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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 14(A)(3)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 2, 2014

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

SUBJECT: Resolution delegating to the Mayor the authority to negotiate and execute an agreement with the United States Coast Guard for a donation of the Eastern Front Range Marker located offshore of Miami Beach in the Government Cut Inlet; authorizing the execution of documents and permits as may be required to carry out the intent of this resolution and waiving the requirements of Resolution No. R-130-06; and authorizing the execution of an agreement between the Bob Lewis Billfish Challenge, Inc. and Miami-Dade County for funding the operation and maintenance of the eastern front range marker
Resolution No. R-1027-14

The accompanying resolution was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Commissioner Bruno A. Barreiro.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: December 2, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Delegating to the Mayor or the Mayor's Designee the Authority to Negotiate and Execute an Agreement with the United States Coast Guard to Accept a Donation of the Eastern Front Range Marker for Government Cut Located Offshore of Miami Beach in the Government Cut Inlet; Authorizing Execution of Other Documents or Permits as May Be Required to Carry Out the Intent of this Resolution and Waiving the Requirements in Resolution No. R-130-06; Authorizing the Execution of an Agreement between the Bob Lewis Billfish Challenge, Inc. and Miami-Dade County for Funding the Operation and Maintenance of the Eastern Front Range Marker

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Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution delegating to the Mayor or the Mayor's designee the authority to negotiate and execute an agreement with the United States Coast Guard to accept a donation of the Eastern Front Range Marker for Government Cut (Bent Range Marker) located offshore of Miami Beach in Government Cut Inlet, provided that there is no cost or liability to the County; and authorizing the execution of an agreement between the Bob Lewis Billfish Challenge, Inc. and Miami-Dade County for funding the operation and maintenance of the Bent Range Marker.

Scope

Activities associated with this agreement will occur offshore of Miami Beach near Fisher Island in Commission District 5 which is represented by Commissioner Bruno A. Barreiro.

Fiscal Impact/Funding Source

There will be no fiscal impact to the County. All funds required for the operation and maintenance will be provided through the attached agreement with the Bob Lewis Billfish Challenge, Inc. Furthermore, the County's acceptance of the Bent Range Marker is contingent upon there being no costs and no liability to the County, as discussed in more detail below.

Track Record / Monitor

Restoration and Enhancement Section Chief Stephen Blair of the Department of Regulatory and Economic Resources, Division of Environmental Resources Management, will monitor the activities performed with these funds.

Background

The coastal waters of Miami-Dade County support a strong commercial and recreational fishing industry that annually contributes millions of dollars to the local economy. The natural and artificial reefs and structures, such as navigational aids, provide important resources for the fishing community. The Eastern Front Range Marker for Government Cut (locally known as the Bent Range Marker) is an existing navigational aid for ships entering the Port of Miami which serves as a reliable and abundant source of baitfish for recreational and commercial use.

The Bent Range Marker is owned by the United States Coast Guard (Coast Guard) and is currently scheduled for removal and replacement. Due to the importance of this structure to the local fishing community, a consortium of fishing interests has sought to have the structure remain and is willing to fund the costs associated with continued maintenance and operation of the Bent Range Marker. The fishing consortium is represented by the Bob Lewis Billfish Challenge, Inc.

The Coast Guard is willing to cancel the removal of the Bent Range Marker and donate the structure to a public entity for the purposes of public benefit. The attached resolution authorizes the Mayor or the Mayor's designee to negotiate with the Coast Guard and accept the donation of the Bent Range Marker from the Coast Guard to Miami-Dade County, provided that there will be no cost or liability to the County in connection with the acceptance of the Bent Range Marker or its maintenance or removal. The Mayor or the Mayor's designee shall also be authorized to execute such other documents or permits as may be necessary to carry out the intent of this resolution, provided that there would be no cost or liability to the County.

To this end, this resolution also authorizes the execution of an agreement between the Bob Lewis Billfish Challenge, Inc. and Miami-Dade County. The agreement establishes that the Bob Lewis Billfish Challenge, Inc. shall provide funding to Miami-Dade County for all costs related to ownership and maintenance of the Bent Range Marker, and specifies other provisions such as time extension of the agreement, transfer of ownership of the Bent Range Marker and termination of the agreement.

