Memorandum

MIAMI-DADE COUNTY

Date: July 24, 2007

Amended
Agenda Item No. 5(R)

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

From: George M. Burgess, County Manager

Subject: Class I Permit Application by Miami Yacht & Engine Works, LLC, for Modification of an Existing Class I Permit to Authorize Expansion of a Marine Repair Facility to Allow Mooring or Storage of an Additional Thirteen (13) Powerboats

R#871-07

Attached, please find for your consideration an application by Miami Yacht & Engine Works, LLC, for modification of an existing Class I Permit. Also attached is the recommendation of the Director of the Department of Environmental Resources Management for denial of the requested Class I Permit modification. Also attached is a Resolution seeking the Board's denial of a modification to the aforesaid Class I Permit.

Assistant County Manager

Memorandum

MIAMI-DADE COUNTY

Date: July 24, 2007

To: George M. Burgess
County Manager

From: Carlos Espinosa, P.E., Director
Environmental Resources Management

Subject: Class I Permit Application by Miami Yacht & Engine Works, LLC, for Modification of an Existing Class I Permit to Authorize Expansion of a Marine Repair Facility to Allow Mooring or Storage of an Additional Thirteen (13) Powerboats

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Recommendation

I have reviewed the application by Miami Yacht & Engine Works, LLC for modification of an existing Class I Permit. Based upon the applicable evaluation factors set forth in Section 24-48.3 of the Code of Miami-Dade County, Florida, I recommend that the Board of County Commissioners deny the requested modification of a Class I Permit for the reasons set forth below.

Scope

The project site is located along the Miami River at 2100 N.W. North River Drive, Miami, Miami-Dade County, Florida, which is in Commission District 5.

Fiscal Impact/Funding Source

Not applicable.

Track Record/Monitor

Not applicable.

Background

The subject application to modify an existing Class I Permit involves the expansion of an existing marine repair facility from the presently authorized eleven (11) powerboat slips to a requested twenty-four (24) powerboat slips. Section 24-48.13(2) of the Code of Miami-Dade County states that modifications to a permit issued for work hereunder must be approved by the Department. If in the opinion of the Director, the proposed modification will result in a substantial change to the project, said modification shall be subject to a public hearing before the Board of County Commissioners. The subject permit modification represents a substantial change to the existing project and is therefore being forwarded for public hearing before the Board of County Commissioners. The project site is located along the Miami River at 2100 N.W. North River Drive, Miami, Florida and is operating under the name of Miami Yacht & Engine Works, LLC.

Section 24-48.3 of the Code of Miami-Dade County, Florida, requires that the Miami-Dade County Department of Environmental Resources Management (DERM) base its recommendation, and the Board of County Commissioners base its decision for approval, denial, or approval subject to conditions limitations or restrictions, for Class I permits on several evaluation factors. These include environmental and related impacts including but not limited to aesthetics, navigation, marine resources, effects on threatened or endangered species, conformance with applicable federal, state and local laws and regulations, and any other environmental value affecting the public interest when deciding whether to approve or deny a proposed project. Section 24-48.3(1)(e) of the Code of Miami-Dade County specifically lists conformance with the Miami-Dade County Manatee Protection Plan as a factor for evaluation of Class I permit applications.

The Miami-Dade County Manatee Protection Plan (MPP) was developed with the assistance of a citizen's advisory committee and was approved by the Board of County Commissioners (Resolution Number R-1595-95) and the State of Florida in 1995. The MPP embodies the consensus knowledge and strategies for avoiding adverse impacts to manatees in Miami-Dade County. Pursuant to state requirements, it includes guidelines for siting of new or expanded marine facilities. The *Marine Facility Siting Criteria* section of the MPP primarily addresses recommendations for powerboat storage or destinations, including wet or dry slips, docks, or berths, and launching facilities such as boat ramps. The most important underlying strategy to reduce potential impact to manatees from new or expanded facilities relates to minimizing potential conflicts between vessel travel patterns and manatees. The MPP guidelines seek to avoid increases in powerboat storage, berths, destinations or launching in areas that would lead to increased vessel traffic through areas that are most regularly used by manatees or that are used by manatees for sensitive behaviors, such as mating or nursing calves. However, the MPP also recognized the importance of balancing traditional water-dependent uses and the need for access to the water, by recommending that historically existing vessel uses, including those situated in essential manatee habitats, be allowed to rebuild, renovate, and continue operations. The MPP defines "existing marine facility" as "one which was in use on October 28, 1984 or later". The MPP states that "all existing marine facilities should be allowed to continue with the existing use, and may renovate (according to permitting guidelines) as long as there is no change in facility size, including no increase in the number of wet or dry slips". This concept was based on fairness to property owners and to provide assurance that new manatee protection guidelines would not be applied retroactively to properties with historical vessel use.

On May 25, 2004, the Miami-Dade County Board of County Commissioners (BCC) passed Resolution Number R-660-04 (Attachment G) approving Class I permit application number CC04-020 for the partial filling of a boat notch on applicant's property to facilitate development of a marine repair facility. For the purposes of manatee protection and as a condition of that approval, the proposed facility was limited to a maximum number of eleven (11) powerboat slips, wet or dry, in association with a conventional boatyard. The limit on the number of powerboat slips was based upon a site-specific evaluation of the historical vessel use in terms of the number of slips as well as the typical frequency of use of the slips, and consistency with guidelines for siting of facilities, as described in the MPP. Following approval of the Class I permit application by the Board of County Commissioners, on October 14, 2004, DERM issued Class I permit number CC04-020 for filling of tidal waters and construction of a new seawall at the subject property. On June 18, 2004, DERM issued Marine Facilities Annual Operating Permit (MOP) number MOP-0182 to Miami Yacht & Engine Works, LLC, for operation of a commercial boat repair facility at the subject property. In accordance with the Board of County Commissioner's approval of Resolution Number R-660-04, both the Class I Permit (CC04-020) and the MOP permit (MOP-0182) for this property restrict the maximum number of powerboats that may be moored or stored at the facility at any one time to eleven (11) (Attachments H and I). It should be noted that the Environmental Resources Permit issued on July 7, 2004 by the Florida Department of Environmental Protection for the subject facility also includes a condition that limits the facility to no more than eleven (11) powerboat slips in order to comply with manatee protection requirements. In addition, the US Army Corps of Engineers permit for construction of this facility limits the site to no more than eleven (11) powerboat slips.

On September 19, 2006, the Petitioner submitted a Class I permit application to DERM requesting an expansion of powerboat slips at the subject property from eleven (11) existing powerboat slips to a proposed twenty-four (24) powerboat slips. The applicant has asserted that expansion of the subject facility should be authorized based upon his interpretation of the MPP or regulations, or based on the "reallocation" of slips from other properties on the Miami River (Attachment E). However, the applicant believes that the transfer or reallocation of powerboat slips from other properties to their property need not require consent from the other donor property. DERM evaluated these arguments, but does not agree with the characterizations or interpretations offered by the applicant, and therefore concluded that an increase in wet or dry slips, or a change from historical vessel use patterns, would represent a significant increased adverse impact to manatees.

DERM has engaged in an extended dialogue with the applicant about how the transfer of slips from other properties along the Miami River might be considered or applied in this case as a means of offsetting the adverse impacts associated with the subject facility expansion. On May 3, 2005, the Board of County Commissioners approved Resolution Number R-536-05 directing the County to prepare polices which shall create procedures whereby owners of property along the Miami River can request an official determination by DERM of the number of existing legal powerboat slips authorized for that property, and to maintain a record of those determinations, and that allows for the reallocation of such slips to other properties on the Miami River, to the extent that such reallocation may be authorized by all other local, state and federal regulations. As noted above, the MPP does include a recommendation to allow for reconstruction of existing marine facilities subject to permitting guidelines. However, the MPP provides no guidance or recommendations concerning the transfer of slips from one location to another. DERM has in place a site-by-site process that considers permits, aerial photos, and other forms of documentation to determine the historical motor vessel use of a site, for the purposes of evaluating requests for rebuilding or repairing wet and dry berthing or other vessel facilities. This was used in the determination of the existing uses at the subject facility to recommend approval for the currently authorized eleven slips. This same procedure can be applied when considering the elimination or the transfer of historical existing slips from a donor property to a recipient property, to offset or mitigate adverse impacts to manatees that are associated with facility expansion. This process involves a review and evaluation by DERM of the proposed transfer for potential adverse impacts to manatees as well as evaluation of other requirements of Chapter 24 of the Code of Miami-Dade County. The review requires an evaluation of the type of facility and typical uses associated with both the historically existing slips at the donor property and the proposed use of the slips at the recipient property. To assure that the impacts from proposed new slips are equivalent to potential impacts from the historical slips to be removed, this analysis must be site specific. Furthermore, to assure that the impact of new powerboat slips is mitigated, a suitable restriction (i.e. restrictive covenant) on the donor property would be required to record that the "historical use" was transferred, and assure that the original slips would never be reoccupied by powerboats. This is similar to other forms of environmental mitigation, or conservation easements, intended to preserve the mitigation benefits in perpetuity. This has implications for the owners of properties with so-called unused slips. These owners have an expectation that reconstruction of historical powerboat slips will be found consistent with manatee protection guidelines, even if the slips have not been occupied for some time, and they will be able to rebuild them in the future, provided other permitting requirements are also met. This would no longer be the case if the historical use had been transferred to another parcel. For these reasons, both from an assessment of the biological merits of a proposed project, and in fairness to owners whose unused slips are sought for transfer, DERM does not agree with the applicant's notion that "unused" slips can simply be "reallocated" to their property without participation and consent of the "donor" site. On July 10, 2007, the Board of County Commissioners heard first reading of an ordinance to create the Manatee Protection Plan Review Committee and to provide funding to begin collection and compilation of data required for the purpose of updating the MPP. As part of that process, it is anticipated that the Manatee Protection Plan Review Committee will further consider the issue of slip transfers, which may then be more formally addressed in an updated version of the MPP.

In a January 5, 2007, letter to the applicant, DERM explained the process for considering a transfer of slips from one property to another, and advised the applicant that such a transfer would require the recording of a restrictive covenant on the donor property to document that the existing slip use had been transferred. The property owner did not agree and appealed DERM's determination regarding the transfer procedure to the Environmental Quality Control Board (EQCB). In addition, the applicant sought a variance from the EQCB to allow for expansion of their facility. On April 12, 2007, the EQCB denied the appeal, and sustained DERM's determination regarding slip transfer, and also dismissed the requested variance for lack of jurisdiction over the matter (Attachment J).

The proposed project is not consistent with Miami-Dade County coastal protection provisions and does not adequately offset or mitigate for adverse environmental impacts associated with the proposed permit modification. Please find attached a DERM Project Report which sets forth the reasons why the project is recommended for denial by DERM pursuant to the applicable evaluation factors set forth in Section 24-48.3 of the Code of Miami-Dade County, Florida.

Attachments

Attachment A: Class I Permit Application and LLC Affidavits
Attachment B: Affidavits of Ownership
Attachment C: Verification of Class I Permit Application by Upland Property Owner
Attachment D: Zoning Memorandum
Attachment E: Applicant Letter to the Board of County Commissioners
Attachment F: Names and Addresses of Owners of All Riparian or Wetland Property Within Three Hundred (300) Feet of the Proposed Work
Attachment G: Resolution Number R-660-04
Attachment H: Class I Permit CC04-020
Attachment I: Marine Facilities Annual Operating Permit Number MOP-0182
Attachment J: Environmental Quality Control Board Orders
Attachment K: DERM Project Report

NOTICE OF PUBLIC HEARING ON AN APPLICATION BY MIAMI YACHT & ENGINE WORKS, LLC, FOR MODIFICATION OF AN EXISTING CLASS I PERMIT TO AUTHORIZE EXPANSION OF A MARINE REPAIR FACILITY TO ALLOW MOORING OR STORAGE OF AN ADDITIONAL THIRTEEN (13) POWERBOATS AT 2100 N.W. NORTH RIVER DRIVE, MIAMI, MIAMI-DADE COUNTY, FLORIDA

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

NOTICE IS HEREBY GIVEN pursuant to Article IV, Division 1 of Section 24-48 of the Code of Miami-Dade County that the Board of County Commissioners of Miami-Dade County will hold and conduct a Public Hearing on a request by Miami Yacht & Engine Works, LLC, for modification of an existing Class I permit to authorize expansion of a marine repair facility to allow mooring or storage of an additional thirteen (13) powerboats at 2100 N.W., North River Drive, Miami, Miami-Dade County, Florida. Such Public Hearing will be held on the 24th day of July, 2007, at 9:30 am o'clock, at the County Commission Chambers on the 2nd Floor of the Stephen P. Clark Center in Miami, Florida.

Plans and details concerning the work requested in the application may be reviewed by interested persons at the office of the Miami-Dade County Department of Environmental Resources Management, 6th Floor, 701 N.W. 1st Court, Miami, Florida 33136.

Oral statements will be heard and appropriate records made. For accuracy of records, all important facts and arguments should be prepared in writing in triplicate, with two copies being submitted to the Deputy Clerk of the County Commission at the hearing or mailed to her beforehand (Kay Sullivan, Deputy Clerk), 111 N.W. 1st Street, Stephen P. Clark Center, Suite 17-202, Miami, Florida 33128; and with one

copy being submitted beforehand to the Miami-Dade County Department of Environmental Resources Management, 701 N.W. 1st Court, Miami, Florida 33136.

A person who decides to appeal any decision made by any Board, Agency, or Commission with respect to any matter considered at its meeting or hearing, will need a record of proceedings. Such person may need to ensure that a verbatim record of the proceedings is made, including the testimony and evidence upon which the appeal is to be based.

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

HARVEY RUVIN, CLERK

BY: _____
Kay Sullivan, Deputy Clerk

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: July 24, 2007

FROM: R.A. Cuevas, Jr. Acting County Attorney

SUBJECT: Amended Agenda Item No. 5(R)

Please note any items checked.

