

Board of County Commissioners

**Environmental Protection Division
Lakeshore Protection Program:
Compliance and Enforcement Analysis**

Work Session

July 30, 2024

Agenda

- Purpose
- Background
- Overview of Program
- Enforcement Options
- Program Initiatives
- Summary
- Recommendations





Purpose

- Provide context relating to enforcement of the County's Lakeshore Protection Program regulations
- Respond to Board questions concerning contractor liability and responsibility for code violations

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Background

1-27-23

- Letter to D1 from Butler Chain of Lakes Advisory Board (BCLAB)

6-27-23

- D1 memo to Mayor Demings requested a Commissioner's Report for BCC Discussion

10-24-23

- Commissioner's report presented to BCC
- Staff directed to review issues and provide update at a Work Session



Background

Summary of D1 Memo and Commissioner's Report Concerns

Concern #1

Illegal lakeshore habitat clearing by contractors

Concern #2

Unenforced violations of lakeshore regulations

Concern #3

Contractors not held responsible for violations, fees, fines, and restoration

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Overview of Lakeshore Protection Program

Permitting

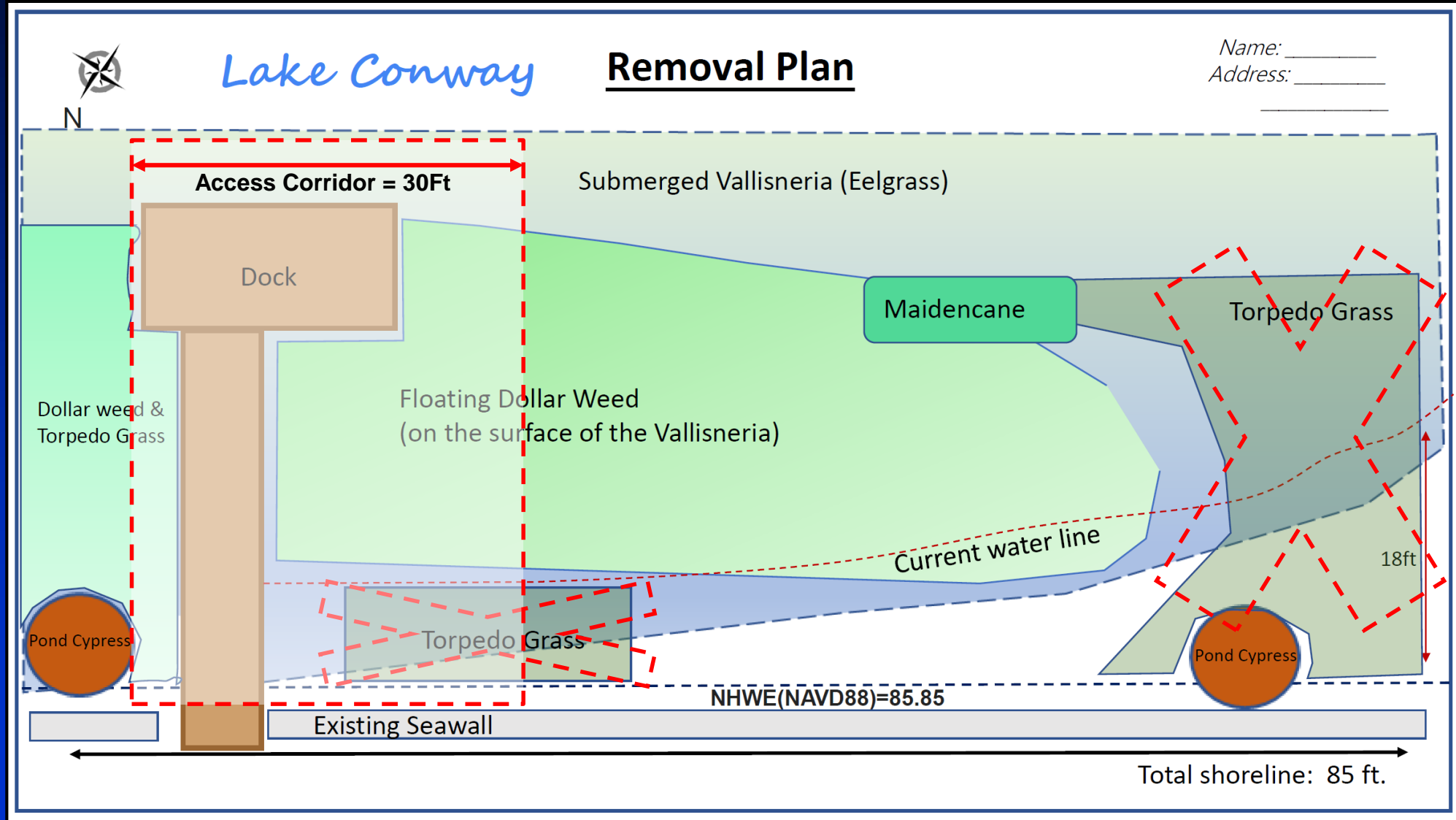
- Chapter 15, Article VII. Lakeshore Protection
- County Charter allows EPD to assert permitting authority in municipalities without an equally restrictive code
- Five of eleven municipalities have either no lakeshore protection code, or a code that is less stringent
- County permits required in Belle Isle, Edgewood, Oakland, Ocoee, and Windermere
- Approx. 12,500 lakefront lots under County jurisdiction for lakeshores protection (>17,500 lake lots County-wide)

Municipality	County Permit Required
Apopka	x
Belle Isle	✓
Eatonville	x
Edgewood	✓
Maitland	x
Oakland	✓
Ocoee	✓
Orlando	x
Windermere	✓
Winter Garden	x
Winter Park	x



