

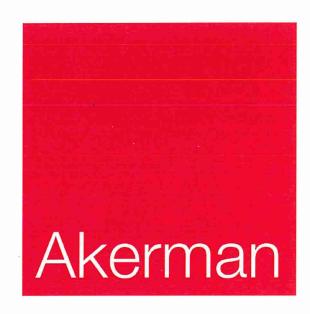


David Clark, Department of Environmental Protection Spencer Crowley, Akerman, LLP. Tim Rach, Department of Environmental Protection Kevin S. Hennessy, Esq.



- Founding member of the firm and Shareholder in charge of the firm's Bradenton Office. He also serves as the chair of the Administrative, Civil, and Appellate Litigation Practice Group.
- Mr. Hennessy received his J.D., cum laude, University of Miami and B.A., in politics form Wake Forest University
- Has more than 30 years of experience representing clients in the negotiation and litigation of environmental permitting and enforcement issues, land development, coastal construction matters, riparian and water rights, hazardous waste, wetland issues, property rights and eminent domain.

### T. Spencer Crowley, III, Esq.



Spencer Crowley's law practice focuses on large scale land use and environmental permitting matters, including zoning, growth management, urban development, transportation oriented development, sovereignty submerged lands, coastal regulation, marina permitting, wetlands, and water resources. He has worked with the Governor's Commission for a Sustainable South Florida, the South Florida Water Management District, and Duke University's Wetlands Center in the Florida Everglades. He has assisted clients in the land use permitting of major projects such as the Babcock Ranch, Midtown Miami, Village at Gulfstream Park, Miami World Center, Brickell City Centre and the Miami Design District. In addition to his private practice, Spencer has served on several boards related to Florida's waterways. In 2008, County Commissioner Carlos Gimenez appointed Spencer

to the committee charged with reviewing and recommending changes to Miami-Dade County's Manatee Protection Plan. In 2007, Spencer was appointed to serve as Miami-Dade County Commissioner for the Florida Inland Navigational District (FIND), and he was reappointed for successive 4-year terms by Governor Rick Scott in 2011 and in 2015. As the Miami Dade FIND Commissioner, Spencer has played an instrumental role in several regionally significant projects such as the restoration of the Miami Circle site, acquisition of Manatee Bend park on the Little River in Miami's Palm Grove neighborhood, funding the

seawall and baywalk at Museum Park and the FEC slip, implementing various projects along the Miami River riverwalk, dredging of the Miami River and Wagner Creek/Seybold Canal, and dredging of the Dania Cutoff Canal and the intracoastal waterway in Ft. Lauderdale to expand the marine industry in that area. In 2005, Miami Mayor Manny Diaz appointed Spencer to the City of Miami's Waterfront Advisory Board where he served as chair and oversaw adoption of the Coconut Grove waterfront master plan. Most recently, Mr. Crowley was asked to serve on the Advisory Board of Florida SeaGrant, a cooperative of Florida's various State Universities and the National Oceanic and Atmospheric Administration, which addresses environmental and socioeconomic issues related to

Florida's coastal areas. Spencer holds an undergraduate degree in Environmental Science and Policy from Duke University, a Master's degree in Marine Affairs and Policy from the University of Miami's Rosenstiel School of Marine and Atmospheric Sciences, and JD and MBA from the University of Florida where he earned a certificate in Environmental and Land-use Law and served on the Florida Law Review and the Environmental Moot Court team. Spencer lives in the City of Miami with his wife and four children.

#### David Clark, Director for the Division of State Lands, DEP



- Prior to becoming Director of State Lands, David Clark served the Department of Environmental Protection as both Deputy Director of State Lands and Director of Cabinet Affairs since February 2014.
- He served for four years in the U.S. Army as an officer with the 82nd Airborne Division, America's Guard of Honor. Before his military service, he worked at DEP in the Office of Cabinet Affairs and in the Division of State Lands.
- David holds a real estate license and degrees in business administration and accounting from Flagler College.

## Timothy Rach



Timothy Rach is a Program Administrator in the Submerged Lands & Environmental Resources Coordination Program at the Florida Department of Environmental Protection. He has been with DEP for over 22 years in various management and supervisory positions. Most of his time has been in the Environmental Resources Permitting program regulating development in wetlands and surface waters. Tim is responsible for overseeing the statewide implementation of the ERP rules and regulations within the Department, Water Management Districts and local delegated programs. He holds a BS degree in Marine Biology from Troy University and a MS degree in Ecology from Old Dominion University.