_____	"4-Day Rule" ("3-Day Rule" for committees) applicable if raised
_____	6 weeks required between first reading and public hearing
_____	4 weeks notification to municipal officials required prior to public hearing
_____	Decreases revenues or increases expenditures without balancing budget
_____	Budget required
_____	Statement of fiscal impact required
_____	Bid waiver requiring County Manager's written recommendation
_____	Ordinance creating a new board requires detailed County Manager's report for public hearing
_____	Housekeeping item (no policy decision required)
✓	No committee review

Approved _____ Mayor

Veto _____

Override _____

Amended

Agenda Item No. 5(R)

7-24-07

RESOLUTION NO. **871-07**

RESOLUTION RELATING TO AN APPLICATION BY MIAMI YACHT & ENGINE WORKS, LLC, FOR MODIFICATION OF AN EXISTING CLASS I PERMIT TO AUTHORIZE EXPANSION OF A MARINE REPAIR FACILITY TO ALLOW MOORING OR STORAGE OF AN ADDITIONAL THIRTEEN (13) POWERBOATS AT 2100 N.W. NORTH RIVER DRIVE, MIAMI, MIAMI-DADE COUNTY, FLORIDA

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board having considered all the applicable factors contained within Section 24-48.3 of the Code of Miami-Dade County, hereby approves the application of Miami Yacht & Engine Works, LLC, for modification of an existing Class I permit to authorize expansion of a marine repair facility. The additional thirteen (13) powerboats shall be restricted to the upland portion of the subject property and shall be allowed on the subject property only for repair and not for storage.

The foregoing resolution was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of July, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Peter S. Tell

Attachment A

Class I Permit Application and LLC Affidavits

MIAMI-DADE COUNTY

Class I Permit Application

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DERM
Environmental Resources Regulation Division

1. Application number
CM06-430

2. Date Day/Month/Year
6/25/2007

3. For official use only

4. Applicant Information:
Name: ~~AMMRE~~ MIAMI YACHT & ENGINE WORKS, LLC
Address: 2100 NW N RIVER DRIVE
MIAMI, FL ~~33127~~ Zip Code: 33125
Phone #: 305.325.0233 Fax #: 305.325.0377

5. Applicant's authorized permit agent
Name: SCOTT WAGNER, ESQ.
Address: 355 ALHAMBRA CIR., #1100
CORAL GABLES, FL Zip Code: 33134
Phone #: 786.221.0600 Fax #: 786.221.0601

6. Describe the proposed activity, its purpose and intended use, including a description of the type of structures, if any, to be erected on fills, or pipe or float-supported platforms, and the type, composition and quantity of materials to be discharged or dumped and means of conveyance.

MODIFICATION OF AN EXISTING CLASS I PERMIT TO AUTHORIZE ALLOWANCE OF 13 MORE BOATS ON THE SUBJECT PROPERTY; NO CONSTRUCTION OR WORK REQUIRED.

Volume of Material:	Dredged/Excavated		Filled/Deposited	
	Waterward of O.H.W. or M.H.W.	Landward of O.H.W. or M.H.W.	Waterward of O.H.W. or M.H.W.	Landward of O.H.W. or M.H.W.
	____ CY	____ CY	____ CY	____ CY

7. Proposed Use: (Check One)
- ☐ Private
- ☐ Public
- ☑ Commercial
- ☐ Other

8. Names and addresses of adjoining property owners whose property also adjoins the waterway.

Name: EBSARY FOUNDATION CO.
Address: 2154 NW N RIVER DR.
MIAMI, FL Zip Code 33125

Name: 2000 MIAMI RIVER MARINA, LLC
Address: 2000 NW N RIVER DR
MIAMI, FL Zip Code 33125

9. Location where proposed activity exists or will occur.
Street Address: 2100 NW N. RIVER DR.
Latitude ____ Longitude ____
Section ____ Township ____ Range ____
State FL County MIAMI-DADE In City or Town MIAMI Near City Or Town ____

10. Name of waterway at location of the activity.
MIAMI RIVER

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Environmental Resources Regulation Division

11. Date activity is proposed to:
Commence N/A Be completed N/A

12. Is any portion of this activity for which authorization is sought now complete?
☐ Yes
☑ No
If answer is "yes", give reasons in the remarks section. Indicate the existing work on the drawings.
Month and Year the activity was completed _____

13. List all approvals or certifications required by other Federal, state or local agencies for any structures, construction, discharges, deposits or other activities described in this application, including whether the project is a Development of Regional Impacts.

Issuing Agency	Type of Approval	Identification Number	Date of Application	Date of Approval
N/A				

14. Has any other agency denied approval for any activity directly related to the activity described herein?
☐ Yes
☑ No

15. Remarks

16. Estimated project cost = 0$

17. Contractor's name and address
Name: N/A. License #:
Address:
Zip Code:
Phone #: Fax #:

18. Application is hereby made for a permit or permit(s) to authorize the activities described herein. I agree to provide any additional information/data that may be necessary to provide reasonable assurance or evidence to show that the proposed project will comply with the applicable State Water Quality Standards or other environmental protection standards both during construction and after the project is completed. I also agree to provide entry to the project site for inspectors from the environmental protection agencies for the purpose of making the preliminary analyses of the site and monitoring permitted works, if permit is granted. I certify that I am familiar with the information contained in this application and that to the best of my knowledge and belief, such information is true, complete and accurate. I further certify that I possess the authority to undertake the proposed activities.

Signature of owner
ALBERTO LAMADRID, MANAGING MEMBER
MIAMI YACHT & ENGINE WORKS, LLC
Date 6/27/07

19. To obtain proprietary authorization for work on state-owned submerged lands, please include an additional copy of the following:
☐ 8½ x 11 Location Map
☐ 8½ x 11 Project Drawing
☐ Copy of Application

SUBSCRIBED AND SWORN TO ME THIS 27 DAY OF JUNE, 20 07, BY ALBERTO LAMADRID
☑ PERSONALLY KNOWN ☐ PRODUCED IDENTIFICATION (PLEASE CHECK ONE)
TYPE OF ID PRODUCED _____
NOTARY PUBLIC

JOCELYNE HERNANDEZ
Notary Public - State of Florida
My Commission Expires Jan 8, 2011
Commission # DD 627851

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JUL 10 2007

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ENVIRONMENTAL RESOURCES
REGULATION DIVISION

AFFIDAVIT OF MEMBERS, MANAGING MEMBERS, AND MANAGERS OF FLORIDA LIMITED LIABILITY COMPANY

WE, (Print full name(s) and all title(s) of person(s) or entity(s) in the following spaces; if more space needed print additional names and title(s) on separate paper marked as Exhibit A and attach Exhibit A to this Affidavit; the list of names and titles shall include all names on the list required by Section 608.4101(1)(a),Fla. Stat. (2004), as same may be amended from time to time)

Full name	Title(s)
ALBERTO LAMADRID	MANAGING MEMBER

hereby swear or affirm that :

1. The foregoing persons or entities set forth above and on Exhibit A, if applicable, which Exhibit A is attached hereto and incorporated herein by reference hereto, constitute and are all of the Members, Managing Members, and Managers, as those terms are defined in Section 608.402, Fla. Stat.(2004), as same may be amended from time to time, of the Florida Limited Liability Company known as MIAMI YACHT & ENGINE WORKS, LLC (Print name of the Florida Limited Liability Company as the name appears in the Articles of Organization currently filed with the Secretary of State of the State of Florida);
2. There are no Members, Managing Members or Managers of the aforesaid Florida Limited Liability Company other than the persons or entities set forth above and on Exhibit A, if applicable.
3. There are no provisions in any Articles of Organization of the aforesaid Florida Limited Liability Company or in any operating agreement, written or oral, of the aforesaid Florida Limited Liability Company, as those terms are defined in Section 608.402, Fla. Stat.(2004), as same may be amended from time to time, which prohibit, restrict or limit in any way or in any manner the execution of the instrument or document attached hereto and incorporated herein by reference hereto, to wit, DERM APPLICATION NUMBER CM06-430 (Print the title of the instrument or document) by any of the foregoing persons or entities set forth above and on Exhibit A, if applicable, for and on behalf of the aforesaid Florida Limited Liability Company and to bind and obligate the aforesaid Florida Limited Liability as set forth in the foregoing instrument or document. MODIFICATION OF CLASS I PERMIT No. CL04-020

4. All of the foregoing persons or entities set forth above and on Exhibit A, if applicable, are authorized by the foregoing Florida Limited Liability Company, to execute the instrument or document attached hereto and incorporated herein by reference hereto, to wit, DERM APPLICATION NUMBER CM06-430 (Print the title of the instrument or document) for and on behalf of the aforesaid Florida Limited Liability Company and to bind and obligate the aforesaid Florida Limited Liability Company as set forth in the foregoing instrument or document. MODIFICATION OF CLASS I PERMIT NO. CC04-020
5. All of the provisions of this Affidavit shall be construed in accordance with the laws of the State of Florida.

Signature ALBERTO LAMADRID

MANAGING MEMBER
Title(s)

Sworn to and subscribed before me this 13TH day of JULY, 2007 (year) by ALBERTO LAMADRID (print name legibly), who is personally known to me or who has produced _____ (type of identification).

_____ (Signature of Notary Public)

JOCELYNE HERNANDEZ (Print, type or stamp name of notary public)

(Add additional Signature, Title(s), and Notary Public areas for all other LLC Members, Managing Members, and Managers, as needed)

JOCELYNE HERNANDEZ
Notary Public - State of Florida
My Commission Expires Jan 8, 2011
Commission # DD 627851
Bonded Through National Notary Assn.

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AFFIDAVIT OF MEMBERS, MANAGING MEMBERS AND MANAGERS OF FLORIDA LIMITED LIABILITY COMPANY

WE, (Print full name(s) and all title(s) of person(s) or entity(s) in the following spaces; if more space needed print additional names and title(s) on separate paper marked as Exhibit A and attach Exhibit A to this Affidavit; the list of names and titles shall include all names on the list required by Section 608.4101(1)(a),Fla. Stat. (2004), as same may be amended from time to time)

Full name	Title(s)
ALBERTO LAMADRID	MANAGING MEMBER
ALICIA LAMADRID	MANAGING MEMBER

hereby swear or affirm that :

1. The foregoing persons or entities set forth above and on Exhibit A, if applicable, which Exhibit A is attached hereto and incorporated herein by reference hereto, constitute and are all of the Members, Managing Members, and Managers, as those terms are defined in Section 608.402, Fla. Stat.(2004), as same may be amended from time to time, of the Florida Limited Liability Company known as AAA REAL ESTATE INVESTMENTS, LLC (Print name of the Florida Limited Liability Company as the name appears in the Articles of Organization currently filed with the Secretary of State of the State of Florida);
2. There are no Members, Managing Members or Managers of the aforesaid Florida Limited Liability Company other than the persons or entities set forth above and on Exhibit A, if applicable.
3. There are no provisions in any Articles of Organization of the aforesaid Florida Limited Liability Company or in any operating agreement, written or oral, of the aforesaid Florida Limited Liability Company, as those terms are defined in Section 608.402, Fla. Stat.(2004), as same may be amended from time to time, which prohibit, restrict or limit in any way or in any manner the execution of the instrument or document attached hereto and incorporated herein by reference hereto, to wit, DERM APPLICATION NUMBER CM06-430 (Print the title of the instrument or document) by any of the foregoing MODIFICATION OF persons or entities set forth above and on Exhibit A, if applicable, for and on CLASS I PERMIT behalf of the aforesaid Florida Limited Liability Company and to bind and No. CL04-020. obligate the aforesaid Florida Limited Liability as set forth in the foregoing instrument or document.

16

4. All of the foregoing persons or entities set forth above and on Exhibit A, if applicable, are authorized by the foregoing Florida Limited Liability Company, to execute the instrument or document attached hereto and incorporated herein by reference hereto, to wit, DERM APPLICATION NUMBER CM06-430 MODIFICATION OF CLASS I PERMIT NO CC04-020. (Print the title of the instrument or document) for and on behalf of the aforesaid Florida Limited Liability Company and to bind and obligate the aforesaid Florida Limited Liability Company as set forth in the foregoing instrument or document.
5. All of the provisions of this Affidavit shall be construed in accordance with the laws of the State of Florida.

Signature ALBERTO LAMADRID — MANAGING MEMBER Title(s)

Sworn to and subscribed before me this 9TH day of JULY, 2007 (year) by ALBERTO LAMADRID (print name legibly), who is personally known to me or who has produced _____ (type of identification).

_____ (Signature of Notary Public)

JOCELYNE HERNANDEZ (Print, type or stamp name of notary public)

(Add additional Signature, Title(s), and Notary Public areas for all other LLC Members, Managing Members, and Managers, as needed)

JOCELYNE HERNANDEZ
Notary Public - State of Florida
My Commission Expires Jan 8, 2011
Commission # DD 627851
Bonded Through National Notary Assn.

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ENVIRONMENTAL RESOURCES
REGULATION DIVISION

4. All of the foregoing persons or entities set forth above and on Exhibit A, if applicable, are authorized by the foregoing Florida Limited Liability Company, to execute the instrument or document attached hereto and incorporated herein by reference hereto, to wit, DERM APPLICATION NUMBER CM06-430 MODIFICATION OF CLASS I PERMIT NO. CC04-020. (Print the title of the instrument or document) for and on behalf of the aforesaid Florida Limited Liability Company and to bind and obligate the aforesaid Florida Limited Liability Company as set forth in the foregoing instrument or document.
5. All of the provisions of this Affidavit shall be construed in accordance with the laws of the State of Florida.

Signature ALICIA LAMADRID — MANAGING MEMBER (Title(s))

Sworn to and subscribed before me this 9 day of July, 2007 (year) by ALICIA LAMADRID (print name legibly), who is personally known to me or who has produced _____ (type of identification).

_____ (Signature of Notary Public)

_____ (Print, type or stamp name of notary public)

Notary Public State of Florida
Claudia Arcentales
My Commission DD403179
Expires 12/06/2009

(Add additional Signature, Title(s), and Notary Public areas for all other LLC Members, Managing Members, and Managers, as needed)

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Attachment B

Affidavits of Ownership

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Affidavit of Ownership and Hold Harmless Agreement

Personally Appeared Before Me, ALBERTO LAMADRID, MANAGING MEMBER, that
(Property owner, lessee or Corporate Officer if owner is a corporation)
undersigned authority, and hereby swears and affirms under oath as follows:

1. That your affiant is the record owner or lessee of that certain property* more fully described as:
2100 NW N RIVER DRIVE, FOLIO NUMBER 10-3134-024-1160, LEGAL DESCRIPTION 34 53 41 RIVERSEDGE PB 23-78 E1/2 LOT6 & ALL LOT & BLK 8 OR 15012-1620 0491 4 COC 21870-1314 12 2003 2.

* may attach legal description from public records or plat book or a copy of the warranty deed

2. That your affiant is also the riparian and/or littoral owner or lessee of that certain property that is the subject matter of Application No. CM06-430 for a Class I permit under and pursuant to Section 24-58 of the Code of Miami-Dade County to construct or engage in the following activity:

MODIFICATION OF AN EXISTING CLASS I PERMIT TO AUTHORIZE ALLOWANCE OF 13 MORE BOATS ON THE PROPERTY; NO CONSTRUCTION OR WORK REQUIRED

3. That your affiant hereby swears and affirms its ownership or leasehold in the above noted property necessary for the work noted in Paragraph 2 above, and hereby agrees to: defend same and hold the County harmless from any and all liability, claims and damages of any nature whatsoever occurring, including or arising as a result of your affiant not having the proper title to all lands or proper leasehold to all lands that are the subject matter of this application.

