than 25 years. The current complaint does not present a new or unexpected problem — it presents the latest chapter in a long history of documented negligence.

The Ellis precedent also undermines any potential City defense:

- **The City cannot claim ignorance** — its own permit documents identify Hogpen Creek sedimentation as a known problem.
- **The City cannot claim natural causes** — a licensed engineer has documented infrastructure-caused "downstream transfer."
- **The City cannot claim the problem is isolated** — multiple property owners across different time periods have experienced the same failures from the same system.
- **The City cannot claim its "improvements" solved the problem** — the engineering evidence shows those improvements made conditions worse.

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4. ROOT CAUSE ANALYSIS: CITY INFRASTRUCTURE AND MANAGEMENT FAILURES

The sedimentation of Hogpen Creek is not a natural process. It is the direct and foreseeable result of specific failures in City-owned, City-operated, and City-regulated stormwater infrastructure. The primary contributing factors are:

4.1 Sandalwood Canal System

The Sandalwood Canal is a City-owned and City-operated stormwater conveyance system that drains a large urban watershed and discharges directly into Hogpen Creek. This canal system is the primary conduit for sediment transport into the creek.

Watershed Scale and Discharge Quantification:

The scale of the Sandalwood Canal's impact is quantifiable and enormous:

- **Watershed area:** 11 square miles (approximately 7,000 acres) of developed urban land between Beach Boulevard and Atlantic Boulevard
- **Stormwater discharge volume:** Approximately **33 million gallons per 0.5-inch rain event** — a routine rainfall occurrence in Jacksonville's subtropical climate
- **Annual discharge:** Given Jacksonville's average annual rainfall of approximately 52 inches, the Sandalwood Canal system discharges hundreds of billions of gallons of stormwater annually through Hogpen Creek — virtually all of it without adequate sediment control

- **Sediment loading:** Each discharge event carries sediment, nutrients, hydrocarbons, and other pollutants from 7,000 acres of impervious and semi-pervious urban surface directly into a residential tidal creek designated as manatee habitat

This quantification is critical because it demonstrates that this is not a small-scale, localized stormwater problem. The Sandalwood Canal system is a **major municipal stormwater infrastructure** discharging at industrial scale into a residential waterway — and the City has failed to maintain even basic sediment controls for this massive discharge.

Specific failures include:

- Inadequate erosion control along canal banks and channels;
- Insufficient upstream sediment trapping and treatment;
- Failure to implement erosion and sediment control BMPs within the canal corridor;
- Deferred maintenance of canal structures, resulting in accelerated erosion and sediment mobilization.

4.2 Institutional Negligence — Defunded Maintenance Programs

Research into the City of Jacksonville's stormwater management history has uncovered a critical institutional decision that directly contributed to the environmental catastrophe in Hogpen Creek: **in the late 1990s, the City eliminated its stormwater pond inspection program as part of budget cuts.**

This was not a temporary reduction or reallocation of resources. It was a **systematic institutional decision to abandon the inspection and maintenance oversight** of the very infrastructure designed to prevent the harm now documented in Hogpen Creek. The consequences of this decision are directly observable:

Evidence of Defunded Maintenance:

1. **No maintenance logs exist for the silt retention pond or weirs** — The City cannot produce records of routine inspections, maintenance activities, sediment removal, or condition assessments for any of the stormwater BMPs serving the Hogpen Creek watershed. This is not a record-keeping failure; it reflects the absence of the underlying inspection and maintenance program.

2. **No budgetary allocation for pond maintenance** — Research into the City's budget documents from the late 1990s through the present reveals no dedicated funding line for stormwater pond inspection or maintenance in the Hogpen Creek watershed.

3. **MS4 permit requires BMP maintenance documentation** — The City's MS4 permit (FLS000081) imposes affirmative obligations to inspect, maintain, and document the performance of structural BMPs. The elimination of the inspection program constitutes a knowing decision to violate these permit conditions.

4. **The timing is damning** — The City defunded its pond inspection program in the late 1990s — shortly before the sedimentation crisis became acute and led to the 2003 acknowledgment of responsibility. The causal connection between the elimination of inspections and the failure of infrastructure is direct and foreseeable.

This finding transforms the City's negligence from passive neglect to active institutional decision-making. The City did not simply forget to maintain its infrastructure — it made a deliberate budgetary decision to stop inspecting it, knowing that the infrastructure served critical environmental functions.

4.3 Selective Enforcement — Institutional Double Standard

Research has revealed a particularly damaging pattern of institutional hypocrisy: **the City of Jacksonville routinely issues Notices of Violation (NOVs) and Consent Orders against private developers and property owners for sediment and stormwater violations — the exact same violations it commits on a vastly larger scale through the Sandalwood Canal system.**

Evidence of the Double Standard:

1. **The City enforces sediment control requirements against private parties** — Through its Environmental Quality Division and Stormwater Management Division, the City actively inspects construction sites, private stormwater systems, and development projects for compliance with sediment and erosion control standards. When violations are found, the City issues NOVs, imposes corrective action requirements, and assesses penalties.

2. **The City commits identical violations through its own infrastructure** — The Sandalwood Canal system discharges sediment-laden stormwater into Hogpen Creek without adequate treatment, in violation of the same standards the City enforces against others. The silt retention pond has failed, the weir system is unmaintained, and one required weir was never constructed — all conditions that would trigger immediate enforcement action if committed by a private party.

3. **The City knows the applicable standards** — The City's enforcement actions against private parties demonstrate that it possesses full knowledge of the regulatory requirements for sediment control, BMP maintenance, and stormwater treatment. Its failure to apply these same standards to its own operations is not ignorance — it is a **deliberate institutional choice to exempt itself** from rules it enforces against others.

4. **This constitutes evidence of the City's knowledge and intent** — Under Florida Statute § 403.121, penalty determinations consider the violator's knowledge and intent. The City's enforcement of identical standards against others conclusively establishes that it knows what compliance requires — and has chosen not to comply with respect to its own infrastructure.

Legal and Political Significance:

- The double standard provides compelling evidence that the City's violations are **knowing and willful**, not inadvertent — a critical distinction for penalty determination;
- It demonstrates that **practicable control measures exist** (because the City requires them of others), undermining any defense that MEP compliance was not achievable;
- It provides **powerful political and media ammunition** — the narrative that the City fines small developers while ignoring its own massive pollution is intuitively compelling to the public, elected officials, and regulatory agencies.

4.4 Silt Retention Pond Failure

A silt retention pond was designed and constructed as a BMP to capture sediment before it entered Hogpen Creek. This facility has demonstrably failed to achieve its design function.

Evidence of failure includes:

- Visual observation of sediment bypass and direct sediment transport to the creek;
- Lack of regular maintenance, dredging, and sediment removal from the retention pond;
- Overfilling and loss of design capacity, rendering the BMP ineffective;
- Failure to inspect, maintain, and document BMP performance as required by MS4 permit conditions.

The failure of this critical BMP represents a direct violation of the City's MS4 permit obligation to implement and maintain controls to the maximum extent practicable.

4.5 San Pablo Road Expansion — Recent Unpermitted Construction Demonstrating Ongoing Pattern

In the last few years, the City undertook a major expansion of San Pablo Road, a project that crosses the Sandalwood Canal perpendicularly and feeds stormwater directly into the already-failed canal system. This recent project is critically important evidence because it demonstrates that **the pattern of permit violations and infrastructure neglect is not merely historical — it continues to the present day.**

The San Pablo Road Project:

- **Unpermitted construction:** The City applied for SJRWMD Permit 118023-1 to authorize stormwater impacts associated with the San Pablo Road project. The permit application was **withdrawn and never issued** — yet the City proceeded with construction anyway. This constitutes unpermitted construction affecting jurisdictional waters and wetlands under SJRWMD jurisdiction.
- **Crosses Sandalwood Canal:** The road expansion crosses the Sandalwood Canal perpendicularly, creating a direct hydrologic connection that channels stormwater runoff from the expanded road surface into the canal system.
- **Feeds into already-failed infrastructure:** The San Pablo Road stormwater discharge feeds directly into the Sandalwood Canal system that was already failing to control sediment. Rather than being diverted or treated separately, this additional stormwater volume was routed into infrastructure the City knew (from 2003, 2010, and 2014 engineering reports) was inadequate.
- **Increased stormwater volume without infrastructure upgrades:** The road expansion significantly increased impervious surface area, generating substantially more stormwater runoff during each rain event. The City made no corresponding upgrades to the downstream Sandalwood Canal infrastructure to handle this increased volume.

The Missed Opportunity — City Chose Not to Fix:

The San Pablo Road project presented a natural opportunity for the City to finally address the long-standing Sandalwood Canal infrastructure deficiencies that it had known about since 2003:

- **The City could have constructed the missing fourth weir** as part of the San Pablo Road project, integrating it into the road construction budget and timeline. The project area was already under construction, equipment was on-site, and the weir location is in proximity to the road alignment. This was a perfect opportunity to remedy the 2007 permit violation.
- **The City could have upgraded the silt retention pond** to handle the additional stormwater volume from the expanded road surface. Engineering best practices require that when upstream impervious area increases, downstream BMPs must be upgraded proportionally.
- **The City could have implemented enhanced stormwater treatment** specifically for the San Pablo Road runoff, installing vegetated swales, permeable surfaces, or detention structures to offset the increased loading on the Sandalwood Canal.

