

Recovering mooring anchors

In 2004, the city of miami (not deserving capital letters) decided to close the free anchorage outside Dinner Key Marina. This anchorage had been in use since the earliest settlers arrived in Miami. The underwater land was finally donated to the city of miami by the State of Florida with the express condition that the land never be conveyed or leased to any private person, firm or corporation for any private use, nor grant any license or permit to any private person. Of course that did not stop the city from evicting anchorage boats and then placing permanent mooring structures to lease to private persons. (see image of deed below). Anchorage residents attempted to block the plan (see attached complaint), but without substantial financial and legal support all was lost.

So in the spring of 2009, Troubadour was moved to the mooring field at Crandon Park Marina. The site was more protected but there was no guarantee about the mooring integrity. Worse, there was no dinghy dock and the dinghies had to be carried to a rack. Troubadour stayed at Crandon until she was sold in 2014. Meanwhile, the Troubadour's mooring anchors were still in the bottom of the Dinner Key anchorage. Even though outside of the area designated to become a mooring field, the contractor was cleaning the bottom throughout. Rather than allow the anchors to be collected for scrap or sold off by the contractor, Daphne and I motored Troubadour and her dinghy to the anchorage to pickup the two 120 pound fisherman anchors. These anchors were well buried, so we shortened the chains to Troubadour's bow and let the waves break them loose. The sheet winches easily lifted each anchor high enough over the water that we could wrestle them into the dinghy. With both anchors in the dinghy, I began to add the chain and swivels, but the second chain was enough to bring water through the dinghy's centerboard slot. So it remained on deck while we returned to Crandon Park.

After picking up the mooring, I removed the one chain, got in the dinghy, rowed ashore and muscled the two anchors to the shore. Another trip for Daphne and the chains made for enough rowing for the day. Together we put the anchors into the station wagon and drove back to Micanopy Ave where they still reside in the back garden.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

DAVID E. BRICKER,

Petitioner,

vs.

OGC CASE NO. 05-1497

**CITY OF MIAMI and
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Respondents.

_____ /

FINAL ORDER OF DISMISSAL WITH PREJUDICE

On June 13, 2005, the Department of Environmental Protection (Department) received a letter that could be considered as a petition for administrative hearing (Petition) from the Petitioner, David E. Bricker. The Petition challenged the Department's decision to issue Permit No. 0217762-002-EI to the City of Miami for the Dinner Key Managed Mooring Field in Miami-Dade County. On November 3, 2005, the Petitioner's request for an administrative hearing was dismissed with leave to amend. Petitioner subsequently filed two amended petitions for a formal administrative hearing. The first amended petition was filed with the Department on November 18, 2005. The second administrative petition was filed on November 27, 2005. See Exhibit 1. On December 13, 2005, Petitioner sent, via email, a paragraph to be added to Petitioner's second amended petition. See Exhibit 2.

Standing

Section 120.54(5)(b)4, Florida Statutes, Rule 28-106.201(2), Florida Administrative Code, and the notice provided to the Petitioner explain what must be included in a petition for a formal administrative hearing. The second amended Petition does not contain all of the

information required by the statute and administrative rule and is their not sufficient to entitle the Petitioner to a formal administrative hearing. In particular, the Petitioner fails to specifically explain how he has demonstrated standing to challenge the Department's permitting decision. In order to demonstrate such standing, the Petitioner must allege that his substantial environmental interests are affected by the Department's action or proposed action.

Such allegations in the second amended Petition must demonstrate that (1) the Petitioner will suffer injury in fact which is of sufficient immediacy to entitle him to a hearing under Sections 120.569 and 120.57, Florida Statutes, and Rule 28-106.201, Florida Administrative Code, and (2) the injury is of a type or nature which the administrative proceeding is designed to protect. The Petitioner's allegations do not meet these requirements. *See Village Park v. Department of Business Regulation*, 506 So.2d 426, 433 (Fla. 1st DCA 1987); *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478, 482 (Fla. 2d DCA 1981).

The Petitioner alleges his substantial injury from the Department's proposed action will be economic in nature, in that, Petitioner will have to pay a fee to moor his vessel at its current location. Currently, Petitioner moors his vessel free of charge at its current location, which is located within the City of Miami's proposed Managed Mooring Field. In *Agrico*, the court held that an economic injury alone does not confer standing to a party. *See Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478, 482 (Fla. 2d DCA 1981). Petitioner's economic injury is sufficient to meet the *Agrico* test for standing only if Petitioner's economic injury is of the type or nature which the administrative proceeding is designed to protect. *Id.* at 482. Here, like in *Agrico*, Petitioner has not been able to show that the nature of the injury was under the protection of Part IV of Chapter 373, Florida Statutes(Environmental Resource Permits), or Sections 253 and 258 Florida Statutes(Proprietary Authorization for the use of Sovereign Submerged Lands).

Issues raised by the petition outside the scope of an administrative forum

Many of Petitioner's claims for relief fall outside the scope of the Department's jurisdiction. The Department is an executive agency and its jurisdiction only extends as far as the Florida Legislature designates. *See Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (Fla. 5th DCA 1985) (stating "[a]n agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction.")

Alleged violations of state law outside the jurisdiction of the Department

Petitioner raises two state law claims that fall outside the scope of the Department's jurisdiction. First, Petitioner alleges that both the City of Miami and the Department of Environmental Protection have violated the Public Records Act. The proper forum for these claims is not in the administrative forum; it is in circuit court. *See* § 119.11 Fla. Stat. (2005). In addition, Petitioner alleges that the proposed mooring field extends into Florida's Intracoastal waterway, and as such any local ordinance regulating the waterway must fail because the Florida Fish and Wildlife Conservation Commission (FFWCC) has the exclusive right to regulate vessel safety in Florida's Intracoastal waterways under Section 327.60 Florida Statutes. Petitioner must bring this claim to the FFWCC, not the Department, as the FFWCC has jurisdiction over the enforcement of vessel safety in the state of Florida. *See* § 327.70 Fla. Stat. (2005).

Alleged violations of federal law cannot be considered in an administrative forum

Petitioner alleges that the granting of permit number 0217762-002-EI to the City of Miami by the Department is in violation of various federal laws. (Petitioner cites to varied provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, Clean Vessel Act of 1992, 33 U.S.C. § 1322 *et seq.*, the Submerged Land Act, 43 U.S.C. § 1314 *et seq.*, and the Submerged Vessel Act, 43 U.S.C. § 1314.) However, federal law is not considered in a Florida

administrative proceeding. *See Curtis v. Taylor*, 648 F. 2d 946, 948 (5th Cir. 1980)(concluding that, in a state administrative hearing under Section 120.57, F.S., an administrative hearing officer was not empowered to consider claims that state actions were invalid based on alleged violations of federal law). The *Curtis* rationale has been followed in a series of Florida administrative decisions. *See, e.g., Putnam County Env'tl. Council v. Dep't of Env'tl. Protection*, 24 F.A.L.R. 4674 (Fla. DEP 2002); *Rowe v. Oleander Power Project*, 22 F.A.L.R. 1173, 1177 (Fla. DEP 1999); *Miccosukee Tribe v. South Florida Water Mgmt. District*, 20 F.A.L.R. 4482, 4486-4487 (Fla. DEP 1998). As such, the Petitioner's claims based on violations of federal law are outside the jurisdiction of the Department and are not considered to be within the scope of a state administrative proceeding.

Disputes over real property rights must be brought in circuit court

The Petitioner's assertion that the City of Miami violated deed 19448 and his claim of a prescriptive easement are nothing more than disputes as to the title or ownership of real property and, as such, are not cognizable in an administrative proceeding such as this. Determination of real property disputes is a pure judicial power reserved exclusively to courts of Florida. *See* Art. V, § 20(c)(3), Fla. Const. ("Circuit courts ... shall have exclusive original jurisdiction ... in all actions involving the titles or boundaries or right of possession of real property ..."); *accord*, § 26.012(2)(g), Fla. Stat. (2005). Thus, administrative proceedings may not be used to resolve issues of title to or ownership of real property. *See Buckley v. Dep't of Health & Rehabilitative Services*, 516 So.2d 1008, 1009 (Fla. 1st DCA 1987); *Miller v. Dep't of Environmental Regulation*, 504 So.2d 1325 (Fla. 1st DCA 1987); *Hageman v. Carter*, 17 F.A.L.R. 3684, 3690 (Fla. DEP 1995); *Powell v. Alabama Electric Cooperative*, 15 F.A.L.R. 325, 326 (Fla. DER 1992). Consequently, these claims are dismissed and cannot be entertained. *Cf. Gregory v. Indian River County*, 610 So.2d 547, 552 (Fla. 1st DCA 1992) (the issue of the reasonableness of

a mitigation plan *vis-à-vis* the amount of property taken in a condemnation proceeding was properly a matter for circuit court rather than administrative resolution).

Additionally, the Board of Trustees of Internal Improvement Trust Fund (Board) manages the sovereign submerged lands in the state of Florida. *See* § 253.001 Fla. Stat. (2005), Fla. Admin. Code R. 18-21. The Board is charged with managing, protecting, and enhancing “sovereignty lands so that the public may continue to enjoy traditional uses including, but not limited to, navigation, fishing and swimming.” Fla. Admin. Code R. 18-21.001(3). The right to manage the state’s sovereign submerged lands resides with the Board of Trustees of the Internal Improvement Trust Fund, and only the Board, “the board of county commissioners or governing body of any municipality, or any aggrieved person, shall have the power to enforce the provisions of this law by appropriate suit in equity.” *See* § 253.127 Fla. Stat. (2005). An aggrieved person is considered to be someone involved in a dispute with the Board concerning his or her own property. As such, Petitioner is not considered an aggrieved person.

Nevertheless, even if Petitioner were considered an aggrieved person, the administrative forum is the inappropriate venue to bring such a claim. Claims to enforce property disputes under Chapter 253, Florida Statutes, must be brought in a court of equity. *See* § 253.127 Fla. Stat. (2005).

Based on the foregoing reasons, the second amended petition considered in this Order must be dismissed with prejudice as required by Section 120.569(2)(c), Florida Statutes.

IT IS THEREFORE ORDERED:

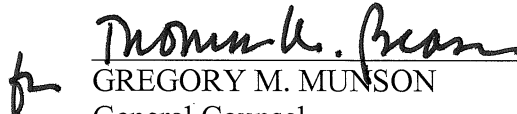
- A. The Second Amended Petition is DISMISSED with prejudice.
- B. This order constitutes final agency action of the Department.

Any party to this proceeding has the right to seek judicial review of this order under Section 120.68, Florida Statutes, by the filing of a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General

Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after the date this order is filed with the clerk of the Department.

DONE AND ORDERED this 26th day of April, 2006, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


GREGORY M. MUNSON
General Counsel
3900 Commonwealth Boulevard
Mail Station
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.


CLERK

4-26-06
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing has been sent by United States Postal Service to the following persons on this 26th day of April, 2006.

David Bricker
2414 Coral Way
Miami, Florida 33145

Stephen Bogner, Marinas Manager
City of Miami Department of Public Facilities, Dinner Key Marina
3400 Pan American Drive
Miami, Florida 33133

Alicia Cuervo Schreiber, Chief of Operations
City of Miami
Miami City Hall
3500 Pan American Drive
Miami, Florida 33133



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**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

DAVID E. BRICKER

Petitioner,

vs.

OGC CASE NO.: 05-1497

THE CITY OF MIAMI

&

**THE FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

Respondents.

_____ /

SECOND AMENDED PETITION

Petitioner files this Second Amended Petition for Formal Administrative Hearing on FDEP's "Notice of Intent" to permit the City of Miami's proposed Managed Mooring Field, located in Miami-Dade County, Florida. Petitioner asserts that the Notice of Intent to issue a permit for the proposed mooring field, issued under state statutes and implementing regulations including Chapter 403 of the Florida Statutes, has or will have the effect of impairing, polluting, or otherwise injuring the water and/or other natural resources of the state under F.S. 403.412, and that the plan as proposed will violate the Deed by which the City acquired submerged lands as well as state and federal maritime and constitutional laws. All allegations and arguments made in the original petition, which by oversight have not been expressly included here, are incorporated by reference.

I. Nature of Petition

1. On or about 5/27/05 the Florida Department of Environmental Protection ("FDEP") issued a permit approval for the City of Miami's ("City") Mooring Field Plan for the Dinner Key Area in Coconut Grove, Miami. Petitioner objects to agency approval on legal and environmental grounds, as well as on the basis of planning deficiencies.

II. Notice of Agency Decision

2. Petitioner has been involved in planning and tracking this project since its inception. Advisement of the upcoming "Notice of intent to issue permit" was provided via email by Jennifer Smith of Florida Department of Environmental Protection in response to a request for a project permit status report.