STATE OF FLORIDA
COUNTY OF DADE

Owner/Applicant, MIAMI YACHT & ENGINE WORKS, LLC
ALBERTO LAMADRID, MANAGING MEMBER

BEFORE ME, the undersigned authority, personally appeared ALBERTO LAMADRID, who, after being duly sworn, deposes and says that he/she has read the foregoing, and that the statements contained therein are true and correct to the best of his/her knowledge and belief.

Sworn to and subscribed before me this 9TH (day) of JULY (month), 2007 (year).

Notary Signature _____

Notary Seal

JOCELYNE HERNANDEZ
Notary Public - State of Florida
My Commission Expires Jan 8, 2011
Commission # DD 627851
Bonded Through National Notary Assn.

RECEIVED
JUL 10 2007
DERM
ENVIRONMENTAL RESOURCES
REGULATION DIVISION

Affidavit of Ownership and Hold Harmless Agreement

Personally Appeared Before Me, ALBERTO LAMADRID, MANAGING MEMBER, that
(Property owner, lessee or Corporate Officer if owner is a corporation)
undersigned authority, and hereby swears and affirms under oath as follows:

1. That your affiant is the record owner or lessee of that certain property* more fully described as:
   2100 NW N RIVER DRIVE, FOLIO NUMBER 10-3134-024-1160, LEGAL DESCRIPTION 34 53 41 RIVERSEDGE PB 23-78 E1/2 LOT6 & ALL LOT & BLK 8 OR 15012-1620 0491 4 COC 21870-1314 12 2003 2.

   * may attach legal description from public records or plat book or a copy of the warranty deed

2. That your affiant is also the riparian and/or littoral owner or lessee of that certain property that is the subject matter of Application No. CM06-430 for a Class I permit under and pursuant to Section 24-58 of the Code of Miami-Dade County to construct or engage in the following activity:

   MODIFICATION OF AN EXISTING CLASS I PERMIT TO AUTHORIZE ALLOWANCE OF 13 MORE BOATS ON THE PROPERTY; NO CONSTRUCTION OR WORK REQUIRED

3. That your affiant hereby swears and affirms its ownership or leasehold in the above noted property necessary for the work noted in Paragraph 2 above, and hereby agrees to: defend same and hold the County harmless from any and all liability, claims and damages of any nature whatsoever occurring, including or arising as a result of your affiant not having the proper title to all lands or proper leasehold to all lands that are the subject matter of this application.

STATE OF FLORIDA
COUNTY OF DADE

Owner/Applicant AAA REAL ESTATE INVESTMENTS, LLC
ALBERTO LAMADRID, MANAGING MEMBER

BEFORE ME, the undersigned authority, personally appeared ALBERTO LAMADRID, who, after being duly sworn, deposes and says that he/she has read the foregoing, and that the statements contained therein are true and correct to the best of his/her knowledge and belief.

Sworn to and subscribed before me this 9TH (day) of JULY (month), 2007 (year).

Notary Signature _____ Notary Seal

JOCELYNE HERNANDEZ
Notary Public - State of Florida
My Commission Expires Jan 8, 2011
Commission # DD 627851
Bonded Through National Notary Assn.

Attachment C

Verification of Class I Permit Application by Upland Property Owner

RECEIVED
JUN 27 2007
DERM
Environmental Resources Regulation Division

Miami-Dade County
Board of County Commissioners
C/O DERM
701 NW 1st Ct, Suite 400
Miami, FL 33136

June 27, 2007

To Whom It May Concern:

We, Alberto LaMadrid and Alicia LaMadrid, are the sole managing members of AAA Real Estate Investments, LLC, a Florida limited liability company.

AAA Real Estate Investments, LLC is the sole owner of the parcel of property located at 2100 NW N River Drive, Folio Number 10-3134-024-1160, Legal Description 34 53 41 Riversedge PB 23-78 E1/2 LOT 6 & ALL LOT & BLK 8 OR 15012-1620 0491 4 COC 21870-1314 12 2003 2.

Alberto LaMadrid is also the sole managing member of Miami Yacht & Engine Works, LLC, also a Florida limited liability company. Miami Yacht & Engine Works, LLC is a full service ship repair yard that is the tenant and sole user of the property owner by AAA Real Estate Investments, LLC as described more fully in Paragraph 2 supra.

As the sole managing members of AAA Real Estate Investments, LLC, we hereby do not object in any way, shape or form, to any permit application made by Miami Yacht & Engine Works, LLC relating to the parcel of property owned by AAA Real Estate Investments, LLC (more fully described above in Paragraph 2 above) at any City, County, State or Federal level, including but not limited to any Class I Construction Permit, including but not limited to any and all amendments, modifications and/or changes thereto.

If you have any questions, please refer them to our attorney, Scott Wagner, at 786-221-0600.

Best Regards,

Alberto LaMadrid, Managing Member
AAA Real Estate Investments, LLC

Alicia LaMadrid, Managing Member
AAA Real Estate Investments, LLC

Attachment D

Zoning Memorandum

Memorandum

MIAMI-DADE COUNTY

Date: June 13, 2007

To: Luis C. Otero, Manager LO
Coastal Resources
Environmental Resources Management

From: Muriel M. Blaisdell, ERPS mb
Coastal Resources
Environmental Resources Management

Subject: Class I Permit Application by Miami Yacht & Engine Works, LLC for Modification of an Existing Class I Permit to Authorize Expansion of a Marine Repair Facility to Allow Mooring or Storage of an Additional Thirteen (13) Powerboats

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Pursuant to Section 24-48.2(II)(A)(7), Code of Miami-Dade County, Florida, a substantiating letter shall be submitted by the applicant stating that the proposed project does not violate any zoning laws. Said letter will be submitted after approval by the Miami-Dade County Board of County Commissioners and prior to issuance of the Class I Permit.

Attachment E

Applicant Letter to the Board of County Commissioners

LETTER FOR SUBMISSION TO THE BOARD OF COUNTY COMMISSIONERS FOR MIAMI-DADE

Mr. Lamadrid with his wife Alicia own a parcel of property through a limited liability company known as AAA Real Estate Investments, LLC, located along the north side of the Miami River located at 2100 NW N River Dr, Miami Fl. The property, even before purchase by the current owner, has always been designated for use as a commercial shipyard offering services to Vessels, including storage, dockage and repair work. As a matter of fact, the property was once jointly owned with its neighboring property and had 100 slips allotted to the properties. The MPP itself actually allots 94 slips to the subject address; however, when he bought the property and subsequently applied for the Class I permit he was told that his property address was only afforded 11 slips, not the 94 he hoped for.

The property owner appears before the Board to apply for the limited request of obtaining permission to use 13 additional upland dry slips so he can grow his business into making a reasonable return and so he can properly use the actual land on his property. Apparently, this can only be accomplished through an amendment to his Class I Construction Permit.

The Property, The County Code, and the Manatee Protection Plan

Currently the property is used by Miami Yacht and Engine Works, a limited liability company, with its sole manager as Alberto Lamadrid. Consistent with its historical use, Miami Yacht and Engine Works offers various services to Vessels, mainly vessel repair work. It is important to note that over 95% of the work performed by Miami Yachts is done on Vessels while they are out of the water, upland, on land and in no way on the water. The extent of the property's water traffic consists solely of (1) entering from the channel to the property where the vessel is hauled onto dry land and (2) exiting from the property where the Vessel is splashed into the water and makes its way to the channel. The property is not a marine diesel gas station where boats are moving in and out all day long.

The spaces where these Vessels sit, regardless of whether in or out of the water, are called, for better or worse, boat slips. Pursuant to Miami-Dade's County Code, Section 24-5, a boat slip shall mean a berthing space for a vessel which has been created or authorized pursuant (by) to a permit or permits issued by the Department of Environmental Resources Management. In essence, boat slips are simply the amount of boats that are authorized, pursuant to a permit, to be pulled and/or parked on an owner's property at any given time, irrespective of whether they are parked on land or docked in the water. In many cases, slips are not physically marked on one's property by any boundaries; rather they are simply an administrative way to set the number of how many vessels can be on a property at any given time.

In the past, before the Manatee Protection Plan, there were no criteria for how many vessels could be pulled or parked at an owner's property. In essence, until the implementation of the Manatee Protection Plan, a property owner could decide, on his own and without permit, to have 1 boat on its property (either in the water or out of the water; aka wet/dry) or 1,000,000 boats on its property at one time – it made no difference.

However, in the early 80's, an environmental crisis overtook the waterways of the State of Florida. Manatees, an ever-important part of the marine eco-system, were at record low numbers, endangered, and at risk of becoming extinct. Legislators, environmentalists, scientists, and citizens banded together and came up with a Manatee Protection Plan. The Plan sought to educate, analyze and implement strategies that would hopefully lead to increased awareness and careful behavior curbing Manatee deaths, and in turn, raising their diminished numbers. The Plan was an effort to marry marine commerce, pleasure boating, and enjoyment of the waters with respect for the environmental eco-system, not a mutual exclusion of them.

One of the thirteen county's that was required to establish and implement its own unique Plan was Miami-Dade County. The County's Plan was comprehensive and also included sections that focused on different kinds of marine facilities and their respective allotment of permits for boatslips.

Slip Allocations as Represented By DERM

More specifically, DERM informed us that properties that continued with their existing use were to be permitted by DERM with whatever amount of slips were historically used on that property at any one given time. As such, like mentioned above, regardless of whether that property had 1 slip or 1,000,000 slips, it would be allotted, through a permit, with the same amount of slips it historically used at any one given time.

The property that is the subject of this variance produced aerial photographs that established it had once used at least 11 slips on the property at one time. As such, because the property continued to be used as a commercial boatyard it received a permit for a maximum of 11 slips.[1]

In the fall of 2006, the owner approached DERM to acquire a permit for 13 additional slips on the property. These additional slips would require no construction, no alteration to the property, no new buildings and/or no other structures. Absolutely no modifications would be done. Rather, the request simply asks DERM to permit my client to have the ability to park 13 more boats on dry land on his property. DERM advised that because the property was on the Miami River (a cold weather aggregate area under the MPP) no permit for additional slips could be granted from DERM. DERM presented

[1] DERM has recently recanted its previous position and stated at a recent EQCB hearing that the historical use was simply a presumption that the land owner could argue, but was not an entitlement.

the Manatee Protection Plan as our obstacle and told us that in order to receive a permit for the requested additional slips, we were *required* to meet nine performance criteria.[2]

Unfortunately, for my client, regardless of meeting 8 of 9 of the performance criteria, he could never achieve his goal. The 9th criterion had nothing to do with his business, property, or control. Rather, because, by chance, the property was located in a cold-weather aggregate area, and we were told that DERM could not issue a permit for 13 additional spots to park vessels at the property.[3]

Therefore, while completely out of our control, the ability to have more boats upland on the property upland was impossible under the expansion criteria of the Manatee Protection Plan. And as such, according to DERM, no property in the Miami River (which is a cold weather aggregate area) could obtain any more spots to pull or park vessels on their property than that which was historically used on that site.[4]

Previous Appeal Process under the Manatee Protection Plan

Determined to keep the business hopes alive, we sought out additional avenues. After reading the Plan we were told was positive law, we found language to obtain additional slips from DERM, despite being located in a cold weather aggregate area. We read the Plan as one which permitted historical slips to property so long as properties maintained their existing use; however, implicit in that language is the fact that where a property changes its existing use to a new use (i.e. from commercial to residential) they no longer maintained their existing use and therefore that property would lose its permits for historical slips and retreat to be permitted by the Plan's 1 slip per 100 foot regulation. The result would be excess permits for slips from properties that changed their use which would revert to DERM, creating the opportunity for DERM to allocate and reallocate those excess slips to existing businesses along the River based on need and request.

Even this Board agreed that there could be a mechanism in place that allowed for the reallocation of slips from property to property in a May 12, 2005 Count Resolution.

While DERM acknowledged to us that slips could be transferred from property to property, they did not agree with our reading of the Plan. DERM read the Plan to say that a property owner could change his existing use to a new use and still retain all of those excess permitted slips. DERM stated that the retained permits for excess slips could be sold/bartered/donated in a private transaction with another property owner for consideration (cash or otherwise). In essence DERM took the position that these excess slips that remained after a use change were transferable for cash, like they were some sort of property right, not permitted right, as specifically stated in the Code.

---

[2] DERM has recanted this position too at the EQCB hearing and let us know that the MPP is simply a guideline, not a positive law.

[3] Again, this position was subsequently recanted, as we are now told that the power to issue the slips lies with the Board of County Commissioners, not DERM.

[4] Again this position was subsequently recanted by DERM because they admitted, through County lawyers, that the Plan was a guideline.

As such, DERM determined it could not allocate and reallocate permits to my client based on a property owner's change in existing use.

As defined by the Miami-Dade County Code, "boat slips shall mean a berthing space for a vessel which has been created or authorized pursuant to a permit or permits issued by the Department of Environmental Resources Management." As such, by definition, boat slips are not actually physical pieces of property, but are created or authorized pursuant to a Permit issued by DERM. In fact, boat slips are simply the amount of boats that a particular property is authorized to park or pull out of the water at one's property pursuant to the permit. They need not be marked, constructed, built, or otherwise. It is simply authority to park a boat.

Under the Manatee Protection Plan, which states that a property owner who operates as an existing marine facility may be reconstructed with the maximum number of slips that were in use at one time since October 28, 1984 and should be allowed to continue with the *existing use*. As such, the property was allocated 11 total slips, which corresponded with the amount of slips that were used and have remained issued to the property which continues the existing use, i.e. as a marine boatyard facility.

During the foregoing series of events, this Board also recognized this crisis for property owners in need of additional slips to operate their marine business. The Commission also recognized that many property owners along the river had abandoned use of the permitted slips and had also changed their prior existing use to a new use, i.e. from a marine business facility to a residential condominium high rise. The Commission noted that the maintenance of adequate authorized boat slips along the Miami River is of paramount concern for the vitality of the River and that "the reallocation of existing but abandoned or removed boat slips from a Miami River property to another suitable site on the Miami River ... would be in the best interest of the Miami River."

As such, the Commission ordered the County Manager to prepare a policy creating procedures "whereby DERM needed to maintain a record that allows for reallocation of such slips to other properties along the Miami River."

