

IN THE CIRCUIT COURT FOR THE
16th JUDICIAL CIRCUIT IN AND FOR
MONROE COUNTY, FLORIDA

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
on behalf of the BOARD OF
TRUSTEES OF THE INTERNAL
IMPROVEMENT FUND,

Petitioner,
vs.

EVERETT G. WEST, et al.,

Defendants.

CASE NO. 95-20165-CA-18

MOTION TO RECONSIDER EVIDENTIARY RULING

Defendants respectfully move the Court to reconsider its evidentiary ruling excluding thirty nine (39) documents identified and included in Exhibit A (marked for identification), and as grounds therefore states as follows.

1. At the hearing on September 15, 2006, Defendants sought to introduce Exhibit A containing 39 documents, and specifically a letter dated June 6, 1990, from Percy Mallison, the Director of the Division of State Lands to the Chairman of the Monroe County Planning Commission, a copy of which is attached hereto.

2. The Court sustained Petitioner's objection to the Defendants' motion to introduce the 39 documents into evidence on the grounds of hearsay.

3. Defendants inadvertently failed to inform the Court that the 39 documents were the subject of Defendants' Third Request for Admissions dated November 20, 2003, and that Petitioner:

- a) Admitted the documents were provided to counsel during discovery;
- b) Admitted 27 of the 39 documents including the letter from Percy Mallison were "maintained in the ordinary course of business" by the DEP or TIFF;
- c) Admitted 27 of the 39 documents including the letter from Percy Mallison were public records.

A copy of the Third Request for Admissions and Petitioner's Response is attached hereto.

4. Pursuant to Rule 90.802, records kept in the ordinary course of business are an exception to the hearsay rule.

5. Pursuant to Rule 90.803(8), public records are an exception to the hearsay.

6. Because there is no dispute that 27 documents were kept in the ordinary course of business and are public records, the documents should be admitted into evidence and specifically the letter from Percy Mallison, Director of the Division of State Lands, a copy of which is attached hereto.

7. With respect to the remaining 12 documents: 2 Documents were memos from DCA staff to DNR staff (No. 4 and No. 12); 2 Documents were prepared by CARL, which is headed by the Governor and Cabinet and staffed by State Lands Division of DNR (No. 18 and No. 9); 1 Document was from an appraiser employed by DNR and sent to DNR (No. 28).

These documents are admissible as "records of regularly conducted business activity" by DEP (formerly DNR) and the Governor and Cabinet, which is the titular head of the CARL

Selection Committee, which is staffed by DNR, and which comprises both the Board of Trustees, which is charged with the duty of appraising and acquiring lands as well as the Administration Commission, which is charged with the duty of "guiding" the Florida Keys under the critical state concern designation set forth in ch. 380, *Fla. Stat.*

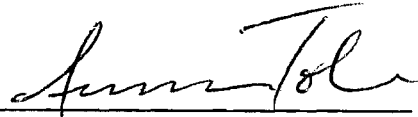
The remaining documents Documents (No. 1, No. 11, and No. 31 are Herald Reports and were obviously maintained by DEP and the Board of Trustees as part of their duty to monitor local activities that can influence the real estate valuations.

Because the various agencies, including the Governor and Cabinet have a statutory duty to coordinate with other state agencies pursuant to § 380.05 (22), *Fla. Stat.*, all of the documents from other State agencies including a letter from Florida Fish and Game Commission to the Chairman of the Planning Commission (No. 33) would normally be expected to be maintained by Petitioner.

Finally, because Petitioner admitted the documents were furnished in response to Defendants' discovery request, the records were admissible as business records. *Phillips v. Ficarra*, 618 So. 2d.

Based on the foregoing arguments and authorities, Defendants respectfully pray the Court admit all 39 of the documents.

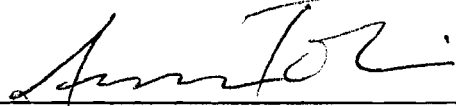
Respectfully submitted,



Andrew M. Tobin, Esq.
Florida Bar No. 184825
Counsel for Plaintiff
P.O. Box 620
Tavernier, Florida 33070
(305) 852-3388

Certificate of Service

✓ I CERTIFY THAT a true copy of the foregoing was furnished to
PAUL A. LEHRMAN, ESQ., Attorney for Plaintiff DEP for Board of
Trustees, Assistant Attorney General, Office of the Attorney
General, The Capital, PL-01 Tallahassee, FL, 32399-1050, by U.S.
Mail this 22nd day of September 2006.



