



RECEIVED
June 16, 2011
KW Planning Dpt

June 16, 2011

Mr. Don Craig
Interim City Planner
City of Key West
525 Angela Street
Key West, FL 33040

dcraig@citykeywest.org

Dear Mr. Craig,

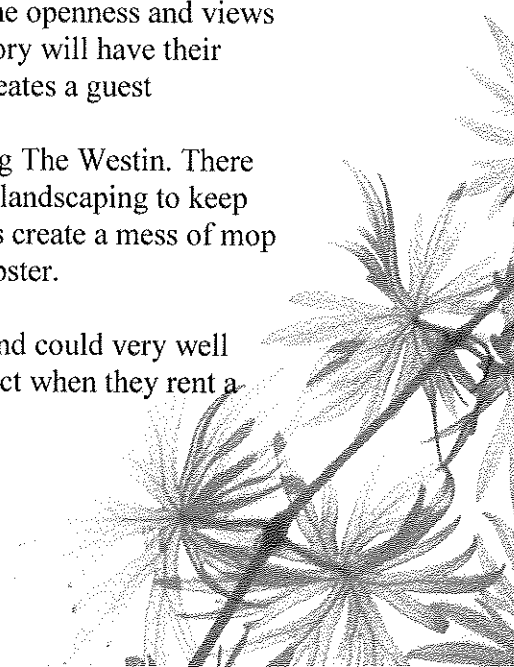
While I have publically spoken at a Planning Board meeting earlier this year about my objections to the Mallory Square Restaurant project, I want to go on written record.

I was first made aware of this project in November 2010. On November 17, Joe Walsh, came in to my office, introduced himself and told me of his restaurant project for Mallory Square. We talked about being good neighbors and his eagerness to work with us on this project. He promised to forward the plans that had been submitted which he did, the very next day.



After review, I can tell you this project is just too close and is too massive. I am concerned about a number of things:

- The Westin has earned a Four Diamond rating from AAA for over twelve years. This requires adhering to a stringent list of requirements including room quality and room amenities. We are one of only ten Four Diamond properties in Key West. One of the attributes we promote is the balconies from the majority of our guest rooms. The new building as proposed will eliminate the openness and views from 31 of our guest room. Seventeen percent of our inventory will have their ocean view designation changed to non-ocean view. This creates a guest experience issue as well as a financial issue.
- The restaurant/bar plans show the back of the building facing The Westin. There are not enough storage units, fences, gate, or any amount of landscaping to keep the back area clean and organized. Restaurant/bar operations create a mess of mop buckets, chemicals and trash waiting to be taken to the dumpster.
- And restaurant/bar operations create strong odors.
- In addition, the hours of operation have not been specified and could very well interfere with the peace and quiet our guests desire and expect when they rent a quality hotel room.



- There has also been no indication of music or entertainment. This, too, could disrupt our guests.

Overall, I feel the project will be most detrimental to the operation and success of The Westin. I do not feel it would be a good neighbor. The plan for this bar/restaurant is just too large, out of scale and too close for comfort. It would disrupt the type of guest experience we want visitors to Key West to have.

Thank you for your time and review of my comments.

Sincerely,

A handwritten signature in cursive script that reads "Diane Schmidt".

Diane Schmidt
General Manager



RECEIVED

June 14, 2011

KW Planning Dpt

14 June 2011

To whom it may concern,

In reference to the application for variances to allow a large-scale food and beverage operation in Mallory Square, Ocean Key Resort and spa is against this.

As a taxpayer in the city, we rely on our Mallory Square/Ocean View suites for revenue generation. Ocean Key Resort and Spa feels that an operation of this sort in direct view, as well as earshot of these units would have a significant negative impact.

The Ocean Key Resort and Spa is not against healthy competition. However, the upscale nature of the resort as well as the tax revenue generated by it must be considered when looking at an operation of the nature being discussed and any lease dollars and/or any other perceived benefit it may provide the city.

Regards,

Matthew Trahan

Area Managing Director

Noble House Hotels and Resorts

Ocean Key Resort and Spa

Little Palm Island Resort and Spa

STONES & CARDENAS
ATTORNEYS AT LAW

221 SIMONTON STREET, KEY WEST, FL 33040
TELEPHONE (305) 294-0252 FAX (305) 292-5442

ADELE VIRGINIA STONES, P.A.

SUSAN M. CARDENAS, P.A.

January 14, 2011



Owen Trepanier
Trepanier & Associates
402 Appelrouth Lane
Key West, FL 33040

Re: Mallory Square Major Development & Variance Application

Dear Mr. Trepanier:

I wanted to thank you and your client for taking the extra time and effort to meet with my clients, the owners of the Westin Resort & Marina ("Westin Owner") last month to discuss the proposed bar-restaurant at Mallory Square. As you are aware, my client's objection to the bar-restaurant use is premised on the extent of the expansion from the former ground level thirty (30) seat food and beverage operation to a two story, 5000+ square feet, one hundred fifty-six (156) seat full service bar and restaurant.

The significant enlargement of the non-conforming use and the potential impact of visual obstruction, noise, and odor generations cannot be adequately mitigated by compromise on the requested variances for height, side setback and/or v-zone setback. Without a specific proposal for redesign, the Westin Owners cannot support this major development or the variances required by the size and location of the structure.

Please feel free to contact me or my client directly if you have any questions regarding the Westin position on this matter.

Sincerely,


Adele V. Stones
AVS/cms

c. Planning Director
Planning Board Chair and Members

SUPPLEMENT TO TANNEX DEVELOPMENT'S OBJECTIONS TO VARIANCES

As the legal representative for Tannex Development, L.C., an adjacent property owner who will be affected by the Proposed Development, I wish to put on the record my client's further objections to the granting of the variances requested for this project, which will supplement the written objections previously submitted to the Planning Board and filed of record at the January 20, 2011 Planning Board meeting.

1. **Consideration of the variance from the Coastal Control Line ordinance is premature since the State of Florida has not approved the variance request as required by Florida law.** Section 122-1148 of the Code of Ordinances establishes the coastal construction control line ("CCL") as follows: "No building or other structure shall be constructed: [w]ithin 30 feet of the mean high water along the main ship channel [and] Key West Harbor. . . ." That local CCL was adapted pursuant to a state law that authorizes municipalities to establish their own coastal construction control lines in lieu of the coastal control lines imposed by Chapter 161, Florida Statutes. Any change to the adopted CCL requires **prior** state approval. Section 161.053(3), Florida Statutes states: "any exception to locally established coastal construction zoning and building codes may not be granted unless previously approved by the [D]epartment [of Environmental Protection]" (emphasis added). There is no evidence in the record before the Planning Board that the Florida Department of Professional Regulation (DEP) has approved the variance from the City's coastal control line requested by the applicant. Therefore, until the DEP approves the requested variance, the Planning Board has no authority to approve the requested

variance.¹

2. **The City's Coastal Construction Control Line setback applies to slipway that is an historical part of the Key West Harbor shoreline.** The applicant seeks a variance from the coastal construction control line on the Westerly side of the subject property facing "Christmas Tree" (Wisteria) Island. The applicant incorrectly describes the side of the subject property abutting the slipway as a "side yard" and seeks a variance from the 15 feet, side yard setback requirements.² In doing so, the applicant ignores the historic fact that the slipway has been part of the Key West Harbor shoreline since at least the 1870's (*See*, February 16, 2011 Letter from Edward J. Little, attached). Certainly, the slipway shoreline was in existence at the time that the City established the coastal construction control line in 1997. Therefore, in evaluating the applicability of the coastal construction control line to the instant project, the Planning Board must take into consideration that the proposed project must also comply with the CCL as measured from the mean high water line of the slipway shoreline. ✓

3. **The applicant has incorrectly characterized the rear yard of the subject parcel as a "side yard" in an effort to avoid the minimum rear set back of 20 feet.** Even if a 30 feet CCL setback were somehow found inapplicable to the rear of the abutting slipway, the

¹ Indeed, Section 161.053(3), Florida Statutes provides that if the DEP determines at any time the a local government is "inadequately" administering its coastal construction control line ordinance, the DEP "may revoke the authority granted to the county or municipality."

² As discussed under heading three, the applicant has recast the "read yard" of the subject parcel as the "side yard" and seeks a variance from the 15 feet side yard variance requirements instead of the twenty (20) feet, rear yard setback requirement.

