

RESOLUTION NO. 2003- 33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA AUTHORIZING THE CITY TO ENTER INTO A PRELIMINARY DEVELOPMENT AGREEMENT WITH THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE MANAGEMENT OF BOOT KEY HARBOR; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO FINALIZE THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") recognizes the importance of properly managing and protecting its near shore waters in order to protect the health, safety and welfare of the City and its residents; and

WHEREAS, the City Council has determined that the entering into a Preliminary Development Agreement with the Department of Community Affairs and the Department of Environmental Protection for the management of Boot Key Harbor will assist the City in properly managing and protecting its near shore waters.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

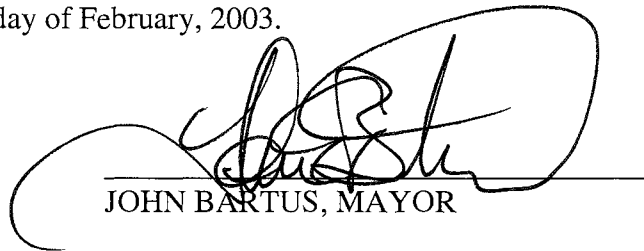
Section 2. Approval and Execution of Agreement. The Preliminary Development Agreement between the City of Marathon, Florida, the Department of Community Affairs and the Department of Environmental Protection (the "Agreement"), in substantially the form of the

attached Exhibit "A," together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved.

Section 3. Appropriation. The City Manager is authorized to expend budgeted funds to implement the terms and conditions of the Agreement.

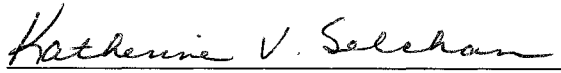
Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 4th day of February, 2003.



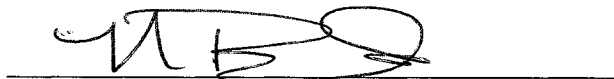
JOHN BARTUS, MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

PRELIMINARY DEVELOPMENT AGREEMENT

FOR BOOT KEY MANAGED HARBOR - MARATHON, FLORIDA

This Preliminary Development Agreement (“Agreement”) is entered into between the City of Marathon, Florida (“City”), the State of Florida Department of Community Affairs (“DCA”), and Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (“Board of Trustees”) pursuant to the provisions of Sections 380.032(3) and 380.06(8), Florida Statutes (2002)¹ and Rule 9J-2.185, Florida Administrative Code.

RECITALS:

WHEREAS, the DCA is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, which includes provisions relating to developments of regional impact (DRI); and

WHEREAS, the total project size subject to this Agreement is 94.6 acres of Boot Key Harbor (“Harbor”) upland, City owned harbor bottomland and Harbor sovereignty lands located in the City, more particularly described in Exhibit “A” to this Agreement; and

WHEREAS, the Board of Trustees owns 63.8 acres of Harbor sovereignty lands and is responsible for administration of those sovereignty lands; and

WHEREAS, the City owns 7.6 acres of upland and bottomland on a canal immediately adjacent to the Harbor, and 23.2 acres of Harbor bottomland; and

WHEREAS, the City proposes to develop a project known as the Boot Key Managed Harbor (“Project”); and

WHEREAS, the Project will include the installation of moorings, land based slips, and improvements to the existing upland facilities owned by the City; and

¹ / All references to Florida Statutes are to 2002 edition.

NOW, THEREFORE, the City, DCA and Board of Trustees do mutually agree as follows:

I. Recitals:

1. The above recitals are true and correct, and incorporated herein by this reference.

II. Existing Conditions/Development.

1. The existing upland owned by the City is currently functioning and managed as a municipal marina. The marina is comprised of:

- a. A 127 space paved parking area with access from US Highway 1.
- b. A 10,500 square foot administration building.
- c. Fifty-eight (58) slips for dinghies or tenders to the harbor anchored vessels.
- d. Restrooms and showers.
- e. Sanitary pump-out facilities, and all utilities necessary for an active marina.

2. The existing bottomlands owned by the City contain twenty-five (25) moorings owned and managed by the City.

3. This existing development and infrastructure is under the fixed threshold requiring DRI review.

III. Proposed Development Project.

1. The City proposes to develop the Project in phases that will include, but is not limited to:

- a. The installation of 230 anchored moorings in the Harbor that will replace conventional boat anchoring currently practiced in the Harbor.

- b. A service area to support the mooring fields.
- c. Redevelopment of the existing marina and management facility adjacent to the mooring fields.