Overview of Lakeshore Protection Program

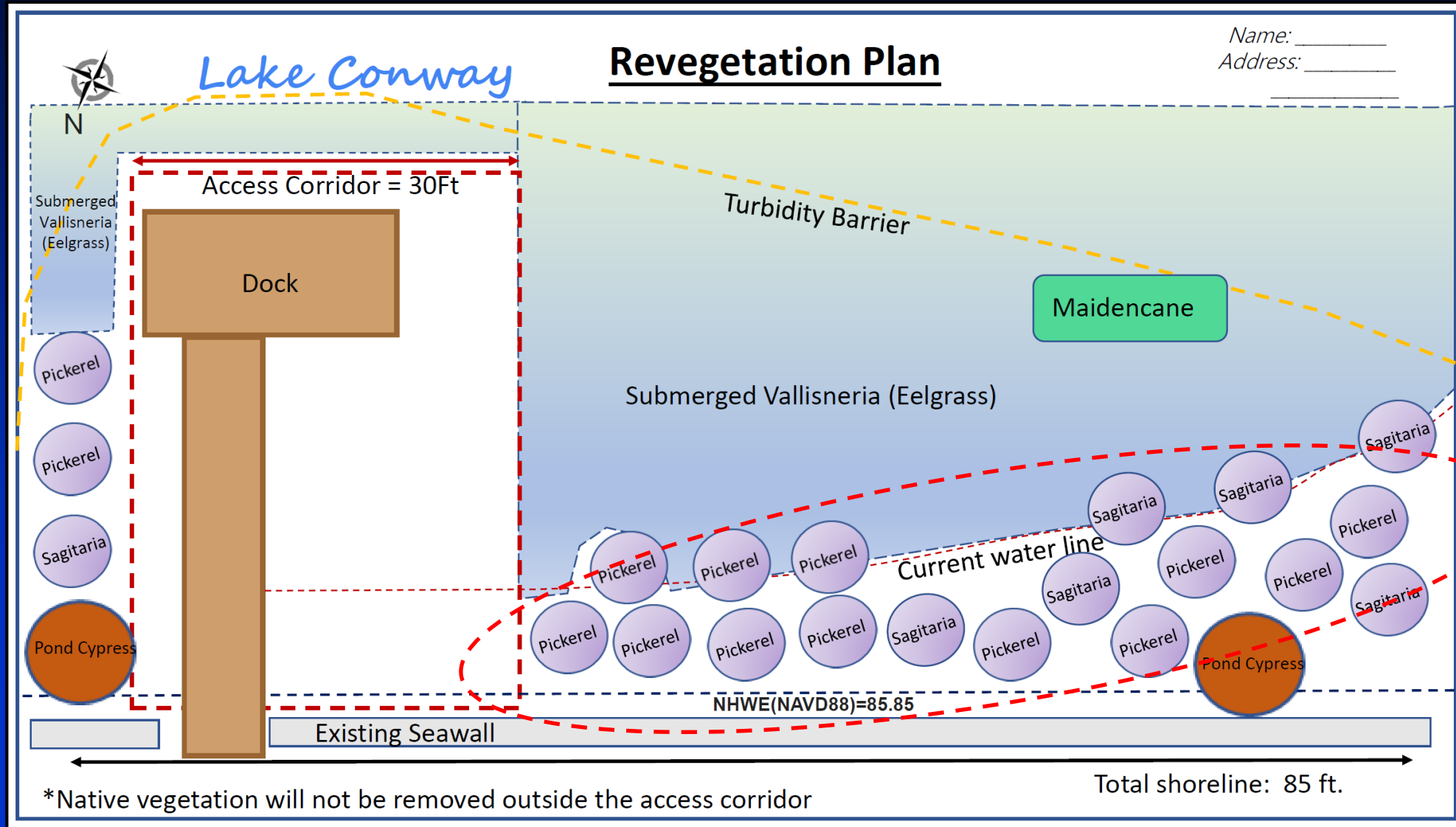
Permitting





Overview of Lakeshore Protection Program

Permitting





Overview of Lakeshore Protection Program

Permitting

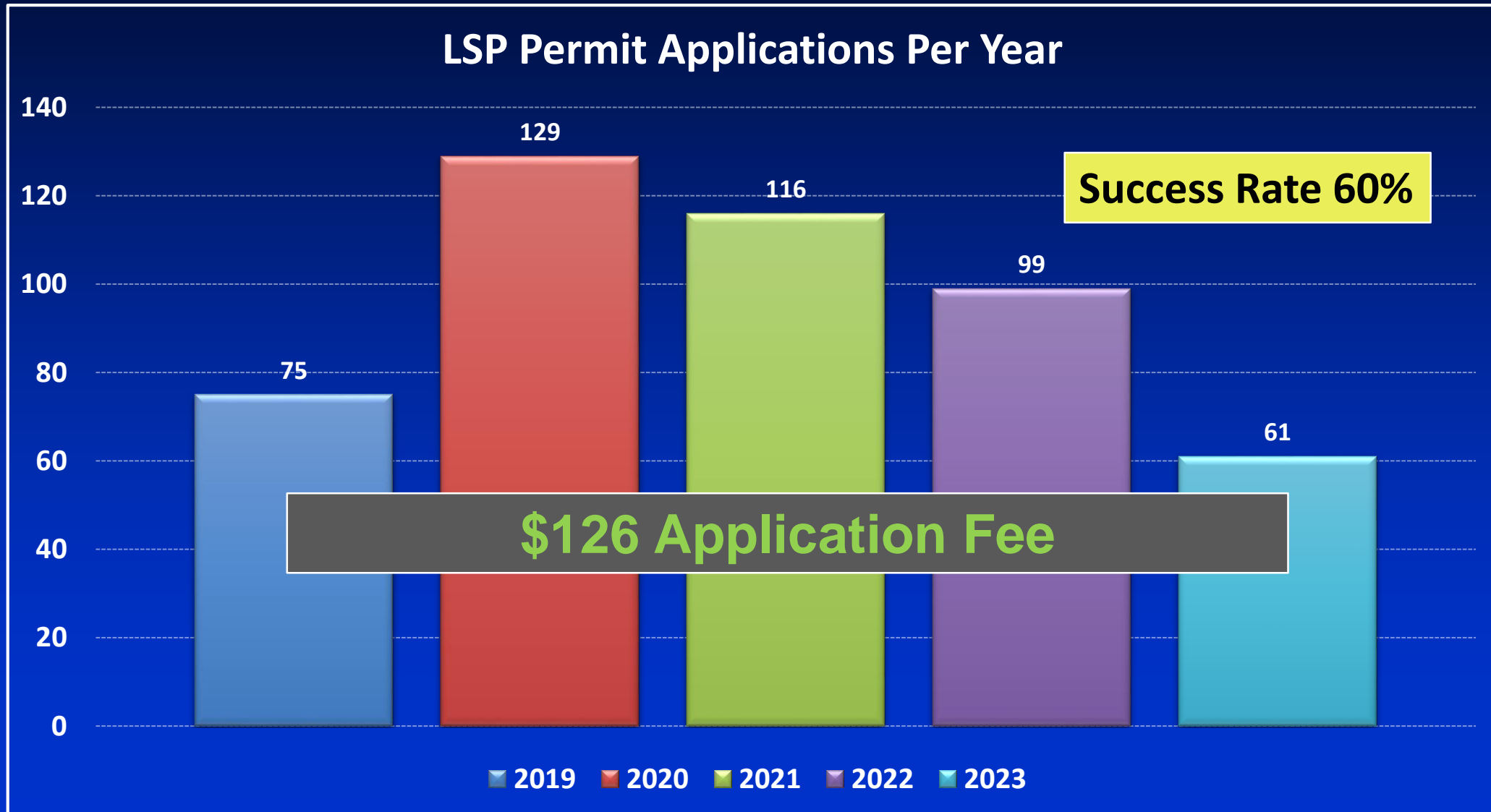
- Successful planting examples





Overview of Lakeshore Protection Program

Permitting





Overview of Lakeshore Protection Program

Compliance & Enforcement

Concern #1

Illegal lakeshore habitat clearing by contractors



Overview of Lakeshore Protection Program

Compliance & Enforcement

- **Concern: Online, print and signage ads for lakefront beach creation**
 - Staff contact these companies and provide them with educational materials. A record of the outreach is documented.



Beachfront

If you live on a lake, you already know how amazing it can be. Our back yards can be a great escape to unwind and let our worries float away. Living in Central Florida, the beach is only a short time away, and sometimes we dream of the beach but are too busy to get away. Wouldn't it be great to look out and see a beach out of your window? If you can't go to the beach, why not bring the beach to you?