# Administration of the Public Trust Doctrine

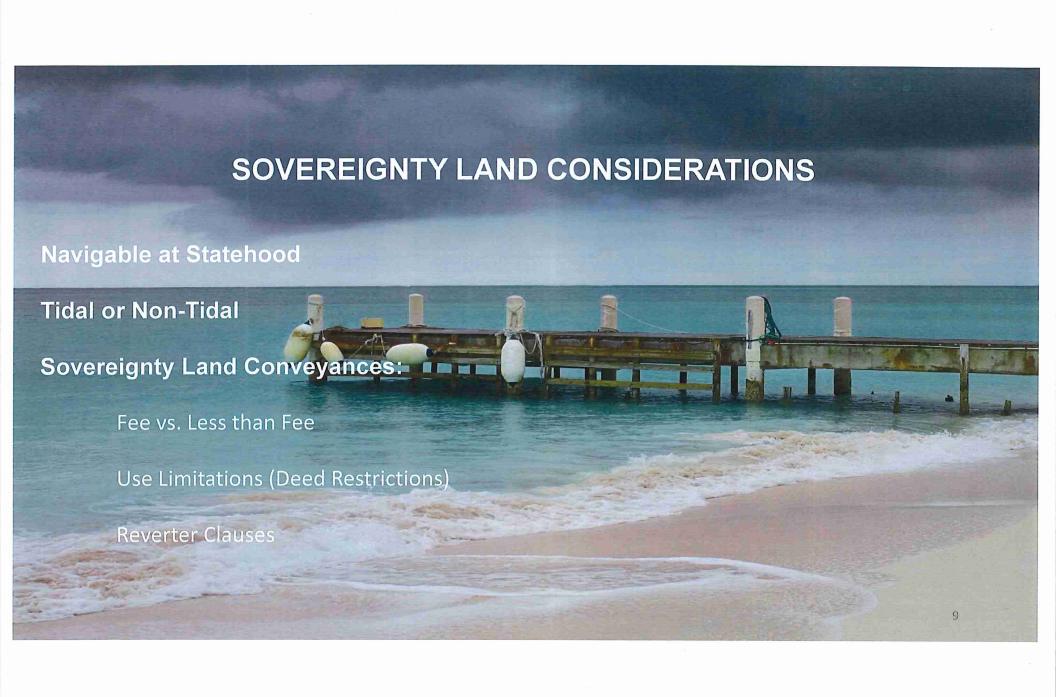
- **Board of Trustees of the Internal Improvement Trust Fund (i.e., the Governor and Cabinet)** 
  - Empowered by the Florida Constitution and the Legislature to hold title to and administer state lands and sovereign lands.
  - **Department of Environmental Protection** 
    - Serves as staff to the Board of Trustees.
    - Includes the Division of State Lands, Division of Recreation and Parks, Office of Greenways and Trails, and the Office of Coastal and Aquatic Managed Areas.

# Sovereign Submerged Lands Considerations

### ARTICLE X THE FLORIDA CONSTITUTION

**SECTION 11. Sovereignty lands.**—The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

History.--Am. H.J.R. 792, 1970; adopted 1970.









- Public trust tests are used to evaluate private uses of sovereign lands.
- Proprietary Rules define public interest as:
  - Demonstrable environmental, social, and economic benefits accruing to the public at large because of a proposed action in such manner that exceeds all demonstrable environmental, social, and economic costs.
- Florida Law recognizes two public interest standards:
  - Not contrary to the public interest
    - Is the default standard in the proprietary realm
  - In the public interest
    - Becomes effective in proprietary realm where a project falls within the boundaries of a state Aquatic Preserve