2. The first phase of the Project is comprised of the installation of thirty-nine (39) additional moorings, and twenty-seven (27) service oriented dinghy slips that will assist the City to mitigate the negative impacts to the benthic resources, abate unchecked pollution, and adequately test administration and management of the Project prior to total development (“Preliminary Development”).

3. The Project will reduce impacts to the Harbor and create more efficient and effective utilization of current and planned facilities.

4. The existing development and the Project are consistent with the City’s Comprehensive Plans and Land Development Regulations.

IV. Legal Description/Maps.

1. The property encompassing the Project is legally described and sketched on the attached Exhibit “A.”

2. The property subject to this Agreement is legally described and sketched on the attached Exhibit “B.”

V. Development of Regional Impact.

1. The Project constitutes a DRI, and the City desires to move forward with the Preliminary Development of the Project prior to issuance of a final development order.

2. The City has an interest in land or development located within five miles of the Project perimeter. These properties are:

- a. The Marathon Community Park, adjacent to the City of Marathon Marina.

- b. The City Skate Park across the street from the Community Park.
- c. The 33rd Street Public Boat Ramp.
- d. The Boot Key Draw Bridge located within the Harbor.
- e. The 33rd Street Fire Department Annex Building.
- f. The Marathon Yacht Club property.
- g. Sombrero Beach Park.
- g. The City boat ramp on Aviation Boulevard and Harbor Drive.

VI. Scope of Authorized Preliminary Development.

1. The Board of Trustees and DCA have determined that local governmental management of the bottomland, surface waters and upland of the Harbor will provide relief from misuse, natural resource damage, near shore water pollution, unsafe activity by the boating public, and inequitable use by live-a-board boaters.

2. The DCA has determined the existing public infrastructure will accommodate the uses planned for the Preliminary Development of the Project authorized by this Agreement, when such development will utilize public infrastructure.

3. The Preliminary Development will not result in material adverse impacts to existing or planned facilities.

4. The Preliminary Development is limited to lands and water that are suitable for development and that are currently heavily used by boaters for conventional anchoring.

5. The Preliminary Development is essential to the ultimate viability of the total proposed development.

6. The Preliminary Development will not result in material adverse impacts to existing resources or planned facilities. All development will be properly permitted with mitigation measures for any impact to the natural resources.

7. The Preliminary Development authorized under this Agreement is limited to thirty-nine (39) anchored moorings and twenty-seven (27) boat slips on floating docks for servicing the moorings located on City owned bottomland and upland. The Preliminary Development, together with the existing development described in paragraph II.1, is less than 100% of any applicable numerical guideline and standard for DRI review. No Preliminary Development authorized by this Agreement shall take place on property of the Board of Trustees.

^ AND PARAGRAPH II.2
LG
7/10/03

8. All other lands are to remain undeveloped and no other development shall occur until such time as a final development order is approved for the Project in its entirety. The Preliminary Development authorized by this section shall be subject to the terms and conditions of the final development order.

DSS
7/29/03

WLL
7/24/03
RM 7/28/03

VII. City and DEP Requirements.

1. Within forty-five (45) days from the date of execution of this Agreement, the City and the State of Florida Department of Environmental Protection ("DEP") as staff to the Board of Trustees shall meet with the South Florida Regional Planning Council for the pre-application conference required by Section 380.06(7), Florida Statutes.

2. Within three (3) months from the date of execution of this Agreement, the City and DEP as staff to the Board of Trustees shall file an application for final development approval for the Project. This application shall include all the impacts associated with the entire

development of the Project, including the Preliminary Development authorized by this Agreement.

VIII. Breach.

1. Time is of the essence. Failure to timely attend the pre-application conference or timely file an application for final development approval or to otherwise fail to diligently proceed in good faith to obtain a final development approval for the Project shall constitute a breach of this Agreement. In the event of such a breach, the City shall immediately cease all development of the Project, including the Preliminary Development authorized by this Agreement.

2. In the event of a breach of this Agreement or failure to comply with any condition of this Agreement, or if this Agreement is based upon materially inaccurate information, DCA may terminate this Agreement or file suit to enforce this Agreement, including a suit to enjoin all development.

IX. No Vested Rights/Equitable Estoppel.

1. The City shall not claim vested rights, or assert equitable estoppel, arising from this Agreement or any expenditures or actions taken in reliance on this Agreement to continue with the Project beyond the Preliminary Development. This Agreement shall not entitle the City to a final development order approving the Project, or to any particular conditions in a final development order.

2. The restrictions and conditions of the final development order issued pursuant to Chapter 380, Florida Statutes, shall supersede the restrictions and conditions upon development of this Agreement.