During the summer many families enjoy spending time on the lake, with [redacted] you can now have a brand new type of fun. By removing all vegetation and bringing in fresh sand, we can create lake beachfronts on your property or restore past beaches to their original condition.

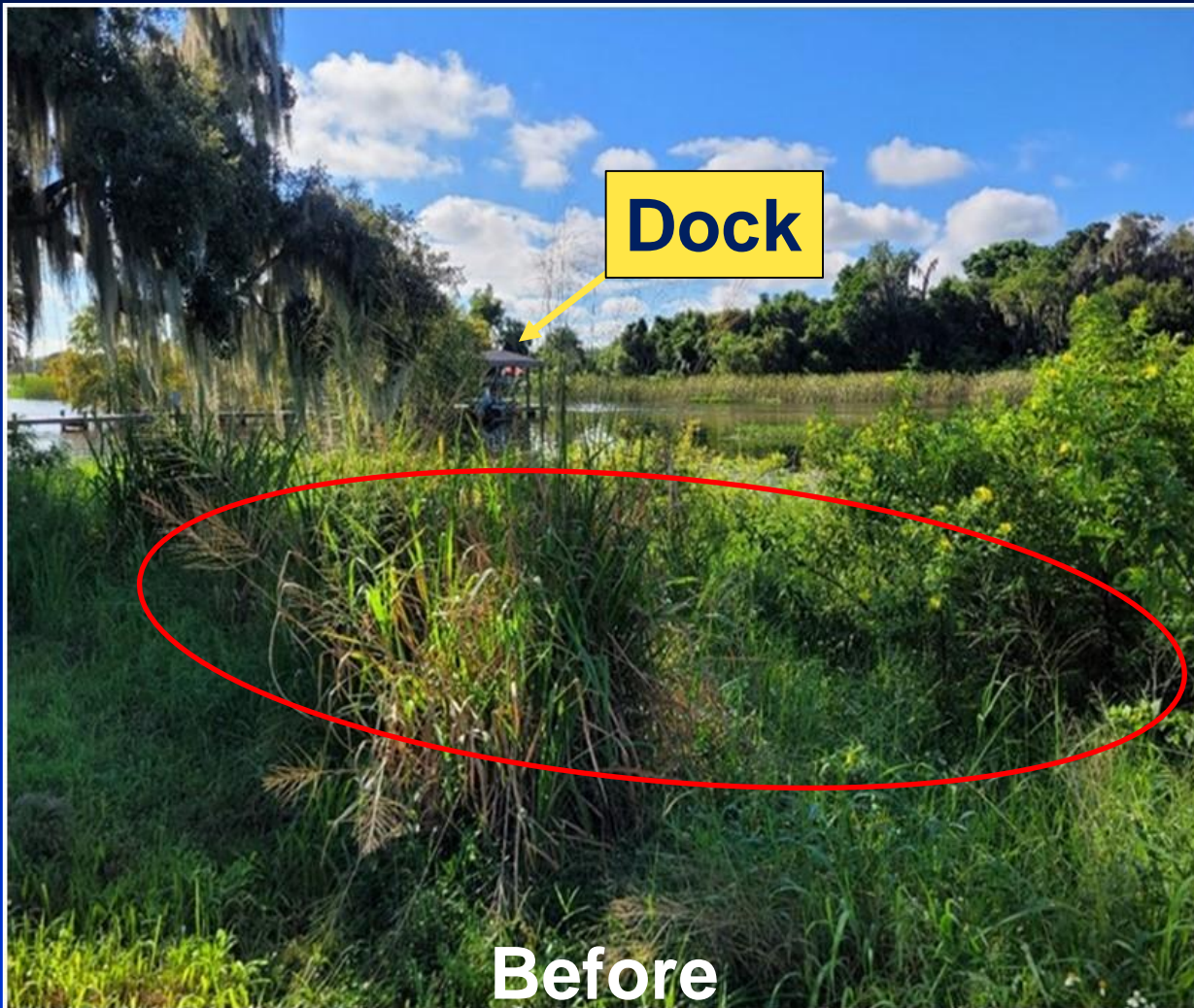
At [redacted] we can turn your lakeside backyard into your beach! Imagine stepping out of your door onto a beautiful sandy beach with palm trees swaying in the breeze. Let your dream back yard become a reality while you melt your troubles away in your private tropical paradise.