The City chose to do none of these things. Instead, the City proceeded with unpermitted construction, added stormwater volume to a system it knew was failing, and made an existing environmental problem worse.

Why This Matters — Ongoing Pattern, Not Historical Problem:

The San Pablo Road project is powerful evidence for several reasons:

1. **Demonstrates violations are current and ongoing** — This is not a complaint about something that happened 20 years ago and was never fixed. This is a complaint about violations that **continue to the present day**, including recent unpermitted construction (SJRWMD permit withdrawn).

2. **Proves the City won't fix voluntarily** — When given a natural opportunity during active construction to remedy known deficiencies, the City chose not to. This proves that voluntary compliance will not occur; only enforcement with binding requirements will compel action.

3. **Shows institutional culture of noncompliance** — Even on new projects in the 2020s, the City proceeds without required permits (SJRWMD 118023-1 withdrawn), demonstrating that the pattern of treating permits as optional extends across decades and continues to modern projects.

4. **Made the problem worse** — Rather than fixing the system during San Pablo construction, the City added more stormwater volume to an already-failed system, accelerating the sedimentation of Hogpen Creek.

5. **Undermines any claim of good faith** — The City cannot claim it was unaware of the Sandalwood Canal's problems or that it lacked opportunity to fix them. The San Pablo Road project was a $multi-million capital project that crossed the canal — the opportunity was obvious, and the City deliberately chose not to take it.

Specific Deficiencies:

- Failure to obtain required SJRWMD environmental resource permit (Permit 118023-1 withdrawn);
- Failure to implement adequate post-construction stormwater controls to offset the increased runoff;
- Inadequate or absent sediment and erosion control measures during construction;
- Failure to update and upgrade downstream BMPs (including the silt retention pond) to accommodate increased sediment loads;
- Failure to construct the missing fourth weir despite having construction equipment and budget onsite;
- Failure to conduct adequate environmental review and impact analysis prior to project approval;
- Knowing violation of MS4 permit requirements to manage increased stormwater from redevelopment projects.

This project represents not merely inadequate post-construction stormwater management — it represents **deliberate institutional indifference** to environmental compliance, even on modern projects where the City had every opportunity and obligation to comply.

4.6 Systemic Deferred Maintenance

Beyond these specific infrastructure failures, the City has engaged in a pattern of deferred maintenance across the Hogpen Creek watershed. This includes:

- Failure to inspect and maintain drainage ditches, swales, and conveyance systems;
- Failure to clean and maintain stormwater outfalls;
- Failure to remove accumulated sediment from BMP facilities;
- Failure to repair eroded outfall structures and stabilize discharge points;
- Failure to implement routine monitoring and adaptive management practices.

This systemic neglect violates the City's MS4 permit obligation to "adequately maintain" stormwater controls and infrastructure.

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5. TIMELINE OF DETERIORATION (2005-2026)

The following timeline documents the progressive deterioration of Hogpen Creek following the City's 2003-2005 dredging project:

2005-2010: Initial post-dredging period. Creek depth and navigability temporarily restored. However, no corrective action taken to address root causes (Sandalwood Canal, silt pond, infrastructure maintenance). Sediment accumulation begins anew.

2010-2015: Progressive sedimentation becomes visible and measurable. Waterfront residents begin reporting reduced navigability, particularly at low tide. Sediment deltas form at canal discharge points. Water clarity declines. Muck accumulation accelerates.

2015-2019: Sedimentation accelerates. Multiple homeowners report loss of boat access. Property appraisals begin reflecting reduced waterfront utility. Residents begin reporting concerns to City officials with minimal response or remediation.

Late 2010s–Early 2020s (San Pablo Road Expansion Project): The City undertakes a major expansion of San Pablo Road, crossing the Sandalwood Canal. SJRWMD Permit 118023-1 is applied for to authorize stormwater impacts — **but the permit application is withdrawn and never issued**. The City proceeds with construction anyway, conducting unpermitted work affecting jurisdictional waters. The project significantly increases impervious surface area and channels additional stormwater runoff directly into the already-failed Sandalwood Canal system. Despite having construction equipment on-site, budget allocated, and a natural opportunity to remedy longstanding deficiencies, **the City chooses not to construct the missing fourth weir, not to upgrade the silt retention pond, and not to implement enhanced stormwater treatment**. This recent unpermitted construction demonstrates that the pattern of violations continues to the present day and that the City will not fix problems voluntarily even when opportunities arise.

2020-2023: Severe degradation phase — worsened by the additional stormwater volume from San Pablo Road. Multiple properties reclassified by Duval County Property Appraiser from "Deep Water" to "Tidal Access" designation, reflecting complete or near-complete loss of navigability. Property values decline significantly. Water quality continues to degrade. Low-oxygen events and fish kills observed.

2022: During the Hogpen Dredging Special District (HDSD) petition process, the City of Jacksonville **promised homeowners** that it would conduct a preliminary study of Hogpen Creek sedimentation and pursue identification of responsible parties for the degradation. These representations were made to residents as part of the City's response to growing community pressure.

2023: Rather than fulfilling its 2022 promises, the City enacted **Ordinance 2023-0149**, creating a special taxing district to shift the cost of remediation onto the very homeowners harmed by the City's infrastructure failures. The promised preliminary study was never conducted. The promise to pursue responsible parties was abandoned. Instead, the City created a mechanism to tax residents for a problem the City itself caused — a bad faith cost-shifting scheme that represents the latest chapter in the City's pattern of avoidance.

2023-2026: Current conditions represent near-total loss of navigability at low tide in critical creek segments. Accumulated sediment depth estimated at 2-4 feet in affected areas. SAV substantially di-

minished or absent. Creek ecosystem degraded. Property value impacts fully realized. Problem continues unabated with no City remediation plan or timeline.

January 4, 2024: A **professional hydrographic survey** provided objective scientific proof of causation. The survey documented:
- **Less than 0.5 feet depth at mean low water (MLW)** at the Sandalwood Canal outfall discharge point into Hogpen Creek
- **6.2 feet depth at MLW** in the adjacent Atlantic Intracoastal Waterway (AICW)
- This **depth gradient of more than 5.7 feet** between the canal outfall and the AICW conclusively proves that the sedimentation originates from the Sandalwood Canal discharge — not from natural tidal processes, not from the AICW, and not from homeowner activity. The scientific evidence is unambiguous: the canal outfall is the source.

5.4 Technical Evidence: 2024 Hydrographic Survey — Scientific Proof of Causation

The January 4, 2024 professional hydrographic survey is the single most important piece of objective evidence in this complaint. It transforms the causation argument from inference and engineering opinion to **measured scientific fact.**

Survey Findings:

Location	Depth at Mean Low Water (MLW)	Significance
Sandalwood Canal outfall into Hogpen Creek	< 0.5 feet	Near-total blockage by sediment at discharge point
Adjacent Atlantic Intracoastal Waterway (AICW)	6.2 feet	Normal navigable depth — no sediment problem in AICW
Depth differential	**> 5.7 feet**	**Proves sediment source is the canal, not natural processes**

Why This Evidence Is Dispositive:

1. **Eliminates alternative causation theories** — If sedimentation were caused by natural tidal processes, AICW sediment transport, or homeowner activity, the depth gradient would not show a 5.7-foot differential concentrated at the canal outfall. The gradient proves the sediment originates from the canal discharge.

2. **Objective, not subjective** — Unlike homeowner observations or photographic evidence, hydrographic survey data is scientifically measured, professionally collected, and independently verifiable. It is the type of evidence that regulatory agencies and courts routinely rely upon.

3. **Quantifies the severity** — Less than 0.5 feet of navigable depth at the outfall means the creek is effectively blocked at the discharge point. This is not a minor impairment — it is near-total obstruction.

4. **Corroborates the engineering evidence** — The Devo Engineering report (2014) described “downstream transfer” of erosion from the canal to Hogpen Creek based on engineering analysis.

The 2024 survey confirms this with direct measurement — the sediment is indeed accumulating where the canal discharges, exactly as the engineers predicted.

5.5 Protected Species Harm — Manatee Habitat Destruction

Research has confirmed that Hogpen Creek is **designated manatee habitat** under the City of Jacksonville's own environmental planning documents and the Florida Manatee Protection Plan. The sedimentation documented in this complaint has caused direct, measurable harm to this protected species habitat:

Habitat Destruction:

1. **Loss of navigable channels** — Manatees require navigable waterways with sufficient depth for transit, foraging, and calving. The sedimentation of Hogpen Creek has eliminated navigable depth in multiple locations, effectively closing portions of the creek to manatee use.
2. **Destruction of submerged aquatic vegetation (SAV)** — SAV, including seagrasses, is the primary food source for the Florida manatee (Trichechus manatus latirostris). Sedimentation and increased turbidity have smothered and eliminated SAV beds throughout affected creek segments, directly reducing foraging habitat.
3. **Water quality degradation** — Increased turbidity, muck accumulation, and low-oxygen events create inhospitable conditions for manatees, potentially causing distress, displacement, or mortality.
4. **Physical entrapment risk** — Shallow, muck-filled waters create entrapment hazards for manatees, particularly calves, which may enter areas at high tide and become stranded as waters recede over accumulated sediment.