20-foot rear yard setback would apply to what the applicant mischaracterizes as a “side yard.” It is readily apparent from the record that the front of the subject property faces North toward the Mallory Square Plaza. That is the part of the “Cable Hut” building that the public accessed when patronizing the grill/snack stand that previously operated on the premises, and it is the front of the property which would serve as the entrance to the proposed restaurant and bar.

The City Code defines “**rear yard**” as “ a yard extending across the rear of a lot between the side lot lines,” and requires it to be measured from “the rear of the main building. . . .” Section 122-1145 c(2), Code of Ordinances. Section 122-960(6), Code of Ordinances. As noted above, the rear of the Cable Hut (the main building) faces the slipway.

In the HPS zoning district, the minimum setback is 15 feet for side yards and 20 feet for rear yards. Here the applicant is seeking a variance from a 15 feet side setback instead of a 20 feet rear yard setback.

In considering the setback requirements requested by the Applicant, its mischaracterization of the rear yard as a “side yard” should be rejected. No variance from applicable setback requirements should be granted.



Key West Maritime Historical Society of the Florida Keys, Inc.

“A nonprofit, all volunteer, Society for Preservation, Research, Service, and Education”

P.O. Box 695, Key West, Florida 33041

E-mail and more at: keywestmaritime.org

16 February 2011

Mr. Robert Cintron
c/o Morgan, Cintron, and Hogan, PLLC
317 Whitehead St.
Key West, FL 33040

Dear Mr. Cintron:

In our phone chat of this AM you asked me for how far back in time was the boat slip/dock immediately adjacent to (southwest of) the cable tanks at Mallory Square likely an element in the historic shoreline of Key West. I've done some preliminary research, and attached several diagrams/maps as exhibits to support my finding- that waterfront feature has probably been there since the 1870's.

I used the term “waterfront feature” above, but may I suggest another term, “slipway”. This provides this locale, which now extends shoreward to the waterside pens of the Aquarium, a more appropriate, specific, traditional name. By definition, a slipway was a ramp sloped to support ships. And, in the 1899 Sanborn's insurance map, just such ramp, labeled as “marine ways” is shown at the location in question.

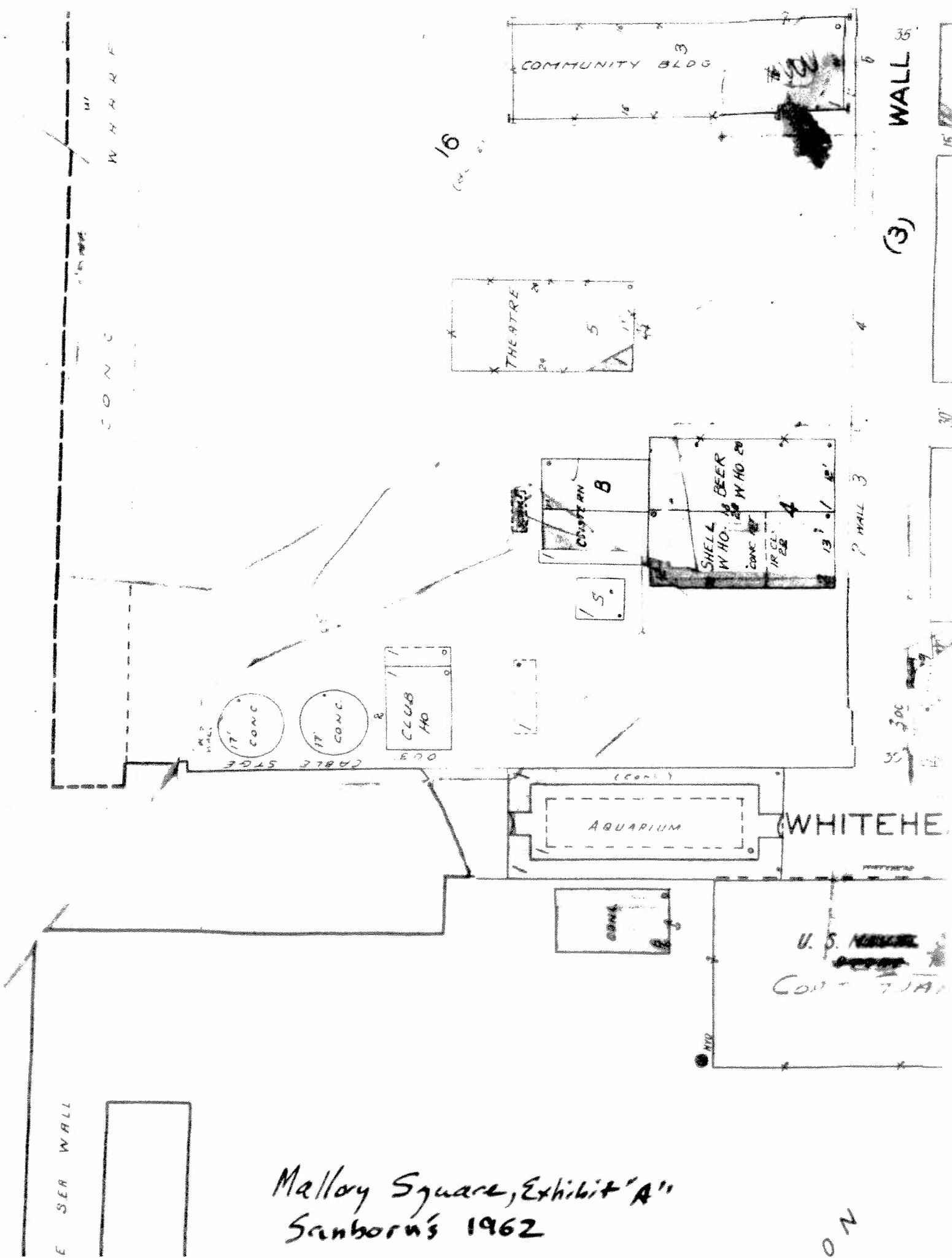
I might add that I've done considerable research into the history of the environs of Key West Harbor. I've even written a brief, published, history (of sorts) of the waterfront at Key West Bight (now the Historic Seaport). Also, beginning in 1970 (when I was the biologist for a small marine lab that Florida operated in the Tift warehouse near the slipway) I've been fishing and diving the Mallory Square vicinity. I remember the shoreline of the slipway was pretty much at it is now.

If you want to go even further back, the slipway in one configuration or other is shown at the same approximate location in the attached exhibits from sources dated 1962, 1926, 1912, 1899, 1892, 1889, and 1874.

