LEGAL OPIDIONS

Davis, Persson, Smith & Darnell

Attorneys and Counselors At Law
A Partnership of Professional Associations
2033 Main Street, Suite 406
Sarasota, Florida 34237
Telephone (941) 365-4950

Devid D. Davis
Of Council

David P. Persson, Kevin P. Smith Robert W. Darnell Barbara B. Levin Barry R. Lewis, Jr. Robert E. Turffs¹

* Qualified in Administrative and Governmental Law under the Florida Designation Plan

1 Board Certified Civil Triel

March 13, 1996

Pacsimile (941) 365-3259

Mr. Griff H. Roberts, Town Manager Town of Longboat Key 501 Bay Isles Road Longboat Key, Florida 34228

Re: Canal Dredging

Dear Griff:

In accordance with your request, I enclose a copy of a review and comments prepared by Barbara Levin regarding the Canal Dredging Feasibility Report.

If I can answer any further questions, please let me know.

Sincerely,

David P. Persson / ag

DPP:awg196 Enclosure

Davis, Persson, Smith & Darnell

Attorneys and Counselors At Law A Partnership of Professional Associations 2033 Main Street, Suite 406 Sarasota, Florida 34237 Telephone (941) 365-4950

Facsimile (941) 365-3259

MEMORANDUM

TO:

David P. Persson, Town Attorney

FROM:

Barbara B. Levin

RE:

LBK - Canal Dredging

SUBJECT:

Review of and Comments on Canal Dredging Feasibility Report

DATE:

12 March 1996

You provided me with a copy of Mr. Roberts' memorandum and accompanying draft report, entitled the Canal Dredging Feasibility Study prepared by CPE, for review and comment. Beyond the ownership, liability, and funding issues identified for further evaluation in Phase II of this proposed project, I have a general comment pertaining to the objective of the dredging as related to term "level of service" as used in Dr. Truitt's memorandum dated January 31, 1996. This term, as used in the comprehensive planning sense, implies a continuing obligation upon the Town to maintain the prescribed depths below mean low water.

In reviewing the scope of the proposal, I do not believe Dr. Truitt intended a continuing obligation by usage of this term. However to avoid future confusion, and in the absence of the Town Commission adopting a level of service as part of the Town's Comprehensive Plan, I believe it is appropriate to delete references to the term "level of service" in any action taken by the Town Commission to implement the dredging of the canals through this Study.

The term "level of service" is typically associated with the capacity of infrastructure to provide services to the population, such as the capacity of roadways to provide for the flow of traffic or the capacity of water and sewer systems to provide water and remove wastes. As such, the capacity of the canal to allow boat traffic could be considered to be "level of service" where the canals were determined to be public infrastructure and part of the facilities identified in the Capital Improvements Element of the Comprehensive Plan. If the Town were to adopt a true "level of service" for the dredging of public canals (e.g. -5 feet below mean low water) as part of the Comprehensive Plan, such standard would impose an obligation upon the Town to maintain such determined depth in order to maintain the "level of service".

Davis, Persson, Smith & Darnell

Attorneys and Counselors At Law
A Partnership of Professional Associations
2033 Main Street, Suite 406
Sarasota, Florida 34237
Telephone (941) 365-4950
Facsimile (941) 365-3259

David D. Davis
Of Council

David P. Persson Kevin P. Smith Robert W. Darnell Barbara B. Levin Barry R. Lewis, Jr. Robert E. Turffs¹

2/28/96

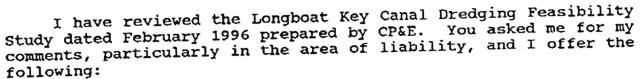
 Qualified in Administrative and Governmental Law under the Florida Designation Plan
 Board Certified Civil Trial

February 27, 1996

Mr. Griff H. Roberts, Town Manager Town of Longboat Key 501 Bay Isles Road Longboat Key, Florida 34228

Re: Dredging of Canals - Liability

Dear Griff:



I have written a letter to our insurance carrier to insure that our insurance policy will cover liability for collapsed seawalls and to determine whether the insurance policy will treat each seawall collapse as a separate act or whether it will treat all problems arising from canal dredging together. This is important for determining what economic impact this will have in view of the Town's significant deductible.

I enclose the letter I wrote to you on July 7, 1993, which outlines problems and recommendations. I would merely note that the absolute best way to protect the Town from liability is requiring a release from all property owners absolving the Town from any liability which may result from the dredging activity.

Alternatively, you may wish to consider some of the following suggestions.

In reviewing the CP&E report, it appears that most seawalls appear to be in good condition but there are some which are already failing. The Town could ask the engineer to review the canal seawalls on a canal by canal basis, and determine which seawalls are in the process of failing. Then the Town would notify the property owner that they have an existing problem and that the dredging may exacerbate their existing problem and their seawall may fail. The property owner would be encouraged to replace or fix

Mr. Griff H. Roberts February 27, 1996 Page 2

the seawall prior to the dredging. If the property owner chooses not to fix the seawall, then a release would be required. Property owners of seawalls which were in good condition would not be required to execute the release. Releases could also be required in areas where impact is likely, and not required when it is unlikely.

While this increases the likelihood of potential liability, it also increases the possibility of moving forward with the dredging program. You may wish to include a contingency fee factor for failed seawalls within the canal dredging plan.

I would note that the Town's liability arises from "negligent dredging". The determination of what constitutes negligent dredging is what is known as a facts and circumstance test. This simply means that a court would look at an individual's failed seawall and determine whether the Town dredged in a negligent fashion as it relates to that particular seawall. Therefore, the facts would change with each particular situation. This would add to the expense of litigating these issues.

Another alternative perhaps would be that the Town and the property owner could agree to binding arbitration or some other methodology which would be less expensive than classic litigation over each failed seawall.

In conclusion, I think you have the following options:

- Require a release from all property owners.
- Require a release from all property owners whose seawall appears to be a problem, coupled with the suggestion that they fix the seawall prior to dredging.
- Increase the contingency for failed seawalls.
- 4. In combination with items 2 and 3 above, provide for an alternative dispute resolution system as an alternative for a property owner who feels that the Town has unfairly damaged the seawall.

Mr. Griff H. Roberts February 27, 1996 Page 3

These are my thoughts. I look forward to receiving more information from the insurance carrier so I can determine the Town's exposure.

David P. Persson

Sincerelly,

DPP:awg191 Enclosures

cc: Cliff Truitt, P.E., D.Eng.

REPORT

DATE: 3-5-96

TO: Town Commission

FROM: Griff Roberts, Town Manager

SUBJECT: CANAL DREDGING FEASIBILITY STUDY

We are pleased to present this report on the Canal Dredging Feasibility Study as prepared by our coastal engineers, Coastal Planning & Engineering, Inc. (CPE). Included with this report is a complete copy of the CPE study together with all related data developed by CPE for this study, i.e. charts, graphs, photographs, survey data, etc. In addition to the CPE Study, included with this staff report are exhibits containing staff, staff consultant and Town Attorney assessments of the report. In these we have identified key factors intended to help you determine how you choose to proceed.

Overview of CPE's Study and Preliminary Conclusions

The scope of services for this study, of course, included all essential elements to ensure that adequate data was obtained to facilitate moving toward those policy determinations necessary to proceed with the project. The report contains sufficient data for it to be considered Phase I of the process.

Accordingly, the report is considered to be **preliminary**, and as such concludes the following:

- · A phased approach to the program is required.
- Our engineers selected a -5.4 NGVD channel depth as an acceptable "design depth" for the channels. This will allow permit exemption in most cases but would require "some" dredging in the majority of canals.

- Approximately 38,500 cubic yards would be removed from the canals to achieve the -5.4
 NGVD channel depth.
- If the Town is to consider seawalls, then detailed surveys, geotechnical investigation, and engineering analyses will be required. (Three canals [17, 18, 19] - Tarrawitt, Jungle Queen Way and St. Judes Drive South are identified as too narrow to dredge without impact.)
- Construction of the project would be 18 months away from the point in time that the Town submitted its applications for permits.
- For planning purposes, construction cost is estimated at \$1.2 million.

