

Key West Committee for Safer, Cleaner Ships

June 4, 2025

Mayor & Commissioners:

Please consider this additional information regarding this morning's discussion of the RFP for Water Quality Monitoring (#50) and your continued discussion of this item at the evening session:

Conflicts of Interest regarding MOTE Marine and Testing for Water Quality Violations Caused by Cruise Ships in Key West

1. There is only one cruise ship pier in operation in Key West: the Pier B Cruiseport, operated by Pier B Development Corporation, whose president is Mark Walsh. Mark Walsh is also the president of Opal Collection, Inc.¹
2. Pier B Dev Corp's lease agreement with the State requires Pier B to "contribute an annual monetary donation of \$50,000 to the Coral Reef Restoration Initiative through Mote Marine Laboratory, Inc for the full term of the lease."²
3. A 2022 article in Keys Weekly reported that Mark Walsh donated property in Key Largo and \$1.5 million to Mote Marine.³
4. A 2023 press release issued by Mote Marine and published in Keys Weekly describes Opal Collection as its "partner."⁴
5. Pier B Dev Corp has an extensive and documented history of noncompliance with the terms of its Environmental Resource Permit from the State of Florida, its lease agreement with the State of Florida, and violations of state and federal law, including violations of Naval Restricted Areas causing adverse impacts to national security.⁵

Chapter 80 of Key West's Code of Ordinances calls for "independent" monitoring of water quality violations caused by cruise ships in Key West's waterways. **No reasonable person would conclude that Mote Marine is "independent" with regard to cruise ship operations in Key West's waterways, which provide Mote with a direct economic benefit.** Pier B's

¹ FL Div Corp Document #s P15000077045 and P93000087910

² Pier B Development Corporation Lease No. 440020075

³ [MOTE MISSION BRINGS CORAL REEF RESTORATION TO KEY LARGO, FLORIDA 8/15/2022, Keys Weekly](#)

⁴ ["MOTE & OPAL COLLECTION PARTNER IN RESTORATION CAUSE" 6/8/2023 Keys Weekly](#)

⁵ See SCS letters to FL DEP 5/5/2022 and 5/19, 2023; and STATE OF FLORIDA ex rel. KEY WEST COMMITTEE FOR SAFER CLEANER SHIPS, INC., V. PIER B DEVELOPMENT CORP., CASE NO.: 2022 CA 001636.

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demonstrated pattern of noncompliance with state and federal law, including environmental resource permit violations, and its president's donations of millions of dollars and property to Mote Marine, raise serious concerns that Pier B would exercise leverage over any testing performed by Mote Marine.

Ongoing Violations of Sec. 80-5

At this morning's session, attention was given to Sections 80-1, 80-2, and 80-3. Unfortunately, the Commission ignored **Sec. 80-5**, which states:

"The City of Key West shall coordinate with state and federal agencies to ensure that vessel operations conform to all applicable laws relating to Sec. 80-2(2)." (Sec. 80-5)

This references Sec. 80-2(2)'s requirement for:

"...full compliance with all applicable state, federal and international safety, health and environmental protection statutes, regulations, standards and requirements." (Sec. 80-2(2))

In December 2024, the City was presented with findings by the College of the Florida Keys stating that "32 turbidity events associated with cruise ships exceeded EPA standards." The College additionally noted that these events were non-compliant with Florida Administrative Code Chapter 62-302.530.

To our knowledge, the City has not reported these violations to state or federal agencies or made any attempt to coordinate with such agencies to ensure that cruise ship operations conform to all applicable laws. **Thus, the City has been in ongoing violation of its obligations under Sec. 80-5 for many months and the Commission should act immediately to remedy this failure** by directing the City Manager to report these documented violations to state and federal agencies.

Turbidity as a Pollutant under the Clean Water Act

Commissioner Carey raised concerns about the classification of turbidity as a pollutant, opining that turbidity is a measurement of pollution rather than a pollutant itself. However, under the U.S. Clean Water Act, "pollutant" is defined broadly to include not only traditional contaminants

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but also solids such as “dredged spoil, rock, . . . sand, [and] cellar dirt.”⁶ “The discharge of a pollutant” is defined broadly to include “any addition of any pollutant to navigable waters from any point source.”⁷ “The term ‘point source’ means any discernible, confined and discrete conveyance, including but not limited to any . . . vessel or other floating craft, from which pollutants are or may be discharged.”⁸ In *United States v. MCC Florida*, the 11th Circuit found the vessel’s prop wash activity was a point source and that the redeposition of dredged soil in adjacent sensitive seagrass beds constituted a pollutant.⁹ *Thus, prop wash activity by cruise ships in Key West’s waterways which adds sand to navigable waters is a discharge of a pollutant by cruise ships and subject to the regulations and requirements of Chapter 80-2(1).*

To Commissioner Carey’s point, “turbidity” is a federally accepted term that applies to *both* a pollutant *and* a measurement of pollution. Under the U.S. Clean Water Act, “Suspended particulates/turbidity” is defined to “consist of fine-grained mineral particles, usually smaller than silt, and organic particles... Suspended particulates may enter water bodies as a result of land runoff, flooding, vegetative and planktonic breakdown, resuspension of bottom sediments, and man’s activities including dredging and filling. . . . The discharge of dredged or fill [material](#) can result in greatly elevated levels of suspended particulates in the water column for varying lengths of time... Significant increases in suspended particulate levels create turbid plumes which are highly visible and aesthetically displeasing. The extent and persistence of these adverse impacts caused by discharges depend upon the relative increase in suspended particulates above the amount occurring naturally, the duration of the higher levels, the current patterns, water level, and fluctuations present when such discharges occur, the volume, rate, and duration of the discharge, particulate deposition, and the seasonal timing of the discharge.”¹⁰ Suspended particulates/turbidity is measured in Nephelometric Turbidity Units (NTU); the legal maximum in Key West’s waterways, established under State and Federal law, is 29 NTUs above background conditions.¹¹

Please let me know if you have any questions.

⁶ 33 U.S.C. § 1362(6)

⁷ 33 U.S.C. § 1362(12)

⁸ 33 U.S.C. §1362(12)

⁹ *United States v. M.C.C. of Fla., Inc.*, 772 F.2d 1501, 1506 (11th Cir. 1985), *cert. granted, judgment vacated*, 481 U.S. 1034, 107 S. Ct. 1968, 95 L. Ed. 2d 809 (1987) (the judgment was vacated for reasons unrelated to cited findings).

¹⁰ 40 CFR § 230.21

¹¹ Florida Administrative Code (F.A.C.), CHAPTER 62-302.530

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Respectfully,

Arlo Haskell

on behalf of

Key West Committee for Safer, Cleaner Ships

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