

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**In re: Petitions for Declaratory
Statement by Fetzer Brs, LLC****OGC CASE No: 20-0815****Petitioner**
_____/**FINAL ORDER ON PETITION FOR DECLARATORY STATEMENT****FINDINGS OF FACT**

1. On April 24, 2020, the Department of Environmental Protection (Department), in its capacity as staff to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Board of Trustees) received a Petition for Declaratory Statement (Petition) from the Petitioner Fetzer Brs, LLC. See Petition (attached hereto as Exhibit 1).

2. The Petition was filed pursuant to section 120.565, Florida Statutes. It seeks a Declaratory Statement on the question of whether the Petitioner may apply for an environmental resource permit and sovereign submerged lands authorization to allow for the reconstruction of the Quednau Ice House which the Petitioner maintains is “grandfathered-in to use sovereignty lands” under Section 253.03(7)(c), Florida Statutes.

3. The Petition asserts that Fetzer Brs, LLC’s ownership of the “burnt remains of The Ice House” consisting of a “burned site and remnant pilings” were transferred into Fetzer Brs, LLC’s ownership via a Quitclaim Deed/Bill of Sale dated February 2016.

4. The Petition further asserts that the burned site and remnant pilings were part of a structure that was successfully registered as a grandfathered structure with the Department of Natural Resources (predecessor agency to the Department as staff to the Board of Trustees for state lands issues) in 1985. Such grandfather registration was recognized in lieu of state lands authorization until January 1, 1998, which was the deadline for owners of structures preempting

sovereign submerged lands to bring such structures under authorization via a submerged land lease. See Fla. Admin. Code R. 18-21.00405 (1990). Evidence of the structure's registration was provided in Exhibit C to the Petition.

5. The Petition asserts that in July of 1995, the Quednau Ice House was burned down to the pilings, which remain in place and have been maintained intact.

6. The Petition also explains that, despite an "erroneous determination by the office of the Secretary of State Department of Historic Preservation," regarding the remnant pilings in the year 2000, a "determination of continuing historic relevance was issued by Jason Aldridge, Deputy State Historic Preservation Officer in November 20, 2017." The 2017 determination was provided in Exhibit B to the Petition.

7. In June of 2000 and June of 1998 two different applicants were denied regulatory and proprietary authorization to rebuild the Quednau Ice House. The consolidated denials of those applications are attached to this order as Exhibits 2 and 3.

8. The Department published notice of receipt of the Petition on Friday, June 19, 2020.

9. As of the date of this Order, no third-parties have petitioned for leave to intervene pursuant to Florida Administrative Code rule 28-105.0027.

CONCLUSIONS OF LAW

1. Section 120.565(1), Florida Statutes, states that "[a]ny substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the Petitioner's particular set of circumstances."

2. A declaratory statement cannot be issued for general applicability. Sutton v. Dep't of Environmental Protection, 654 So.2d 1047 (Fla. 5th DCA 1995) (citing Mental Health Dist. Bd., II-B v. Dep't of Health and Rehabilitative Servs., 425 So.2d 160 (Fla. 1st DCA 1983)).

3. Section 120.565(2), Florida Statutes, states that “[t]he petition seeking a declaratory statement shall state with particularity the Petitioner’s set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.”

4. Florida Administrative Code Rule 28-105.001, which implements the above referenced statutes, provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

5. In taking action on the Petition, the Department “may rely on the statements of fact set out in the Petition without taking any position with regard to the validity of the facts.” Fla. Admin. Code Rule 28-105.003.

6. The Petition and associated materials contain sufficient information to provide a Declaratory Statement to Petitioner concerning its rights to seek a sovereignty submerged lands authorization in the form of a lease, but they do not contain sufficient information for a complete answer on the applicability of Section 253.03(7)(c), Florida Statutes.

7. Petitioner is entitled and indeed required to apply for a joint regulatory and proprietary authorization to maintain the “burned site and remnant pilings” on sovereignty submerged lands. See generally § 253.03, Fla. Stat., Fla. Admin. Code R. 18-21.004 and § 373.414, Fla. Stat. When Petitioner applies for the required permit and proprietary authorization,

any gaps in the factual background presented in the application will have the opportunity to be fleshed out as part of the administrative permitting process pursuant to sections 120.60 and 120.57, Florida Statutes.

8. Petitioner specifically seeks a determination on the applicability of subsection 253.03(7)(c) (hereinafter “the subsection”) because the subsection provides a statutory pathway to a leasehold interest that can be granted by the Department acting in its capacity as staff to the Board of Trustees. Absent such a pathway, stilt houses on sovereign submerged lands, such as the former icehouse at issue, are prohibited under Florida Administrative Code Rule 18-21.004(1)(h).

9. Specifically, Section 253.03(7)(c) provides:

Structures which are listed in or are eligible for the National Register of Historic Places or the State Inventory of Historic Places which are over the waters of the state and which have a submerged land lease, or have been grandfathered-in to use sovereignty submerged lands until January 1, 1998, pursuant to former rule 18-21.00405, Florida Administrative Code, as it existed in rule on March 15, 1990, shall have the right to continue such submerged land leases, regardless of the fact that the present landholder is not an adjacent riparian landowner, so long as the lessee maintains the structure in a good state of repair consistent with the guidelines for listing. If the structure is damaged or destroyed, the lessee may reconstruct, so long as the reconstruction is consistent with the integrity of the listed structure and does not increase the footprint of the structure. If a listed structure falls into disrepair and the lessee is not willing to repair and maintain it consistent with its listing, the state may cancel the submerged lease and repair and maintain the property or require that the structure be removed from sovereignty submerged lands.

10. Thus, to be entitled to a statutory pathway to a leasehold interest that can be granted by the Department on behalf of the Board of Trustees, the structure must: (1) be a structure over waters of the state, (2) be listed on the National Register of Historic Places or the State Inventory of Historic Places, and (3) either have an existing submerged lands lease or “have been grandfathered-in to use sovereignty submerged lands until January 1, 1998 pursuant

to former rule 18-21.00405, Florida Administrative Code, as it existed in rule on March 15, 1990.”

11. With respect to the first requirement, the Petition alleges that there are at least some “remnants” of the original structure of the Quednau Ice House that qualify as structure existing in waters of the state.

12. With respect to the second requirement, the Petition alleges that the remnants of the former icehouse are listed on the National Register of Historic Places, pursuant to the letter provided as Exhibit B to the Petition.

13. With respect to the third requirement, the Petition does not allege structure in question was ever authorized in a lease of sovereignty submerged lands. Instead, the Petition alleges that the structure was “grandfathered-in to use sovereignty submerged lands until January 1, 1998 pursuant to former rule 18-21.00405, Florida Administrative Code, as it existed in rule on March 15, 1990.” However, the petition does not allege the necessary material facts for the Department to opine whether the structure has been grandfathered-in to use sovereignty submerged lands until January 1, 1998.

14. The fact that the structure received grandfather registration in 1985 is not determinative because the structure was destroyed at least in part in 1995 due to a fire and was not rebuilt before 1998. It depends on the unalleged facts whether the 1995 burning destroyed

enough of the structure to disqualify it from be reconstructed and therefore lose its grandfather status.¹

15. Because the material question of whether the remnants of the icehouse constitute enough of the original structure to extend the grandfathered status from 1995 through 1998 is fact-driven, a declaratory statement proceeding is not the proper avenue to make this determination. See Lennar Homes, Inc. v. Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes, 888 So.2d 50, 53 (Fla. 1st DCA 2004), citing Florida Optometric Association v. Department of Professional Regulation, Board of Opticianry, 567 So.2d 928, 936 (Fla. 1st DCA 1990). The authority of the Department to issue declaratory statements is limited by section 120.565 F.S. to a determination “as to the applicability of a statutory provision ... to the petitioner's particular set of circumstances.” See generally Grippe v. Florida Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes, 729 So.2d 459 (Fla. 4th DCA 1999).

DISPOSITION

IT IS THEREFORE ORDERED:

The Petitioners’ request for a declaratory statement is **GRANTED** in part and **DISMISSED** in part with leave to file an application apply for regulatory and proprietary

¹ Florida Administrative Code Rule 18-21.00405 (1990) states in pertinent part that such structures shall not be rebuilt or restored except as authorized according to the provisions of paragraph 18-21.004(1)(g), F.A.C., if 50% or more of the structure is destroyed or if the use of the structure has been discontinued and 50% or more of the structure must be replaced in order to restore the structure to a safely usable condition. It goes on to state that they shall not be converted to a new use except as authorized according to the provisions of paragraph 18-21.004(1)(g), F.A.C. See former Rule 18-21.00405(6), F.A.C. (1990). Under this rubric, the determination of whether the structure remained grandfathered is a fact-dependent determination hinging on patterns of use that were not indicated in the petition, and upon percentages of the amount of the structure that was destroyed, for which specific facts were also not provided.

authorization pursuant to Section 253.03, Fla. Stat. & Fla. Admin. Code R. 18-21.004 and § 373.414, Fla. Stat.

DONE AND ORDERED this 23rd day of July 2020, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



CHADWICK STEVENS
Acting General Counsel
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

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



07/23/20
DATE

CLERK

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was emailed to Michael P. Haymans, Esq., 215 West Olympia Avenue, Punta Gorda, Florida 33950 at michael@mphaymans.com, on this 23rd day of July 2020.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Toni L. Sturtevant
Assistant General Counsel
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000
Telephone: (850) 245-2257
Email: toni.sturtevant@dep.state.fl.us

April 24, 2020

Dept. of Environmental Protection
Office of General Counsel

Exhibit 1 -

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
TALLAHASSEE, FLORIDA**

Re:
Petition of Declaratory Statement

PETITION FOR DECLARATORY STATEMENT BEFORE THE DEPARTMENT
OF ENVIRONMENTAL PROTECTION

FETZER BRS, LLC, a Florida limited liability company, "Petitioner", hereby submits this Petition for Declaratory Statement, pursuant to Section 120,565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, and states as follows:

STATEMENT OF FACTS AND LAW

1. The Petitioner's name, mailing address and related information are:

Name: Fetzer Brs, LLC, c/o Michael P. Haymans Attorney at Law, P. A. (Registered Agent)

Mailing Address: 215 West Olympia Avenue, Punta Gorda, FL 33950

Phone: 941-575-0007

Email: michael@mphaymans.com

2. Petitioner's attorney mailing address and related information are:

Michael P. Haymans Attorney at Law, P. A.

Mailing Address: 215 West Olympia Avenue, Punta Gorda, FL 33950

Phone: 941-575-0007

Email: michael@mphaymans.com

3. The statute for which interpretation and a declaratory statement is sought is:

Chapter 253.03 (7)(c), which provides that:

(c) Structures which are listed in or are eligible for the National Register of Historic Places or the State Inventory of Historic Places which are over the waters of the state and which have a submerged land lease, or have been grandfathered-in to use sovereignty submerged lands until January 1, 1998, pursuant to former rule 18-21.00405, Florida Administrative Code, as it existed in rule on March 15, 1990, shall have the right to continue such submerged land leases, regardless of the fact that the present landholder is not an adjacent riparian landowner, so long as the lessee maintains the structure in a good state of repair consistent with the

guidelines for listing. If the structure is damaged or destroyed, the lessee may reconstruct, so long as the reconstruction is consistent with the integrity of the listed structure and does not increase the footprint of the structure. If a listed structure falls into disrepair and the lessee is not willing to repair and maintain it consistent with its listing, the state may cancel the submerged lease and repair and maintain the property or require that the structure be removed from sovereignty submerged lands.

4. Petitioner FETZER BRS, LLC is a Florida limited liability company that owns personal property in Pine Island Sound, Lee County, Florida, to wit remains of an historic ice house ("The Ice House" or "Quednau Ice House"). See Attachment "A".

5. Petitioner seeks a declaration that the burnt remains of The Ice House were "grandfathered-in to use sovereignty submerged lands" under the statute, such that it may apply for an environmental resource permit to rebuild the ice house and authorization from the Board to use the sovereign submerged lands.

6. Petitioner met with staff of the Florida Department of Environmental Protection ("FDEP") in the Southwest District Office in pre-applications on February 3, 2017 and again on April 18, 2018. Both meetings included telephone participation by an attorney from the office of General Counsel.

7. On behalf of the FDEP, the General Counsel's office opined in both meetings that the requirements of Section 253.03 could not be met, and that an application to permit the rebuilding and for a submerged land lease would not be accepted.

8. In the first pre-application meeting, General Counsel and FDEP staff asserted that the burned site and remnant pilings were not historic, relying upon an erroneous determination by the office of the Secretary of State Department of Historic Preservation in 2000.

9. Petitioner submitted a request for reconsideration to the Secretary of State Department of Historic Preservation, and a resulting determination of continuing historic relevance was issued

by Jason Aldridge, Deputy State Historic Preservation Officer, on November 20, 2017. See Attachment "B".

10. The Ice House is now and has since its registration continuously been registered in the National Register of Historic Places, and if properly reconstructed will continue to be on the National Register of Historic Places.

11. Therefore, the site meets the first requirement of Section 253.03 (c) "Structures which are listed or are eligible for the National Register of Historic Places.", because the structure is listed and will continue to be eligible.

12. At the second meeting between Petitioner and Staff of the FDEP, staff and General Counsel then asserted that the Petitioner could not and cannot meet the further requirements of the Statute, because there is no existing lease, asserting that the status of "grandfathered-in" was only a qualifying status during the period of grandfather registration, which passed in 1998: Staff and General Counsel assert that now an existing lease is the only qualifying land use relationship to "continue" such submerged land leases.

13. Staff of FDEP and General Counsel also assert that Petitioner has failed to maintain The Ice House as required by the Statute.

14. Petitioner asserts that the Statute provides for a right to apply for a lease, and the right to apply for a permit to reconstruct The Ice House consistent with the integrity of the listed structure, so long as it does not increase the footprint of the structure.

15. Petitioner also asserts that it has maintained The Ice House by keeping the remnant pilings intact and any further maintenance having been opposed and thwarted by FDEP.

16. The remains of The Ice House are a relic of the commercial fishing industry of Southwest Florida, existing from the 1880's through the early 1950's.

17. Run boats plied the waters from Punta Gorda to Punta Rassa delivering ice and supplies to and picking up fish from the chain of ice houses including The Ice House during their years of commercial operation.

18. The ice houses in the system including The Ice House served the fishing families on the barrier islands of the greater Charlotte Harbor area, and served the fishing families in residential stilt structures on Captiva Shoal that glommed to The Ice House, which was not proximate to the barrier island communities.

19. On Captiva Rocks and Shoal six residential stilt structures and The Ice House remained intact through the 1980's.

20. In the early 1980's all of the Captiva Rocks and Captiva Shoal stilt structures including The Ice House were submitted to the State of Florida program that was designed to quantify and individually identify all of the then existing structures on sovereign submerged land that required proprietary authorization, "Grandfather Registration", pursuant to former Rule 18-21.00405, Florida Administrative Code.

21. The Ice House has "... been grandfathered in to use sovereignty submerged lands until January 1, 1998 ..." by receiving Grandfather Registration Number 360063. See the Grandfather Registration documentation attached as "C".

22. The Ice House at Captiva Rocks was listed, LL1407, in the National Register of Historic Places on April 11, 1991, as part of the Fish Cabins of Charlotte Harbor MPS ("Multiple Property Submission"—the MPS listed a total of 11 stilt structures).

23. In July 1995 The Ice House was burned to the pilings in an act of arson, possibly in retaliation for the adoption of the Florida Constitutional Amendment banning entangling nets. See the newspaper reports attached as "D".

24. Based upon an erroneous determination by Department of State, Division of Historical Resources in a letter dated February 17, 2000, (stating that the fire destroyed The Ice House and it no longer was eligible for listing in the National Register of Historic Places), the determined that an application of a prior owner of The Ice House did not meet the “on or eligible” requirement of Section 253.03 (7) (c), F. S.

25. In the aftermath of Hurricane Charlie in 2004 the FDEP issued emergency permits to allow the rebuilding and continuation of the submerged land leases for most of the Fish Camps of Charlotte Harbor, although most were destroyed by more than 50% and some destroyed so that all that remained were pilings. The other Fish Cabins of Charlotte Harbor MPS entered into renewed leases in the summer of 2019.

26. In 2017, at the request of Petitioner, in light of the apparent inconsistency in the determination of whether a destroyed stilt structure still met the “on or eligible” requirement of Section 253.03 (7) (c) concerning eligibility in the National Register of Historic Places, the Florida Department of State issued an opinion that The Ice House is still on the National Register of Historic Places, and that it can be reconstructed and remain on the National Register of Historic Places; see letter attached as “B”.

27. In January 2019 the FDEP interpreted Section 253.03 (7) (c), F. S. to again prohibit an application to rebuild The Ice House because there is no existing lease, and the term of the Grandfather Registration expired, January 1, 1998. See the correspondence with the FDEP attached as “E”.

THE PARTIES' DISPUTE AND PRAYER FOR RELIEF

28. The FDEP misconstrues the provisions of Section 253.03 (7) (c), F. S. by requiring a qualification for a permit and a lease not required by the Statute.

29. The FDEP's interpretation requires that there be a current lease for the structure in order to apply for a permit and lease.

30. The FDEP reads into the Statute a requirement that as an alternative to a current lease the structure be currently registered in a Grandfather Registration program that ended in 1998, which is impossible.

31. The FDEP converts a descriptive modifier of grandfathered-in through the Grandfather Registration program into a time period component.

32. The Ice House met the "constructed prior to" and ownership derangement requirements of the quantification and individual identity components of the Grandfathered Registration Program, and has/"have been grandfathered in to use sovereignty submerged lands", which is evidenced by the Grandfather Registration application and letter of approval attached as "C".

33. The FDEP's interpretation of the statutory language requires the substitution of the words "is currently grandfathered" in place of the Statutes' "have been grandfathered", which substitution is contrary to settled rules of statutory construction.

34. Subsequent language in the statutory provisions adds to the confusion "shall have the right to continue such submerged land leases", because Grandfathered Registration was not and is not a submerged land lease.

35. The provisions of Section 253.03 (7) (c) were added to the Statutes by Chapter 97-160 in the Spring of 1997.

36. The first Fish Camp leases were entered into by Trustees pursuant to Section 253.03 (7) (c) for other stilt structures on Captiva Rock and Captiva Shoals (Fish Camps of Charlotte Harbor MPS) with a term commencing July 1, 1999, which was after the January 1, 1998

Grandfather Registration program termination date, and with no then-existing current lease. See Attachment "F".

37. FDEP's interpretation of the Statute today is inconsistent with its interpretation in July 1999 and 2000.

38. In light of the dispute between the parties described above, Plaintiff is in doubt as to its legal rights.

NATURE OF DECLARATORY STATEMENT SOUGHT

WHEREFORE, Petitioner Fetzer Brs, LLC respectfully requests that the Florida Department of Environmental Protection issue a Declaratory Statement that Petitioner may submit for and an application be processed for a submerged land lease and permit to rebuild The Ice House because The Ice House meets the statutory conditions of Section 253.03 (7)(c) FS, which are as follows:

- 1 a. On the National Register; or
b. eligible to be on the National Register; and
- 2 a. has been Grandfathered; or
b. has an existing lease; and
3. has been appropriately maintained consistent with the guidelines for listing on the National Register of Historic Places.



Michael P. Haymans, Esq.