Overview of Lakeshore Protection Program

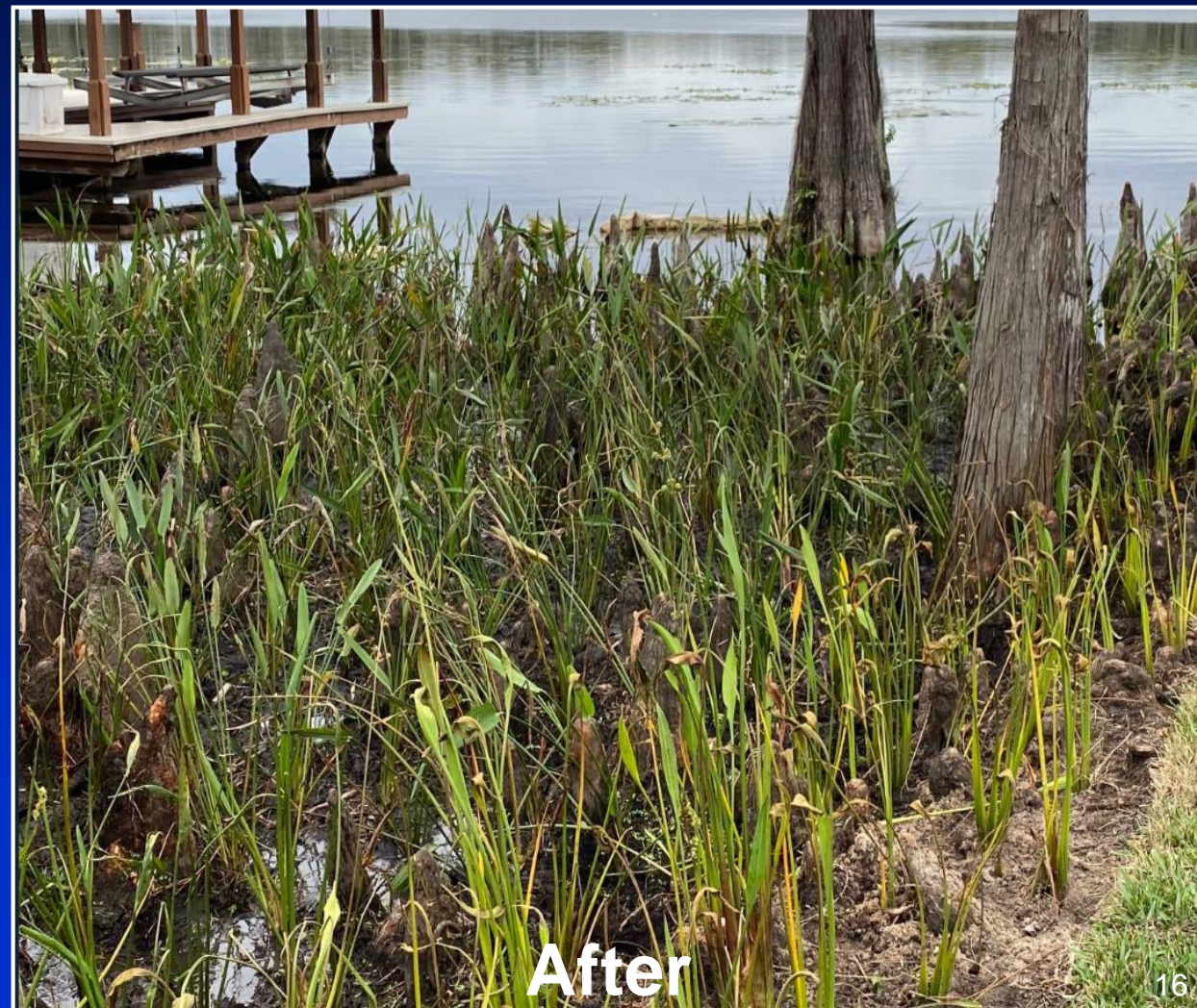
Compliance & Enforcement





Overview of Lakeshore Protection Program

Compliance & Enforcement





Overview of Lakeshore Protection Program

Compliance & Enforcement

Other Violation Examples





Overview of Lakeshore Protection Program

Compliance & Enforcement

- **Butler Chain Analysis:**
 - Aerial photos reviewed for beach-like shorelines in 1984 and 2024
 - 4% increase in beach-like shorelines over 40 years
 - 117% increase in number of developments on lakefront lots





Overview of Lakeshore Protection Program

Compliance & Enforcement

Concern #1

Illegal lakeshore habitat clearing by contractors

■ Staff Analysis:

- While illegal clearing does occur, various pathways exist for staff to be made aware of violations
- cursory review of aerial photos suggests only a minor increase in occurrence of illegal clearing over four decades



Overview of Lakeshore Protection Program

Compliance & Enforcement

Concern #2

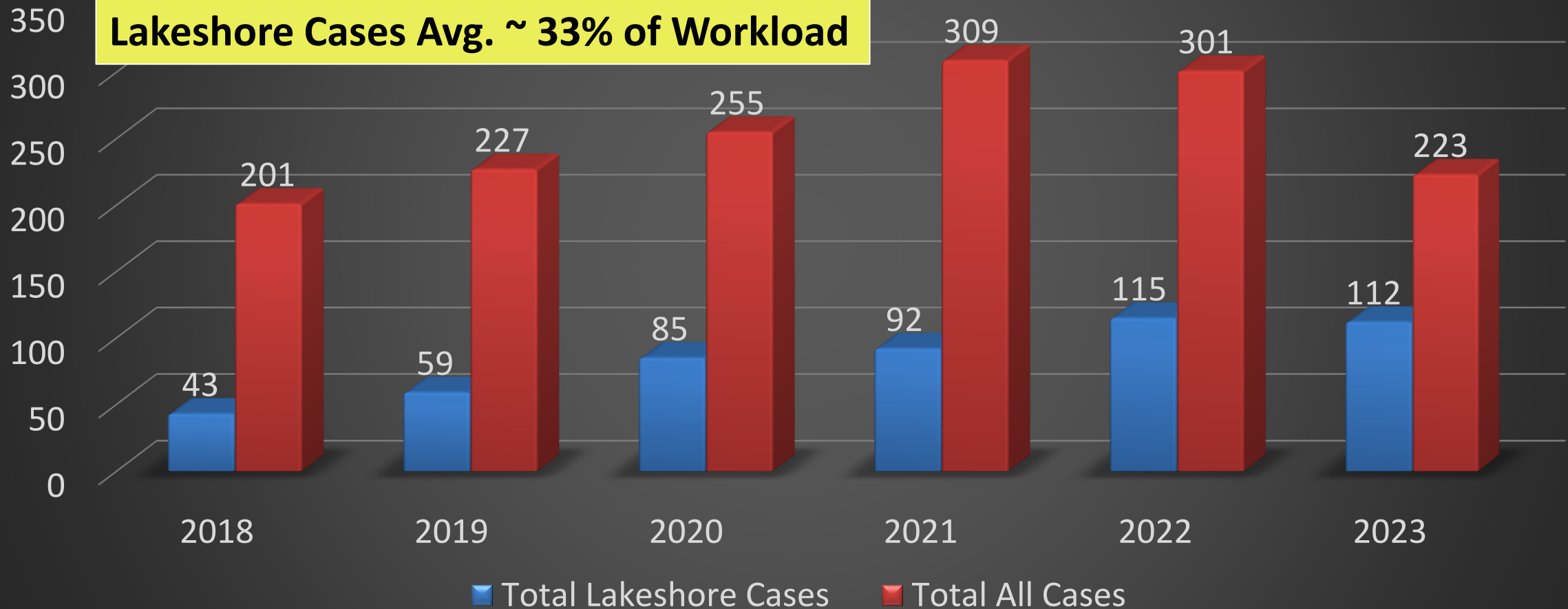
Unenforced violations of lakeshore regulations