Regulatory Violations:

- **City of Jacksonville Manatee Protection Plan** — The City maintains a Manatee Protection Plan that identifies and protects manatee habitat within its jurisdiction. The City's own infrastructure is now destroying habitat that its own plan is designed to protect — an internal contradiction that demonstrates institutional failure.
- **Federal Endangered Species Act (ESA)** — The Florida manatee is listed as a threatened species under the federal ESA (16 U.S.C. § 1531 et seq.). The destruction of designated manatee habitat through sediment discharge may constitute an unauthorized "take" under Section 9 of the ESA, which prohibits actions that harm, harass, or kill listed species, including through habitat destruction.
- **Marine Mammal Protection Act (MMPA)** — The MMPA (16 U.S.C. § 1361 et seq.) provides additional federal protections for manatees. Habitat degradation that constitutes harassment of manatees may violate the MMPA's prohibitions.

Federal Enforcement Implications:

The protected species dimension of this complaint opens federal enforcement pathways that extend beyond FDEP's jurisdiction:

- The **U.S. Fish and Wildlife Service (USFWS)** has authority to investigate and enforce ESA violations related to manatee habitat destruction;
- The **National Marine Fisheries Service (NMFS)** shares jurisdiction over marine mammal protections;

- Federal enforcement actions carry substantially higher penalty thresholds and are not subject to the same political dynamics as local or state enforcement.

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6. SPECIFIC PERMIT VIOLATIONS AND STATUTORY BASIS

6.1 MS4 Permit Violations (Permit No. FLS000081)

The City of Jacksonville's MS4 permit imposes mandatory minimum control measures and performance standards. The City has violated multiple permit conditions, including:

A. Failure to Control Pollutant Discharges to the Maximum Extent Practicable (MEP)

MS4 permits require permittees to reduce the discharge of pollutants to the maximum extent practicable. The City's failure to maintain the silt retention pond, control erosion in the Sandalwood Canal, and implement adequate post-construction controls following the San Pablo Road project constitute clear violations of the MEP standard.

B. Failure to Adequately Maintain Stormwater Controls

MS4 permits require regular inspection, maintenance, and documentation of BMP performance. The failed silt retention pond and deteriorated canal infrastructure demonstrate that the City has not met this obligation.

C. Failure to Control Construction Site Runoff

The San Pablo Road expansion project required adequate erosion and sediment controls during and after construction. The resulting sedimentation spike indicates these controls were inadequate or poorly implemented.

D. Failure to Implement Post-Construction Stormwater Management

MS4 permits require municipalities to implement and enforce post-construction stormwater management controls for new development and redevelopment projects. The San Pablo Road expansion represents a major redevelopment project that triggered this requirement, yet adequate controls were not implemented.

E. Failure to Prevent and Eliminate Illicit Discharges

The ongoing sediment discharge from City infrastructure into Hogpen Creek constitutes an ongoing illicit discharge that the City has failed to detect, investigate, and eliminate as required by the permit.

6.2 Florida Water Quality Standards Violations (Chapter 403.161, F.S.; Chapter 62-302, F.A.C.)

Florida law establishes water quality standards for surface waters. The ongoing sediment discharge into Hogpen Creek violates multiple standards, including:

A. Turbidity Standards

Excessive sediment discharge has caused sustained violations of turbidity standards, impairing aquatic life and designated uses.

B. Prohibition on Pollution Causing Imbalance in Natural Flora or Fauna

The loss of SAV, degradation of benthic habitat, and low-oxygen events demonstrate that the sediment pollution has caused an imbalance in the natural biological community, in violation of Class III water quality standards.

C. Prohibition on Interference with Designated Uses

Hogpen Creek is a Class III water body designated for recreation, fish and wildlife propagation, and navigation. The loss of navigability and ecological degradation directly interfere with these designated uses.

6.3 Additional Statutory Violations

Chapter 403.121, F.S. – Prohibited Pollution

The City's ongoing discharge of sediment into state waters without adequate control or mitigation violates the general prohibition on pollution.

Chapter 403.141, F.S. – Exemptions

The City cannot claim exemption from water quality standards for discharges from its MS4 system. While MS4 permits provide a regulatory framework, they do not exempt the permittee from underlying water quality standards when those standards are demonstrably violated.

Chapter 403.412, F.S. – Citizen Enforcement

This statute provides the procedural mechanism for citizen enforcement and establishes the required notice and opportunity for agency action.

6.4 Federal Jurisdiction Violations

Research has confirmed that the **U.S. Army Corps of Engineers (USACE), Jacksonville District**, claims jurisdiction over Hogpen Creek as a navigable water of the United States. This federal jurisdictional determination has profound implications for the enforcement landscape:

Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403) — Navigable Waters:

Section 10 prohibits the unauthorized obstruction or alteration of navigable waters of the United States. The ongoing discharge of sediment from the Sandalwood Canal into Hogpen Creek constitutes an unauthorized obstruction of navigation:

- The sedimentation has reduced navigable depth by an estimated 2-4 feet in affected segments;
- Portions of the creek that were historically navigable are now exposed at low tide;
- The sediment accumulation constitutes a physical obstruction to navigation — a core Section 10 violation;
- Any work or structures in navigable waters, including sediment control infrastructure, requires USACE authorization.

Section 404 of the Clean Water Act (33 U.S.C. § 1344) — Dredge and Fill:

Section 404 regulates the discharge of dredged or fill material into waters of the United States. The City's discharge of sediment from the Sandalwood Canal into Hogpen Creek may constitute an unpermitted discharge of fill material:

- Sediment transported through the canal system and deposited in Hogpen Creek meets the regulatory definition of "fill material" — material that has the effect of replacing aquatic area with dry land or changing the bottom elevation of a water body;

- No Section 404 permit has been identified authorizing the discharge of sediment from the Sandalwood Canal into Hogpen Creek;
- The absence of a Section 404 permit means each discharge event constitutes a separate federal violation;
- Section 404 violations carry civil penalties of up to $25,000 per day and criminal penalties for knowing violations.

USACE Enforcement Authority:

- USACE has independent authority to issue cease-and-desist orders, require restoration, and refer cases to the Department of Justice for civil or criminal prosecution;
- USACE enforcement is not subject to the same political pressures as local or state enforcement — it operates under federal authority and federal timelines;
- The Jacksonville District office has direct jurisdiction and can initiate an investigation independently of FDEP;
- USACE can require the City to obtain after-the-fact permits with conditions that include full creek restoration.

Strategic Significance:

The confirmation of federal jurisdiction transforms this case from a state-level MS4 permit enforcement matter into a **multi-jurisdictional enforcement action** with parallel federal authority. The complainants now have the option to file parallel complaints with USACE, USFWS (for ESA violations), and EPA (for Clean Water Act violations), creating multiple enforcement pressure points that the City cannot address through a single political channel.

6.5 Bad Faith Cost Shifting — Ordinance 2023-0149

In 2022, during the Hogpen Dredging Special District (HDSD) petition process, the City of Jacksonville made specific representations to Hogpen Creek homeowners:

1. **The City promised to conduct a preliminary study** of the sedimentation in Hogpen Creek to determine its causes and extent;
2. **The City promised to pursue identification of responsible parties** for the creek's degradation — implicitly acknowledging that there were responsible parties to identify.

These promises were made in the context of growing community pressure and organized homeowner advocacy. They were reasonable expectations that residents relied upon.

Instead of fulfilling these promises, the City enacted Ordinance 2023-0149, which created a special taxing district encompassing the Hogpen Creek properties — effectively shifting the financial burden of remediation onto the very homeowners who were harmed by the City's infrastructure failures.

This constitutes bad faith cost shifting for the following reasons:

1. **Broken promises** — The City explicitly promised a preliminary study and pursuit of responsible parties. Neither was conducted. The ordinance creating the taxing district was enacted instead.

2. **Polluter pays principle violated** — Under fundamental environmental law principles (and Florida Statute § 403.141), the entity that causes pollution bears the cost of remediation. By creating a taxing district that charges homeowners, the City is requiring the victims of its pollution to pay for cleanup — inverting the polluter-pays principle.

3. **Admission by conduct** — The City's 2022 promise to "pursue responsible parties" implicitly acknowledges that there are responsible parties other than the homeowners. The City's subsequent refusal to follow through on this promise, combined with its decision to tax the homeowners instead, constitutes an admission that the City knows it is the responsible party and chose to shift costs rather than accept responsibility.

4. **Pattern of avoidance** — This is consistent with the City's decades-long pattern: acknowledge the problem when politically necessary (2003, 2007, 2010, 2022), promise action, then fail to follow through. The 2022-2023 sequence is the latest iteration: promise a study → create a taxing district instead → move on.

5. **Relevance to enforcement** — The bad faith cost-shifting scheme demonstrates that the City will not only avoid fixing the problem but will actively attempt to make the victims pay for the consequences of the City's own violations. This behavior underscores the necessity of enforcement action — the City's response to community pressure is not remediation but financial burden-shifting.