Sincerely,

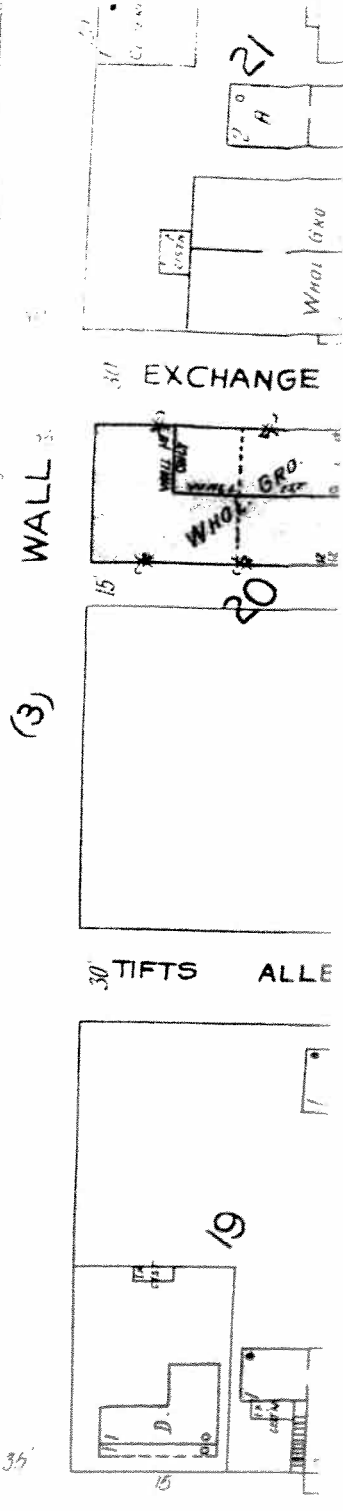
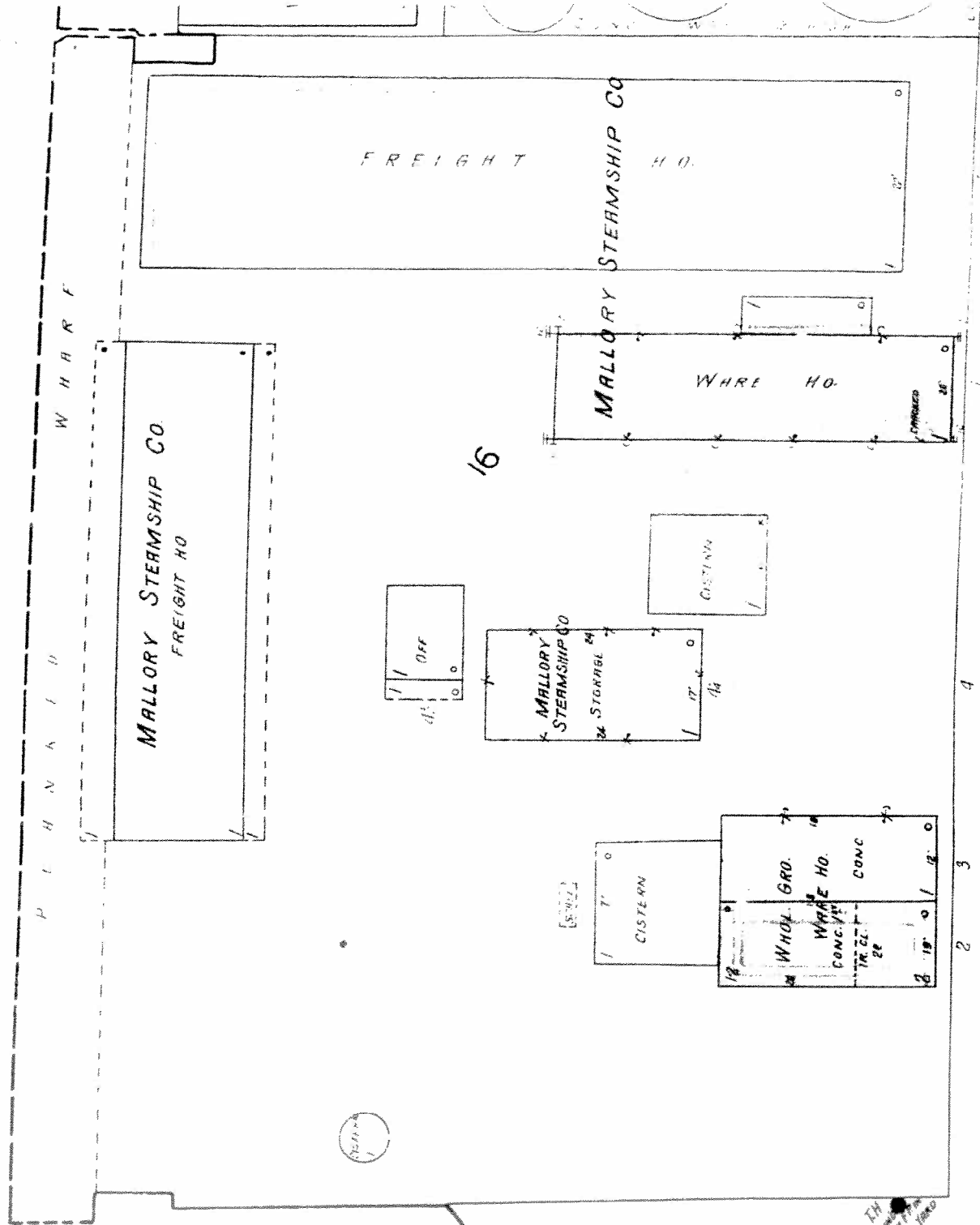


Edward J. Little Jr., President
Key West Maritime Historical Society

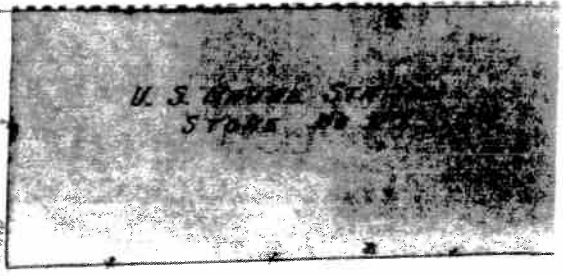


Malloy Square, Exhibit 'A'
 Sanborn's 1962

0 N



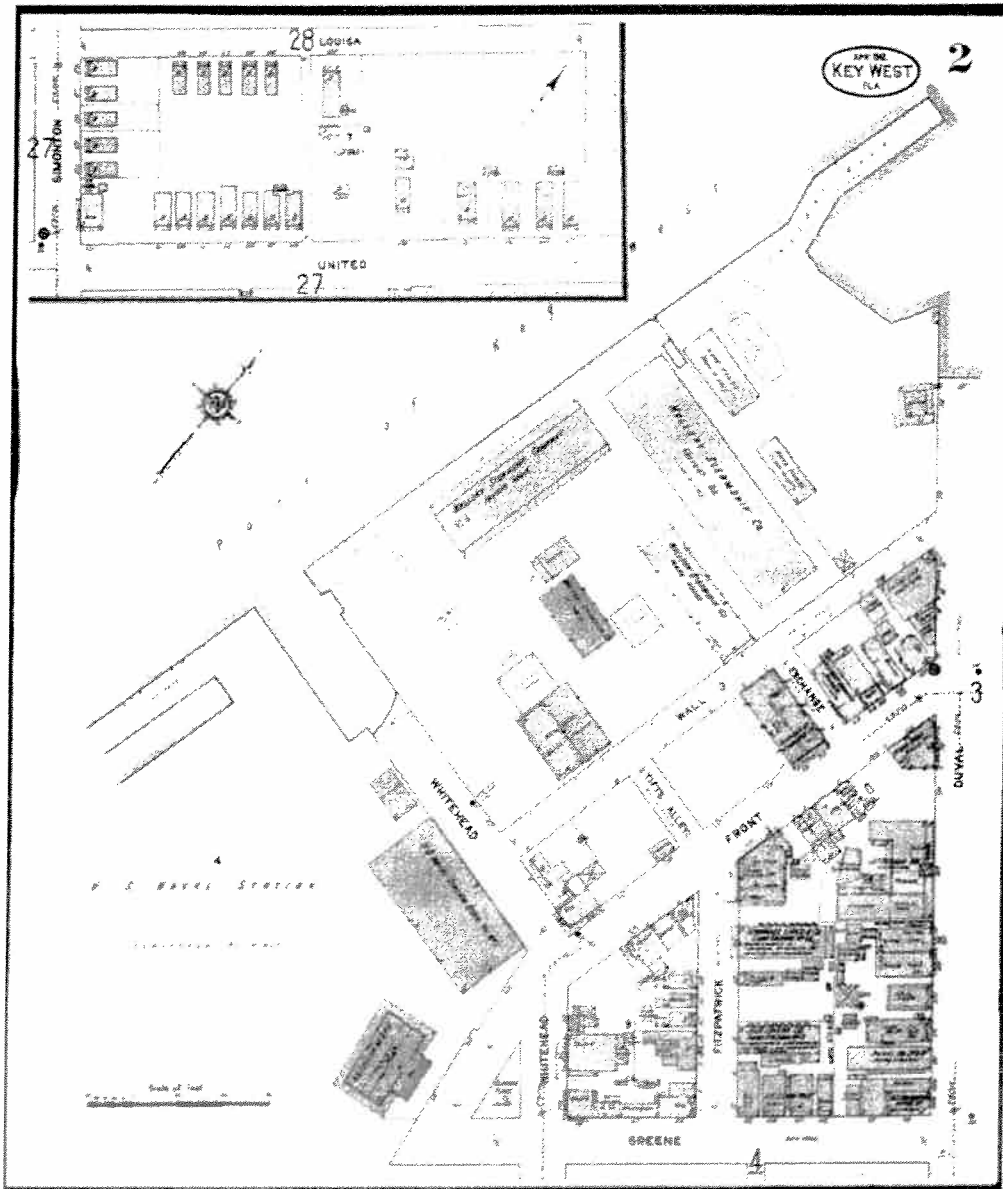
WHITEHEAD



Mallery Square Exhibit "B"
 Sanborn's 1926

Group Title: Insurance maps of Key West, Florida

Title: Key West, Monroe County, Florida, 1912



UF UNIVERSITY of
FLORIDA
 The Foundation for The Gator Nation

© 2004 - 2010 University of Florida George A. Smathers Libraries.

All rights reserved.