The Coast Guard's contract for the removal of the Bent Range Marker is currently underway, and the fishing consortium has offered to pay the Coast Guard's contractor for losses that it may incur in connection with its contract. The County's agreements and contracts in connection with the Bent Range Marker will not be executed unless the County receives reasonable assurances in writing, such as a release of claims, that the County will not have any liability in connection with the acceptance of the Bent Range Marker or its maintenance and ownership. Furthermore, pursuant to this resolution, the Mayor shall not be authorized to accept the Bent Range Marker or execute any agreements or contracts in connection therewith if the Mayor, in his reasonable discretion, determines that the potential costs or liability to the County would be more than zero.

Jack Osterholt, Deputy Mayor

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 2, 2014

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

SUBJECT: Agenda Item No. 14(A)(3)

Please note any items checked.

_____ **"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**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(3)
12-2-14

RESOLUTION NO. R-1027-14

RESOLUTION DELEGATING TO THE MAYOR OR MAYOR'S DESIGNEE THE AUTHORITY TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE UNITED STATES COAST GUARD FOR A DONATION OF THE EASTERN FRONT RANGE MARKER LOCATED OFFSHORE OF MIAMI BEACH IN THE GOVERNMENT CUT INLET; AUTHORIZING THE EXECUTION OF DOCUMENTS AND PERMITS AS MAY BE REQUIRED TO CARRY OUT THE INTENT OF THIS RESOLUTION AND WAIVING THE REQUIREMENTS OF RESOLUTION NO. R-130-06; AND AUTHORIZING THE MAYOR OR MAYOR'S DESIGNEE TO EXECUTE AN AGREEMENT BETWEEN THE BOB LEWIS BILLFISH CHALLENGE, INC. AND MIAMI-DADE COUNTY FOR FUNDING THE OPERATION AND MAINTENANCE OF THE EASTERN FRONT RANGE MARKER AND TO EXERCISE THE PROVISIONS CONTAINED THEREIN INCLUDING THE TERMINATION AND EXTENSION PROVISIONS

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 hereby authorizes the Mayor or Mayor's designee to negotiate and execute an agreement with the United States Coast Guard for the donation to Miami-Dade County of the Eastern Front Range Marker for Government Cut (also known as the 'Bent Range Marker'), located offshore of Miami Beach in the Government Cut Inlet, provided that there will be no cost or liability to the County; authorizes the Mayor or Mayor's designee to execute such other documents or permits as may be required to carry out the intent of this resolution and waiving the requirements in Resolution No. R-130-06 to this effect; authorizes the Mayor or Mayor's designee to execute the Agreement between the Bob Lewis Billfish Challenge, Inc. and Miami-Dade County, in substantially the

form attached hereto and made part hereof, which obligates the Bob Lewis Billfish Challenge, Inc. to provide funding to Miami-Dade County for all costs related to ownership and maintenance of the Bent Range Marker; and authorizes the Mayor or Mayor's designee to exercise the provisions contained in this Agreement, including but not limited to, the termination and extension provisions.

The foregoing resolution was offered by Commissioner **Audrey M. Edmonson**, who moved its adoption. The motion was seconded by Commissioner **José "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman			**aye**
Bruno A. Barreiro	**absent**	Esteban L. Bovo, Jr.	**aye**
Daniella Levine Cava	**aye**	Jose "Pepe" Diaz	**aye**
Audrey M. Edmonson	**aye**	Sally A. Heyman	**aye**
Barbara J. Jordan	**aye**	Jean Monestime	**aye**
Dennis C. Moss	**absent**	Sen. Javier D. Souto	**absent**
Xavier L. Suarez	**aye**	Juan C. Zapata	**aye**

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of December, 2014. This resolution shall become effective upon the earlier of (1) ten (10) days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: *Christopher Agrippa*
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Abbie Schwaderer-Raurell

AGREEMENT
BETWEEN
THE CAPTAIN BOB LEWIS BILLFISH CHALLENGE, INC.
AND
MIAMI-DADE COUNTY

This Agreement (the "Agreement") is made and entered into this 26 day of November, 2014, by and between the Captain Bob Lewis Billfish Challenge, Inc. (the "BILLFISH CHALLENGE, INC."), an association interested in maintaining the Eastern Front Range Marker for Government Cut (the "Bent Range Marker"), and Miami-Dade County ("the County"), a political subdivision of the State of Florida.