Florida Bar No. 364312

Primary Email: michael@mphaymans.com

Secondary Email: lori@mphaymans.com

215 West Olympia Avenue

Punta Gorda, FL 33950

Phone: (941) 575-0007

Fax: (941) 575-9177

Attachment "A", description of The Ice House

Attachment "B", Determination of Continuing Historic Relevance

Attachment "C", Grandfather Registration Number 360063

Attachment "D", Newspaper Reports Documenting Arson of The Ice House

Attachment "E", Correspondence With Department

Prepared by and return to:
Michael P. Haymans, Esq.
Michael P. Haymans Attorney at Law, P. A.
215 West Olympia Avenue
Punta Gorda, FL 33950
941-575-0007

QUIT-CLAIM DEED/BILL OF SALE

THIS QUIT-CLAIM DEED/BILL OF SALE is executed this 18th day of February, 2016, between DOROTHY N. QUEDNAU, heir and successor to ALBERT A. QUEDNAU, Grantor, whose address is 817 West Marion Avenue, Punta Gorda, FL 33950, and Fetzer BRS, LLC, Grantee, whose mailing address is c/o Michael P. Haymans Attorney at Law, P. A., 215 West Olympia Avenue, Punta Gorda, Florida 33950.

WITNESSETH:

That the Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, does hereby sell, transfer, convey, remise, release and quit-claim unto said Grantee forever, all the right, title, interest, claim and demand which the Grantor has in and to the following described property, situate, lying and being in the County of Lee, State of Florida, to-wit:

All of the pilings *in situ* upon which was built a wood-frame building, known as the Captiva Rocks Ice House, a/k/a Ice House at Captiva Rocks, a/k/a Quednau Ice House/8LL1407, including the docking system surrounding the structure. The said pilings are located south east of Captiva Rocks, and southwest of Little Wood Key, Charlotte Harbor, Pine Island Sound, Section 23, Township 44 South, Range 21 East, Lee County, Florida; the Ice House building itself was destroyed by an act of arson; together with all of the Grantor's right title and interest in and to the remnants of the Ice House building and the historic location which was registered by the Department of Natural Resources of the State of Florida, in Grandfathered Structure Registration Permit No. 360063, and which were the supporting pilings for the Ice House at Captiva Rocks listing in the National Register of Historic Places on April 11, 1991.

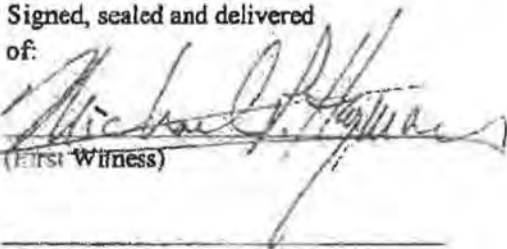
Grantor warrants that she owns the property as the widow of and heir and successor to Albert A. Quednau, and that neither he nor she have conveyed the said property to any other person or entity.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the use, benefit and behoof of the said Grantee forever.




IN WITNESS WHEREOF, the grantor have signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
of:


(First Witness)


DOROTHY N. QUEDNAU, heir and successor
to **ALBERT A. QUEDNAU**

Michael P. Haymans


(Second Witness)

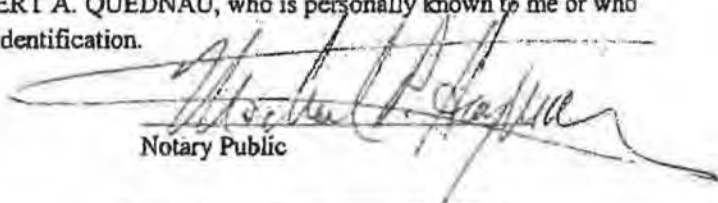
Lorayne S. Cavallaro

STATE OF FLORIDA

COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 18th day of February, 2016 by **DOROTHY N. QUEDNAU**, heir and successor to **ALBERT A. QUEDNAU**, who is personally known to me or who has produced _____ as identification.

My Commission Expires:


Notary Public





FLORIDA DEPARTMENT OF STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

Michael P. Haymans
Michael P. Haymans Attorney at Law, P.A.
215 West Olympia Avenue
Punta Gorda, FL 33950

November 20, 2017

RE: Reconstruction of the Ice House at Captiva Rocks 8LL1407, Pine Island Sound, Lee County, Florida
DHR Project File No.: 2017-5464

Dear Mr. Haymans:

As referenced in your letter, Chapter 253.03(7)(c), *Florida Statutes* allows for the reconstruction of historic structures that are listed, or eligible for listing, in the National Register of Historic Places. The statute also provides the requirements that must be met for a reconstruction to be considered acceptable. The statute states, "If the structure is damaged or destroyed, the lessee may reconstruct, so long as the reconstruction is consistent with the integrity of the listed structure and does not increase the footprint of the structure."

As required in Chapter 253.03(7)(c), *Florida Statutes*, the Ice House at Captiva Rocks is listed in the National Register of Historic Places and is recorded on the Florida Master Site File as LL1407. Additionally, it is our opinion that the lessee may move forward with a reconstruction of the Ice House, as long as the reconstruction is consistent with the *Secretary of the Interior's Standards for Reconstruction* and the *Guidelines for the Treatment of Historic Properties* (the Standards and Guidelines). The Standards and Guidelines provide detailed requirements for the reconstruction of historic properties to ensure that the reconstructed property is consistent with the design and character of the original structure. The plans for reconstruction will need to be reviewed and approved by our office to ensure that the reconstruction meets the requirements of the statute.

We look forward to working with you, the lessee, and the permitting agency to address any necessary next steps for approval and review of the proposed undertaking. If you have any questions, please contact me by email at Jason.Aldridge@dos.myflorida.com, or by telephone at 850.245.6344 or 800.847.7278.

Sincerely,

Jason Aldridge
Deputy State Historic Preservation Officer
for Compliance and Review



Division of Historical Resources
R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6300 • 850.245.6436 (Fax) FLHeritage.com



FARR, FARR, HAYMANS, MOSELEY, EMERICH AND SIFRIT, P. A.

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813 839-1158

2315 AARON STREET
P. O. BOX 2159
PORT CHARLOTTE, FLORIDA 33952
813 625-6171

PLEASE REPLY TO:

EARL D. FARR
OF COUNSEL

Punta Gorda Office


November 20, 1985

Mr. Albert A. Quednau
817 West Marion Avenue
Punta Gorda, Florida 33950

Dear Al:

Enclosed please find a Grandfathered Structure Registration, plate and instructions. It has been a pleasure being of service to you. Good fishing.

Sincerely,


Michael P. Haymans
For the Firm

MPH/ds
Enclosures

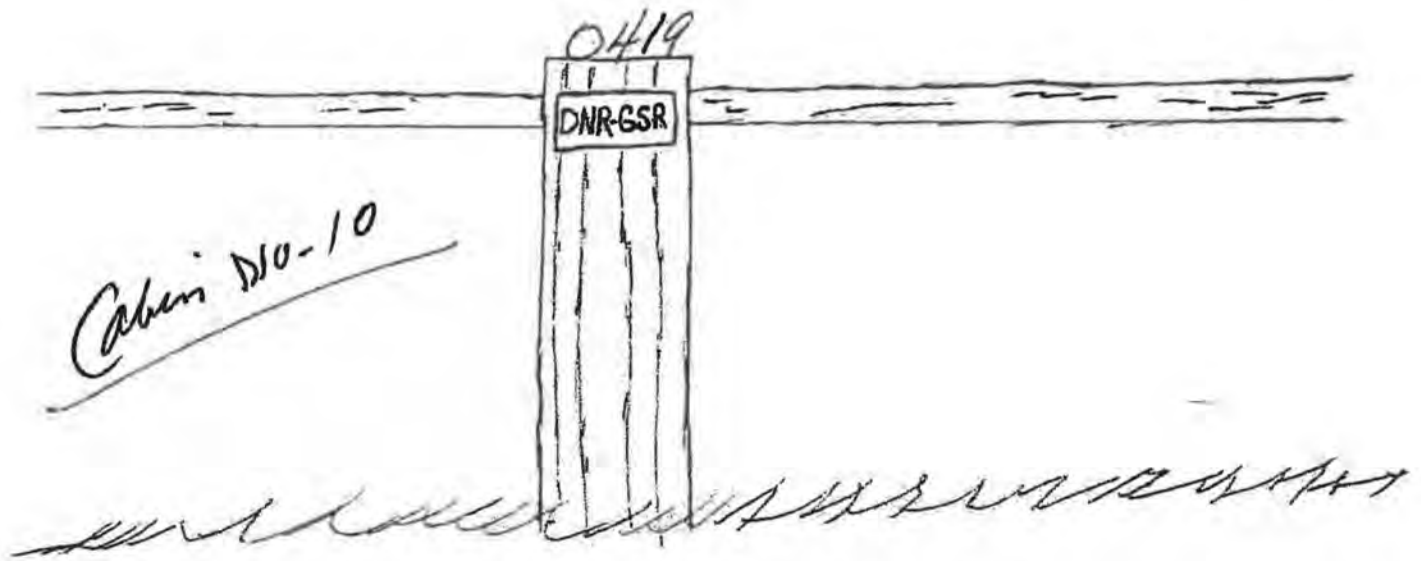
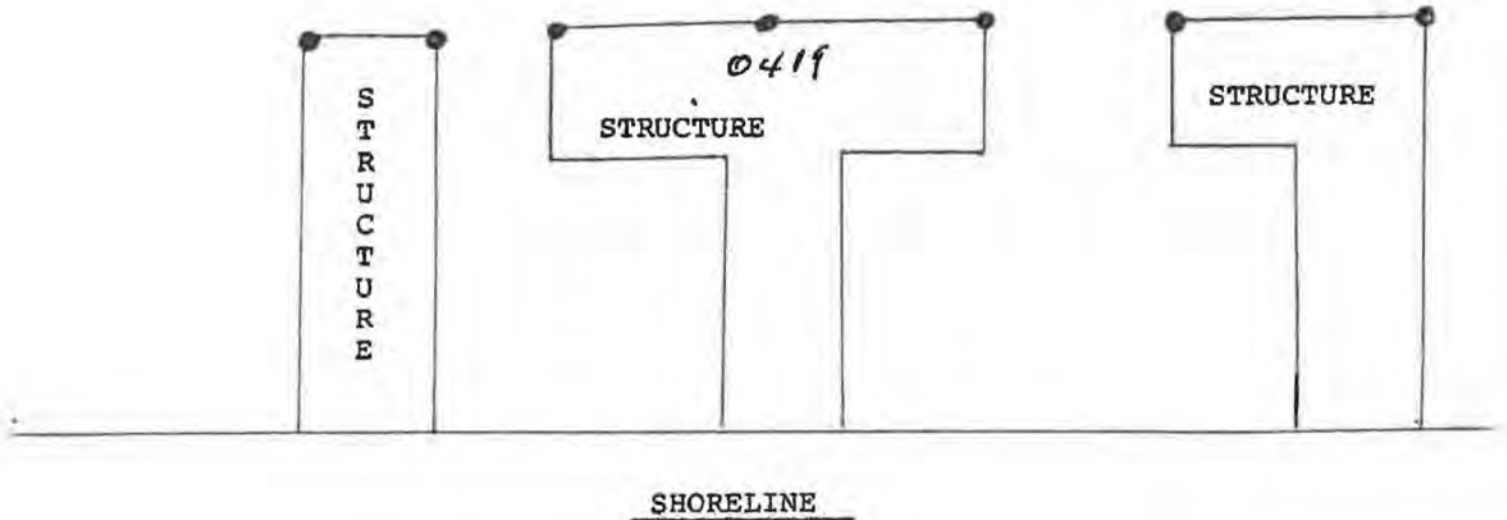
0419

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



DEPARTMENT OF NATURAL RESOURCES
GRANDFATHER REGISTRATION

- Most waterward piling of the structure



The identification plate must be secured to the most waterward piling of the structure for identification by the Marine Patrol and other inspectors. If more than one structure is involved the larger or the more central of the structures should have the plate located on it.

NOTICE

At this time the state will begin identifying the structures which have obtained a submerged land lease or have registered as a grandfathered structure. Please find enclosed an identification tag, identifying your structure as being leased or registered, a renewal sticker showing your structure registered for the 1986 year, and a registration certificate verifying the structure as being registered.

Your tag must be attached securely to the most waterward piling of the registered structure, visible from the water for verification of registration by the Marine Patrol and other inspectors. The renewal sticker must be attached to the upper right hand corner of the plate.

The registration certificate must be kept in a readily accessible location where upon it may be presented for verification when requested by the Marine Patrol or other inspectors.

If there are any questions, please do not hesitate to call James Stansbury at 904/487-0566 or write to:

Bureau of State Lands Management
Division of State Lands
Department of Natural Resources
3900 Commonwealth Boulevard
Tallahassee, Florida 32303

Please attach your tag to your structure immediately upon receipt.



State of Florida
DEPARTMENT OF NATURAL RESOURCES

DR. ELTON J. GISSENDANNER
Executive Director
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard, Tallahassee, Florida 32303

BOB GRAHAM
Governor
GEORGE FIRESTONE
Secretary of State
JIM SMITH
Attorney General
GERALD A. LEWIS
Comptroller
BILL GUNTER
Treasurer
DOYLE CONNER
Commissioner of Agriculture
RALPH D. TURLINGTON
Commissioner of Education

August 26, 1985

Mr. Michael P. Haymans, Esq.
Post Office Drawer 1447
Punta Gorda, FL 33950

Dear Mr. Haymans:

File No. 360063
Applicant: Albert A. Quednav

We have reviewed your application for grandfathered structure registration for the above-referenced dock and based upon the information submitted have determined that it qualifies for registration. We will be forwarding you a certificate of registration and a registration plate in the near future.

This letter in no way waives the authority and/or jurisdiction of any governmental entity nor does this letter disclaim any title interest that the State may have in this project site.

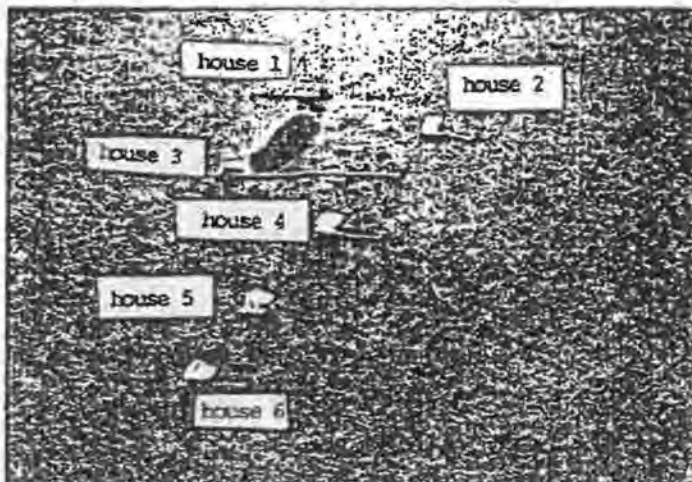
Should you have any questions regarding this matter, please feel free to contact Mr. James D. Stansbury via the letterhead address or at (904) 487-0566.

Thank you very much for complying with our registration program. It should prove to be a valuable management tool for our department, the marina industry, and the citizens of Florida as a whole.

Sincerely,

Elton J. Gissendanner
Executive Director

EJG/jc



7 out here

Figure 7. Aerial photo of six of the seven stilt houses at Captiva Rocks, Pine Island Sound Aquatic Preserve; houses numbered from north to south. A seventh house lies southeast of these houses. Photo not dated.



Figure 8. Five of the seven houses from the Sound looking from the northwest, house four is behind the mangrove island. Date of photo unknown.

1-29-85

TITLE SECTION

Work Sheet

File No. 360063 Application Date: _____ County Lee
Applicant or Requestor Albert A. Quednau
Address _____

Type Activity grandfathered docks - open waters
Project Location: Section 23 Township 445 Range 21E
Name of Waterway at Location of the Activity Charlotte Harbor / Pine Is. Sound
Maps, Charts, Photos 233-A Flip Cards 22426
Bokeelia ~~22430A~~

U.S. Survey 1916, 1972

Open Waters

Inventory None

TRAC Book Vol. 18, pg 212

Field Notes NA

Encumbrances None

Aquatic Preserve 22

Comments: Sovereignty submerged lands are involved.

To James

Checked by (KM)
Supervisors Initials _____

Date 2-7-85

FARR, FARR, HAYMANS, MOSELEY, EMERICH AND SIFRIT

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

ATTORNEYS AT LAW

115 WEST OLYMPIA AVENUE

P. O. DRAWER 1647

PUNTA GORDA, FLORIDA 33950

813 838-1158

PLEASE REPLY TO:

Punta Gorda Office

3524-C TAMPAH TRAIL

P. O. BOX 2159

FORT CHARLOTTE, FLORIDA 33952

813 825-0171

RONALD H. PEACOCK, P. A.
OF COUNSEL

CARL D. FARR, P. A.
EARL DRAYTON FARR, JR., P. A.
LENTON H. HAYMANS, P. A.
BERNARD R. MOSELEY, P. A.
GUY S. EMERICH, P. A.
ROBERT C. SIFRIT, P. A.
LESTER E. DURST, P. A.
JACK G. HACKETT, P. A.
MICHAEL R. HAYMANS
CHARLES T. BOYLE
CAROL M. H. CARR

June 29, 1984

Bureau of State Lands Management
Department of Natural Resources
3900 Commonwealth Boulevard
Tallahassee, Florida 32303

RE: Grandfathered Structure
Albert A. Quednau

Gentlemen and Ladies:

As Agent for Albert A. Quednau I submit the enclosed Application for Registration of a Grandfathered Structure. This application includes the following documents:

1. The completed application form including a signed and notarized Affidavit of Ownership or Control.
2. A check, No. 552, in the amount of \$200.00.
3. The Bokeelia Quadrangle map as a vicinity map with a red circle indicating the location of the property.
4. Evidence of title as follows:
 - a. An Affidavit by Harry R. Goulding that the Captive Rocks Icehouse was sold by the Punta Gorda Fish Company sometime after 1957 to G. W. Quednau, Jr. The actual Bill of Sale from Punta Gorda Fish Company could not be located.
 - b. An Affidavit by Albert Quednau, the executor of the estate of G. W. Quednau, Jr., that he personally distributed the Captive Rocks Icehouse to Cecil E. Quednau, the mother of the deceased.
 - c. A Bill of Sale for the Captive Rocks Icehouse to the applicant, Albert A. Quednau.
5. Two copies of a dimensioned site plan drawing of the structure.
6. An aerial photograph dated January 29, 1970 of Township 44 South, Range 21 East, Section 23, taken by Rader & Associates. This photograph was obtained from the duplicating department of the Lee County Courthouse where it is maintained as and for the Records of Lee County, Florida.

Bureau of State Lands Management
June 28, 1984
Page Two

7. An Affidavit by an employee of the Lee County Commission that she works in the duplicating department and sold the above-described photograph to Michael Haymans. (The photograph bears her signature also.)

8. A photocopy of this cover letter with a space added for an acknowledgment of receipt of this application accompanied by a self-addressed, stamped envelope for return of the same.

If you have any questions, please do not hesitate to contact my office.