Ordinance 2023-0149 should be considered as an aggravating factor in any penalty determination, as it demonstrates the City's willingness to compound its environmental violations with financial harm to the affected community.

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7. PUBLIC HARM AND CONSEQUENCES

The City's permit violations have caused substantial, measurable, and ongoing harm to both private property owners and the public interest:

7.1 Economic Harm to Property Owners

Property Value Loss: Waterfront property owners along Hogpen Creek have experienced collective property value losses estimated at $25-30 million due to loss of navigability and waterfront utility. These losses are reflected in property appraisals and market transactions.

Reclassification from Deep Water to Tidal Access: Multiple properties have been formally reclassified by the Duval County Property Appraiser from "Deep Water" designation (indicating year-round boat access) to "Tidal Access" designation (indicating limited or no navigable access). This reclassification is a direct consequence of sedimentation and represents a permanent impairment of property rights and values.

Loss of Reasonable Use and Enjoyment: Waterfront homeowners purchased properties with the reasonable expectation of boat access, recreational use, and aesthetic enjoyment of navigable waters. The sedimentation has substantially deprived them of these property rights.

7.2 Economic Harm to the City (Public Fisc)

Property Tax Revenue Loss: As a direct result of reduced property valuations, the City of Jacksonville faces an estimated annual property tax revenue loss of $275,000-$360,000. This revenue loss is perpetual and cumulative, representing millions of dollars in foregone public revenue over time.

Increased Future Remediation Costs: The City's failure to address root causes in 2005 has necessitated a second expensive dredging project. The estimated cost of remediation has now escalated substantially, likely exceeding $5-7 million for dredging alone, exclusive of necessary infrastructure upgrades.

7.3 Environmental and Ecological Harm

Loss of Submerged Aquatic Vegetation (SAV): SAV beds, which provide critical habitat and ecosystem services, have been substantially degraded or eliminated in affected creek segments.

Benthic Habitat Degradation: Accumulated sediment and muck have smothered benthic communities, reducing biodiversity and ecosystem function.

Water Quality Degradation: Increased turbidity, reduced dissolved oxygen, and muck accumulation have degraded overall water quality, creating episodic stress conditions for aquatic life.

Impacts to Protected Species: Hogpen Creek provides habitat for manatees, wading birds, and other protected species. The degraded conditions impair habitat quality and may constitute an unauthorized “take” or harassment of protected species.

7.4 Public Trust and Navigability

Florida’s public trust doctrine protects navigable waters for the benefit of all citizens. The sedimentation of Hogpen Creek represents an impairment of the public’s right to navigate and recreate on state waters. The City’s failure to maintain navigability violates its public trust obligations.

7.5 Cumulative and Irreversible Harm

Each year of inaction compounds the harm. Sediment continues to accumulate, water quality continues to decline, property values continue to suffer, and the cost of remediation continues to escalate. Without prompt enforcement action, the creek may reach a point of irreversible ecological collapse.

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8. RELIEF REQUESTED AND ENFORCEMENT ACTION REQUIRED

Based on the foregoing facts, documented violations, and extensive supporting evidence, the complainants respectfully request that the Florida Department of Environmental Protection issue a comprehensive **Consent Order** compelling the City of Jacksonville to remedy its environmental violations and restore Hogpen Creek. This section details the mandatory requirements that **must be imposed** to achieve compliance with applicable environmental law.

8.1 Legal Authority for FDEP Enforcement

A. Florida Statute § 403.121 — Consent Orders and Penalties

Florida Statute § 403.121 explicitly authorizes the Florida Department of Environmental Protection to:

- Issue Consent Orders in response to violations of environmental permits, water quality standards, or other environmental statutes;
- Compel specific remedial actions, including construction of infrastructure improvements, restoration of degraded resources, and implementation of monitoring programs;
- Assess civil penalties for environmental violations, including the economic benefit derived from noncompliance;
- Impose stipulated penalties for failure to meet specified compliance milestones and deadlines;
- Establish binding compliance timelines with enforcement authority to compel adherence;
- Require ongoing oversight and reporting to verify long-term compliance.

The City's demonstrated 20+ year pattern of permit non-compliance, combined with the availability of documented evidence and the substantial harm caused, fully satisfies statutory requirements for issuance of a Consent Order under this authority.

B. Florida Statute § 403.161 — Injunctive Relief and Restoration

Florida Statute § 403.161 authorizes injunctive relief and mandates restoration of degraded water resources. This statute provides explicit authority to:

- Order cessation of pollutant discharges;
- Require restoration of navigability and water quality to Hogpen Creek;
- Impose conditions preventing recurrence of violations;
- Compel long-term monitoring to verify restoration success and prevent future degradation.

The loss of navigability in Hogpen Creek, the destruction of aquatic vegetation and benthic habitat, and the ongoing pollution constitute violations of this statute that justify restoration orders.

C. Florida Statute § 403.087 — MS4 Permit Compliance

Florida Statute § 403.087 establishes the municipal stormwater permit (MS4) program and requires municipalities to implement controls to reduce pollutant discharges to the maximum extent practicable (MEP). This statute provides the legal foundation for enforcement against the City's systematic failure to maintain stormwater BMPs and control sediment discharges.

8.2 Mandatory Infrastructure Remediation

The City of Jacksonville **is required to achieve compliance** through construction and restoration of critical stormwater infrastructure. Failure to implement these measures will perpetuate ongoing violations and ensure continued environmental harm. These measures are **not discretionary suggestions** but rather **mandatory requirements** necessary to satisfy the permitting authority's minimum standards for compliance.

A. Construct the Missing Fourth Weir — MANDATORY

Requirement: The City **must construct** the easternmost (fourth) canal weir in the Sandalwood Canal system. This weir was required under SJRWMD Permit #4-031-17631-6 but was never completed by the City. The failure to construct this permitted infrastructure element constitutes an ongoing permit violation and is a direct cause of increased downstream flow velocities and sedimentation in Hogpen Creek.

Functional Specifications:
- Raised canal weir designed to attenuate flow velocities within the Sandalwood Canal channel
- Location: East of W. Osprey Point Drive, positioned to control flow approaching Hogpen Creek discharge
- Design capacity: Control design storm flow velocities to prevent erosion acceleration downstream
- Engineering standards: Compliance with SJRWMD permit specifications and current Florida Department of Transportation (FDOT) and American Society of Civil Engineers (ASCE) standards

Compliance Timeline:
- Engineering design and permitting: **90 days from Consent Order issuance**
- Construction commencement: **180 days from Consent Order issuance**
- Completion and operational certification by licensed P.E.: **12 months from construction com-**

mencement
- Failure to meet any deadline: **$10,000 per day stipulated penalty**

B. Restore and Rehabilitate the Silt Retention Pond — MANDATORY

Requirement: The City **must restore** the Sandalwood Canal silt retention pond to full design capacity and operational effectiveness. This facility was designed to remove sediment before discharge into Hogpen Creek and has failed to achieve its design function due to deferred maintenance, sediment overfill, and structural degradation. Restoration is **required to achieve compliance** with MS4 permit obligations.

Design and Performance Specifications:
- Sediment excavation: Remove all accumulated sediment to restore original design bottom elevation and depth
- Design capacity restoration: Restore pond to minimum **150,000 cubic yards** sediment storage capacity
- Outlet structures: Inspect, repair, replace, and certify all outlet pipes, spillways, sediment control structures, and control gates
- Bank stabilization: Stabilize, vegetate, and protect all pond embankments with native vegetation and erosion control measures
- Freeboard: Maintain adequate freeboard and overflow spillway capacity to handle design storm events while maintaining sediment retention

Maintenance Protocol Requirements:
The City **is required to maintain** documented maintenance protocols with the following components:

- **Quarterly inspections:** Conduct formal inspections of the silt retention pond on a quarterly (every 90-day) schedule year-round; more frequent inspections during and immediately after major rainfall events
- **Inspection documentation:** Document all inspections in standardized inspection reports including date, inspector identification, sediment levels (measured depth), vegetation condition, structural condition of embankments and outlets, and identification of any maintenance needs
- **Annual bathymetric surveys:** Conduct annual sediment depth surveys using bathymetric survey methods or equivalent technology; maps showing sediment configuration, depth profiles, and volume estimates
- **Maintenance response requirement:** Implement identified maintenance needs within **30 days** of inspection discovery; emergency maintenance for safety hazards within **7 days**
- **Sediment removal:** Remove accumulated sediment annually or more frequently as surveys determine; target sediment depth to remain below 50% of design capacity in any quarter
- **Log maintenance and archival:** Maintain all inspection reports, survey data, maintenance records, and photographic documentation in an organized manner available for FDEP review upon request; retain records for minimum 10 years

Compliance Timeline:
- Initial restoration design and engineering assessment: **30 days from Consent Order issuance**
- Permitting and design finalization: **90 days from order issuance**
- Construction commencement: **180 days from order issuance**
- Restoration completion and certification: **12 months from construction commencement**
- Failure to meet infrastructure milestones: **$10,000 per day stipulated penalty**
- Ongoing maintenance program implementation: **Commencing immediately upon Consent Order**

issuance; continuing minimum 5 years beyond creek restoration completion
- Failure to conduct quarterly inspections: **$5,000 per day for each missed inspection**

C. Implement Comprehensive Documented Maintenance Protocols — MANDATORY

Requirement: The City **is required to establish and maintain** comprehensive, formalized maintenance protocols for all stormwater best management practices (BMPs) serving the Hogpen Creek watershed. This requirement is **necessary to achieve compliance** with MS4 permit obligations requiring maintenance "to the maximum extent practicable."

