

Ceitus

Watershed Council monthly meeting:
North Cape Coral Spreader Overview and Discussion
August 16, 2012
Moderator: Phil Buchanan, 283-4067

Organization of Discussion

Environmental issues

- “ Watershed photos (historical flows and manmade changes)
- “ Spreader photo (Spreader history and characteristics)
- “ Ceitus area photos (issues with the Ceitus Barrier)
- “ Back Bay damage photos (ever-increasing siltation)

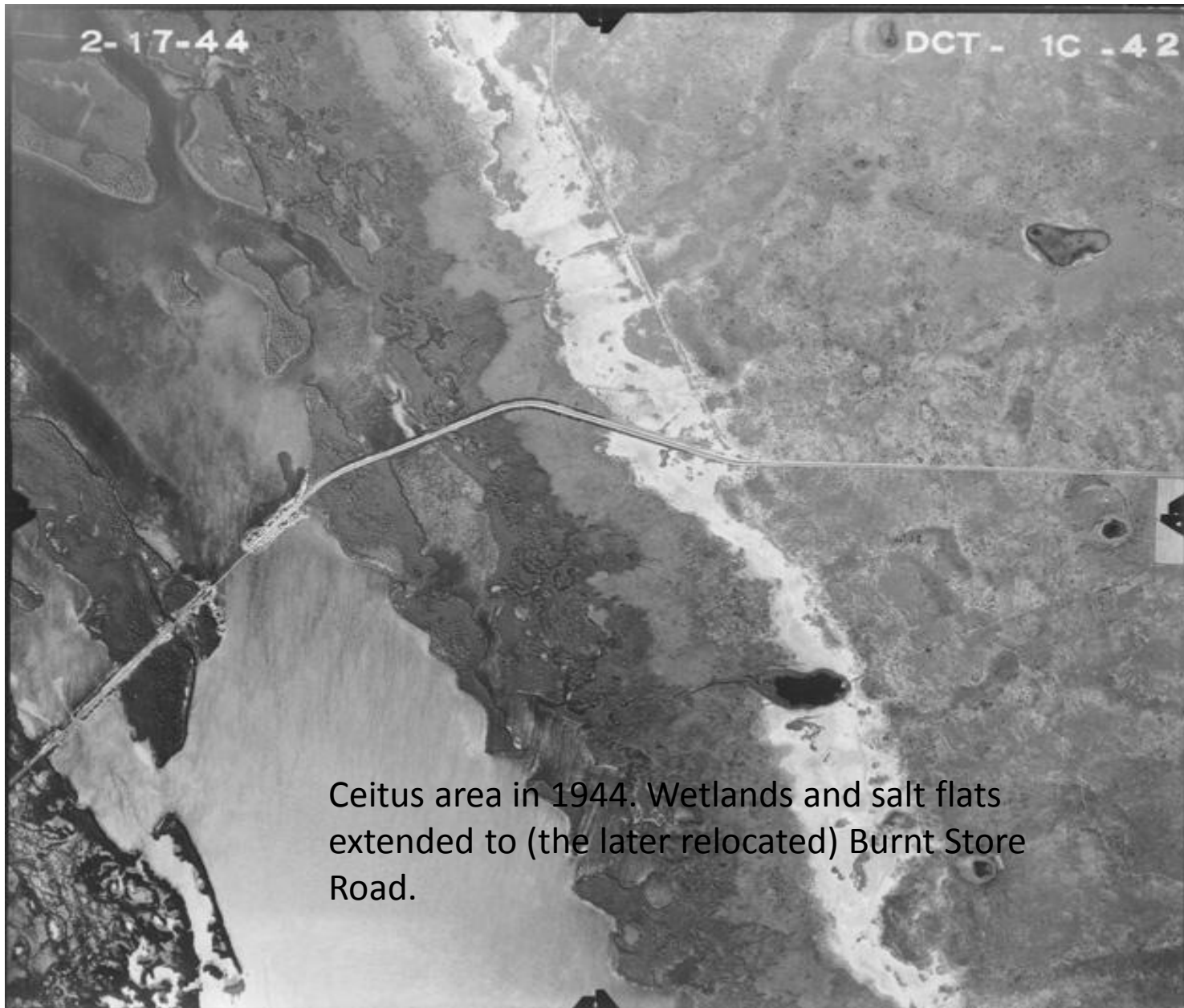
Legal issues

- “ 1977 Order # 15
- “ 2007 Consent Order
- “ 2008 Amended Consent Order
- “ Legal Action by Environmental organizations and Lee County
- “ Settlement Agreement
- “ 2008 2nd Amended Consent Order
- “ EMA proceedings and results
- “ Permit application and denial
- “ Current status of legal proceedings