III. Jurisdiction & Venue

3. Jurisdiction and venue are proper pursuant to Florida Statutes 120.57, 120.569, 403.412(5), and FAC 28-106.207.

IV. Affected Agencies

4. Affected Agencies and file numbers (when known) include:

- a) Submerged Lands & Environmental Resource Program
Department of Environmental Protection
Jennifer Smith, Environmental Specialist III
400 North Congress Avenue, Suite 200
West Palm Beach, FL 33401
FDEP Project File No. 13-0217762-002
- b) City of Miami Department of Public Facilities
Stephen Bogner, Marinas Manager
Dinner Key Marina
3400 Pan American Drive
Miami, FL 33133

- c) U.S. Coast Guard
USCG Marine Safety Office
Capt. James A. Watson IV
100 MacArthur Causeway
Miami Beach, FL 33139
- d) U.S. Army Corps of Engineers
1400 Centrepark Boulevard, Suite 750
West Palm Beach, Florida 33401
- e) Miami-Dade County DERM
David Roach, Executive Director
Florida Inland Navigation District
1314 Marcinski Road
Jupiter, FL 33477-9498
- f) Biscayne Bay Aquatic Preserve Manager
Marsha Colbert
1275 NE 79th Street
Miami, FL 33138

V. Parties

- 5. The Petitioner, David Bricker, is a US citizen residing in Miami Dade County.
- 6. The City of Miami is a municipal corporation located in Miami-Dade County, Florida.
- 7. The FDEP is a subdivision of the State of Florida, and is the agency designated to oversee and regulate environmental issues in the State of Florida and to administrate Florida Internal Improvement Trust Fund lands by the Board of Trustees.

VI. Petitioner's Contact Information

David E Bricker
2414 Coral Way
Miami, FL 33145
305-908-1350
[email:spot@spotgrafix.com](mailto:spot@spotgrafix.com)

VII. Petitioner's Substantial Interests

8. The mooring field plan is intended to regulate the Dinner Key Anchorage, where Petitioner's vessel is anchored. The City's Managed Mooring Field Plan proposes to impose significant limitations on anchoring along with the requirement that vessels in the area use and pay for a municipal mooring. The Petitioner is not likely to be able to afford the expense of a mooring, whereby the proposed plan, if or when implemented, limits or eliminates the Petitioner's use and enjoyment of the air, water, and natural resources in the area. Additionally, Petitioner is a member of the Coconut Grove Sailing Club which will be directly and significantly affected and possibly even eliminated by the mooring field plan.

VIII. Index to Referenced Law and Deeds (Statement of Specific Rules or Statutes Requiring Reversal of the Departments' Decision)

- Deed 19448
- FL S. 768
- Homestead Act of 1862
- Public Records Act, Ch 119 of the Florida Statutes
- The Submerged Land Act, 43 USC §1314
- The Supremacy Clause, Article VI of the US Constitution
- FL S. 327.60
- FL S. 327.02
- FL S. 327.70
- FL S. 823.11(2)
- FAC §18-21.005(1)(e)
- FL S. 823.11(2)
- Clean Vessel Act of 1992, §5602 (3)
- Pottinger v. City of Miami, 810 F. Supp. 1551 (S.D. Fla. 1992)
- United States v. Guest, 383 U.S. 745, 757, 86 S.Ct. 1170, 1177, 16 L.Ed.2d 239 (1966)
- Robinson v. State of California, 370 U.S. 660, 666 82 S. Ct. 1417, 1420, 8 L.Ed.2d 758 (1962)
- King v. New Rochelle Municipal Housing Auth., 442 F.2d 646, 648 (2d Cir.), cert. denied, 404 U.S. 863, 92 S.Ct. 113, 30 L.Ed.2d 107 (1971)
- Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969)
- Edwards v. California, 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119 (1941)
- Wheeler v. Goodman, 306 F. Supp. 58, 64 (W.D.N.C. 1969)
- Headley v. Selkowitz, 171 So.2d 368 Fla. 1965
- Goldman v. Necht, 295 F. Supp. 897, 907-08 (D.Colo.1969)
- Parker v. Municipal Judge, 83 Nev. 214, 427 P.2d 642, 644 (1967)
- Hayes v. Municipal Court, 487 P.2d 974, 981 (Okla.Crim.App.1971)

- Alegata v. Commonwealth, 353 Mass. 287, 231 N.E.2d 201, 207 (1967)
- State v. Frick
- 33 USC Sec. 1251 of the Clean Water Act
- FL 5. 327.59
- Impaired Waters Rule [FAC 62-303]
- 33 USC §1252 (c) (2) (b)
- FAC Ch 62
- The 8th Amendment to the US Constitution
- The 14th Amendment to the US Constitution

Explanation of how the above referenced law applies to the permit approval follows in the Section below, "Disputed Issues of Material Fact."

IX. Disputed Issues of Material Fact

Mooring Field Plan Exceeds Land Use Restrictions

9. The City's Managed Mooring Field Plan proposes to locate fields on submerged lands along the coast of Coconut Grove that the Florida's Board of Trustees of the Internal Improvement Trust Fund transferred to the City by way of Deed 19448, attached here as Exhibit "A".

10. Deed 19448 imparts conditions of ownership:

PROVIDED, HOWEVER, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private person, firm or corporation for any private use or purpose, it being the intention of this restriction that the said lands shall be used solely for public purposes, including municipal purposes and not otherwise.

[Emphasis added]

11. Deed 19448 was enacted in 1949, at which time a municipality under Florida law was legally a corporation rather than a government entity. A municipality was not recognized as a government entity under state law until 1976, when the Legislature enacted FL S. 768 and thereby included municipalities as a subdivision of the state under the umbrella of State sovereignty. The term "municipal corporation" signifies this history. By way of comparison, Federal Law continues not to recognize a municipal corporation as a government entity. Deed 19448's expressed purpose that bequeathed land is used for "public purposes including municipal purposes" needs to be

considered in its historical context. The phrasing clearly draws a distinction between public purposes and municipal purposes; it does not provide that the land should be used for “public purposes/municipal purposes” or for “municipal purposes only.” Public purposes have traditionally meant or included public access and use, and the Deed plainly prioritized this public use and access and included municipal purposes on a secondary basis (as indicated by general meaning, and the inclusion of “municipal purposes” as the subordinate clause).

12. Over the years the lands comprising Deed 19448 have steadily been lost to the general public through leases to private concerns and municipally run enterprises that are akin to privately operated businesses. Nor is it a misrepresentation to say that the public lands comprising Deed 19448 have become an entrepreneurial playground for private and political interests, resulting in rates charged for these facilities to double in price, thereby reducing and eliminating the general public's access, and giving rise to facilities that are private and exclusive in character.

13. The City's Mooring Field Plan mandates that vessels pay a fee to use proposed moorings. A 9/4/05 Miami Herald article quotes City of Miami Marinas Manager Stephen Bogner as saying that moorings will rent for the “going market rate.” Mr. Bogner has publicly suggested a rate of approximately \$240 a month, but the Article points out that moorings in another field in the vicinity rent for \$480 a month. Because “going market rates” are open to interpretation, it is possible that rental rates thus justified will restrict the general public's use of the last vestige of Deed 19448 lands that provide unfettered public access. The \$240 rate will itself be beyond the means of many people at the Anchorage – and effectively “regulate” them out of the area.

14. Under the Homestead Act of 1862, the federal government transferred land comprising the Coconut Grove area to settlers, along with adjacent coastal waters. These homesteaders often donated land to the public, but with provisions. For example, John and Euphemia Frow donated roads in Coconut Grove for the “perpetual use of the public” under the condition that if the roads were ever closed to the public, the encompassed land would revert back to the Frows or their heirs, consigns, and designees. [See: Exhibit “B”]. Under circumstances where land currently comprised under Deed 19448 was donated to Florida by homesteaders, similar restrictions would

likely apply.

15. Over the last 2 years, Public Records Act requests were repeatedly directed to the City for purposes of inspecting ownership records and abstract(s) of title regarding lands encompassed by Deed 19448 to examine whether Homesteader restrictions were applicable. The City ignored these requests, and refused to provide claimed exemptions as justification for their refusals to provide requested records as required pursuant to FL S. 119.07(2)(a). These land records were also requested from the FDEP, but the FDEP also failed to provide the records. Prior to FDEP issuance of permit approval for the City's Mooring Field, the conditions and provisions of ownership imparted by homesteaders needs to be evaluated, provided due consideration, and honored as a legal condition of the grant.

16. Deed 19448 indicates that the granted submerged land is:

"bounded on the southeast by that land which is consistently more than 6 feet below the mean-low-water surface of Biscayne Bay."

The only conceivable use of submerged lands of less than 6 feet of depth is to facilitate anchoring of small vessels, (probably owned by fishermen and recreational boaters) in close proximity to local amenities and convenient access. Deed 19448's prohibitions against building islands or structures on the submerged lands further supports this conclusion. As municipal anchorages were unheard of in 1949, and the overall intent was that the land was intended for "public purposes," the submerged lands are most reasonably interpreted as being originally intended for purposes of public anchoring. A large community of permanent and transient small vessels continues to enjoy this public land and has availed itself of this specific historical purpose for over forty years.

17. The Petitioner challenges City's claims of jurisdiction beyond the spoil islands on the basis that jurisdiction is based on a double standard where dredged areas within the deeded lands are considered to remain within City jurisdiction, but filled lands outside of Deed 19448's original scope are considered to extend the City's jurisdiction by virtue of the fact that these lands are now "consistently less than six feet deep."

The six-foot depth contour a few feet from shore under the Dinner Key Marina is not considered to redefine the outer boundaries of the City's jurisdiction and this

suggests that artificially introduced changes to the topography are not considered to conflict with Deed 19488's historical limitations and intentions.

It is reasonable to assume that the lands to the Southeast of the spoil islands were never dredged, except where the channel was dug simply because there would be no reason to incur the effort and expense. Yet, in spite of the fact that these lands are of consistently greater than six feet deep and likely reflect the natural contour of the Bay Bottom at the time of the drafting of Deed 19488, the City claims jurisdiction in these waters.

The same standard that permits waters dredged to depths of six-feet or greater to remain within the Deed's historical boundaries prohibits the extension of City jurisdiction based on claims that areas filled with dredge spoil from the creation of the Dinner Key channel are currently "consistently less than six feet deep."

Mooring Field Plan Exceeds & Violates State & Federal Law

18. The City's Managed Mooring Field Plan proposes to regulate the anchoring and mooring of vessels consequent to rights of ownership of Deed 19448 lands. However, The Submerged Land Act, 43 USC §1314 (a) withholds federal jurisdiction of submerged lands for purposes of navigation as a constitutional right equal to rights of land ownership and management:

The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources which are specifically recognized, confirmed, established, and vested in and assigned to the respective States and others by section 1311 of this title.

Submerged lands as they relate to navigation cannot exclude anchoring, as there is no use of submerged land more fundamental and intrinsic to navigation than anchoring. Consequent to this intrinsic relationship, the Submerged Lands Act inexorably links the right to anchor as incidental to navigation and "elevates" anchoring to the level of a Constitutional navigational right. The right to anchor is indeed considered such a

fundamental constitutional right by the Submerged Lands Act, that under the Act a mariner's use of submerged lands for anchoring are "paramount to" or equal in stature to rights of ownership. Accordingly, rights to anchor and rights of ownership are concurrent and not mutually exclusive rights. Therefore the City has no legal basis for its argument that it is entitled to limit or prohibit anchoring on the basis of land ownership.

19. The Supremacy Clause under Article VI of the US Constitution holds that federal law is superior in stature to conflicting state law, and that federal law preempts state law when the two are in conflict. The City's Mooring Field Plan attempts to restrict use of submerged lands for anchoring on the basis of land ownership and management rights pursuant to state law, and is consequently in direct conflict with the Submerged Lands Act. In accordance with the Supremacy Clause – such conflict should be resolved by the superior federal stature of the Submerged Lands Act.

20. The Mooring Field Plan indicates the City's intent to regulate vessels in the outer anchorage area encompassed by Deed 19448, and calls for ordinances to be enacted to facilitate regulation. However, FL 5. 327.60 (1) prohibits the City from regulating vessels from regulating vessels in the Florida Intracoastal Waterway, where the outer Anchorage is located at the Florida Intracoastal Waterway. Under FL S. 327.02 (10), a local government is prohibited from establishing ordinances regulating vessels in the Intracoastal Waterway pursuant to FL 5. 327.60 (1), "Local regulations; limitations":

Nothing in these sections shall be construed to prevent the adoption of any ordinance or local law relating to the operation and equipment of vessels, except that no such ordinance or local law may apply to the Florida Intracoastal Waterway and further provided such ordinance or local laws shall be operative only when they are not in conflict with this Chapter or any amendments thereto or any amendments thereunder." [Emphasis added].