The City's historical decision to eliminate its stormwater pond inspection program in the late 1990s resulted in the current environmental catastrophe. The reinstatement of comprehensive maintenance protocols with permanent staffing and budget allocation is **mandatory** to prevent recurrence.

Specific Operational Requirements:

Requirement	Frequency	Documentation	Deadline for Action
Formal BMP inspection (all detention/retention basins, channels, outfalls)	Quarterly (4x/year)	Standardized inspection reports with photos, measurements, condition notes	30 days for routine maintenance; 7 days for safety/emergency issues
Sediment removal from detention/retention structures	As needed per inspection findings	Survey data, excavation logs, disposal documentation	Within 30 days of determination that sediment exceeds thresholds
Vegetation management (mowing, invasive removal)	As needed per inspection	Work logs, photos, date documentation	30-day response window
Structural repairs (erosion control, outfall stabilization)	As identified in inspections	Work permits, engineering certifications, contractor reports	30-day response window
Annual comprehensive stormwater BMP inventory update	Annual (minimum)	Mapping, GPS coordinates, condition assessments, aerial photography	90 days following fiscal year-end
Budget allocation	Annual	Dedicated line-item budgeting minimum $250,000 for Hogpen Creek watershed	Must be included in annual municipal budget without discretionary reductions
Staffing	Permanent	Qualified stormwater maintenance personnel with documented training	Staffing levels maintained consistent with program requirements

Program Requirements:

1. **Dedicated Budget Allocation:** The City **is required to maintain** a permanently dedicated annual budget allocation of **minimum $250,000** for inspection, maintenance, and sediment removal activities in the Hogpen Creek stormwater system. This allocation **shall not be subject to discretionary reduction** and shall be protected by City Council ordinance from budget reallocation without explicit authorization.

2. **Qualified Personnel:** The City **must assign** qualified personnel responsible for BMP inspection and maintenance. Assigned personnel **shall complete** documented training in sediment control best practices, BMP design and function, and stormwater management principles within **60 days** of Consent Order issuance.

3. **Inspection Standards:** All inspections **shall be conducted** using standardized inspection forms and protocols consistent with Florida Department of Environmental Protection guidance and American Public Works Association (APWA) standards.

4. **Record Retention:** All inspection reports, maintenance records, survey data, and photographic documentation **shall be retained** for minimum **10 years** and **shall be made available** to FDEP upon request.

Compliance Timeline:
- Program establishment and staffing: **Commencing immediately upon Consent Order issuance**
- Personnel training completion: **60 days from order issuance**
- First quarterly inspection: **90 days from order issuance**
- Ongoing quarterly inspections: **Continuing for minimum 5 years and potentially indefinitely as condition of MS4 permit renewal**
- Budget allocation integration: **First fiscal year following Consent Order issuance**
- Failure to conduct required inspections: **$5,000 per day per missed inspection**
- Failure to implement required maintenance within 30-day deadline: **$5,000 per day per outstanding maintenance item**

D. Install Water Quality Monitoring System — MANDATORY

Requirement: The City **is required to install** a comprehensive, automated water quality monitoring system in Hogpen Creek. This system is **necessary to achieve compliance** with the Consent Order's monitoring requirements and to detect future violations promptly.

Monitoring Equipment Specifications:
- **Primary monitoring station:** Located at or near the Sandalwood Canal discharge point into Hogpen Creek, positioned to capture discharge characteristics
- **Secondary monitoring station:** Located at representative mid-creek location downstream to assess creek-wide conditions
- **Measured parameters:** Continuous automated measurement of dissolved oxygen (DO), temperature, specific conductivity, turbidity, pH, chlorophyll-a, and water level
- **Equipment standard:** Industry-standard multiparameter sondes with automated data logging capabilities and real-time telemetry (4G cellular or equivalent)
- **Data transmission:** Real-time data transmission to secure cloud-based server accessible to FDEP, SJRWMD, and authorized complainant representatives
- **Data accessibility:** Public-facing internet dashboard displaying real-time and historical water quality data accessible to the general public
- **Calibration and maintenance:** Equipment calibration and sensor cleaning performed per manufacturer specifications, minimum quarterly; annual equipment service by certified technician

Monitoring Data Requirements:
- **Data retention:** All collected data **shall be retained** indefinitely in secure archival format
- **Public reporting:** Monthly summary reports of monitoring data **shall be posted** on publicly accessible website
- **Anomaly response:** Any measurement indicating potential water quality standard violation **shall be reported** to FDEP within **24 hours** of detection
- **Adaptive response:** Exceedances of water quality standards **shall trigger** investigation and corrective action within **30 days**

Estimated Cost and Timeline:
- Equipment and installation cost: Approximately $80,000–$120,000
- Procurement and installation: **90 days from Consent Order issuance**
- Operational certification: **120 days from order issuance** (30 days of calibration and validation)
- Ongoing operation and maintenance: Continuing indefinitely as condition of Consent Order compliance

Failure to achieve operational monitoring: $5,000 per day delay

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8.3 Mandatory Creek Restoration

The City's sedimentation of Hogpen Creek has caused irreversible loss of navigability, ecosystem function, and public trust values. These losses **must be remedied** through comprehensive creek restoration. The following measures are **mandatory** to satisfy the Consent Order's restoration objectives.

A. Comprehensive Dredging and Sediment Removal — MANDATORY

Requirement: The City **must execute** a comprehensive dredging and sediment removal project to restore Hogpen Creek to navigable condition and remove the accumulated pollution burden. This project is **required to achieve compliance** with water quality standards and restore navigable use protected under Florida's public trust doctrine.

Project Scope and Specifications:

- **Dredging volume:** Removal of approximately **50,000–75,000 cubic yards** of accumulated sediment from Hogpen Creek, with precise volume to be determined through baseline bathymetric survey and engineering design
- **Target depth restoration:** Restore creek bottom to a minimum depth of **4–6 feet below mean low water (MLW)** in the primary navigation channel and sediment-impacted segments; greater depth in deeper historical segments
- **Geographic scope:** All segments of Hogpen Creek from the Sandalwood Canal discharge point downstream to the creek's mouth at the broader tidal marsh system
- **Dredging methodology:** Mechanical dredging using standard hydraulic dredge or clamshell excavation equipment; hydraulic dredging with sedimentation basin containment preferred to minimize turbidity impacts
- **Sediment disposal:** Excavated sediment **shall be disposed of** at an upland disposal facility licensed and approved for creek sediments; sediments **shall be tested** for contaminants before disposal and managed according to applicable environmental regulations; beneficial reuse of sediments shall be explored if testing determines material is suitable
- **Environmental protections:** Dredging operations **shall implement** turbidity controls including sedimentation barriers, turbidity curtains, and sediment dewatering facilities; all construction shall comply with state and federal environmental regulations; dredging **shall be conducted** during

windows of optimal environmental conditions (typically low-water season, dry season) to minimize ecological impacts; all dredging **shall be authorized** by U.S. Army Corps of Engineers Section 404 permit, FDEP dredge and fill authorization, and other applicable environmental permits

- **Post-dredging restoration:** Immediately following dredging, the creek bottom **shall be stabilized** to prevent rapid re-sedimentation; native vegetation and habitat restoration **shall be implemented** in dredged areas; submerged aquatic vegetation restoration plantings **shall be installed** in suitable habitat areas to restore the forage base for manatees and other aquatic life

Project Design and Permitting Timeline:
- Baseline bathymetric survey (existing conditions): **60 days from Consent Order issuance**
- Engineering design and permit applications: **90 days from order issuance**
- USACE Section 404 permit issuance (federal authorization): **Typically 90–120 days from application**
- Total design and permitting timeline: **Approximately 180–210 days from order issuance**

Construction and Dredging Timeline:
- Construction contract procurement: Concurrent with permitting
- Dredging commencement: **240 days from Consent Order issuance**
- Dredging completion: **18 months from construction commencement** (approximately 27 months from Consent Order issuance)
- Project contingencies: Timeline allows for seasonal constraints, permitting delays, and environmental conditions

Project Cost Estimate:
- Total dredging project cost: Approximately **$5,000,000–$7,000,000**, depending on sediment volume, disposal logistics, environmental controls, and market conditions
- The City **shall be responsible** for all costs; no cost-sharing with property owners or other entities shall be imposed

Compliance Standards:
- All dredging **shall be conducted** by licensed marine contractors with demonstrated experience in tidal creek dredging
- All work **shall be certified** by licensed professional engineers
- All dredging **shall comply** with federal Section 404 permit conditions, state dredge and fill permits, and all environmental protection requirements
- Failure to achieve dredging commencement: **$10,000 per day**
- Failure to achieve dredging completion: **$10,000 per day past deadline**

B. Habitat Restoration — MANDATORY

Requirement: The City **must implement** comprehensive habitat restoration measures to repair ecosystem damage caused by sedimentation. These measures are **required** to restore ecological function, protect manatee habitat, and comply with the City's own Manatee Protection Plan.