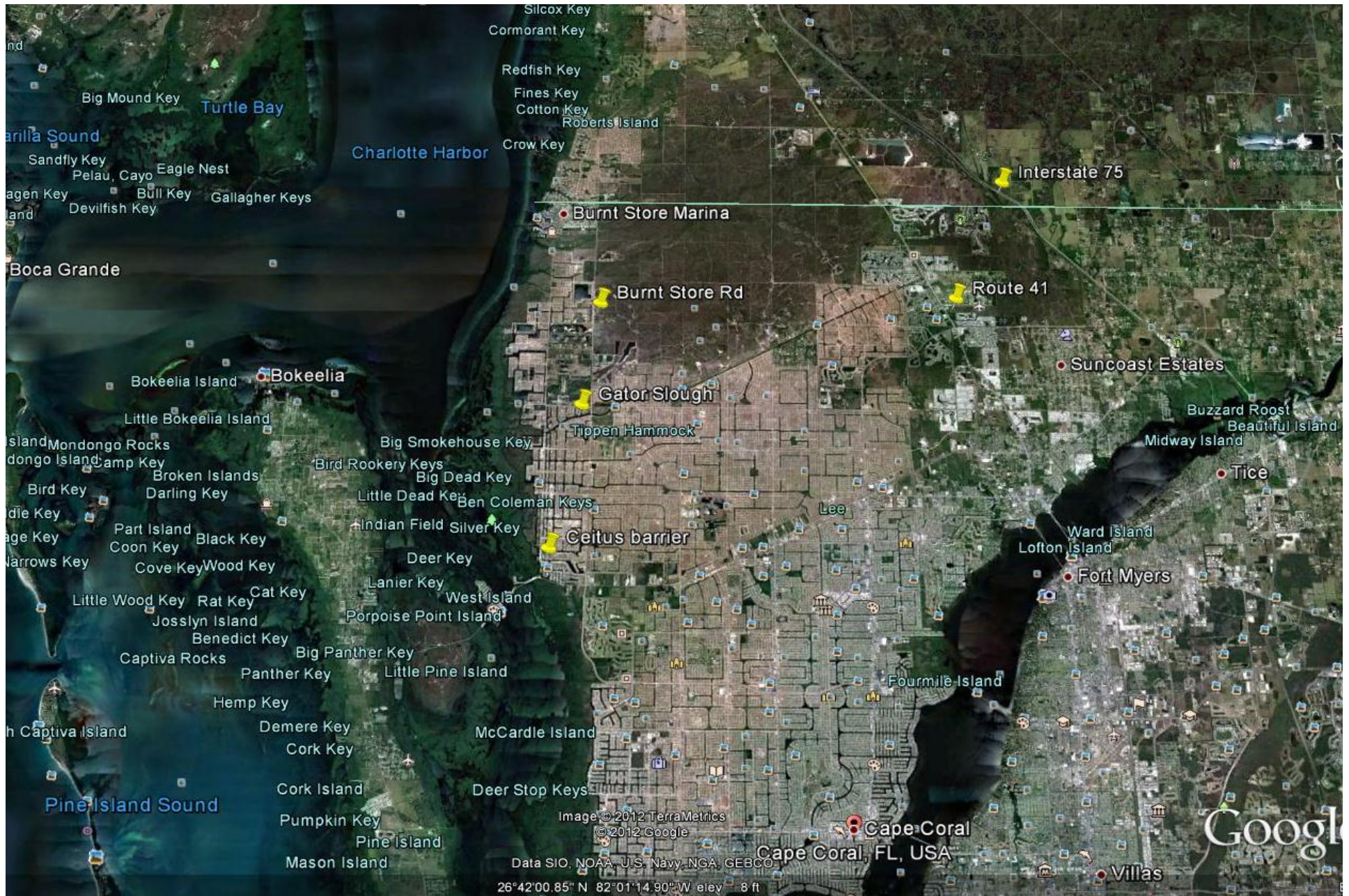
For copies of slides or related documents, contact Phil Buchanan at coolcherokee@comcast.com