### **Forms of Authorization**

- Exceptions
- Consent by rule
- Letters of Consent
- Leases
- Easements

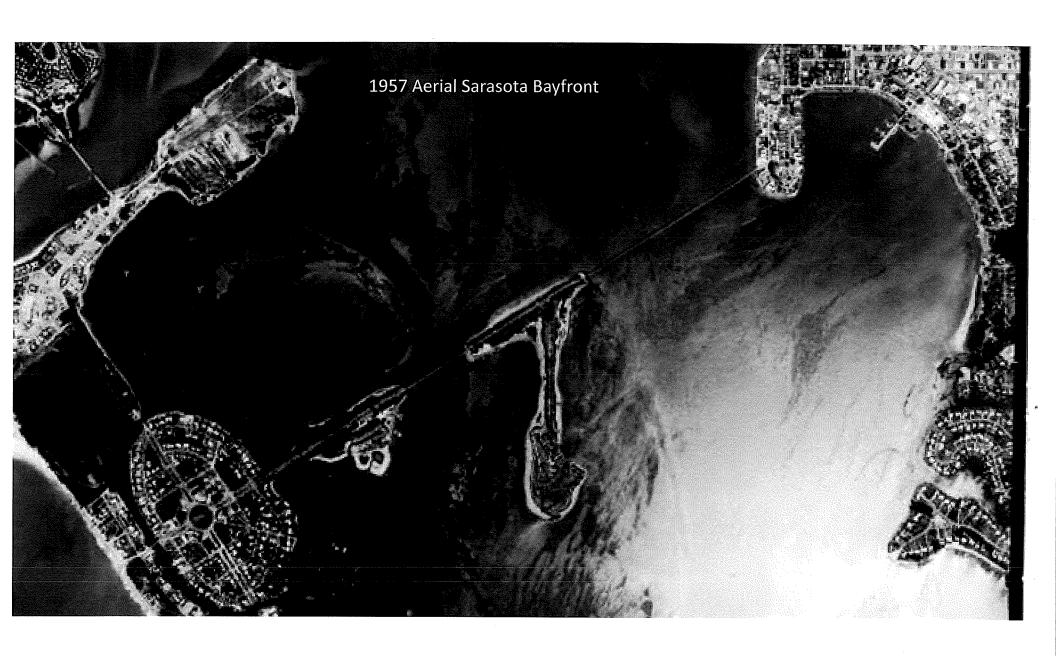


Chapter 18-21.005, F.A.C.

#### Department of Environmental Protection Business Portal



- Welcome to the Florida Board of Trustees Land Document System (BTLDS) website. The BTLDS website provides access to the Florida Board of Trustees of the Internal Improvement Trust Fund (TIITF) State Lands Records archived with the Division of State Lands in Tallahassee, Florida. This website allows you the ability to retrieve agenda items, mapping data, tabular data, and images related to Board of Trustees (BOT). This website allows you to dynamically query the BTLDS database three ways:
- Agenda Item Search: <u>BTLDS Web Map Search</u>: This allows you to visit Map Direct Lite outside of the BTLDS application and without search criteria filters. The result set that is generated represents parcels described in the archived TIITF land record documents; this is not a tax map or a representation of current ownership. Selecting a parcel on the map may return information about several different documents associated with that parcel throughout the history of State land transactions involving that parcel. The mapping feature provides a number of standard tools for zooming, panning, extracting, and querying the information provided on the map.
- <u>Document Search:</u> This allows you to query by one or more specific document attributes. The result set generated will provide document information that meets the search criteria entered.



1971 Aerial Sarasota Bayfront



#### 2017 Aerial Sarasota Bayfront

2017 Aerial from Sarasota County Property Appraiser



00832856-1

#### DEP General Permit for Mooring Fields

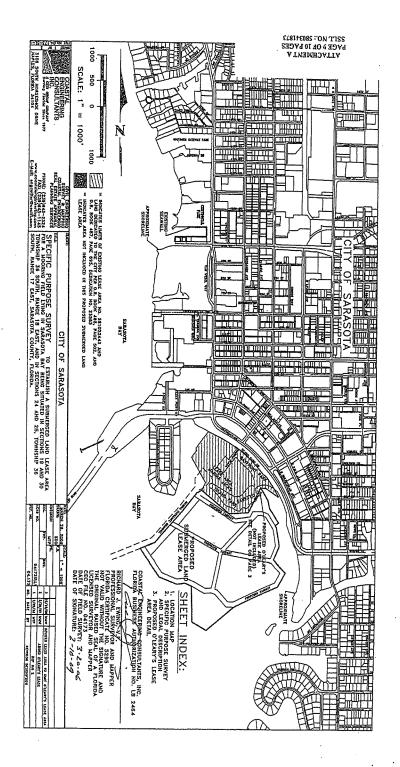
## General Permit to Local Governments for Public Mooring Fields. (s. 62-330.420, Florida Administrative Code)

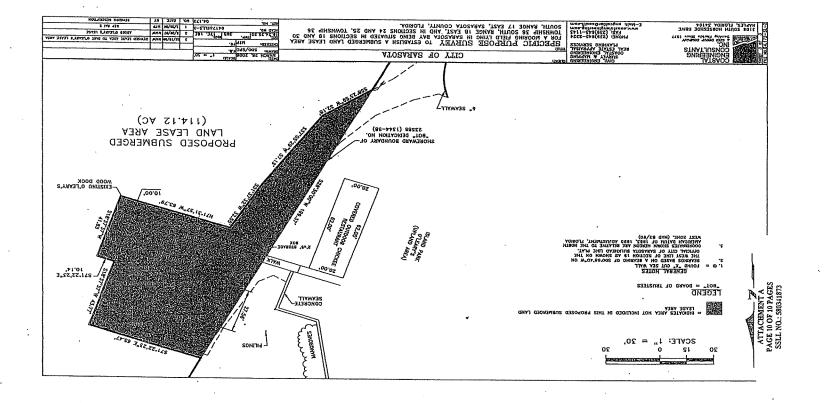
- A general permit is granted to any local government to construct, operate, and maintain a public mooring field for up to 100 vessels, including a dinghy dock and sewage pumpout dock directly supporting the mooring field.
- Pre-application meetings, mooring field management plan, pump-out requirements, staff level approval of lease