Acceptable Use, Copyright, and Disclaimer Statement

Last updated October 10, 2010 - Version 2.9.10 - mvs

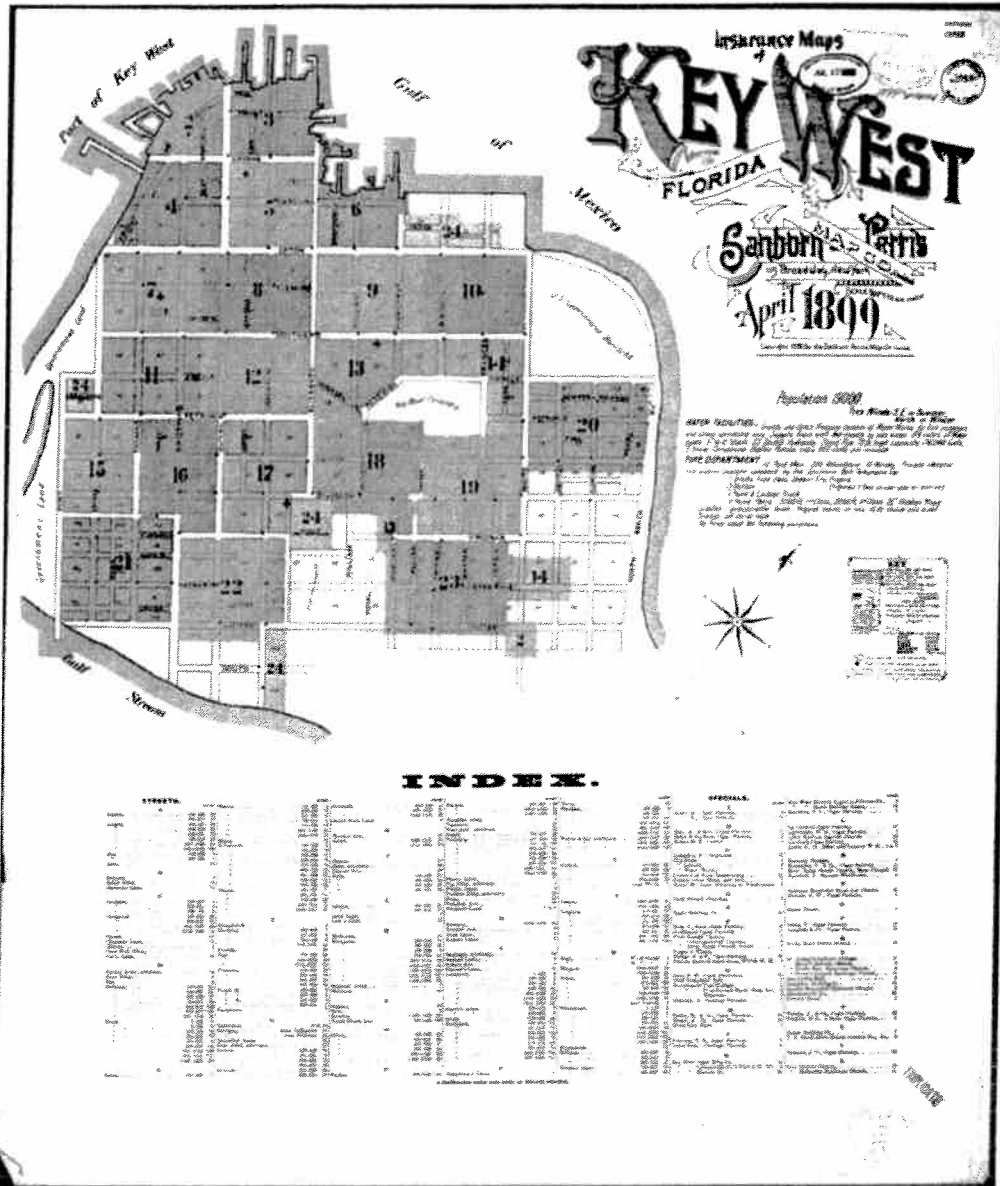
Mallory Square, Exhibit "C"

Sanborn's 1912

PRINT SEND ADD SHARE

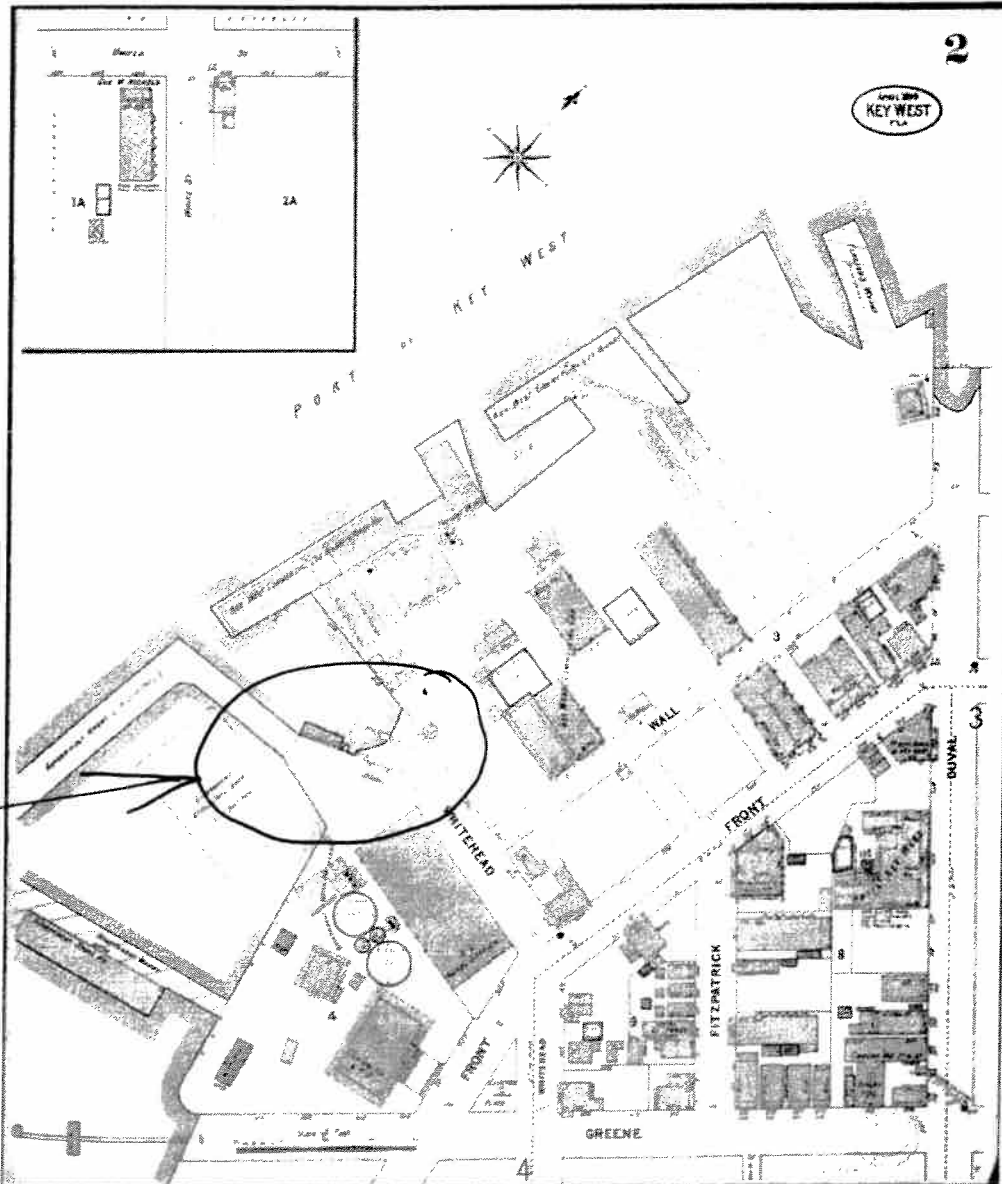
Group Title: Insurance maps of Key West, Florida

Title: Key West, Monroe County, Florida, 1899



Group Title: Insurance maps of Key West, Florida

Title: Key West, Monroe County, Florida, 1899



"Marine ways"