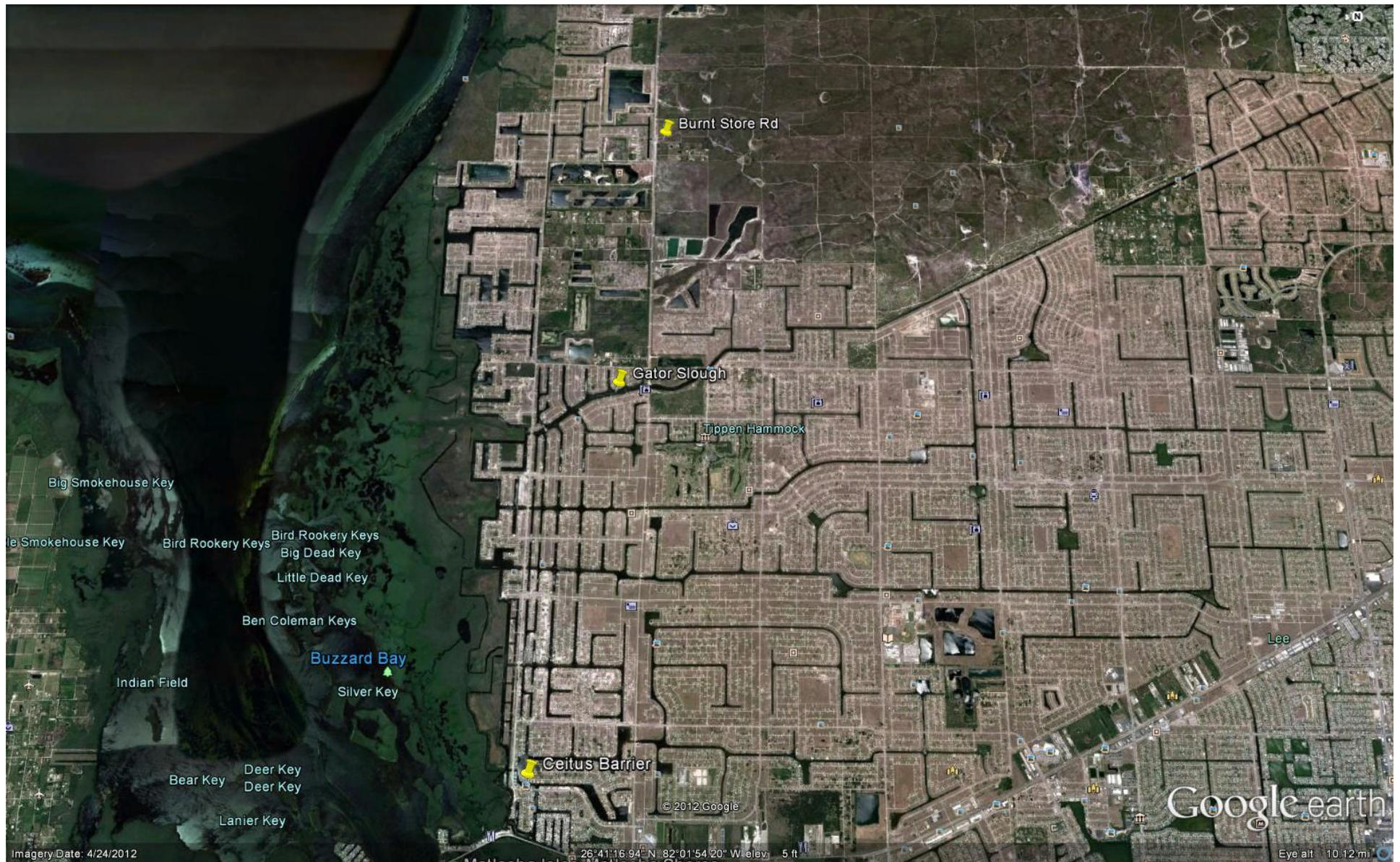
Matlacha about 1958. Note Cape Coral in background is just wetlands and woodlands.