Sincerely,


Michael P. Haymans
For the Firm

MPH/ds
Enclosures
cc: Mr. Albert A. Quednau

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF CHARLOTTE

BEFORE ME, the undersigned authority, personally appeared ALBERT A. QUEDNAU, who, after being first duly sworn, deposes and says:

1. My name is ALBERT A. QUEDNAU and I was the Executor of the estate of my brother W. G. QUEDNAU, JR. (BILLY QUEDNAU).

2. Part of the estate was the Captiva Rocks Ice House acquired from the Punta Gorda Fish Company.

3. That I personally as executor distributed the Captiva Rocks Ice House to Cecil B. Quednau, the Mother of W. G. QUEDNAU (BILLY QUEDNAU).

FURTHER AFFIANT SAYETH NOT.


ALBERT A. QUEDNAU

Sworn to and subscribed before me this 22nd day of June, 1984.


Notary Public - State of Florida

My Commission Expires:
NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. DEC 25, 1987
BONDED THRU GENERAL INS. UIC.

(AFFIX SEAL)

LAW OFFICES
FARR, FARR,
HAYMANS, MOSELEY,
EMERICH
AND SIFRIT
A PARTNERSHIP OF
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
118 WEST OLYMPIA AVENUE
P.O. DRAWER 1447
PUNTA GORDA, FLORIDA
32980

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF CHARLOTTE

BEFORE ME, the undersigned authority, personally appeared HARRY R. GOULDING, who, after being first duly sworn, deposes and says:

1. My name is HARRY R. GOULDING and I was the Bookkeeper for the Punta Gorda Fish Company for many years including the 1950's until termination of the company.

2. That I know of my own personal knowledge that W. H. MUNSON, President of the Punta Gorda Fish Company, sold the Captiva Rocks Ice House to G. W. QUEDNAU, Jr. (BILLY QUEDNAU) sometime after 1957 but prior to termination of the Punta Gorda Fish Company.

3. The Captiva Rocks Ice House was sold to G. W. QUEDNAU, Jr. for \$500.00.

FURTHER AFFIANT SAYETH NOT.


HARRY R. GOULDING

Sworn to and subscribed before me this 22nd day of June, 1984.


Notary Public - State of Florida

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. DEC 25, 1987
BONDED THRU GENERAL ICS, INC.

(AFFIX SEAL)

LAW OFFICES
FARR, FARR,
HAYMANS, MOSELEY,
EMERICH
AND SIFRIT
A PARTNERSHIP OF
PROFESSIONAL ASSOCIATIONS
ATTORNEYS AT LAW
18 WEST OLYMPIA AVENUE
P.O. DRAWER 1417
PUNTA GORDA, FLORIDA
33950

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF LEE


BEFORE me, the undersigned authority, personally appeared BRENDA HALL, who, after first being duly sworn, deposes and says:

1. I am the Mail Clerk in the duplicating department of the Lee County Courthouse and an employee, thereby, of the Lee County Commission.

2. That on June 22, 1984, I sold Michael Haymans of the law firm of Farr, Farr, Haymans, Moseley, Emerich and Sifrit, aerial photographs, dated 1/29/70 by Rader & Associates, of Township 44 South, Range 21 East, Section 23, in Lee County.

3. That these aerial photographs are maintained in the duplicating department, where I am employed, as and for the records of Lee County, Florida.

FURTHER AFFIANT SAYETH NOT.


BRENDA HALL

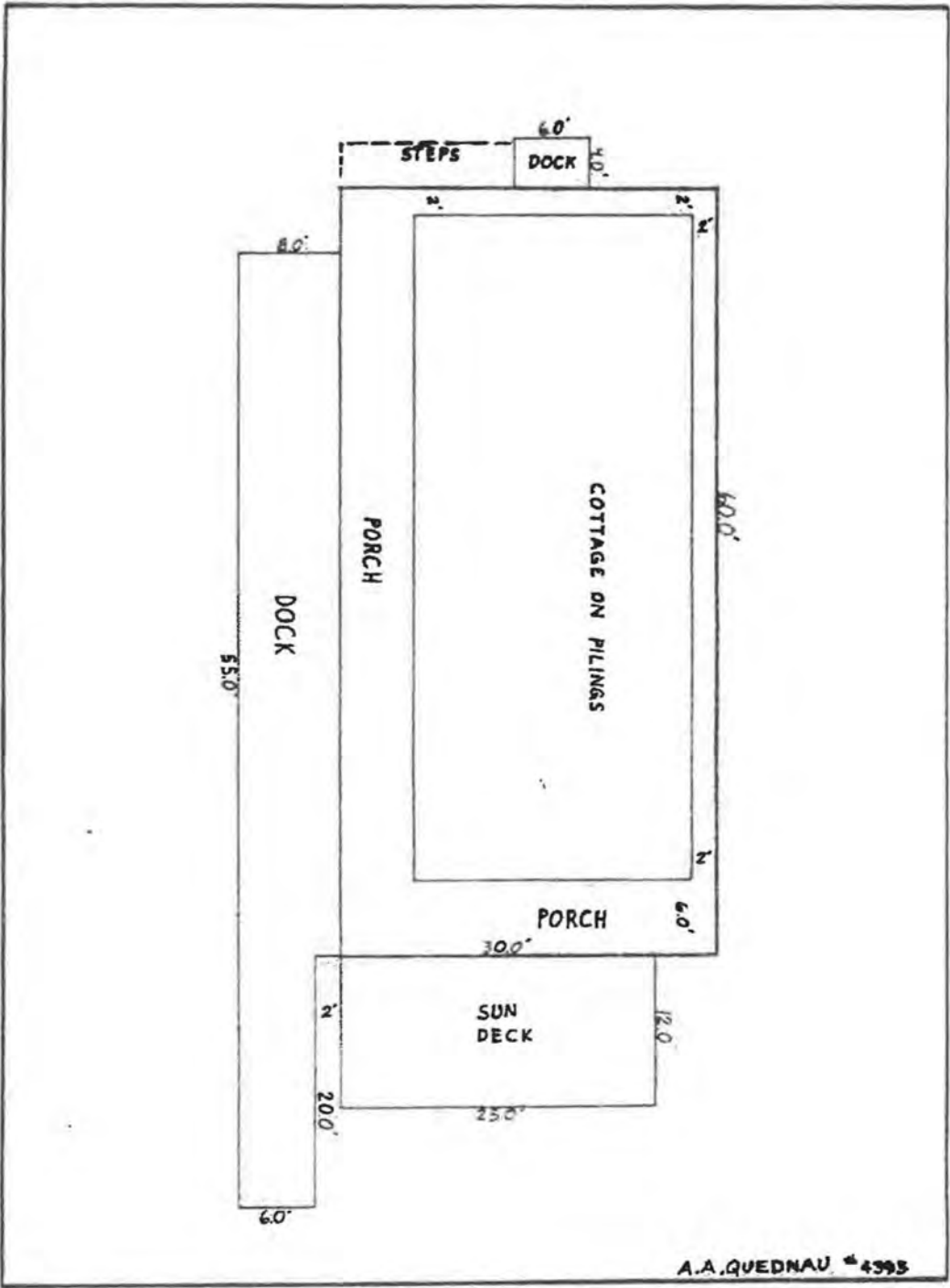
SWORN to and subscribed before me this 27 day of June,
1984.


Notary Public - State of Florida

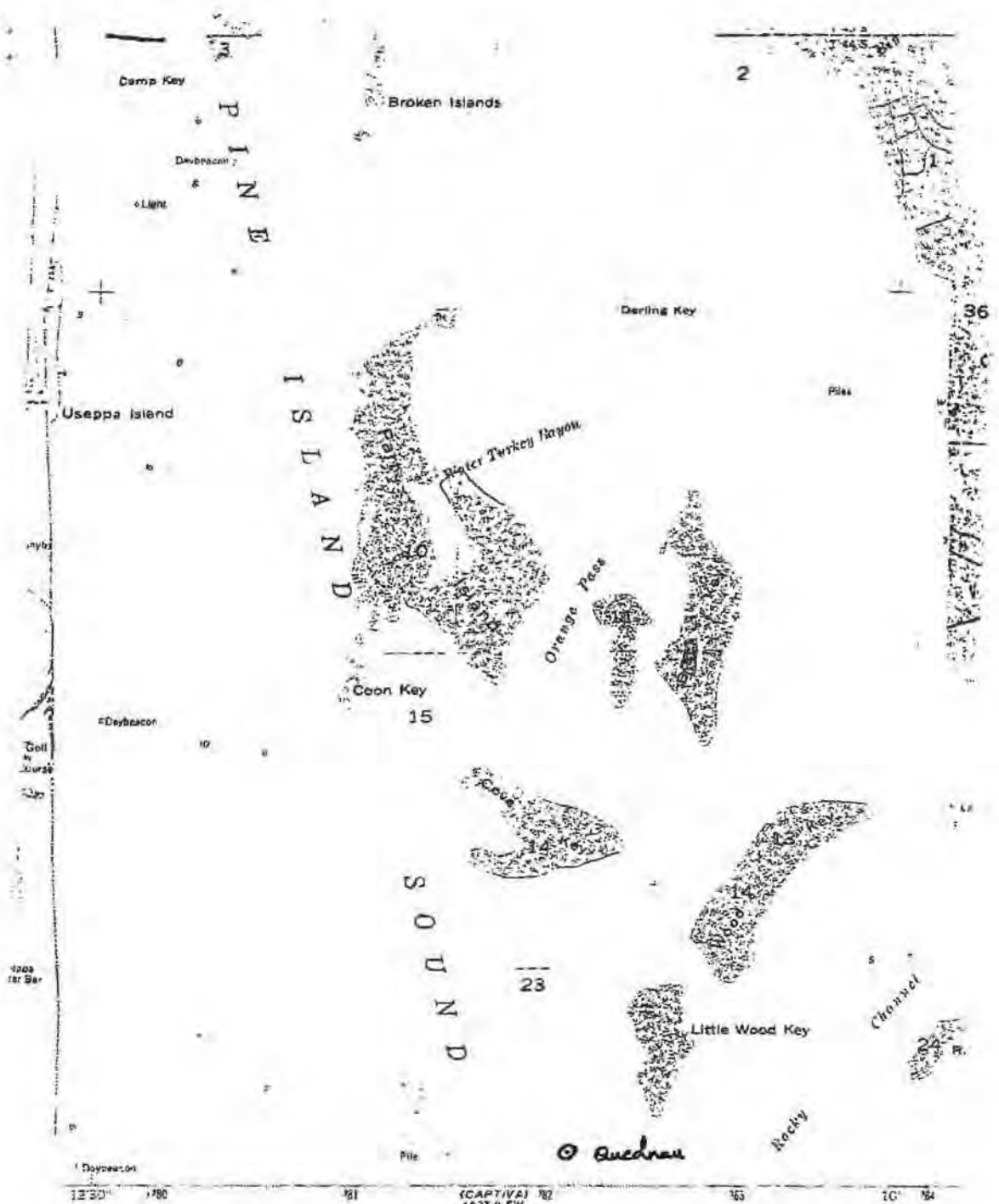
My commission expires:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES 21.06.1987
BONDID THRU GRANTING OFFICE AND

(AFFIX SEAL)







12°30' 1780 181 (CAPTIVA) 182 183 10' 184
 SCALE 1:4000

VERTICAL INTERVAL - FEET
 100 200 300 400 500 600 700 800 900 1000
 THIS MAP COMPLEIES WITH NATIONAL MAP ALLEGIANCE STANDARDS
 FOR SALE BY U. S. GEOLOGICAL SURVEY, WASHINGTON, D. C. 20242
 A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

12°30' 180

(CAPTIVA) 182
 183

Rocky site

CASH-DEF AS OF 07/10/84

7400000000

DATE RUN 07/10/84

CASH RECEIPTS BY FDA
REPORT FROM 35 FILE WITH OBJECT CODES
JULY 10, 1984

PAGE 5

FDA: 2741040021

ORG L2L5	POB	DATE	OTHER DOC	CAT	OBJECT	OCA	AMOUNT	VENDOR	DESCRIPTION	TR
10 10 00 000	C070204	07-02-84	13234	002100	021025		200.00	C202400001	CASTRO,ARNOLD/MI	30
10 10 00 000	C070204	07-02-84	13235	002100	021025		200.00	C202400001	FLAGLER FISH CAM	30
10 10 00 000	C070204	07-02-84	13236	002100	021025		200.00	C202400001	PANA VISTA LODGE	30
10 10 00 000	C070204	07-02-84	13237	002100	021025		200.00	C202400001	PORT-PARADISE HO	30
10 10 00 000	C070204	07-02-84	13238	002100	021025		200.00	C202400001	CLAUDE Y. HESSEE	30
10 10 00 000	C070204	07-02-84	13239	002100	021025		200.00	C202400001	JACKSONVILLE ELE	30
10 10 00 000	C070204	07-02-84	13240	002100	021025		200.00	C202400001	DAYSHORE SEAFOOD	30
10 10 00 000	C070204	07-02-84	13241	002100	021025		200.00	C202400001	A.A.QUEDNAU	30
10 10 00 000	C070204	07-02-84	13242	002100	021025		200.00	C202400001	C.W.WHEDDEN	30
10 10 00 000	C070204	07-02-84	13243	002100	021025		200.00	C202400001	JOHN F.LAURENT	30
10 10 00 000	C070204	07-02-84	13244	002100	021025		200.00	C202400001	EDEN ROC	30
10 10 00 000	C070204	07-02-84	13245	002100	021025		200.00	C202400001	RICHARD H. LEA	30
10 10 00 000	C070204	07-02-84	13246	002100	021025		200.00	C202400001	RALPH J. BRANSON	30
10 10 00 000	C070204	07-02-84	13247	002100	021025		200.00	C202400001	JOHN C PEGO	30
10 10 00 000	C070204	07-02-84	13248	002100	021025		200.00	C202400001	SEASNEEZE RESTAU	30
10 10 00 000	C070204	07-02-84	13249	002100	021025		200.00	C202400001	DEBANTIS,COOK,GA	30
10 10 00 000	C070204	07-02-84	13250	002100	021025		200.00	C202400001	SLIH'S FISH CAMP	30
10 10 00 000	C070204	07-02-84	13251	002100	021025		200.00	C202400001	COASTAL MARINE M	30
10 10 00 000	C070204	07-02-84	13252	002100	021025		200.00	C202400001	WEST BAY POINT	30
10 10 00 000	C070204	07-02-84	13253	002100	021025		200.00	C202400001	CITY OF FT. LAUD.	30
10 10 00 000	C070204	07-02-84	13254	002100	021025		200.00	C202400001	CITY OF FERNANDI	30
10 10 00 000	C070204	07-02-84	13255	002100	021025		200.00	C202400001	HANSS & WINTERS	30
10 10 00 000	C070204	07-02-84	13256	002100	021025		200.00	C202400001	RIVERSIDE MARINE	30
10 10 00 000	C070204	07-02-84	13257	002100	021025		200.00	C202400001	HALLS LODGE INC	30
10 10 00 000	C070204	07-02-84	13258	002100	021025		200.00	C202400001	THOMAS IANNOTTI	30
10 10 00 000	C070204	07-02-84	13259	002100	021025		200.00	C202400001	ROD & REEL MARTH	30
10 10 00 000	C070204	07-02-84	13260	002100	021025		200.00	C202400001	C.N. MCPHERSON	30
10 10 00 000	C070204	07-02-84	13261	002100	021025		200.00	C202400001	CAUSEWAY 79 HARI	30
10 10 00 000	C070204	07-02-84	13262	002100	021025		200.00	C202400001	PIRATE'S COVE	30
10 10 00 000	C070204	07-02-84	13263	002100	021025		200.00	C202400001	CITY OF SAHFOED	30
10 10 00 000	C070204	07-02-84	13264	002100	021025		200.00	C202400001	CITY FISH, INC.	30
10 10 00 000	C070204	07-02-84	13265	002100	021025		200.00	C202400001	KEYS BOAT WORKS	30
10 10 00 000	C070204	07-02-84	13266	002100	021025		200.00	C202400001	STRANGE, ARTHUR	30
10 10 00 000	C070204	07-02-84	13267	002100	021025		200.00	C202400001	ATLANTIC SEAFOOD	30
10 10 00 000	C070204	07-02-84	13268	002100	021025		200.00	C202400001	BASARA, HILLIAH	30
10 10 00 000	C070204	07-02-84	13269	002100	021025		200.00	C202400001	SEMHOLE VILLAGE	30
10 10 00 000	C070204	07-02-84	13270	002100	021025		200.00	C202400001	HUTCHINSON, ROBE	30
10 10 00 000	C070204	07-02-84	13271	002100	021025		200.00	C202400001	CYPRESS ISLE FIS	30
10 10 00 000	C070204	07-02-84	13272	002100	021025		200.00	C202400001	BAY CITY LODGE	30
10 10 00 000	C070204	07-02-84	13273	002100	021025		200.00	C202400001	APALACH MARINE M	30
10 10 00 000	C070204	07-02-84	13274	002100	021025		200.00	C202400001	GULFSHORE TRAIL	30

March 29, 1972-----

Received of Albert A. Quednau the sum of One Dollar, and other valuable considerations, which represents payment in full for my interest in one wood frame building on piles, located southeast of Captiva Rocks, Lee County, Florida, known as CAPTIVA ROCKS ICEHOUSE; and I hereby relinquish all my claims of any sort whatsoever and assign all my right and title in the same to the said Albert A. Quednau.

Cecil B. Quednau
Cecil B. Quednau

Attest:

George T. Key
Notary Public

APPLICATION FOR REGISTRATION OF A GRANDFATHERED STRUCTURE

Applicant's name (owner): Albert A. Quedneu
Address: 817 Near Marion Avenue Telephone: (813) 639-1768
City/State/Zip: Punta Gorda, Florida 33950

Agent's name (if any): Michael P. Haymans, Esquire 625 617
Address: Post Office Drawer 1447 Telephone: (813) 639-1158
City/State/Zip: Punta Gorda, Florida 33950

Location of the grandfathered structure: _____
County: Lee
Section: 23, Township: 44 S (South), Range 21 E (East)
Waterbody: Charlotte Harbor, Pine Island Sound

ATTACHMENTS REQUIRED FOR APPLICATION

1. A vicinity map, preferably a reproduction of the appropriate portion of the United States Geological Survey quadrangle map, that indicates the approximate location of your structure.
2. Evidence of title for the applicant's riparian upland property. (Complete Affidavit of Ownership or Control on the other side of this application form, it must be notarized.)
3. Two copies of a dimensioned site plan drawing, on 8 1/2" x 11" or 14" paper, that:
 - a. uses an appropriate scale; and
 - b. shows the approximate water's edge; and
 - c. shows the location of the grandfathered structure(s); and
 - d. shows the applicant's upland parcel property lines.
4. Dated aerial photography flown by or verified by a governmental agency, previously issued permits, or other governmental authorizations, or other satisfactory information that verifies that the structures qualify as grandfathered structures. A copy of any of the above may be submitted. If aerial photography is submitted the date should either be a part of the photograph, or should be accompanied by a statement indicating the source agency and the date it was taken.
5. A \$200.00 non-refundable processing and registration fee made payable to THE DEPARTMENT OF NATURAL RESOURCES. (Note: no additional fee is required for subsequent annual maintenance of this application information by the original applicant/owner.)