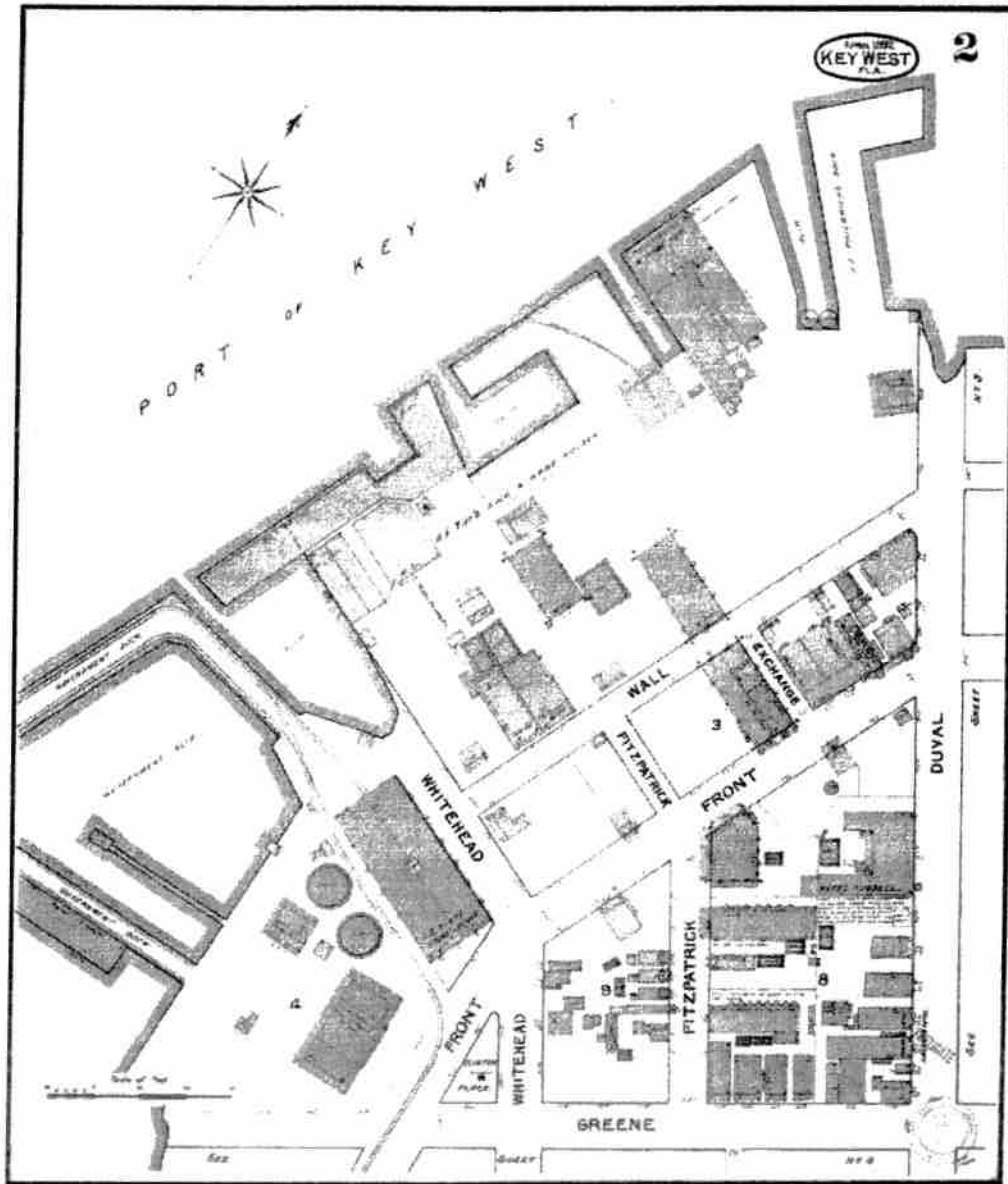


The Foundation for The Gator Nation
 © 2004 - 2010 University of Florida George A. Smathers Libraries.
 All rights reserved.
 Acceptable Use, Copyright, and Disclaimer Statement
 Last updated October 10, 2010 - Version 2.9.10 - mvs

Mallory Square, Exhibit "D"
 Sanborn's 1899

Group Title: Insurance maps of Key West, Florida

Title: Key West, Monroe County, Florida, 1892



UF UNIVERSITY of FLORIDA

The Foundation for The Gator Nation

© 2004 - 2010 University of Florida George A. Smathers Libraries.

All rights reserved.

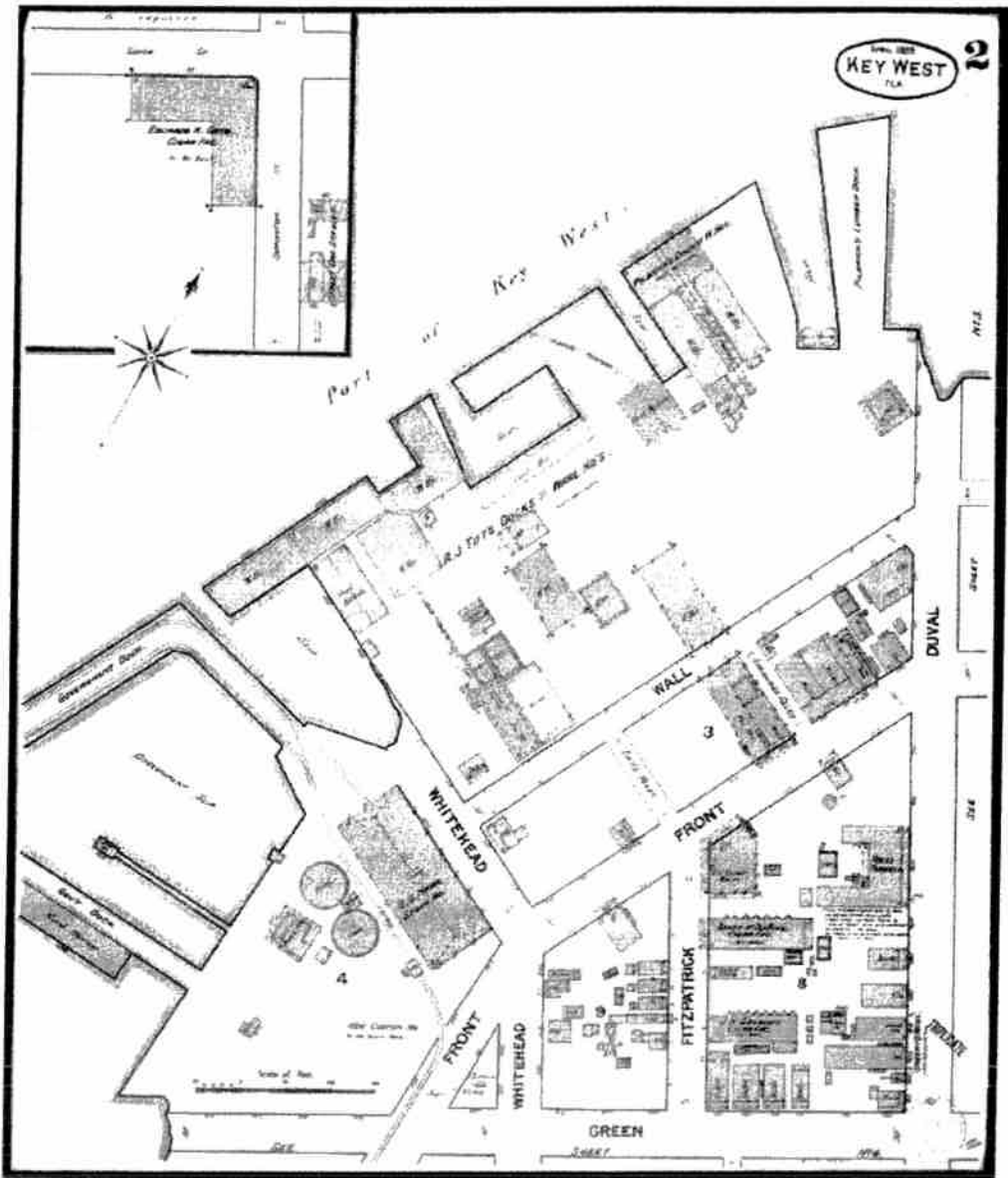
Acceptable Use, Copyright, and Disclaimer Statement