X. No Waiver.

1. The failure of any party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

2. Nothing in this Agreement shall constitute a waiver by any party of the right to appeal any development order pursuant to Section 380.07, Florida Statutes.

3. This Agreement affects the rights and obligations of the parties under Chapter 380, Florida Statutes. It is not intended to determine or influence the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals which might be required by state law or local ordinance for any development authorized by this Agreement. This Agreement shall not prohibit the South Florida Regional Planning Council from reviewing or commenting on any regional issue that it determines should be included in the regional agency's report on the final development application.

XI. Successors and Assigns.

1. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. The City shall ensure and provide that any successor in interest in and to any lands or parcels affected by this Agreement is bound by the terms of this Agreement.

XII. Recording.

1. The City shall record this Agreement in the Official Records of Monroe County, Florida, and shall provide the DCA and DEP with a copy of the recorded Agreement including Book and Page number within two (2) weeks of the date of execution of this Agreement.

XIII. Entire Agreement/Modification/Amendment.

1. This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

2. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

XIV. Severability.

1. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

XVI. Governing Law.

1. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

XVII. Notices.

1. Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by private postal service, by registered or certified mail with postage prepaid return receipt requested, addressed to the parties at the following addresses:

For the City:

City of Marathon
Attention: Scott Janke, City Manager
10045-55 Overseas Highway

Marathon, Florida 33050
Telephone: (305) 743-0033
Facsimile: (305) 743-3667

With a copy to:

Weiss Serota Helfman Pastoriza & Guedes, P.A., City Attorneys
Attention: John R. Herin, Jr., Esq.
2665 South Bayshore Drive
Suite 420
Miami, FL 33133
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

For DCA:

Department of Community Affairs
Division of Community Planning
Bureau of Local Planning
2555 Shumard Oak Blvd., Tallahassee, Florida 32399
Telephone: (850) 488-4925

With a copy to:

DCA Keys Field Office
Marathon Regional Service Office
2796 Overseas Highway
Suite 212
Marathon, Florida 33050

For Board of Trustees:

Eva Armstrong
Department of Environmental Protection
Director, Division of State Lands
3900 Commonwealth Blvd., MS 100
Tallahassee, Florida 32399
Telephone: (850) 245-2555

With a copy to:

Richard Cantrell
DEP South District Branch Office
2295 Victoria Avenue, Suite 364
Fort Myers, Florida 33902-2549

Any party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions hereof.

XIIX. Assignment.


1. The parties agree that this Agreement shall not be assignable unless all parties approve of the assignment.

XIX. Effective Date.

1. The date of execution of this Agreement shall be the date that the last party signs and this Agreement.

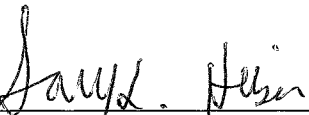
IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated herein.

Board of Trustees of the Internal Improvement
Trust Fund of the State of Florida.


By: 
David B. Struhs, Secretary
Florida Department of Environmental Protection as
staff for, and on behalf of, the Board of Trustees of the
Internal Improvement Trust Fund of the State of Florida

June 17, 2003
Date

Approved as to legal form and sufficiency:


General/Assistant General Counsel

State of Florida Department of Community Affairs

By: 
E. H. "Sonny" Timmerman, Director, Division
Of Community Planning
Florida Department of Community Affairs


7/18/03
Date

Approved as to legal form and sufficiency:



General/Assistant General Counsel

City of Marathon, Florida



Randy Mearns, Mayor
City of Marathon

4/21/03

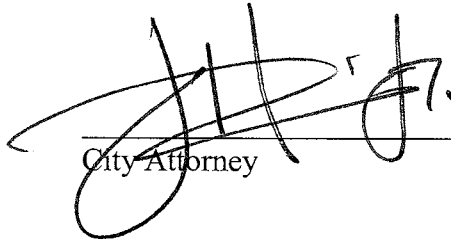
Date

Attest:



City Clerk

Approved as to legal form and sufficiency:



City Attorney

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**NOTICE OF PRELIMINARY DEVELOPMENT AGREEMENT FOR A
DEVELOPMENT OF REGIONAL IMPACT KNOWN AS BOOT KEY MANAGED
HARBOR DEVELOPMENT**

Please Take Notice that a Preliminary Development Agreement for a Development of Regional Impact covering the property legally described on the attached Exhibit "A" was entered into on April ____, 2003, pursuant to Section 380.06(8), Florida Statutes, between the Florida Department of Community Affairs, the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the City of Marathon, Florida. The Agreement may be examined at the office of the Department of Community Affairs, Bureau of Resource Management, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399, (850) 488-4925. Said Preliminary Development Agreement constitutes a land development regulation applicable to the land covered by the Agreement.