#### City of Sarasota Bayfront Mooring Field

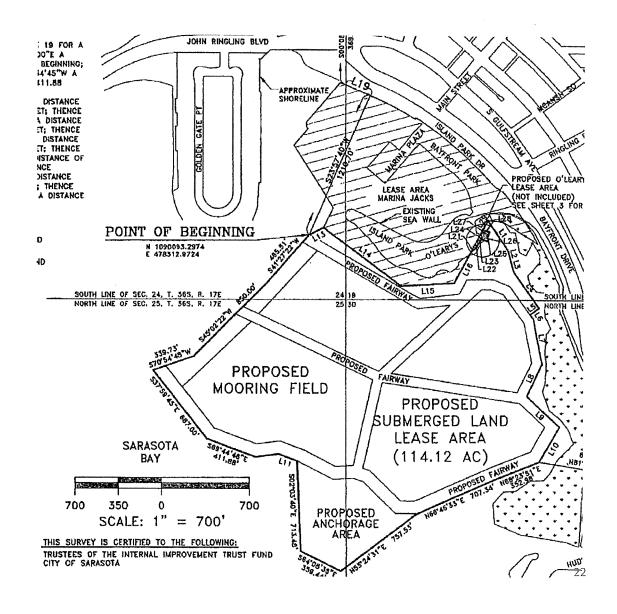








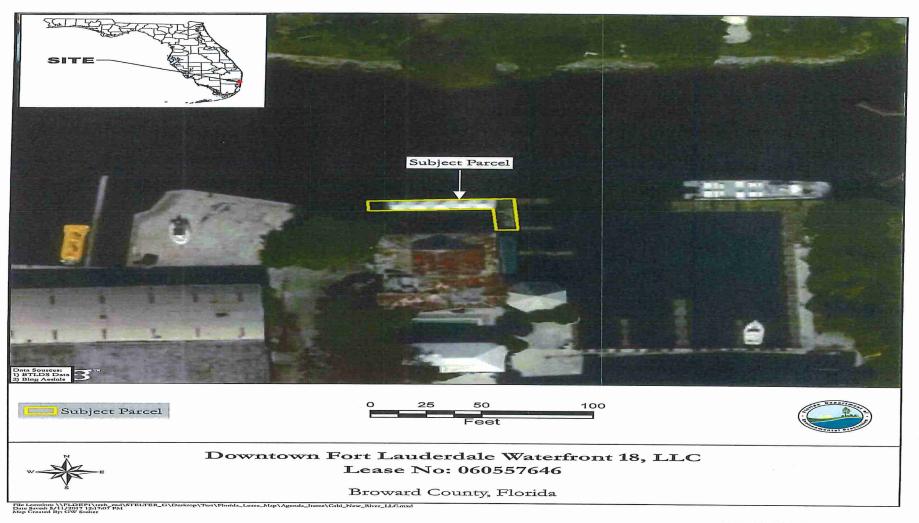
#### Existing Lease



#### 18-21.004 Management Policies, Standards, and Criteria.

The following management policies, standards, and criteria shall be used in determining whether to approve with conditions or modifications, or deny all requests for activities on sovereignty submerged lands, except activities associated with aquaculture..

- (g) Activities on sovereignty lands shall be limited to water dependent activities only unless the board determines that it is in the public interest to allow an exception as determined by a case by case evaluation. Public projects which are primarily intended to provide access to and use of the waterfront may be permitted to contain minor uses which are not water dependent if:
- 1. Located in areas along seawalls or other nonnatural shorelines;
- 2. Located outside of aquatic preserves or class II waters; and
- 3. The nonwater dependent uses are incidental to the basic purpose of the project, and constitute only minor nearshore encroachments on sovereign lands.
- (3) Riparian Rights.
- (d) Except as provided herein, all structures, including mooring pilings, breakwaters, jetties and groins, and activities must be set back a minimum of 25 feet inside the applicant's riparian rights lines. Marginal docks, however, must be set back a minimum of 10 feet. Exceptions to the setbacks are: private residential single-family docks or piers associated with a parcel that has a shoreline frontage of less than 65 feet, where portions of such structures are located between riparian lines less than 65 feet apart, or where such structure is shared by two adjacent single-family parcels; utility lines; bulkheads, seawalls, riprap or similar shoreline protection structures located along the shoreline; structures and activities previously authorized by the Board; structures and activities built or occurring prior to any requirement for Board authorization; when a letter of concurrence is obtained from the affected adjacent upland riparian owner; or when the Board determines that locating any portion of the structure or activity within the setback area is necessary to avoid or minimize adverse impacts to natural resources.