RECEIVED
JUL 2 1984

PLEASE SEND THE APPLICATION TO:

Bureau of State Lands Management
Department of Natural Resources
3900 Commonwealth Boulevard
Tallahassee, Florida 32303

013241

JUL 2 1984

AFFIDAVIT OF OWNERSHIP OR CONTROL

I the upland property immediately riparian to the location of the structure proposed for registration.

certify that I am the record owner, lessee, or record easement holder of the property described below, and have been in control since prior to March, 1970.

LEGAL DESCRIPTION OF PROPERTY SITUATED IN LEE COUNTY, FLORIDA:
(Use additional sheets if necessary)

CAPTIVA ROCKS ICEHOUSE



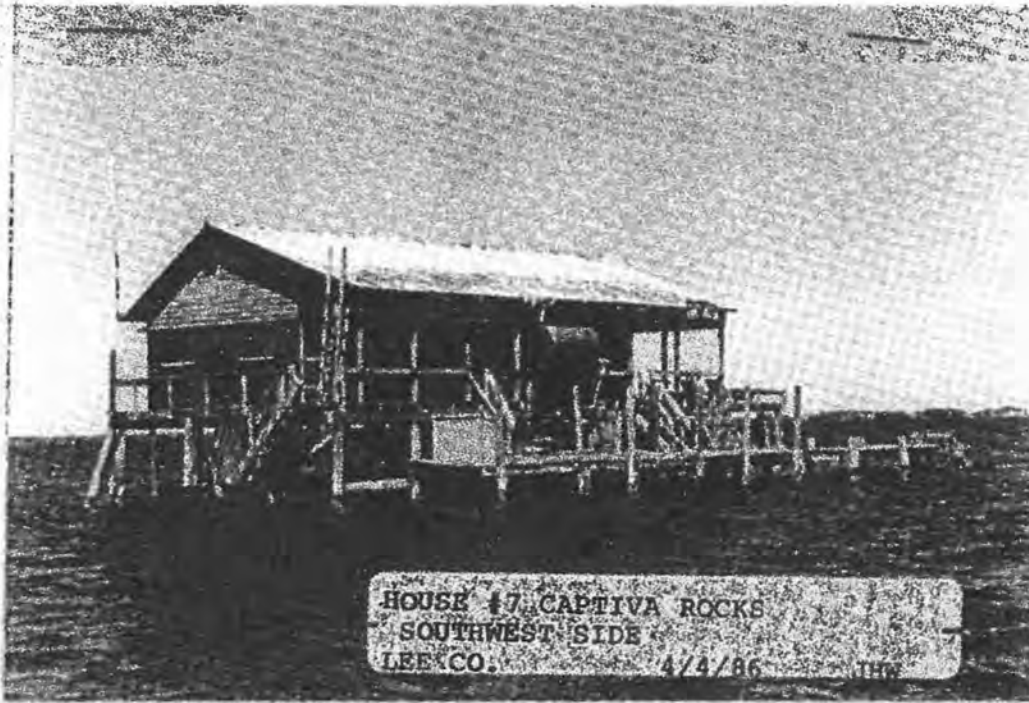
Signature

worn and subscribed before me at Charlotte County, Florida
is 27 day of June, 1984

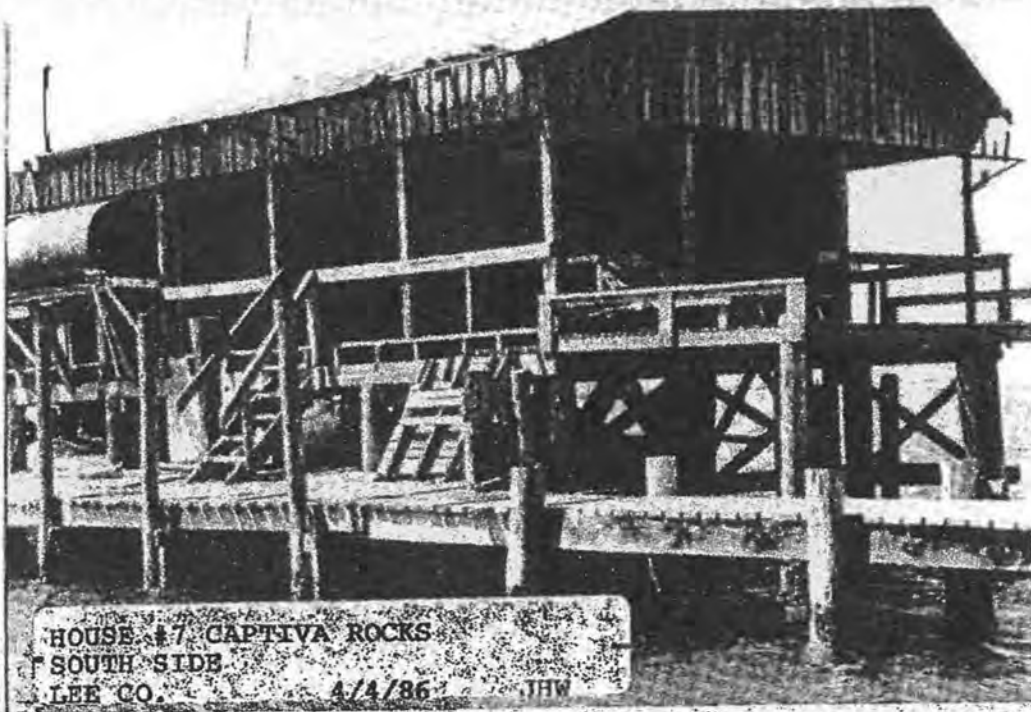
NOTARY PUBLIC STATE OF FLORIDA
My Comm. Exp. 12/31/84


NOTARY PUBLIC

My commission expires:



HOUSE #7, CAPTIVA ROCKS
SOUTHWEST SIDE
LEE CO. 4/4/86 JHW



HOUSE #7, CAPTIVA ROCKS
SOUTH SIDE
LEE CO. 4/4/86 JHW

7/26/95 Char. Am. 211

Burning bridges to history

Remnants of Florida's past are difficult enough to preserve without intentional acts of destruction. The old fish houses dotting Charlotte Harbor had overcome threats from the elements and the bureaucracy, but several of them couldn't survive an arsonist's torch.

Whatever the motive for the crime, valuable pieces of history went up in smoke recently. The fish houses were once part of a thriving commercial fishing industry and more recently were owned by sport fishermen. Several of the buildings were on the National

Register of Historic Places.

The houses were built between 1895 and 1939 as residences on stilts in the water. They were later clustered around ice stations that stored each day's catch before it was shipped to market. The fishermen used the shacks to rest and repair their gear.

The destruction of the fish houses represents a loss to everyone in Southwest Florida, natives and newcomers alike. And the fires will only deepen and extend the losses borne by the commercial fishermen affected by the net ban; the fish houses were visible links to their past.



Feds join fire investigation

Local agencies probing fish house blazes to get help from ATF, Customs

By **DON MOORE**
Senior Writer

The U.S. government is taking the recent torching of three historically significant turn-of-the-century fish houses and camps in Charlotte and Lee counties seriously.

Agents from U.S. Alcohol, Tobacco and Firearms, U.S. Customs and the U.S. Coast Guard will work alongside State Fire Marshal's investigators, Florida Marine Patrol officers and sheriff's deputies from Charlotte and Lee counties. The federal agents are becom-

ing involved because two of the three fish houses that burned to their pilings were on the U.S. Registry of Historic Places.

Since June, one fish camp and two fish houses have gone up in flames. Investigators believe it was arson, and they strongly suspect it may have some connection to the recent commercial net ban that took effect July 1.

The camps and fish houses were used by commercial netters as bunk houses and cold storage sheds to store fish. Until the late 1930s, the camps and fish houses were operational. After that, the

rough, wooden buildings were sold to individuals and became private get-aways situated on wooden pilings in out-of-the-way places.

Capt. Michael Douglas of the State Fire Marshal's office in Tampa is heading the task force, which will hold its first official meeting at the Marine Patrol's area office in Fort Myers Wednesday afternoon.

"We're getting a lot of phone calls," he said. "Now it's just a matter of following up on these tips."

Since Thursday of last week, when a fish house owned by Albert Quedneau of

Punta Gorda burned, the Fire Marshal's office has received at least 30 calls, Douglas said. That doesn't include additional calls made to the other departments that are taking part in the investigation.

"We're getting calls from Pine Island, Jacksonville, a couple from Sarasota County, Ocala—they're coming in from all over," the captain said.

"We're looking at commercial fishermen because they said if the net ban ever took effect, they might do something

Please see **FEDS**, page 8

Tuesday, July 25, 1995

* FEDS

From page 1

like this," he added. "We've got nothing at this time to pinpoint that the commercial fishermen had anything to do with these fires. We're looking at them because of the comments they made in the past."

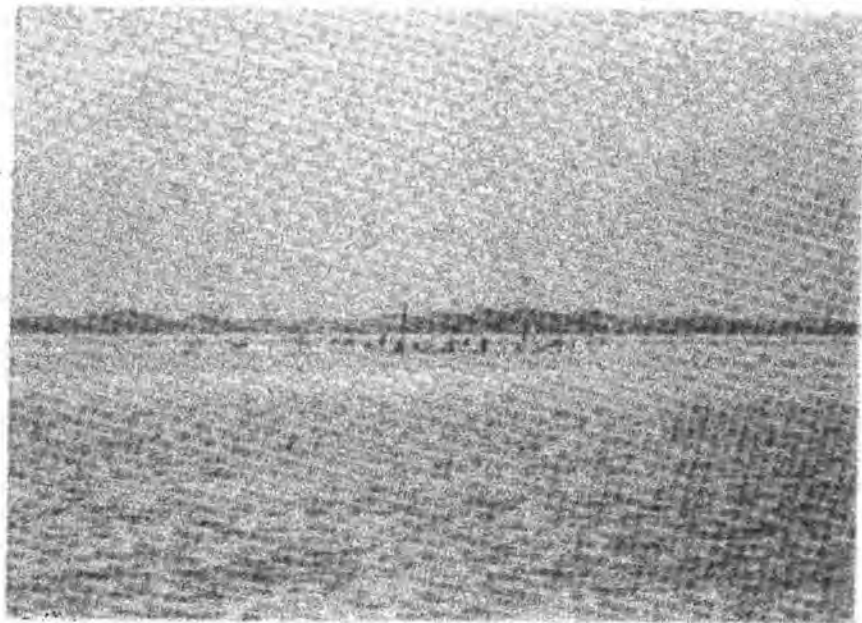
Any person having information to report concerning the fires call the State Fire Marshal's main office in Tallahassee toll free at 1-800-638-3473. The information will be relayed to the task force in Fort Myers.

A person convicted of burning these buildings would be guilty of a first-degree felony punishable by up to 30 years in prison.

Douglas confirmed the Charlotte-Lee county area of southwest Florida is the first area in the state to experience problems that may be linked to the commercial fishing net ban. State officials expected that if there was going to be trouble, it would be the netters in northwest Florida who would revolt because commercial fishing is a mainstay of the local economy up there.

The captain said the federal government may send in numerous agents, if necessary, to help with the investigation. That possibility is yet to be determined.

"The feds have better resources than we have," Douglas said. "They can bring in 30 or 40 agents in a heartbeat. We've talked to the federal agents, and they want to be involved in the investigation. We're glad to hear that."



Quednau Fish Shack Remains
July 1995

Lori Cavallaro

From: McCall, Cheryl <Cheryl.McCall@dep.state.fl.us>
Sent: Monday, January 14, 2019 3:21 PM
To: Michael Haymans; Lewis, Rene
Cc: Sturtevant, Toni; Rach, Timothy; Mills, Megan; Lori Cavallaro; Iglehart, Jon; Malloy, Richard
Subject: Ice House, Pine Island Sound, Grandfather Registration Number 360063

Good afternoon, Mr. Haymans.

As Mrs. Lewis mentioned below, staff met internally across the Regulatory to Proprietary programs. We have reviewed the historical information thoroughly across the program areas and have come to the same conclusion based upon rule and statute that the facility does not meet the needed criteria for rebuilding.

In the review of the history, the facility did not come under lease before 1998 per statute even though the facility was listed on the National Registry in 1991 and the owner was notified of the requirements to come under lease. A fire occurred in 1995 destroying the entire historical facility and subsequently the facility was considered no longer qualifying for the historical registry since it no longer conveyed its significance of design, materials, workmanship, feeling or association.

The department must follow all rules and statutes that set out the path for the continued approval of the stilthouse structures. I understand that this final review of your request is not what you were hoping to hear as to the future of the structure. Please be reassured both program areas reviewed all historical and current rules in order to come to this conclusion.

Sincerely,



Cheryl C. McCall, Chief
Bureau of Public Land Administration
Division of State Lands

Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32309-3000
Direct Line (850)245-2739
Call Phone (850)519-4217
cheryl.mccall@dep.state.fl.us



From: Michael Haymans [mailto:michael@mphaymans.com]
Sent: Tuesday, January 08, 2019 1:46 PM
To: Lewis, Rene <Rene.Lewis@dep.state.fl.us>
Cc: Sturtevant, Toni <Toni.Sturtevant@dep.state.fl.us>; McCall, Cheryl <Cheryl.McCall@dep.state.fl.us>; Rach, Timothy <Timothy.Rach@dep.state.fl.us>; Mills, Megan <Megan.Mills@dep.state.fl.us>; Lori Cavallaro <lori@mphaymans.com>
Subject: RE: Ice House, Pine Island Sound, Grandfather Registration Number 360063

Dear Ms. Lewis,

Thank you. I look forward to communicating with Ms. McCall. I will make myself available in Tallahassee if that is helpful to the process.

Sincerely,
Michael

Michael P. Haymans Attorney At Law, P.A.
215 West Olympia Avenue
Punta Gorda, Florida 33950
941 575 0007
michael@mphaymans.com

From: Lewis, Rene [mailto:Rene.Lewis@dep.state.fl.us]
Sent: Tuesday, January 08, 2019 12:53 PM
To: Michael Haymans <michael@mphaymans.com>
Cc: Sturtevant, Toni <Toni.Sturtevant@dep.state.fl.us>; McCall, Cheryl <Cheryl.McCall@dep.state.fl.us>; Rach, Timothy <Timothy.Rach@dep.state.fl.us>; Mills, Megan <Megan.Mills@dep.state.fl.us>; Lori Cavallaro <lori@mphaymans.com>
Subject: RE: Ice House, Pine Island Sound, Grandfather Registration Number 360063

Good afternoon Mr. Haymans,

Yesterday, we had an internal DEP staff meeting to review the information that you provided. Cheryl McCall, Chief for DEP's Bureau of Public Land Administration (BPLA), will be the point of contact moving forward. She is copied on this email and will be meeting with her staff to further discuss this project. She or one of her staff members will be back in touch. Thank you very much and have a nice afternoon.



Rene Best Lewis
Florida Department of Environmental Protection
Director
Office of Cabinet Affairs
rene.lewis@floridadep.gov
Office: 850-245-2279
Cell: 850-519-0235

From: Michael Haymans <michael@mphaymans.com>
Sent: Friday, December 21, 2018 9:50 AM
To: Lewis, Rene <Rene.Lewis@dep.state.fl.us>; Lori Cavallaro <lori@mphaymans.com>
Cc: Sturtevant, Toni <Toni.Sturtevant@dep.state.fl.us>; Clark, David <David.A.Clark@dep.state.fl.us>; Bentley, Terry

<Terry.Bentley@dep.state.fl.us>

Subject: RE: Ice House, Pine Island Sound, Grandfather Registration Number 360063

Thank you.

Michael P. Haymans

From: Lewis, Rene [mailto:Rene.Lewis@dep.state.fl.us]

Sent: Thursday, December 20, 2018 10:03 PM

To: Lori Cavallaro <lori@mphaymans.com>; Michael Haymans <michael@mphaymans.com>

Cc: Sturtevant, Toni <Toni.Sturtevant@dep.state.fl.us>; Clark, David <David.A.Clark@dep.state.fl.us>; Bentley, Terry <Terry.Bentley@dep.state.fl.us>

Subject: RE: Ice House, Pine Island Sound, Grandfather Registration Number 360063

Thank you for your email correspondence. After the holidays, our DEP staff will meet during the week of January 7, 2019 to review the attached letter and backup materials. We will be back in touch in early January 2019.

Thanks again - Have a nice weekend.



Rene Best Lewis

Florida Department of Environmental Protection

Director

Office of Cabinet Affairs

rene.lewis@floridadep.gov

Office: 850-245-2279

Cell: 850-519-0235

From: Lori Cavallaro <lori@mphaymans.com>

Sent: Thursday, December 20, 2018 4:42 PM

To: Clark, David <David.A.Clark@dep.state.fl.us>; Lewis, Rene <Rene.Lewis@dep.state.fl.us>

Cc: Michael Haymans <michael@mphaymans.com>

Subject: Ice House, Pine Island Sound, Grandfather Registration Number 360063

Dear Mr. Clark and Ms. Lewis,

I've attached a scanned copy of Michael's letter dated December 20, 2018, and his November 20, 2018 letter concerning the Ice House in Pine Island Sound, Grandfather Registration Number 360063, in Lee County, Florida/Eligibility to Seek to Rebuild, and Eligibility to Seek to Obtain a Submerged Lands Lease Under Section 253.03 F. S. Please let me know if you would like the hardcopy original for your file. Thank you!

Sincerely,

Lori Cavallaro

Michael P. Haymans Attorney at Law, P. A.

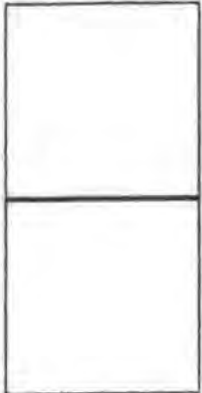
215 West Olympia Avenue

Punta Gorda, FL 33950

Telephone: 941-575-0007

Facsimile: 941-575-9177

Email: lori@mphaymans.com



Michael P. Haymans

====ATTORNEY AT LAW, P. A.====

November 20, 2018

VIA EMAIL: toni.sturtevant@dep.state.fl.us

Toni Sturtevant, Senior Attorney
FDEP Office of General Counsel
3900 Commonwealth Boulevard MS 35
Tallahassee, FL 32399-3000

Re: Ice House, Pine Island Sound, Grandfather Registration Number 360063
Lee County, Florida/Eligibility to Seek to Rebuild, and Eligibility to Seek to Obtain a
Submerged Lands Lease Under Section 253.03 F. S.

Dear Ms. Sturtevant,

I represent Fetzer Brs., LLC ("Fetzer"). On February 3, 2017, and again on April 18, 2018 I met with staff of the Florida Department of Environmental Protection Southwest District Office in pre-application conferences. Both meetings included telephone participation by an attorney from the office of General Counsel. Fetzer owns the in-place pilings, remnants of a criminally torched, arson of the Ice House in Pine Island Sound. A copy of the Bill of Sale is enclosed as "A", the newspaper coverage of which is enclosed as "B".

On behalf of the Florida Department of Environmental Protection, the General Counsel's office opined in both meetings that the requirements of Section 253.03 could not be met, and that an application to permit the rebuilding and for a submerged land lease would not be accepted.

That opinion and interpretation of the Statutory provisions should be reconsidered. An application should be accepted.

In the first pre-application meeting, General Counsel and staff asserted that the burned site and remnant pilings were not historic, relying upon an erroneous determination by the office of the Secretary of State Department of Historic Preservation in 2000. The letter is referenced in the Notice of Denial enclosed as "C". That letter was used to thwart an attempt by prior applicants to rebuild and enter into a lease (Application Number 36-0128599-002).