Habitat Restoration Components:

1. Manatee Navigation Channel Maintenance
- **Objective:** Maintain primary navigation channels to depth of minimum **4–5 feet below mean low water** to permit year-round transit and foraging by manatees
- **Implementation:** Conduct annual surveys to monitor channel depths; implement maintenance dredging in any areas showing sedimentation reducing depths below threshold
- **Timeline:** Surveys beginning immediately following dredging project completion; annual frequency for minimum 5 years

2. Submerged Aquatic Vegetation (SAV) Restoration
- **Objective:** Restore submerged aquatic vegetation beds to restore the primary forage resource for manatees and benthic fauna
- **SAV species:** Widgeon grass (Ruppia maritima), Vallisneria (Vallisneria americana), and other native seagrasses appropriate to tidal creek conditions
- **Restoration approach:** Identify suitable habitat areas in dredged and restored creek segments; obtain native plant stock from local nurseries or propagation facilities; implement transplanting of SAV nursery stock into suitable substrate; monitor establishment and provide maintenance (herbivory control, invasive species removal) as needed
- **Restoration timeline:** Implementation to begin during final phases of dredging project and continue 6 months post-dredging; 5-year establishment and monitoring period
- **Success criteria:** Achieve minimum 50% coverage of SAV in identified restoration zones within 3 years of planting; maintain coverage at 40%+ thereafter

3. Benthic Community Restoration
- **Objective:** Restore the bottom fauna and microorganism communities that support the aquatic food web
- **Implementation:** In areas of severe muck accumulation and anoxic conditions, remove excess organic material through targeted dredging or sediment remediation; restore bottom composition through placement of native shell substrate, oyster shell, and suitable benthic habitat materials
- **Oyster bar restoration:** Where appropriate, establish native Eastern oyster (Crassostrea virginica) restoration areas to provide both ecosystem services and structural complexity for juvenile fish and manatee use
- **Timeline:** Implementation concurrent with dredging and post-dredging habitat restoration

4. Shoreline and Bank Stabilization
- **Objective:** Eliminate ongoing erosion sources that contribute sediment to the creek
- **Implementation:** Stabilize eroded streambanks through installation of living shorelines (native vegetation, coir logs, oyster reef structures) or structural stabilization (riprap with native plantings); eliminate bare, eroding banks; restore native riparian vegetation along creek margins
- **Timeline:** Implementation concurrent with dredging and restoration project

Habitat Restoration Oversight:
- **Design:** Habitat restoration **shall be designed** by qualified environmental consultants with expertise in tidal creek and manatee habitat restoration
- **Permitting:** Restoration activities **shall comply with** all applicable environmental permits (FDEP dredge and fill, USACE Section 404, SJRWMD water management permit, etc.)
- **Monitoring:** Habitat restoration success **shall be monitored** through annual surveys for minimum 5-year period; monitoring **shall document** SAV establishment, benthic fauna diversity, fish community composition, and manatee utilization patterns
- **Adaptive management:** If monitoring indicates restoration success is inadequate, additional plantings or corrective measures **shall be implemented** to achieve target conditions

C. Post-Dredging Water Quality and Sediment Monitoring — MANDATORY

Requirement: The City **is required to conduct** comprehensive water quality and sediment monitoring for a minimum **5-year period** following dredging completion. This monitoring is **necessary to verify** that dredging has successfully restored water quality and to **detect and prevent** future sedimentation problems.

Monitoring Program Components:

1. Annual Sediment Depth Surveys
- **Frequency:** Annual bathymetric surveys beginning year 1 following dredging completion; surveys conducted annually for minimum 5 years and potentially indefinitely
- **Methods:** Professional bathymetric survey using current technology (multibeam sonar, single-beam sonar, or equivalent) providing detailed depth profiles and sediment volume estimates
- **Reporting:** Survey results **shall be provided** to FDEP within **60 days** of completion; reports **shall include** maps showing sediment configuration, depth comparisons to baseline post-dredging conditions, and volume estimates
- **Threshold:** If surveys indicate sediment reaccumulation exceeding **12 inches in any calendar year** in any survey location, **maintenance dredging shall be required** to be completed within **the following quarter**

2. Water Quality Monitoring
- **Continuation of automated monitoring:** The automated water quality monitoring system described in Section 8.2.D **shall continue operation** throughout the 5-year monitoring period and potentially indefinitely
- **Parameters monitored:** Dissolved oxygen, temperature, specific conductivity, turbidity, pH, chlorophyll-a, water level
- **Standard compliance:** All measured parameters **shall remain within** Florida water quality standards; exceedances **shall trigger** investigation and corrective action
- **Public reporting:** Monthly water quality reports **shall be posted** on public website; annual summary reports **shall be submitted** to FDEP

3. Habitat Monitoring
- **Frequency:** Annual biological surveys throughout the 5-year post-dredging monitoring period
- **Parameters:** SAV coverage (aerial survey + ground-truth sampling), benthic fauna diversity (sediment grab samples, biological indices), fish community composition (seine/net sampling), manatee presence and utilization (observation records, citizen science reports)
- **Reporting:** Annual reports **shall document** restoration progress and success; reports **shall be submitted** to FDEP and made publicly available

4. Adaptive Management Trigger Points
- **Sediment reaccumulation exceeding 12 inches annually:** Triggers requirement for maintenance dredging in the following quarter
- **Water quality standard exceedances:** Trigger investigation of cause and implementation of corrective measures within 30 days
- **SAV restoration failure:** If SAV coverage fails to reach 50% target in year 3, or declines below 40% thereafter, **additional restoration plantings and management measures shall be required**
- **Manatee habitat degradation:** If monitoring indicates manatee utilization declining or indicators suggest habitat degradation, **adaptive management measures shall be implemented** to address causes

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8.4 Economic Benefit Recapture and Civil Penalties

The City of Jacksonville derived substantial economic benefit through its decision to defer maintenance and infrastructure investment over the past 20 years. The City avoided significant expenditures that would have been required to comply with its MS4 permit and environmental obligations. Additionally, the City’s violations caused measurable, quantifiable harm to private property owners and public revenues.

FDEP is authorized under Florida Statute § 403.141 to assess civil penalties that:
1. Recover the economic benefit obtained through noncompliance;
2. Reflect the severity, duration, and knowing nature of the violations;
3. Account for the environmental and economic harm caused;
4. Provide adequate deterrence against future violations.

A. Economic Benefit of Noncompliance — Itemization

The following economic benefit was derived by the City through deferring required maintenance and infrastructure improvements:

Benefit Category	Calculation Basis	Amount
Deferred stormwater pond maintenance costs (20-year period, 2005–2025)	Estimated cost of quarterly inspections + sediment removal = $15,000/year × 20 years	**$300,000**
Deferred fourth weir construction	Engineering cost estimate for design, permitting, and construction of required canal weir	**$750,000**
Deferred comprehensive stormwater BMP inspection and maintenance program	Reinstatement of elimination 1990s inspection program = estimated $25,000/year × 20 years	**$500,000**
Avoided stormwater treatment upgrades	San Pablo Road expansion failed to include downstream BMP upgrades estimated at $250,000–$400,000	**$300,000**
Deferred sediment removal (post-2010 sedimentation)	Maintenance dredging to prevent recurrent sedimentation, estimated $150,000/occurrence × 3–4 required events	**$400,000**
Avoided watershed-wide stormwater treatment and compliance	Treatment infrastructure for 11-square-mile (7,000-acre) watershed generating 33 million gallons per 0.5” rain event; compliance monitoring, permitting, and engineering costs avoided	**$1,750,000**
TOTAL ECONOMIC BENEFIT	Sum of all deferred costs	**$4,000,000–$5,000,000**

This updated economic benefit analysis reflects the true watershed-scale scope of the City’s avoided costs. The prior estimate of $2,250,000 understated the benefit because it did not fully account for the

massive scale of the Sandalwood Canal system — an 11-square-mile (7,000-acre) watershed generating approximately 33 million gallons of stormwater discharge per 0.5-inch rain event. The City avoided the cost of treating, monitoring, and permitting this industrial-scale discharge for over two decades. The $4-5 million minimum is conservative and does not include avoided engineering studies, opportunity costs of capital, or avoided ERP permitting compliance costs.

B. Recommended Civil Penalty Structure

Based on statutory authority under Florida Statute § 403.141, and considering the severity, duration, knowing nature, and harmfulness of the violations, the complainants recommend the following penalty structure:

Penalty Component	Rationale	Amount
Economic benefit recapture	Direct recovery of costs deferred by noncompliance (updated watershed-scale analysis)	**$4,000,000–$5,000,000**
Severity and duration multiplier	20+ years of continuous violations; nationwide MS4 enforcement average is 2–3× economic benefit for knowing violations	**$500,000**
Environmental harm component	Documented loss of navigability, ecosystem degradation, protected species harm	**$500,000**
Bad faith aggravating factor	Ordinance 2023-0149 cost-shifting, broken 2022 promises, deliberate burden-shifting to victims	Included in total
TOTAL RECOMMENDED CIVIL PENALTY	Complete deterrence, restoration of proper incentives, adequate punishment	**$5,000,000**

This recommended penalty is **not excessive** and is consistent with federal EPA enforcement patterns for municipal MS4 violations of comparable severity and duration. The increase from the prior $3,000,000 recommendation reflects the updated economic benefit analysis that properly accounts for the watershed-scale scope of the City’s avoided infrastructure investment, as well as the aggravating factor of the City’s bad faith cost-shifting through Ordinance 2023-0149.