WITNESSETH

WHEREAS, the United States Coast Guard ("the USCG") is the current owner of the Eastern Front Range Marker for Government Cut, known as the Bent Range Marker located at N 25° 45' 11.048"; W 80° 06' 28.821, offshore of Fisher Island, Miami Beach and depicted in Exhibit A, attached hereto and made a part hereof; and

WHEREAS, the USCG has scheduled the demolition and removal of the Bent Range Marker to occur in late 2014 or early 2015; and

WHEREAS, the BILLFISH CHALLENGE, INC. has expressed interest in the structure of the Bent Range Marker remaining intact for the purpose of attracting schools of baitfish that are caught and used by local fishermen thereby creating a public benefit; and

WHEREAS, the USCG has stated their willingness to donate the Bent Range Marker to an appropriate party subject so long as the Bent Range Marker is properly maintained and properly removed when necessary; and

WHEREAS, due to the urgency to transfer ownership from the USCG prior to the planned demolition of the Bent Range Marker by the USCG or their agents, the County is willing to accept ownership of the Bent Range Marker on behalf of the BILLFISH CHALLENGE, INC. in order to preserve the public benefits of the Bent Range Marker, with the condition that the BILLFISH CHALLENGE, INC. fund all of the maintenance costs and all of the eventual demolition and disposal costs of the Bent Range Marker.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants herein set forth, the parties hereto agree as follows:

1. This term of this Agreement shall be three (3) years from the effective date, as determined below. This Agreement may be extended for one additional term of three (3) years, for a maximum period of six (6) years from the effective date, provided that the conditions provided herein for such an extension of time have been satisfied.

2. When and if the ownership of the Bent Range Marker is transferred from Miami-Dade County to another party, this Agreement shall automatically terminate.

3. The County will perform only limited maintenance on the Bent Range Marker, which shall only include minor repairs to maintain the required lighting, day boards and markings of the Bent Range Marker. Whether repairs or maintenance work falls under this limited definition of "minor repairs to maintain the required lighting and markings of the Bent Range Marker" shall be determined by the Director of the Miami-Dade County Department of Regulatory and Economic Resources ("Director"), in the Director's sole discretion.

4. Miami-Dade County does not intend to conduct any restorative or corrective work or activities, any structural repairs or work, nor any other repairs that would serve to extend the life of the Bent Range Marker.

5. Notwithstanding anything to the contrary stated herein, the County has the discretion but not the obligation to conduct minor repairs to the decking or other components of the Bent Range Marker so as to maintain its function as a baitfish aggregation site. Any such repairs shall be done in the sole discretion of the Director of the Miami-Dade County Department of Regulatory and Economic Resources.

6. If the Director of the Department of Regulatory and Economic Resources determines, in the Director's sole discretion, that the Bent Range Marker should be removed, then Miami-Dade County shall effect the removal of the Bent Range Marker as soon as possible. In making such a determination, the Director may consider whether the Bent Range Marker is at risk of structural failure so that it could potentially pose a hazard to navigation, the environment, human health and safety, but there is no requirement that the Director wait until any such risks are imminent. Any opinion, conclusion, or determination by the United States Coast Guard, or any other state or federal agency, related to the Bent Range Marker shall not affect or limit the discretion of the Director on when and whether the Bent Range Marker should be removed, unless it is with respect to a required permit or authorization from such agencies.

7. Miami-Dade County may also remove the Bent Range Marker forthwith if the BILLFISH CHALLENGE, INC. has not or cannot provide sufficient funds for both expected maintenance and removal costs of the Bent Range Marker. If the Bent Range Marker is not or cannot be transferred to the BILLFISH CHALLENGE, INC. or another suitable entity before the expiration of this Agreement, the Bent Range Marker may be removed before the expiration date.

8. The County desires to transfer ownership of the Bent Range Marker to the BILLFISH CHALLENGE, INC. or another qualified entity, provided that said entity demonstrates compliance with all statutory and regulatory requirements and demonstrates its ability to maintain the Bent Range Marker, as determined by the Director, in the Director's sole discretion.. The BILLFISH CHALLENGE, INC. or another qualified entity shall provide to the County a notice of its intent to take ownership of the Bent Range Marker no later than 1 year after the effective date of this Agreement. As a condition of transferring ownership to the BILLFISH CHALLENGE, INC. or another qualified entity, said entity shall provide assurance, in the form of a Bond, Letter of Credit or cash deposit in the amount of $80,000, to be held by the County until such time as the Bent Range Marker has been removed in its entirety.