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However, after Hurricane Charley in 2004, fish camp sites and structures in Pine Island Sound, which had been destroyed down to remnant pilings, were allowed to be rebuilt under emergency permits. Based upon those approvals the Fetzers reasoned that there was no loss of historic status, and that approval to rebuild the historic structure was feasible. The previous, historic owners of the Ice House reasoned that with a proper historic determination by the State, and with adequate applicant resources that the Ice House could be rebuilt, resulting in the conveyance indicated by Exhibit "A".

So, after the pre-application meeting of February 3, 2017, having been told by Office of General Counsel and Staff of the Florida Department of Environmental Protection that an application would not be accepted because of the non-historic determination, Fetzer submitted a request for reconsideration to the Secretary of State Department of Historic Preservation. A copy of the submittals and the resulting determination of continuing historic relevance is enclosed as "D". The Ice House, also known as the Quednau Ice House, is now and has continuously been registered in the National Register of Historic Places, and if properly reconstructed will continue to be on the National Register of Historic Places.

Therefore, the site meets the first requirement of Section 253.03 (c) "Structures which are listed or are eligible for the National Register of Historic Places.", because the structure is listed and will continue to be eligible.

After having resolved the issue that caused the prior owner to abandon their attempt to rebuild and to obtain a submerged lands lease, the second pre-application meeting was held on April 18, 2018. At the second meeting, Staff and General Counsel then asserted that the applicant could not and cannot meet the further requirements of the Statute, because there is no existing lease, asserting that the status of "grandfathered-in" was only a qualifying status during the period of grandfather registration, which has passed: Staff and General Counsel assert that an existing lease is the only qualifying land use relationship to "continue" such submerged land leases. Further the staff and General Counsel indicated that they may assert that the "Lessee" has not "maintained the structure in a good state of repair consistent with the guidelines for listing."

The positions, interpretations and assertions of Staff and Office of General Counsel cause Fetzer to be uncertain of its rights to apply for a lease and permit for reconstruction. Fetzer asserts that the Statute provides for an opportunity to apply for a lease, and the right to

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apply to reconstruct the Ice House consistent with the integrity of the listed structure, so long as it does not increase the footprint of the structure. To reach the conclusions of Staff and the previous pronouncements of the Office of General Counsel, one must begin with an intention to find a way to deny eligibility, then to read additional words into the Statute, contrary to the intent of the Statute as a whole, and to disregard the impediments to rebuild and maintain caused by the erroneous letter referenced in "C".

There is an irony to Staff and Office of General Counsel's resistance to allowing an application to rebuild the Ice House. In the early 1980's, the State of Florida started to more restrictively manage sovereign submerged land use by riparian littoral owners, and to deal with and control or eliminate sovereign submerged land use by non-riparian owners. After posting notice on all of the non-riparian structures in greater Charlotte Harbor, the Florida Department of Natural Resources ("DNR"), through Judy Wysocky, under Elton Gissendaner, burned at least 10 structures. Protection from the DNR burning led to submittal to the historic preservation process at state and federal level, which caused the State of Florida to create the grandfather registration process to get a handle on the extent of private use of submerged land. Ultimately, the effort to protect the historic fish shacks and ice houses resulted in the Section 253.03 7 (c) F.S.

From Punta Gorda to Punta Rassa with Pine Island Sound on the way from the 1880's until the early 1950's run boats plied the waters delivering ice and supplies and picking up fish at ice houses. The ice houses, such as the Quednau Ice House, attracted residential shack's camps and lighters to house the fishermen and their families. The ice houses give the residential shacks/camps context. Without the ice house those residential structures would not have been built, that part of the story is missing without the associated ice house.

Reading the statute to work against the rebuilding of the most important part of the Captiva Shoals complex of structures unfairly thwarts the intent of the resulting legislation authorizing fish camp lease for their protection based upon the historical context the structures represent.

So how should we read the statute?

As established earlier in this letter and the Exhibit "D" from the department, the Ice House is on the National Register of Historic Places. The structure is over waters of the State, and "have been grandfathered-in" through the Grandfather Registration Process (Grandfather

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Registration Number 360063). The rest of that clause only modifies "grandfathered-in" to equate "grandfathered-in" with having a Grandfathered Registration:

Grandfather Registration is the only process for a structure to be "grandfathered-in". That Registration did not result in a "lease". So the ambiguous next phrase "shall have the right to continue such submerged leases" needs interpretation. Please see the good article from the Florida Bar Journal, How to Interpret Statutes—or Not: The Phantom of Plain Meaning, by Steven Wisotsky, attached as "E", which articulates the importance of context in such interpretation. The intent of the Statute is to provide for rebuilding to protect our cultural, historic resources.

The further qualifier "lessee", is another confusing reference, "maintains the structure in a good state of repair consistent with the guidelines for listing." The State thwarted the requested repair and reconstruction by the erroneous Secretary of State determination. The burnt pilings have been maintained and not razed which is the only good state of repair allowed, which still qualifies the structure as being consistent with the guidelines for listing. The Ice House is still registered.

Please provide a letter interpreting Section 253.03 (c) to allow the Ice House application to be accepted and considered for permitting and lease. We should not need a Suit for Declaratory Decree to resolve this matter. Please call to discuss.

Sincerely,



Michael P. Haymans

MPH/lsc
cc: Client

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michael@mphaymans.com

Michael P. Haymans

====ATTORNEY AT LAW, P. A.====

List of Enclosures:

Bill of Sale is enclosed as "A";

Newspaper coverage of arson is enclosed as "B";

Historic Preservation letter is enclosed as "C";

Submittals and the resulting determination of continuing historic relevance is enclosed as "D"
(July 3 2017 letter to Dr. Parsons, August 10, 2017 letter to Dr. Parsons, October 10, 2017
letter to Alissa Lotane, and November 20, 2017 letter from Jason Aldridge);

Florida Bar Journal, January 2009 "How to Interpret Statutes—or Not: the Phantom of Plain
Meaning" is enclosed as "E".

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Prepared by and return to:

Michael P. Haymans, Esq.
Michael P. Haymans Attorney at Law, P. A.
215 West Olympia Avenue
Punta Gorda, FL 33950
941-575-0007

QUIT-CLAIM DEED/BILL OF SALE

THIS QUIT-CLAIM DEED/BILL OF SALE is executed this 18th day of February, 2016, between **DOROTHY N. QUEDNAU**, heir and successor to **ALBERT A. QUEDNAU**, Grantor, whose address is 817 West Marion Avenue, Punta Gorda, FL 33950, and **Fetzer BRS, LLC**, Grantee, whose mailing address is c/o Michael P. Haymans Attorney at Law, P. A., 215 West Olympia Avenue, Punta Gorda, Florida 33950.

WITNESSETH:

That the Grantor, for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration in hand paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, does hereby sell, transfer, convey, remise, release and quit-claim unto said Grantee forever, all the right, title, interest, claim and demand which the Grantor has in and to the following described property, situate, lying and being in the County of Lee, State of Florida, to-wit:

All of the pilings *in situ* upon which was built a wood-frame building, known as the Captiva Rocks Ice House, a/k/a Ice House at Captiva Rocks, a/k/a Quednau Ice House/8LL1407, including the docking system surrounding the structure. The said pilings are located south east of Captiva Rocks, and southwest of Little Wood Key, Charlotte Harbor, Pine Island Sound, Section 23, Township 44 South, Range 21 East, Lee County, Florida; the Ice House building itself was destroyed by an act of arson; together with all of the Grantor's right title and interest in and to the remnants of the Ice House building and the historic location which was registered by the Department of Natural Resources of the State of Florida, in Grandfathered Structure Registration Permit No. 360063, and which were the supporting pilings for the Ice House at Captiva Rocks listing in the National Register of Historic Places on April 11, 1991.


Grantor warrants that she owns the property as the widow of and heir and successor to Albert A. Quednau, and that neither he nor she have conveyed the said property to any other person or entity.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or equity, to the use, benefit and behoof of the said Grantee forever.




IN WITNESS WHEREOF, the grantor have signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
of:


(First Witness)


DOROTHY N. QUEDNAU, heir and successor
to **ALBERT A. QUEDNAU**

Michael P. Haymans


(Second Witness)

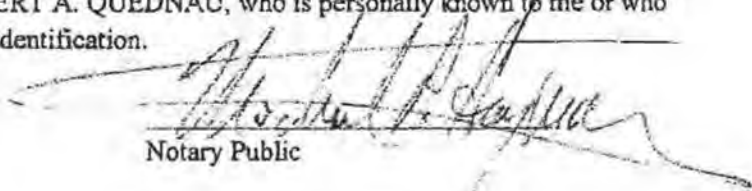
Lorayne S. Cavallaro

STATE OF FLORIDA

COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 18th day of February, 2016 by **DOROTHY N. QUEDNAU**, heir and successor to **ALBERT A. QUEDNAU**, who is personally known to me or who has produced _____ as identification.

My Commission Expires:


Notary Public





Jeb Bush
Governor

Department of Environmental Protection

South District
P.O. Box 2549
Fort Myers, Florida 33902-2549

David B. Struhs
Secretary

FILE

SUBMERGED LANDS AND ENVIRONMENTAL RESOURCE PROGRAM

CONSOLIDATED NOTICE OF DENIAL FOR ERP ACTIVITIES ON SOVEREIGN SUBMERGED LANDS

CERTIFIED MAIL NO. Z 519 782 282
RETURN RECEIPT REQUESTED

In the Matter of an
Application for Permit/Water Quality Certification,
and Authorization to Use Sovereign Submerged Lands by:

Daniel V. Heleski
Performance Construction, Inc.
308 West Highland Drive
Lakeland, FL 33813

Lee County - ERP
DEP File No. 36-0128599-002

NOTICE OF DENIAL ENVIRONMENTAL RESOURCE PERMIT

The State of Florida Department of Environmental Protection (Department) gives its
notice of denial of:

- (a) an environmental resource permit under Part IV of Chapter 373, Florida Statutes
(F.S.), and Title 62, Florida Administrative Code (F.A.C.), which also constitutes



- denial of certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341; and
- (b) authorization to use sovereign submerged lands for the proposed activity, under Article X, Section 11 of the Florida Constitution, Chapters 253 and 258, F.S., and Title 18, F.A.C.

Where applicable (such as for activities in coastal counties), this consolidated denial of the environmental resource permit and the authorization to use sovereign submerged land also constitutes a finding of inconsistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

This Notice of Denial is based on the reasons stated below.

I. DESCRIPTION OF THE PROPOSED ACTIVITY

The Applicant, Daniel V. Heleski, applied on March 14, 2000, to the Department for an environmental resource permit/water quality certification and requested authorization to use sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to rebuild a stilthouse.

This activity includes consideration of an application for a 20-year sovereignty, submerged land lease containing an undetermined number of square feet for the stilthouse and associated mooring area, which requires payment of an estimated \$841.82 representing the initial lease fee and including an initial 25 percent surcharge payment, plus sales tax pursuant to Section 212.031, F.S.

This project is located on sovereignty submerged lands in Pine Island Sound, Class III Outstanding Florida Waters, Pine Island Sound Aquatic Preserve, Lee County, Section 23, Township 44 South, Range 21 East.

II. AUTHORITY FOR REVIEW

The Department has permitting authority under Part IV of Chapter 373, F.S., and Chapters 62-330, 62-341, and 62-343, F.A.C. The activity is not exempt from the requirement to obtain an environmental resource permit. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing this application.

The activity also requires a proprietary authorization, as it is located on sovereign submerged lands owned by the Board of Trustees. The activity is not exempt from the need to obtain a proprietary authorization. Pursuant to Article X, Section 11 of the Florida Constitution, Sections 253.002 and 253.77, F.S., Sections 18-21.0040, 18-21.0051, 18-20, and 62-343.075, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department has the authority to review and take final action on this request for proprietary authorization.

III. REASONS FOR DENIAL

A. Environmental Resource Permit and Sovereign Submerged Lands Authorization

The Applicant has not provided reasonable assurance that the construction and operation of the activity, considering the direct, secondary and cumulative impacts, will comply with the provisions of Part IV of Chapter 373, F.S., and the rules adopted thereunder. Specifically, the

activity does not meet the Conditions for Issuance or Additional Conditions for Issuance of an environmental resource permit, pursuant to Part IV of Chapter 373, F.S., Chapters 62-330, and Sections 40E-4.301 and 40E-4.302, F.A.C., because the Applicant has not provided reasonable assurance that:

- (1) The immediate and long-term impacts of the activity will not cause violations of the water quality standards set forth in Chapters 62-4, 62-302, F.A.C., including any anti-degradation provisions of Sections 62-4.242 and 62-302.530, F.A.C., and the criteria in 40E-4.301, F.A.C. The activity is also anticipated to cause degradation of the ambient water quality of Outstanding Florida Waters, in contravention of the provisions of Sections 62-4.242 and 62-302, F.A.C.;
- (2) The project will meet the criteria in 40E-4.302(1)(b), F.A.C. regarding avoidance of unacceptable cumulative impacts upon wetlands and other surface waters;
- (3) The project will comply with the criteria in subsection 40E-4.302(1)(c), F.A.C., as the activity will adversely affect Class II waters or is located in Class II waters or Class III waters classified by the Department as approved, restricted or conditionally restricted for shellfish harvesting as set forth or incorporated by reference in Chapter 62R-7, F.A.C.; and
- (4) The project will comply with the criteria, including the mitigation provisions and the provisions for elimination or reduction of impacts, contained in Section 373.414(1)(b), F.S., and the South Florida Water Management District Basis of Review 4.2.1.

Additionally, the applicant has not submitted the \$500 permit application fee required by Section 62-4.050(4)(g)2.c.(III), F.A.C.

The request for authorization to use sovereign submerged lands is denied because the Applicant has not met all applicable requirements for proprietary authorizations to use sovereign submerged lands, pursuant to Article X, Section 11 of the Florida Constitution, Chapter(s) 253 and 258, F.S., associated Chapters(s) 18-21 and 18-20, F.A.C., and the policies of the Board of Trustees. Specifically:

- (1) construction of the activity is inconsistent with the management policies, standards and criteria of Section(s) 18-21.004 and 18-20.004, F.A.C. The Applicant has not provided reasonable assurance that the activity will be "not contrary to the public interest" and will be clearly "in the public interest", will maintain essentially natural conditions, will not cause adverse impacts to fish and wildlife resources or public recreation or navigation, and will not interfere with the riparian rights of adjacent property owners. In addition, the project is inconsistent with the goals and objectives of the "Conceptual State Lands Management Plan" adopted by the Board of Trustees on March 17, 1981 and modified on March 15, 1983;
- (2) construction of the activity is inconsistent with Sections 18-21.00405(6)(a)1 and 2, F.A.C. Specifically, the proposed structure is a nonwater dependent structure. Section 18-21.00405(6)(a)1 and 2, F.A.C., state that nonwater dependent structures shall not be rebuilt or restored if 50 percent or more of the structure is destroyed, or if use of the structure has been discontinued and 50 percent or more of the structure must be replaced in order to restore

the structure to a safely usable condition. According to photos submitted with the application, and prior on-site visits by Department staff, the structure has been 100 percent destroyed by fire. Therefore, use of the structure has been discontinued and 50 percent or more of the structure must be replaced in order to restore the structure to a safely usable condition.

Section 253.03(7)(c), F.S., states that structures which are listed in or are eligible for the National Register of Historic Places or the State Inventory of Historic Places which are over the waters of the State of Florida and which have a submerged land lease, or have been grandfathered to use sovereignty submerged lands until January 1, 1998, pursuant to rule 18-21.00405, Florida Administrative Code, shall have the right to continue such submerged land leases, regardless of the fact that the present landholder is not an adjacent riparian landowner, so long as the lessee maintains the structure in a good state of repair consistent with the guidelines for listing. If the structure is damaged or destroyed, the lessee shall be allowed to reconstruct, so long as the reconstruction is consistent with the integrity of the listed structure and does not increase the footprint of the structure. If a structure so listed falls into disrepair and the lessee is not willing to repair and maintain it consistent with its listing, the state may cancel the submerged lease and either repair and maintain the property or require that the structure be removed from sovereignty submerged lands.

On March 1, 2000, the Department received a February 17, 2000 letter from the Department of State, Division of Historical Resources, stating the following. "The fire in 1995 destroyed all but some of the pilings and decking. The property no longer conveys

its significance because the design, materials, workmanship, feeling and association have been lost. The Ice House at Captiva Rocks, therefore, is no longer eligible for listing the National Register of Historic Places, and is no longer significant." Based on the Department's interpretation of that letter and section 253.03(7), F.S., the remains of the original structure and the applicant's proposed project do not qualify for authorization to use sovereignty submerged land; and

(3) the authorization to use sovereign submerged lands cannot be approved, in accordance with Sections 18-21.00401 and 62-343.075, F.A.C., because the activity does not meet the conditions for issuance of a standard general or individual permit under Part IV of Chapter 373, F.S., as described above.

B. Coastal Zone Consistency

Based on the above, the Department has determined that the activity is inconsistent with Florida's Coastal Management Program (FCMP), as required by Section 307 of the Coastal Zone Management Act. Pursuant to Section 380.23, F.S., the Department may not issue a permit for an activity found to be inconsistent with the FCMP. The Department has recommended project design modifications which would bring the project into compliance with the Department's statutory authority under the FCMP (see below). However, the Applicant has not modified the application in accordance with those recommendations.

IV. PROPOSED CHANGES

The Department has determined that the following changes to the project may enable the Department to grant a consolidated permit and authorization to use sovereign submerged lands:

the applicant should provide to the Department the information requested in the April 13, 2000 Request for Additional Information prepared by the Department.

Modification of the project as specified above may enable the Department to determine that the activity is consistent with Florida's Coastal Management Plan.

V. RIGHTS OF AFFECTED PARTIES

This denial is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this action automatically becomes only proposed agency action on the application, subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in granting the application.

Mediation is not available.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Under rule 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

A person subject to regulation has a right to apply for a variance from or waiver of the requirements of particular rules, on certain conditions, under section 120.542 of the Florida Statutes. The relief provided by section 120.542 applies only to regulatory rules. It does not apply to proprietary rules of the Board of Trustees of the Internal Improvement Trust Fund. Nor does it apply to statutes or federal regulatory requirements. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have in relation to the Department's action or proposed action.

The application for a variance or waiver is made by filing a petition with the Department of Environmental Protection, Office of General Counsel, Mail Station 35, 3900 Commonwealth

Boulevard, Tallahassee, Florida 32399-3000. The petition must specify the following information:

- (a) The name, address, telephone number, and any facsimile number of the petitioner;
- (b) The name, address, and telephone number, and any facsimile number of the attorney or qualified representative of the petitioner, if any;
- (c) The applicable rule or portion of a rule from which a variance or waiver is requested;
- (d) The citation to the statute underlying (implemented by) the rule identified in (c) above;
- (e) The type of action requested;
- (f) The specific facts that demonstrate a financial hardship or a violation of principles of fairness that would justify a variance or waiver for the petitioner;
- (g) The reason why the variance or waiver would serve the purposes of the underlying statute (implemented by the rule); and
- (h) A statement whether the variance or waiver is permanent or temporary and, if temporary, a statement of the dates showing the duration of the variance or waiver requested.