DERM recognized that there were a gross number of authorized slips along the Miami River. DERM also recognized that regardless of where these slips were located along the River, there would be no adverse affect to the manatees so long as the gross number of slips did not increase. As such, DERM recognized that allocating and reallocating slips from property to property along the River would not adversely affect the manatees so long as the gross number of currently authorized slips did not increase.

However, the implementation of how the slips would be allocated and reallocated is where the owner and DERM part ways. DERM believes that property owners have the right to sell their permitted slips to other property owners in a private business transaction for cash or otherwise and that DERM's only function is to record and approve the transfer.

We believe that because these slips are created and authorized pursuant to permits that it is DERM's responsibility to maintain a "slip kitty", whereby slips that are not in use, have been abandoned, or where a property has changed its land use and become a new use are recorded, maintained and permitted by DERM to property owners based on an application process. The property owner believes that any other avenue would lead to the net result of cash for permits, which is impermissible under local, state and federal law.

My client then asked about reallocating slips from properties that have changed their existing use to a new use and abandoned old permitted slips. DERM also stated that this was not feasible.

Rather, the property owner was informed by DERM that he would have to buy these permitted slips from another property owner because the slips were property of that owner.[5]

It remains our position that where a property owner has forfeited his right to use slips due to a land use change, that DERM should allocate or reallocate slips per permit, not per private sales, as the slips are permitted rights not an inalienable property right owned by an owner who never paid for it.

This was the subject of our appeal, which the EQCB denied, because DERM argued that no mechanism for transfer of slips from property to property was even in place and therefore any appeal was premature.

MODIFICATION OF CLASS I CONSTRUCTION PERMIT ARGUMENT

However, we are here today to ask this Commission for an amendment/modification to our Class I Construction Permit. But to be clear, we are not seeking to do any construction or alter our property or property use in any way. Rather, we simply seek permission from the Board to allow the property owner to pull or park 13 more boats at his property.

For the past two years, the owner, my client, has been operating the property with the maximum 11 slips. Based on its two year performance, the property, despite using almost all its slips on average, has been losing approximately $25,000.00 per month. In fact, if all slips were used 100% of the time, the owner could still not yield a reasonable return.

While demand for the yard remains high, the owner cannot advertise, market or promote its yard as it would like because it will have to turn away vessels based solely on the 11 slip maximum. At the yard, Vessels often remain upland for weeks, if not months, based on the repair work requested. The owner has much room on his property to fit

[5] Again, DERM has recently recanted its previous position and stated at a recent EQCB hearing that the historical use was simply a presumption that the land owner could argue, but was not an entitlement.

additional boats, but is hamstrung by the 11 slip maximum, rendering much of his property virtually useless. The only way for the property to operate wherein it can return a reasonable rate of profit so that the business does not continue to hemorrhage money and suffocate is for the owner to receive a modification of its Class I Construction Permit by 13, from 11 to 24.

Essentially, we need a variance on the Class I Construction Permit in order for the business to survive. Under Florida law, there are three foundations or elements that should be met in order to be successful regarding the request for a variance (or conditional variance).

First, is whether he can have additional slips and be compliant with the Code. Clearly, DERM has refused my client's request for a permit for an additional 13 slips where he can park boats on his property based on the fact that his property is located in a coldwater aggregate area, and therefore, would not comply with the Manatee Protection Plan's expansion criteria recommendation for additional slips. As such, the first element is satisfied.

The second question before the Board is whether a legal hardship is found to exist. Under Florida law, a legal hardship exists where the property is (a) virtually unusable or (b) incapable of yielding a reasonable return when used pursuant to his current 11 slip maximum. Not only does the property owner meet one of the criteria, but the owner meets both.

By forcing a maximum number of 11 slips on the property, the business is hemorrhaging money every month, is strangled by his slip allotment, and will be forced to fold and sell out to a residential developer; essentially, he will fall victim to gentrification of the River. Not only does my client, despite operating at almost maximum capacity, continue to lose money and unable to take on more vessels, but he cannot advertise, market, or promote his business due to the concern that increased demand will result in him having to turn away Vessels. Most of his capacity problems are a direct result of the length of time it takes to perform the repair work to these vessels. Essentially, the Vessels are spending a significant amount of time on dry land while the repair work takes place, but the owner is without power to take on more business. However, if granted a variance for 13 additional slips, his business could take on more vessels at a time, could market, could advertise and promote, and could yield a reasonable return on the business on the property – as opposed to the current predicament of losing $25,000.00 on a monthly basis! If the property operated at 100% for 100% of the time, the business could only break even. As such, the 11 slip maximum qualifies under one prong of the analysis as a tremendous hardship because it cannot yield a reasonable return. This alone would qualify my client for a hardship.

However, he also qualifies under the prong that makes his property virtually useless. Because he can only park 11 boats on his property, most of the property is rendered virtually unusable as he is unable to put boats on empty pieces of his land and perform repair work. My client is not only a hardship because he cannot yield a

reasonable return, but this noose has rendered a vast majority of his yard unusable. As such, he clearly meets two hardship requirements, although only one is necessary.

The final piece of the variance equation is that a permit for additional slips will not cause an adverse impact to the environment, and more specifically the manatee. It is our position that additional slips permitted for on and up land use will not, in any way, adversely affect the manatee. It has been admitted to us by DERM that the only adverse affect to the manatee will be the result of incoming and outgoing traffic back and forth from the channel and the property.

Currently, my client is allowed 11 boats on his property at any one time. This means, hypothetically, that he could operate a marine jiffy lube, where he could take on 11 boats at 8 in the morning and return them to the water at 9, only to take on a new 11 boats at 9:30 and so on and so forth each and every day. This would be entirely permissible under the permits for the property. However, this is not the case. My client performs, for the most part, lengthy repairs to vessels which remain on land, out of the water, away from the manatee for several weeks, only to be launched and the end of the repair and moved back out to the channel. As such, the Vessels water traffic and potential encounter with the manatee is extremely minimal – limited to when the vessel enters and exits the yard – both of which are often spread out by weeks on end.

However, let's take for example that my client makes only 11 splashes a day for his 11 slips. On Monday 11 boats come in and on Tuesday those 11 leave. On Wednesday 11 come in. On Thursday those 11 leave. If this were the case, he would do around 220 splashes a month (11 day/ 20 working days), creating a potential encounter with the manatee 220 times/month. This is a reasonable number considering we have 11 slips right now.

My client hereby represents to this Board that a conditional variance granting him 13 more dry slips, that he will not create any more than 220 entrances or exits per month and no more than 11 per day, which he currently has the absolute right to do. My client is willing to keep a log of the daily, weekly, and monthly hauls and launches (or entrances and exits) and warrants to this Board that it will never exceed 11 per day or 220 per month, as it is his current right without the additional slips. As such, the amount of water traffic will remain exactly the same tomorrow with the additional slips as it is today, with the limited slips. There will be absolutely no change in water traffic between the channel and the property, and as such, will not adversely affect the manatee.

Moreover, my client is willing to represent, as a condition to the additional slips, that all 13 additional slips will be dry slips, and that the Vessels will remain on dry land for the entirely of their stay. As such, there will be no more vessels in the water at any one time on his property with the additional slips as with the current slips – again not adversely affecting the manatee.

Lastly, my client is not asking for 100 more slips. He is asking for 13. A permit or conditional variance for 13 additional slips would keep his aggregate total of 24

permitted slips under the 5 per 100 foot maximum as set forth by the Plan. He currently has 526 feet of contiguous shoreline and therefore could obtain a maximum of 26 under the expansion criteria of the Plan; however, he is only asking for a permit allotting an additional 13, brining the total to 24. Because the water traffic will remain the same and because there will be no more vessels in the water, the permit or variance for additional slips would not adversely affect the manatee.

As such, because my client is a hardship in that much of his property is rendered useless and he cannot yield a reasonable return on his business and because he will not create additional adverse affects to the Manatee than is currently in place, my client is pleads with the Panel to grant him a Conditional Variance so that he can operate his business.

Mitigating Factors

In addition, please look at the mitigating factors surrounding the current circumstances along the Miami River. First, surrounding gentrification has turned what was old commercial properties into residential high rises, greatly reducing the number of used slips and vessel traffic. Second, our request will require absolutely no construction. Third this facility is not a courtesy dock, fuel transitory dock, etc.; vessels make one trip in and one trip out, separated mostly by several days between trips to and trips from. Fourth, almost all work performed on vessels upland. Fifth, the property has great depth (over 10' at low tide) to ensure safety for the manatees. Sixth, the Manatee Protection Plan calls for expansion to an existing site as "preferred to the construction of a new facility." Seventh, there will be no increase in the use of wet slips; it will simply be upland and onland use.

Prayer for Relief

As such, we respectfully ask this Board of County Commissioners to vote in favor of amending the language in our Class I Construction Permit limiting our wet and dry "slip" usage from 11 to 24 slips.

Dated: May 21, 2007

Respectfully submitted,
Moore & Company, P.A.
Counsel for Applicant/Property Owner
355 Alhambra Circle, Suite 1100
Coral Gables, Florida 33134
Telephone: (786) 221-0600
Facsimile: (786) 221-0601
Email: swagner@moore-and-co.net
/s/ Scott A. Wagner

Michael T. Moore, Esquire
Florida Bar No. 207845
Scott A. Wagner, Esquire
Florida Bar No. 10244

34

Attachment F

Names and Addresses of Owners of All Riparian or Wetland Property Within Three Hundred (300) Feet of the Proposed Work

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AVERY® 5161®

CALLAHAN PLAZA ASSOC LTD
1901 NW N RIVER DR MIAMI FL
33125-2235

EBSARY FOUNDATION CO.
2154 NW N RIVER DRIVE
MIAMI, FL 33125

2000 MIAMI RIVER MARINA, LLC
2000 NW N RIVER DRIVE
MIAMI FL 33125

PRESTIGE INVESTMENTS ENTERPRISES
2945 NW 21 TERR MIAMI FL
33142-7019

RECEIVED
JUN 27 2007
DERM
Environmental Resources Regulation Division

Attachment G

Resolution Number R-660-04

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 4(G)

5-25-04

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

RESOLUTION NO. R-660-04

RESOLUTION RELATING TO AN APPLICATION BY MIAMI YACHT & ENGINE WORKS, LLC FOR A CLASS I PERMIT TO PARTIALLY FILL AN EXISTING BOAT NOTCH ON THE MIAMI RIVER LOCATED AT 2100 NW NORTH RIVER DRIVE, MIAMI, MIAMI-DADE COUNTY, FLORIDA

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board, having considered all of the applicable factors set forth in Section 24-58.3 of the Code of Miami-Dade County, Florida, hereby approves the application by Miami Yacht & Engine Works, LLC for a Class I permit to partially fill an existing boat notch on the Miami River located at 2100 NW North River Drive, Miami, Miami-Dade County, subject to the conditions, limitations, and restrictions set forth in the memorandum from the Director of the Miami-Dade County Department of Environmental Resources Management, a copy of which is attached hereto and made a part of hereof. The issuance of this approval does not relieve the applicant from obtaining all applicable federal, state and local permits.

The foregoing resolution was offered by Commissioner Bruno A. Barreiro, who moved its adoption. The motion was seconded by Commissioner Jose "Pepe" Diaz and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson	Aye		
Katy Sorenson, Vice-Chairperson	aye		
Bruno A. Barreiro	aye	Jose "Pepe" Diaz	aye
Betty T. Ferguson	absent	Sally A. Heyman	aye
Joe A. Martinez	aye	Jimmy L. Morales	aye
Dennis C. Moss	aye	Dorrin D. Rolle	aye
Natacha Seijas	aye	Rebeca Sosa	absent
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 25th day of May, 2004. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. PST

Peter S. Tell

Attachment H

Class I Permit CC04-020

MIAMI - DADE COUNTY
DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT
NATURAL RESOURCES DIVISION

AGREEMENT

FOR

CLASS I COASTAL CONSTRUCTION PERMIT

MIAMI YACHT & ENGINE WORKS, LLC –
PARTIALLY FILL EXISTING
BOAT NOTCH WITH NEW BULKHEAD

Suite No. 400
33 S.W. 2 Avenue
Miami, Florida 33130
(305) 372-6575

PERMIT NO. CC04-020

DATE ISSUED: 10-14-2004

EXPIRATION DATE: 10-14-2007

AGREEMENT FOR COASTAL CONSTRUCTION
MIAMI - DADE COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT
(DERM)
NATURAL RESOURCES DIVISION

This agreement, between the Permittee and Contractor named herein and Miami-Dade County DERM, is made for the purpose of accomplishing the work described herein as further described by approved drawings.

1. **Proposed work, construction, or use for:**

Installation of approximately 158 linear feet of new seawall and backfilling the landward edge of the notch with approximately 3,010 cubic yards of clean fill material. The boat notch will be reconfigured to eliminate 79 linear feet of the most landward extent of the existing boat notch. From this point, the boat notch will be narrowed by 28 feet. This narrowing occurs along 55 feet at the new landward edge in order to accommodate a new travel lift.

All work shall be performed in accordance with the plans entitled "*Proposed Miami Yacht & Engine Works*"; *Sheets A-1, DG-1, SS-1, WA-1*; prepared by Arnelio Alfonso, Jr., P.E.; signed and sealed on January 10, 2004; and with plans entitled "*Proposed Miami Yacht & Engine Works"; Sheets S-1, S-2, S-3; prepared by Herbert L. Gopman; dated on March 5, 2004;* approved by this Department, and in accordance with the conditions on sheets 3A through 3F.

2. **Location:**

2100 NW North River Drive
Miami, Florida 33125

Waterway:

Miami River

3. **Name, Address and Phone of Permittee:**

Alberto Lamadrid
2122 NW North River Drive
Miami, Florida 33125
(305) 325-0233

Contractor: (Must be Licensed by Dade County)

Miami Beach Seawalls Inc.
2430 N.E. 214th Street
Miami, Fl. 33180
E-277
Tel 305-945-2114
Fax: 305-945-2329

4. **DERM Project Managers:**

JoAnne Clingerman
Jose Diaz

5. **Approximate Costs:**

Item	Estimated Cost	Bond Amount
Cost of Construction	$1 00,000.00	N/A
Performance/Mitigation Bond	N/A	$30,000.00

6. **Total Amount of Performance Bond Required:** **$30,000.00**

7. **Pre-Work Conference**:

At the discretion of the Director, a pre-work conference may be held prior to the commencement of any work under this Permit between the Permittee, the Contractor and Engineer, and representative(s) of DERM together with any property owners or other persons whose interests may be affected by the work.

8. **As-Built Plans** (may be required by DERM within thirty (30) days of completion of the project).