Andrew M. Tobin, Esq.

cc: James S. Mattson, ✓ Esq.

STATE OF FLORIDA
DEPARTMENT OF NATURAL RESOURCES

Marjory Stoneman Douglas Building • 3900 Commonwealth Boulevard • Tallahassee, Florida 32399
Tom Gardner, Executive Director



June 6, 1990

The Honorable Milt Mravic
Chairman
Monroe County Planning Commission
5825 Junior College Road West Wing 3
Stork Island
Key West, Florida 33040

RE: North Key Largo

Dear Mr. Mravic:

I am writing to you regarding the proposed Habitat Conservation Plan (HCP) for North Key Largo.

As you are aware, the state is a major landowner within the area proposed for the HCP. The Department of Natural Resources (Department) requests the Monroe County Planning Commission approve native zoning for the area, rather than approving the HCP, except for those areas currently identified as Improved Subdivision (IS). The Department also recommends that the IS designated areas remain as they currently exist.

Our recent purchases on North Key Largo are encouraging and my staff feels that we will be successful in completing our acquisition program.

If you or the Planning Commission have any questions, please call me. Finally, I am requesting that this letter be read into the record of the next Planning Commission Meeting. Thank you.

Sincerely,

Percy W. Mallison, Director
Division of State Lands

PWM/bhm

cc: Mr. George Garrett (Monroe County)
Mr. Jim Quinn (DCA)
Mr. Tom Gardner (DNR)
Dr. Greg Brock (DNR)



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Administration	Beaches and Shores	Law Enforcement	Marine Resources	Recreation and Parks	Resource Management	State Lands
Jim Martinez Secretary	Jim Smith Secretary of State	Bob Butterworth Attorney General	Gerald Lewis State Comptroller	Tom Gallagher State Treasurer	Doyle Conner Commissioner of Agriculture	Betty Castor Commissioner of Education

IN THE CIRCUIT COURT FOR THE 16th JUDICIAL CIRCUIT IN
AND FOR MONROE COUNTY, FLORIDA

CASE NO. 95-20165-CA-18

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION, on
behalf of the BOARD OF TRUSTEES
OF THE INTERNAL IMPROVEMENT
FUND,

Petitioner, .

vs.

EVERETT G. WEST, et al.,

Defendants.

DEFENDANTS WEST/FREEMAN THIRD REQUEST FOR ADMISSIONS

Defendants WEST/FREEMAN FAMILY pursuant to the applicable Rules of Civil Procedure, serves the following requests for admissions and qualified interrogatories on Petitioner, Department of Environmental Protection on behalf of the Board of Trustees.

REQUEST FOR ADMISSION

Pursuant to Rule 1.370, please admit the following:

1. Admit that the 39 documents identified in the attached table of contents and furnished to under separate cover as Exhibit A to Defendants' Motion for Summary Judgment, were provided by Petitioner to Defendants as part of discovery.

2. Admit that each of the 39 documents are true and correct copies of documents maintained by the BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT FUND or the DEPARTMENT OF ENVIRONMENTAL PROTECTION in the normal course of business.

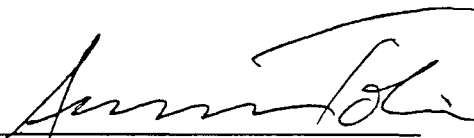
3. Admit that each of the 39 documents are public records.

Qualified Interrogatories

A. If Petitioner denies that any of the 39 documents a) were not produced by the Department during discovery; or b) are not kept in the normal course of business; or c) are not public records; for each document, please identify the document and explain the reason and supporting facts for the denial.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to ELAINE ASSAD, ESQ., Assistant Attorney General, Department of Legal Affairs, Assistant Attorney General, 110 Tower Building, 110 S.E. 6th St. Ft. Lauderdale, FL 33301, by U. S. Mail, this 20th day of November 2003.


Andrew M. Tobin, Esq.
Florida Bar No. 184825
Counsel for Defendant
West/Freeman
P.O. Box 620
Tavernier, FL 33070
Ph. (305) 852-3388

ANSWERS TO INTERROGATORIES

State of Florida
County of _____

Before me appeared _____
who is personally known to me [or who produced a _____
as identification], who did swear or affirm that the foregoing
answers are true and correct.

(Signature)

(Type or print name)

SWORN TO AND SUBSCRIBED to this ___ day of _____
2003.