21. The City's Managed Mooring Field Plan further proposes to regulate all vessels in the field, which is prohibited under FL. 5. 327.60 (2), which provides:

"Local government authorities are prohibited from regulating the anchorage of non-liveaboard vessels engaged in the exercise of the rights of navigation."

22. The State of Florida recognizes that anchoring is incidental to navigation and consequently a right of navigation, as explained in an opinion by Florida Attorney General Jim Smith.¹ The opinion further holds that FL S. 327.60(2) prohibits municipalities from regulating the anchoring of non-liveaboard vessels. Criteria provided for differentiating between liveaboard and non-liveaboard vessels included whether the vessel was the owners' legal residence, as provided under FL 5. 327.02(16)(b).

23. The State of Florida does not acknowledge the Dinner Key Anchorage or the vessels therein as legal residences. The Department of Transportation will not issue a driver's license to anyone using the Anchorage or their vessel as a residence, nor does the Department of Elections recognize a vessel at the Anchorage as a legal residence. Evidently, the City also does not recognize vessels at the Anchorage as legal residences, as the City could have designated an address for the area - but did not.

24. Other definitions of "live-aboard vessels" provided under FL S. 327.02 also do not apply to many vessels (perhaps the majority of vessels) at the Anchorage.

25. The City's Mooring Field Plan provides no method for distinguishing between liveaboard and non-liveaboard vessels on a case by case basis, as required consequent to FL 5. 327.60(2), but rather expresses the intent to regulate all vessels in the field through an ordinance. The ordinance circumvents legal requirements under FL S. 327.60(2) by requiring all vessels staying in the fields for more than 72 hours to use a mooring under contract to the City, and the contract bequeaths the City the right to regulate all vessels on moorings. Thus the proposed Ordinance violates the letter and intent of FL 5. 327.60(2).

26. The Florida Fish and Wildlife Conservation Commission (FFWCC) has jurisdiction under FL 5. 327.70 to regulate navigation and environmental issues in state waters, and is permitted to transfer such power and jurisdiction to the City pursuant to FL S. 823.11(2) and FAC §18-21.005(1)(e). However, if the FFWCC entered into an agreement with the City to manage or regulate the outer anchorage area, it would violate the express legislative limitations provided under FL 5. 327.60(1) and FL 5. 327.60(2).

¹ 1985 WL 190102 (Fla. A.G.)

27. FL S. 823.11(2) also imposes a noteworthy limitation on the FFWCC extending its jurisdiction to a municipality:

The Fish and Wildlife Conservation Commission is designated as the agency of the state authorized and empowered to remove or cause to be removed any abandoned or derelict vessel from public waters in any instance when the same obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment Pursuant to an agreement with the governing body of a county or municipality, and upon a finding by the commission that the county or municipality is competent to undertake said responsibilities, the commission may delegate to the county or municipality its authority to remove or cause to be removed an abandoned or derelict vessel from public waters within the county or municipality. [Emphasis Added]

The City has not demonstrated the competence necessary for increasing its jurisdiction as required under FL 5. 823.11(2), as indicated by decades of:

- a) Failing to educate boaters about legal requirements governing responsible seamanship in order to gain voluntary compliance.
- b) Failure to take corrective measures concerning navigation through regulatory agencies with jurisdictional powers of enforcement.
- c) Failure to take corrective action through the courts over damages arising from violations of navigational regulations.
- d) Enforcing laws beyond its municipal jurisdiction and doing so in a spurious manner, in utter disregard of the law, with intent to harass, coerce, and intimidate the public - including an intentional pattern of threats of arrests and actual arrests under circumstances where the arresting officer knew there was no violation, and seizures of vessels and property without due process.
- e) Taking no remedial measures to mitigate known primary sources of pollution, including 27th Avenue storm drain discharge, illegal construction discharge through storm drains, regularly occurring fuel spills at the City owned Dinner Key Marina, and the destruction of the tree canopy in Coconut Grove and other areas of Miami, etc.
- f) Ordering mariners (including the Petitioner) seeking safe harbor in advance of an approaching hurricane to leave the marina area or face legal action

As the City has a record of incompetence with regards to environmental and maritime regulatory functions, the Mooring Field Plan needs to incorporate safeguards against City regulatory abuses. Such safeguards include citizen panels and county or state regulatory officers. An alternative regulatory agency also suits the “public purposes” clause of Deed 19448, as the City’s regulatory practices do not serve the public’s interests.

28. Vessels at the Dinner Key Anchorage are predominately stalwart and seaworthy, but less fortunate members of the community live on vessels with no electricity or plumbing, and which barely protect them from the elements. Such individuals are in essence homeless. In Pottinger v. City of Miami, 810 F. Supp. 1551 (S.D. Fla. 1992), one of the primary definitions of “homeless person” was an individual who’s nighttime abode was not “designed for or ordinarily used as a regular sleeping accommodation for a human being.” The Court in Pottinger found that the City had a municipal policy of violating various constitutional rights of the homeless through police harassment, seizures of property, and arrests for essentially harmless life-sustaining activities, whereby the City was prohibited from driving the homeless off of public lands.² The City’s Mooring Field Plan proposes to regulate homeless persons off public lands, as homeless individuals are seldom if ever financially capable of paying a “market rate” for a mooring or ensuring vessel compliance. Permitting approval of the City’s Mooring Field Plan, as currently proposed, therefore serves as a “license” for the City to prohibit homeless people from public land they are entitled to be on.

29. The City Mooring Field Plan proposes a 72-hour anchoring restriction that is prohibitively restrictive, arbitrary, without legitimate purpose, and an obstruction to rights of navigation through unwarranted fines and penalties. On the foregoing grounds, the court in State v. Frick³ struck down Riviera Beach’s 72-hour anchoring ordinance.

30. The use of time restrictions with regards to anchoring, be they 72 hour restriction or restrictions of a longer duration, is an obstruction of rights of navigation as the term applies to today’s recreational vessels. Recreational navigation rights do not

² The only public properties excluded were City Hall, the City Riverside Center, Fire and Police Stations, Police Net Offices, and City property leased to non-governmental entities.

³ Case No. 91-6869 MO A08 (May 28, 1991)

consist exclusively of going from point A to point B, nor can the “act of navigation” be completely severed from “purposes of navigation” (in the same manner that federal law inexorably links navigation and commerce). A recreational boater or cruiser’s purpose includes travel, but travel includes experiencing the destinations - be it for a day, a month, or a year. Thus some cruisers circumnavigate the globe in under three years, while others are still “working at it” after 10 years of steady (albeit slow) progress. Recreational navigation also sometimes requires staying at a given location for an extended period, as regularly occurs when mariners need to work to raise money to continue their journey, carry out vessel repairs and needed improvements, wait for parts or supplies, wait for a weather window or for a change in season/prevaling winds, and so forth. These circumstances are inexorably part of navigation.

31. Federal law provides no timeframe restrictions regarding anchoring as a right of navigation and travel. The right to travel has long been considered a fundamental constitutional right, and the courts have long held that impeding or penalizing this right is prohibited. See: United States v. Guest, 383 U.S. 745, 757, 86 S.Ct. 1170, 1177, 16 L.Ed.2d 239 (1966) (noting that the constitutional right to travel is a fundamental right that has been “firmly established and repeatedly recognized”); Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) (any classification penalizing the exercise of the fundamental right to travel is unconstitutional absent a showing that it is necessary to promote a compelling governmental interest. *Id.* at 634, 89 S.Ct. at 133; King v. New Rochelle Municipal Housing Auth., 442 F.2d 646, 648 (2d Cir.), cert. denied, 404 U.S. 863, 92 S.Ct. 113, 30 L.Ed.2d 107 (1971) (It would be “meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state.” 442 F.2d at 648; Edwards v. California, 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119 (1941), Justice Douglas found that the challenged statute “prevents a citizen because he is poor from seeking new horizons in other States.” *Id.* at 181, 62 S.Ct. at 170 (Douglas, J., concurring). In the same decision Justice Jackson stated, “Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another clan that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our

country has expanded, but also is a short-sighted blow at the security of property itself. Property can have no more dangerous, even if unwitting, enemy than one who would make its possession a pretext for unequal or exclusive civil rights. Id. at 182,62 S.Ct. at 171 (Jackson, J., concurring); See also: Pottinger v. City of Miami, 810 F. Supp. 1551 (S.D. Fla. 1992). Insofar as the foregoing concerns the Anchorage and the Coconut Grove Sailing Club, it is an usurpation and barrier to the fundamental Constitutional right of travel for the City to impose insurmountable fees and arbitrary and unreasonable time restrictions as a barrier to travel against poorer members of the community. Nor is there a compelling government interest in the City or DEP to do so. Existing regulations are sufficient to procure the sought after compliance.

32. The City and State have lost their right to impose a mooring fee or contract for use of submerged lands, as for 40 years or more the lands comprising Deed 19448 have been used in plain view and obviously as a free public anchorage, giving rise to a prescription easement. The public's unfettered access and use of this land cannot be obstructed, by fees or otherwise, as easement rights apply.⁴ This easement includes the right to access land and/or to secure dinghies to shore and/or the dinghy dock located adjacent to the Seminole Boat Ramp.

33. Managed Mooring Field Management Plan Rule 3.8 provides:

In order to ensure compliance with federal and state safety and marine sanitation regulations, the Harbormaster shall be authorized to conduct periodic vessel inspections. Denial of an inspection shall be considered grounds for termination of the vessel owner's Mooring Rental Agreement. The vessel owner shall fully comply with the direction of the Harbormaster and Law Enforcement personnel, and shall allow access to their vessel by those personnel as necessary.

To the extent that a particular vessel is a live-aboard vessel, or someone's home, Rule 3.8 conflicts with Article IV of the US Constitution, which establishes "The

⁴ See: Sears, Roebuck and Co. v. Franchise Finance Corp. of America, 711 So.2d 1189 (Fla. App. 2 Dist. 1998, "An easement is not an estate in land and does not convey title to land or disposes the owner of the land subject to the easement; instead, an easement only grants the right to use the property for some particular purpose or purposes."; Dean v. MOD Properties Ltd., 528 So2d. 432 (Fla. App. 5 Dist. 1988), "Ownership of land, or ownership interest in land, constitutes estate as distinguished from "easement," which is right in one other than the owners of land to use land for some particular purpose."; Brewer v. Flankley, 660 So. 2d 761 (Fla. App. 5 Dist. 1995), "To establish prescriptive easement, claimant must prove by clear and positive proof, inter alia, that he and/or his predecessors in title have made actual continuous use of disputed property for full prescriptive period of 20 years."

right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon reasonable probable cause, supported by oath and affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Public Participation Requirement Not Met

34. The Clean Waters Act, Title 33 USC at §1251 provides:

Public participation in development, revision, and enforcement of any regulation, etc. Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.

The Clean Water Act provides the criteria and/or minimum criteria that State environmental standards are based upon, and is applicable to the instant DEP permit. The public involvement requirement has not been met with regard to the proposed Managed Mooring Field Plan. No meetings have been afforded the public to participate in the development and revision of the plan, or provide any input whatsoever about their concerns and ideas, and participation was discouraged rather encouraged. For instance, the City has illegally withheld from stakeholders Chapter 119 requests for public records concerning the Anchorage, the proposed Managed Mooring Field, and related land ownership records. The DEP also failed to provide pertinent land ownership records.

Environmental Issues

35. The City Mooring Field Plan purportedly intends to mitigate environmental damages caused by anchored vessels, including:

- a. Scouring of seagrass beds by ground tackle (anchors and anchor chain).
- b. Vessel keels or bottoms causing destruction to seagrass beds under circumstances where vessel draft exceeds water depth.
- c. Derelict vessels that sink or become stranded on shore.
- d. Sinking and ground tackle failures causing vessels to go ashore during hurricanes and storms.

e. Discharge of pollutants into the waters.

36. The most obvious and serious of the environmental issues above concerns sunken vessels and vessels that come ashore. However, the Mooring Field Plan does not approach these issues in a realistic or viable manner that will mitigate damages or avoid transplanting damages to adjacent State-owned lands.

37. The Plan's proposal for derelict vessels, as indicated by Challenger's response to FDEP's "Request for Additional Information", states:

all derelict vessels will be required to vacate the mooring field areas and that many of the unseaworthy vessels that are currently located in this area and would not want to moor on a buoy will not be able to relocate. They will most likely be abandoned and removed and not become a problem in another nearby area.