9. **Agencies other than DERM from which approval may be necessary (as checked):**

1. ___ South Florida Water Management District
2. ___ United States Coast Guard
3. _X_ City of Miami (structural and zoning approvals)
4. _X_ State of Florida Department of Environmental Protection
5. _X_ U. S. Army Corps of Engineers

Recommended: _____
Coastal Program

IN WITNESS WHEREOF the said MIAMI-DADE COUNTY, FLORIDA has caused this Permit Agreement to be executed in its name by the Director of DERM, and Contractor and Permittee have caused this Permit Agreement to be executed in their names.

SPECIFIC CONDITIONS

1. The permittee is hereby advised that under Florida law, no person shall commence any excavation, filling, construction, or other activity involving the use of sovereign or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Florida Department of Environmental Protection (FDEP), until such person has received the required authorization for the proposed use from the Board of Trustees or FDEP. If such work is done without consent, or if a person otherwise damages state land or products of state land, the Board of Trustees may levy administrative fines of up to $10,000 per offense pursuant to the Florida Administrative Code.

2. DERM shall be notified a minimum of forty-eight (48) hours prior to the commencement of construction (305) 372-6575, unless otherwise noted.

4. A separate Class I Permit shall be required for any work not specifically authorized in this permit.

5. The bulkhead shall be installed prior to any backfilling to avoid any potential violations of water quality standards.

6. The backfill must be from upland sources and consist of suitable material that is free from toxic pollutants. Pursuant to Section 24-58.3(D) of the Code of Miami-Dade County, Florida, only clean fill, as defined in Section 24-3(120), shall be used for backfill material.

7. The excavation or use of benthic soils/substrate and/or marine sediments/soils/material from the Miami River as backfill landward of the seawall is strictly prohibited. Any excavation waterward of the new seawall, with the exception of the minimum necessary to install the new seawall panels, shall constitute a violation of this permit and shall result in enforcement action against the contractor and the permittee.

8. Any discharge of stormwater from the *Pressure Cleaning Area* depicted on Sheet DG-1 of the approved plans to sanitary sewer is prohibited.

9. The contractor shall take all necessary precautions to prevent construction debris from falling into the water. Any debris, which does fall into the water, shall be removed immediately. No material resulting from the removal of the existing steel sheet pile seawall shall be placed in the water either temporarily or permanently.

10. In order to prevent positive drainage of stormwater into the waterway, the new cap shall be a minimum of six (6) inches above the final grade, and all uplands adjacent to the bulkhead shall be graded away from the waterway. Proper on-site disposal of stormwater shall be provided.

11. All upland storm drainage shall comply with the standards of Chapter 24 of the Code of Miami-Dade County, Florida and with EPA/NPDS federally mandated requirements. It is the responsibility of the permittee and contractor to contact the Storm Water and Flood Plain Assessment Section of DERM at (305) 372-6888 for appropriate stormwater drainage approvals.

12. A Class II permit shall be required prior to any construction, installation and/or alteration of any outfall or overflow system in, on, under or upon any water body at or adjacent to the subject property.

13. Turbidity controls (such as, but not limited to, turbidity curtains) shall be implemented during all phases of construction to ensure compliance with Miami-Dade County water quality standards as stipulated in Chapter 24-11 (3), of the Code of Miami-Dade County. Turbidity controls shall be employed and maintained in the most effective manner possible to prevent turbidity from extending beyond the control mechanism in place. Failure to deploy and maintain the turbidity curtain or other turbidity mechanism in the most effective manner possible may result in the issuance of a Uniform Civil Violation Notice (UCVN) which carries a mandatory fine, and/or revocation of all or a portion of the performance bond, in addition to a requirement to correct the violation.

14. Turbidity may not exceed twenty-nine (29) Nephelometric Turbidity Units (NTU's) above background beyond fifty (50) feet form the point of discharge. Turbidity levels shall be monitored continuously when turbidity plumes are visible beyond a fifty (50) foot radius of the point of discharge. If the turbidity levels exceed twenty-nine (29) NTU's above background beyond fifty (50) feet from the point of discharge, all construction shall be halted and additional turbidity controls implemented. This project shall not be resumed until the contractor has implemented additional turbidity control methods and has received authorization from DERM to commence work. At DERM's discretion, turbidity samples may be required and shall be collected in accordance with Section 24-11(5)(c) or as specified by DERM and the results sent directly to the DERM Project Manager on a weekly basis.

15. Since the Florida manatee occurs in the waters at and adjacent to the property, the permittee and contractor shall take measures to protect manatees during and after construction. These measures shall include the following:

    a. All construction personnel shall be notified in writing of the possible presence of manatees in the areas and the precautions that should be taken during the construction period. Copies of these written notifications shall be sent to DERM.

    b. All construction personnel shall be advised that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act of 1978.

    c. The permittee and contractor will be held jointly responsible for any manatee and/or crocodile harmed, harassed, or killed as a result of the construction activities.

    d. Prior to commencement of construction each vessel involved in the construction shall display in a prominent location, visible to the operator an 8 1/2" x 11' temporary placard reading, "Manatee Habitat/Idle Speed In Construction Area". In the absence of a vessel the placard will be located prominently adjacent to the issued construction permit. A second temporary 8 1/2" x 11' placard reading, "Warning Manatee Area" will be posted in a location prominently visible to water related construction crews. A temporary construction notice criteria sheet (temporary notices are constructed by permittee) is attached. Temporary notices will be removed by the permittee upon completion of construction.

e. Turbidity curtains shall be made of material in which manatees cannot become entangled. Said curtains shall be properly secured, and shall be regularly monitored to avoid manatee entrapment. Curtains shall not block manatee entry to or exit from essential habitat.

f. The entire Miami River is designated as a no wake/idle speed zone. As such, all vessels associated with the project shall operate at "no wake/idle" speeds at all times while in the Miami River. All vessels will follow routes of deep water whenever possible.

g. All in-water construction activities shall cease upon the sighting of a manatee(s) within fifty (50) feet of the project area. Construction activities will not resume until the manatee(s) has departed the project area.

h. Any collision with and/or injury to a manatee shall be reported immediately to the "Manatee Hotline" (1-888-404-FWCC) and to the U.S. Fish and Wildlife Service, Vero Beach Office (561-562-3903), and to DERM (305-372-6575).

i. The contractor shall maintain a log detailing manatee sightings within 300 feet of the furthest limit of the project area. The log shall contain information including the date and time of the sighting, the date and time that equipment/machinery was shut down and the time that operations commenced after the departure of the manatee. Additional information should include the number of individuals, location, approximate age or size, identifying marks (i.e. prop scars, paint marks, etc.) and behavior description if possible. The manatee log shall also record any collisions, or injuries to manatees should they occur during the contract period. DERM Biologist Forrest Shaw shall be notified at 305-372-6854 within 24 hours of any manatee sightings.

j. Following project completion, a report summarizing the above incidents and sightings shall be submitted to the Florida Department of Environmental Protection (FDEP), Marine Research Institute Office of Protected Species Research, 100 Eighth Avenue, Southeast, St. Petersburg, Florida 33701-5095, to the U.S. Fish and Wildlife Service, 3100 University Blvd., Jacksonville, Florida 32216, and to DERM within thirty (30) days of project completion.

k. Permanent manatee awareness signs shall be installed and maintained (facing land) at the docking facilities. Prior to initiation of construction, the permittee shall send a project site plan to the FFWCC, Protected Species Management, 620 Meridian Street, Tallahassee, Florida 32399. FFWCC shall specify permanent locations for "Caution Manatee Area" and "Information Display" signs.

l. The permanent signs shall read "Caution Manatee Area" and shall be 3' X 4', 125 gauge 61TS aluminum, covered with white, engineer grade, reflective sheeting; black screened lettering and design; and orange, engineer grade, reflective circle and border. These signs shall conform to the Florida Uniform Waterway Marking System in accordance with F.S. 327.40.1 The installation of these signs shall be made in accordance with the FDEP specifications for such signs. Sign installation specifications and a permanent manatee awareness sign criteria sheet may be attached or shall be forwarded when permanent sign locations are designated by FFWCC.

16. As per the Miami-Dade County Manatee Protection Plan, any outfall that is installed in the seawall that has a diameter between seven (7) inches and sixty (60) inches shall be covered with grates or screens with spaces less than seven (7) inches wide in order to prevent entrapment of manatees.

17. **The subject facility is approved to have a maximum number of eleven (11) powerboat slips, including both wet and dry slips, at the subject property. This restriction shall be enforced through the permittee's Marine Facilities Annual Operating Permit (MOP). No greater than 11 powerboat vessels may be moored and/or stored at the subject facility at any time.**

18. The permittee agrees that the maximum number of powerboats that shall be moored and/or stored at the subject facility at any one time is eleven (11) powerboats. This provision shall not apply to sailboats with ancillary motors or any rowboat, skiff or inflatable boat with a motor having a capacity of five (5) horsepower or less.

19. The permittee agrees that only that portion of the docking facility specifically designated for the mooring and or storing of vessels, pursuant to this permit and the approved plans, shall be used, at any time, for the mooring and/or storing of any vessels.

20. Mooring of any commercial vessel requires that a Marine Facilities Operating Permit (MOP) be obtained prior to mooring any vessel allowed pursuant to the recommendations in the Miami-Dade County Manatee Protection Plan. Contact Jose Diaz of the Coastal Resources Section of DERM at 305-372-6575 for information on applying for and obtaining a MOP permit.

21. As per the Miami-Dade County Manatee Protection Plan, any marine facilities located on the Miami River mooring vessels greater than one hundred (100) feet in length shall be retrofitted with fender systems, which provide at least three (3) feet of standoff at maximum compression. The permittee shall submit a plan to DERM for approval, which indicates how the required three foot standoff will be achieved if the permitee intends to allow vessels of greater than 100 feet in length to moor at the subject facility. Plans shall be approved by DERM prior to implementation to determine if additional Class I permit approval is necessary for installation of the fender system. No vessels over 100 feet in length shall be allowed to moor at the facility prior to the installation of a DERM approved fender system that provides the minimum standoff.

22. No liveaboard vessels (permanent or transient) shall be permitted to be docked at this facility. Any future requests for liveaboard vessels shall require a modification to the current Marine Operating Permit (MOP) and direct connection (at the slip) to the sanitary sewer system.

23. No bilge discharge within the marina complex shall cause an iridescence on the water's surface.

24. There shall be no overboard discharge of sewage from vessels within this marina complex including approved Coast Guard Type 1 or 2 flow-through marine sanitation devices. All boat owners shall use the shoreside bathroom facilities unless their vessel is equipped with a Coast Guard approved holding tank system (type 3 device).

25. The operator of this marina shall take immediate corrective action when any oil or fuel spill occurs. This shall include, but not be limited to, the determination of the source of the spill and its' elimination, the deployment of oil and fuel containment booms, and the spreading of absorbent materials for collection of the oil or fuel, and other appropriate measures.

26. In the event of any breakdown or lack of proper functioning of any equipment required at this marina, it shall be the duty of the operator of the marina to immediately notify Miami-Dade County DERM.

27. All subcontractors performing work authorized by this permit shall hold an applicable certificate of competency and shall be licensed in Miami-Dade County.

28. Pursuant to Section 24-58.10 of the Miami-Dade County Code, the work or structures authorized under this permit shall be privately maintained by the applicant, his successors and assigns. Whenever, in the opinion of the Director of the DERM, said work or structures are not maintained in such a manner so as to prevent deterioration to the extent that they become a hazard to the public or to navigation, or create an obstruction of flow, prevent access for drainage maintenance purposes, or may damage adjacent property, then the owner is required to perform any ne`cessary remedial work.

29. All watercraft associated with the construction of the permitted structure shall operate within waters of sufficient depth so as to preclude bottom scouring or prop dredging.

30. Potential navigational hazards to vessels traveling throughout the area shall be minimized by the use of day shapes and lights as required under federal law. All U.S. Coast Guard and Florida Marine Patrol requirements for navigation and vessels safety must be strictly adhered to. All structures that are potentially hazardous to navigation of vessels throughout the area must be lighted and clearly visible at night.

31. In order to mitigate for impacts typically associated with seawall construction and for the loss of benthic habitat from backfilling, in addition to providing habitat for a variety of invertebrates and protective cover for small fish, 216 cubic yards (approximately 332 tons) of limestone riprap boulders shall be placed at a DERM approved off-site location at a two to one slope. This amount of riprap shall satisfy the mitigation required for the new bulkhead and backfilling work authorized by this permit. The riprap shall be composed of natural limerock boulders between one (1) foot and three (3) feet in diameter. If an appropriate off-site location cannot be located and approved by DERM, then the cost of the balance of riprap to be placed will be donated to the Biscayne Bay Environmental Enhancement Trust Fund at a cost of $50.00 per cubic yard. If an off-site location is accepted by DERM, the contractor shall submit in writing to the project manager information regarding the location and date for intended placement of the riprap boulders for DERM approval. This condition shall be satisfied within thirty (30) days of the completion of the seawall and backfilling.

32. A performance/mitigation bond in the amount of $30,000.00 shall be held to ensure compliance with the aforementioned specific conditions. Failure to comply with any of these specific conditions may result in the forfeiture or revocation of all or a portion of the manatee protection bond.

33. Any deviations from the approved plans for this project shall be submitted in writing to, and approved by DERM prior to the commencement of this project.

34. A copy of this permit must be kept on-site during all phases of this project.

35. The time allotted to complete the work for which this permit has been issued shall be limited to the period stipulated on the permit unless the permittee requests an extension of time from the Department in writing at least thirty (30) days prior to the date of permit expiration. Applications for extensions of time, which are not timely filed pursuant to Section 24-58.9(B)(2), Code of Miami-Dade County, will be returned to the applicant.

I HAVE READ ALL THE AFOREMENTIONED "SPECIFIC CONDITIONS" LISTED ABOVE ON SHEETS 3A THROUGH 3F AND FULLY UNDERSTAND THEM. I AGREE TO FULLY COMPLY WITH ALL CONDITIONS OF THIS PERMIT. I UNDERSTAND AND ACKNOWLEDGE THAT FAILURE TO COMPLY WITH ALL CONDITIONS OF THIS PERMIT MAY RESULT IN BOND FORFEITURE, PERMIT REVOCATION, FINES, AND/OR THE FILING OF AN ENFORCEMENT ACTION AGAINST ME BY DERM.