Overview of Lakeshore Protection Program

Compliance & Enforcement

Lakeshore Cases vs. All Cases

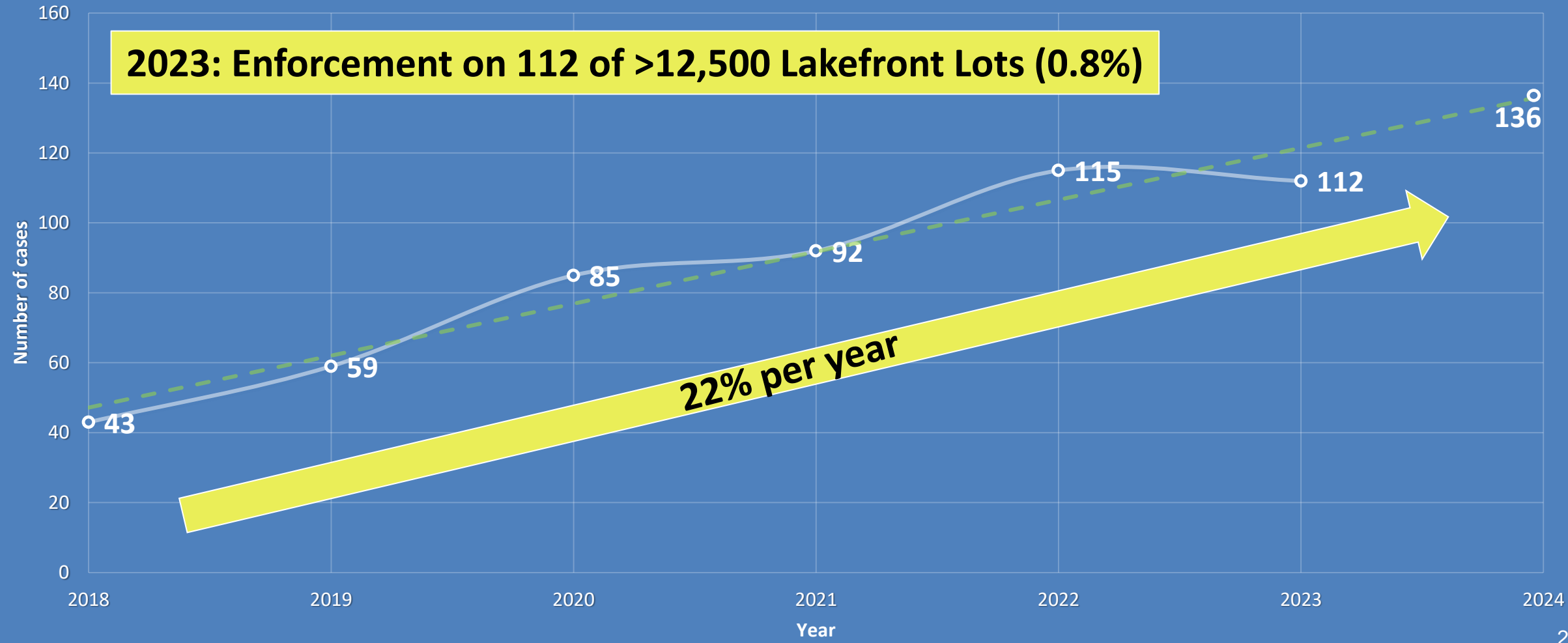




Overview of Lakeshore Protection Program

Compliance & Enforcement

TOTAL OF LAKESHORE VEGETATION CASES PER YEAR



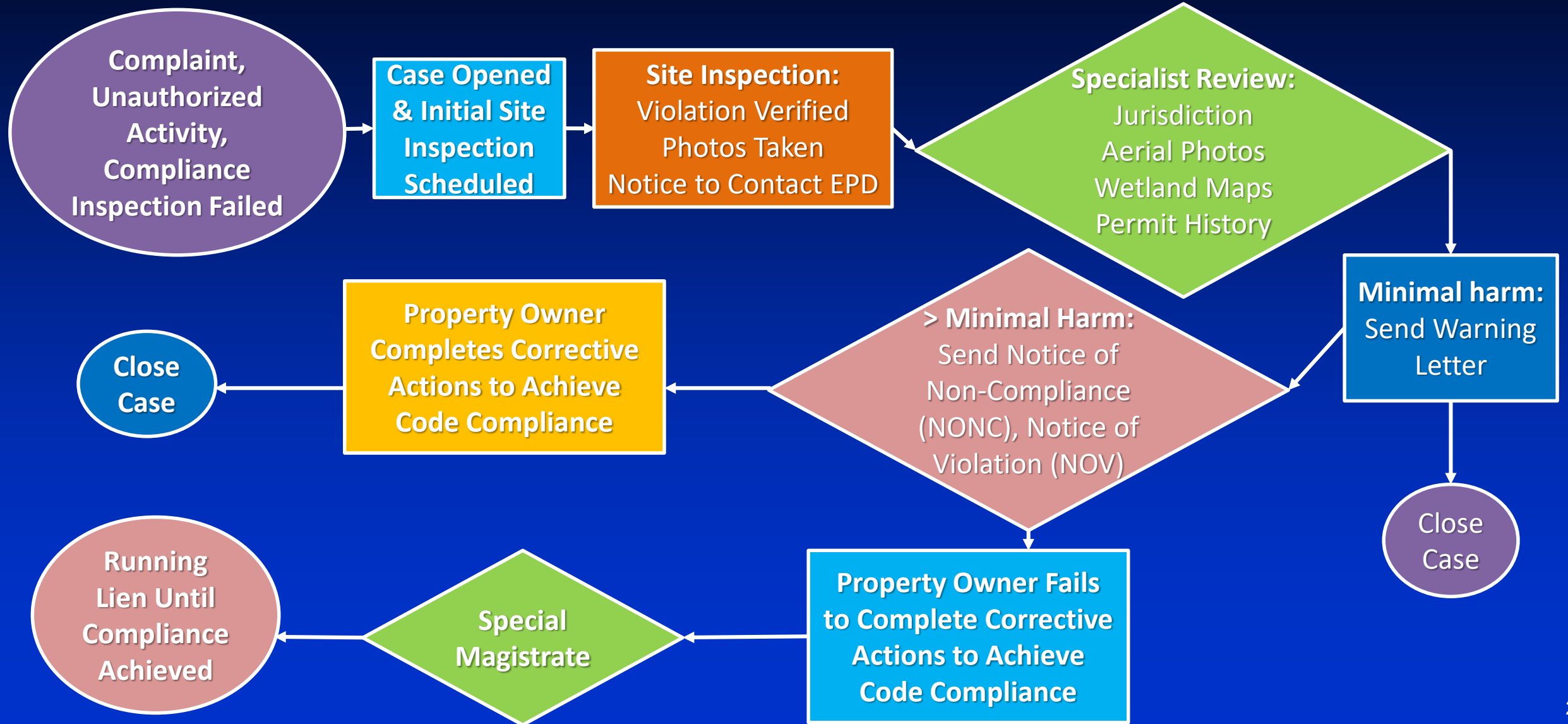
2023: Enforcement on 112 of >12,500 Lakefront Lots (0.8%)