Last updated October 10, 2010 - Version 2.9.10 - mvs

*Molly Square, Exhibit "E"
Sanborn's 1892*

Group Title: Insurance maps of Key West, Florida

Title: Key West, Monroe County, Florida, 1889

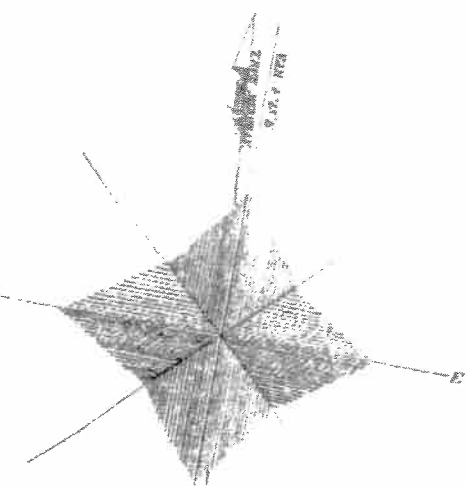
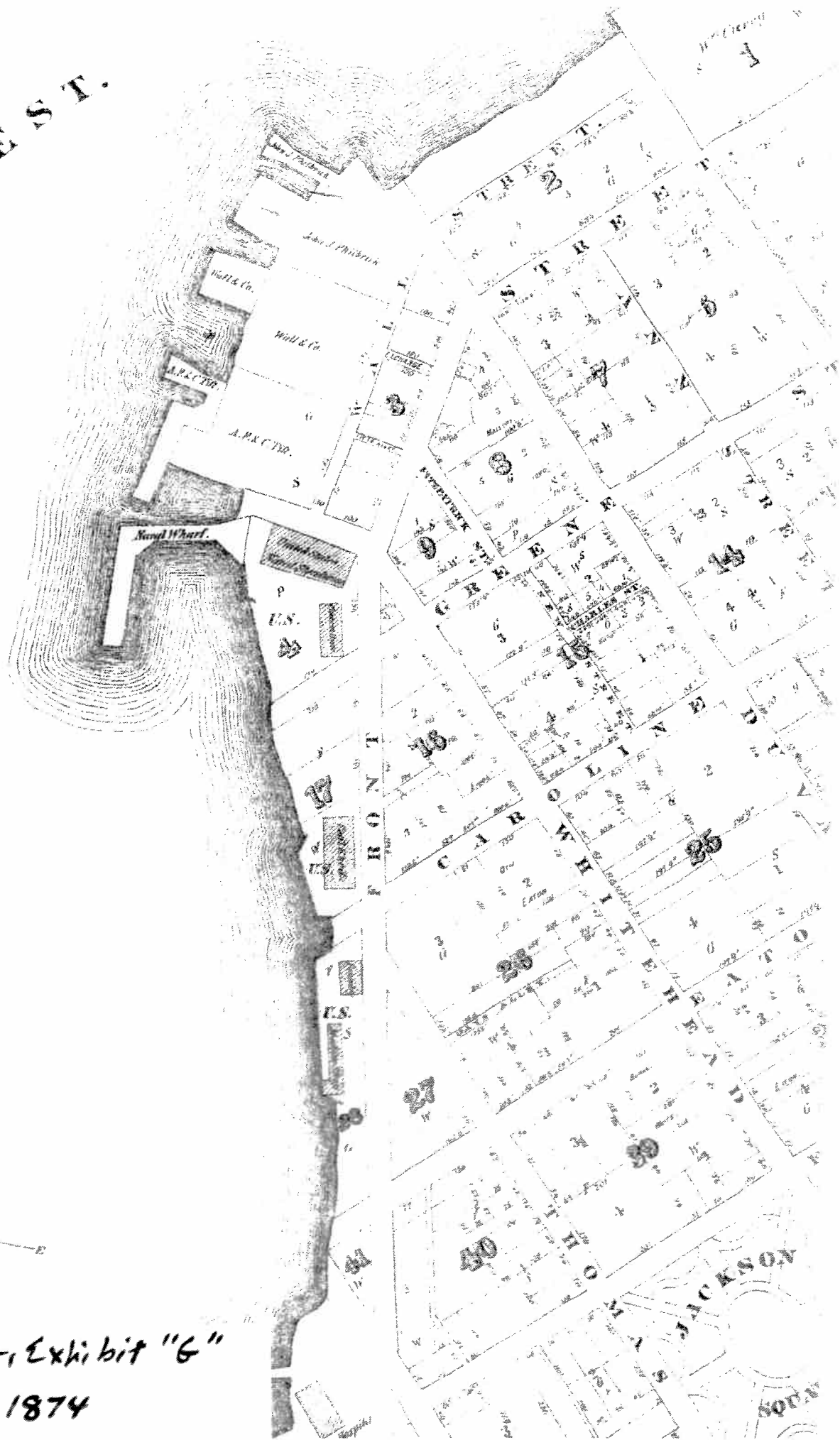


UF UNIVERSITY of FLORIDA
The Foundation for The Gator Nation


© 2004 - 2010 University of Florida George A. Smathers Libraries.
All rights reserved.
Acceptable Use, Copyright, and Disclaimer Statement
Last updated October 10, 2010 - Version 2.9.10 - mvs

*Mallory Square, Exhibit "F"
Sanborn's 1889*

PORT OF KEY WEST.



Mallory Square, Exhibit "G"
City 'Promo' map, 1874

Select Year: 2010 

The 2010 Florida Statutes

Title XI
COUNTY ORGANIZATION AND
INTERGOVERNMENTAL RELATIONS

Chapter 161
BEACH AND SHORE
PRESERVATION

[View Entire
Chapter](#)

161.053 Coastal construction and excavation; regulation on county basis.—

(1)(a) The Legislature finds and declares that the beaches in this state and the coastal barrier dunes adjacent to such beaches, by their nature, are subject to frequent and severe fluctuations and represent one of the most valuable natural resources of Florida and that it is in the public interest to preserve and protect them from imprudent construction which can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access. In furtherance of these findings, it is the intent of the Legislature to provide that the department establish coastal construction control lines on a county basis along the sand beaches of the state fronting on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida. Such lines shall be established so as to define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions. However, the department may establish a segment or segments of a coastal construction control line further landward than the impact zone of a 100-year storm surge, provided such segment or segments do not extend beyond the landward toe of the coastal barrier dune structure that intercepts the 100-year storm surge. Such segment or segments shall not be established if adequate dune protection is provided by a state-approved dune management plan. Special siting and design considerations shall be necessary seaward of established coastal construction control lines to ensure the protection of the beach-dune system, proposed or existing structures, and adjacent properties and the preservation of public beach access.

(b) As used in this subsection:

1. When establishing coastal construction control lines as provided in this section, the definition of "sand beach" shall be expanded to include coastal barrier island ends contiguous to the sand beaches of the state fronting on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida.

2. "Coastal barrier island ends" means those areas on the ends of barrier islands fronting the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida, which are subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.

3. "Coastal barrier islands" means geological features which are completely surrounded by marine waters that front upon the open waters of the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida and are composed of quartz sands, clays, limestone, oolites, rock, coral, coquina, sediment, or other material, including spoil disposal, which features lie above the line of mean high water. Mainland areas which were separated from the mainland by artificial channelization for the purpose of assisting marine commerce shall not be considered coastal barrier islands.

(c) Coastal construction control lines shall be set on coastal barrier island ends only in conjunction

with the resetting of the coastal construction control line throughout the entire county within which the barrier island end is located, and shall not be established on reaches of coastal barrier island ends where the shore is vegetated with mangroves.

(2)(a) Coastal construction control lines shall be established by the department only after it has been determined from a comprehensive engineering study and topographic survey that the establishment of such control lines is necessary for the protection of upland properties and the control of beach erosion. No such line shall be set until a public hearing has been held in each affected county. After the department has given consideration to the results of such public hearing, it shall, after considering ground elevations in relation to historical storm and hurricane tides, predicted maximum wave uprush, beach and offshore ground contours, the vegetation line, erosion trends, the dune or bluff line, if any exist, and existing upland development, set and establish a coastal construction control line and cause such line to be duly filed in the public records of any county affected and shall furnish the clerk of the circuit court in each county affected a survey of such line with references made to permanently installed monuments at such intervals and locations as may be considered necessary. However, no coastal construction control line shall be set until a public hearing has been held by the department and the affected persons have an opportunity to appear. The hearing shall constitute a public hearing and shall satisfy all requirements for a public hearing pursuant to s. 120.54(3). The hearing shall be noticed in the Florida Administrative Weekly in the same manner as a rule. Any coastal construction control line adopted pursuant to this section shall not be subject to a s. 120.56(2) rule challenge or a s. 120.54(3)(c)2. drawout proceeding, but, once adopted, shall be subject to a s. 120.56(3) invalidity challenge. The rule shall be adopted by the department and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6. Upon such filing with the Department of State, no person, firm, corporation, or governmental agency shall construct any structure whatsoever seaward thereof; make any excavation, remove any beach material, or otherwise alter existing ground elevations; drive any vehicle on, over, or across any sand dune; or damage or cause to be damaged such sand dune or the vegetation growing thereon seaward thereof, except as hereinafter provided. Control lines established under the provisions of this section shall be subject to review at the discretion of the department after consideration of hydrographic and topographic data that indicate shoreline changes that render established coastal construction control lines to be ineffective for the purposes of this act or at the written request of officials of affected counties or municipalities. Any riparian upland owner who feels that such line as established is unduly restrictive or prevents a legitimate use of the owner's property shall be granted a review of the line upon written request. After such review, the department shall decide if a change in the control line as established is justified and shall so notify the person or persons making the request. The decision of the department shall be subject to judicial review as provided in chapter 120.