CPE Report Recommendations

Each of the five report recommendations (page 29 of the study) are important to proceeding with the project, two of which are being repeated here for emphasis as follows:

- (1) Evaluate the acceptability of the design depth for the proposed 22.5 feet wide, -5.4 ft. NGVD channel in most canals and the no dredge scenario for the narrow canals in northern Longboat Key (canals 17, 18, 19).
- (2) Analyze the seawalls for each area to be dredged to determine the most feasible channel width.

Staff's Assessment

Attached to this report are four exhibits (A, B, C, and D) containing staff's assessment of the report and related data including the Town Attorney's assessment regarding the issues of liability and ownership.

Exhibit A is Dr. Cliff Truitt's assessment of the CPE Study which provides a very thorough evaluation of the report and identifies at least three remaining phases to bring the project to fruition. Dr. Truitt identifies this study as a "very preliminary first step" of a much more detailed, phased process.

Exhibit B is a brief summary report from Director of Public Works Len Smally supporting Dr. Truitt's conclusions and providing alternatives for budgeting the next phase of the study depending on whether the Town Commission chooses to proceed during the current fiscal year or to plan a budget for FY 1996/97.

Exhibit C is a staff report which we developed from contacting two government entities known to have canal dredging operations in effect for some period of time. These are the City of Cape Coral and Manatee County. Both of these government entities have had ongoing canal dredging programs in operation for approximately ten years and each has different policies relative to funding and the question of liability for seawalls. As one example, Cape Coral's dredging program requires no release form or hold harmless clause from property owners and their program is funded by an assessment to all property owners within the City under a stormwater utility fee for dredging, stormwater and street sweeping. On the other hand, Manatee County's policy goes to the other extreme and requires that property owners hold the County harmless for its dredging program either by language in a petition for dredging by a property owner or by language in a Municipal Services Benefit Unit (MSBU), the funding mechanism for the dredging program.

Exhibit D is the Town Attorney's assessment of the report with particular concern regarding the question of liability. His assessment, of course, offers the option of (1) requiring a release from all property owners of any liability; (2) requiring a release from all property owners whose seawalls appear to be a problem (which would necessitate a study); or the consideration of other options the Town would need to address if releases are not required. Another option being favored by the Town

Attorney and me is to include liability as part of the contractor's contract. Additional information is currently being developed with regard to the Town's liability coverage for this program.

Recommendations: Decisions to Consider

Based upon the CPE Study and the assessments by our staff consultant, Town staff and Town Attorney, we submit the following list of decisions for your consideration and action:

- (1) That the CPE Canal Dredging Feasibility Study be accepted as **Phase I** of the program.
- (2) That authorization be given for Phase II to resolve the questions of liability and ownership and to determine the Town's policy for the "design depth" of the channels.
- (3) Upon satisfactory completion of Phase II, move to **Phase III** to authorize CPE to go forward with the **design**, **cost estimates**, **and permit applications/exemptions**.
- (4) Upon satisfying Phase III, proceed to **Phase IV** by making a determination on funding and then authorizing the consultant to proceed to **plans**, **specs**, **and finally construction**.

Conclusion

Based upon my evaluation of the CPE report together with staff assessments, it is my view that additional discussions with the technical staffs as well as a thorough airing of the issues of **liability** and **ownership** by the Town Commission in a Workshop setting should occur in order to determine what Phase II will entail and who would carry out this phase. Phases III and IV would clearly be the role of CPE under an extended contract with a clearly identified scope of services. However, the most "pivotal" decision of the entire canal dredging program is the question of **liability**. If the Town makes a policy determination not to dredge canals except where abutting property owners execute a full release and hold harmless for the Town, this policy determination will have a significant effect upon the

scope and extent of a canal dredging program. If, however, the Town chooses to pursue a program at a reduced design depth for the canals to essentially minimize, if not eliminate, concern for the question of liability, this then will necessitate additional cost to evaluate seawalls in order to estimate inherent risk before finalizing the scope of the project.

Finally, a second "pivotal" decision regarding a canal dredging program is the question **of funding**. In this regard, there are a variety of alternatives for the Town Commission to consider: (1) a district tax wherein all canal owners would be assessed to finance canal dredging; (2) an assessment-type program where each of the abutting property owners pay a share and the Town pays a share; (3) an ad valorem tax levy; or (4) a combination of financing alternatives.

We are mindful that as Commissioners each of you may have additional questions that have not been addressed here or other input that you would like to have considered for a Workshop on this subject. We will welcome individual comments and input in this regard for inclusion in the Workshop discussions.

Respectfully submitted,

Griff Roberts, Town Manager

Attachments: Exhibits A - D

cc: Coastal Planning & Engineering, Inc.

Cliff Truitt, P.E., D.Eng.

Len Smally, P.E., Public Works Director

David Persson, Town Attorney

	MOTE MARINE LABORATORY Memorandum
DATE	January 31, 1996
то	Griff Roberts, Town Manager
FROM	Cliff Truitt, P.E., D.Eng.
SUBJECT	Draft Canal Dredging Feasibility Report

Introduction

Coastal Planning & Engineering (CPE) has submitted a draft of the Canal Feasibility Report to me for review and comment. I have "marked-up" the text and returned it to them with a few other suggestions so that they can finalize the report and we can distribute it to the Town Commission. This memo provides my general comments on the project, a framework to help understand what the report does and does not mean, and where to go from here.

My principal concern can be summarized very simply by quoting the final conclusion in the CPE report (pg. 27, No. 7): "The dredging of the canals is feasible, but many factors identified in this study may significantly modify the scope and cost of the work prior to construction." I can not emphasize too strongly that this report should be considered as a very preliminary first step in a much more detailed, and as I am recommending here, a carefully phased process. Dredging the bayside canals to some level of service will always be "feasible." However, as the project moves forward from phase to phase, the Town Staff and Commission must continually reassess the scope of the project and ensure that it is still "practical."

Limitations of Preliminary Report

I feel that CPE did a very good job of addressing the Town's needs at this preliminary stage and it was well worth the \$19,900 contract. The CPE report provided us with three primary results (plus considerable important background and other necessary data). It answered the basic question that a canal maintenance program of some scope is indeed feasible; it provided a very preliminary, planning level cost estimate; and, it included a rough, relative timeline/schedule for the program. It has not, however, clearly defined what is the final "project" which actually should be constructed. The reason for this is that in order for CPE to make any progress at all, they had to make several assumptions about the program's scope and about the design. Those assumptions may change with additional study and/or the Town may choose to change them for policy reasons. Among the assumptions are:

MEMORANDUM, Page 2

Date:

January 30, 1996

To:

Griff Roberts, Town Manager

Subject:

Draft Canal Dredging Feasibility Report

• A conceptual channel design had to be assumed for planning purposes. For a number of reasons, including a presumed desire to stay within certain FDEP permit exemptions on depth of dredging, the conceptual design used was a uniform excavation to <u>elevation</u> -5 feet (MLLW) and minimum width of 22.5 feet.

- Not all canals on the Key would be dredged (even though they may need it); three canals in the Tarawitt/St. Judes area were judged at this preliminary stage to be too narrow to be dredged to the conceptual design without endangering adjacent bulkheads; five others (including one owned by the Town) were so filled in with soil and/or blocked with mangroves that it was judged not worth it.
- A number of assumptions were made about the type of dredge and handling of the spoil. Important among them are that upland sites could be found on the Key or nearby to contain the spoil, even temporarily, while it dried out enough to handle.
- It was recognized and stated that ownership of the canal bottoms and spoil sites would need to be determined for permit purposes and to secure necessary easements or other "permissions;" and, it was assumed that issues of liability for seawall and dock failure could be resolved.