Challenger provides no facts whatsoever in support of its position that derelict vessels will be abandoned by their owners, and naively misinterprets the socio-economic nature of the problem. Derelict vessels at the anchorage serve as shelter to individuals who, for all intents and purposes, are homeless. That these individuals are financially unable to rent a mooring should in no way imply or suggest that they will abandon their dwellings and their belongings and go live on the street. One rapidly discovers after getting to know these individuals that they recognize the option to move their vessels outside of the managed mooring field boundary (as many owners of non-derelict vessels who cannot afford a mooring or are not willing to pay excessive rates for a mooring also plan to do.) A derelict vessel may not be able to move under its own power, but it can readily be towed with a rowing dinghy or a dinghy outfitted with an outboard motor. Challenger misunderstands the nature of the problem and the resourcefulness of these individuals. The Mooring Field Plan offers no viable remedy to socio-economic conditions, and therefore will assuredly transplant vessels and their problems to adjacent land under State of Florida jurisdiction.

38. Early in its planning stages, the Managed Mooring Field's Plan proposed to mitigate vessels sinking or breaking loose and washing up on shore due to hurricanes and tropical storms by installing "hurricane proof" moorings. To their credit City planners objectively studied the issue, and reversed their initial finding. The current proposal, as indicated in Sec. 4.1 of the "City of Miami Dinner Key Managed Mooring

Field Rules and Regulations,” provides:

Evacuation of Vessels for Storm Event: City Mooring Facilities are not safe locations for vessels during tropical storms or hurricanes, and the City believes that significant damage to the vessels and Facility will likely occur in a major storm if vessels are left at the Facility. The City warns vessel owners to exercise prudent and appropriate judgment on whether to remove their vessel from the Facility in the event that a tropical storm or hurricane threatens the area. The City recommends that vessels evacuate the Facility prior to the declaration of a hurricane watch or warning. Tenants are advised that mooring equipment provided in the Facility may not be able to withstand the pending hurricane or tropical storm or associated wind or tidal surges. All Facility tenants shall be solely and totally responsible for any and all damages to persons or property caused by their failure to remove their vessels from the Facility in a timely fashion.

39. Sec. 4.1 of the Mooring Field Rules may initially appear to be a sound management approach, but it is not practical for the following reasons:

- a) There is a shortage of safe harbor in the vicinity for vessels to relocate to.
- b) Tropical storms and hurricanes can develop rapidly and are often unpredictable. Consequently the strength and course are not always predictable, whereby advanced warning cannot be provided in time for vessels to determine whether relocation is necessary.
- c) Absentee ownership, whereby the owner is not available to relocate the vessel.
- d) An inability to relocate or safely relocate a vessel well due to work and other obligations.
- e) Other priorities, including securing one's home, helping elderly or disabled relatives prepare for a storm, and so forth.

40. Without sufficient safe harbor for all or even most of the vessels in the area, the Mooring Field Management Plan will transplant storm-related environmental damage to adjacent State-owned lands and private property.

41. Viewed from a “life and safety” perspective, Sec. 4.1 of the Managed Mooring Field Rules is outright dangerous and irresponsible in that it encourages vessel owners to vacate the facility and search on a first come, first served basis for available space as a storm approaches. Pursuing such a course of action endangers lives, as reflected by FL 5. 327.59, which prohibits marine facilities from ordering vessels to

vacate the facility on the basis of impending storm activity “in order to ensure that protecting the lives and safety of vessel owners is placed before interests of protecting property.” The Petitioner is not proposing that seeking safe harbor is not a prudent act of seamanship, but rather, that it is the mariner, and not any marine facility, that is provided the right to determine how best to protect his life and property when severe weather conditions are imminent. Currently, mariners seeking shelter from imminent weather threats are regularly ordered to remove their vessels from City-owned lands, which diminishes the available sheltered areas and endangers lives and property.

42. The City’s proposed Mooring Field plans on increasing the number of vessels that currently occupy the Coconut Grove Sailing Club and outer Anchorage fields, which will exacerbate the shortage of safe harbor and consequential environmental damage caused by hurricanes and tropical systems. Moreover, the Plan calls for most of these vessels to be located outside of the spoil islands, areas significantly more vulnerable to wind and sea conditions than the field located inside the spoil islands. Increasing the number of vessels in fields that are afforded no protection from storms, without sufficient safe harbor for relocation is a recipe for an environmental disaster.

43. Increased potential for an environmental disaster at the proposed Managed Mooring Field is not limited to the number of vessels that can sink or blow ashore, but also to the type(s) of damage caused. For instance, a derelict vessel by definition cannot move under its own power — it has no engine. Having no engine, a derelict vessel does not ordinarily store fuel. This will not be the case with the type of vessels that the City intends to attract to its moorings, thus an increase in fuel spills can reasonably be anticipated when vessels sink or break apart on breakwaters, islands, and so forth.

44. The FDEP and City Mooring Field Plan also fail to consider that squalls and cold fronts in South Florida can impart tropical storm and even hurricane force conditions. Although non-tropical in nature, cold fronts are capable of imparting winds of 40-90 knots with corresponding sea conditions. The Storm of the Century, with 90 plus knot winds, illustrates this point. Nor are frontal systems afforded the attention in terms of intensity or the advanced notification warnings that the weather bureau provides for

tropical weather systems.

45. Responsible planning with regards to storm damage to vessels, and consequently the environment, cannot entirely depend on weather prediction and the vacating of facilities. Prudent planning requires that the most protected locations are considered and selected for marine facilities. The City has a well-protected location for a mooring field, Marine Stadium, which is a more suitable location for purposes of mitigating environmental damages caused by storms and establishing a mooring facility that will not displace existing populations or violate the law as alleged in this Petition..

46. The City's Managed Mooring Field Plan, as proposed, does nothing to mitigate environmental damage caused by vessels during storms, but merely mitigates City liability over poor planning and the cost of cleanup to the vessel owner, adjacent municipalities, and the State. This mitigation of responsibility is an unavoidable consequence of the Mooring Field Rules directive for vessels to relocate in advance of a storm system, and City police discouraging and/or prohibiting use of more protected areas within City jurisdiction as safe harbor.

47. Environmental studies of the area are flawed in that sampling methods were inconsistent, major sources of point and non-point sources of pollution were not incorporated into the study, the study period was of too short a duration and lacked consistent sampling techniques whereby no baseline was established to determine whether environmental conditions were improving or deteriorating. Natural trends affecting how prolific seagrass is in the area were also not considered, nor were the effects of historical dredging studied as a causal effect of seagrass sparseness in areas. Areas with less seagrass, or where the health of seagrass was called into question, were arbitrarily attributed to degradation caused by vessels. These studies rely on assumptions that differ significantly from observations by local marine scientists and mariners who are more familiar with the history and trends in the area, as well as from impartial scientific studies and observations.

48. The need to mitigate environmental impact to seagrass beds from vessels located at the outer Anchorage is vastly overstated and/or pre-textual. Seagrass is thriving in the outer anchorage and has become more prolific, not less prolific, over the last decade.

49. Seagrass is sparse and/or non-existent inside of the spoil islands where facilities have been developed and vessel density is high. High vessel density causes shading of submerged lands, whereby sunlight is obstructed from reaching seagrass - preventing its growth and survival. The City's Managed Mooring Field Plan proposes a higher density of vessels than currently exists in these areas, and there is a high probability, if not a scientific certainty, that seagrass beds will be adversely impacted by shading. Prior to permit issuance, an environmental impact study should be required to determine a level of density that will not adversely impact the local environment.

50. Damages are unlikely to be caused by a vessel's draft exceeding its depth as the plan alleges. This problem is largely self-correcting as vessel damage is likely to arise from such conditions, and continuous bumping of the sea bottom makes it unpleasant to be aboard the vessel - resulting in owners voluntarily moving their vessels to deeper waters. In the rare instances where owners do not move their vessels, law enforcement with the jurisdiction to do so is empowered to regulate the matter. However, due to the self-correcting nature of this problem, and the minimal damage caused, the means of regulating everyone does not justify the burden and cost to responsible law abiding boaters.

51. The necessity or curative effect of a Managed Mooring Field to mitigate damages caused by the release of effluent is overstated and distorted. Studies of contamination in areas frequented by boaters along suburban coasts typically find that pollution arises from sources other than boats, including in relative order of occurrence: a) storm water run off; b) municipal sewer plant outfall; c) residential septic leachate; d) farm, lawn & garden chemical run off; e) waterfowl, domestic dogs, farm animals; f) decaying algae; g) recreational boats, swimmers & bathers.⁵

52. The City and its consultants have not scientifically shown that some fifty liveaboard boaters at the outer Anchorage, who usually use land based restrooms, are polluting an area comprised of hundreds of acres of open water that are flushed regularly by outgoing tides and currents. Neither algae blooms, hypoxia, nor unsafe levels of contaminants have been scientifically linked to the anchorage or the vessels

⁵ G. L. Chmura and N. W. Ross. *The Environmental Impacts of Marinas and Their Boats*. University of Rhode Island Sea Grant Marine Advisory Service, Marine Memorandum 45 (P-675), Narragansett, 1978, 32 pages.

therein. To the contrary, seagrass is flourishing at the Anchorage and the water is clear, indicating that a natural equilibrium exists at the Anchorage. The Legislature's intent, as declared at 33 USC Sec. 1251 of the Clean Water Act, "is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited." [Emphasis added]. This has not been scientifically shown with regards to the Anchorage.

53. The Clean Vessel Act of 1992, §5602 (3), provides that Congress found:

"There is currently an inadequate number of pumpout stations for type III marine sanitation devices where recreational vessels normally operate."

Case law concerning the 8th and 14th Amendments of the US Constitution provide that a regulation cannot be strictly enforced if the violation is consequent to the involuntarily status of an individual or impossible to comply with [See: Pottinger v. City of Miami, 810 F. Supp. 1551 (S.D. Fla. 1992), and by reference Robinson v. State of California, 370 U.S. 660, 666 82 S. Ct. 1417, 1420, 8 L.Ed.2d 758 (1962); Wheeler v. Goodman, 306 F. Supp. 58, 64 (W.D.N.C. 1969); Headley v. Selkowitz, 171 So.2d 368 Fla. 1965; Goldman v. Necht, 295 F. Supp. 897, 907-08 (D.Colo.1969); Parker v. Municipal Judge, 83 Nev. 214, 427 P.2d 642, 644 (1967); Hayes v. Municipal Court, 487 P.2d 974, 981 (Okla.Crim.App.1971); Alegata v. Commonwealth, 353 Mass. 287, 231 N.E.2d 201, 207 (1967)

54. In the case of the Anchorage, zero discharge regulations are difficult or impossible to abide by due to a multiplicity of factors:

- a) An inadequate number of facilities. The Dinner Key Marina is close by, but there is often no dock space available for non-tenants.
- b) Inconvenience. This is no small matter. To find out whether a pump-out slip is available, a vessel owner needs to take a dinghy to the Marina Office and check with staff as to whether a slip is available. Then the owner must go back out to bring the vessel in to the designated slip. Once at the slip, the owner must go back to the office to get the pump-out hose. Then it's back to the slip to pump the vessel out, and afterwards another trip to the office to return the hose. Then it is back to the slip for departure to the Anchorage. The back and forth nature of this endeavor is made more inconvenient by the fact that the piers are approximately

a quarter-mile long, and the distance to the office can be even further.

- c) Cost. The City charged \$40 for non-tenants to pump out a vessel holding tank. The average vessel at the Anchorage only has room for a 6-9 gallon holding tank, which fills to capacity after only a few flushes. A pump-out charge of \$40 is the rough equivalent of \$5-10 per flush, which is unreasonable and unaffordable.
- d) Lack of education and information. The Dinner Key Marina recently lowered its pump-out rates, and reportedly obtained a vessel with pump-out capabilities. This sort of vessel is ideal for Anchorages, as when marine sanitation devices are used on a regular basis, a great inconvenience is incurred moving the vessel to a shore based pump-out facility every day or few days, especially with a setup like the City's. However, the City has made no known attempt to inform those at the Anchorage about the rates and services available, nor the legal requirement regarding vessel discharge.
- e) Harassment and intimidation. Unfortunately, the City has a history of treating Anchorage vessel owners as second class citizens. This includes discriminatory prohibitions denying use of the restrooms, as well as arrests and harassment directed specifically against them for loitering and other essentially harmless activity (particularly as some of these owners work on vessels at the Marina, and the Marina itself is public property). Consequently, many individuals at the Anchorage shy away from the Dinner Key Marina.

The City's hostile management approach and failure to inform, educate, or welcome anchored vessels to use pump-out stations or services is indicative of the City's failure to implement a workable management plan - not voluntary non-compliance on the part of vessel owners at the Anchorage. Additional regulations are not what is required here – it is a viable management plan that is called for.