The Department will grant a variance or waiver when the petition demonstrates both that the application of the rule would create a substantial hardship or violate principles of fairness, as each of those terms is defined in section 120.542(2) of the Florida Statutes, and that the purpose of the underlying statute will be or has been achieved by other means by the petitioner.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the

right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

In accordance with rules 28-106.111(2) and 62-110.106(3)(a)(4), petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under section 120.60(3) of the Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that right.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;

- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301.

Under sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.


This denial constitutes an order of the Department. Subject to the provisions of paragraph 120.68(7)(a) of the Florida Statutes, which may require a remand for an administrative hearing, the applicant has the right to seek judicial review of the order under section 120.68 of the Florida Statutes, by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900

Daniel V. Heleski
File No. 36-0128599-002
Page 13 of 14

Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department. The applicant, or any party within the meaning of section 373.114(1)(a) or 373.4275 of the Florida Statutes, may also seek appellate review of this order before the Land and Water Adjudicatory Commission under section 373.114(1) or 373.4275 of the Florida Statutes. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the order is filed with the Clerk of the Department.

Executed in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Richard W. Cantrell
Director of District Management
South Florida District
P.O. Box 2549
Fort Myers, Florida 33902
Telephone: (941) 332-6975

RWC/LB/MRM/m

cc:

U.S. Army Corps of Engineers, Tampa
Lee County Property Appraiser
Bureau of Public Land Administration
Florida Marine Patrol
OCRM, Washington, D.C.
Ralph Cantral, FCMP Director, DCA
Department of Community Affairs
Florida Fish and Wildlife Conservation Commission

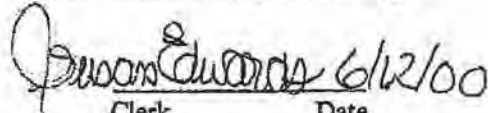
Daniel V. Heleski
File No. 36-0128599-002
Page 14 of 14

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this denial including all copies, was mailed before the close of business on June 12, 2000, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to 120.52(7),
Florida Statutes, with the designated Department Clerk,
receipt of which is hereby acknowledged.


Clerk Date

FILE

Z 519 782 282

CERTIFIED

Z 519 782 282

MAIL

DANIEL V HELESKI
PERFORMANCE CONSTRUCTION INC
308 WEST HIGHLAND DRIVE
LAKELAND FL 33813

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DANIEL HELESKI

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FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

Michael P. Haymans
Michael P. Haymans Attorney at Law, P.A.
215 West Olympia Avenue
Punta Gorda, FL 33950

November 20, 2017

RE: Reconstruction of the Ice House at Captiva Rocks 8LL1407, Pine Island Sound, Lee County, Florida
DHR Project File No.: 2017-5464

Dear Mr. Haymans:

As referenced in your letter, Chapter 253.03(7)(c), *Florida Statutes* allows for the reconstruction of historic structures that are listed, or eligible for listing, in the National Register of Historic Places. The statute also provides the requirements that must be met for a reconstruction to be considered acceptable. The statute states, "If the structure is damaged or destroyed, the lessee may reconstruct, so long as the reconstruction is consistent with the integrity of the listed structure and does not increase the footprint of the structure."

As required in Chapter 253.03(7)(c), *Florida Statutes*, the Ice House at Captiva Rocks is listed in the National Register of Historic Places and is recorded on the Florida Master Site File as LL1407. Additionally, it is our opinion that the lessee may move forward with a reconstruction of the Ice House, as long as the reconstruction is consistent with the *Secretary of the Interior's Standards for Reconstruction* and the *Guidelines for the Treatment of Historic Properties* (the Standards and Guidelines). The Standards and Guidelines provide detailed requirements for the reconstruction of historic properties to ensure that the reconstructed property is consistent with the design and character of the original structure. The plans for reconstruction will need to be reviewed and approved by our office to ensure that the reconstruction meets the requirements of the statute.

We look forward to working with you, the lessee, and the permitting agency to address any necessary next steps for approval and review of the proposed undertaking. If you have any questions, please contact me by email at Jason.Aldridge@dos.myflorida.com, or by telephone at 850.245.6344 or 800.847.7278.

Sincerely,

Jason Aldridge
Deputy State Historic Preservation Officer
for Compliance and Review



Division of Historical Resources
R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6300 • 850.245.6436 (Fax) FLHeritage.com



Michael P. Haymans

====ATTORNEY AT LAW, P. A.====

October 10, 2017

VIA EMAIL: Alissa.lotane@dos.my.florida.com

Ms. Alissa Lotane, Chief
Bureau of Historic Preservation
Florida Division of Historical Resources
R. A. Gray Building
500 S. Bronough St.
Tallahassee, FL 32399-0250

Re: Reconstruction of the Ice House at Captiva Rocks 8LL1407, Pine Island Sound, Lee County, Florida

Dear Ms. Lotane,

This letter follows up and confirms our telephone conference of Monday, October 9, 2017. Thank you for taking the time to speak with me again about this matter. Our conversations have been pleasant and encouraging.

As requested please find attached my previous correspondence seeking support for the reconstruction of the Ice House, which is still listed on the National Register of Historic Places: 1) Letter of July 3, 2017 to Dr. Parsons with attachments (I was assisted with that letter by our historical consultant Ms. Gloria Sajgo, AICP of Aplanaday, LLC), and 2) Letter of August 10, 2017 to Dr. Parsons further explaining the importance of the Ice House to the run boat system for domestic commercial fishing in Charlotte Harbor, and specifically the connection of the Quednau family to that system and this particular Ice House. Additionally, please find attached color photographs of the subject Ice House, and the 1984 submittal package to the Bureau of State Lands Management of the Department of Natural Resources, including a drawing of the basic footprint of the Ice House, along with the 1985 letter of approval of the Grandfathered Registration. As you can see from the 1984 and 1985 correspondence, I have been involved with this Ice House for a long time.

Confirmation that the historically significant structure can be rebuilt on the footprint, because it is still listed on the National Register of Historic Places and can remain so, is a threshold issue for submittal to the Florida Department of Environmental Protection (FDEP) under section 253.03 (7) (c) Florida Statutes. Once we cross that threshold with your

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determination, then proposed construction drawings will be developed for your further review, and for submittal to the FDEP and other permitting and State lands management agencies.

Sincerely,



Michael P. Haymans

MPH/lsc
cc: Client
Enc.

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August 10, 2017

Timothy A. Parsons Ph. D. RPA
Division Director and State Historic Preservation Officer
Florida Division of Historical Resources
R. A. Gray Building
500 S. Bronough St
Tallahassee, FL 32399-0250
timothy.parsons@dos.myflorida.com

RE: Reconstruction of the Ice House at Captiva Rocks 8LL1407

Dear Mr. Parsons:

This letter follows up my letter to you of July 3, 2017.

The subject Ice House gave context to the residential fish camps in Pine Island Sound. The run boat system in place for the historic commercial fishing of Charlotte Harbor and nearby waters emanated from the railhead and ice plants in Punta Gorda. The run boats would bring ice and supplies to the Ice Houses "down the bay", and bring back iced fish for shipment on the railroad. The further from Punta Gorda the more residential structures would be associated with the Ice Houses, so that the fishermen and their families could stay and fish where the fish were. The residential structures were dependent upon proximity to the Ice House. Without the Ice House the existing residential structures on Captiva Shoal are without context.

I look forward to speaking with you about our request, which is a threshold consideration as we attempt to rebuild the Captiva Rocks Ice House.

Sincerely,



Michael P. Haymans

MPH/lsc
cc: Client

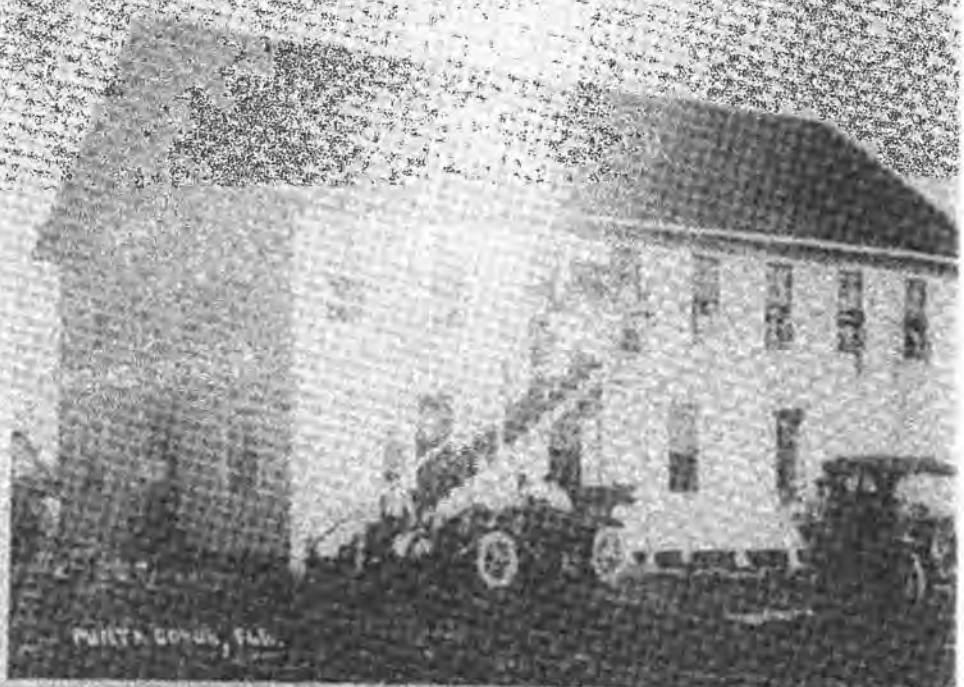
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Historical History of Punta Gorda by Vernon D. Jones

The first saw the regular steam service from Florida until a few years ago. In 1888, the Florida & Cuba Steamship Company was organized with headquarters in Tampa. It had a fleet of six large passenger steamers. The regular route was from Tampa to Key West and back. It was the only regular service between Florida and Cuba at that time. Several years ago, the company was reorganized as the Florida & Cuba Steamship Company. It now has a fleet of eight large passenger steamers. The regular route is from Tampa to Key West and back.

While Punta Gorda was still the main industry on the peninsula, it was eclipsed by the lumber industry in the late 1890's and the 1900's. The Punta Gorda Lumber Manufacturing Company was organized in 1901. In 1907, the company moved to Punta Gorda. By 1910, the company had expanded its facilities and was producing lumber. In 1911, a fire occurred which destroyed the main factory. In 1912, a fire occurred which destroyed the main factory. In 1913, a fire occurred which destroyed the main factory. In 1914, a fire occurred which destroyed the main factory. In 1915, a fire occurred which destroyed the main factory. In 1916, a fire occurred which destroyed the main factory. In 1917, a fire occurred which destroyed the main factory. In 1918, a fire occurred which destroyed the main factory. In 1919, a fire occurred which destroyed the main factory. In 1920, a fire occurred which destroyed the main factory. In 1921, a fire occurred which destroyed the main factory. 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PUNTA GORDA, FLA.



The steamer, built in 1911, was the Powell in 1912, and its name has been changed to the City of Punta Gorda. The R. W. Powell was built in 1911, and it transported food and other supplies to the various fish ranges and brought the catch of fish to the Punta Gorda railroad. Will and Fred Anderson owned and operated the Powell for many years. She was purchased by Collier and renamed the City of Punta Gorda and became a casualty in the maritime disaster. She was white wooded at Punta Gorda, and her name was changed to City of Punta Gorda.

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PUNTA GORDA, FLORIDA

Michael P. Haymans

====ATTORNEY AT LAW, P. A.====

July 3, 2017

Timothy A. Parsons Ph. D. RPA
Division Director and State Historic Preservation Officer
Florida Division of Historical Resources
R. A. Gray Building
500 S. Bronough St
Tallahassee, FL 32399-0250
timothy.parsons@dos.myflorida.com

RE: Reconstruction of the Ice House at Captiva Rocks 8LL1407

Dear Mr. Parsons:

Please advise as to the process we should follow to reconstruct the Ice House at Captiva Rocks 8LL1407, which was listed in the National Register of Historic Places on 4/11/1991 as part of the Fish Cabins of Charlotte Harbor MPS (Multiple Property Submission – the subject MPS lists a total of 11 stilt houses.) Mr. Fred Gaske, Florida State Historic Preservation Officer from 2004 to 2009 set the precedent for allowing reconstruction of these Fish Cabins when he granted approval in 2005 for the reconstruction of several of the Fish Cabins listed in the National Register that were destroyed by Hurricane Charley.

According to Section 253.03(7)(c) FS fish houses, which are listed in or are eligible for listing in the National Register of Historic Places, have the right for continued use so long as they are maintained in a state of good repair and consistent with the National Register. If the properties are damaged or destroyed, they can be reconstructed so long as the reconstruction is consistent with the National Register and does not increase the footprint of the structure.

Unfortunately a fire in 1995 destroyed all but some of the pilings and decking of the Ice House at Captiva Rocks. In 2000 DEP issued a Notice of Denial (Notice) of the owner's request to rebuild the fish house. (See Attachment 1: Submerged Lands and Environmental Resource Program Consolidated Notice of Denial for ERP activities on sovereign submerged lands DEP File No. 36-0128599-002). Pages 6 and 7 of 14 of the Notice reference a February 17, 2000 letter from the Division of Historic Resources (Division) stating that the destruction by the fire makes the Ice House at Captiva Rocks no

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longer eligible for listing in the National Register of Historic Places. (See Attachment 2: February 17, 2000 letter from Janet Snyder Matthews, Ph.D. State Historic Preservation Officer regarding Ice House at Captiva Rocks.) As a result the Notice states that DEP cannot grant approval for the reconstruction.

While in 2000 the Division denied the request to reconstruct the Ice House at Captiva Rocks, in 2005 the Division granted permission to reconstruct fish houses listed on the National Register that were destroyed by Hurricane Charley on August 13, 2004. Please find attached three letters written in 2005 by Frederick Gaske, Director and State Historic Preservation Officer allowing the reconstruction of the fish houses and stating that the reconstruction will not affect the integrity of the property listed in the National Register of Historic Places. (See Attachment 3: Three letters by Frederick Gaske, Director and State Historic Preservation Officer: January 6, 2005 letter Re Larsen Fish Camp – 8LL1403; March 29, 2005 letter Re: Icing Station at Bull Bay – 8CH459 and April 26, 2005 Willis Fish Cabin – 8CH379).

A 2005 newspaper article explained the Division's position towards reconstruction as follows:

It's the commercial fishing era that the houses represent, more than what's left of the original structures, that makes them historically significant, the division says. 'Because these structures are located over the water they were constantly being repaired or rebuilt more than once,' state historic preservation officer Frederick Gaske wrote in a letter to DEP in December. 'Therefore, reconstruction of a stilt house... will not affect the integrity of the property listed in the National Register of Historic Places. (See Attachment 4: "Florida's stilt houses on the mend after hurricanes" by Jamie Manfuso, New York Times News Service, March 13, 2005 – <http://chicagotribune.com>).

We trust that you will agree that the reconstruction of the Ice House at Captiva Rocks is important to preserve and interpret the historic and cultural heritage of commercial fishing in the Charlotte Harbor area. We look forward to working with you on this very important project.

Thank you for your time and attention. Please contact my office; I look forward to hearing from you.

Sincerely,

Michael P. Haymans

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Enclosures

Attachments:

Attachment 1: Submerged Lands and Environmental Resource Program Consolidated Notice of Denial for ERP activities on sovereign submerged lands DEP File No. 36-0128599-002.

Attachment 2: February 17, 2000 letter from Janet Snyder Matthews, Ph.D. State Historic Preservation Officer regarding Ice House at Captiva Rocks.

Attachment 3: Three letters by Frederick Gaske, Director and State Historic Preservation Officer: January 6, 2005 letter Re Larsen Fish Camp – 8LL1403; March 29, 2005 letter Re: Icing Station at Bull Bay – 8CH459 and April 26, 2005 Willis Fish Cabin –8CH379.

Attachment 4: "Florida's stilt houses on the mend after hurricanes" by Jamie Manfuso, New York Times News Service, March 13, 2005 – <http://chicagotribune.com>

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January, 2009 Volume 83, No. 1

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How to Interpret Statutes — or Not: The Phantom of Plain Meaning by Steven Wisotsky

Page 43

The government alleged that in 1926, Timothy McBoyle hired a pilot to steal an airplane and fly it from Ottawa, Illinois, to Guymon, Oklahoma.¹ Although McBoyle denied the charge, the jury convicted him of interstate transportation of a stolen "motor vehicle" in violation of a federal statute. The operative language of the National Motor Vehicle Theft Act of 1919 defined "motor vehicle" to include "an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails."²

On appeal, the 10th Circuit affirmed the conviction, rejecting McBoyle's contention that "the word 'vehicle' includes only conveyances that travel on the ground; that an airplane is not a vehicle but a ship; and that, under the doctrine of ejusdem generis, the phrase 'any other self-propelled vehicle' cannot be construed to include an airplane."³

Canvassing several dictionaries, the court of appeals determined that "vehicle" means "[a]ny receptacle, or means of transport, in which something is carried or conveyed, or travels."⁴ It concluded that "the derivation and the definition of the word 'vehicle' indicate that it is not limited to any means or device by which persons or things are transported, and it is not limited to instrumentalities used for transportation."⁵



The court acknowledged ambiguity in the statute insofar as a land-based vehicle “may be the limited or special meaning of the word.” But, “[w]e do not think it would be inaccurate to say that a ship or vessel is a vehicle of commerce.”⁶

An airplane is self-propelled, by means of a gasoline motor. It is designed to carry passengers and freight from place to place. . . . It furnishes a rapid means for transportation of persons and comparatively light articles of freight and express. It therefore serves the same general purpose as an automobile, automobile truck, or motorcycle. It is of the *same general kind or class* as the motor vehicles specifically enumerated in the statutory definition and, therefore, construing an airplane to come within the general term, “any other self-propelled vehicle,” does not offend against the maxim of *eiusdem generis*.⁷

The Supreme Court granted certiorari and reversed the court of appeals in *McBoyle v. United States*, 283 U.S. 25, 27 (1931). Justice Oliver Wendell Holmes, writing for a unanimous court, held that the statute, making it a federal crime to move a stolen “motor vehicle” in interstate commerce, did not apply to a stolen airplane. “No doubt etymologically it is possible to use the word [vehicle] to signify a conveyance working on land, water or air”⁸ Indeed, that is the “plain meaning” of the word vehicle, as the 10th Circuit had found by both “derivation and definition.”⁹ But the Supreme Court was otherwise persuaded: “It is impossible to read words that so carefully enumerate the different forms of motor vehicles and have no reference of any kind to aircraft, as including airplanes under a term that usage more and more precisely confines to a different class.”¹⁰

The Court alluded to but did not explicitly invoke familiar maxims or canons of construction that were seemingly applicable. It did not, for example, directly apply the rule of *eiusdem generis* to narrow the broad language “any other self-propelled vehicle” to the class or kind of ground-based vehicles enumerated by the statute. The 10th Circuit had reached the opposite conclusion, *i.e.*, that planes were of “the general class as an automobile and a motorcycle.”¹¹ And it did not explicitly invoke the rule of resort to legislative history to interpret ambiguous statutes; there is only a passing observation that airplanes “were not mentioned in the reports or in the debates in Congress.”¹² Nor did it explicitly invoke the familiar rule of lenity to resolve a statutory ambiguity against the government in a criminal prosecution, although the dissenting judge on the court of appeals

had done so.¹³

The Supreme Court chose the rationale that contemporary usage had effectively narrowed the “plain meaning” of motor vehicle in the dictionary sense to land-based vehicles: “But in everyday speech ‘vehicle’ calls up the picture of a thing moving on land.”¹⁴ Building on that linguistic premise, the Court relied additionally upon the principle of fair play: “It is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.”¹⁵

The argument based on unfairness to McBoyle as an individual is dubious because he clearly knew that he was conspiring to commit and committing (as an aider and abettor) the ancient common law crime of larceny. Larceny is *malum in se*, a “ten commandments” crime (Deuteronomy 5:17, “Neither shalt thou steal”).¹⁶ Every sane person knows that it is wrong to steal. The only colorable point about lack of fair warning was whether a reasonable person would know that he or she was committing a crime against the United States *in addition* to the crime(s) against state law. Analogy from other (later) cases suggests that knowledge of the federal character of the offense is not an element for which *mens rea* is required.¹⁷ The only solid basis for the Court's decision is a rejection of foolish literalism based on the apparent legislative intent underlying “motor vehicle” as gleaned from the statutory context.