NOTARY PUBLIC

(Seal/Stamp/Expiration)

**IN THE CIRCUIT COURT FOR THE
SIXTEENTH JUDICIAL CIRCUIT IN AND
FOR MONROE COUNTY, FLORIDA**

**FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION, on behalf of THE BOARD OF
TRUSTEES OF THE INTERNAL IMPROVEMENT
TRUST FUND, State of Florida,**

Petitioner,

vs.

EVERETT G. WEST, et al.,

Defendants.

Case No. 95-20-165-CA-18

Parcels 1 and 7

**EXHIBIT A:
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON INVERSE
CONDEMNATION COUNTERCLAIM AND DATE OF VALUATION, AND FOR
ORDER OF TAKING**

Documents Produced by DEP in Response to Defendants' Requests for Production

List of acronyms at end of Table

No	Date	Author	Recipient	Subject Matter	Page
1.	07/25/82	Brian Duffy and Carl Hiaasen	Miami Herald	Newspaper article: Builders to alter nature's plan in Keys	1-5
2.	10/25/82	Leo Minasian, DNR Div State Lands	CARL Selection Committee	Memo: Potential CARL Projects on NKL	6
3.	12/16/82	Leo Minasian, DNR Div State Lands	CARL Selection Committee	Memo: Natural Features and Revised Boundaries of NKL Hammocks – Proposed Acquisition Project	7-13
4.	02/02/83	Paul Darst, DCA	Ed Conklin, et al.	Memo: NKL Hammock CARL Project and Florida Keys ACSC	14-17
5.	10/27/83	Joseph Pulliam, Jr., Regional Director, USF&WS	James Ruspi, REA	Letter: Biological Opinion per § 7, ESA, opposing electrical service to NKL	18-28
6.	03/26/84	Vaden Shadden, Jr., Senior Appraiser, DNR Bur App	James MacFarland, Director, DNR Div State Lands	Memo: Appraisal Review Summary, NKL Hammock (w/ 2 attachments)	29-40

7.	04/16/84	Elton Gissendanner, Executive Director, DNR	Wilhelmina Harvey, Chair, Monroe County Commission	Letter: re concerns over extension of services (water, sewer, etc.), zoning changes, DRI's in NKL	41
8.	08/20/84	DNR Staff	CARL Selection Committee	Recommended Approach to Land Acquisition under CARL as a Means of Environmental Protection of PSP and KLNMS	42-44
9.	09/01/84	Unknown	CARL Selection Committee	NKL Land Acquisition Proposal to CARL	45-54
10.	09/04/84	Bob Graham, Governor	Public	Executive Order No. 84-157	55-57
11.	09/06/84	Juanita Greene	Miami Herald	Newspaper article: Panel picked to guide NKL growth	58
12.	04/11/85	Paul Darst, DCA	Leo Minasian, DNR Div State Lands	Memo: Resource Planning Boundary for NKL Hammocks	59
13.	05/13/85	Leo Minasian, DNR Div State Lands	Wilhelmina Harvey, Chair Monroe County Commission	Letter: Big Pine Key-Coupon Bight, NKL Hammocks Addition CARL Projects	60-61
14.	07/02/85	Chair, CARL Selection Committee	Public	1985 Annual Report of the CARL Selection Committee	62-69
15.	08/16/85	Leo Minasian, DNR Div of State Lands	James MacFarland, Director, DNR Bur Land Acquisition	Memo: re Prototype C map, that recommends three "development areas" in NKL	70-76
16.	09/12/85	David Brower, DCA, as Chair, NKL HCP Study Committee	Interested Parties	Memo: NKL HCP study committee meeting of Aug. 27, 1985 (odd-numbered pages only)	77-81
17.	02/14/86	Elton Gissendanner, DNR Executive Director	Wilhelmina Harvey, Chair, Monroe County Commission	Letter: re NKL and other CARL projects in Monroe County	82-86
18.	7/1/86	Chair, CARL Selection Committee	Public	1986 Annual Report of CARL Selection Committee	87