9. The BILLFISH CHALLENGE, INC. agrees to pay for all costs incurred by the County with respect to the Bent Range Marker, including but not limited to:

(1) Costs of maintenance including, but not limited, to minor repair and maintenance to lighting systems, day-boards and markings, decking, and access ladder;

(2) Costs of any and all legal and regulatory authorizations including but not limited to land leases, environmental permits, filing or required notifications resulting from, or required by the transfer of the Bent Range Marker from the Coast Guard to the County or from the County to the Captain Bob Lewis entity;

(3) Costs of removal of the Bent Range Marker; and

(4) Other costs that the County may incur as a result of its ownership of the Bent Range Marker.

10. The County will submit invoices to the BILLFISH CHALLENGE, INC, no more frequently than quarterly, for maintenance work conducted in connection with this agreement. Payment of said invoices is due 30 days from the date of receipt of the invoice

11. The County may seek to recover its costs either through a requested reimbursement, a request to pre-pay anticipated costs, or through the Bond, Letter of Credit or cash deposit from BILLFISH CHALLENGE, INC., or through any other legal means.

12. In order to cover all of the costs that the County may incur with respect to the Bent Range Marker, the BILLFISH CHALLENGE, INC. shall provide financial assurance, in the form of a Bond, Letter of Credit or cash deposit in the amount of $80,000. The Bond will be required until this Agreement terminates.

13. The County shall seek all necessary or applicable permits (local, state, and federal) and all necessary or applicable approvals (local, state, and federal) to take ownership of the Bent Range Marker. If, however, the County is unable to obtain any necessary permits for the Bent Range Marker, the County may remove the Bent Range Marker forthwith.

14. The BILLFISH CHALLENGE, INC. shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, cases of actions or proceedings of any kind or nature arising out of, relating to or resulting from the Bent Range Marker, including but not limited claims, demands, suits, cases of actions or proceedings of any kind of nature arising out of, relating to or resulting from the acquisition by the County of the Bent Range Marker or the performance of this Agreement by the BILLFISH CHALLENGE, INC. or its employees, agents, servants, partners, principals or subcontractors. The BILLFISH CHALLENGE, INC. shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorney's fees which may issue thereon. BILLFISH CHALLENGE, INC. expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by BILLFISH CHALLENGE, INC. shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Billfish Challenge, Inc. shall furnish to the Regulatory and Economic Resources Department, Attn: Mr. Lee N. Hefty, 701 NW 1st St, Suite 400, Miami, Florida 33128,

Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Marine General Liability and/or Commercial General Liability and/or Protection and indemnity insurance, specifically endorsed to include any and all third party liability claims arising from the ownership, maintenance and/or operation of the "Bent Range Marker", with combined single limits of not less than $1,000,000 per occurrence. **Miami Dade County must be shown as an additional insured with respect to this coverage.**

15. This Agreement is solely for the benefit of the parties hereto and no third party shall be entitled to claim or enforce any rights hereunder.

16. The parties shall comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all applicable laws relating to the Project. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

17. Nothing contained herein shall make, or be construed to make any party a principal, agent, partner or joint venture of the other.

18. Title and paragraph headings are for convenient reference and are not a part of this Agreement.

19. Each of the parties hereto acknowledges it is duly authorized to enter into this Agreement and that the signatories below are duly authorized to execute this Agreement in their respective behalf.

20. If the BILLFISH CHALLENGE, INC. wishes to seek the one extension of three (3) years that is contemplated in this Agreement, the Mayor of Miami-Dade County has the authority to execute such an extension, provided that the BILLFISH CHALLENGE, INC. requests such an extension in writing at least three (3) months before the expiration of the term; the BILLFISH CHALLENGE has submitted a written notice of its intent to take ownership of the Bent Range Marker; and the BILLFISH CHALLENGE has shown the Director the progress that it has made in getting the necessary permits or authorizations to take ownership of the Bent Range Marker.

21. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms contained herein shall be effective unless set forth in writing in accordance with this section. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties.