I HEREBY ACKNOWLEDGE THAT I AM FULLY RESPONSIBLE FOR THE IMPLEMENTATION OF ALL WORK AUTHORIZED UNDER THIS PERMIT AGREEMENT AND AGREE TO TAKE FULL RESPONSIBILITY FOR ENSURING ADHERENCE TO ALL CONDITIONS, LIMITATIONS AND RESTRICTIONS CONTAINED IN THIS PERMIT AGREEMENT. I FURTHER AGREE TO ASSUME FULL RESPONSIBILITY FOR THE ACTIONS OF ALL MY EMPLOYEES, AGENTS AND PERSONS UNDER DIRECT OR INDIRECT CONTRACTUAL OBLIGATION TO ME WITH RESPECT TO THE WORK AUTHORIZED HEREIN. I FURTHER AGREE TO ENSURE THAT ALL SUCH EMPLOYEES, AGENTS, AND PERSONS SHALL ABIDE BY ALL CONDITIONS, LIMITATIONS AND RESTRICTIONS CONTAINED IN THIS PERMIT.

Signed: _____ Date: Sept 8, 2004
PERMITTEE

WHEN THE CONTRACTOR IS A CORPORATION:

_____
Secretary

Miami Beach Seawalls, Inc.
(Correct Name of Corporation)

DATE 9·9·04

BY _____
President

(AFFIX CORPORATE SEAL)

WHEN THE PERMITTEE IS A CORPORATION:

_____
Secretary

Miami Yacht & Engine Works LLC
(Correct Name of Corporation)

DATE Sept 8, 2004

BY _____
President

(AFFIX CORPORATE SEAL)

Alberto Lamadrid

DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT

Issued On: 10-14-04

By _____
Director or his Designee

THE ISSUANCE OF THIS PERMIT DOES NOT RELIEVE THE PERMITTEE AND/OR CONTRACTOR FROM OBTAINING ALL REQUIRED FEDERAL, STATE AND LOCAL PERMITS.

Attachment I

Marine Facilities Annual Operating Permit Number MOP-0182

091811482410

Environmental Resources Management
Environmental Resources Regulation Division
33 SW 2nd Avenue, 4th Floor
Miami, Florida 33130-1540
T 305-372-6575 F 305-372-6479

miamidade.gov

PERMIT NO: MOP-000182-2006/2007 (B)-GEN
MIAMI YACHT & ENGINE WORKS LLC
2100 NW NORTH RIVER DR
MIAMI, FL 33125-

PERMITTEE:
Alberto Lamadrid
MIAMI YACHT & ENGINE WORKS LLC
2100 NW NORTH RIVER DR.
MIAMI, FL 33125-

MARINE FACILITIES
ANNUAL OPERATING PERMIT

DESCRIPTION OF FACILITY/EQUIPMENT

This document, issued under the provisions of Chapter 24, Miami-Dade County Code (Ordinance Number 89-104), shall be valid from 01-OCT-2006 through 30-SEP-2007. The above named permittee, is hereby authorized to operate the marine facility at the above location which consists of the following:

Commercial Facility.

Commercial Boat Maintenance Facility.

Total wet slips: 5
Total dry slips: 6
Total commercial vessels: 2
Total recreational vessels: 9
Number of liveaboards: 0
Days of week in operation: 7

This facility is subject to conditions listed below and in the following pages (if any) of this permit.

SPECIFIC CONDITIONS

1. The maximum number of powerboats that may be moored at this facility at any one time is eleven (11). This provision shall not apply to sailboats with ancillary motors or any rowboat, skiff or inflatable boat with a motor having a capacity of five (5) horsepower or less.

2. This facility must be operated in accordance with the "Best Management Practices" attached hereto and incorporated herein by reference as part of this permit.

3. All applicable conditions from previously executed local, state, and federal permits issued for the above-referenced marine facility shall be enforced.

4. All fixed or floating non-water dependent structures in, on, over, or upon tidal waters, unless previously approved by a Class I permit, are prohibited.

5. All permanent sewage pumpout systems and portable pumpout systems required at this facility pursuant to DERM, state, or federal permits shall be maintained on site and in fully operable condition at all times in order to convey sewage to the sanitary sewer system. Designated slips for pumpout stations shall be kept open at all times except while a vessel is discharging sewage to the pumpout system. There shall be no overboard discharge of sewage to tidal waters from vessels at this facility. This prohibition also includes discharges from approved Coast Guard Type 1 or 2 flow-through marine sanitation devices. All vessel occupants shall use shoreside facilities unless the vessel is equipped with a Coast Guard approved holding tank system or is directly connected to the facility's sewage pumpout system.

Miami-Dade County
Department of Environmental Resources Management

Jose Diaz for 52
Carlos Espinosa, P.E., Acting Director

6. The facility owner/operat is required to maintain a submerged d lease from the state of Florida if any vessels or structures are located over state-owned submerged lands. Use of state-owned submerged lands without a lease or other form of consent from the State of Florida is prohibited.

7. Unless otherwise approved by DERM, fueling of vessels at this facility shall be prohibited. Facilities approved for fueling operations shall maintain on-site spill prevention, containment, and recovery equipment and materials including, but not limited to, absorbent pads, booms, and sweeps and shall maintain staff trained in the deployment and operation of said equipment at all times. Fueling at approved facilities shall be conducted only at the designated fueling location in order to contain any spills that may occur. A floating containment boom large enough to enclose the area of the vessel being fueled, but with a minimum length of fifty (50) feet, shall be available at all times during fueling operations. Said equipment shall be deployed and operated in the most effective manner possible when spills occur.

8. The maximum number of vessels that may be stored, docked or moored at this facility may not exceed the number of slips as referenced above in this Operating Permit. This condition shall not apply to appurtenant vessels such as dinghies and tenders that are associated, by ownership, design and common usage, with a primary vessel docked, moored or stored at the facility, and therefore, are affixed to/carried by and stored on the primary vessel.

ENERAL CONDITIONS

. The applicant, by acceptance of this document, agrees to operate and maintain the subject operation so as to comply with the requirements of Chapter 24 of the Code of Miami-Dade County.

. If for any reason, the applicant does not comply with or will be unable to comply with any condition or limitation specified on this document the applicant shall immediately notify and provide the department with the following information: (a) a description of and cause of non-compliance; and (b) the period of non-compliance including exact dates and times; or, if not corrected, the anticipated time the non-compliance is expected to continue, and steps taken to reduce, eliminate, and prevent recurrence of the non-compliance. The applicant shall be responsible for any and all damages which may result and may be subject to enforcement action by the department for penalties or revocation of this document.

. As provided in Section 24-15 of the Code of Miami-Dade County, the prior written approval of the Department of Environmental Resources Management shall be obtained for any alteration to this facility.

. The issuance of this document does not convey any vested rights or any exclusive privileges. Nor does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations. Nor does it relieve the applicant from liability for harm or injury to human health or welfare or property.

. This document is required to be posted in a conspicuous location at the facility site during the entire period of operation.

. This document is not transferable. Upon sale or legal transfer of the property or facility covered by this document, the applicant shall notify the department within thirty(30) days. The new owner must apply for a permit within thirty (30) days. The applicant shall be liable for any non-compliance of the source until the transferree applies for and receives a transfer of this document.

. The applicant, by acceptance of this document, specifically agrees to allow access to the named source at reasonable times by department personnel presenting credentials for the purposes of inspection and testing to determine compliance with this document and department rules.

. This document does not indicate a waiver of or approval of any other department permit that may be required for other aspects of this facility.

. This document does not constitute an approval by DERM or certification that the applicant is in compliance with applicable laws, ordinances, rules or regulations. The applicant acknowledges that separate enforcement actions may be initiated by DERM and that this document does not constitute compliance with orders issued in conjunction with enforcement actions for correction of violations.

. Failure to comply with any condition of this document, or the requirements of Chapter 24, Code of Miami-Dade County may subject the applicant to the penalty provisions of said Chapter including civil penalties up to $25,000 per day per offense and/or criminal penalties of $500 per day or $2000 per day for violations of Section 24-42.4, Sanitary Sewer Discharge Limitations and Pretreatment Standards and/or sixty (60) days in jail.

Attachment J

Environmental Quality Control Board Orders

BEFORE THE MIAMI-DADE COUNTY
ENVIRONMENTAL QUALITY CONTROL BOARD

IN RE : **Board Order No.** 07-23
:
AAA Real Estate Investments, LLC :

THIS MATTER came before the Board as a request by Petitioner, AAA Real Estate Investments, LLC, for a variance from the requirements of Section 24-48.3(1)(e) of the Code of Miami-Dade County, Florida. The request is to allow for a Class I Permit application submitted in connection with a proposed expansion of an existing marine facility from 11 existing powerboat slips to a proposed 24 powerboat slips, be evaluated without conformance to the requirements of the Miami-Dade County Manatee Protection Plan (MPP), as required in the aforesaid Code Section. The subject property is located at 2100 N.W. North River Drive, Miami, Florida, is operating under the name of Miami Yacht & Engine Works, LLC and is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

The Board finds that this it has no jurisdiction over this matter and that the same should be dismissed.

ACCORDINGLY, IT IS

ORDERED AND ADJUDGED that the request by Petitioner, AAA Real Estate Investments, LLC, for a variance from the requirements of Section 24-48.3(1)(e) of the Code of Miami-Dade County, Florida be and the same is hereby dismissed.

Done and Ordered this 2nd day of July, 2007 in Miami-Dade County, Florida.

Claire Bradshaw-Sidran, Ph.D.
Chairperson

FILING AND ACKNOWLEDGEMENT

Filed on this 2nd day of July, 2007 with the Secretary of the Board as Clerk of the Environmental Quality Control Board, receipt of which is hereby acknowledged and the seal of the Board affixed below.

ASST. DIRECTOR

Carlos Espinosa, P. E.
Secretary and Clerk

SEAL

Approved as to form and legal sufficiency:

Murray A. Greenberg
County Attorney
Attorney for the Board

Peter S. Tell
Assistant County Attorney

BEFORE THE MIAMI-DADE COUNTY
ENVIRONMENTAL QUALITY CONTROL BOARD

IN RE	:	**Board Order No.** 07-22
	:	
AAA Real Estate Investments, LLC	:	

THIS MATTER came before the Board as a request by Appellant, AAA Real Estate Investments, LLC, for an appeal pursuant to the provisions of Section 24-11 of the Code of Miami-Dade County, Florida of an action or decision by the Director of the Miami-Dade County Department of Environmental Resources Management (DERM). The Appellant is appealing a determination by the Director related to an application seeking to increase the number of powerboat slips at the Appellant's property from eleven (11), an amount consistent with guidelines in the Miami-Dade Manatee Protection Plan (MPP), to twenty-four (24). More specifically, DERM determined that the Department cannot "reallocate" historical powerboat slips from other properties on the Miami River, to and for the exclusive use of the Appellant's property as requested by the Appellant. The property, which is the subject of this appeal, is located at 2100 N.W. North River Drive, Miami, Florida with a business operating under the name of Miami Yacht & Engine Works, LLC and is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

The Board finds that in 1989, the State of Florida's Governor and Cabinet directed that 13 counties with the highest numbers of manatee mortalities attributed to human activities, develop comprehensive manatee protection plans. This requirement was subsequently formalized legislatively and mandated by requirements of Chapter 370.12(2)(t) of the Florida Statutes. The Board finds that DERM initiated efforts to collect data and developed a draft plan by 1992. In December 1995, the MPP was approved by resolution of the Board of County Commissioners and by the Florida Fish and Wildlife Conservation Commission (then the Florida Department of Environmental Protection). The Board further finds that an ordinance was adopted requiring DERM and the Board of County Commissioners to consider consistency with the MPP when evaluating applications for Class I Coastal Construction permits. The Miami-Dade County Comprehensive Development Master Plan Conservation Element also includes a policy requiring consistency with marine facility siting guidelines.

The Board finds that Section 24-48.3 of the Code of Miami-Dade County, Florida, requires that DERM base its recommendation, and the Board of County Commissioners base its decision for approval, denial, or approval subject to conditions limitations or restrictions, for class I permits on several evaluation factors. These include environmental and related impacts including but not limited to aesthetics, navigation, marine resources and any other environmental value affecting the public interest when deciding whether to approve or deny a proposed project. Section 24-48.3(1)(e) of the Code of Miami-Dade County specifically lists conformance with the Miami-Dade County Manatee Protection Plan (MPP) as a factor for evaluation of class I permit applications.

The Board finds that on May 25th 2004, the Miami-Dade County Board of County Commissioners (BCC) passed Resolution Number R-660-04 approving class I permit application number CC04-020 for the partial filling of a boat notch on the Appellant's property. For the purposes of manatee protection and as a condition of that approval, the proposed facility was limited to a maximum number of eleven (11) powerboat slips. The MPP includes recommended limits and sites for new or expanded marine facilities. The number of powerboats recommended for approval at the subject property is based on continuation of an existing use at the subject property as recognized by the Miami-Dade County Manatee Protection Plan for areas within Essential Manatee Habitat. The MPP defines "existing marine facility" as "one which was in use on October 28, 1984 or later". The MPP states that "all existing marine facilities should be allowed to continue with the existing use, and may renovate", and further states that "an existing marine facility may be reconstructed with at least the maximum number of slips that were in use at one time since October 28, 1984". Following approval of the class I permit application by the Board of County Commissioners, on October 14, 2004, DERM issued class I permit number CC04-020 for filling of tidal waters and construction of a new seawall at the subject property. On June 18th, 2004, DERM issued Marine Facilities Annual Operating Permit (MOP) number MOP-0182 to Miami Yacht & Engine Works, LLC, for operation of a commercial boat maintenance facility at the subject property. In accordance with the BCC approval, both the Class I permit (CC04-020) and the MOP (MOP-0182) permit for the subjecty property restrict the maximum number of powerboats that may be moored or stored at the facility at any one time to eleven (11).

The Board finds that on May 3, 2005, the Board of County Commissioners approved Resolution Number R-536-05, which relates to historical boat slips on the Miami River. The Commission considered that circumstances may occur where impacts associated with new or added motorboat slips at a particular site could be offset, or mitigated, by removal of impacts from motor boat slips at another site where the slips were no longer needed or used. In concept, allowing the additional impacts to manatees from slips to be created at one site in exchange for a reduction of equivalent impact elsewhere would help prevent a net loss of boat docks or storage on the Miami River without a net increase in impact to manatees. In order for this concept to be implemented, so that there is no additional impact to manatees, it is necessary to assure that the historical slips will not be rebuilt or used again in the future at their original location. The Board finds that DERM has an established process in place for determining the number of historical powerboat slips for a given property in a manner that is consistent with the MPP. This is accomplished on a case-by-case basis through a review of historical aerial photographs, review of permits and inspection reports, and consideration of any additional information that property owners can

provide to demonstrate the historical powerboat uses at their property. In a situation where an applicant seeks more motor vessel slips or berths than would be recommended in the MPP, they could propose to offset or mitigate the impact by removing similar historical motorboat slips elsewhere on the Miami River. The process involves a site-specific review and evaluation by DERM for potential impacts to manatees represented by use of the pre-existing and proposed new slips, as well as other requirements of Chapter 24 of the Code of Miami-Dade County, and requires the recording of a restrictive covenant proffered by owner of the property with historical slips to clearly establish to present and future property owners that the existing powerboat use, has been modified to offset or mitigate for impacts elsewhere. In addition, a restrictive covenant is required for the site where powerboat slips are created to reflect the maximum number of powerboats that may now be moored at that site. Both covenants would require review and approval by the Board of County Commissioners. The Board finds that while this process was never specifically identified in the MPP, DERM believes that in particular cases where such a proposal does not result in an increase in potential adverse impacts to manatees, such a procedure would not be inconsistent with the MPP.