There are several lessons to be drawn from this opinion. The first is that superficially clear statutory language may upon concentrated analysis prove ambiguous, so that even a phrase as simple, familiar, and concrete as “motor vehicle” becomes subject to interpretation. The second is that in the search for statutory meaning, context trumps literalism. In other words, there is no “plain meaning” without context. This latter point helps to make sense out of what is otherwise the dialectical inconclusiveness of the canons of statutory interpretation.¹⁸ By way of example, a few familiar dueling maxims are adduced below.

• *The Plain Meaning of a Statute Controls — or Not:* The plain meaning of a statute controls “unless this leads to an unreasonable result or a result contrary to legislative intent.”¹⁹

• *“Shall” Is Mandatory, “May” Is Permissive — or Not:* The plain meaning of “may”

denotes a permissive term, but “if reading ‘may’ as permissive leads to an unreasonable result or one contrary to legislative intent, courts may look to the context in which ‘may’ is used and the legislature’s intent” to determine whether “may” should be read as a mandatory term.²⁰

• *“And” Is Conjunctive or Disjunctive — or Not:* “In its elementary sense the word ‘or’ is a disjunctive particle that marks an alternative, generally corresponding to ‘either,’ as ‘either this or that’....”²¹ But there are also some recognized situations “in which the conjunction ‘or’ is held equivalent in meaning to the copulative conjunction ‘and.’”²²

The fatal flaw in these oppositional directives is that there is no built-in mechanism for determining which is which, *i.e.*, whether the putative “rule” applies or its “exception.” One cannot tell without resort to an extrinsic guide or standard whether “shall” is to be read as “may”; whether “and” is to be read as “or.” Therefore, it is impossible for the advocate to know in advance whether the canons of construction will predict decision, as distinguished from explaining it after the fact. And a judge approaching such a case is left at sea without reliance upon something beyond the canons.

This insight is not original to the author, who learned it in law school from Dean Soia Mentschikoff. It was first published nearly 70 years ago by Karl Llewellyn in a law journal, and later reproduced in his classic work *Deciding Appeals: The Common Law Tradition (1960)* (Appendix C), a book described by former Yale Law School Dean Anthony Kronman as “the best account of common-law adjudication that any American has ever offered.”²³

On the dualistic nature of the standard tools of statutory interpretation, Llewellyn was quite blunt about what in terms of legal realism could be termed judge-speak: “[T]he accepted convention still, unhappily, requires discussion as if only one single correct meaning could exist. Hence there are two opposing canons on almost every point.”²⁴ In other words, like a variant of Newton’s Third Law of Motion, for every canon there is an equal and opposite canon. The state of the analytical art has not advanced beyond this dialectic. As Llewellyn said, the canons are “still needed tools of argument” and every lawyer must know them all. But they do not, they cannot, decide the hard cases.

In this regard, appellate opinions have been on the whole remarkably unreflective about the inherent ambiguity of written language. Oral, in-person

communication is infinitely richer in nuance and detail arising from the meaning(s) imparted by the personae and relationship of the speakers, body language, facial expression, proximity, gestures, tone of voice, rhythm, pauses, pacing, inflection, and more. Additionally, although much oral communication relates to simple subjects or tasks, even in complex and sustained presentations, like a law school lecture, a speaker receives almost instantaneous signals of comprehension, confusion, or doubt from his or her interlocutors. Even if only one person is speaking, oral communication is reciprocal, an ongoing feedback loop of communication.

A written text, by contrast, is much more limited in its reach and power. "The printed word is presented to us in a linear way, with syntax supreme in conveying the sense of the words in their order. We read privately, mentally listening to the writer's voice and translating the writer's thoughts."²⁵ Statutes face the additional expressive challenge of universality, trying to regulate (or exempt) every foreseeable occurrence or omission of a certain kind or class.

The reticence of judges to be more explicit about the interpretive process and their reliance upon "accepted conventional vocabulary"²⁶ is no doubt traditional. It is also professional. Judges are not linguists or grammarians, although they are of necessity arbiters of language. Social and political constraints apply to the degree of candor in their opinions. Black-letter high school civics, reinforced by the cable television commentariat, emphasizes a rather mechanical separation of powers in which judges merely apply positive law. Judicial lawmaking has fallen, especially since the Warren Court, into political disrepute. Our inheritance of centuries of judge-made common law on the most fundamental matters of life and death is largely ignored or forgotten.

A more candid evaluation of the challenge of interpreting statutes would acknowledge that precision in statutory drafting is aspiration rather than reality, becoming more difficult as the complexity of the subject under regulation increases. Judges are necessary as translators of the statutory language in each case-specific context as it arises. They mediate the meaning of statutes, as any reader must do.²⁷ There is no other possibility. How, then, should they proceed?

In truth, all meaning is contextual. The meaning of individual words may, of course, be clear: "A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."²⁸ But meaning arises also from syntax, the

interrelationship of words living “a communal existence.” In Judge Learned Hand’s phrase, the meaning of each word informing the others and “all in their aggregate tak[ing] their purport from the setting in which they are used.”²⁹ Thus, the overall meaning of the sentences, sections, and paragraphs of a statute may with clear words still be ambiguous in application, as amply demonstrated by the National Motor Vehicle Theft Act as applied to McBoyle’s theft of an airplane.

A more recent case closer to home illustrates the point that statutory language may be plain yet ambiguous. In *Kasischke v. State*, 991 So. 2d 803, 807 (Fla. 2008), the Florida Supreme Court held five-to-two that “[t]he plain language of the statute could be construed in at least four ways.” The two dissenters wrote separately to argue that the plain meaning of the statute was unambiguous.³⁰ Plainly, the court as a whole could not find clear meaning from the statutory language prohibiting the possession of pornography “relevant to the offender’s deviant behavior pattern.”³¹ For that reason, the majority resorted to a variety of canons of construction, based on the maxim that “if the language of the statute is unclear, then the rules of statutory construction control.”³²

With statutes presenting clear language but multiple possible interpretations, the dictionary ceases to determine meaning. More sophisticated analysis is required, and context is king. “Language, of course, cannot be interpreted apart from context. The meaning of a word that appears ambiguous if viewed in isolation may become clear when the word is analyzed in light of the terms that surround it.”³³ “[I]n ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.”³⁴

In this sense, “plain meaning” is a misnomer and is better called “situational meaning.” Even a stop sign does not mandate a stop if in a particular situation a traffic officer waves cars through or if a passenger is in cardiac arrest and requires immediate delivery to a hospital emergency room. If the plain meaning of a statute was really so plain, would not the appellate opinions explaining them be redundant; would not the cases more properly be decided by a per curiam affirmance? Further, would not the losing party be liable for sanctions (a fee award) for pursuing a frivolous appeal where the “plain meaning” was, as the court decided, against the loser’s position? Of course, that is far from reality. How else does one explain a five-to-four decision turning on words so apparently simple? “The Court today ignores the plain meaning of the Federal Service

Labor-Management Relations Statute...³⁵

The fact is that plain meaning is riddled with exceptions and doubts:

In *Church of the Holy Trinity v. United States*. . . this Court conceded that a church's act of contracting with a prospective rector fell within the plain meaning of a federal labor statute, but nevertheless did not apply the statute to the church: "It is a familiar rule," the Court pronounced, "that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers."³⁶

There is, furthermore, a split among jurists regarding techniques of finding statutory meaning. Some judges reject the idea that a putative plain meaning should foreclose consideration of legislative history or other sources. "Believers in plain meaning might be excused for thinking that the text answers the question. But history may have something to say about what is plain, and here history is not silent."³⁷ "It is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."³⁸ The plain meaning rule is "rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists."³⁹

Summing up, what the courts have told the bench and bar is, in effect, to read statutes as one reads most texts, following dictionary definitions (except for terms of art), and rules of syntax, grammar, and punctuation where they work to produce a sensible result — the most plausible interpretation of the language in question. Excessive literalism is to be avoided. Thus, courts should "disregard the punctuation, or repunctuate, if need be, to render the true meaning of the statute."⁴⁰ Why? "Statutory construction 'is a holistic endeavor.'"⁴¹ It must account for a statute's "object and policy."⁴²

Often, "plain meaning" will be plain enough using common sense and common understanding. But it is the hard cases, the ones that justify a reasoned appellate opinion or second-tier review, that truly illuminate the unavoidable judicial choices in the decision-making process and the limited utility of the canons of construction. In such cases, the search for plain meaning devolves to a choice

among competing options to arrive at the most plausible meaning among the several alternatives.

The advocate's job, whether at trial or on appeal, is to advance the interpretation of the statute most beneficial to his or her client's position as the one that is also the most consistent with the common sense of the statute. Plain meaning and other canons can facilitate argument but not decide it conclusively. "Llewellyn stresses that cases cannot be decided merely by identifying the controlling rules of law, the 'paper' rules, as he dismissively describes them. The decision of a case always requires a choice among alternatives, hence an exercise of will."⁴³ Hence:

[T]o make any canon take hold in a particular instance, the construction contended for must be sold, essentially, by means other than the use of the canon: The good sense of the situation and a *simple* construction of the available language to achieve that sense, *by tenable means, out of the statutory language*.⁴⁴

Mutatis mutandis, the task for judges in the search for law and justice in a case of statutory interpretation, is ultimately the same, attainable by what Judge Richard Posner calls the exercise of "sound judgment."⁴⁵

¹ *McBoyle v. United States*, 43 F.2d 273, 274 (10th Cir. 1930).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 274 (emphasis added).

⁸ *McBoyle*, 283 U.S. at 26.

⁹ *McBoyle*, 43 F.2d at 274.

¹⁰ *McBoyle*, 283 U.S. at 27.

¹¹ *McBoyle*, 43 F.2d at 274.

¹² *McBoyle*, 283 U.S. at 26.

¹³ *McBoyle*, 43 F.3d at 276 (Cottler, J., dissenting).

¹⁴ *McBoyle*, 283 U.S. at 26.

¹⁵ *Id.* at 27.

¹⁶ See *Foster v. State*, 596 So. 2d 1099, 1103 & n.2 (Fla. 5th D.C.A. 1992) (Coward, J. dissenting).

¹⁷ Cf. *United States v. Feola*, 420 U.S. 671 (1975) (holding that the crime of assaulting a federal officer does not require proof that defendant knew victim was a federal officer and that there is “no risk of unfairness” in such rule).

¹⁸ The same principles generally apply to the interpretation of other forms of positive law. “The rules used in construing statutes are in general applicable in construing the provisions of a constitution.” See *State ex rel. McKay v. Keller*, 191 So. 542, 545 (Fla. 1939). “[T]he basic rule requiring that the intent of the framers and adopters be given effect equally controls in construing constitutional provisions.” See *State ex rel. Dade County v. Dickinson*, 230 So. 2d 130, 135 (Fla. 1969).

¹⁹ *Cherry v. State*, 959 So. 2d 702, 713 (Fla. 2007).

²⁰ *Shands Teaching Hosp. & Clinics, Inc. v. Sidky*, 936 So. 2d 715, 721 (Fla. 4th D.C.A. 2006).

²¹ *Pompano Horse Club v. State*, 111 So. 801, 805 (Fla. 1927).

²² *Id.*

²³ Anthony Kronman, *The Lost Lawyer* 211 (1993).

²⁴ Karl Llewellyn, *Deciding Appeals: The Common Law Tradition* 521 (1960).

²⁵ Lynne Truss, *Eats, Shoots & Leaves* 180 (2003).

²⁶ Llewellyn, *Deciding Appeals: The Common Law Tradition* at 521.

²⁷ “Readers attend to the text. They create images and verbal transformations to represent its meaning. Most impressively, they generate meaning as they read by constructing relations between their knowledge, their memories of experience, and the written sentences, paragraphs and passages.” Alberto Monguel, *A History of Reading* 39 (1996), quoting, Lewin C. Wittrock, *Reading Comprehension in Neuropsychological and Cognitive Processes in Reading* (Oxford, 1981).

²⁸ *Perrin v. United States*, 444 U.S. 37, 42 (1979).

²⁹ *NLRB v. Federbush Co.*, 121 F.2d 954, 957 (2d Cir. 1941).

³⁰ *Kasischke v. State*, 991 So. 2d at 827 (Lewis & Bell, J.J., dissenting).

³¹ *Id.* at 805.

³² *Id.* at 811 (quoting, *Joshua v. City of Gainesville*, 768 So. 2d 432, 435 (Fla. 2000)).

³³ *Smith v. United States*, 508 U.S. 223, 229 (1993); accord, *Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004).

³⁴ *Household Credit Services, Inc. v. Pfenning*, 541 U.S. 232, 239 (2004) (quoting the circuit court of appeals).

³⁵ *Nat’l Fed’n of Fed. Employees, Local 1309 v. Dep’t of Interior*, 526 U.S. 86, 101 (1999) (O’Connor, J., dissenting).

³⁶ *Zuni Public Schools Dist. No. 89 v. Dep’t of Educ.*, 127 S. Ct. 1534, 1551 (2007) (Scalia, J., dissenting) (citations omitted).

³⁷ *United States v. Mezzanotto*, 513 U.S. 196, 212 (1995) (Souter, J., dissenting).

³⁸ *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir. 1945), *aff'd*, 326 U.S. 404 (1945).

³⁹ *Boston Sand & Gravel Co. v. United States*, 278 U.S. 41, 48 (1928) (Justice Holmes writing for the majority). *See also United States v. Am. Trucking Ass'ns, Inc.*, 310 U.S. 534, 543-544 (1940) ("When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'") (citations omitted).

⁴⁰ *Hammock v. Farmers' Loan & Trust Co.*, 105 U.S. 77, 84-85 (1882) (internal quotation marks and citation omitted).

⁴¹ *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988).

⁴² *United States v. Heirs of Boisdore*, 49 U.S. (8 How.) 113, 122 (1849) (quoted in more than a dozen cases).

⁴³ Kronman, *The Lost Lawyer* at 196.

⁴⁴ Llewellyn, *Deciding Appeals: The Common Law Tradition* at 521 (emphasis in original).

⁴⁵ Kronman, *the lost lawyer* at 231.

Steven Wisotsky has served since 1980 as a tenured professor of law at Nova Southeast University Law Center, where he teaches appellate practice, white collar crimes, criminal procedure, and other courses. He has also served as special counsel at Zuckerman Spaeder, LLP, in Miami. His practice covers civil rights, commercial litigation, regulation of medical care providers, condominium and land use litigation, white collar criminal appeals, legal malpractice defense, civil RICO, and class actions. He is a member of the Federal Trial Bar (SD FL), the Bars of the Fourth, Fifth, and 11th U.S. circuits, and the Bar of the U.S. Supreme Court.

This column is submitted on behalf of the Appellate Practice Section, Siobhan

Helene Shea, chair, and Tracy R. Gunn, Kristin A. Norse, and Heather M. Lammers, editors.

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Journal HOME



Jeb Bush
Governor

Exhibit 2 -
**Department of
Environmental Protection**

South District
P.O. Box 2549
Fort Myers, Florida 33902-2549

David B. Struhs
Secretary

FILE

SUBMERGED LANDS AND ENVIRONMENTAL RESOURCE PROGRAM

**CONSOLIDATED NOTICE OF DENIAL
FOR ERP ACTIVITIES ON SOVEREIGN SUBMERGED LANDS**

CERTIFIED MAIL NO. Z 519 782 282
RETURN RECEIPT REQUESTED

In the Matter of an
Application for Permit/Water Quality Certification,
and Authorization to Use Sovereign Submerged Lands by:

Daniel V. Heleski
Performance Construction, Inc.
308 West Highland Drive
Lakeland, FL 33813

Lee County - ERP
DEP File No. 36-0128599-002

**NOTICE OF DENIAL
ENVIRONMENTAL RESOURCE PERMIT**

The State of Florida Department of Environmental Protection (Department) gives its
notice of denial of:

- (a) an environmental resource permit under Part IV of Chapter 373, Florida Statutes
(F.S.), and Title 62, Florida Administrative Code (F.A.C.), which also constitutes

"More Protection, Less Process"

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Exhibit 2 -

denial of certification of compliance with state water quality standards pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341; and
(b) authorization to use sovereign submerged lands for the proposed activity, under Article X, Section 11 of the Florida Constitution, Chapters 253 and 258, F.S., and Title 18, F.A.C.

Where applicable (such as for activities in coastal counties), this consolidated denial of the environmental resource permit and the authorization to use sovereign submerged land also constitutes a finding of inconsistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

This Notice of Denial is based on the reasons stated below.

I. DESCRIPTION OF THE PROPOSED ACTIVITY

The Applicant, Daniel V. Heleski, applied on March 14, 2000, to the Department for an environmental resource permit/water quality certification and requested authorization to use sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to rebuild a stilthouse.

This activity includes consideration of an application for a 20-year sovereignty, submerged land lease containing an undetermined number of square feet for the stilthouse and associated mooring area, which requires payment of an estimated \$841.82 representing the initial lease fee and including an initial 25 percent surcharge payment, plus sales tax pursuant to Section 212.031, F.S.

This project is located on sovereignty submerged lands in Pine Island Sound, Class III Outstanding Florida Waters, Pine Island Sound Aquatic Preserve, Lee County, Section 23, Township 44 South, Range 21 East.

II. AUTHORITY FOR REVIEW

The Department has permitting authority under Part IV of Chapter 373, F.S., and Chapters 62-330, 62-341, and 62-343, F.A.C. The activity is not exempt from the requirement to obtain an environmental resource permit. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing this application.

The activity also requires a proprietary authorization, as it is located on sovereign submerged lands owned by the Board of Trustees. The activity is not exempt from the need to obtain a proprietary authorization. Pursuant to Article X, Section 11 of the Florida Constitution, Sections 253.002 and 253.77, F.S., Sections 18-21.0040, 18-21.0051, 18-20, and 62-343.075, F.A.C., and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department has the authority to review and take final action on this request for proprietary authorization.