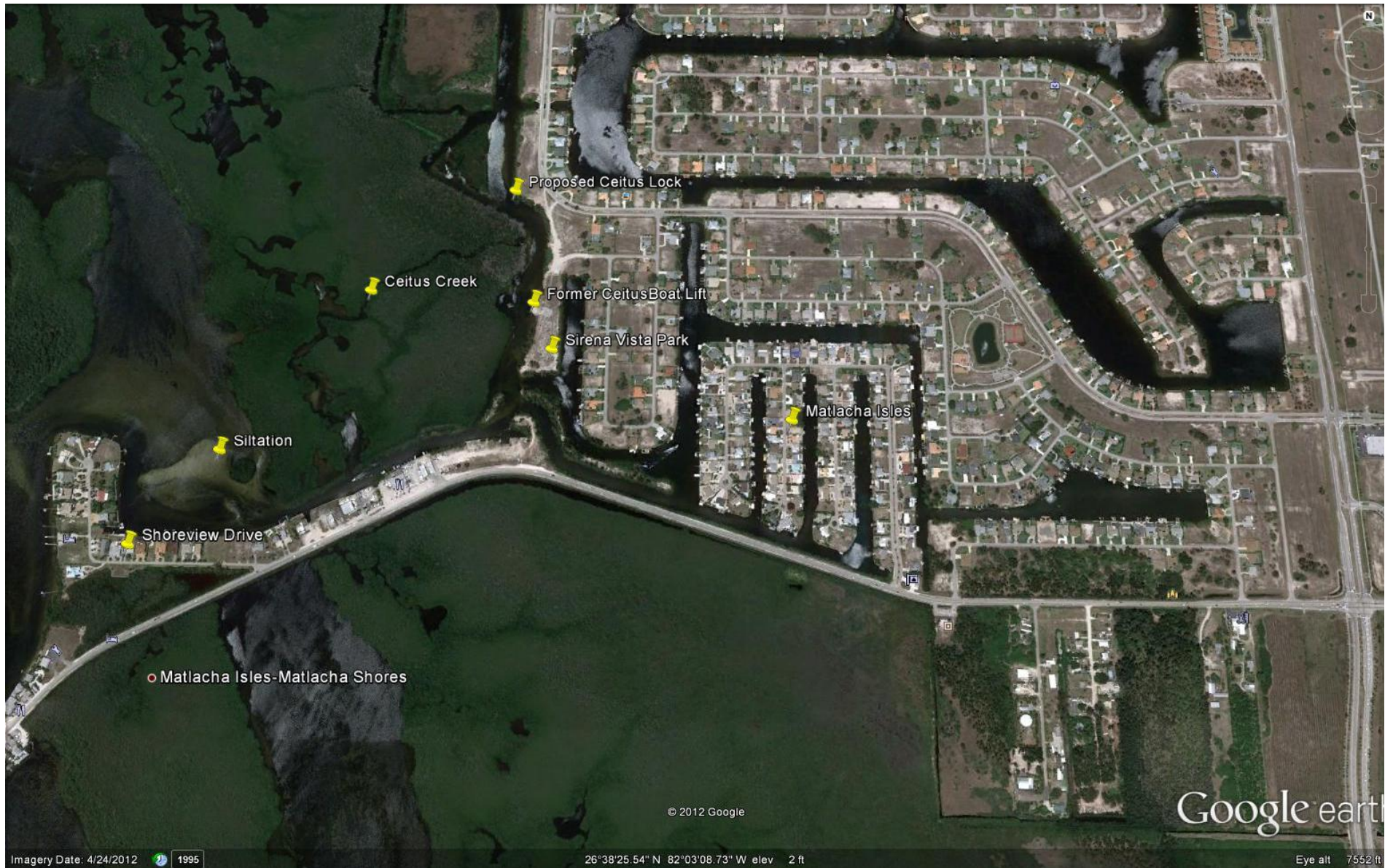
Ceitus area in 1944. Wetlands and salt flats extended to (the later relocated) Burnt Store Road.