19.	10/08/86	Dan Duden, DNR Ass't Executive Director	Lee Einsweiler, Siemon, Larsen & Purdy Law Offices	Letter: re comments on Draft Final Report of NKL HCP Committee (refers to July 21, 1986 letter of similar content)	97-105
20.	08/28/87	Maurice Jacobson, Senior Appraiser, DNR Bur App	James MacFarland, Director, DNR Div State Lands	Confidential Memo: re appraisals of certain parcels in NKL Hammocks	106-07
21.	10/14/87	Maurice Jacobson, Senior Appraiser, DNR Bur App	James MacFarland, Director, DNR Div State Lands	Confidential Memo: Appraisal Review, NKL Hammocks Phases I & II	108-12
22.	10/27/87	Tom Gardner, DNR Executive Director	Monroe County Commission	Letter: re concerns over rezoning, annexation, extension of water/sewer, services in CARL areas	113
23.	02/10/88	K. P. Howell, Chief, DNR Bur App	James MacFarland, Director, DNR Div State Lands & Tom Gardner, DNR Executive Director	Memo: re Monroe County's approval of Anchor Bay major development on June 26, 1986, and State's position on CARL purchase thereof	114-15
24.	02/04/88	Maurice Jacobson, Senior Appraiser, DNR Bur App	James MacFarland, Director, DNR Div State Lands	Confidential memo: NKL appraisal review	116-29
25.	03/24/88	Maurice Jacobson, Senior Appraiser, DNR Bur App	Don Duden, Acting Director, DNR Div State Lands	Confidential memo: Review of NKL appraisals	130-33
26.	05/11/88	Maurice Jacobson, Senior Appraiser, DNR Bur App	John Hope, Appraisal and Realty Services, Inc.	Letter: re questions on NKL appraisals (including Parcels 1 and 7)	134-37
27.	05/18/88	Maurice Jacobson, Senior Appraiser, DNR Bur App	William Giberson, John A Causey & Associates	Letter: re questions on NKL appraisals (including Parcels 1 and 7)	138-41
28.	06/17/88	William Giberson, John A Causey & Associates	Maurice Jacobson, Senior Appraiser, DNR Bur App	Letter: reply to Jacobson's letter of May 18, 1988	142-46

29.	12/15/88	Maurice Jacobson, Senior Appraiser, DNR Bur App	Morton Horn, Senior Acquisition Review Agent, DNR Bur Land Acquisition	Memo: NKL appraisals, maximum prices and price adjustments (Parcel 1 \$222,500; Parcel 7 \$26,361)	147-58
30.	04/06/89	Maurice Jacobson, Senior Appraiser, DNR Bur App	Charles Hardee, Chief, DNR Bur Land Acquisition	NKL Hammocks, Phase V, CARL	159-61
31.	02/04/90	Dan Keating	Miami Herald	Newspaper article: “New habitat plan: Preserve more, build less”	162
32.	03/21/90	Maurice Jacobson, Senior Appraiser, DNR Bur App	Butch Horn	Revised values for NKL Hammocks (Parcel 1 \$242,500; Parcel 7 \$35,100)	163-68
33.	04/24/90	Bradley Hartman, Director, Office of Env Svcs, Fla G&FWFC	Milton Mravic, Chair, Monroe County Planning Commission	Letter: re opposition to NKL HCP, recommending use of TDR’s as compensation to landowners	169-71
34.	05/16/90	Edward Kuester, Chief, DNR Bur Land Acquisition	Bruce Staskiew, Ass’t Chief, DNR Bur Land Acquisition	Memo: Review of 6 CARL projects, including NKL and “potential need for condemnation”	172-76
35.	06/06/90	Percy Mallison, Director, DNR Div State Lands	Milt Mravic, Chair, Monroe County Planning Commission	Letter: re DNR opposition to HCP	177
36.	03/16/92	Dan Duden, DNR Ass’t Executive Director	Monroe County Planning & Zoning Department	Letter: re concerns over rezoning, annexation, extension of water/sewer, services in CARL areas	178-79
37.	08/11/92	Greg Brock, Environmental Administrator, DNR Div State Lands	Renate Skinner, DNR District IX Biologist, Key Largo	Letter: re Sr. Skinner’s interest in NKL, attached form letter to property owners threatening eminent domain suits	180-81

38.	01/08/96	Percy Mallison, Director, DNR Div State Lands	Virginia Wetherell, DNR Secretary	Memo: re CARL land acquisition program stalled in Monroe County	182-84
39.	03/12/96	Judy Brooks, DEP Cabinet Affairs Director	Public	Certificate: TIF adopted new appraisal procedures for Monroe County CARL programs on Mar 12, 1996	185-90

ACSC = Area of Critical State Concern, established pursuant to § 380.05, Fla. Stat. (2003).

Bur App = Bureau of Appraisals

CARL = Conservation and Recreational Lands.

DCA = Department of Community Affairs.