22% per year



Overview of Lakeshore Protection Program

Compliance & Enforcement





Overview of Lakeshore Protection Program

Compliance & Enforcement

Penalty Determination Matrix

Median Penalty: \$4,000

Typical Range: \$200 - \$20,000

Extent of Deviation From Code

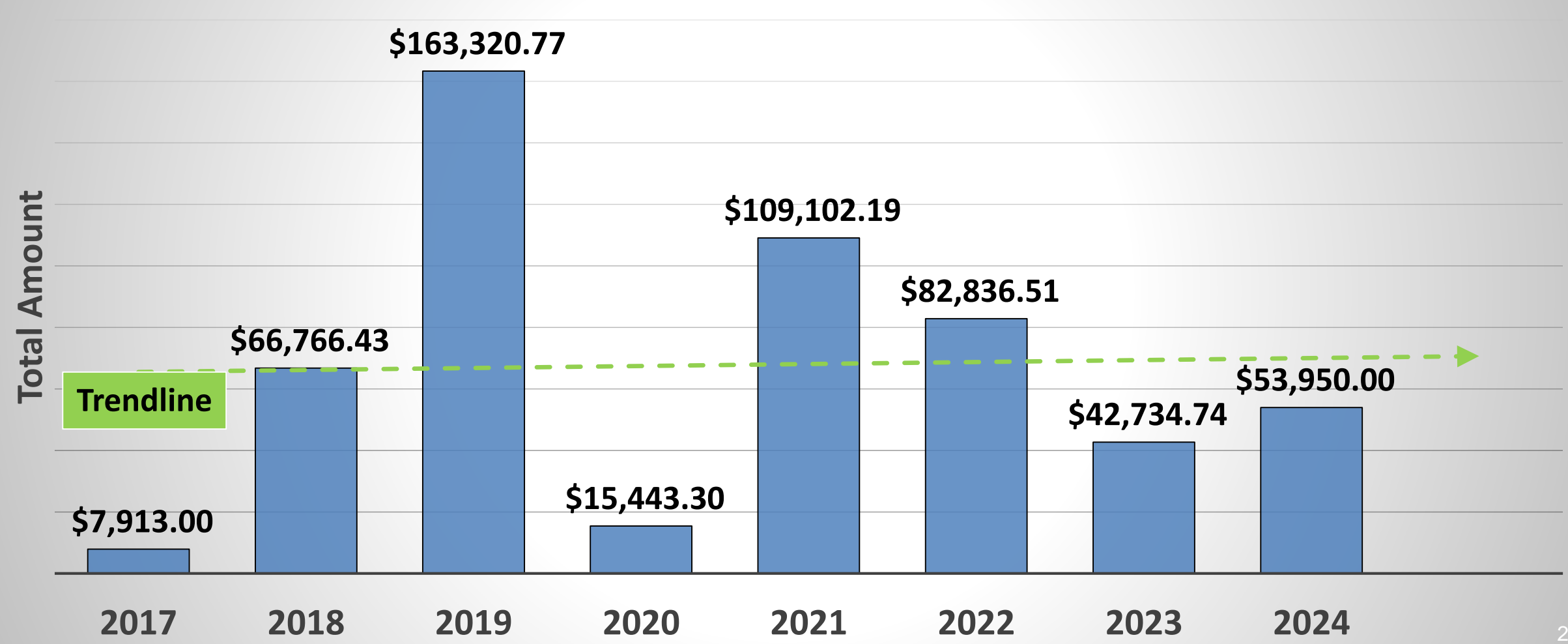
		Extent of Deviation From Code		
		Major	Moderate	Minor
Potential for Harm	Major	\$10,000	\$7,000	\$4,000
		to \$6,000	to \$4,000	to \$2,000
	Moderate	\$5,999	\$3,999	\$1,999
		to \$2,200	to \$1,500	to \$800
	Minor	\$2,199	\$1,499	\$799
		to \$1,000	to \$600	to \$200



Overview of Lakeshore Protection Program

Compliance & Enforcement

Penalties Remitted (all case types)

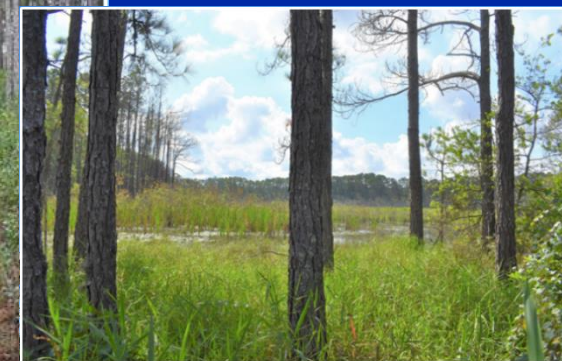




Overview of Lakeshore Protection Program

Compliance & Enforcement

- Conservation Trust Fund (CTF) is utilized for land management activities that assist in the enhancement and restoration of Green PLACE properties, including:
 - Invasive species control
 - Controlled burning
 - Trail maintenance
 - Habitat management





Overview of Lakeshore Protection Program

Compliance & Enforcement

Concern #2

Unenforced violations of lakeshore regulations

■ Staff Analysis:

- The County has strong compliance and enforcement programming to incentivize compliance with lakeshore regulations

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Enforcement Options

Concern #3

Contractors not held responsible for violations, fees, fines, and restoration

- **Board Question: Can we pursue enforcement action on contractors for unauthorized clearance of vegetation?**



Enforcement Options

Authority

▪ Permitting and Enforcement Authority

–Chapter 15, Article VII. Lakeshore Protection

- Section 15-254 – Permit; appeals

- “All those persons desiring to perform or cause to be performed any clearance of shoreline vegetation shall be required to obtain a permit...”

- Section 15-256 – Penalties; enforcement

- Environmental Protection Officer (EPO) may issue a written Notice of Violation to the offending person.

–Chapter 33, Special Districts

- Lake Conway and Windermere Water and Navigation Control Districts

- “Person” is defined as “an individual, firm, partnership or corporation.”



Enforcement Options

Formal Administrative Process

■ Section 15-256, Article VII

- EPD issues a Notice of Violation (NOV) to any offender responsible for the violation
 - Notice must include description of site conditions and provisions violated
 - Notice must set forth the remedial action necessary to correct the violation
- NOVs pursued through Special Magistrate process
 - Each Respondent must be served NOV
 - Property posted
 - Hand-delivered
 - Agent of any business Respondent
 - Due process and opportunity to be heard govern hearing
 - Each Respondent has a right to appeal to Circuit Court
- Failure to comply with Special Magistrate (SM) Order allows County to pursue lien



Enforcement Options

Formal Civil Process

- **Section 15-36, Article II**

- EPD may pursue violations in a court of competent jurisdiction

- Proceedings governed by Florida Rules of Civil Procedure and Chapter 90, F.S. (Evidence Code)

- **Parties**

- Any party whose presence is necessary or proper to a complete determination of the cause is appropriate as a Defendant to the matter

- **Complaint**

- Sufficient statement of ultimate facts showing the County is entitled to relief

- **Service**

- Summons and copy of Complaint issued by Clerk of Court

- Service by an officer authorized by law to serve process



Enforcement Options

Formal Civil Process (cont.)

■ Considerations for Formal Civil Action

- Multiple Defendants could allow various “blame-shifting” theories to become the focus of the case
- Timing of case progress not controlled by County but subject to docket management by Court
 - Appeals could lead to delayed enforceability of any Judgment
- Staff time
 - Discovery requests
 - Depositions
 - Court appearances
- Business reorganization to avoid judgment

- ### ■ Staff Analysis: EPD has the authority to prosecute contractors; Special Magistrate process most efficient and effective method to achieve compliance



Enforcement Options

County Licensure of Lakeshore Contractors

- **Board Question: Can Orange County require licensure for removing lakeshore vegetation?**



Enforcement Options

County Licensure of Lakeshore Contractors

- **Section 163.211, F.S.- Licensing of occupations preempted to state**
 - **(2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE. — The licensing of occupations is expressly preempted to the state,** and this section supersedes any local government licensing requirement of occupations with the exception of the following:
 - (a) Any local government that imposed licenses on occupations before January 1, 2021. However, any such local government licensing of occupations expires on July 1, 2024.
 - (b) Any local government licensing of occupations authorized by general law.