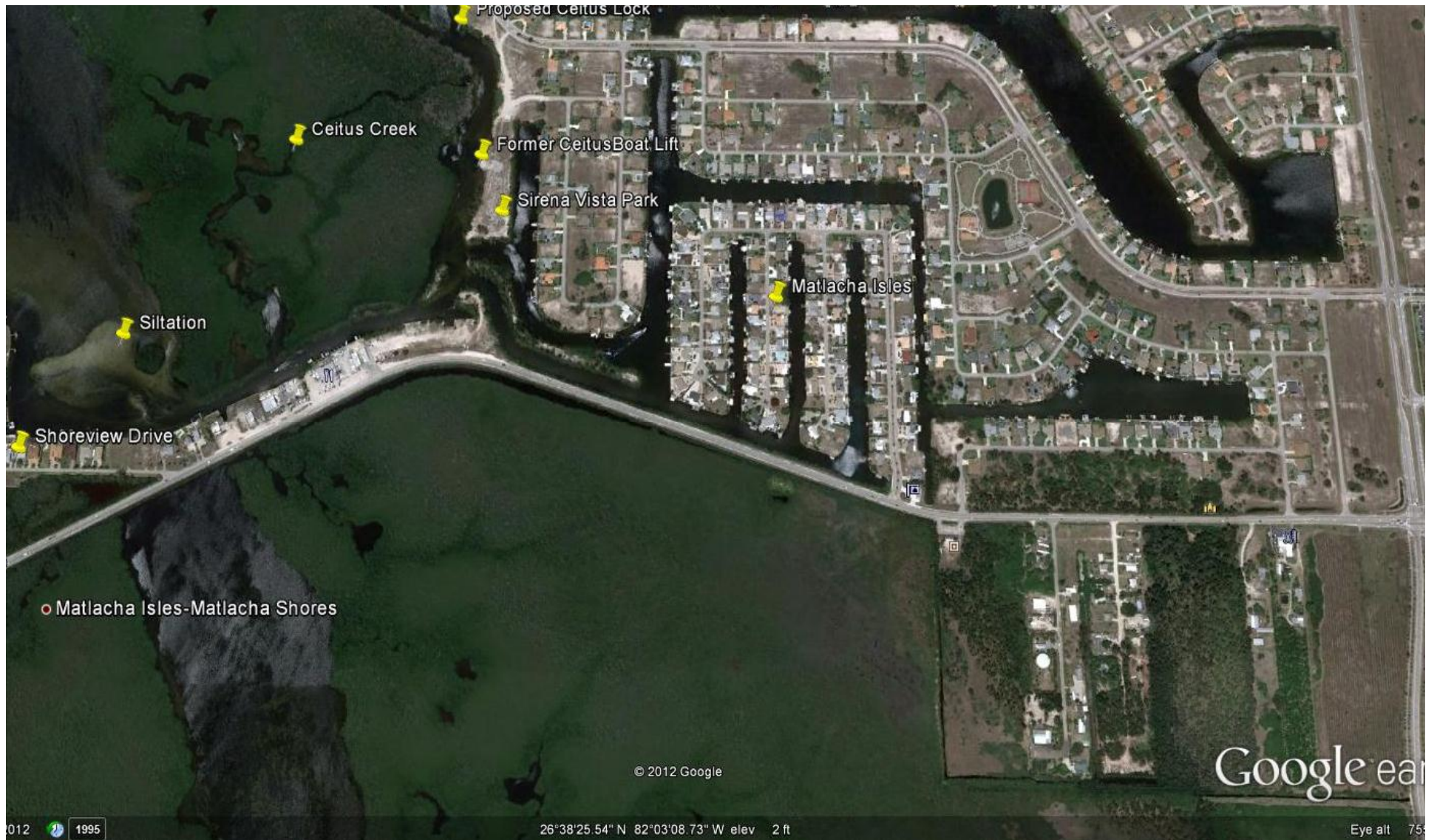
The North Spreader Watershed, some 115 square miles, receives some 3.3 million acre-feet of rain each year. Flow is southwest to Cape Coral North Spreader. Historically flowed into mangrove fringe, providing fresh water necessary for fish nursery. Removal of Ceitus Barrier redirected that flow to open water.



North Spreader system created in late 1970's to mitigate violation of illegal dredge and fill provisions of Clean Water Act. Purpose of Spreader was to restore historical water flows to the mangroves and wetlands. Cape developer also paid \$1 million fine, largest in Florida environmental history.



Ceitus Barrier at south end of Spreader was destroyed by Hurricane Charlie (2004) and vandalism, allowing fresh water to circumvent mangroves and wetlands and flow directly to open waters. Fish nursery is denied necessary fresh water.