Environmental studies performed on behalf of the City attribute degradation of seagrass beds to anchor lines scouring the bottom, as “evidenced” by signs of erratic and suppressed seagrass growth where vessels are anchored. However none of the available studies indicate that scouring was actually observed, and the observation that seagrass is sparse or its growth suppressed where vessels are anchored is inaccurate and arbitrarily attributed to anchoring. As is readily observable

at the outer Anchorage, seagrass is more prevalent where boats are or have been anchored. This is particularly true in Field 4, where seagrass is abundant and flourishing (as evidenced by blade length). Seagrass is not doing as well in Field 6, but the studies fail to take into consideration that Field 6 is located adjacent to the 27th Avenue storm drain (the recognized major source of silting and discharge of pollutants in the area). The studies also fail to consider that dredging destroyed the seagrass in Field 3. Where vessels are currently or have traditionally anchored in Field 3, seagrass has been making a significant comeback from damages caused by dredging. It is readily observed that areas barren of seagrass increases commensurately to the shoreward distance from anchored vessels.⁶ There has been very little or no anchoring in Field 1A and 1B, so seagrass issues in these areas ought not be attributed to anchoring. The same is true of Field 2, which is likely to have been dredged to create the adjacent spoil island.

56. According to the 4/22/04 draft environmental report by Geoffrey Lane, entitled "An Analysis of Flora and Submerged Aquatic Vegetation for the Proposed Managed Anchorage and Mooring Fields of the Dinner Key Marina, City of Miami":

"Replacement using mooring system that does not contact the benthic habitat versus using traditional mooring chains that scour the bottom as the moored boats turns with the wind and tides, is a vital move in the right direction.

Scouring is presumed to occur when wind and tides shift, causing the vessels anchor lines to drag along the bottom, however, proper anchoring entails setting anchors from multiple directions. When wind or tides shift, the shifting of load to a line lifts it off the seagrass, and the lines no longer under load drop. They do not "scour." Scouring is likely to occur if a single anchor is used, but anchoring with a single anchor results in anchors dislodging themselves causing the attached vessel to drag. Consequently this problem is self correcting, as adjacent vessel owners have zero tolerance towards vessels dragging. But again, the prevalence of seagrass where vessels are moored or anchored does not bear out the studies' conclusions.

⁶ Excluding areas close to the spoil island where no vessels are anchored and seagrass is abundant, but this is likely due to dredged deposits of substrate conducive to seagrass growth that were removed from the overall field.

57. The environmental studies performed on behalf of City consultants are flawed in many ways. The studies do not differentiate between point and non-point pollution sources in the study area, correlate pollution at the Anchorage with the vessels at the Anchorage, or make any attempt whatsoever to differentiate or consider pollution at the Anchorage area and known major sources of pollution released in the adjacent areas of the Dinner Key Marina and the 27th Avenue storm drain. The studies are also of extremely limited value in that data was not collected over a long enough timeframe or at regular enough intervals to indicate whether water quality was improving or deteriorating. Due to these and other shortcomings, the environmental studies performed are not based on sound science.

58. Lack of scientific evidence and the absence of management attempts to mitigate environmental damages suggests that the City's justification for a managed mooring field to remedy environmental problems is pre-textual. Insofar as real problems at the Anchorage are concerned, namely poverty / derelict vessels, and damage resulting from storms sinking vessels and washing them ashore - the proposed mooring field plan does not offer a single realistic solution. There is insufficient safe harbor to prevent storms from damaging vessels and thereby the environment, and transplanting the poor to adjacent vicinities won't remedy alleged environmental issues. It is unfair, burdensome, and repugnant to impart large fees on vessel owners to use moorings for purposes of environmental regulation under circumstances where scientific environmental studies have not been applied, objective common sense remedies are not addressed, mitigation measures proposed are likely to transplant alleged problems to adjacent areas, and there are adequate regulations in place for management if management was truly the objective. A Managed Mooring Field is not necessary for responsible management of Deed 19448 lands, nor is it a cost effective method of regulation with regards to public expenditures of funds or the financial burden it imposes on vessel owners who would utilize the area under the proposed plan. The costs of construction, maintenance, and operation with their associated constriction are not needed to mitigate most or all of the environmental damages alleged. Moorings don't clean up the environment. *Management* cleans up the environment, and there have been no obstacles to a management plan for four decades.

MOORING FIELD PLAN OPERATIONAL DEFFICIENCIES

59. The mooring field proposed for outside of the spoil islands is excessively dense for an area unprotected from prevailing weather conditions. There is insufficient space between vessels and moorings for boaters and crews of average operational skill to safely navigate on and off moorings in moderately windy conditions. Consequently boating accidents, property damage, and personal injury are more likely to occur than if the field was less dense.

59. A mooring field that is exposed to wind and sea conditions but which places moorings in close proximity to each other is a recipe for disaster during weather event evacuations. Vessels will be impeded from leaving the area due to lack of maneuvering space and decreased maneuverability in wind and sea conditions that regularly precede storm events.

60. The Mooring Field Plan proposes to emulate the transport service currently provided at the Coconut Grove Sailing Club (CGSC). However, the CGSC area is protected from wind and waves by the mainland and surrounding spoil islands, whereas the proposed outer fields are nearly totally exposed, and winds of 25 knots regularly produce a rough chop. Under such conditions a transport vessel will rise and fall as much as 3-4 feet in relation to a moored vessel, and veer away sideways from the moored vessel with wind shifts and wave action. Under such circumstances it is unclear whether a transport service can safely drop off or pick up passengers (able bodied patrons as well as children, the elderly, or the disabled) and avoid damaging patrons' vessels.

61. It is even less likely that a transport service will be capable of operating in winds in excess of 40 knots. Due to the hazards involved, the USCG ceases to dispatch their vessels when the wind exceed 40 knots - and in all likelihood USCG captains have a higher level of training and experience than can be expected of a vessel transport operator provided by a municipal mooring field facility.

62. Under circumstances where vessels need to be evacuated due to hurricane and tropical storm warnings, the two vessels the City intends to provide for transport are unlikely to suffice in getting patrons back and forth to their vessels for last minute outfitting, or be capable of operating as winds approach or exceed 40 knots.

63. No marketability study appears to have been undertaken concerning the City's Mooring Field Plan. A Miami Herald article suggests that the mooring rate will be around \$480 a month. This is an extremely high price for a mooring in an unprotected area such as the outer Anchorage. Lack of protection from wind and fetch, and boat traffic and their wakes, renders the waters at the Anchorage rough and uncomfortable. Additionally, there is no electricity or water supply where vessels are anchored, thus electricity has to be generated and water transported to the vessel by the owner. The electricity smaller vessels can generate is limited, and insufficient for air conditioning during the summer or heat during the winter. Unprotected anchorages are not an easy place to live aboard or maintain a vessel, and it is the Petitioner's contention that the outer Anchorage is currently popular only because it's free. Although the City claims to intend bringing those at the Anchorage into the mooring field fold, no-one I've talked to at the Anchorage is willing to pay an exorbitant fee for a mooring - whereby it becomes increasingly likely that vessels currently there will move to adjacent areas and that alleged environmental problems will be transplanted to adjacent vicinities. Before significant public resources are allocated or spent on the City's proposed managed mooring field, an economic feasibility study needs to be performed to determine the amount of demand for moorings, a viable market rate, and the likelihood or unlikelihood that a regulated mooring field will transplant problem vessels to adjacent vicinities. A feasibility study needs to encompass whether a mooring field is a cost effective regulatory measure as recommended under 33 USC Sec. 1252 (c) (2) (b) of the Clean Water Act and related regulations under Ch 62 of the Florida Administrative Code.

64. The City has repeatedly left out or remained non-committal with regards to the location of a dinghy dock for the facility. City officials have indicated that areas convenient to the proposed Mooring Field, such as the Coconut Grove Sailing Club provide insufficient space for Mooring Field dinghies. The DEP has repeatedly asked for the location of the dinghy dock, but the City, through Challenger, has failed to offer a location. Lack of planning in this regard could result in vessel owner's incurring difficulties commuting between shore and their vessels, particularly under the provisions of Managed Mooring Field Rule 2.3:

- a) "All vessels shall should have a dinghy or other small craft as an alternative means of conveyance to enable access to the Dinghy Dock and Harbormaster's Office."
- b) "It is the sole responsibility of vessel occupant's to provide their own conveyance to the upland facilities."

65. Managed Mooring Field Rule 2.5 provides: "Dinghies shall be kept onboard the vessel when not in use." This rule is likely the result of the high density of vessels in the proposed Plan. However, there is insufficient room aboard most vessels to store a dinghy. Nor is it reasonable to expect all vessels to have the hoists necessary to haul dinghies out of the water, or to expect all vessel owners to be able to manually lift dinghies out of the water. A well thought out Plan should be designed around real life circumstances, and not shift planning deficiencies onto vessel owners through rules that are impossible to comply with. If there is insufficient room for vessels and dinghies due to the proposed density, the density of the Fields should be decreased.

66. The City has repeatedly left out or remained non-committal with regards to the location of upland amenities, what the amenities will include, the location of the dinghy dock, the cost of a mooring, and so forth. In order for the community to be able to appraise the plan, these factors need to be set forth in a forthright manner in the Plan. To the extent that the Plan is a mandatory condition of the permit, inclusion of amenity considerations in the plan will go a long way towards ensuring that amenities are provided and/or provided in a timely manner.

67. Rule 2.2 of the Managed Mooring Field Rules provides:

"The determination of whether a vessel is considered to be in good operating condition, capable of maneuvering under their own power shall be the sole discretion of the harbormaster. Vessels without integral or functional power for propulsion are not allowed in the facility"

Under this Rule completely legal sailboats, albeit without engines, could be barred from mooring or anchoring at the sole discretion of the harbormaster. The wording of rule 2.2 is overly broad, and empowers the harbormaster to ban the use and enjoyment of the areas natural resources by standards that are not enumerated and could be arbitrarily applied or misapplied without challenge.

68. A significant percentage of individuals at the anchorage cannot afford a

mooring. Charges appear likely to be a minimum of \$300 a month (\$240 for a mooring, \$60 in holding tank pumpout costs, and \$30 a month in mandatory insurance costs with associated haul-out and survey costs averaged in). This cost is near the equivalent cost of an inexpensive room, which is unaffordable to the poor at the Anchorage, a high percentage of which are physically or mentally disabled who receive little or no government assistance. The Managed Mooring Field Plan provides absolutely no provisions to help these individuals become compliant. For the Plan to effectively mitigate environmental and regulatory compliance, socio-economic issues need to be addressed and included in the Plan to help ensure resolution.

69. The Managed Mooring Field Rules mandate that vessels using the facilities use pump-out stations or pump out their vessels every 2-3 days, thereby failing to take into account that a high percentage of vessels likely to use a Managed Mooring Field will not house the vessel owner, whereby the marine head will seldom be used and require pump-outs far less than mandated by the plan. At the recommended 2-3 pump-outs a week, with all the associated inconvenience and expense (\$40-\$60 a month at an anticipated cost of \$5 per pump-out), the Plan arbitrarily imposes an undue burden on vessel owners.

**X. Concise Statement Of The Ultimate Facts Alleged
(Including The Specific Facts That Petitioner Contends Warrant Reversal
Or Modification Of The Agency's Proposed Action)**

70. Deed 19448 primary intended use of submerged lands for "public purposes," and this intent needs to be abided by and not forsaken by a development approach that is exclusive and private in character. To allow public access, mooring fees should be based on covering the operating costs of the facility and the value to the community rather than on maximum market rates or direct revenue projections.

71. The Dinner Key Mooring Plan is in violation of the terms of Deed 19448 in that changes to the topology have been artificially introduced to the property that have not been properly incorporated into the interpretation of its boundaries. Reevaluation of Deed boundaries is needed to determine boundaries, as to the extent that boundaries cannot be determined the Deed is null and void and the City has no jurisdiction whatsoever over the lands it describes.

72. Required public involvement in regulatory decision and plan making through hearings and access to public records have not occurred and/or have been discouraged, and consequently, knowledgeable and valuable stakeholder input has not been afforded to planners. The plan should not be approved before public hearings are held, and as the public has been prevented from adequately researching, understanding and reviewing this project, denial of public records needs to be remedied.

73. Maritime law and other applicable law needs to be abided by. The plan needs to be revised so as not to infringe upon mariners rights of navigation. Prescription easement rights also need to be abided by, as well as Constitutional rights. The plans deficiencies in these regards can be remedied by increasing the anchoring area and removing arbitrary and unreasonable anchoring limitations.

74. Socio-economic remedies need to be incorporated into the Managed Mooring Field Plan, as the proposed Mooring Field will transplant those who cannot afford a mooring along with environmental problems to adjacent vicinities, thereby shifting the burden of cleanup from the City to the State and adjacent municipalities without mitigating the damages themselves.