ATTACHMENT 5 PAGE 1

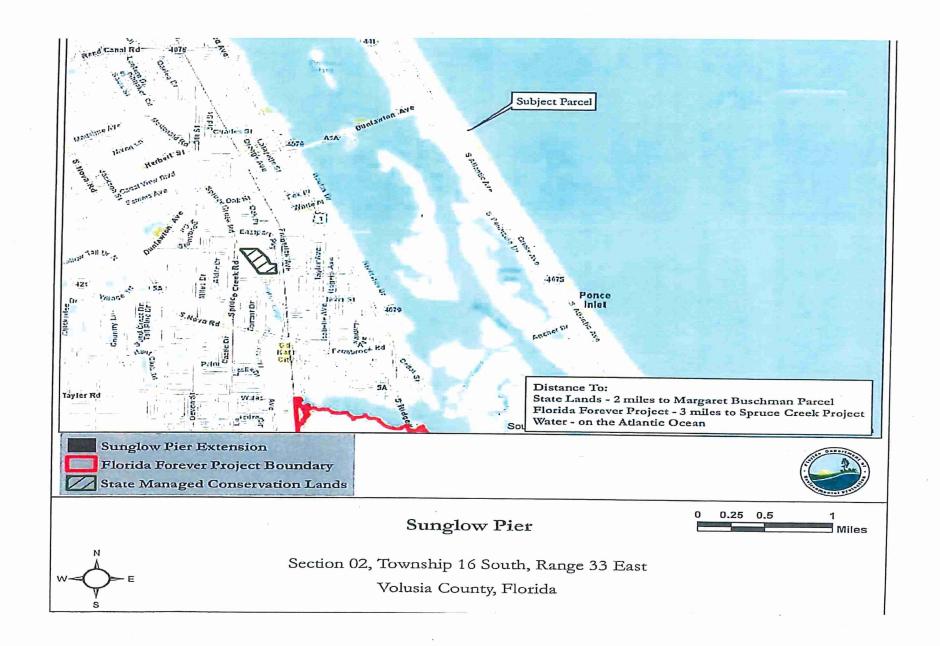






AERIAL SHOWING SUBJECT PROPOSED "OVER-THE-WATER" LEASE AREA

"The Pirate Republic Seafood and Grill 400 SW 3<sup>rd</sup> Avenue Fort Lauderdale, Florida







Sunglow Pier Extension



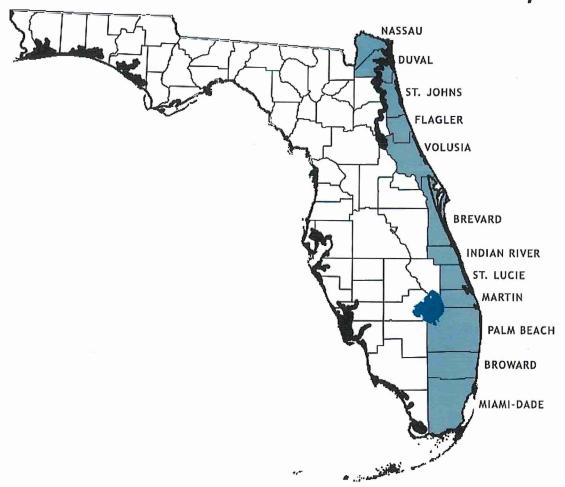
#### Sunglow Pier

0 37.5 75 150 Feet

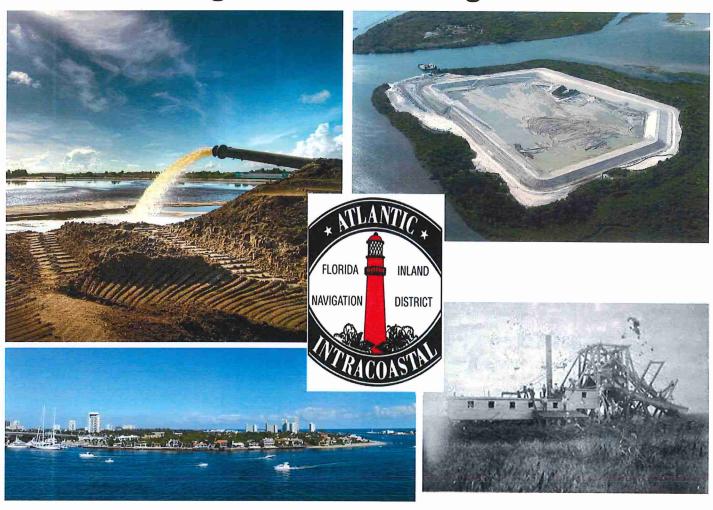
Section 02, Township 16 South, Range 33 East Volusia County, Florida