Cape Coral refuses to restore Ceitus Barrier. DEP does not enforce it's own consent order.
Excess fresh water and siltation destroys North Matlacha marine ecosysstem.

Ceitus siltation 2007



Ceitus siltation 2008



2008

Ceitus siltation 2009



Ceitus siltation (Rawl photo #1)



Rawl photo #2



Rawl photo # 3





Ground view of siltation at low tide. Sea grass beds and marine life completely destroyed.



Dead marine life in Matlacha following Cape Coral's removal of damaged Ceitus Barrier (September, 2008).



Dead marine life includes sponges, tunicates, shellfish, and uprooted sea grasses.

Attitude



Environmentalists agree situation is intolerable.

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

DEPARTMENT OF ENVIRONMENTAL)
REGULATION,

)

Order No. 15

)

PROPERTIES, INC.,
County.

)

1977 Consent Order requiring Cape developer construction of North Spreader.

Sequence of Legal Actions

Order # 15: 1977, Imposed \$1 mil fine and required construction and maintenance of three spreader systems (largest environmental fine in Florida history?)

Consent Order: 2007, required reconstruction of Ceitus Barrier as lock at more northern location, provided for return of unspent remainder of the \$1 mil fine

Amended Consent Order: 2008, released Cape from any requirement to reconstruct Ceitus Barrier if they abided by terms of EMA, provided for return of unspent remainder of the \$1 mil fine

Appeal: 2008, By eleven SWF environmental organizations and individuals against Amended Consent Order (see later slide for details)

Appeal: 2008, By Lee County against Amended Consent Order

Settlement Agreement: 2008, Among all parties, remove damaged barrier, and agree to abide by findings of an EMA process (which must be by consensus) or barrier must be restored at better location. (See later slide for details). Documented as Second **Amended Consent Order**. DEP promises to issue permit to restore barrier within as little as one month after application

EMA: 2010, Vote is 14 to 4 to restore barrier (see later slide for details)

Permit: Cape Government makes pretense and factious permit application, and DEP denies for concocted reasons. DEP then returns unspent fine funds to Cape Coral, and declares Cape to be absolved of any further responsibilities. \$1 mil fine designated for maintenance of spreader was returner to violator and spent to destroy spreader.

STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS

THE SNOOK FOUNDATION, INC.
AUDUBON OF SOUTHWEST FLORIDA, INC.
CALOOSA HATCHEE RIVER CITIZENS ASSOCIATION, INC. ("RIVERWATCH")
RESPONSIBLE GROWTH MANAGEMENT COALITION, INC.
GREATER PINE ISLAND CIVIC ASSOCIATION, INC.
CALUSA LAND TRUST AND NATURE PRESERVE OF PINE ISLAND, INC.
PURRE Water Coalition Foundation, Inc.
SOUTHWEST FLORIDA WATERSHED COUNCIL, INC.
SANIBEL-CAPTIVA CONSERVATION FOUNDATION, INC.
PHILLIP G. BUCHANAN, AND
NOEL ANDRESS,
Petitioners,

v.

DEP File No. OGC 06-2345
Lee County, Florida

DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
STATE OF FLORIDA and
CITY OF CAPE CORAL
Respondents.

VERIFIED PETITION
FOR

Area environmental organizations join
to bring Chapter 120 action against DEP
and Cape Coral. Lee County brings
separate action.

Settlement Agreement

06/26/2008 10:32 18502452301

DEP OGC

PAGE 02/30

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION

THE SNOOK FOUNDATION, INC.
AUDUBON OF SOUTHWEST FLORIDA, INC.
CALOOSAHATCHEE RIVER CITIZENS ASSOCIATION, INC. ("RIVERWATCH")
RESPONSIBLE GROWTH MANAGEMENT COALITION, INC.
GREATER PINE ISLAND CIVIC ASSOCIATION, INC.
CALUSA LAND TRUST AND NATURE PRESERVE OF PINE ISLAND, INC.
PURRE Water Coalition Foundation, Inc.
SOUTHWEST FLORIDA WATERSHED COUNCIL, INC.
SANIBEL-CAPTIVA CONSERVATION FOUNDATION, INC.
PHILLIP G. BUCHANAN, AND
NOEL ANDRESS,
Petitioners,


v.