C. Stipulated Penalties for Missed Compliance Milestones

In addition to base civil penalties, the Consent Order **shall include** stipulated penalties to be assessed automatically for failure to meet specified compliance deadlines. Stipulated penalties **shall accrue daily** and **shall be in addition to** any civil penalties assessed for the underlying violations.

Stipulated Penalty Schedule:

Compliance Milestone	Deadline	Daily Stipulated Penalty	Notes
Prepare engineering plans for fourth weir and silt pond restoration	90 days from CO	$10,000/day	Cumulative; assessed for each day past deadline
Obtain SJRWMD and other required permits for infrastructure work	120 days from CO	$10,000/day	Assumes reasonable permitting timeline
Commence construction of fourth weir	180 days from CO	$10,000/day	“Commence” = first day mobilization equipment on-site
Complete fourth weir construction and obtain P.E. certification	12 months from commencement	$10,000/day	Penalty resumes if deadline missed
Complete silt pond restoration dredging and structural repairs	12 months from commencement	$10,000/day	Same timeline as weir construction
Obtain Section 404 permit and other dredging authorizations	180 days from CO	$10,000/day	Assumes typical federal permitting timeline
Commence Hogpen Creek dredging	240 days from CO	$10,000/day	Major milestone; significant penalty reflects importance
Complete Hogpen Creek dredging	18 months from commencement	$10,000/day	Extended timeline; penalties reflect high cost burden
Install water quality monitoring system	90 days from CO	$10,000/day	Equipment procurement and installation
Achieve operational certification of monitoring system	120 days from CO	$5,000/day	Calibration and validation period
	90 days from CO	$5,000/day	Establishes maintenance program

Compliance Milestone	Deadline	Daily Stipulated Penalty	Notes
Conduct first quarterly BMP inspection			
Conduct quarterly BMP inspections (ongoing)	Every 90 days, ongoing	$5,000/inspection	Each missed inspection triggers penalty
Respond to inspection-identified maintenance needs	30 days of identification	$5,000/day per item	Establishes expectation of responsive maintenance
Conduct baseline and annual sediment surveys	Year 1 and annually thereafter	$5,000/day delay	Beginning following dredging completion
Establish dedicated annual maintenance budget	First fiscal year following CO	$10,000/month for budget below $250,000 minimum	Ensures program funding

Stipulated Penalty Provisions:
- **Daily accrual:** Penalties accrue on a daily basis for each day deadline is not met; no minimum threshold
- **Cumulative:** Penalties are cumulative and continue to accrue until the missed deadline is achieved
- **In addition to other penalties:** Stipulated penalties are **in addition to**, not in place of, any civil penalties assessed for underlying violations
- **Allocation:** Stipulated penalties **shall be credited** to the general revenue fund of the State of Florida and **may be partially allocated** to complainant reimbursement of enforcement costs upon FDEP approval
- **Non-waivable:** Stipulated penalties **cannot be waived**, reduced, or forgiven except by amendment to the Consent Order itself, which **requires written approval** of FDEP Director

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8.5 Ongoing Oversight and Compliance Requirements

Enforcement does not end with the issuance of a Consent Order. FDEP **must establish** ongoing oversight mechanisms to verify that the City complies with all requirements, that construction is completed properly, that restoration is successful, and that the City maintains its infrastructure to prevent recurrence of violations. These oversight provisions are **essential** to ensuring that the Consent Order achieves its remedial objectives.

A. Compliance Reporting — Mandatory Requirements

The City **is required to provide detailed compliance reports** to FDEP according to the following schedule. Failure to submit required reports on time **shall result in** automatic stipulated penalties.

Phase 1: Design and Permitting Phase (Months 0–6)
- **Monthly progress reports:** By the 15th of each month, submit written progress reports document-

ing:
- Status of engineering design for fourth weir, silt pond restoration, and Hogpen Creek dredging
- Status of permit applications and regulatory approvals (SJRWMD, USACE, FDEP, local authorities)
- Any permitting delays or obstacles encountered
- Revised schedules if changes to timelines are anticipated
- Budget expenditures to date and remaining budget projections

Phase 2: Construction Phase (Dredging and Infrastructure)
- **Monthly progress reports:** By the 15th of each month, submit detailed progress reports documenting:
- Construction progress as percentage of total project completion
- Dredging volume completed to date (if applicable)
- Contractor performance and any issues or disputes
- Environmental monitoring results (turbidity, water quality if dredging underway)
- Compliance with environmental permit conditions
- Budget expenditures to date
- Photographic documentation (minimum 5 representative photos per month showing progress)
- Updated project schedule with revised timelines if any delays anticipated
- Certification by project engineer of compliance with design specifications

Phase 3: Post-Construction and Long-Term Monitoring (Years 1–5+)
- **Quarterly reports (Year 1):** By the 15th of each quarter (Jan 15, Apr 15, Jul 15, Oct 15), submit:
- Water quality monitoring results (turbidity, DO, temperature, conductivity, pH, chlorophyll-a)
- Sediment depth measurements or survey results
- BMP inspection results and maintenance activities completed
- Habitat monitoring observations (SAV coverage, vegetation establishment, fish/fauna observations)
- Any observations of manatee activity or utilization
- Identification of maintenance needs identified in inspections
- Corrective actions implemented in response to inspection findings

- **Annual reports (Years 2–5 and beyond):** By January 31 of each year, submit comprehensive annual report documenting:
- Complete water quality monitoring data for the prior year
- Annual sediment depth survey results and comparison to prior years
- BMP inspection summary documenting all quarterly inspections conducted, maintenance activities, and outstanding maintenance needs
- Habitat restoration monitoring results (SAV coverage, benthic fauna, fish populations, manatee observations)
- Long-term trend analysis of water quality and sediment conditions
- Budget expenditures for the prior year and projected budget for coming year
- Photographic documentation showing creek conditions, vegetation establishment, habitat recovery
- Certification by professional engineer of overall Consent Order compliance and achievement of restoration objectives

Report Submission Requirements:
- All reports **shall be submitted** electronically to FDEP and complainant representatives
- Reports **shall be on FDEP-provided template** or equivalent format
- Reports **shall be prepared and certified** by a qualified professional engineer licensed in Florida
- Late submission **shall result in** $5,000 per day stipulated penalty

B. Verification and Independent Oversight

FDEP **shall maintain ongoing direct oversight** of the City's compliance with all Consent Order requirements. This oversight is **essential** to detect non-compliance and ensure project completion.

FDEP Inspection and Verification Rights:
- **Unannounced inspections:** FDEP **retains the right** to conduct unannounced site inspections at any time during construction, monitoring, and compliance periods
- **Inspection frequency:** FDEP **shall conduct** minimum quarterly site inspections during active construction phases; minimum annual inspections during monitoring phases
- **Inspection authority:** During inspections, FDEP representatives **shall have access** to the project site, all documents, inspection records, and data; the City **shall cooperate fully** with all FDEP requests for information or site access
- **Third-party verification:** All major construction milestones **shall be certified** by a qualified professional engineer independent of the City's project management; the engineer **shall be approved by FDEP** and retain authority to determine adequacy of construction quality

Project Engineering Certification:
- **Design phase certification:** Before construction commencement, final design plans **shall be reviewed and certified** by an independent P.E. approved by FDEP to confirm compliance with permit requirements and engineering standards
- **Construction certification:** Upon completion of each major project phase (fourth weir construction, silt pond restoration, dredging), the independent engineer **shall certify** that:
- Work was completed in substantial conformance with design plans
- All permit conditions were satisfied
- Specifications and standards were achieved
- The BMP or restoration measure is functioning as designed
- All environmental protections were properly implemented
- **Long-term certification:** The independent engineer **shall certify annually** (for minimum 5 years) that the restoration works are performing adequately and meeting performance objectives

Compliance Audits:
- **Annual audits:** FDEP **shall conduct** annual comprehensive audits of the City's compliance with all Consent Order requirements, including:
- Review of all inspection and maintenance records
- Verification of budget allocation and expenditures
- Assessment of water quality and sediment monitoring data
- Inspection of BMPs and infrastructure to verify maintenance status
- Interviews with City personnel responsible for compliance
- Determination of overall compliance status and identification of any deficiencies
- **Audit results:** Results of audits **shall be communicated** to the City in writing with explanation of any deficiencies and required corrective actions; deficiencies **shall be corrected** within timeframes specified by FDEP (typically 30–60 days)

C. Long-Term Maintenance Assurance

History demonstrates that the City may be tempted to abandon maintenance and monitoring obligations once the highly visible dredging project is complete and public attention wanes. The Consent Order **must include provisions** that bind the City and its successors to long-term maintenance obligations and prevent future defunding of critical environmental programs.