The Board finds that in September 2006, the Appellant submitted a class I permit application to DERM requesting expansion of the subject facility from eleven (11) powerboat slips to a total of twenty-four (24) powerboat slips. Through correspondence and in meetings with county staff, the Appellant has asserted that expansion of the subject facility should be authorized based on an evaluation of the performance criteria listed in the MPP, or based on the "reallocation" of slips from other properties on the Miami River.

The Board finds that following additional meetings with county staff, DERM provided the Appellant with a January 5, 2007, letter concerning the Appellant's application to increase the number of motorboats at their facility. The determinations in that DERM letter are the subject of this appeal. The Board finds that DERM's letter informed the Appellant that because their property is located within a travel corridor from a manatee cold-weather aggregation area, their facility did not qualify for additional powerboat slips under the performance criteria identified in the MPP. The DERM letter also explained the case-by-case procedure, as described above, that DERM would follow to evaluate a proposal to offset the impacts from proposed new or additional motorboat slips at a particular location by removal of similar historical uses at another site. Since this process is site-specific and requires a covenant or similar restriction on the historical site to assure that use of the slips and associated impacts would not occur again in the future at the original location, DERM further stated that the Department could not "reallocate" slips from other properties without engaging in the above-described restrictive covenant process.

The Board finds that the Appellant continues to assert that DERM should allow an increase in powerboats at his facility without the site-specific assessment described above. Furthermore, the Board finds that DERM does not agree with Appellant's assertions and believes their "Letter of Intent to Appeal" dated January 19, 2007, contains inaccurate characterizations and conclusions. The manatee protection guidelines described in the MPP and the importance of considering them in this case are further addressed in a March 28, 2007, staff memorandum "Analysis of Letter of Intent to Appeal or Request Variance"

ACCORDINGLY, IT IS

ORDERED AND ADJUDGED that, based upon the evidence and testimony presented and the foregoing findings, the appeal of AAA Real Estate Investments, LLC, be and the same is hereby denied, and the Director's decision is hereby affirmed.

Done and Ordered this 2nd day of July, 2007 in Miami-Dade County, Florida.

Claire Bradshaw-Sidran, Ph.D.
Chairperson

FILING AND ACKNOWLEDGEMENT

Filed on this 2nd day of July, 2007 with the Secretary of the Board as Clerk of the Environmental Quality Control Board, receipt of which is hereby acknowledged and the seal of the Board affixed below.

ASST. DIRECTOR.

SEAL

Carlos Espinosa, P. E.
Secretary and Clerk

Approved as to form and legal sufficiency:

Murray A. Greenberg
County Attorney
Attorney for the Board

Peter S. Tell
Assistant County Attorney

Attachment K

DERM Project Report

PROJECT REPORT

CLASS I PERMIT APPLICATION NO. CM06-430

MIAMI YACHT & ENGINE WORKS, LLC, FOR MODIFICATION OF A CLASS I PERMIT TO AUTHORIZE EXPANSION OF A MARINE REPAIR FACILITY TO ALLOW MOORING OR STORAGE OF AN ADDITIONAL THIRTEEN (13) POWERBOATS

Date: June 4, 2007

Staff's recommendation of denial for the above-referenced permit application is based on the applicable evaluation factors under Section 24-48.3 of the Code of Miami-Dade County, Florida. The following is a summary of the proposed project with respect to each applicable evaluation factor.

1. **Potential Adverse Environmental Impact** – The subject application involves the modification of an existing Class I permit to authorize expansion of a marine repair facility to allow mooring or storage of an additional thirteen powerboats. Although no additional physical construction is proposed, the principal potential adverse environmental impacts from this project include increased risk of injury, death or disturbance to manatees and their habitat as a result of increased powerboat traffic to and from the subject facility.

2. **Potential Cumulative Adverse Environmental Impact** – Increased capacity for power vessel storage at the site represents continuing, cumulative impacts associated with travel of the vessels from their site of origin to a destination within a sensitive manatee habitat. Offsetting the potential impacts of increased traffic associated with such new powerboat slips by transfer or removal of similar slips elsewhere may be considered as a form of mitigation, but only on a site-specific, case-by-case basis.

3. **Hydrology** - Not applicable.

4. **Water Quality** – The proposed project as designed is not reasonably expected to adversely affect water quality.

5. **Wellfields** – Not applicable.

6. **Water Supply** – Not applicable.

7. **Aquifer Recharge** – Not applicable.

8. **Aesthetics** –The project is designed to be compatible with the historic use of boat repair, vessel storage, and commercial buildings in the surrounding area.

9. **Navigation** –The proposed project is not reasonably expected to adversely affect navigation.

10. **Public Health** - The proposed project is not reasonably expected to adversely affect public health.

11. **Historic Values**- The proposed project is not reasonably expected to adversely affect historic values. No filling or additional construction is proposed as part of the request for permit modification.

12. **Archaeological Values** - The proposed project is not reasonably expected to adversely affect archaeological values. No filling or additional construction is proposed as part of the request for permit modification.

13. **Air Quality** - The proposed project is not reasonably expected to affect air quality.

14. **Marine and Wildlife Habitats** - See "Rare, Threatened and Endangered Species," number 18 below.

15. **Wetland Soils Suitable for Habitat** - There are no wetland soils suitable for habitat in the footprint of the proposed work.

16. **Floral Values** - The proposed project is not reasonably expected to affect marine flora. There is no marine flora located in the proposed project area.

17. **Fauna Values** - See "Rare, Threatened and Endangered Species," number 18 below.

18. **Rare, Threatened and Endangered Species** - The proposed project is expected to adversely affect rare, threatened or endangered species. The project area is located within essential habitat for the West Indian Manatee (*Trichechus manatus*). Due to increased interactions between manatees and powerboats resulting from facility expansion and the associated additional powerboat traffic to and from the subject property, the proposed permit modification is expected to adversely affect the West Indian Manatee. In addition, the proposed project is not in conformance with the Miami-Dade County Manatee Protection Plan, which embodies the consensus knowledge and strategies for avoiding adverse impacts to manatees.

    Motor vessel traffic represents a continuing threat to manatees and their habitat. In evaluating the potential direct and cumulative impact of new powerboat slips, the types of vessels, frequency of operation, and destinations are considered. This is the case whether the vessels would be stored in wet or dry berths. Marine facility siting guidelines seek to avoid increases in powerboat storage, berths, destinations, or launching in areas that would lead to increased vessel traffic through areas that are most regularly used by manatees or that are used by manatees for sensitive behaviors, such as refuge from cold, mating or nursing calves. In many cases, whether the vessel is stored in a wet or dry slip is less important than the trips generated by the slip. Various types of powerboats represent different potential risks, either because of the frequency of vessel trips to and from the slip or berth, the typical destination or operation areas for the vessels using the facility, or the nature of the vessels. For example, a slip at a courtesy dock represents a greater potential risk than a similar size slip at another type of facility, since the courtesy dock represents several vessel trips per day through manatee habitat, whereas a vessel in a commercial or residential marina is likely to be used once a week or even much less. Also, a large vessel, such as a freighter or mega-yacht, generally travels in deep dredged channels or in the open ocean, rather than in shallow areas most likely to be occupied by manatees. Their impacts are typically addressed by considering water depth and fendering systems, to prevent accidental crushing.

    The Miami River and its tributaries have been identified as essential manatee habitat based on frequent and consistent sighting of manatees during aerial surveys, by the public, and by trained agency staff. DERM has observed at least one manatee in the Miami River in 83% of 48 aerial surveys conducted from 1996 to the present, and as many as 42 individuals, including calves, during cold weather. US Fish and Wildlife Service (USFWS) studies of tagged or uniquely scarred manatees also document regular use of the Miami River and

nearby seagrass beds by manatees. The USFWS Florida Manatee Recovery Plan, 3rd Revision (2001) identifies the Palmer Lake area on the upper Miami River as a winter aggregation area, where manatees may seek shelter in slightly warmer water during periods of cold weather. Such areas are among the most sensitive to human disturbances, including vessel traffic, which may interfere with the animals' access to aggregation area. Florida Fish and Wildlife Conservation Commission data on manatee mortality also demonstrates numerous instances of manatee carcass recovery on or near the Miami River. The most recent manatee carcass recovery in the Miami River area occurred on March 1, 2007, when a decomposing animal was found in Palmer Lake, secured or entangled in a line. Therefore, the Miami River is not recommended as an area for expanded or new commercial marinas or boatyards.

With respect to the property that is the subject of this application, DERM reviewed historical records related to motor vessel use specifically on property owned by the applicant in connection with an application for a Class I Permit to modify the shoreline for a boatyard. DERM evaluated past records for these parcels, which had at one time been part of a larger facility including several other parcels now owned by others, and determined that as many as 11 motor vessels had used the site since October 1984, and therefore recommended that rebuilding or reconstruction of the facility for the same number and types of vessels would not represent an increased potential impact to manatees. A Class I permit with a condition that limits the maximum number of motor vessels at the property to eleven (11) was approved by the Board of County Commissioners and issued October 14, 2004. A State of Florida permit from the Department of Environmental Protection includes the same limitation.

The applicant has made a proposal to increase the total number of motor boat slips to 24, but to limit the number of vessel launches to 220 per month. This proposal is based upon a hypothetical argument that they may operate as a "marine jiffy lube" making a daily launch from each currently authorized dry slip at the facility. However, this hypothetical argument is based on a flawed assumption. DERM's original analysis of historic uses at the site and recommendation for authorization of 11 slips was based upon continuation of a type and frequency of vessel activities as had occurred in the past. The past uses were associated with a commercial marina and conventional boatyard, which are typically characterized by two to four vessel trips per slip per month, as the applicant stipulates in their own request. This rate of use would translate to 22 to 44 powerboat launches per month for 11 slips. The applicant's proposal of 220 launches would increase risk to manatees from the vessel trips to and from the facility by a factor of 5 to 10 times, compared to the historical use at the site. The previously existing facility was not a "marine jiffy lube" and did not experience daily trips for each slip or vessel stored there. Thus, although the Department acknowledges that it does not directly regulate vessels, such an operation would likely not have received a recommendation of approval from DERM, due to the significant increase in potential manatee impacts compared to the historical use.

Alternatively, the applicant suggests that DERM has a responsibility to establish a "slip kitty" and redistribute from it previously existing, but currently unused slips. However, even ignoring considerations of the intentions of the owners of property with historical vessel uses, the concept that unused slips may be automatically redistributed to other sites is inherently flawed. As noted previously, not all powerboat slips are equivalent, with respect

to potential impact on manatees. To reach a conclusion that there will be no increase in impact to manatees, the applicant must show that the impacts from use of additional new slips at a site would be offset, or mitigated, by removing or discontinuing similar use at another location. Therefore, historical vessel types, sizes, and operations at the original site must be similar to those proposed at the "receiving" site, and the two sites must both be located in areas with similar manatee use. Furthermore, in order to reach a conclusion that the proposal for additional slips at a site may be approved, numerous other evaluation factors including navigation, submerged land ownership, water quality, water depth, and other environmental values would have to be considered. These issues necessitate a case-by-case analysis.

DERM has considered proposals on a case-by-case basis, where applicants have requested additional powerboat slips at a location based upon removal or discontinued use at another site. Assuming that the number and type of powerboats and manatee habitat values are similar, and all other regulatory requirements can be met, it is necessary to assure that powerboat slips from the historically used donor site will not be used for powerboats in the future, even in the event of an ownership or land use change. To assure the slips at the original site will not be rebuilt or used in more than one place, a restrictive covenant or similar instrument, which runs with the land would have to be recorded for both the historical site and the receiving site. The covenants would define limits on subsequent motor vessel uses at each site and require the mutual consent of owners of all sites involved.

19. **Natural Flood Damage Protection** - The proposed project is not reasonably expected to adversely affect surface water drainage or retention of stormwater.

20. **Wetland Values** - The proposed project does not involve dredging or filling of wetlands.

21. **Land Use Classification** – Pursuant to Section 24-48.2(II)(A)(7), of the Code of Miami-Dade County, Florida, a substantiating letter shall be submitted stating that the proposed project does not violate any zoning laws. Said letter will be submitted after the approval by the Board of County Commissioners and prior to the issuance of a Class I Permit.

22. **Recreation** - The proposed project does not conflict with the recreation element of the Miami-Dade County Comprehensive Development Master Plan and recreation element of the Biscayne Bay Management Plan recreation elements.

23. **Other Environmental Values Affecting the Public Interest** –The subject submerged lands within the boat notch at this property are owned by the applicant.

24. **Conformance with Standard Construction Procedures and Practices and Design and Performance Standards** – No filling or additional construction is proposed as part of this request for permit modification.

25. **Comprehensive Environmental Impact Statement (CEIS)** - A CEIS was not required by DERM to evaluate the project.

26. **Conformance with All Applicable Federal, State and Local Laws and Regulations** - The proposed project is not in conformance with the following applicable State, Federal and local laws and regulations:
    a) United States Clean Water Act (Army Corps of Engineers permit). The existing ACOE permit for this project limits the facility to 11 powerboat slips.
    b) Federal Endangered Species Act (US Fish & Wildlife Service) The proposed permit modification is not consistent with the USFWS Manatee Recovery Plan.
    c) Florida Department of Environmental Protection Regulations: The existing State of Florida Environmental Resource Permit for the subject property limits the facility to eleven powerboat slips at any given time.
    d) Chapter 24 of the Code of Miami-Dade County

27. **Conformance with the Miami-Dade County Comprehensive Development Master Plan (CDMP)** - In the opinion of DERM, the proposed project is not in conformance with the CDMP. The following is a summary of the proposed project as it relates to the CDMP:

LAND USE ELEMENT I:

Objective 2/Policy 2A - Level of Service. The proposed project does not involve new or significant expansion of existing urban land uses.

Objective 3/Policies 3A, 3B, 3C - Protection of natural resources and systems. – The proposed project is not consistent with the goals, objectives and policies of the Conservation and Coastal Management Elements of the CDMP.