# FLORIDA INLAND NAVIGATION DISTRICT DREDGING CHALLENGES

#### The Florida Atlantic Intracoastal Waterway



#### 50-Year Dredged Material Management Plan

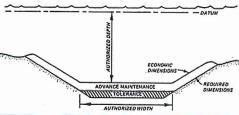


#### **Technical Issue Resolution**













US Army Corps of Engineers<sub>®</sub>

Engineer Research and Development Center



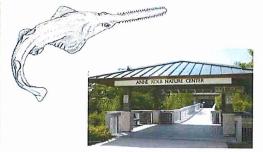












## Technical Analyses: The Foundation of Project Design

- Aerials
- Bathymetric Surveys
- Previous Dredging Records
- Natural Resource Data
- Dredged Material Disposal Options
- Marine Industry Economic Analysis
- Recreational Boater Surveys
- Subsurface Geotechnical Investigation
- Physical and Chemical Sediment Analysis
- Hydrodynamic Water Quality Modeling





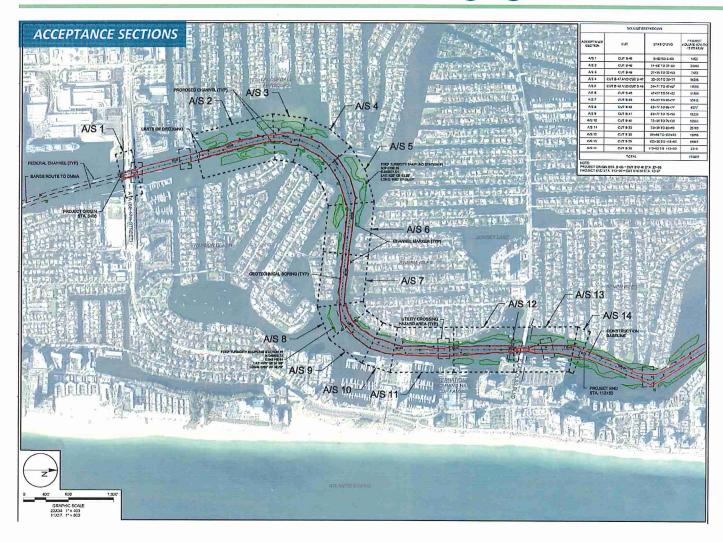




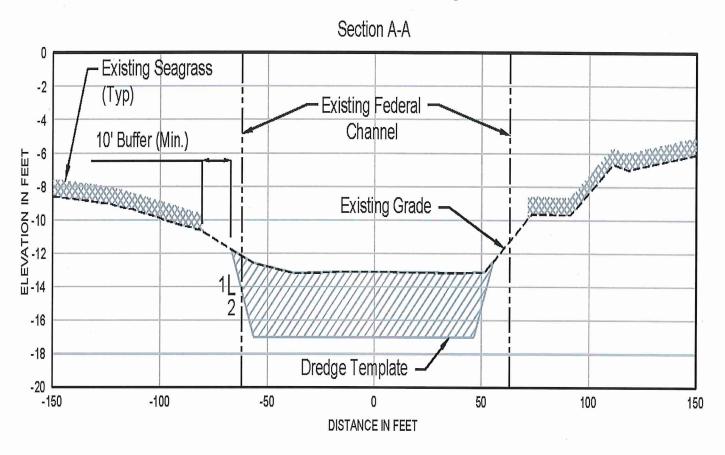




#### **PROJECT COMPONENTS – Dredging**



### Project Challenges – Seagrass Avoidance Intracoastal Waterway Section

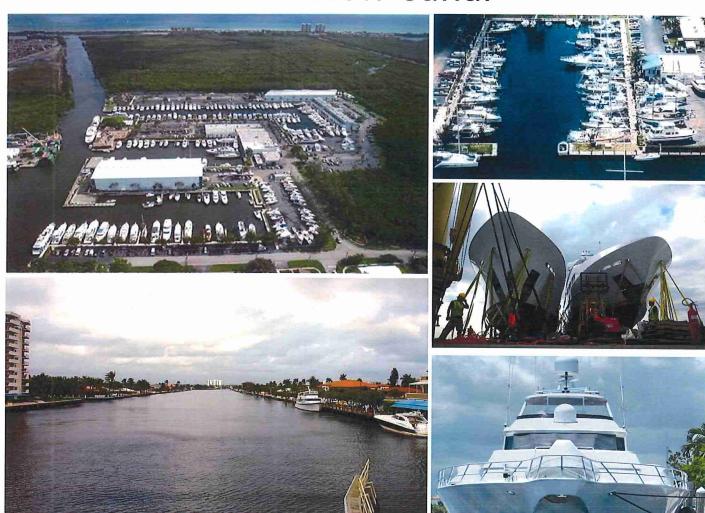


#### **Dania Cutoff Canal**



THE NUTS AND BOLTS OF DREDGING