- **Staff Analysis: No – State preemption**



Enforcement Options

Florida Dept. of Business and Professional Regulation

- **Board Question: Can the Florida Department of Business and Professional Regulation (DBPR) assist us with prosecution of contractors and/or revocation of their licensure?**



Enforcement Options

Florida Dept. of Business and Professional Regulation

▪ DBPR Analysis

- Regulates 29 businesses and professions per Section 20.165, F.S.
 - Construction, cosmetology, electrical, etc.
- Process complaints regarding licensed professionals
- Defines “Contractor” as, “someone who demolishes, subtracts from, builds or improves any building or structure for compensation”
- Lawn maintenance and landscaping design, including design of planting plans and installing plants, does not require a license from DBPR

▪ Staff Analysis: No – Licensure not required by State for lakeshore vegetation service providers



Enforcement Options

Other Jurisdictions' Processes

- **Surveyed 29 state and local agencies about their compliance and enforcement on contractors for shoreline violations:**
 - Enforcement process (legal notices, Special Magistrate, civil action, etc.)
 - Compliance tools (monetary penalties, liens, permit holds, etc.)
- **Summary of responses**
 - Notices and monetary penalties issued commonly to both property owner and contractor
 - Compliance responsibility (including penalties) is ultimately on the property owner
 - Civil court actions for shoreline violations not typically utilized
 - Focus on compliance via warnings and non-compliance letters to defer formal enforcement.
 - Florida Fish and Wildlife Conservation Commission (FWC) two-letter approach has been successful



Enforcement Options

Concern #3

Contractors not held responsible for violations, fees, fines, and restoration

■ Staff Analysis:

- EPD has the codified authority to pursue contractors
- Non-compliance Notices and formal administrative process (i.e., Special Magistrate) are the most common, efficient and effective methods to incentivize compliance
- Local licensure or DBPR assistance not practicable
- Civil court for shoreline violations not widely utilized by other agencies

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Program Initiatives

- **Board Question: Can we require a form to be signed by the property owner that attests to them being educated on lakeshore protection requirements?**



Program Initiatives

Completed Efforts

■ Administrative

- 2021: LSP Application Updates:
 - Property owner must sign acknowledgement of requirements and limitations of the permit
- 2023 Enforcement Notices updates:
 - February 2023: Staff began copying contractors on Notices, when applicable
 - Fall 2023: Staff began to address both the property owner AND the contractor as co-respondents on Notices, when applicable

SECTION 4

TO BE COMPLETED BY REAL PROPERTY OWNER ONLY:

Please read each of the following requirements of the Lakeshore Restoration Permit and initial next to each statement confirming you have read and understand the requirements set forth by Orange County Ordinance, Chapter 15, Article VII.

I, _____, am the legal owner of _____ the property described herein.

I understand that the purpose of this permitted activity is to improve or enhance the ecological value of the shoreline and the adjacent waterbody.

I understand that the replanting of my shoreline with native vegetation to a minimum areal coverage of 80 percent within 30 days of the removal of the nuisance/invasive/exotic species is required.

I understand that if Orange County staff determines my property to have less than 40 percent areal coverage of nuisance/invasive/exotic vegetation upon site inspection, my permit application will be administratively closed.

I understand that replanting requirements may differ based on existing vegetation, community type, or other site conditions.

I understand that if my property is on an Outstanding Florida Water (OFW) or an impaired waterbody that I must meet stricter replanting requirements, such as plantings being installed more densely and diversity of revegetation must meet a minimum of five different species based on similar species in the watershed.

I understand that a turbidity barrier, or other sediment/erosion control measures, must be used for the entirety of the removal and replanting process.

I understand that no heavy equipment shall be used to alter topography, impact the soil, or result in excessive turbidity.

I understand that native trees are protected and will not be removed or impacted, unless specified and approved.

I understand that EPD staff shall have permission to enter my property at any reasonable time to ensure conformity with the approved plans and specifications approved by the permit.

I understand that if any native trees are removed, I will be required to replant appropriate native trees at a 4:1 ratio.

I understand that I may be required to address any outstanding enforcement/compliance items prior to the approval of my permit.

I understand that if Orange County staff determines that my shoreline replanting is insufficient, I may be held responsible for corrective actions that may include but not be limited to, replanting with additional native vegetation, paying penalties for non-compliance, paying fines for each day my property is out of compliance, and mitigation for impacts.

I understand that upon the transfer of ownership of the property the permit shall become void and a completed permit transfer request is submitted to EPD.

I, _____, understand and acknowledge the above statements and requirements of this permit application and the potential implications if I do not comply with my permit.

 Typed/Printed Name of Real Property Owner Real Property Owner Signature Date

 Corporate Title (if applicable)

Revised 11-18-2021
 EPC-025-2018-02

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Program Initiatives

- **Board Question: What are we doing on outreach on Lakeshore Protection Regulations?**



Program Initiatives

Completed Efforts

■ Educational

- August 2023: EPD sent an educational letter to all contractors known to provide lakeshore clearing services
 - Information included: Link to Lakeshore Protection Ordinance on Municode, Access Corridor, Permittable Activities, Replanting Requirements, etc.
- October 2023: All lakefront homeowners in Orange County received postcard regarding the benefits of a vegetated shoreline and Code requirements



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August 21, 2023

Re: Orange County Lakeshore Protection Regulations Informational Letter

Dear Lakeshore Contractor:

The Orange County Environmental Protection Division (EPD) would like to provide information regarding removal, trimming or thinning of vegetation on lakeshores and within adjacent conservation areas (wetlands), in Orange County.

The Lakeshore Protection (LSP) regulations can be found in Chapter 15, Article VII of the Orange County Code, or here: https://library.municode.com/fl/orange_county/codes/code_of_ordinances?nodeId=PTI1ORCOCO_CH15ENCO_ARTVII1APR.

Under this code, a lakefront property owner has the ability to remove and maintain a 30-foot-wide (or 20 percent of their shoreline, whichever is greater) vegetation free "access corridor" which begins at the Normal High Water Elevation (NHWE) and continues out waterward. The property owner must include any boat allowed within conservation areas/easements.

Please be aware that any work outside of the access corridor will require a Lakeshore Protection Permit from EPD.

In situations where a lakeshore and/or an adjacent conservation area has become dominated by nuisance, invasive, or exotic vegetation, a LSP Permit may be issued to allow the selective removal of these non-beneficial species from outside of the allowed access corridor. Replanting the shoreline and/or adjacent wetland within 30 days of removal with appropriate native vegetation is required following removal of the non-beneficial species.

The Orange County LSP permit application can be found here: <https://www.orangecountyfl.net/PermitsLicenses/Permits/LakeshoreProtectionPermit.aspx>

Please note, all work in or immediately adjacent to a lakeshore or conservation area/easement requires that Best Management Practices (BMPs) are installed when doing work on land (i.e., silt fencing) and when doing work near or in a waterbody (i.e., turbidity barrier). Failure to follow the above guidelines may result in enforcement.

If you have any questions or concerns, please contact EPD at 407-836-1402 or at WetlandPermitting@ocfl.net.

Sincerely,

Karen Garrett-Kraus
Environmental Program Supervisor

KGK/TH/ERJ:gfjdr

Enclosures: Lakefront Homeowner Handbook: A Stewardship Guide for Orange County
Residential Permitting: A Pocket Guide for Lakeshores and Wetlands

Serving our community by conserving, protecting, and enhancing the environment for current and future generations.