III. REASONS FOR DENIAL

A. Environmental Resource Permit and Sovereign Submerged Lands Authorization

The Applicant has not provided reasonable assurance that the construction and operation of the activity, considering the direct, secondary and cumulative impacts, will comply with the provisions of Part IV of Chapter 373, F.S., and the rules adopted thereunder. Specifically, the

activity does not meet the Conditions for Issuance or Additional Conditions for Issuance of an environmental resource permit, pursuant to Part IV of Chapter 373, F.S., Chapters 62-330, and Sections 40E-4.301 and 40E-4.302, F.A.C., because the Applicant has not provided reasonable assurance that:

- (1) The immediate and long-term impacts of the activity will not cause violations of the water quality standards set forth in Chapters 62-4, 62-302, F.A.C., including any anti-degradation provisions of Sections 62-4.242 and 62-302.530, F.A.C., and the criteria in 40E-4.301, F.A.C. The activity is also anticipated to cause degradation of the ambient water quality of Outstanding Florida Waters, in contravention of the provisions of Sections 62-4.242 and 62-302, F.A.C.;
- (2) The project will meet the criteria in 40E-4.302(1)(b), F.A.C. regarding avoidance of unacceptable cumulative impacts upon wetlands and other surface waters;
- (3) The project will comply with the criteria in subsection 40E-4.302(1)(c), F.A.C., as the activity will adversely affect Class II waters or is located in Class II waters or Class III waters classified by the Department as approved, restricted or conditionally restricted for shellfish harvesting as set forth or incorporated by reference in Chapter 62R-7, F.A.C.; and
- (4) The project will comply with the criteria, including the mitigation provisions and the provisions for elimination or reduction of impacts, contained in Section 373.414(1)(b), F.S., and the South Florida Water Management District Basis of Review 4.2.1.

Additionally, the applicant has not submitted the \$500 permit application fee required by Section 62-4.050(4)(g)2.c.(III), F.A.C.

The request for authorization to use sovereign submerged lands is denied because the Applicant has not met all applicable requirements for proprietary authorizations to use sovereign submerged lands, pursuant to Article X, Section 11 of the Florida Constitution, Chapter(s) 253 and 258, F.S., associated Chapters(s) 18-21 and 18-20, F.A.C., and the policies of the Board of Trustees. Specifically:

(1) construction of the activity is inconsistent with the management policies, standards and criteria of Section(s) 18-21.004 and 18-20.004, F.A.C. The Applicant has not provided reasonable assurance that the activity will be "not contrary to the public interest" and will be clearly "in the public interest", will maintain essentially natural conditions, will not cause adverse impacts to fish and wildlife resources or public recreation or navigation, and will not interfere with the riparian rights of adjacent property owners. In addition, the project is inconsistent with the goals and objectives of the "Conceptual State Lands Management Plan" adopted by the Board of Trustees on March 17, 1981 and modified on March 15, 1983;

(2) construction of the activity is inconsistent with Sections 18-21.00405(6)(a)1 and 2, F.A.C. Specifically, the proposed structure is a nonwater dependent structure. Section 18-21.00405(6)(a)1 and 2, F.A.C., state that nonwater dependent structures shall not be rebuilt or restored if 50 percent or more of the structure is destroyed, or if use of the structure has been discontinued and 50 percent or more of the structure must be replaced in order to restore

the structure to a safely usable condition. According to photos submitted with the application, and prior on-site visits by Department staff, the structure has been 100 percent destroyed by fire. Therefore, use of the structure has been discontinued and 50 percent or more of the structure must be replaced in order to restore the structure to a safely usable condition.

Section 253.03(7)(c), F.S., states that structures which are listed in or are eligible for the National Register of Historic Places or the State Inventory of Historic Places which are over the waters of the State of Florida and which have a submerged land lease, or have been grandfathered to use sovereignty submerged lands until January 1, 1998, pursuant to rule 18-21.00405, Florida Administrative Code, shall have the right to continue such submerged land leases, regardless of the fact that the present landholder is not an adjacent riparian landowner, so long as the lessee maintains the structure in a good state of repair consistent with the guidelines for listing. If the structure is damaged or destroyed, the lessee shall be allowed to reconstruct, so long as the reconstruction is consistent with the integrity of the listed structure and does not increase the footprint of the structure. If a structure so listed falls into disrepair and the lessee is not willing to repair and maintain it consistent with its listing, the state may cancel the submerged lease and either repair and maintain the property or require that the structure be removed from sovereignty submerged lands.

On March 1, 2000, the Department received a February 17, 2000 letter from the Department of State, Division of Historical Resources, stating the following. "The fire in 1995 destroyed all but some of the pilings and decking. The property no longer conveys

its significance because the design, materials, workmanship, feeling and association have been lost. The Ice House at Captiva Rocks, therefore, is no longer eligible for listing the National Register of Historic Places, and is no longer significant.” Based on the Department’s interpretation of that letter and section 253.03(7), F.S., the remains of the original structure and the applicant’s proposed project do not qualify for authorization to use sovereignty submerged land; and

(3) the authorization to use sovereign submerged lands cannot be approved, in accordance with Sections 18-21.00401 and 62-343.075, F.A.C., because the activity does not meet the conditions for issuance of a standard general or individual permit under Part IV of Chapter 373, F.S., as described above.

B. Coastal Zone Consistency

Based on the above, the Department has determined that the activity is inconsistent with Florida's Coastal Management Program (FCMP), as required by Section 307 of the Coastal Zone Management Act. Pursuant to Section 380.23, F.S., the Department may not issue a permit for an activity found to be inconsistent with the FCMP. The Department has recommended project design modifications which would bring the project into compliance with the Department’s statutory authority under the FCMP (see below). However, the Applicant has not modified the application in accordance with those recommendations.

IV. PROPOSED CHANGES

The Department has determined that the following changes to the project may enable the Department to grant a consolidated permit and authorization to use sovereign submerged lands:

the applicant should provide to the Department the information requested in the April 13, 2000 Request for Additional Information prepared by the Department.

Modification of the project as specified above may enable the Department to determine that the activity is consistent with Florida's Coastal Management Plan.

V. RIGHTS OF AFFECTED PARTIES

This denial is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this action automatically becomes only proposed agency action on the application, subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in granting the application.

Mediation is not available.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Under rule 62-110.106(4) of the Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

A person subject to regulation has a right to apply for a variance from or waiver of the requirements of particular rules, on certain conditions, under section 120.542 of the Florida Statutes. The relief provided by section 120.542 applies only to regulatory rules. It does not apply to proprietary rules of the Board of Trustees of the Internal Improvement Trust Fund. Nor does it apply to statutes or federal regulatory requirements. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have in relation to the Department's action or proposed action.

The application for a variance or waiver is made by filing a petition with the Department of Environmental Protection, Office of General Counsel, Mail Station 35, 3900 Commonwealth

Boulevard, Tallahassee, Florida 32399-3000. The petition must specify the following information:

- (a) The name, address, telephone number, and any facsimile number of the petitioner;
- (b) The name, address, and telephone number, and any facsimile number of the attorney or qualified representative of the petitioner, if any;
- (c) The applicable rule or portion of a rule from which a variance or waiver is requested;
- (d) The citation to the statute underlying (implemented by) the rule identified in (c) above;
- (e) The type of action requested;
- (f) The specific facts that demonstrate a financial hardship or a violation of principles of fairness that would justify a variance or waiver for the petitioner;
- (g) The reason why the variance or waiver would serve the purposes of the underlying statute (implemented by the rule); and
- (h) A statement whether the variance or waiver is permanent or temporary and, if temporary, a statement of the dates showing the duration of the variance or waiver requested.

The Department will grant a variance or waiver when the petition demonstrates both that the application of the rule would create a substantial hardship or violate principles of fairness, as each of those terms is defined in section 120.542(2) of the Florida Statutes, and that the purpose of the underlying statute will be or has been achieved by other means by the petitioner.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the

right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

In accordance with rules 28-106.111(2) and 62-110.106(3)(a)(4), petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under section 120.60(3) of the Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that right.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;

- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301.

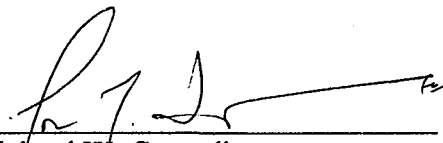
Under sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This denial constitutes an order of the Department. Subject to the provisions of paragraph 120.68(7)(a) of the Florida Statutes, which may require a remand for an administrative hearing, the applicant has the right to seek judicial review of the order under section 120.68 of the Florida Statutes, by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900

Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department. The applicant, or any party within the meaning of section 373.114(1)(a) or 373.4275 of the Florida Statutes, may also seek appellate review of this order before the Land and Water Adjudicatory Commission under section 373.114(1) or 373.4275 of the Florida Statutes. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when the order is filed with the Clerk of the Department.

Executed in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Richard W. Cantrell
Director of District Management
South Florida District
P.O. Box 2549
Fort Myers, Florida 33902
Telephone: (941) 332-6975

RWC/LB/MRM/m

cc:

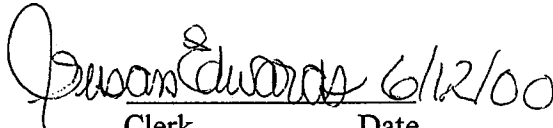
U.S. Army Corps of Engineers, Tampa
Lee County Property Appraiser
Bureau of Public Land Administration
Florida Marine Patrol
OCRM, Washington, D.C.
Ralph Cantral, FCMP Director, DCA
Department of Community Affairs
Florida Fish and Wildlife Conservation Commission

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this denial including all copies, was mailed before the close of business on June 12, 2000, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to 120.52(7),
Florida Statutes, with the designated Department Clerk,
receipt of which is hereby acknowledged.


Clerk Date

CERTIFIED

Z 519 782 282

MAIL

DANIEL V HELESKI
PERFORMANCE CONSTRUCTION INC
308 WEST HIGHLAND DRIVE
LAKELAND FL 33813

FILE

Z 519 782 282

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
DANIEL HELESKI	
Street & Number	
36-0128599-002	
Post Office, State, & ZIP Code	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	e

00, April 1995

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
FT MYERS REGIONAL SERVICE CENTER
P.O. BOX 2549
FT. MYERS, FLORIDA 33902-2549

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

DANIEL V HELESKI
308 W HIGHLAND DR
LAKELAND FL 33813

4a. Article Number

Z 519 782 282

4b. Service Type

- Registered Certified
- Express Mail Insured
- Return Receipt for Merchandise COD

7. Date of Delivery

G-13

5. Received By: (Print Name)

LARRY FREDER

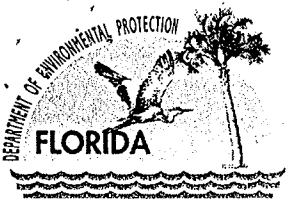
6. Signature: (Addressee or Agent)

X Larry Freder

8. Addressee's Address (Only if requested and fee is paid)

36-0128599-002
DANIEL HELESKI

Thank you for using Return Receipt Service.



FILE

Exhibit 3 -
**Department of
Environmental Protection**

Lawton Chiles
Governor

South District
2295 Victoria Avenue, Suite 364
Fort Myers, Florida 33901-3881
P.O. Box 2549
Fort Myers, FL 33902-2549

Virginia B. Wetherell
Secretary

CERTIFIED MAIL NO. P 148 414 050
RETURN RECEIPT REQUESTED

In the matter of an Application for Permit/Water Quality Certification and Authorization to Use Sovereign Submerged Lands by:

Albert A. Quednau
c/o Daniel V. Heleski
Performance Construction, Inc.
308 West Highland Drive
Lakeland, FL 33813

DEP File No. 363019105
Lee County - ERP

CONSOLIDATED NOTICE OF DENIAL

**ENVIRONMENTAL RESOURCE PERMIT AND CONSENT TO USE SOVEREIGN
SUBMERGED LANDS**

The State of Florida Department of Environmental Protection (Department) gives consolidated notice of denial of:

(a) an environmental resource permit under Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.), which also constitutes denial of certification of compliance with state water quality standards pursuant to Section 404 of the Clean Water Act, 33 U.S.C. 1344.

(b) the consent to use sovereign submerged lands for the proposed activity, under Article X, Section 11 of the Florida Constitution, Chapter(s) 253 and 258, F.S., Title 18, F.A.C., and the policies of the Board of Trustees.

Where applicable (such as for activities in coastal counties), this consolidated denial of the environmental resource

permit and the authorization to use sovereign submerged also constitutes a finding of inconsistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

This Consolidated Notice of Denial is based on the reasons stated below.

I. DESCRIPTION OF THE PROPOSED ACTIVITY

The Applicant, Albert A. Quednau, applied on February 10, 1997, to the State of Florida Department of Environmental Protection for a permit/water quality certification and requested authorization to use sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to rebuild a stilthouse. The project site is located on sovereignty submerged lands in Pine Island Sound, Class III Outstanding Florida Waters, Pine Island Sound Aquatic Preserve, Lee County, Section 23, Township 44 South, Range 21 East.

II. AUTHORITY FOR REVIEW

The Department has permitting authority under Part IV of Chapter 373, F.S., and Chapters 62-330, 62-341, and 62-343, F.A.C. The activity is not exempt from the requirement to obtain an environmental resource permit. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing this application.

The activity also requires a proprietary authorization, as it is located on sovereign submerged lands owned by the Board of Trustees. The activity is not exempt from the need to obtain a proprietary authorization. Pursuant to Article X, Section 11 of the Florida Constitution, Sections 253.002 and 253.77, F.S., Sections 18-21.0040, 18-21.0051, 18-20, and 62-343.075, F.A.C., the policies of the Board of Trustees, and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department has the authority to review and take final action on this request for proprietary authorization.

III. REASONS FOR DENIAL

A. Environmental Resource Permit and Sovereign Submerged Lands Authorization

On March 10, 1997, the Department requested additional information (copies enclosed) from the applicant pursuant to Section 62-312.060, F.A.C. The Applicant has failed to submit additional information.

On July 8, 1997, the Department provided a letter to the applicant's agent providing potential processing options because of the applicant's stated intent to apply for a conveyance of the submerged land beneath the previously existing fishshack pursuant to the Butler Act. The applicant failed to respond to that letter.

Pursuant to Section 120.060(2), F.S., the Department may deny a permit application if the Applicant, after receiving timely notice, fails to correct errors, omissions, or supply additional information in a reasonable period of time.

The request for authorization to use sovereign submerged lands is denied because the Applicant has not met all applicable requirements for proprietary authorizations to use sovereign submerged lands, pursuant to Article X, Section 11 of the Florida Constitution, Chapter(s) 253 and 258, F.S., associated Chapters(s) 18-21 and 18-20, F.A.C., and the policies of the Board of Trustees. Specifically:

the structure proposed to be rebuilt is a nonwater dependent structure. Rule 18-21.00405(6)(a)1 and 2, F.A.C., state that nonwater dependent structures shall not be rebuilt or restored if 50 percent or more of the structure is destroyed, or if use of the structure has been discontinued and 50 percent or more of the structure must be replaced in order to restore the structure to a safely usable condition. According to photos submitted with the application, and an April 3, 1997 site inspection by the Department, the structure proposed to be rebuilt has been 100 percent destroyed by fire.

IV. RIGHTS OF AFFECTED PARTIES

The Department hereby denies the permit unless a timely petition for an administrative proceeding (hearing) is filed pursuant to the provisions of Section 120.57, F.S., and Chapter

62-103, F.A.C., or unless all parties reach a written agreement on mediation as an alternative remedy under Section 120.573, F.S., before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for petitioning for a hearing are set forth below, followed by the procedures for pursuing mediation.

A person whose substantial interests are affected by the Department's permitting decision (action) may petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the

Office of General Counsel, Mail Station 35
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000.

Petitions filed by any person, including the Applicant and any of the parties listed below, must be filed within fourteen (14) days from the date of receipt of this Notice of Permit Denial. A Petitioner must mail a copy of the petition to the Applicant at the address indicated above, at the time of filing. The failure of any person to file a petition (or a request for mediation, as discussed below) within the allowed time frame shall constitute a waiver of that person's right to request an administrative hearing under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any

subsequent intervention will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-5.207, F.A.C.

A petition must contain the following information:

(a) The name, address, and telephone number of each Petitioner, the Applicant's name and address, the Department Application File Number, and the county in which the project is proposed;

(b) A statement of how and when each Petitioner received notice of the Department's action or proposed action;

(c) A statement of how each Petitioner's substantial interests are affected by the Department's action or proposed action;

(d) A statement of the material facts disputed by the Petitioner, if any;

(e) A statement of the facts that the Petitioner contends warrant reversal or modification of the Department's action or proposed action;

(f) A statement identifying the rules or statutes that the Petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by the Petitioner, stating precisely the action that the Petitioner wants the Department to take with respect to the action or proposed action addressed in this Notice of Permit Denial.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this Notice of Permit Denial. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Any person may elect to pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Applicant, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Department's action or proposed action. The agreement must be filed (received) in the Office of General Counsel of the Department at the above address by the same deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;

(d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

(e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been selected;

(f) The name of each party's representative who shall have authority to settle or recommend settlement;

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this Notice of Permit Denial or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and

(h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, F.S., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, F.S., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty (60) days from the date of execution of the agreement.

If mediation results in settlement of the administrative dispute, the Department must enter a Final Order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in

accordance with the requirements for such petitions set forth above, and must therefore file their petitions by the same deadline as set forth above for the filing of a petition.

If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, F.S., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

This notice constitutes final agency action unless a petition or a request for mediation is filed in accordance with the above paragraphs, or unless a request for extension of time in which to file a petition is filed within the time specified for filing a petition and conforms to Rule 62-103.070, F.A.C. Upon timely filing of a petition, a request for mediation, or a request for an extension of time this notice will not be effective until further Order of the Department.

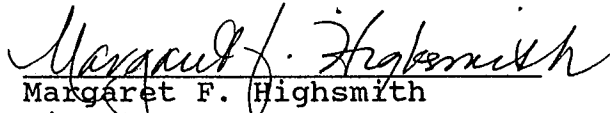
When the Order is final, any party to the Order has the right to seek judicial review of the Order pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, Mail Station 35, at 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; and by filing a copy with the appropriate District

Lee County - ERP
DEP File No. 363019105
Page 10 of 10

Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Order is filed with the clerk of the Department.

Executed in Fort Myers, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Margaret F. Highsmith
Director of
District Management

MFH/JMI/MRM/m

Enclosure(s)

Copies furnished to:

Lee County Property Appraiser
DEP, Office of General Counsel, Tallahassee
DEP, Bureau of Coastal and Aquatic Managed Areas, Bokeelia
U.S. Army Corps of Engineers, Tampa

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this NOTICE OF PERMIT DENIAL and all copies were mailed before the close of business on 6-17-98 to the listed persons.

Clerk Stamp

FILING AND ACKNOWLEDGMENT
filed, on this date, pursuant
to §120.59, F.S., with the
designated Department Clerk,
receipt of which is hereby
acknowledged.


Clerk

6-17-98
Date

P 148 414 050

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to Quednau 363019105	
Street & Number	
Post Office, State, & ZIP Code	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, April 1995

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SENDER:

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- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1. Addressee's Address
- 2. Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Albert A. Quednau
 c/o A.V. Heleski
 Performance Court, Inc.
 308 W Highland Dr
 Lakeland FL 33813

4a. Article Number

P 148 414 050

4b. Service Type

- Registered Certified
- Express Mail Insured
- Return Receipt for Merchandise COD

7. Date of Delivery

6-18-98 Z

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X *Albert A. Quednau*

8. Addressee's Address (Only if requested and fee is paid)

MKM Serial
 ER 363019105

Thank you for using Return Receipt Service.