Phased Approach for Future Work

For the purposes of a feasibility report, none of these assumptions are unreasonable at all. However, I recommend that this CPE report be considered as the first of four phases. The second phase of an overall approach should be directed more at resolving these issues, validating the assumptions and refining the design intent, rather than proceeding directly into more engineering and permitting work. CPE should have a role in the second phase, but much of the work will need to be done by the Town Attorney's office, the Planning Department staff, and the Town Commission itself.

The goal for the second phase would be to validate the assumptions already made, or change them so as to give CPE clear guidance on exactly what project the Town wants designed and permitted. The issues of channel width and depth came to light clearly in the presentation by Gus Antonini. His "project's" conceptual design was to provide a 20-foot wide channel as deep (only) as the draft of the largest boat in each waterway. This approach resulted in approximately 10,000 cubic yards necessary to be dredged. In comparison, the CPE assumption is a minimum 22.5-foot wide channel and at least five feet deep at low water (not necessarily 5 feet of dredging). This would require more like 35,000 cubic yards of dredging.

MEMORANDUM, Page 3

Date:

January 30, 1996

To:

Griff Roberts, Town Manager

Subject:

Draft Canal Dredging Feasibility Report

Note that the difference in yardage may not sound like much, even from a cost perspective, i.e. unit costs (without mob/demob, etc.) would be \$250,000 vs. \$875,000. But, if the area available for use as spoil disposal sites or some other factor turns out to be a limiting parameter - not dollars - a difference of a few thousand yards could be the difference in a practical project and one which is not.

I am not suggesting by this that CPE's (or Antonini's) design assumptions are wrong; but, rather that it becomes a level of service/public policy issue. If it turns out there are no project-killing limitations on spoil sites or liability, etc., the Commission may want to dredge as deep as the permit exemption will let us - essentially providing equal levels of service in all canals, whether necessary or not based on boat census; or, they may even decide to enhance the level of service, to allow for boats larger than common now, by dredging deeper than -5 feet with additional permitting effort. In some cases the depth may not be the only problem. The assumed widths may produce an acceptable central channel, but water adjacent to individual docks/davits could still be too shallow for full access. I suspect it will turn out that a mixed approach, tailored from area to area, will provide the optimum project consisting of the most service for the least dredging volume. Data from CPE and Antonini will be needed to make these choices, as well as input from affected property owners. Perhaps this would be another role for our communications committee.

The second major thrust of Phase II would be on resolving liability and ownership questions. There would be no point in proceeding with engineering design if there is no feasible way to address the liability of the Town and its contractors, or to get blanket permits for all owners. A handful of claims for seawall failures or dock damage could cost as much as the whole dredging project. CPE should proceed in this phase to evaluate in greater detail the condition of the seawalls potentially affected, because this information directly determines the allowable channel width and depth. However, because this work must be done on a property-by-property basis, I suggest a "team" approach to address other issues at the same time. Town staff with our consultant would contact each property owner with preliminary information about the project, solicit their sense of need, research and verify ownership, and request approval of a prepared standard easement and indemnification instrument. Potential spoil sites also must be investigated in a similar manner.

The outcome of this second phase, both in terms of the degree of property owner cooperation and the public policy decisions about level of service, would determine if the Commission wanted to proceed to a third phase in which designs and cost estimates would be refined and permit applications/exemptions submitted. Following that third phase, the Commission would have a fourth decision point at which they could elect to commit to a funding plan and direct the consultant to proceed to plans, specs and finally, construction.

MEMORANDUM, Page 4

Date:

January 30, 1996

To:

Griff Roberts, Town Manager

Subject:

Draft Canal Dredging Feasibility Report

Conclusion

I suggest that your recommendation to the Town Commission include accepting the CPE feasibility report (when finalized), adopting a phased approach similar to that outlined above, and directing CPE and staff to prepare a scope and cost proposal for a second phase to address ownership, liability and level of service questions.

cc: Len Smally, P.E.

MEMORANDUM

DATE: 02-07-96

TO: GRIFF H. ROBERTS, TOWN MANAGER

FROM: LEN SMALLY, DIRECTOR OF PUBLIC WORKS

SUBJECT: CANAL DREDGING - BUDGET

CPE has completed the Canal Dredging Feasibility Study and Dr. Truitt and I have reviewed it. \$20,000 was budgeted for this report and those funds have been expended.

I concur with Dr. Truitt's report. If the Town wishes to go forward with Phase II, it will be necessary for Cliff Truitt and I to develop a detailed scope and work plan with extensive input from the Town Attorney and CPE. Appropriate proposals could then be obtained. If the Town Commission wishes to proceed prior to October 1, 1996, funds would need to be appropriated from reserves or other sources. If Phase II is to be started after 10/1/96 then we will budget accordingly.

/cmg

cc: Cliff Truitt, P.E., D.Eng.

T. O. Sullivan, Finance Director

MEMORANDUM

DATE: 03-04-96

TO: GRIFF H. ROBERTS, TOWN MANAGER

FROM: LEN SMALLY, DIRECTOR OF PUBLIC WORKS

SUBJECT: CANAL DREDGING - PROCEDURES

BY CAPE CORAL AND MANATEE COUNTY

The following was obtained from staff at Cape Coral and Manatee County.

Cape Coral

Cape Coral has three dredges operating 10 hrs/day, 6 days/week, year round. They do not have a release form or hold harmless clause. They stay (+/-) 20' away from all seawalls and docks and have had only one claim in (+/-) 10 years.

In the beginning funding for the dredging program came from ad valorem taxes. All properties in Cape Coral now are assessed a stormwater utility fee for dredging, stormwater and street sweeping.

Manatee County

Manatee County has had a dredging program for (+/-) 10 years. They use private contractors. On one occasion they rented a clam-shell rig and used their own operator and crew. They require that property owners hold the County harmless 1) via language in a petition, by owners, to dredge or 2) within the language of a Municipal Services Benefit Unit (MSBU). MSBU is another acronym for a MSTU. They have created several MSBU's for dredging.

The County receives (upon application) funds for canal dredging from WCIND for large County projects such as the Bowles Creek project. Finger canals, off major waterways, are paid for by individuals (via the MSBU) who want their areas dredged. The County does the permitting for both the major waterways and the finger canals.

/cmq



Davis, Persson, Smith & Darnell

Attorneys and Counselors At Law
A Partnership of Professional Associations
2033 Main Street, Suite 406
Sarasota, Florida 34237
Telephone (941) 365-4950
Facsimile (941) 365-3259

David D. Davis
Of Counsel

Qualified in Administrative and Governmental Law under the Florida Designation Plan

Board Certified Civil Trial

February 27, 1996

Mr. Griff H. Roberts, Town Manager Town of Longboat Key 501 Bay Isles Road Longboat Key, Florida 34228

Re: Dredging of Canals - Liability

Dear Griff:

David P. Persson^e

Robert W. Darnell Barbara B. Levin

Barry R. Lewis, Jr.

Robert E. Turffs'

Kevin P. Smith

I have reviewed the Longboat Key Canal Dredging Feasibility Study dated February 1996 prepared by CP&E. You asked me for my comments, particularly in the area of liability, and I offer the following:

I have written a letter to our insurance carrier to insure that our insurance policy will cover liability for collapsed seawalls and to determine whether the insurance policy will treat each seawall collapse as a separate act or whether it will treat all problems arising from canal dredging together. This is important for determining what economic impact this will have in view of the Town's significant deductible.

I enclose the letter I wrote to you on July 7, 1993, which outlines problems and recommendations. I would merely note that the absolute best way to protect the Town from liability is requiring a release from all property owners absolving the Town from any liability which may result from the dredging activity.

Alternatively, you may wish to consider some of the following suggestions.