22. Any and all notices required to be given under this Agreement shall be sent by first class mail, addressed to the following:

To the BILLFISH CHALLENGE, INC.:
Attention:

With a Copy to:
Attention:

To the County:
Attention: Sara Thanner, Environmental Resource Project Supervisor
Miami-Dade County Regulatory and Economic Resources (RER)
Division of Environmental Resources Management (DERM)
701 NW 1st Court 5th Floor
Miami, Florida 33136
(305) 372-6922
Email: thanns@miamidade.gov

21. This Agreement is agreed to and shall become effective upon final execution of the agreement by the parties.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

ATTEST:

THE CAPTAIN BOB LEWIS BILLFISH CHALLENGE, INC.

By: _____, President Date 11/26/14

Jose R Fonseca, President
Printed name

ATTEST:

HARVEY RUVIN
CLERK OF THE BOARD

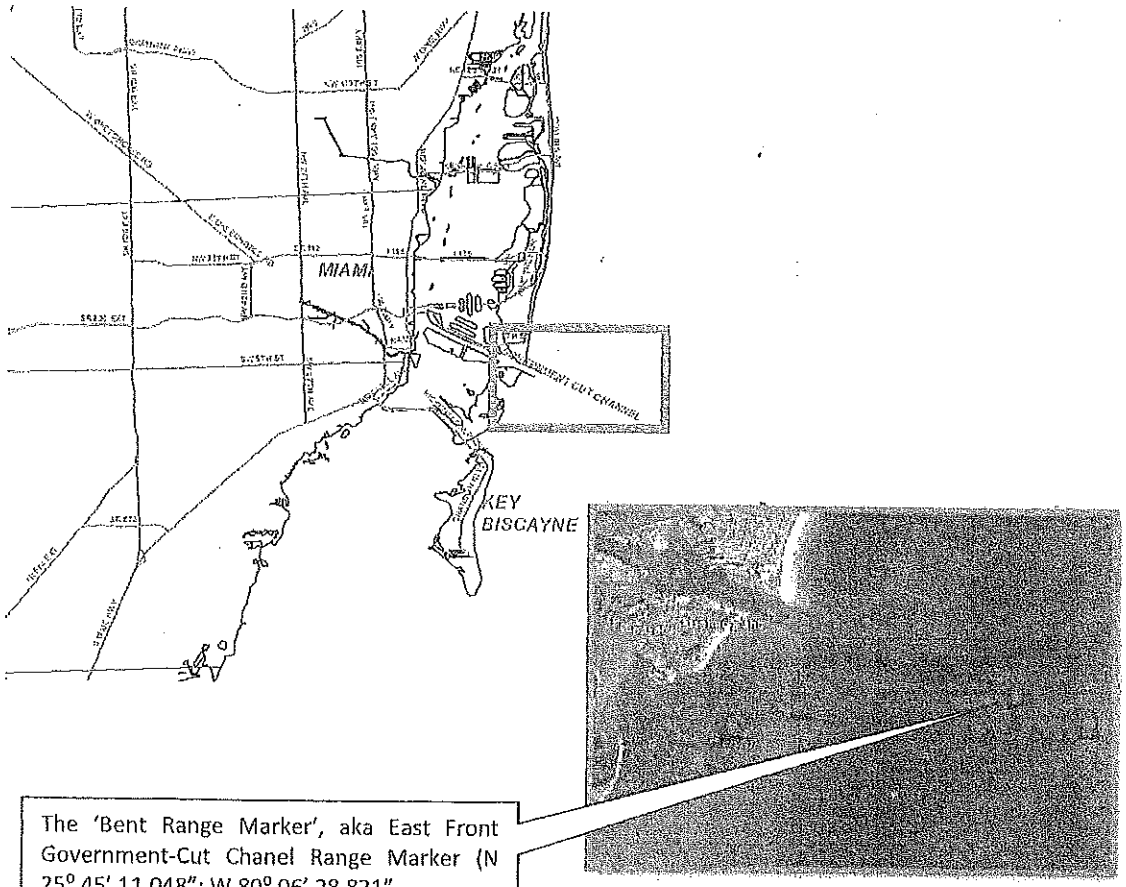
By: _____
Deputy Clerk

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

By: _____
County Mayor or County Mayor's Designee

EXHIBIT A

"LOCATION OF 'BENT RANGE MARKER"



The 'Bent Range Marker', aka East Front Government-Cut Chanel Range Marker (N 25° 45' 11.048"; W 80° 06' 28.821"