(b)1. The department shall exempt construction proposed for a location seaward of a coastal construction control line and landward of existing armoring from certain siting and design criteria of this chapter, provided the armoring is capable of protecting the proposed construction from the effects of erosion from a 100-year storm surge. The exemption shall apply to proposed structures involving the foundation, siting, and excavation criteria of this section, except such structures shall be:

- a. Sited a sufficient distance landward of the armoring to allow for maintenance of the armoring.
- b. Located up to or landward of the established line of construction.
- c. Designed to comply with the windload requirements of this section.
- d. Sited and designed to protect marine turtles.

2. The applicant shall provide scientific and engineering evidence that the armoring has been designed, constructed, and maintained to survive the effects of the design storm and provide protection to existing and proposed structures from the erosion associated with that event. Evidence shall include a report with data and supporting analysis, and shall be certified by a professional engineer registered in this state, that the armoring was designed and constructed and is in adequate condition to meet the following criteria:

a. The top must be at or above the still water level, including setup, for the design storm plus the breaking wave calculated at its highest achievable level based on the maximum eroded beach profile and highest surge level combination, and must be high enough to preclude runup overtopping.

b. The armoring must be stable under the design storm including maximum localized scour, with adequate penetration and toe protection to avoid settlement, toe failure, or loss of material from beneath or behind the armoring.

c. The armoring must have sufficient continuity or return walls to prevent flanking under the design storm from impacting the proposed construction.

d. The armoring must withstand the static and hydrodynamic forces of the design storm.

(3) A coastal county or coastal municipality may establish coastal construction zoning and building codes in lieu of the provisions of this section if such zones and codes are approved by the department as being adequate to preserve and protect the beaches and coastal barrier dunes adjacent to such beaches, which are under the jurisdiction of the department, from imprudent construction that will jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access. Exceptions to locally established coastal construction zoning and building codes may not be granted unless previously approved by the department. The intent of this subsection is to provide for the local administration of established coastal construction control lines through approved zoning and building codes if desired by local interests and where such local interests have, in the judgment of the department, sufficient funds and personnel to adequately administer the program. Should the department determine at any time that the program is inadequately administered, the department may revoke the authority granted to the county or municipality.

(4) Except in those areas where local zoning and building codes have been established pursuant to subsection (3), a permit to alter, excavate, or construct on property seaward of established coastal construction control lines may be granted by the department as follows:



(a) The department may authorize an excavation or erection of a structure at any coastal location as described in subsection (1) upon receipt of an application from a property or riparian owner and upon the consideration of facts and circumstances, including:

1. Adequate engineering data concerning shoreline stability and storm tides related to shoreline topography;

2. Design features of the proposed structures or activities; and

3. Potential effects of the location of the structures or activities, including potential cumulative effects of proposed structures or activities upon the beach-dune system, which, in the opinion of the department, clearly justify a permit.

(b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if the existing structures have not been unduly affected by erosion, a proposed structure may be permitted along such line on written authorization from the department if the structure is also

approved by the department. However, the department may not contravene setback requirements or zoning or building codes established by a county or municipality which are equal to, or more strict than, the requirements provided in this subsection. This paragraph does not prohibit the department from requiring structures to meet design and siting criteria established in paragraph (a) or in subsection (1) or subsection (2).

(c) The department may condition the nature, timing, and sequence of construction of permitted activities to provide protection to nesting sea turtles and hatchlings and their habitat, pursuant to s. 379.2431, and to native salt-resistant vegetation and endangered plant communities.

(d) The department may require engineer certifications as necessary to ensure the adequacy of the design and construction of permitted projects.

(e) The department shall limit the construction of structures that interfere with public access along the beach. However, the department may require, as a condition of granting permits, the provision of alternative access if interference with public access along the beach is unavoidable. The width of the alternate access may not be required to exceed the width of the access that will be obstructed.

(f) The department may, as a condition of granting a permit, require mitigation, financial, or other assurances acceptable to the department to ensure performance of conditions of a permit or enter into contractual agreements to best assure compliance with any permit conditions. The department may also require notice of the permit conditions required and the contractual agreements entered into to be filed in the public records of the county in which the permitted activity is located.

(5)(a) As used in this subsection, the term:

1. "Frontal dune" means the first natural or manmade mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and configuration to offer protective value.

2. "Seasonal high-water line" means the line formed by the intersection of the rising shore and the elevation of 150 percent of the local mean tidal range above local mean high water.

(b) After October 1, 1985, and notwithstanding any other provision of this part, the department, or a local government to which the department has delegated permitting authority pursuant to subsections (3) and (15), may not issue a permit for any structure, other than a coastal or shore protection structure, minor structure, or pier, meeting the requirements of this part, or other than intake and discharge structures for a facility sited pursuant to part II of chapter 403, which is proposed for a location that, based on the department's projections of erosion in the area, will be seaward of the seasonal high-water line within 30 years after the date of application for the permit. The procedures for determining such erosion shall be established by rule. In determining the area that will be seaward of the seasonal high-water line in 30 years, the department may not include any areas landward of a coastal construction control line.

(c) If the application of paragraph (b) would preclude the construction of a structure, the department may issue a permit for a single-family dwelling for the parcel if:

1. The parcel was platted or subdivided by metes and bounds before the effective date of this section;

2. The owner of the parcel does not own another parcel immediately adjacent to and landward of the parcel for which the dwelling is proposed;

3. The proposed single-family dwelling is located landward of the frontal dune structure; and

4. The proposed single-family dwelling will be as far landward on its parcel as is practicable without being located seaward of or on the frontal dune.

(d) In determining the land areas that will be below the seasonal high-water line within 30 years after the permit application date, the department shall consider the effect on erosion rates of an existing beach nourishment or restoration project or of a beach nourishment or restoration project for which all funding arrangements have been made and all permits have been issued at the time the application is submitted. The department shall consider each year there is sand seaward of the erosion control line whether erosion took place that year. However, the seaward extent of the beach nourishment or restoration project beyond the erosion control line may not be considered in determining the applicable erosion rates. This subsection does not prohibit the department from requiring structures to meet the criteria established in subsection (1), subsection (2), or subsection (4) or to be further landward than required by this subsection based on the criteria established in subsection (1), subsection (2), or subsection (4).

(e) The department shall annually report to the Legislature the status of this program, including any changes to the previously adopted procedures for determining erosion projections.

(6) Any coastal structure erected, or excavation created, in violation of this section is declared to be a public nuisance and such structure shall be removed or such excavation shall be refilled after written notice by the department directing such removal or filling. If the structure is not removed or the excavation refilled within a reasonable time as directed, the department may remove such structure or fill such excavation at its own expense and the costs thereof shall become a lien on the property of the upland owner upon which the unauthorized structure or excavation is located.

(7) Any person, firm, corporation, or agent thereof who violates this section commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#), except that a person driving a vehicle on, over, or across a sand dune and damaging or causing to be damaged such sand dune or the vegetation growing thereon in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#). A person, firm, corporation, or agent thereof commits a separate offense for each day during any portion of which a violation of this section is committed or continued.

(8) This section does not apply to structures intended for shore protection purposes which are regulated by s. [161.041](#) or to structures existing or under construction before the establishment of the coastal construction control line if the structures are not materially altered except as provided in subsection (4). Except for structures that have been materially altered, structures under construction at the time of the establishment or reestablishment of the coastal construction control line are exempt from the provisions of this section. However, unless such an exemption has been judicially confirmed to exist before April 10, 1992, the exemption shall last only for a period of 3 years from the date of the determination of the exemption or April 10, 1992, whichever occurs later. The department may extend the exemption period for structures that require longer periods for completion if construction during the initial exemption period is continuous. For purposes of this subsection, the term "continuous" means following a reasonable sequence of construction without significant or unreasonable periods of work stoppage.

(9) The department may exempt specifically described portions of the coastline from the provisions of this section if, in its judgment, such portions of coastline because of their nature are not subject to erosion of a substantially damaging effect to the public.