In reviewing the CP&E report, it appears that most seawalls appear to be in good condition but there are some which are already failing. The Town could ask the engineer to review the canal seawalls on a canal by canal basis, and determine which seawalls are in the process of failing. Then the Town would notify the property owner that they have an existing problem and that the dredging may exacerbate their existing problem and their seawall may fail. The property owner would be encouraged to replace or fix



Mr. Griff H. Roberts February 27, 1996 Page 2

02/28/96 08:49

the seawall prior to the dredging. If the property owner chooses not to fix the seawall, then a release would be required. Property owners of seawalls which were in good condition would not be required to execute the release. Releases could also be required in areas where impact is likely, and not required when it is unlikely.

While this increases the likelihood of potential liability, it also increases the possibility of moving forward with the dredging program. You may wish to include a contingency fee factor for failed seawalls within the canal dredging plan.

I would note that the Town's liability arises from "negligent dredging". The determination of what constitutes negligent dredging is what is known as a facts and circumstance test. This simply means that a court would look at an individual's failed seawall and determine whether the Town dredged in a negligent fashion as it relates to that particular seawall. Therefore, the facts would change with each particular situation. This would add to the expense of litigating these issues.

Another alternative perhaps would be that the Town and the property owner could agree to binding arbitration or some other methodology which would be less expensive than classic litigation over each failed seawall.

In conclusion, I think you have the following options:

- Require a release from all property owners.
- Require a release from all property owners whose seawall appears to be a problem, coupled with the suggestion that they fix the seawall prior to dredging.
- Increase the contingency for failed seawalls.
- 4. In combination with items 2 and 3 above, provide for an alternative dispute resolution system as an alternative for a property owner who feels that the Town has unfairly damaged the seawall.

Mr. Griff H. Roberts February 27, 1996 Page 3

These are my thoughts. I look forward to receiving more information from the insurance carrier so I can determine the Town's exposure.

David P. Persson

Sincerely,

DPP:awg191 Enclosures

cc: Cliff Truitt, P.E., D.Eng.

Davis, Persson, Smith & Darnell

Attorneys and Counselors At Law
A Partnership of Professional Associations
2033 Main Street, Suite 406
Sarasota, Florida 34237
(813) 365-4950

David D. Davis*
David P. Persson*
Kevin P. Smith
Robert W. Darnell
Barbara B. Levin

July 7, 1993

Robert P. Rosin Of Counsel Telecopier (813) 365-3259

 Also licensed to practice in Illinois
 Qualified in Administrative and Governmental Law under the Florida Designation Plan
 Also licensed to practice in Louisians and Massachusetts

> Mr. Griff H. Roberts Town Manager Town of Longboat Key 501 Bay Isles Road Longboat Key, Florida 34228

21 813 365 3259

Re: Dredging of Canals - Liability

Dear Griff:

At a recent Town Commission Workshop, a question was asked concerning the Town's potential liability for dredging canals.

It is my opinion that under Florida Supreme Court case of <u>Slemp v. City of North Miami</u>, the Town faces possible liability for damages resulting from the negligent dredging of the canal. What constitutes "negligent dredging" would be a facts and circumstances test.

I would point out, however, that even the most rigorous testing and careful dredging would still subject the Town to potential claims if seawalls collapsed.

I therefore remain of the opinion that the most practical method for allowing the Town to dredge canals, yet protect it from undue and costly liability exposure, would be to obtain a release from all adjacent property owners absolving the Town of any liability which might result from the dredging activity. Additionally, I would identify in that document some of the potential hazards that dredging activity might cause.

As an alternative, the Town may consider obtaining insurance against damage to seawalls and neighboring property. Obviously, this would be more expensive than the proposed release, just how expensive, or even if insurance is available, you would need to determine.

Mr. Griff H. Roberts July 7, 1993 Page 2

If you have any further questions concerning this matter, please let me know.

Sincerely,

David P. Persson

DPP:awg24

, (

cc: Leonard A. Smally, P.E.

Town Commission

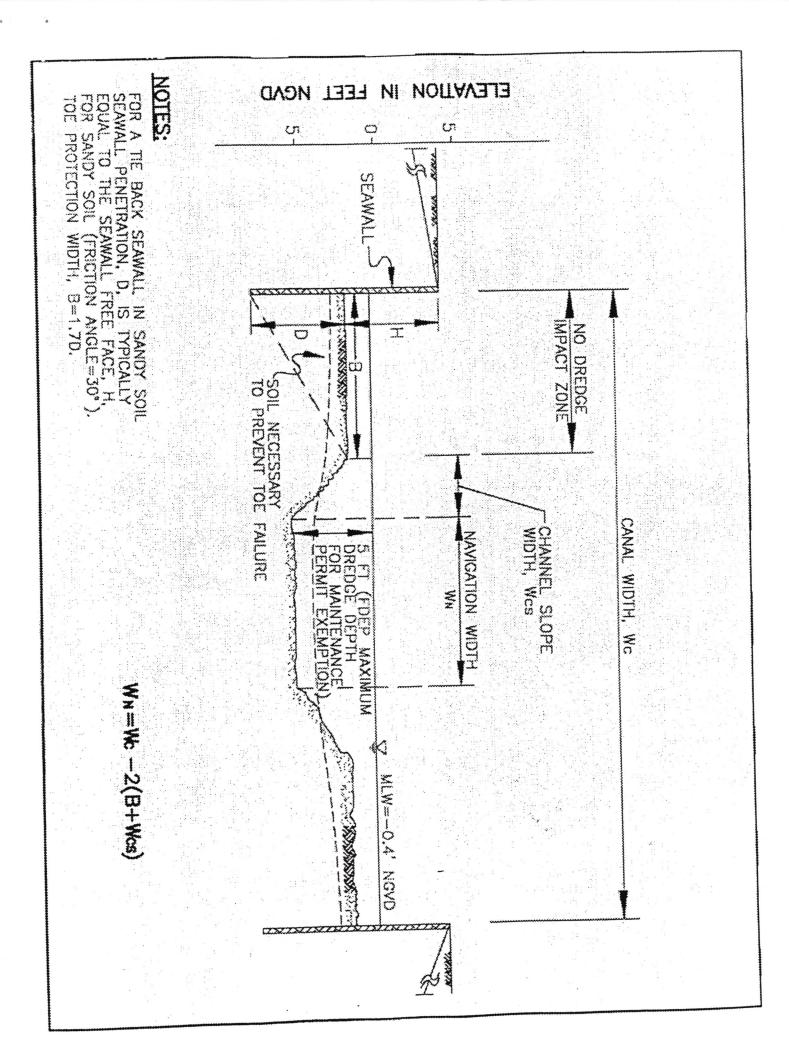
ongboat Key Canal Dredging Feasibility Study-Phase 2

Tom Campbell, P.E. and and Douglas Mann, P.E.

Coastal Planning & Engineering, Inc.