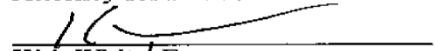
DEP File No. OGC 06-2345

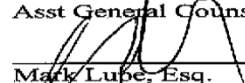
DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
STATE OF FLORIDA and
CITY OF CAPE CORAL FLORIDA
Respondents.

SETTLEMENT AGREEMENT

The Petitioners, through undersigned counsel, hereby agree to settlement of the above styled request for a formal administrative hearing under the terms and conditions set forth in the revised Amended Consent Order (attached hereto as Exhibit A), with each party bearing their own attorney's fees and costs.


Ralf Brookes Esq.
Attorney for Petitioners


Kirk White, Esq.
Asst General Counsel, Department of Environmental Protection


Mark Lupe, Esq.
Asst City Attorney, City of Cape Coral

Settlement agreement
requires reconstruction of
Ceitus Barrier unless EMA
by consensus determines
otherwise.

EMA Proceedings

- “ Facilitators and environmental consultant both worked under contract for Cape Coral
- “ All data not approved by Cape Coral rejected from being included in EMA report
- “ No data indicating environmental problems permitted
- “ No data supporting restoration of barrier permitted
- “ Only NEB's approved by Cape Coral were documented in report

These 2008 contract provisions (not revealed until 2012) controlled EMA proceedings and final report (but not votes by stakeholders).

Environmental Management Agreement Results
(After 2.5 years of proceedings)

14 votes to restore Ceitus Barrier

(included Lee Cty Govt, Charlotte Cty Govt, US Govt, and all local environmental organizations)

2 votes to approve EMA report proposing alternative measures

(Cape Coral Govt and NW Cape Neighborhood Assoc)

1 vote to rewrite and expand alternative measures (CHNEP)

1 vote to keep working together (SFWMD)

18 total votes

Excerpts from Cape Coral City Council Flyer on EMA Results (Winter 2010)

“Several stakeholders involved in the North Spreader Ecosystem Management Agreement process rejected the group’s final report.....”

“Scientific data was used to develop projects that would provide maximum protection – more than an artificial structure (boat lift) would provide.”

“State and federal environmental agencies also supported the actions in the report. However, several stakeholders voted to reject the report.”

Note: The above are all untrue statements, yet continue to be often repeated by the Cape Coral Government and widely believed in Cape Coral. By misrepresenting the results of the EMA, the Cape Government seeks to avoid implementing same. The Cape Government also stands in violation of Settlement Agreement and Second Amended Consent Order as well as the EMA.

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA**

LEE COUNTY,

Petitioner,

v.

CASE NO.:

**THE CITY OF CAPE CORAL AND
THE FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,**

Respondents.

Note: Lawsuit in
preparation, presently in
pre-trial mediation
phrase.

PETITION FOR ENFORCEMENT OF AGENCY ACTION

Petitioner, LEE COUNTY (hereafter “Petitioner” or “County”), by and through its undersigned counsel and pursuant to Section 120.69, Florida Statutes, hereby files this Petition for Enforcement of Agency Action (“Petition”), and states:

PARTIES

1. Petitioner is a Charter County of the State of Florida, created and operating in accordance with Article VIII, Section 1, Florida Constitution and Chapter 125, Florida Statutes, whose primary mailing address is 2115 Second Street, Fort Myers, Florida 33901.

2. The agency concerned (as that term is used in § 120.69, Florida Statutes) with this Petition is the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (“Department”). The Department’s address is 2295 Victoria Avenue, Suite 364, Fort Myers, Florida 33901. The subject matter and activity is located within Lee County, Florida.

3. Respondents are the CITY OF CAPE CORAL (“City”), an incorporated municipality under the laws of the State of Florida, whose primary mailing address is Post Office Box 150027, Cape Coral, Florida 33915-0027, and the Department.

Amicus Brief to Support Lee County Action

- “ Greater Pine Island Civic Association
- “ Calusa Land Trust
- “ RGMC
- “ Audubon
- “ Riverwatch
- “ Matlacha Civic Association
- “ Florida Wildlife Federation
- “ Snook and Gamefish Foundation
- “ Clean Water Network
- “ Watershed Council
- “ SCCF
- “ Florida Guides Association

Note: These are the organizations that have thus far agreed to support Lee County in the lawsuit. More are expected by the time of filing.