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Program Initiatives

Ongoing Efforts

▪ Educational

- ‘Living Lakeshores’ webpage under development
- Quarterly mailing of EPD’s Lakefront Homeowner’s Guide for new lakefront homeowners
 - Provided with every permit and non-compliance letter
- Educational letter for HOAs (in progress)

Stormwater Runoff Rundown

HERE ARE SOME SIMPLE WAYS TO HELP CAPTURE STORMWATER RUNOFF:

- Keep native trees and vegetation and maintain natural drainage patterns.
- Plant native vegetation along the shoreline.
- Install a berm & swale system.
- Replant trees that die or fall down, even if you put them in a better location.
- Use a rain barrel to capture rain and runoff from your roof to use later for irrigation.
- Direct downspouts away from paved surfaces and into the yard where the water can percolate.
- Replace surfaces like concrete and asphalt with more permeable surfaces such as pavers and gravel. Install rain gardens and vegetated strips in the landscape.
- Use Florida-Friendly Landscaping™.

IT'S NO SECRET:

It rains a lot in Florida! All that rain is great for our subtropical ecosystems and helps keep our state green and beautiful. With so much rain though, especially in summer, it can be hard to prevent all pollutants from leaving your yard and flowing into your lake. While reducing the amount of pollutants on your property is essential for promoting the health of your lake, you can also help *keep your lake clean by capturing as much runoff as you can*. By capturing runoff and allowing it to percolate into the soil rather than flow directly into the lake, you can use the ground to filter pollutants before they have a chance to reach the lake.

3



Program Initiatives

Ongoing Efforts

- Educational (cont)
 - October 2024: OC Community Conference (*Bridging Technology, Community, & You*)
 - Partnering with Orlando Regional Realtor's Association on outreach efforts
 - > 4,691 lakefront property sales in Orange County 2019-2023
- Training
 - Annual LSP Contractor training class
 - Annual training for Lake Butler, Conway, Jessamine Marine Patrol on identifying potential environmental violations



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Summary

- **The County has a robust lakeshore permitting and enforcement program**
- **Illegal lakeshore vegetation clearing does occur, but data suggests at a small scale**
- **EPD has the authority to process violations of regulations; compliance is the overarching goal**
- **Administrative and civil enforcement processes are available to prosecute contractors, but not without challenges, including efficacy and resources**
- **Pursuing lakeshore contractors through licensure is preempted or not applicable**
- **Property owners and contractors can both be held responsible for violations; however, the property owner is ultimately responsible for code compliance**
- **EPD invests heavily in training, strategic partnerships and education to increase awareness of lakeshore regulations for contractors and property owners**

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Recommendations

- **Implement additional administrative process changes (e.g., FWC two-letter strategy) to include contractors as partners on resolution of violations**
- **Continue to strengthen partnerships with HOAs, other regulatory bodies and other stakeholders**
- **Continue outreach programming to increase public awareness of lakeshore regulations to support program goals**
- **Consider a future fee schedule update to include:**
 - Increase the LSP Application fee to reflect cost recovery of service
 - After-the-fact permit application fee
 - Re-inspection fee



Lakeshore Protection Program

Compliance & Enforcement

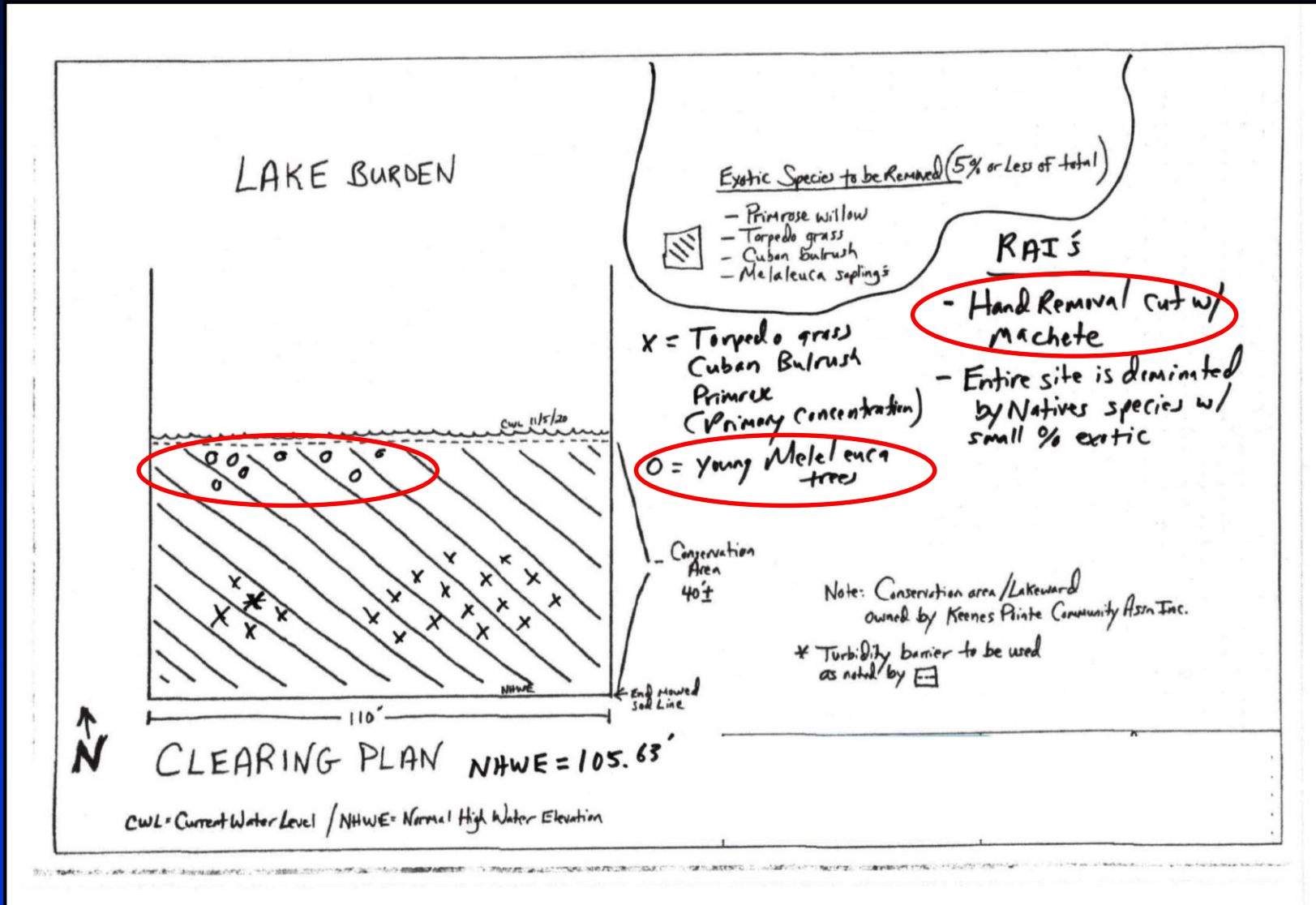
- **Workload and Staffing (all case types)**
 - 33.3 staff hrs spent per case
 - 500 open cases
(16,650 hrs)
 - 252 new cases per year
(8,392 hrs/yr)
 - Four existing full-time staff
(7,136 hrs/yr)





Overview of Lakeshore Protection Program

Permitting





Overview of Lakeshore Protection Program

Permitting