75. The proposed Mooring Field Project violates Civil rights and discriminates against the poor in that it proposes the creation of laws that are impossible for many people to comply with in order to justify forcing them into homelessness and seizing their property.

76. The proposed Mooring Field Plan is located in an exposed choppy area without consideration of safer, more environmentally sound, and more marketable locations.

77. The Mooring Field Plan has applied for a U.S. Coast Guard Special Anchorage designation for a facility that does not include an actual anchorage. Permitting should be withheld until the U.S. Coast Guard has had an opportunity' to complete its review of the City's application.

78. The Mooring Field Plan claims to be based on a need for environmental clean-up, but ignores far more serious sources of pollution and areas of greater damage in the immediate area. State taxpayer funds should not be expended in support of a project that cannot be clearly demonstrated to have maximum benefit to the regional

environment.

79. The Dinner Key Mooring Field Plan is based on studies that use no consistent sampling techniques, survey areas or scientific controls, and thus does not indicate that environmental conditions require remedy pursuant to the Clean Waters Act or corresponding and defining provisions pursuant to State Statutes and FAC.

80. No environmental impact statement has been performed to determine whether the proposed vessel density will have an adverse effect on the environment.

81. The City has not demonstrated a responsible management approach for 40 years with regards to regulatory enforcement or maintenance of facilities, and before the Plan needs to provide safeguards to ensure City compliance with management goals.

82. The City of Miami has never demonstrated any previous willingness or capacity to manage its submerged resources. It should be required to demonstrate these competencies prior to receiving a permit to install taxpayer—funded facilities.

**XI. Statement Of Agency's Specific Proposed Action
That Petitioner Contends Requires Reversal Or Modification**

83. The Florida Department of Environmental Protection has indicated its intention to issue a permit to the City of Miami for its Dinner Key Mooring Field Project." Petitioner contends that this permit should not be awarded at this time.

XII. Statement Of Relief Sought By Petitioner

84. Denial of the permit application. A significant aspect of my objections has been that the direction of this project has always been "to build a mooring field," rather than to identify and prioritize problems and draft a comprehensive, community-based plan to solve them. My' goal in submitting this petition is not to "shoot down" City plans or Agency actions, and I encourage the City of Miami to act quickly to work with its stakeholder communities to draft a revised plan that can take advantages of the surveys and other work that have been done in support of the Mooring Field Project. Given that the City of Miami's Waterfront Master Planning Process is just commencing, the expertise, public support and other resources for accomplishing this are immediately'

available. The actions I propose encourage public involvement, law enforcement, environmental cleanup, sound scientific findings, and comprehensive problem solving at greatly reduced cost to taxpayers. They are all commonsense actions expected of responsible government. They minimize business risk and encourage responsible use of public lands and facilities, while requiring minimal permitting revisal and cost, including:

- a) Incorporate the findings of the City of Miami's public Master Planning Process into a revised plan and permit application.
- b) Conduct proper research into the historical intentions of Deed 19448, and incorporate these into the spirit and direction of the final plan.
- c) Continue environmental and water quality surveys and studies on a regular and ongoing basis in order to establish valid scientific controls that generate well founded data.
- d) Embark on a community supported program of environmental management and clean-up by implementing existing laws and resources.
- e) Establish a regular, friendly law-enforcement presence in the Dinner Key Anchorage, along with a sound legal protocol for handling incoming derelict vessels, improperly' secured vessels, vessels in distress and other matters that mariners are not legally empowered to manage independently.
- f) Establish reasonable environmental and social benchmarks that an interim anchorage field management plan must achieve in order to obtain a permit to invest taxpayer funds in any new marine facilities, including moorings, that may be determined to be desired by the community.
- g) Establish a community oversight Board as recommended by the TA Report
- h) Conduct regular public workshops as recommended by the TA Report. These could be incorporated into the Master Planning Process.
- i) Conduct business and marketing studies regarding the impact of mariners and marine facilities on Miami and potential sites for those facilities including data from NMMA and other relevant sources.
- j) Develop a viable strategy for accommodating, educating, upgrading and providing social services to homeless and indigent boaters who cannot afford

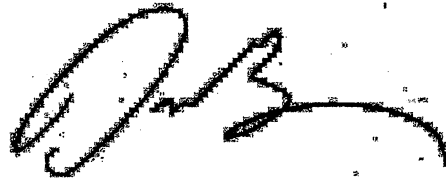
moorings or services fees or to bring their vessels into compliance.

- k) Acknowledge and pledge to preserve the historic communities of Biscayne Bay so long as those communities are willing to comply with the requirements of the law and the environment.
- l) Create a management partnership with the State of Florida that prevents problems from simply being pushed outside the City's jurisdiction onto State lands and into other municipalities' jurisdictions at the expense of the public and the environment.
- m) Demonstrate good faith by immediately opening those public facilities revoked in 1992 (such as showers, fresh water and trash pick-up) to visiting mariners and residents of the field at reasonable costs.
- n) Create a comprehensive environmental cleanup plan that includes not only the areas in the anchoring field, but also the marina, adjacent bottomlands and a plan to address the hazards of storm water runoff. 'This should ideally be done in cooperation with Florida DEP and the Biscayne Bay Aquatic Preserve, and other relevant agencies as well as with direct stakeholder participation.
- o) Create a subsequent environmental maintenance plan that will mitigate trash build-up on the spoil islands and on the submerged lands.
- p) Revise the plan as needed for compliance with Deed restrictions and conditions that may be applicable through homesteader grants.
- q) Revise the plan so that it is compliant with maritime, Constitutional, and other law.

XIII. RESERVATION OF FEDERAL AND STATE RIGHTS & REMEDIES

85. To protect any rights guaranteed under law, Petitioner expressly states that he does not intend to waive his right to seek full and appropriate relief under Federal or state Constitutions or statutes in federal or state courts, seek federal agency or judicial review of state permitting decisions, or injunctive relief prohibiting on-going violations of state or federal statutes — including but not limited to, preparation of an Environmental Assessment and Environmental Impact Study or SEIS under the federal National Environmental Policy Act (NEPA); federal Clean Water Act, Endangered Species Acts; and any and all rules and regulations promulgated under Federal Acts or any applicable program delegation requirements.

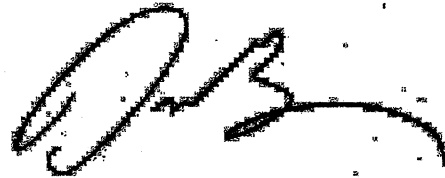
Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. Bricker', with a long horizontal flourish extending to the right.

By: _____
David E Bricker, Pro Se
2414 Coral Way
Miami, FL 33145
(305) 908-1350

Certificate of Service

I HEREBY CERTIFY that on this 27th day of November 2005 the foregoing was emailed to the Department of Environmental Protection at: Lea.crandall@dep.state.fl.us and Francine.Ffolkes@dep.state.fl.us, and to the City of Miami Attorney's Office at law@ci.miami.fl.us.

A handwritten signature in black ink, appearing to read 'D. Bricker', with a stylized flourish extending to the right.

By: _____
David E Bricker, Pro Se
2414 Coral Way
Miami, FL 33145
(305) 908-1350

Internal Improvement Fund, State of Florida

Exhibit "A"

DEED NO. 19448

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, the Trustees of the Internal Improvement Fund of the State of Florida, under and by virtue of the authority of Section 253.12, Florida Statutes, 1941, and according to the provisions and procedure provided for in Section 253.13, Florida Statutes, 1941, and for and in consideration of the sum of Ten and 00/100 Dollars, and other good and valuable /considerations ~~to~~ to them in hand paid by CITY OF MIAMI

Dade County, Florida, receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed to the said CITY OF MIAMI and its successors ~~and~~ and assigns, forever, the following described lands, to-wit:

All that submerged and partially submerged land in Sections 21 and 22, 23, 26, 27 and 35, Township 54 South, Range 41 East, described as follows:

Bounded on the Northwest by the United States Pier-head and Bulkhead Line as established along the westerly side of Biscayne Bay;

Bounded on the Northeast by the Southeasterly production of the Northeasterly right-of-way line of Kirk Street;

Bounded on the Southwest by the Southeasterly production of the Southwesterly boundary of that tract of land marked "John M. Hopkins Lot, Lake Placid School" according to the Plat of the John M. Hopkins Lake Placid School Property, as recorded in Plat Book 6 at Page 152 of the Public Records of Dade County, Florida;

Bounded on the Southeast by that land which is consistently more than 6 feet below the mean-low-water surface of Biscayne Bay.

PROVIDED, HOWEVER, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private person, firm or corporation for any private use or purpose, it being the intention of this restriction that the said lands shall be used solely for public purposes, including municipal purposes and not otherwise.

PROVIDED, FURTHER, anything herein to the contrary notwithstanding, this deed is given and granted upon the further express condition subsequent that the Grantee herein or its successors or assigns shall not give or grant any license or permit to any private person, firm or corporation to construct or make by any means, any islands, fills, embankments, structures, buildings or other similar things within or upon the above described lands or any part thereof for any private use or purpose, as distinguished from any public or municipal use or purpose

It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall render this deed null and void and the above described lands shall, in such event, revert to the Grantors or their successors.

TO HAVE AND TO HOLD the said above mentioned and described land and premises, and all the title and interest of the Trustees therein as granted to them by Section 253.12, Florida Statutes, 1941, unto the said

CITY OF MIAMI

and its successors
~~has~~ and assigns, forever.

SAVING AND RESERVING unto the Trustees of the Internal Improvement Fund of Florida, and their successors, an undivided three-fourths interest in and title in and to an undivided three-fourths interest in all the phosphate, minerals and metals that are or may be in, on or under the said above described lands, and an undivided one-half interest in and title in and to an undivided one-half interest in all the petroleum that is or may be in or under the said above described land, with the privilege to mine and develop the same.

IN WITNESS WHEREOF, The Trustees of the Internal Improvement Fund of the State of Florida have hereunto subscribed their names and affixed their seals, and have caused the seal of the DEPARTMENT OF AGRICULTURE OF THE STATE OF FLORIDA, to be hereunto affixed, at the Capitol, in the City

of Tallahassee, on this the 24th, day of February, A. D. Nineteen

Hundred and Forty-nine

Julien Warren (SEAL)
 Governor.
C. M. Gay (SEAL)
 Comptroller.
Edwin Larson (SEAL)
 Treasurer.
Richard W. Ewing (SEAL)
 Attorney-General.
Richard W. Ewing (SEAL)
 Commissioner of Agriculture.

State of Florida, County of Dade.

This instrument was filed for record the 11 day of April,
 1949 at 4:17 P. M and duly recorded in Book
 Book 3130 on Page 240 File No. Y 29611

E. B. LEATHERMAN
 Clerk Circuit Court

By J. J. Janow D.C.

Map of the Subdivision
of the J. T. FROW
HOMESTEAD.

Lots 50x100 feet.
Streets 50 feet wide.

NOTE:—The above is the only notation shown on said plat.

10.

Plat.

Exhibit "B"

Dated

Filed April 27, 1896.

Recorded in Book "A" of Plats, page 50.

George L. MacDonald, C. E.,

To

The Public.

11.

Plat.

Dated September 5, 1905.

Filed September 9, 1905.

Recorded in Book "B" of Plats, page 106.

Amended Plat of the Frow Homestead, being S½ of NW¼ and N½ of SW¼ of Section 21, Township 54 South, Range 41 East.

Dedication: KNOW ALL MEN BY THESE PRESENTS: That we, J. T. Frow and Euphemia Frow, his wife, owners of the lands embraced in this plat, have caused the lands embraced in this Plat to be surveyed and platted as shown herein and we do hereby dedicate all streets and highways shown hereon, to the perpetual use of the public, reserving to ourselves, our heirs, administrators, assigns, and grantees, owning land abutting or adjoining said streets and highways, the reversion or reversions of the same in case they should be closed or discontinued by law.

Plat is signed and sealed.

One Witness.

Acknowledged with separate examination of the wife before a Notary Public in Dade County, Florida.
(Official Seal).

Attached is certificate by Geo. L. MacDonald to the effect that the plat is a true and correct plat of said property as re-subdivided by him in August, 1905.

12.

Transcript of the proceedings
of the meeting held for the
purpose of incorporating the
Town of Coconut Grove, Florida.

Transcript of minutes of meeting.

Dated March 18, 1919.

Filed April 14, 1919.

Recorded in Book 190 of Deeds, page 119.