## **Dania Cutoff Canal**



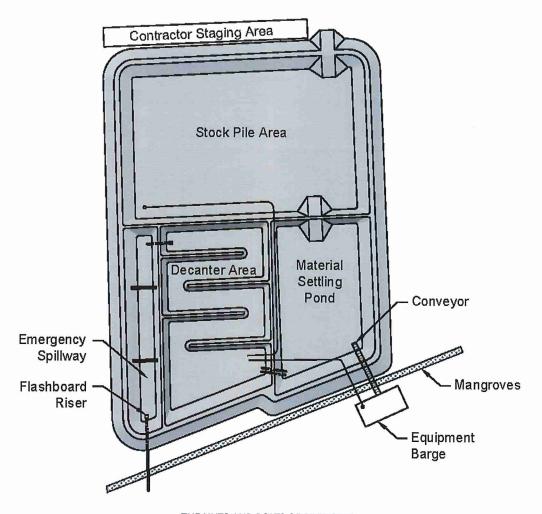
THE NUTS AND BOLTS OF DREDGING

## Port Everglades - DMMA



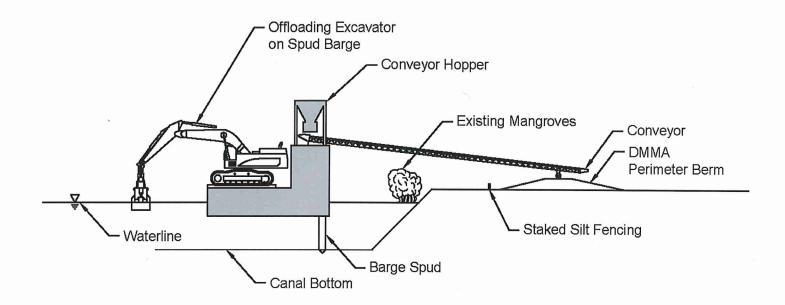
THE NUTS AND BOLTS OF DREDGING

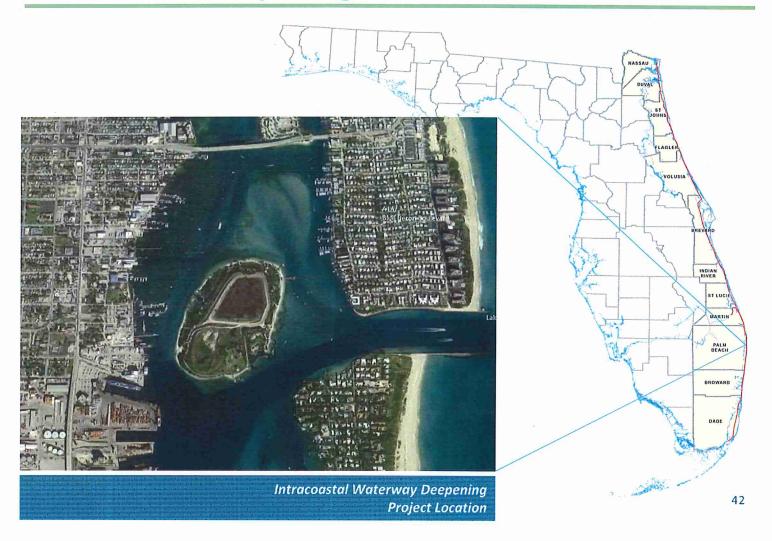
## Port Everglades - DMMA



THE NUTS AND BOLTS OF DREDGING

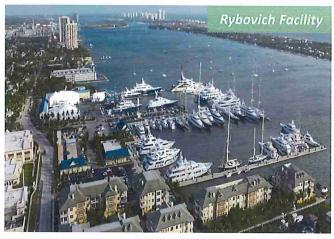
## **DMMA Offloading**





#### **OBJECTIVES**

- Deepen the Intracoastal
   Waterway from -10 ft MLW
   to -17 ft MLW
- Support local industries
  - > Allow larger vessels
  - Provide safe navigation and access to service facilities
- Stimulate local economy





#### Palm Beach Deepening – Strategy & Schedule

#### Strategy

- Optimize channel design
- Existing upland DMMA
- > Advance mitigation area
- Support from local, state, and federal officials

#### Schedule

- > Application: June 2012
- > DOA Section 408: April 2013
- > FDEP: January 2014
- > DOA: November 2014





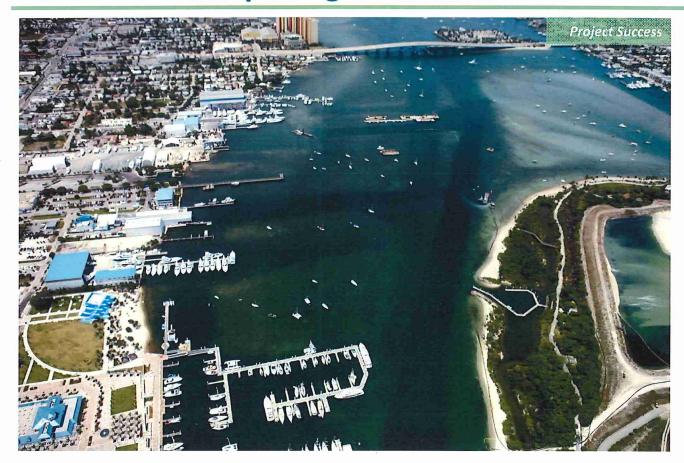
#### Dredge

- > Cut length = 3,500 ft
- > Channel width = 100 ft
- Volume = ±101,000 cy
- Template = -15 ft MLW + 2 ft allowable overdredge