Phase 1 Summary:

- Dredge canals to 5 feet MLW depth
- Place dredged material on upland sites on Longboat Key where possible
- Don't dredge the narrow canals of Tarawitt Jungle Queen, and St. Judes; seawalls could fail



Phase 2 Evaluations:

- 1. Update bathymetric survey to:
 - a. Identify existing navigation service levels
 - b. Identify shoaling caused by drainage
 - c. Refine dredge volume needs
 - d. Quantify access dredging requirements

Phase 2 Evaluations: (continued)

- 2. Evaluate disposal methods and potential Longboat Key disposal sites
- 3. Estimate construction costs
- 4. Evaluate alternate management program for Tarawitt, St. Jude and Jungle Queen canals
 - 5. Integrate program data with Town atlas

Phase 2 Findings

- •Of the 53 canals in Longboat Key, 48 are recommended for dredging
- •A total of 47,000 cubic yards of sand, silt and organic material will be removed
- •Half of the material is in the access channels
- •The estimated cost is \$ 1,538,000
- •The amount of silt in the spoil precludes beach placement

Permitting and Approvals

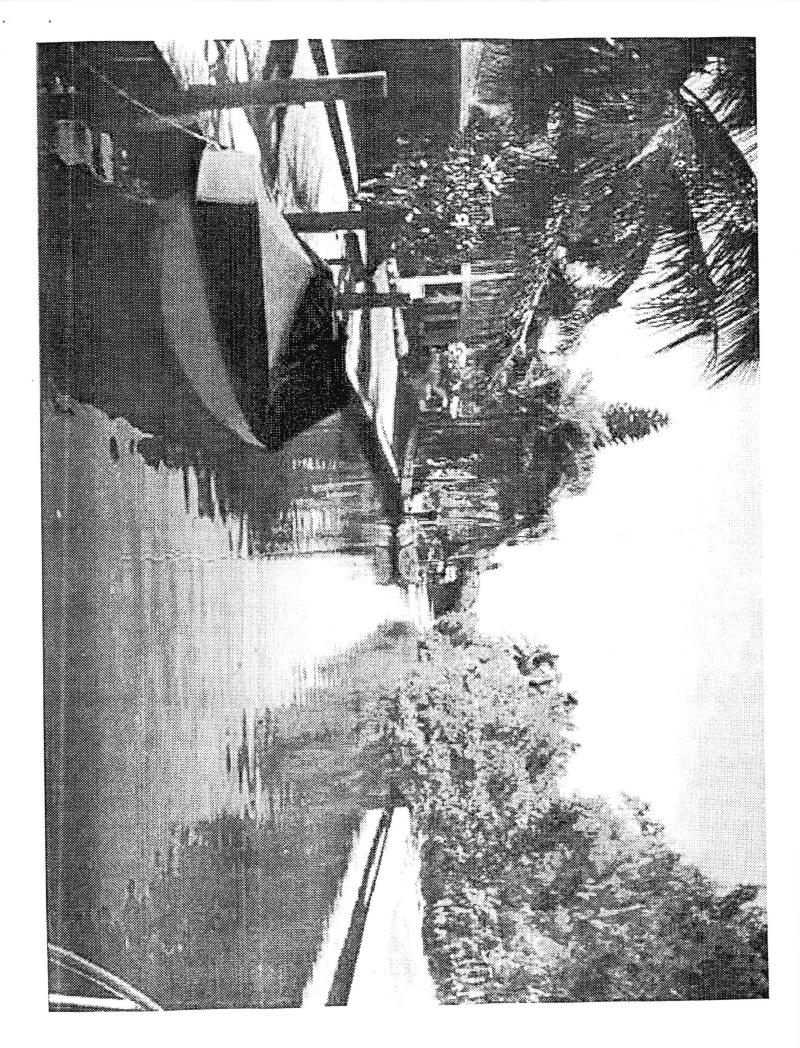
•Canal dredging will be allowed with State and Federal permits and is exempt from Outstanding Florida Water designation.

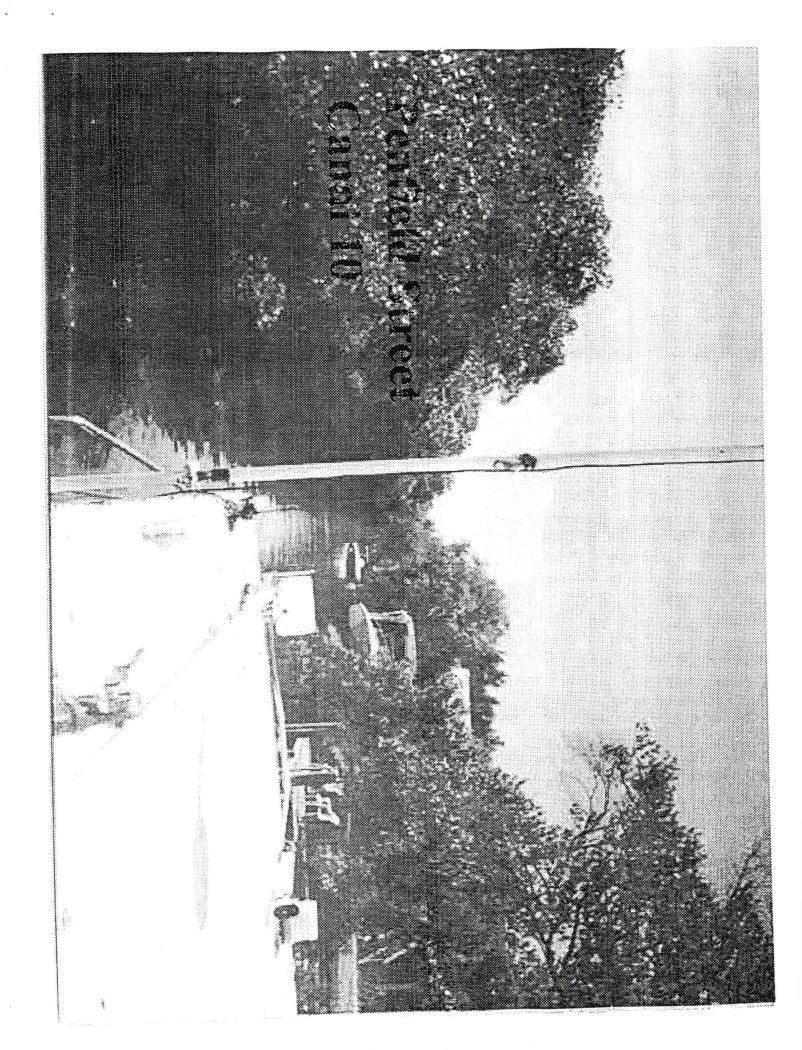
•Bay access dredging permission will be more difficult to obtain because the dredging will be subject to Outstanding Florida Water rules which requires proof of public interest. Some accesses are adjacent to seagrass beds.

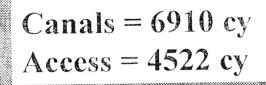
306 cy

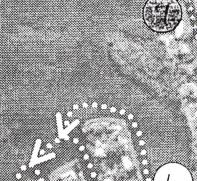
LAND'S END

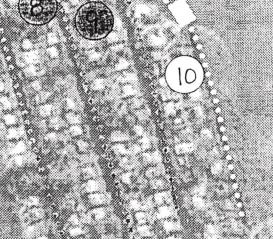
<1.5 feet
1.5-3.0 feet
3.0-5.0 feet
>5.0 feet











BISHOP BAYOU

<u>Jorganna</u> ...