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EXHIBIT "A"

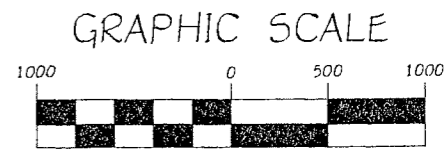
Proposed Mooring Field Legal Descriptions -- Boot Key Harbor

Proposed Mooring Field #1

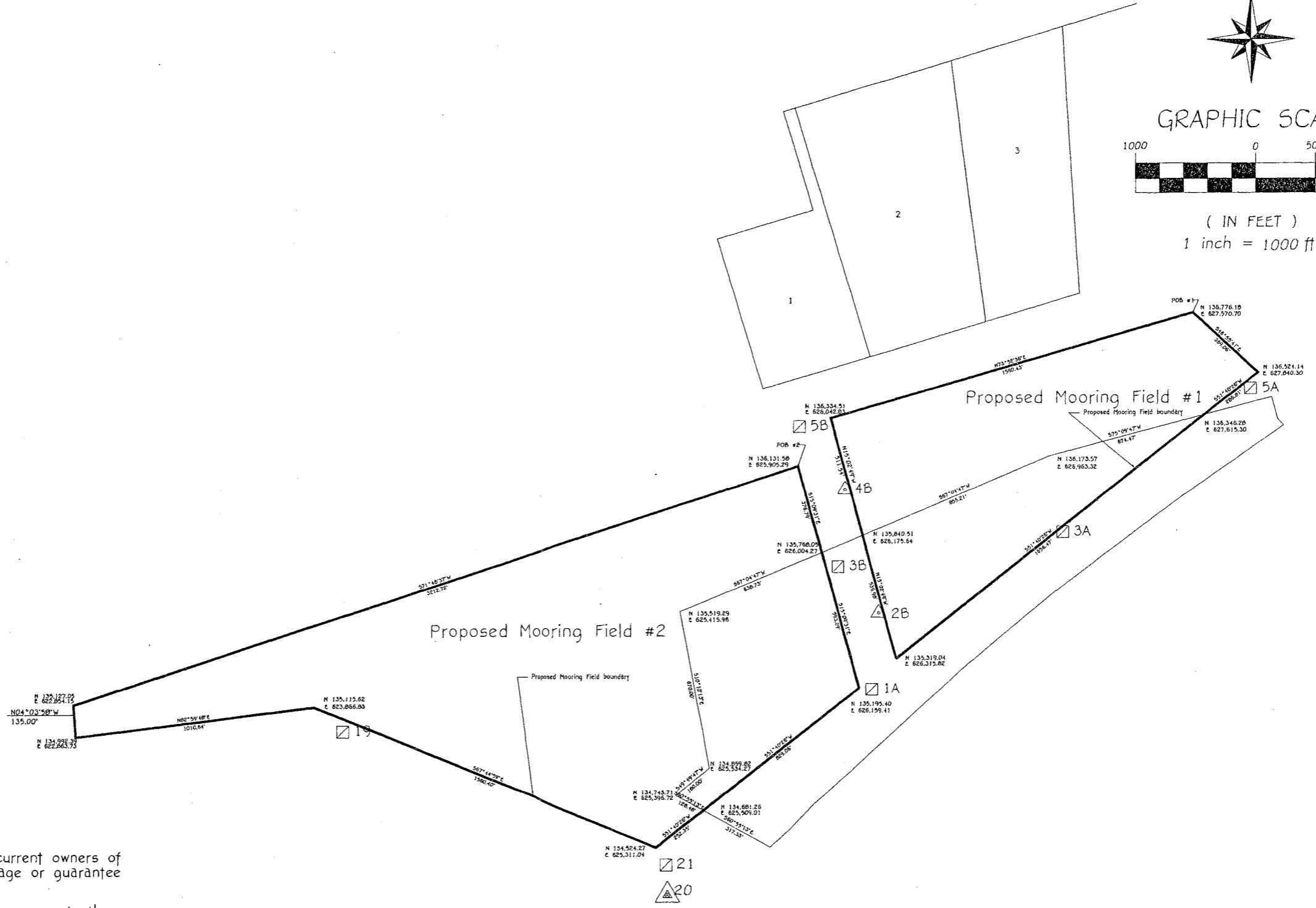
Commence at National Geodetic Survey Monument R 273, N 136346.87, E 620050.88; Thence run N 86°43'57" E, 7532.06 feet more or less (mol) to the North East Corner of Proposed Mooring Field #1, N 136776.18, E 627570.70 for a Point of Beginning (POB). Thence run, S 46°55'41" E, 369.06 feet (mol) to the South East Corner of said Proposed Mooring Field, N 136524.14, E 627840.30; thence run, S 51°40'26" W, 206.81 feet (mol) to a point, N 136346.28, E 627615.30, on the Northerly Boundary Line of Sombrero Properties, Parcel 14, as recorded in Plat Book 5, Pages 100-101 of the Public Records of Monroe County, Florida, subsequently conveyed to Monroe County, Florida by Quit-Claim Deed #212546, O.R. 488, Pg 1094 of the Public Records of Monroe County, Florida; thence continue along said line S 51°40'26" W, 1656.47 feet (mol) to the South West Corner of said Proposed Mooring Field, N 135319.04, E 626315.82; thence run, N 15°02'49" W, 539.98 feet (mol) to a point on the Northerly Boundary Line of said Sombrero Properties, Parcel 14, N 135840.51, E 626175.64; thence continue along said line N 15°02'49" W, 511.49 feet (mol) to the North West Corner of said Proposed Mooring Field, N 136334.51, E 626042.83; thence run, N 73°52'30" E, 1590.43 feet (mol) to the POB. Containing 1,190,601.2 SF or 27.3324 Acres (mol)