Bonded Maintenance Fund:
- **Escrow account:** The City **shall establish** an escrow account or surety bond in the amount of **min-**

imum $500,000 to ensure financing of BMP maintenance, monitoring, and sediment removal activities for a minimum **10-year period** following Consent Order issuance
- **Fund management:** The escrow **shall be held** by a third-party escrow agent approved by FDEP; funds **shall be released** only for authorized maintenance activities documented in inspection reports and approved by FDEP
- **Replenishment:** As funds are expended for authorized maintenance, the City **shall replenish** the escrow account to maintain the minimum $500,000 balance
- **Remainder provision:** Upon conclusion of the 10-year period (or earlier if exhausted), any remaining funds **shall revert** to the State of Florida general fund unless FDEP determines that further funding is necessary for continued maintenance

Permanent Budget Dedication:
- **Ordinance requirement:** The City **shall enact** a binding City Council ordinance establishing a **permanently dedicated annual budget allocation** of minimum **$250,000** for stormwater BMP inspection, maintenance, and sediment removal in the Hogpen Creek watershed
- **Removal of discretion:** This budget allocation **shall be removed from discretionary budget processes** and **shall not be subject to reductions**, deferrals, or elimination without explicit City Council vote and written justification to FDEP
- **Adjustment for inflation:** The $250,000 annual minimum **shall be adjusted** annually for inflation (CPI-U) to maintain purchasing power
- **Successor obligation:** This ordinance **shall bind all successor municipal administrations** and **shall not be modified or repealed** without FDEP approval; violation of this ordinance **shall constitute** violation of the Consent Order and **shall subject the City to** additional enforcement action

Non-Abandonment Covenant:
- **Formal covenant:** The City **shall execute** a written covenant, recorded in the official records of Duval County, in which the City covenants that it **will not reduce, defer, abandon, or eliminate** the stormwater BMP maintenance program, inspection program, or monitoring requirements for the Hogpen Creek watershed for a minimum **10-year period** from Consent Order issuance
- **Enforceability:** This covenant **shall be enforceable** by FDEP through contempt proceedings, civil injunction, or other legal remedies if violated
- **Binding effect:** The covenant **shall run with the City's regulatory obligations** and **shall be binding upon** all successor administrations, elected officials, and personnel

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8.6 Why Enforcement Action Is Essential

The complainants acknowledge that this Consent Order request encompasses substantial remedial obligations and expenditures. The City will incur construction costs estimated at $5–7 million for dredging, $500,000–$750,000 for the fourth weir, additional costs for silt pond restoration and infrastructure upgrades, $3 million in civil penalties, plus ongoing maintenance and monitoring costs. These are significant financial burdens, but they are **essential** and **fully justified** by the facts of this case.

A. Pattern of Voluntary Compliance Failure

The critical fact: The City of Jacksonville has had **more than 20 years** of opportunity to address the Sandalwood Canal's sedimentation impacts on Hogpen Creek. In that time, the City has:

1. **2003:** Formally acknowledged responsibility for Hogpen Creek sedimentation
2. **2003–2005:** Funded a $2.4 million dredging project at 59% City cost

3. **2007–2008:** Undertook canal “improvements” with stated objective of reducing Hogpen Creek sedimentation
4. **2010–2014:** Was sued by Ellis property owner; received independent engineering report documenting infrastructure failures
5. **2014–2026:** Continued inaction for an additional 12 years despite knowledge of failures

This timeline demonstrates conclusively that voluntary compliance will not occur. The City has:
- **Known about the problem** for 20+ years (acknowledged in 2003)
- **Been sued about the problem** (Ellis lawsuit 2010–2014)
- **Received expert engineering documentation** of causation (Devo Engineering Report 2014)
- **Failed to respond** despite all these pressure points

Without enforcement with mandatory obligations and penalties, the City has demonstrated it will continue to choose inaction over compliance. Voluntary persuasion and communication have been tried repeatedly and have failed.

B. Economic Incentives Drive Non-Compliance

The City derived substantial economic benefit by deferring maintenance and infrastructure investment:

- **Deferred $4–5 million in avoided maintenance and infrastructure costs** over 20 years
- **Avoided political controversy** of major infrastructure projects and their costs
- **Shifted financial burden** from the City to private property owners through loss of property values
- **Operated with no consequences** because no regulatory enforcement action was taken

As long as the City faces no enforcement consequences, the economic incentives will continue to drive non-compliance. A $5 million penalty is substantial, but it is less than the $5–7 million dredging cost that the City now faces — and the City has already demonstrated through Ordinance 2023-0149 that it will attempt to shift remediation costs onto victims rather than bear them itself. Only enforcement penalties that exceed the economic benefit of noncompliance will change the City’s calculus.

Enforcement with adequate penalties restores proper incentives by requiring the City to internalize the true environmental and economic costs of non-compliance.

C. Precedent and Rule of Law

The City routinely issues Notices of Violation against private developers and property owners for the same sediment and stormwater violations that it commits on a vastly larger scale through its own infrastructure. The appearance of selective enforcement undermines the City’s regulatory authority and the public’s confidence in environmental law.

FDEP enforcement against the City is essential to establishing that environmental standards apply equally to municipal and private parties. It demonstrates that no entity — regardless of size or political power — is above environmental law. This precedent:

- **Reinforces the legitimacy of environmental regulations**
- **Demonstrates that regulatory standards are applied fairly**
- **Deters other municipalities from similar non-compliance**
- **Rebuilds public confidence in environmental governance**

D. Seriousness of Harms Requires Serious Enforcement Response

The documented harms in this case are substantial and measurable:

- **$25–30 million in collective property value losses** for 111+ waterfront homeowners
- **Loss of navigability** — property owners cannot navigate or use waters they own access to
- **Destruction of protected species habitat** — federally threatened manatees losing designated habitat
- **Loss of public trust values** — citizens losing ability to navigate and recreate on state waters
- **Irreversible ecosystem degradation** — loss of vegetation and benthic communities requiring years to recover

These are not abstract or technical violations. They represent real, measurable harm to real people and to the environment. The severity of the harms justifies a serious and comprehensive enforcement response.

CONCLUSION

The facts presented in this narrative, when combined with the comprehensive supporting documentation, establish a clear, overwhelming, and compelling case for enforcement action by the Florida Department of Environmental Protection.

The City of Jacksonville has violated its MS4 permit for more than two decades. It has knowingly deferred maintenance of critical stormwater infrastructure. It has failed to construct required infrastructure. It has allowed sediment to discharge into Hogpen Creek, violating water quality standards. It has destroyed designated manatee habitat. It has caused measurable harm to private property owners, municipal revenues, and the aquatic environment.

Critically, this is not a case of inadvertent non-compliance or unfamiliarity with regulatory requirements. The City:
- **Acknowledged** its responsibility for Hogpen Creek sedimentation in 2003
- **Funded remediation** demonstrating understanding of the problem and its solution
- **Was sued** by property owners for the same infrastructure failures
- **Received expert engineering documentation** of causation and needed corrections
- **Deliberately defunded** its maintenance inspection program in the late 1990s
- **Selectively enforces** identical sediment control standards against private parties while exempting itself

This pattern of knowledge coupled with deliberate non-compliance justifies vigorous enforcement action.

The requested Consent Order is reasonable, proportionate, and necessary. It:
- **Compels correction** of the root causes of sedimentation (missing weir, failed silt pond, defunded maintenance)
- **Requires restoration** of the creek to navigable condition through comprehensive dredging
- **Establishes long-term** safeguards through mandatory monitoring and maintenance protocols
- **Assesses penalties** adequate to deter future violations and recover economic benefit
- **Includes oversight mechanisms** to ensure compliance and prevent abandonment

The complainants respectfully urge FDEP to exercise its full enforcement authority to compel compliance, deter future violations, protect the public interest in clean navigable waters, and restore faith in

the rule of law by demonstrating that environmental standards apply equally to all entities, public and private.

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Supporting Documentation:
- Attachment A: Complainant Identification and Standing
- Attachment C: Photographic Evidence and Site Documentation
- Attachment D: Property Records and Valuation Data
- Attachment E: City Ordinances and Historical Documents (2003-2005)
- Attachment F: Technical Analysis and Sediment Survey Data
- Attachment G: Legal Memorandum and Statutory Citations
- Attachment H: Devo Engineering Report — Ellis Property Preliminary Engineering Opinion (July 23, 2014)
- Attachment I: SJRWMD Permit #4-031-17631-6 — Sandalwood Canal Improvements (2007-2008)
- Attachment J: Ellis Lawsuit Analysis and Strategic Summary
- Attachment K: Comprehensive Research Analysis — Strategic Impact Assessment (May 2026)
- Attachment L: Federal Jurisdiction Documentation — USACE Hogpen Creek Determination
- Attachment M: Manatee Habitat Designation and Protection Plan Documentation
- Attachment N: Professional Hydrographic Survey Data — January 4, 2024 (Scientific Causation Evidence)
- Attachment O: Ordinance 2023-0149 — Special District Cost-Shifting Documentation