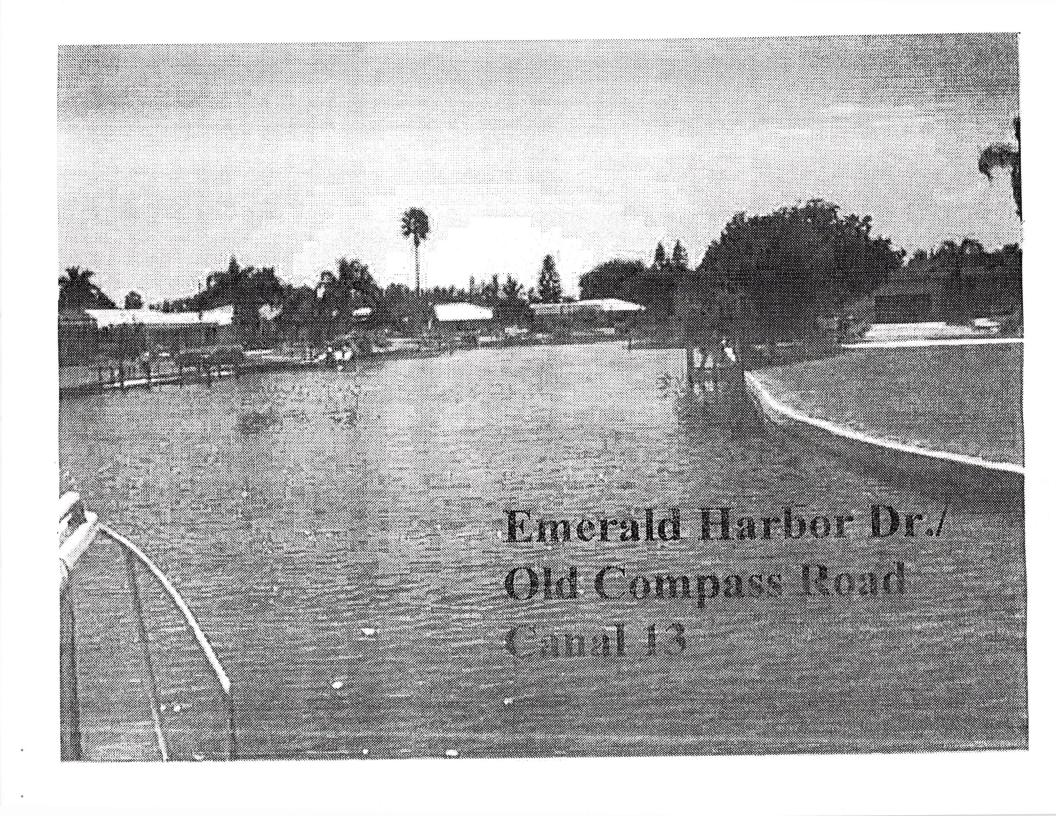
<1.5 feet

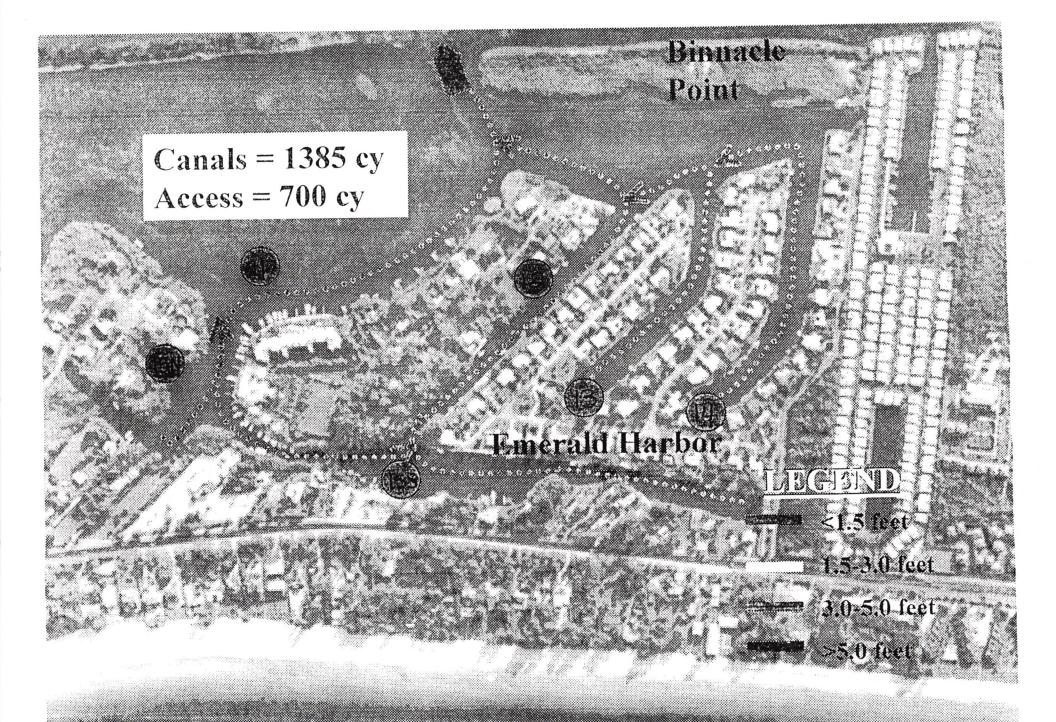
1.5-3.0 feet

3.0-5.0 feet

>5.0 feet

Canals = 1862 cy Access = 2198 cy





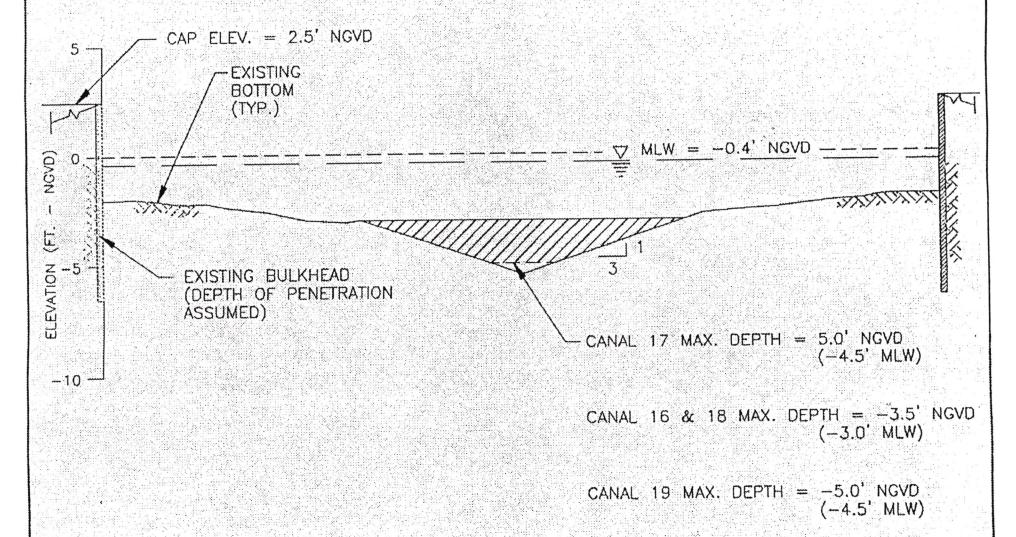




Recommended Alternative for Canals 16,17, 18, 19:

• Owners take responsibility for bulkheads and provide waivers, then Town program dredges a triangular channel (\$125,000).

Triangular channel alternative

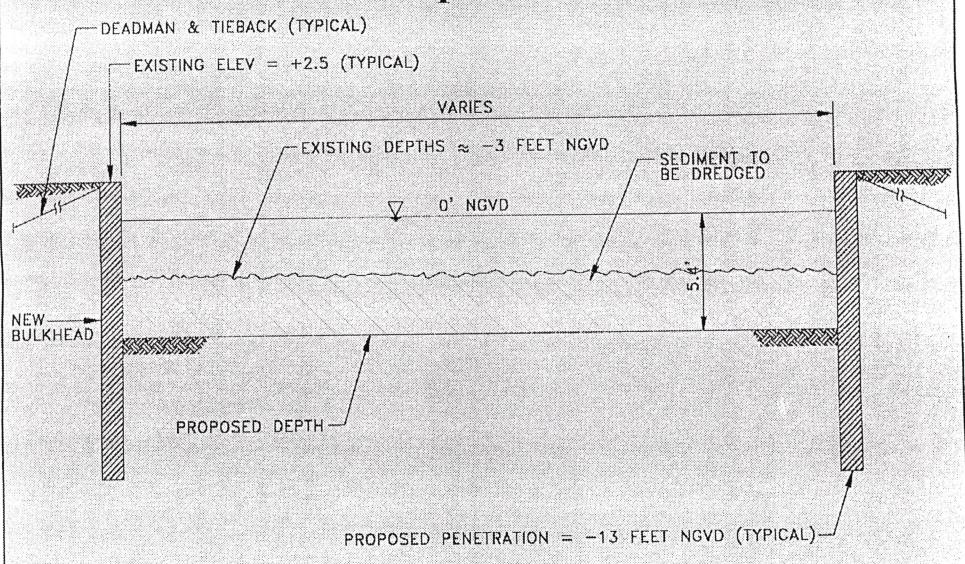


SCALE : 1" = 5.0'

Four Other Alternatives for Canals 16,17, 18, 19:

- 1. Owners stabilize bulkheads(\$=?) and Town dredges minimum channel(\$300,000).
- 2. Replace bulkheads(\$2.9 million) and Town dredges canals bulkhead to bulkhead(\$500,000).