Recites: That pursuant to notice duly published a meeting of more than two-thirds of the qualified electors residing in the territory hereinafter described, was held on Tuesday, March 18, 1919, for the purpose of determining whether a municipal corporation should be formed under the provisions of the Statutes of Florida, embracing such territory;

WHEREUPON, it was moved and unanimously carried that a municipal government with corporate powers and privileges provided by law be established with the following territorial limits;

Beginning at the point of intersection of the North line of the South Quarter of Section 28, and the shore of Biscayne Bay; thence West along said North line of the South Quarter of Section 28, and the North line of the South Quarter of Section 29, to the West line of the East Quarter of Section 29; thence North along said West line of the East Quarter of Section 29 and the West line of the East Quarter of Section 20, to the North line of Section 20; thence East along said North line of Section 20 and the North line of Section 21 to the East line of the W½ of Section 21; thence South along said East line of the West Half of Section 21; to the South line of the North Quarter of Section 21; thence East along said South line of the North Quarter of Sections 21 and 22 to the shore of Biscayne Bay. All of which is in Township 54 South, Range 41 East, in Dade County, Florida.

The name adopted for the corporation is "Town of Coconut Grove."

The Corporate seal adopted is in circular form with the Words: "Town of Coconut Grove, Florida, Corporate Seal"; in the margin or outer edge of the circle and in the center a design of Coconut Trees.

The number of aldermen was fixed as seven.

Irving J. Thomas was elected mayor.

Frederick Ross was elected Town Clerk.

H. De B. Justison, Charles De Garmo, J. R. Swanson, William V. Little, Andrew L. Hardie, Geo. P. Kramer, and Hugh M. Matheson, were elected aldermen.

Dale Payne was elected Town Marshal.

Signed by the Mayor and Aldermen with corporate seal attested by the Clerk, also by E. E. Reynolds, Secretary of the meeting.

13.

Plat.

PLAT OF
TOWN OF
COCONUT GROVE, FLORIDA.
Map of Official Streets, Names
and Numbers.

Authorized by Ordinance, passed
by Board of Aldermen, June 20, 1921.

Dated August 1921.

Filed October 4, 1921.

Recorded in Book 5 of Plats, page 96.

System of Names for Thorofares.

All East and West thorofares to be known as "Avenues."

All North and South thorofares to be known as "Streets."

All Northeast and Southwest thorofares to be known as "Highways."

All Northwest and Southeast thorofares to be known as "Roads."

System of Numbers for Structures.

Even numbers to be on the North, East, Northeast and Southeast sides of thorofares.

Odd numbers to be on the South, West, Southwest and Northwest sides of thorofares.

One hundred numbers to be allowed to each quarter of a mile, approximately, as shown by numbers appearing between lines hereon.

Numbers on Highways to conform with those on Streets and Roads with those on Avenues.

This Map is to be used for reference to Street names and numbers only.

(Signed) Hugh M. Matheson, Mayor.

J. R. Swanson, President of Board.

Attest: Albert L. Isaac, Deputy Town Clerk.

Approved: Hobart Crabtree, County Engineer, Dade County.

14.

Plat.

AGREED BOUNDARY BETWEEN
South Half PENT HOMESTEAD and North
half FROW HOMESTEAD, Section 21,
Township 54 South, Range 41 East,
AND
DEDICATION OF MACDONALD ST.,
TOWN OF COCONUT GROVE, FLORIDA.

Dated July 21, 1922.

Filed August 18, 1922.

Recorded in Book 7 of Plats, page 117.

We, the undersigned owners of all property abutting on Macdonald Street from Grand Avenue to Day Ave-

Exhibit "C"

Mooring Number	Swing Diameter	Depth	Maximum Boat length	Maximum Draft	Location Field	Location Row
1	90 feet	8 Ft.	30 feet	7 ft	3	1
2	90 feet	8 Ft.	30 feet	7 ft	3	1
3	90 feet	7 Ft	30 feet	6 ft	3	1
4	90 feet	7 Ft	30 feet	6 ft	3	1
5	90 feet	7 Ft	30 feet	6 ft	3	1
6	90 feet	7 Ft	30 feet	6 ft	3	1
7	90 feet	7 Ft	30 feet	6 ft	3	1
8	100 feet	7 Ft	35 feet	6 ft	3	1
9	100 feet	7 Ft	35 feet	6 ft	3	2
10	90 feet	7 Ft	30 feet	6 ft	3	2
11	90 feet	7 Ft	30 feet	6 ft	3	2
12	90 feet	7 Ft	30 feet	6 ft	3	2
13	90 feet	7 Ft	30 feet	6 ft	3	2
14	90 feet	7 Ft	30 feet	6 ft	3	2
15	90 feet	7 Ft	30 feet	6 ft	3	2
16	90 feet	8 Ft.	30 feet	7 ft	3	2
17	90 feet	8 Ft.	30 feet	7 ft	3	3
18	90 feet	8 Ft.	30 feet	7 ft	3	3
19	90 feet	7 Ft	30 feet	6 ft	3	3
20	90 feet	7 Ft	30 feet	6 ft	3	3
21	90 feet	7 Ft	30 feet	6 ft	3	3
22	90 feet	7 Ft	30 feet	6 ft	3	3
23	90 feet	7 Ft	30 feet	6 ft	3	3
24	100 feet	6 Ft	35 feet	5 ft	3	3
25	90 feet	7 Ft	30 feet	6 ft	3	4
26	90 feet	7 Ft	30 feet	6 ft	3	4
27	90 feet	7 Ft	30 feet	6 ft	3	4
28	90 feet	7 Ft	30 feet	6 ft	3	4
29	90 feet	7 Ft	30 feet	6 ft	3	4
30	90 feet	7 Ft	30 feet	6 ft	3	4
31	90 feet	8 Ft.	30 feet	7 ft	3	4
32	90 feet	7 Ft	30 feet	6 ft	3	5
33	90 feet	7 Ft	30 feet	6 ft	3	5
34	90 feet	7 Ft	30 feet	6 ft	3	5
35	90 feet	7 Ft	30 feet	6 ft	3	5
36	90 feet	7 Ft	30 feet	6 ft	3	5
37	90 feet	7 Ft	30 feet	6 ft	3	5
38	90 feet	7 Ft	30 feet	6 ft	3	5
39	90 feet	7 Ft	30 feet	6 ft	3	6
40	90 feet	7 Ft	30 feet	6 ft	3	6
41	90 feet	7 Ft	30 feet	6 ft	3	6
42	90 feet	7 Ft	30 feet	6 ft	3	6
43	90 feet	7 Ft	30 feet	6 ft	3	6
44	90 feet	7 Ft	30 feet	6 ft	3	6
45	90 feet	6 Ft	30 feet	5 ft	3	7
46	90 feet	7 Ft	30 feet	6 ft	3	7
47	90 feet	7 Ft	30 feet	6 ft	3	7
48	90 feet	7 Ft	30 feet	6 ft	3	7
49	90 feet	7 Ft	30 feet	6 ft	3	7
50	90 feet	7 Ft	30 feet	6 ft	3	7
51	90 feet	7 Ft	30 feet	6 ft	3	8
52	90 feet	7 Ft	30 feet	6 ft	3	8
53	90 feet	7 Ft	30 feet	6 ft	3	8
54	90 feet	7 Ft	30 feet	6 ft	3	8
55	90 feet	7 Ft	30 feet	6 ft	3	8
56	90 feet	6 Ft	30 feet	5 ft	3	9
57	90 feet	7 Ft	30 feet	6 ft	3	9
58	90 feet	7 Ft	30 feet	6 ft	3	9
59	90 feet	7 Ft	30 feet	6 ft	3	9
60	90 feet	7 Ft	30 feet	6 ft	3	9
61	90 feet	7 Ft	30 feet	6 ft	3	9
62	90 feet	7 Ft	30 feet	6 ft	3	10
63	90 feet	7 Ft	30 feet	6 ft	3	10

64	90 feet	7 Ft	30 feet	6 ft	3	10
65	90 feet	7 Ft	30 feet	6 ft	3	10
66	90 feet	7 Ft	30 feet	6 ft	3	10
67	90 feet	7 Ft	30 feet	6 ft	3	10
68	90 feet	6 Ft	30 feet	5 ft	3	11
69	90 feet	7 Ft	30 feet	6 ft	3	11
70	90 feet	7 Ft	30 feet	6 ft	3	11
71	90 feet	7 Ft	30 feet	6 ft	3	11
72	90 feet	7 Ft	30 feet	6 ft	3	11
73	90 feet	7 Ft	30 feet	6 ft	3	11
74	90 feet	7 Ft	30 feet	6 ft	3	12
75	90 feet	7 Ft	30 feet	6 ft	3	12
76	90 feet	7 Ft	30 feet	6 ft	3	12
77	90 feet	7 Ft	30 feet	6 ft	3	12
78	90 feet	7 Ft	30 feet	6 ft	3	12
79	90 feet	6 Ft	30 feet	5 ft	3	12
80	110 feet	7 Ft	40 feet	6 ft	3	13
81	110 feet	6 Ft	40 feet	5 ft	3	13
82	110 feet	6 Ft	40 feet	5 ft	3	13
83	110 feet	6 Ft	40 feet	5 ft	3	13
84	110 feet	6 Ft	40 feet	5 ft	3	14
85	110 feet	6 Ft	40 feet	5 ft	3	14
86	110 feet	6 Ft	40 feet	5 ft	3	14
87	110 feet	7 Ft	40 feet	6 ft	3	14
88	110 feet	6 Ft	40 feet	5 ft	3	15
89	110 feet	6 Ft	40 feet	5 ft	3	15
90	110 feet	6 Ft	40 feet	5 ft	3	15
91	110 feet	6 Ft	40 feet	5 ft	3	15
92	110 feet	7 Ft	40 feet	6 ft	3	15
93	110 feet	7 Ft	40 feet	6 ft	3	16
94	110 feet	7 Ft	40 feet	6 ft	3	16
95	110 feet	6 Ft	40 feet	5 ft	3	16
96	110 feet	6 Ft	40 feet	5 ft	3	16
97	110 feet	6 Ft	40 feet	5 ft	3	16
98	110 feet	6 Ft	40 feet	5 ft	3	17
99	110 feet	6 Ft	40 feet	5 ft	3	17
100	110 feet	6 Ft	40 feet	5 ft	3	17
101	110 feet	7 Ft	40 feet	6 ft	3	17
102	110 feet	6 Ft	40 feet	5 ft	3	17
103	80 feet	6 Ft	25 feet	5 ft	3	18
104	80 feet	7 Ft	25 feet	6 ft	3	18
105	80 feet	6 Ft	25 feet	5 ft	3	18
106	80 feet	6 Ft	25 feet	5 ft	3	18
107	80 feet	6 Ft	25 feet	5 ft	3	18
108	80 feet	6 Ft	25 feet	5 ft	3	18
109	80 feet	6 Ft	25 feet	5 ft	3	18
110	80 feet	6 Ft	25 feet	5 ft	3	19
111	80 feet	6 Ft	25 feet	5 ft	3	19
112	80 feet	6 Ft	25 feet	5 ft	3	19
113	80 feet	7 Ft	25 feet	6 ft	3	19
114	80 feet	6 Ft	25 feet	5 ft	3	19
115	80 feet	7 Ft	25 feet	6 ft	3	19
116	80 feet	6 Ft	25 feet	5 ft	3	2
117	80 feet	6 Ft	25 feet	5 ft	3	20
118	80 feet	7 Ft	25 feet	6 ft	3	20
119	80 feet	7 Ft	25 feet	6 ft	3	20
120	80 feet	7 Ft	25 feet	6 ft	3	20
121	80 feet	6 Ft	25 feet	5 ft	3	20
122	80 feet	6 Ft	25 feet	5 ft	3	20
123	80 feet	6 Ft	25 feet	5 ft	3	21
124	80 feet	7 Ft	25 feet	6 ft	3	21
125	80 feet	7 Ft	25 feet	6 ft	3	21
126	80 feet	7 Ft	25 feet	6 ft	3	21
127	80 feet	6 Ft	25 feet	5 ft	3	21
128	80 feet	6 Ft	25 feet	5 ft	3	21
129	80 feet	6 Ft	25 feet	5 ft	3	22