(10) Pending the establishment of coastal construction control lines as provided herein, the provisions of s. [161.052](#) shall remain in force. However, upon the establishment of coastal construction control lines, or the establishment of coastal construction zoning and building codes as provided in

subsection (3), s. 161.052 shall be superseded by the provisions of this section.

(11)(a) The coastal construction control requirements defined in subsection (1) and the requirements of the erosion projections in subsection (5) do not apply to any modification, maintenance, or repair of any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure. Specifically excluded from this exemption are seawalls or other rigid coastal or shore protection structures and any additions or enclosures added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure.

(b) Activities seaward of the coastal construction control line which are determined by the department not to cause a measurable interference with the natural functioning of the coastal system are exempt from the requirements of subsection (4).

(c) The department may establish exemptions from the requirements of this section for minor activities determined by the department not to have an adverse effect on the coastal system. Examples of such activities include, but are not limited to:

1. Boat moorings;
2. Maintenance of existing beach-dune vegetation;
3. The burial of seaweed, dead fish, whales, or other marine animals on the unvegetated beach;
4. The removal of piers or other derelict structures from the unvegetated beach or seaward of mean high water;
5. Temporary emergency vehicular access, if the affected area is immediately restored;
6. The removal of any existing structures or debris from the upland, if there is no excavation or disturbance to the existing topography or to beach-dune vegetation;
7. Construction of a new roof overhang extending no more than 4 feet beyond the confines of the existing foundation during modification, renovation, or reconstruction of a habitable structure within the confines of the existing foundation of that structure which does not include any additions to or modification of the existing foundation of that structure;
8. Minor and temporary excavation for the purpose of repairs to existing subgrade residential service utilities (e.g., water and sewer lines, septic tanks and drainfields, electrical and telephone cables, and gas lines), if there is minimal disturbance and the grade is restored with fill compatible in both coloration and grain size to the onsite material and any damaged or destroyed vegetation is restored using similar vegetation; and
9. Any other minor construction that has an effect similar to the above activities.

(12)(a) Notwithstanding the coastal construction control requirements defined in subsection (1) or the erosion projection determined pursuant to subsection (5), the department may issue a permit for the repair or rebuilding within the confines of the original foundation of a major structure pursuant to subsection (4). Alternatively, the department may also issue a permit for a more landward relocation or rebuilding of a damaged or existing structure if such relocation or rebuilding would not cause further harm to the beach-dune system, and if, in the case of rebuilding, the rebuilding complies with subsection (4) and otherwise complies with this subsection.

(b) The department may not permit repairs or rebuilding that expands the capacity of the original structure seaward of the 30-year erosion projection established pursuant to subsection (5).

(c) In reviewing applications for relocation or rebuilding, the department shall specifically consider changes in shoreline conditions, the availability of other relocation or rebuilding options, and the design adequacy of the project sought to be rebuilt.

(d) Permits issued under this subsection are not considered precedential as to the issuance of subsequent permits.

(13) Concurrent with the establishment of a coastal construction control line and the ongoing administration of this chapter, the secretary of the department shall make recommendations to the Board of Trustees of the Internal Improvement Trust Fund concerning the purchase of the fee or any lesser interest in any lands seaward of the control line pursuant to the state's Save Our Coast, Conservation and Recreation Lands, or Outdoor Recreation Land acquisition programs; and, with respect to those control lines established pursuant to this section before June 14, 1978, the secretary may make such recommendations.

(14) A coastal county or municipality fronting on the Gulf of Mexico, the Atlantic Ocean, or the Straits of Florida shall advise the department within 5 days after receipt of any permit application for construction or other activities proposed to be located seaward of the line established by the department pursuant to this section. Within 5 days after receipt of such application, the county or municipality shall notify the applicant of the requirements for state permits.

(15) In keeping with the intent of subsection (3), authority for permitting certain types of activities that have been defined by the department may be delegated by the department to a coastal county or coastal municipality. Such partial delegation shall be narrowly construed to those particular activities specifically named in the delegation and agreed to by the affected county or municipality. The delegation may be revoked by the department at any time if it is determined that the delegation is improperly or inadequately administered.

(16) The department may, at the request of a property owner, contract with the property owner for an agreement, or modify an existing contractual agreement regulating development activities landward of a coastal construction control line, if the contractual agreement is consistent with the design and siting provisions of this section. The contractual agreement may not bind either party for a period longer than 5 years following its date of execution. Before beginning a construction activity covered by the agreement, the property owner must obtain the necessary authorization required by the agreement. The agreement may not authorize construction for:

(a) Major habitable structures that require construction beyond the expiration of the agreement, unless such construction is above the completed foundation; or

(b) Nonhabitable major structures or minor structures, unless such construction is authorized at the same time as the habitable major structure.

(17) The department may grant areawide permits to local governments, other governmental agencies, and utility companies for special classes of activities in areas under their general jurisdiction or responsibility if these activities, due to the type, size, or temporary nature of the activity, will not cause measurable interference with the natural functioning of the beach-dune system or with marine turtles or their nesting sites. Such activities include, but are not limited to: road repairs, not including new construction; utility repairs and replacements, or other minor activities necessary to provide utility services; beach cleaning; and emergency response. The department may adopt rules to establish criteria and guidelines for permit applicants. The department must require notice provisions appropriate to the type and nature of the activities for which the areawide permits are sought.

(18) The department may grant general permits for projects, including dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other nonhabitable structures, if the projects, due to type, size, or temporary nature, will not cause a measurable interference with the natural functioning of the beach-dune system or with marine turtles or their

nesting sites. Multifamily habitable structures do not qualify for general permits. However, single-family habitable structures that do not advance the line of existing construction and satisfy all siting and design requirements of this section may be eligible for a general permit. The department may adopt rules to establish criteria and guidelines for permit applicants.

(a) Persons wishing to use the general permits must, at least 30 days before beginning any work, notify the department in writing on forms adopted by the department. The notice must include a description of the proposed project and supporting documents depicting the proposed project, its location, and other pertinent information as required by rule, to demonstrate that the proposed project qualifies for the requested general permit. Persons who undertake projects without proof of notice to the department, but whose projects would otherwise qualify for general permits, shall be considered to have undertaken a project without a permit and are subject to enforcement pursuant to s. 161.121.

(b) Persons wishing to use a general permit must provide notice as required by the applicable local building code where the project will be located. If a building code requires no notice, any person wishing to use a general permit must, at a minimum, post a sign describing the project on the property at least 5 days before commencing construction. The sign must be at least 88 square inches, with letters no smaller than one-quarter inch.

(19)(a) The department may suspend or revoke the use of a general or areawide permit for good cause, including: submission of false or inaccurate information in the notification for use of a general or areawide permit; violation of law, department orders, or rules relating to permit conditions; deviation from the specified activity or project indicated or the conditions for undertaking the activity or project; refusal of lawful inspection; or any other act by the permittee which results or may result in harm or injury to human health or welfare, or which causes harm or injury to animal, plant, or aquatic life or to property.

(b) The department shall have access to the permitted activity or project at reasonable times to inspect and determine compliance with the permit and department rules.

(20) The department may adopt rules related to the establishment of coastal construction control lines; activities seaward of the coastal construction control line; exemptions; property owner agreements; delegation of the program; permitting programs; and violations and penalties.

(21) In accordance with ss. 553.73 and 553.79, and upon the effective date of the Florida Building Code, the provisions of this section which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities shall be incorporated into the Florida Building Code. The Florida Building Commission may adopt rules pursuant to ss. 120.536 and 120.54 to administer those provisions. This subsection does not limit or abrogate the right and authority of the department to require permits or to adopt and enforce environmental standards, including, but not limited to, standards for ensuring the protection of the beach-dune system, proposed or existing structures, adjacent properties, marine turtles, native salt-resistant vegetation, endangered plant communities, and the preservation of public beach access.

History.—s. 1, ch. 71-280; s. 2, ch. 75-87; s. 1, ch. 77-12; s. 5, ch. 78-257; s. 29, ch. 79-164; s. 3, ch. 80-183; s. 67, ch. 81-259; s. 2, ch. 83-247; s. 33, ch. 85-55; s. 1, ch. 86-191; s. 13, ch. 87-97; s. 1, ch. 88-106; s. 1, ch. 88-349; s. 11, ch. 89-175; s. 9, ch. 91-224; s. 1, ch. 92-191; s. 22, ch. 94-356; s. 1437, ch. 95-147; s. 1, ch. 96-371; s. 21, ch. 96-410; s. 2, ch. 98-131; s. 6, ch. 2000-141; s. 5, ch. 2000-346; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 186, ch. 2008-247; s. 39, ch. 2010-102.