2. Bulkhead replacement alternative

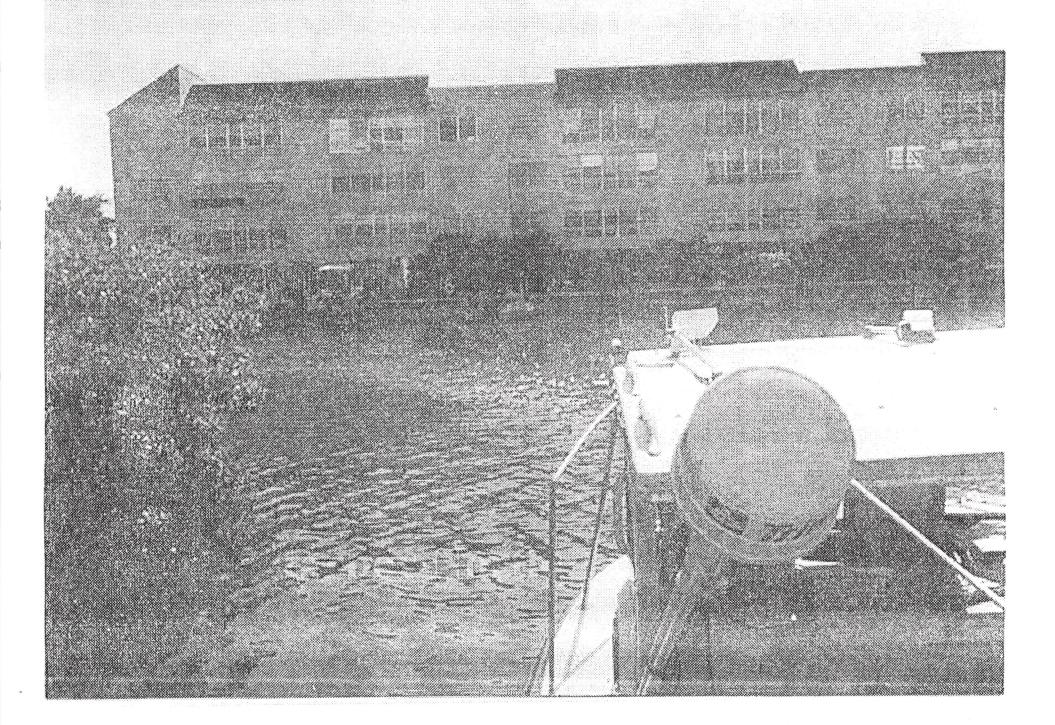


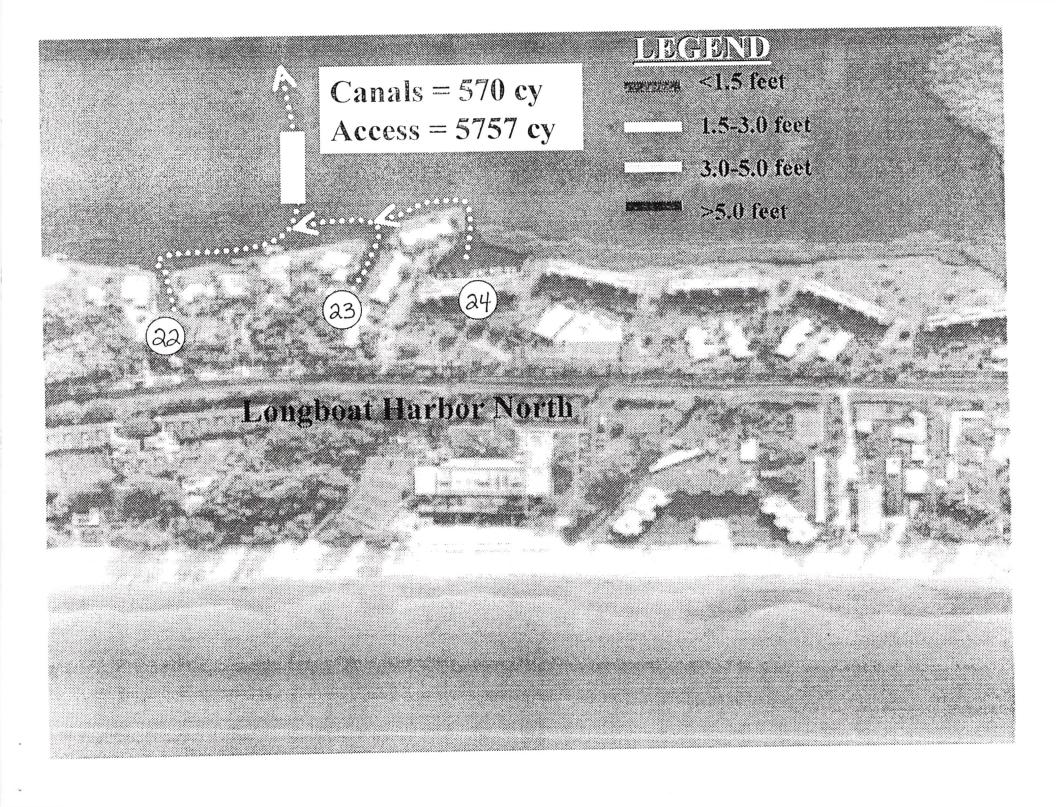
SCALE: 1"=5"

for Canals 16,17, 18, 19: Four Other Alternatives

reimbursement of part of total (\$125,000-\$300,000). 3. Owners dredge canal with appropriate

and 17 (<\$10,000). 4. Selective dredging at the mouth of canals 16





基層 <1.5 feet

1.5-3.0 feet # 3.0-5.0 feet

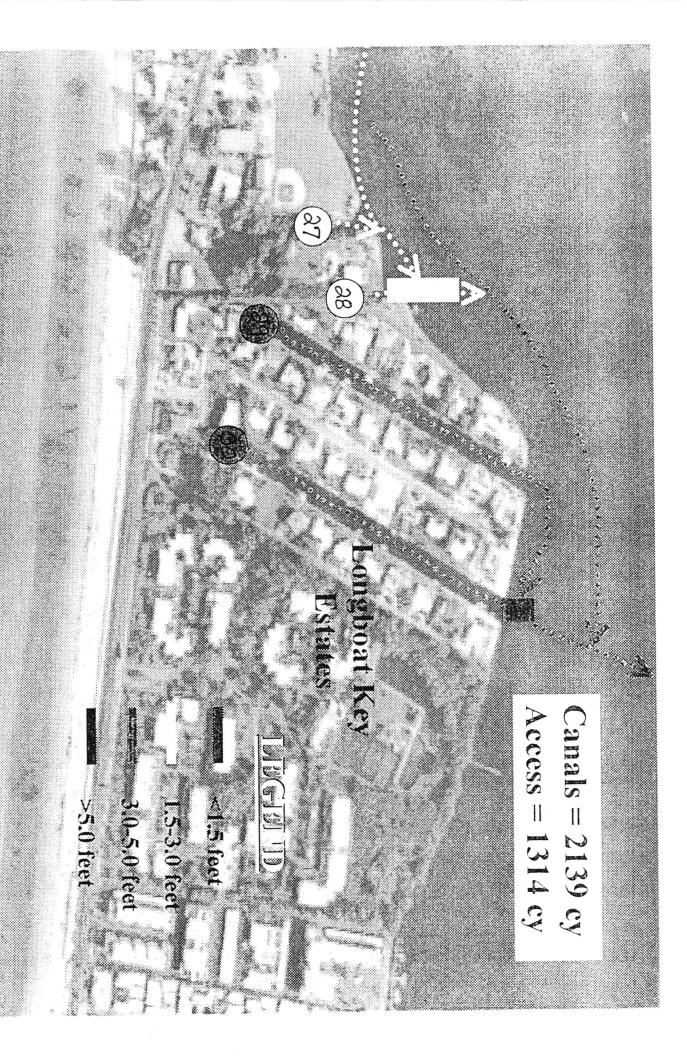
>5.0 feet

Canals = 306 cy Access = 501 cy

(33)