Proposed Mooring Field #2

Commence at National Geodetic Survey Monument R 273, N 136346.87, E 620050.88; Thence run S 87°53'38" E, 5858.37 feet more or less (mol) to the North East Corner of the Proposed Mooring Field #2, N 136131.58, E 625905.29 for a Point of Beginning (POB). Thence run, S 15°09'31" E, 376.79 feet (mol) to a point, N 135768.05, E 626004.27, on the Northerly Boundary Line of Sombrero Properties, Parcel 14, as recorded in Plat Book 5, Pages 100-101 of the Public Records of Monroe County, Florida, subsequently conveyed to Monroe County, Florida by Quit-Claim Deed #212546, O.R. 488, Pg 1094 of the Public Records of Monroe County, Florida; thence continue along said line S 15°09'31" E, 593.29 feet (mol) to the South East Corner of said Proposed Mooring Field, N 135195.40, E 626159.41; thence run, S 51°40'26" W, 829.06 feet (mol) to a point on the Southwesterly Boundary Line of said Sombrero Properties, Parcel 14, N 134681.26, E 625509.01; thence continue along said line S 51°40'26" W, 252.35 feet (mol) to the Southerly Corner of said Proposed Mooring Field, N 134524.27, E 625311.04; thence run, N 67°44'59" W, 1560.40 feet (mol) to a point, N 135115.62, E 623866.83; thence run, S 82°59'48" W, 1010.64 feet (mol) to the South West Corner of said Proposed Mooring Field, N 134992.39, E 622863.73; thence run N 04°03'58" W, 135.00 feet (mol) to the North West Corner of said Proposed Mooring Field, N 135127.05, E 622854.15; thence run, N 71°46'37" E, 3212.72 feet (mol) to the POB. Containing 2,412,938.7 SF or 55.3935 Acres (mol)



(IN FEET)
1 inch = 1000 ft.



This legal description is made for the exclusive use of current owners of the property and also those who purchase, lease, mortgage or guarantee the title thereto within one (1) year from date hereof.

I hereby certify that the legal description represented hereon meets the minimum technical standards set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 61G17-6, Florida Administrative Code. Code. Not valid unless signed and embossed with seal.

©Copyright

REVISIONS	BY	DATE	SURVEY BK.		PG.	
					BY	DATE
Area determinations	AMN	1/11/02				
			CALC.			
			DESIGN			
			DRAWN			
			APPROVED			

Science and Engineering in the Traditions of The Challenger Expedition
Cert No. 5284
Challenger Enterprises Inc.
P O Box 285
Safety Harbor, Florida 34695-0285
Phone (727) 726-7612
Fax (727) 724-1002

Voyage of HMS Challenger, 1872-1876

CLIENT
**Monroe County, Florida
Marathon, Florida**

[Signature]
Florida Surveyor's Registration No. 3483
Date *2/5/02*

PROJECT NAME
Boot Key Harbor Mooring Fields

PLAN
Mooring Field Legal Descriptions w/Sketch

DATE	9/21/01
FILE NAME	Legals.dwg
PROJECT NO.	
SHEET	1 of 1