TRANSPORTATION ELEMENT II

Aviation Subelement/Objective 9 - Aviation System Expansion - There is no aviation element to the proposed project.

Port of Miami River Subelement/Objective 3 - Minimization of impacts to estuarine water quality and marine resources. The proposed project is located within the Miami River and does not minimize adverse impacts to manatees and their habitat.

CONSERVATION, AQUIFER RECHARGES AND DRAINAGE ELEMENT IV:

Objective 3/Policies 3A, 3B, 3D - Wellfield protection area protection. - The proposed project is not located within a wellfield protection area.

Objective 3/Policy 3E - Limestone mining within the area bounded by the Florida Turnpike, the Miami-Dade/Broward Levee, N.W. 12 Street and Okeechobee Road. - The proposed project is not located within this area.

Objective 4/Policies 4A, 4B, 4C - Water storage, aquifer recharge potential and maintenance of natural surface water drainage. - The proposed project will not adversely affect water storage, aquifer recharge potential or natural surface water drainage. The proposed project does not involve positive drainage of wetland area and will not affect water storage or aquifer recharge potential.

Objective 5/Policies 5A, 5B, 5F - Flood protection and cut and fill criteria. – The proposed project does not compromise flood protection, involve filling for development purposes, and is not related to cut and fill activities.

Objective 6/Policy 6A - Areas of highest suitability for mineral extraction. - The proposed project is not located in an area proposed or suitable for mineral extraction.

Objective 6/Policy 6B - Guidelines for rock quarries for the re-establishment of native flora and fauna. - The proposed project is not located in a rock quarry.

Objective 6/Policy 6D - Suitable fill material for the support of development. – The proposed project does not propose additional fill for the purposes of development.

Objective 7/Policy 7A - No net loss of high quality, relatively unstressed wetlands. – The proposed project will not result in a net loss of any such wetlands.

Objective 9/Policies 9A, 9B, 9C - The proposed project is expected to adversely affect rare, threatened or endangered species, specifically the West Indian Manatee (*Trichechus manatus*), and its habitat.

COASTAL MANAGEMENT ELEMENT VII:

Objective 1/Policy 1A - Tidally connected mangroves in mangrove protection areas – There are no mangroves in the project area and the project is not located within a designated "Mangrove Protection Area."

Objective 1/ Policy 1B - Natural surface flow into and through coastal wetlands. – The project will not affect natural surface flow into and through coastal wetlands.

Objective 1/ Policy 1C - Elevated boardwalk access through mangroves. – The project does not involve access through a Mangrove Protection Area.

Objective 1/Policy 1D - Protection and maintenance of mangrove forests and related natural vegetational communities. - The proposed project does not involve work in mangrove forests, coastal hammock, or other natural vegetational communities.

Objective 1/Policy 1E - Mitigation for the degradation and destruction of coastal wetlands. Monitoring and maintenance of mitigation areas. – The proposed project does not involve the degradation and destruction of coastal wetlands and therefore does not involve monitoring of mitigation for impacts to coastal wetlands.

Objective 1/Policy 1G - Prohibition on dredging or filling of grass/algal flats, hard bottom or other viable benthic communities, except as provided for in Chapter 24 of the Code of Miami-Dade County, Florida. – The proposed permit modification does not involve the dredging or filling of grass/algal flats, hard bottom or other viable benthic communities.

Objective 2/Policies 2A, 2B - Beach restoration and renourishment objectives. - The proposed project does not involve beach restoration or renourishment.

Objective 3/Policy 3E, 3F - Location of new cut and spoil areas for proper stabilization and minimization of damages. - The proposed project does not involve the development or identification of new cut or spoil areas.

Objective 4/Policy 4A, 4C, 4E, 4F – Protection of endangered or threatened species habitat, implementation of the Miami-Dade County Manatee Protection Plan, and minimizing the overlap between manatees and boat travel patterns. The proposed permit modification does not minimize manatee and vessel pattern overlap. In addition, the proposed project is not consistent with the Miami Dade County Manatee Protection Plan.

Objective 5/Policy 5B - Existing and new areas for water-dependent uses. - The proposed project will enhance existing water-dependent uses.

Objective 5/Policy 5D - Consistency with Chapter 33D, Miami-Dade County Code (shoreline access, environmental compatibility of shoreline development) - The proposed project does not require review by the Shoreline Development Review Committee.

Objective 5/Policy 5F - The siting of water dependent facilities. - The proposed project does not involve the creation of any new water dependent facilities.

28. **Conformance with Chapter 33B, Miami-Dade County Code** (East Everglades Zoning Overlay Ordinance) – The proposed project is not located within the East Everglades Area.

29. **Conformance with Miami-Dade County Ordinance 81-19** (Biscayne Bay Management Plan Section 33D-1 through 33D-4) - The project site is not located within the management boundaries of the Biscayne Bay Management Plan.

30. **Conformance with the Miami-Dade County Manatee Protection Plan -** The project area is located within essential habitat for the West Indian Manatee (*Trichechus manatus*). The proposed project is expected to adversely affect rare, threatened or endangered species as described in more detail above. The proposed project is not consistent with the guidelines in the MPP.

    Additionally, the letter from the applicant to the Board of County Commissioners contains several inaccurate characterizations of the MPP and other regulations and also omits context that is necessary to arrive at objective and informed conclusion. It is important to approach this issue with an acknowledgement that local, state, and federal regulations generally prohibit adverse impacts to endangered, threatened, and other listed species or their habitat. The regulatory authority and requirements for listed species protection resides in statutes and ordinances, while the MPP embodies, in a narrative form, the consensus knowledge and strategies for avoiding adverse impacts to manatees.

    In 1989, the Florida Governor and Cabinet directed that 13 counties with the highest numbers of human-related manatee mortality develop comprehensive manatee protection

plans. This requirement was subsequently formalized legislatively and mandated by requirements of Ch. 370.12(2)(t) Florida Statutes, which states in part:

> *"Manatee protection plans shall include the following elements at a minimum: education about manatees and manatee habitat; boater education; an assessment of the need for new of revised manatee protection speed zones; local law enforcement; and a boat facility siting plan to address expansion of existing and the development of new marinas, boat ramps, and other multislip boating facilities"*

The State required that such plans include detailed recommendations or criteria for the siting of new or expanded marine facilities, with a goal of accommodating growth in a way to minimize the potential for collisions or conflict between motor vessels and manatees, and to avoid direct impacts to their habitat. In counties without an approved plan, the State implemented a limit on permitting of new or expanded facilities, allowing no more than 1 motor vessel per 100 feet of shoreline.

Miami-Dade County DERM initiated efforts to collect data and developed a draft plan by 1992. A Citizen's Advisory Committee, with balanced representation from stakeholders in the conservation and marine/business communities was established to assist in refining the draft. Dozens of public meetings and other hearings occurred over the next three years, and a final draft MPP was presented to the Board of County Commissioners in 1995. The MPP was approved by resolution of the Board of County Commissioners and by the Florida Fish and Wildlife Conservation Commission (then the Florida Department of Environmental Protection) in December 1995. An ordinance was adopted requiring DERM and the Board of County Commissioners to consider consistency with the MPP when evaluating applications for Class I permits. Pursuant to Florida Statute, the Miami-Dade County Comprehensive Development Master Plan Conservation Element also incorporated consistency with the MPP as a policy. The MPP was also approved by the U.S. Fish and Wildlife Service (USFWS), the federal agency responsible for recovery of listed species. The USFWS Florida Manatee Recovery Plan, 3rd Revision (2001) also contains actions related to development and implementation of local MPPs, as activities needed for achieving the objective to "Protect, identify, evaluate, and monitor manatee habitats". Federal and state environmental regulators consider consistency with the approved MPP when conducting reviews of permit applications for projects, such as construction of vessel facilities or dredging and filling that may affect manatees or their habitat. The MPP guidelines do indeed recommend limits on the number or type of new motor vessel storage or launching facilities in sensitive manatee habitat, but also recognize the importance of balancing rights of property owners and boaters to access the water. Therefore, there are only a few areas where no new motor vessel facilities are recommended.

During the early development of the plan, DERM and state regulators gave assurance to property owners and businesses that the emerging manatee protection guidelines would apply to new or expanded vessel facilities, but that existing marinas, terminals, docks, and similar facilities would be allowed to repair or rebuild, provided that the vessel uses remained the same even if they are located in sensitive manatee habitats. This commitment was based upon fairness and reasonable expectation that established vessel uses should be allowed to continue, as well as providing an incentive for retention of existing water-dependent land uses. The Citizens Advisory Committee engaged in an

extensive discussion of how to implement this commitment and define "existing facility" for the purpose of the MPP. This discussion occurred immediately following widespread destruction of marinas and coastal structures after Hurricane Andrew, and committee members wished to arrive at a policy that recognized facilities with some bona-fide history of motor vessel operation be considered "existing" even if they were temporarily closed due to a catastrophic event or economic issues. The committee ultimately recommended that facilities should be allowed to reconstruct the maximum number of slips that had been in use since October 28, 1984 (approximately ten years prior to the date of the discussion). The term "existing use", in this part of the plan narrative is further explained to refer to facility size and numbers of vessel slips, indicating that the context is number and types of vessel uses, not upland land use. The MPP does not address or provide any process for the transfer or redistribution of motor vessel slips from an existing facility to another location. The discussion of "existing marine facilities" and the associated slips is limited entirely to the issue of rebuilding or reconstruction.

It is important to note that the MPP description of "existing marine facility" and the number or type of slips does not make reference to or rely on the Marine Facility Operating Permit (MOP) or Class I permits. The Marine Facilities Operating Permit ordinance predates the MPP and primarily addresses pollution control and the implementation of best management practices at commercial marine facilities and larger private marinas at multi-family residences. It was adopted in 1989 (Sec. 24-18 of the Code of Miami-Dade County) and the first permits were issued in 1991. Although the MOP records a total number of slips at facilities required to obtain such a permit, it does not distinguish between sailboat and motor vessel slips, nor does it necessarily consider historical uses. Some types of facilities that provide permanent or temporary berthing or storage of vessels are not required to obtain MOPs. Numbers and configuration of slips is authorized by DERM, as well as federal and state regulators, only during construction. Many older facilities were constructed prior to the time when permits were required from DERM. Therefore, while helpful for compiling an inventory of potential slips or berths, the total number of slips reported in an MOP does not address manatee protection guidelines and is not by itself a determination by DERM of historical vessel use of a site as described in the MPP. In fact, it is possible that the maximum number of motor vessels at a given site since October 1984 may be more or considerably less than the total number reported in a current MOP. Also, MOPs may be issued for new or expanded facilities at new sites, provided that MPP guidelines and other regulatory requirements are met.

The MPP Citizens Advisory Committee also recommended that the plan include guidance or procedures for consideration of a facility with a different use or number of motor vessel slips than was recommended in the MPP. This concept was to be similar to a variance or exception to allow for consideration of unique situations that might not have been envisioned or addressed by the MPP *Marine Facility Siting Criteria* at the time it was finalized. This section, called *Performance Criteria*, provides that residential facilities subject to the "one motor vessel per 100 feet of shoreline" may be considered for additional motor vessel slips, or facilities may be considered for a different type of use than recommended in the siting guidelines if a series of criteria are met. Variances or exceptions are not recommended for the most sensitive habitats, such as cold-weather aggregation sites. These criteria are generally intended to assure that minimum manatee protection strategies are met, and that a departure from the guidelines will not represent an additional adverse impact to manatees or other environmental values.

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New or expanded boatyards and other types of commercial facilities are not recommended at any density in the Miami River. However, there is no finite limit on number of slips for the Miami River. In addition to allowing existing marine facilities to rebuild, the MPP also recommends additional new slips may be allowed for ship terminals or vessels larger than 100-feet in length, new motor vessel slips at a density not greater than one motor vessel per 100 feet of shoreline, and new slips for courtesy docks in the downstream portions of the river at a density not greater than 1 per 500 feet of shoreline. As with other areas in the county, there is no restriction on new sailboat slips.

The request to increase the number of motor vessel slips at this location is inconsistent with the intent and the foundation of the MPP. Because the facility is located in a cold-weather aggregation area and increased vessel traffic represents a potential threat to manatees, it does not meet the performance criteria in the Plan that would allow for consideration of additional powerboat slips.

31. **Consistency with Miami-Dade County Criteria for Lake Excavation** – The proposed project does not involve lake excavation.

32. **Municipality Recommendation** – Pursuant to Section 24-48.2(II)(A)(7), Code of Miami-Dade County, Florida, a substantiating letter shall be submitted stating that the proposed project does not violate any zoning laws. Said letter will be submitted after the approval by the Board of County Commissioners and prior to the issuance of the Class I Permit modification.

33. **Coastal Resources Management Line** - A coastal resources management line was not required for the proposed project, pursuant to Section 24-48.2(II)(A)(10)(b) of the Code of Miami-Dade County, Florida.

34. **Maximum Protection of a Wetland's Hydrological and Biological Functions** – The proposed project is not located in wetlands.

35. **Class I Permit Applications Proposing to Exceed the Boundaries Described in Section D-5.03(2)(a) of the Miami-Dade County Public Works Manual** – DERM has considered the following factors:

    i) **Whether the proposed exceedance is the minimum necessary to avoid seagrasses or other valuable environmental resources** – Not applicable.
    ii) **Whether the proposed exceedance is the minimum necessary to achieve adequate water depth for mooring of a vessel** – Not applicable.
    iii) **Whether the applicant has provided notarized letters of consent to DERM from adjoining riparian property owners** – Not applicable.
    iv) **Whether any letters of objection from adjoining riparian property owners were received by DERM** – Not applicable.

The proposed project was also evaluated for compliance with the standards contained in Section 24-48.3(2),(3), and (4) of the Code of Miami-Dade County, Florida. The following is a summary of how the standards relate to the proposed project:

24-48.3 (2) Dredging and Filling for Class I Permit - The proposed project does not involve dredging and filling activities.

24-48.3 (3) Minimum Water Depth Required for Boat Slips Created by the Construction or Placement of Fixed or Floating Docks and Piers, Piles and Other Structures Requiring a Permit Under Article IV, Division 1 of Chapter 24 of the Code of Miami-Dade County - The proposed project complies with the water depth requirements set forth in Section 24-48.3(3) of the Code of Miami-Dade County.

24-48.3 (4) Clean Fill in Wetlands – The proposed project does not involve placing clean fill in wetlands.

BASED ON THE FOREGOING, IT IS RECOMMENDED THAT A CLASS I PERMIT BE DENIED.

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Coastal Resources Section

Muriel Blaisdell

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