DEP = Department of Environmental Protection (formerly DER and DNR)

DNR = Department of Natural Resources, now merged into DEP.

DRI = Development of Regional Impact, § 380.06, Fla. Stat. (2003).

ESA = Endangered Species Act

HCP = Habitat Conservation Plan.

KLNMS = Key Largo National Marine Sanctuary, now expanded to Florida Keys National Marine Sanctuary.

NKL = North Key Largo.

PSP = John Pennekamp State Park.

REA = U.S. Rural Electrification Administration.

USF&WS = U.S. Fish and Wildlife Service, Department of the Interior.



James S. Mattson, Esq.
Florida Bar No. 360988
Co-counsel for Defendants
James S. Mattson, P.A.
P.O. Box 586
Key Largo, FL 33037
(305) 451-3951
jmattson@mattsonlaw.com

Andrew M. Tobin, Esq.
Florida Bar No. 184825
Co-counsel for Defendants
Andrew M. Tobin, P.A.
P. O. Box 620
Tavernier, FL 33070
(305) 852-3388

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IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL DISTRICT,
IN AND FOR MONROE COUNTY, FLORIDA

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
on behalf of THE BOARD OF
TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND,

CASE NO.: 95-20165-ca-18

JUDGE: Garcia

Petitioner,

v.

EVERETT G. WEST, et al.,

Defendants.

**PETITIONER'S RESPONSE TO DEFENDANT,
WEST/FREEMAN'S, THIRD REQUEST FOR ADMISSIONS**

Petitioner, Florida Department of Environmental Protection on behalf of the Board of Trustees of the Internal Improvement Trust Fund, by and through undersigned counsel and pursuant to Rule 1.370, Florida Rules of Civil Procedure, responds to said Defendants' Request for Admissions as follows:

1. Petitioner has reviewed its previous responses to requests for production of documents and admits the documents were provided to Defendant.
2. Petitioner admits that the following documents are maintained by the Department of Environmental Protection in the normal course of business:
 1. October 25, 1982 DNR Interoffice Memo
 2. December 16, 1982 DNR Memo
 3. March 26, 1984 DNR Interoffice Memo
 4. April 16, 1984 DNR letter

5. DNR Staff recommendations
6. May 13, 1985 DNR letter
7. August 16, 1985 DNR memo
8. February 14, 1986 DNR letter
9. October 8, 1986 DNR letter
10. October 7, 1986 DNR interoffice memo
11. August 28, 1987 DNR memo
12. October 14, 1987 DNR memo
13. October 27, 1987 DNR letter
14. February 10, 1988 DNR memo
15. February 4, 1988 DNR memo
16. March 24, 1988 DNR memo
17. May 11, 1988 DNR memo
18. May 18, 1988 DNR letter
19. December 15, 1988 DNR memo
20. April 6, 1989 DNR memo
21. March 21, 1990 DNR memo
22. May 16, 1990 DNR memo
23. June 6, 1990 DNR letter
24. March 16, 1992 DNR letter
25. August 11, 1992 DNR letter
26. January 8, 1996 DEP memo
27. March 12, 1996 DEP memo

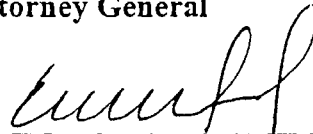
Petitioner denies that the remaining documents are records of a regularly conducted business activity of the Board of Trustees of the Internal Improvement Fund or the Department of Environmental Protection pursuant to Florida Evidence Code Section 90.803(6)(a).

3. Pursuant to Florida Evidence Code Section 90.803(8), Petitioner admits the documents listed in Answer #2 above are public records. Petitioner denies that the remaining documents are public records of the Board of Trustees of the Internal Improvement Fund or the Department of Environmental Protection and denies further that any of the newspaper articles are public records. Petitioner cannot truthfully admit or deny whether the remaining documents are public records for the agencies who drafted and/or generated those documents pursuant to Fla. Evidence Code Section 90.803(8).

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that the foregoing Response to Requests for Admissions was sent via U.S. Mail on December 23, 2004³ to Andrew M. Tobin, Esq., P.O. Box 620, Tavernier, Florida 33070.

CHARLES J. CRIST, JR.
Attorney General



Elaine M. Asad
Florida Bar No. 0109630
Senior Assistant Attorney General
110 SE 6th Street, 9th Floor
Fort Lauderdale, FL 33301
Tel: 954-712-4609
Fax: 954-712-4761
Attorney for Petitioner