130	80 feet	6 Ft	25 feet	5 ft	3	22
131	80 feet	6 Ft	25 feet	5 ft	3	22
132	80 feet	7 Ft	25 feet	6 ft	3	22
133	80 feet	7 Ft	25 feet	6 ft	3	22
134	80 feet	7 Ft	25 feet	6 ft	3	22
135	80 feet	6 Ft	25 feet	5 ft	3	22
136	110 feet	6 Ft	40 feet	5 ft	3	23
137	110 feet	6 Ft	40 feet	5 ft	3	23
138	110 feet	7 Ft	40 feet	6 ft	3	23
139	110 feet	7 Ft	40 feet	6 ft	3	23
140	110 feet	7 Ft	40 feet	6 ft	3	23
141	110 feet	6 Ft	40 feet	5 ft	3	23
142	110 feet	6 Ft	40 feet	5 ft	3	23
143	110 feet	6 Ft	40 feet	5 ft	3	22
144	110 feet	6 Ft	40 feet	5 ft	3	23
145	110 feet	6 Ft	40 feet	5 ft	3	22
146	110 feet	6 Ft	40 feet	5 ft	3	23
147	110 feet	6 Ft	40 feet	5 ft	3	24
148	110 feet	6 Ft	40 feet	5 ft	3	24
149	110 feet	6 Ft	40 feet	5 ft	3	24
150	110 feet	6 Ft	40 feet	5 ft	3	24
151	110 feet	6 Ft	40 feet	5 ft	3	24
152	110 feet	6 Ft	40 feet	5 ft	3	24
153	110 feet	7 Ft	40 feet	6 ft	3	24
154	110 feet	7 Ft	40 feet	6 ft	3	24
155	110 feet	7 Ft	40 feet	6 ft	3	24
156	110 feet	7 Ft	40 feet	6 ft	3	24
157	110 feet	7 Ft	40 feet	6 ft	3	25
158	110 feet	7 Ft	40 feet	6 ft	3	25
159	110 feet	7 Ft	40 feet	6 ft	3	25
160	110 feet	7 Ft	40 feet	6 ft	3	25
161	110 feet	6 Ft	40 feet	5 ft	3	25
162	110 feet	6 Ft	40 feet	5 ft	3	25
163	110 feet	6 Ft	40 feet	5 ft	3	25
164	110 feet	6 Ft	40 feet	5 ft	3	25
165	110 feet	6 Ft	40 feet	5 ft	3	25
166	110 feet	6 Ft	40 feet	5 ft	3	25
167	110 feet	6 Ft	40 feet	5 ft	3	25
168	110 feet	6 Ft	40 feet	5 ft	3	26
169	110 feet	6 Ft	40 feet	5 ft	3	26
170	110 feet	6 Ft	40 feet	5 ft	3	26
171	110 feet	6 Ft	40 feet	5 ft	3	26
172	110 feet	6 Ft	40 feet	5 ft	3	26
173	110 feet	6 Ft	40 feet	5 ft	3	26
174	110 feet	6 Ft	40 feet	5 ft	3	26
175	110 feet	7 Ft	40 feet	6 ft	3	26
176	110 feet	7 Ft	40 feet	6 ft	3	26
177	110 feet	7 Ft	40 feet	6 ft	3	26
178	110 feet	7 Ft	40 feet	6 ft	3	26
179	110 feet	7 Ft	40 feet	6 ft	3	27
180	110 feet	7 Ft	40 feet	6 ft	3	27
181	110 feet	6 Ft	40 feet	5 ft	3	27
182	110 feet	7 Ft	40 feet	6 ft	3	27
183	110 feet	6 Ft	40 feet	5 ft	3	27
184	110 feet	6 Ft	40 feet	5 ft	3	27
185	110 feet	6 Ft	40 feet	5 ft	3	27
186	110 feet	6 Ft	40 feet	5 ft	3	27
187	110 feet	6 Ft	40 feet	5 ft	3	27
188	110 feet	6 Ft	40 feet	5 ft	3	27
189	110 feet	6 Ft	40 feet	5 ft	3	27
190	110 feet	6 Ft	40 feet	5 ft	3	28
191	110 feet	6 Ft	40 feet	5 ft	3	28
192	110 feet	6 Ft	40 feet	5 ft	3	28
193	110 feet	6 Ft	40 feet	5 ft	3	28
194	110 feet	6 Ft	40 feet	5 ft	3	28
195	110 feet	6 Ft	40 feet	5 ft	3	28

196	110 feet	6 Ft	40 feet	5 ft	3	28
197	110 feet	6 Ft	40 feet	5 ft	3	28
198	110 feet	6 Ft	40 feet	5 ft	3	28
199	110 feet	7 Ft	40 feet	6 ft	3	28
200	110 feet	7 Ft	40 feet	6 ft	3	28
201	110 feet	6 ft	40 feet	5 ft	4	1
202	110 feet	6 ft	40 feet	5 ft	4	1
203	110 feet	6 ft	40 feet	5 ft	4	1
204	110 feet	5 ft	40 feet	4 ft	4	1
205	110 feet	5 ft	40 feet	4 ft	4	1
206	110 feet	5 ft	40 feet	4 ft	4	2
207	110 feet	5 ft	40 feet	4 ft	4	2
208	110 feet	5 ft	40 feet	4 ft	4	2
209	110 feet	5 ft	40 feet	4 ft	4	2
210	110 feet	5 ft	40 feet	4 ft	4	2
211	110 feet	6 ft	40 feet	5 ft	4	3
212	110 feet	5 ft	40 feet	4 ft	4	3
213	110 feet	5 ft	40 feet	4 ft	4	3
214	110 feet	5 ft	40 feet	4 ft	4	3
215	110 feet	6 ft	40 feet	5 ft	4	3
216	110 feet	6 ft	40 feet	5 ft	4	4
217	110 feet	5 ft	40 feet	4 ft	4	4
218	110 feet	5 ft	40 feet	4 ft	4	4
219	110 feet	6 ft	40 feet	5 ft	4	4
220	110 feet	6 ft	40 feet	5 ft	4	5
221	110 feet	6 ft	40 feet	5 ft	4	5
222	110 feet	6 ft	40 feet	5 ft	4	5
223	110 feet	6 ft	40 feet	5 ft	4	6
224	110 feet	6 ft	40 feet	5 ft	4	6
225	110 feet	6 ft	40 feet	5 ft	4	7
226	110 feet	6 ft	40 feet	5 ft	6	1
227	110 feet	7 ft	40 feet	6 ft	6	1
228	110 feet	7 ft	40 feet	6 ft	6	1
229	110 feet	7 ft	40 feet	6 ft	6	1
230	110 feet	7 ft	40 feet	6 ft	6	1
231	110 feet	7 ft	40 feet	6 ft	6	1
232	110 feet	8 Ft.	40 feet	7 ft	6	1
233	110 feet	8 Ft.	40 feet	7 ft	6	1
234	110 feet	8 Ft.	40 feet	7 ft	6	1
235	110 feet	8 Ft.	40 feet	7 ft	6	2
236	110 feet	8 Ft.	40 feet	7 ft	6	2
237	110 feet	8 Ft.	40 feet	7 ft	6	2
238	110 feet	8 Ft.	40 feet	7 ft	6	2
239	110 feet	7 ft	40 feet	6 ft	6	2
240	110 feet	7 ft	40 feet	6 ft	6	2
241	110 feet	7 ft	40 feet	6 ft	6	2
242	110 feet	7 ft	40 feet	6 ft	6	2
243	80 feet	7 ft	25 feet	6 ft	6	3
244	80 feet	7 ft	25 feet	6 ft	6	3
245	110 feet	6 ft	40 feet	5 ft	6	3
246	110 feet	7 ft	40 feet	6 ft	6	3
247	110 feet	7 ft	40 feet	6 ft	6	3
248	110 feet	8 Ft.	40 feet	7 ft	6	3
249	110 feet	8 Ft.	40 feet	7 ft	6	3
250	80 feet	7 ft	25 feet	6 ft	6	4
251	110 feet	7 ft	40 feet	6 ft	6	4
252	110 feet	7 ft	40 feet	6 ft	6	4
253	110 feet	6 ft	40 feet	5 ft	6	4
254	110 feet	6 ft	40 feet	5 ft	6	4
255	110 feet	6 ft	40 feet	5 ft	6	4
256	80 feet	6 ft	25 feet	5 ft	6	4
257	80 feet	6 ft	25 feet	5 ft	6	4
258	80 feet	6 ft	25 feet	5 ft	6	4
259	80 feet	6 ft	25 feet	5 ft	6	5
260	80 feet	6 ft	25 feet	5 ft	6	5
261	80 feet	6 ft	25 feet	5 ft	6	5

262	80 feet	6 ft	25 feet	5 ft	6	5
263	80 feet	6 ft	25 feet	5 ft	6	5
264	80 feet	6 ft	25 feet	5 ft	6	5
265	80 feet	6 ft	25 feet	5 ft	6	5
266	80 feet	7 ft	25 feet	6 ft	6	5
267	80 feet	7 ft	25 feet	6 ft	6	5
268	80 feet	7 ft	25 feet	6 ft	6	5
269	80 feet	6 ft	25 feet	5 ft	6	6
270	80 feet	6 ft	25 feet	5 ft	6	6
271	80 feet	6 ft	25 feet	5 ft	6	6
272	80 feet	6 ft	25 feet	5 ft	6	6
273	80 feet	6 ft	25 feet	5 ft	6	6
274	80 feet	6 ft	25 feet	5 ft	6	6
275	80 feet	6 ft	25 feet	5 ft	6	6
276	80 feet	6 ft	25 feet	5 ft	6	6
277	80 feet	6 ft	25 feet	5 ft	6	6
278	80 feet	6 ft	25 feet	5 ft	6	6
279	80 feet	6 ft	25 feet	5 ft	6	7
280	80 feet	6 ft	25 feet	5 ft	6	7
281	80 feet	6 ft	25 feet	5 ft	6	7
282	80 feet	6 ft	25 feet	5 ft	6	7
283	80 feet	6 ft	25 feet	5 ft	6	7
284	80 feet	6 ft	25 feet	5 ft	6	7
285	80 feet	6 ft	25 feet	5 ft	6	7
286	80 feet	6 ft	25 feet	5 ft	6	7
287	80 feet	6 ft	25 feet	5 ft	6	7
288	80 feet	6 ft	25 feet	5 ft	6	8
289	80 feet	6 ft	25 feet	5 ft	6	8
290	80 feet	6 ft	25 feet	5 ft	6	8
291	80 feet	6 ft	25 feet	5 ft	6	8
292	80 feet	6 ft	25 feet	5 ft	6	8
293	80 feet	6 ft	25 feet	5 ft	6	8
294	80 feet	6 ft	25 feet	5 ft	6	8
295	80 feet	6 ft	25 feet	5 ft	6	8
296	80 feet	6 ft	25 feet	5 ft	6	9
297	80 feet	6 ft	25 feet	5 ft	6	9
298	80 feet	5 ft	25 feet	4 ft	6	9
299	80 feet	6 ft	25 feet	5 ft	6	9
300	80 feet	6 ft	25 feet	5 ft	6	9
301	80 feet	6 ft	25 feet	5 ft	6	9
302	80 feet	6 ft	25 feet	5 ft	6	9
303	80 feet	6 ft	25 feet	5 ft	6	10
304	80 feet	6 ft	25 feet	5 ft	6	10
305	80 feet	6 ft	25 feet	5 ft	6	10
306	80 feet	5 ft	25 feet	4 ft	6	10
307	80 feet	6 ft	25 feet	5 ft	6	11
308	80 feet	6 ft	25 feet	5 ft	6	11
309	80 feet	6 ft	25 feet	5 ft	6	11
310	80 feet	6 ft	25 feet	5 ft	6	11
311	80 feet	6 ft	25 feet	5 ft	6	12
312	80 feet	6 ft	25 feet	5 ft	6	12
313	80 feet	6 ft	25 feet	5 ft	6	12
314	80 feet	6 ft	25 feet	5 ft	6	13
315	80 feet	6 ft	25 feet	5 ft	6	13
316	80 feet	6 ft	25 feet	5 ft	6	13
317	80 feet	6 ft	25 feet	5 ft	6	14
318	80 feet	6 ft	25 feet	5 ft	6	14
319	80 feet	6 ft	25 feet	5 ft	6	14
320	80 feet	6 ft	25 feet	5 ft	6	15
321	80 feet	6 ft	25 feet	5 ft	6	15
322	80 feet	5 ft	25 feet	4 ft	6	15
323	80 feet	6 ft	25 feet	5 ft	6	16
324	80 feet	6 ft	25 feet	5 ft	6	16
325	80 feet	6 ft	25 feet	5 ft	6	16

Ffolkes, Francine

From: Dave Bricker [spot@spotgrafix.com]
Sent: Tuesday, December 13, 2005 11:29 AM
To: Ffolkes, Francine
Subject: OGC CASE No. 05-1497

Ms. Ffolkes,

If you would indulge me in one more tiny amendment while the petition application is under review, I wish to add the following small paragraph to the section where I assert the reasons I claim standing to file my application for an administrative hearing.

Petitioner also claims standing on the basis that he is a participant in an ongoing City-sponsored Public Waterfront Master Planning process that specifically includes the referenced submerged lands in its scope. Petitioner has attended public meetings, coordinated with stakeholder groups and conducted research, and the permit, if awarded, would negate the value of this time invested in bona fide City-sponsored public planning processes.

Thank you and happy holiday.

David Bricker