#### DMMA

- FIND-owned upland confined disposal area
- > Capacity = 289,000 cy





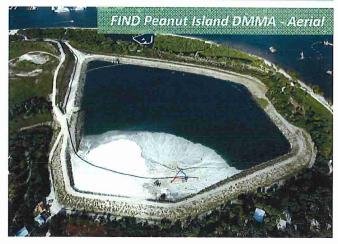


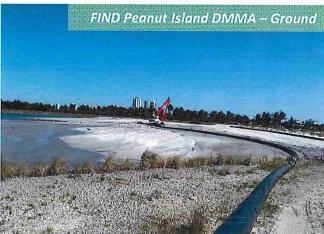
#### Schedule

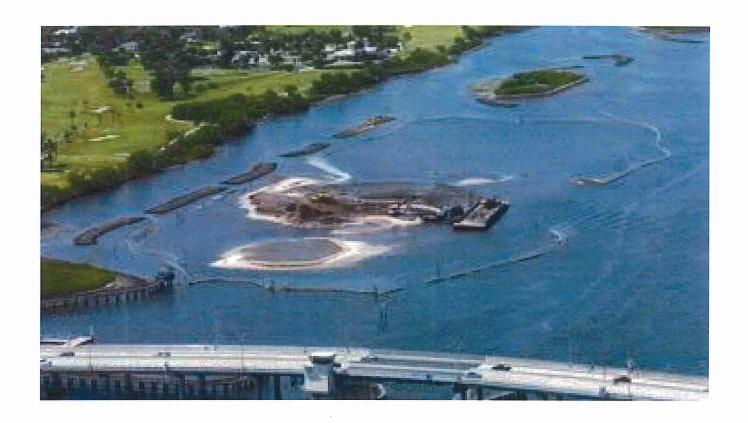
- Advertisement: Summer 2015
- Complete: Spring 2016
- Contract Length: 150 days from NTP (Actual = 149 days)

#### Budget

- > Estimated budget: \$1.9M
- > Original contract: \$1.2M
- > Final contract: \$2.0M

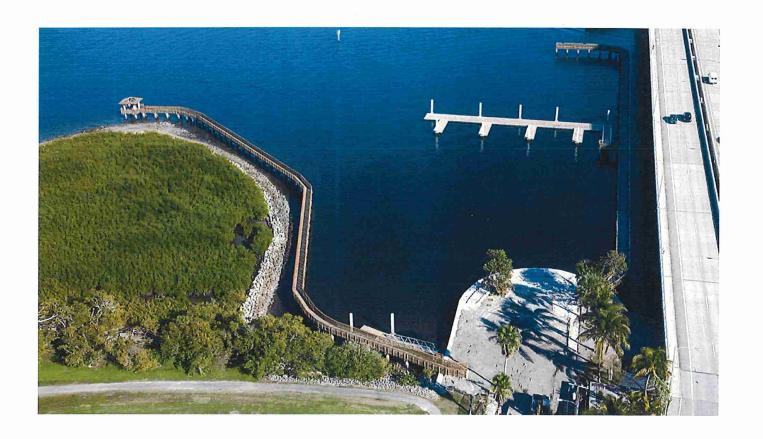












## Seagrass Mitigation

#### Board of Trustees Rule

#### Chapter 18-21, Florida Administrative Code

- Establishment of a mitigation bank on sovereign submerged lands requires Board of Trustees approval
- May 1998 Agenda item lays out several points that need to be accomplished before the Board would consider a proposal
  - Must receive both conceptual and final approval from the Board

## House Bill 7059 (2008 Legislative Session)

 Proposed Bill would have allowed for the establishment of seagrass mitigation banks on sovereign submerged lands

#### Governor Crist vetoed it:

"The provisions in this legislation authorizing the establishment of mitigation banks on sovereignty submerged lands undermines the protection of seagrass beds and other marine and freshwater habitat around the state and raises serious constitutional issues. At best these provisions provide fertile ground for litigation."

## Seagrass Permit Database Project

- Collect and catalog seagrass impact and restoration permits issued within Florida since the 1990's
- Collect all monitoring reports
- Catalog "successful" projects
- Review permit conditions

#### In the works:

Developing a Monitoring Protocol for seagrass mitigation projects





Akerman

# Thank you allows?

Kevin S. Hennessy, Esq. Spencer T. Crowley, III, Esq. David Clark, Director Division State Lands, DEP Timothy Rach