(ab)

Congboat Harbor

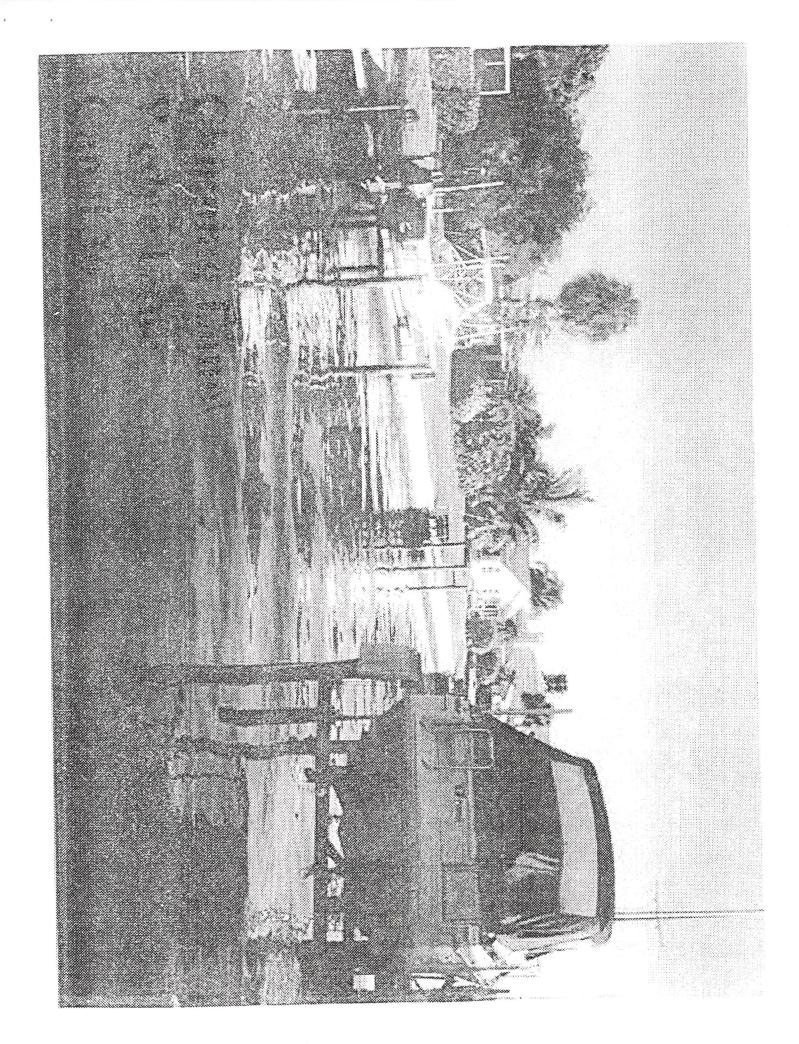


Canals = 1650 cyAccess = 0 cy

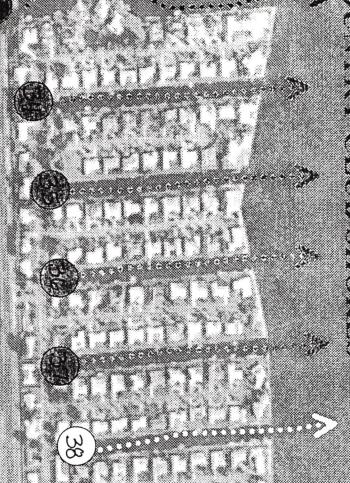
<1.5 feet

1.5-3.0 feet 3.0-5.0 feet

>5.0 feet



COUNTRY CLUB SHORES



Canals = 2347 cy Access = 1427 cy

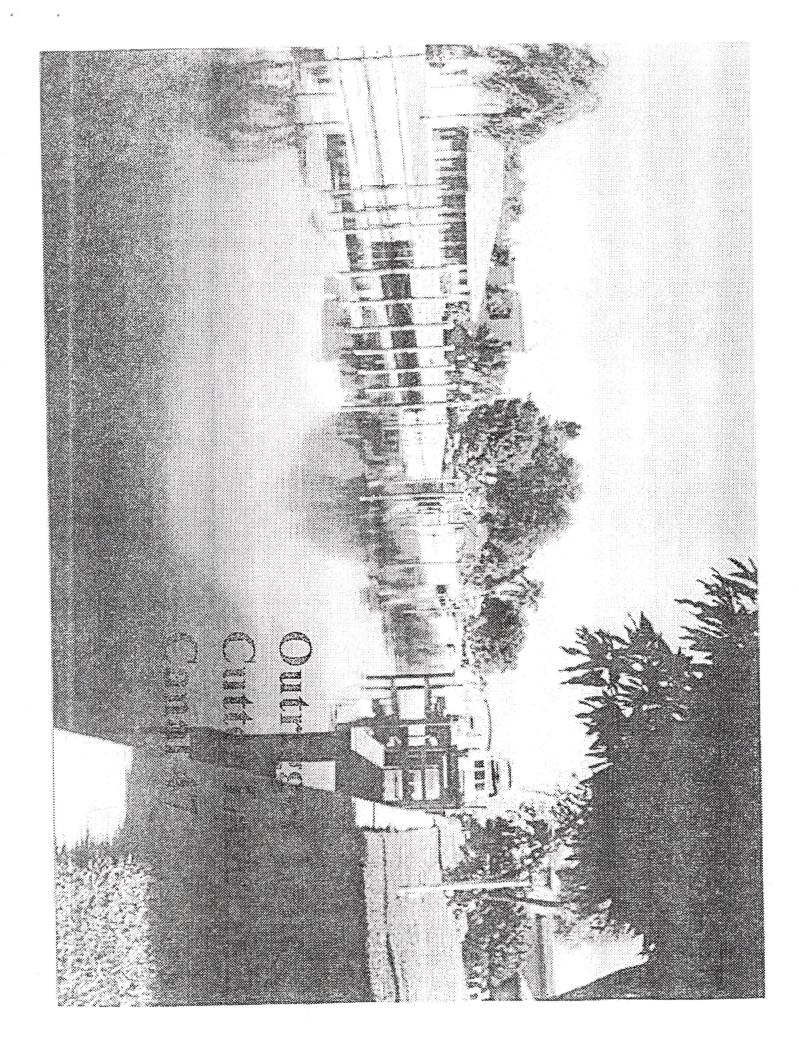
<1.5 feet

1.5-3.0 feet

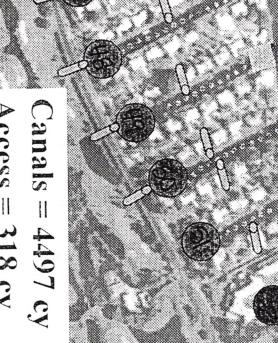
3.0-5.0 feet

>5.0 feet

STORMWATER CONTRIBUTES
TO CANAL SHOALING.







Access = 318 cy

STORMWARE CONTRIBUTES TO CANAL SHOALING.

3.0-5.0 feet

>5.0 feet

Disposal Sites

Evaluated 17 sites within Town limits including:

- •Town Owned
- •Intracoastal
- Undeveloped sites

Feasible Disposal Sites

- Lyons Lane Site
- Bayfront Park
- Water Tank Site
- Overlook Park Parking Lot
- accommodate permanent storage because of planned conservation site-could Durante Park South - Currently precluded

SHOP BAYOU

Bayfront Park Disposal Site Canals 22-32

27 28

(29)

30

Quick Point

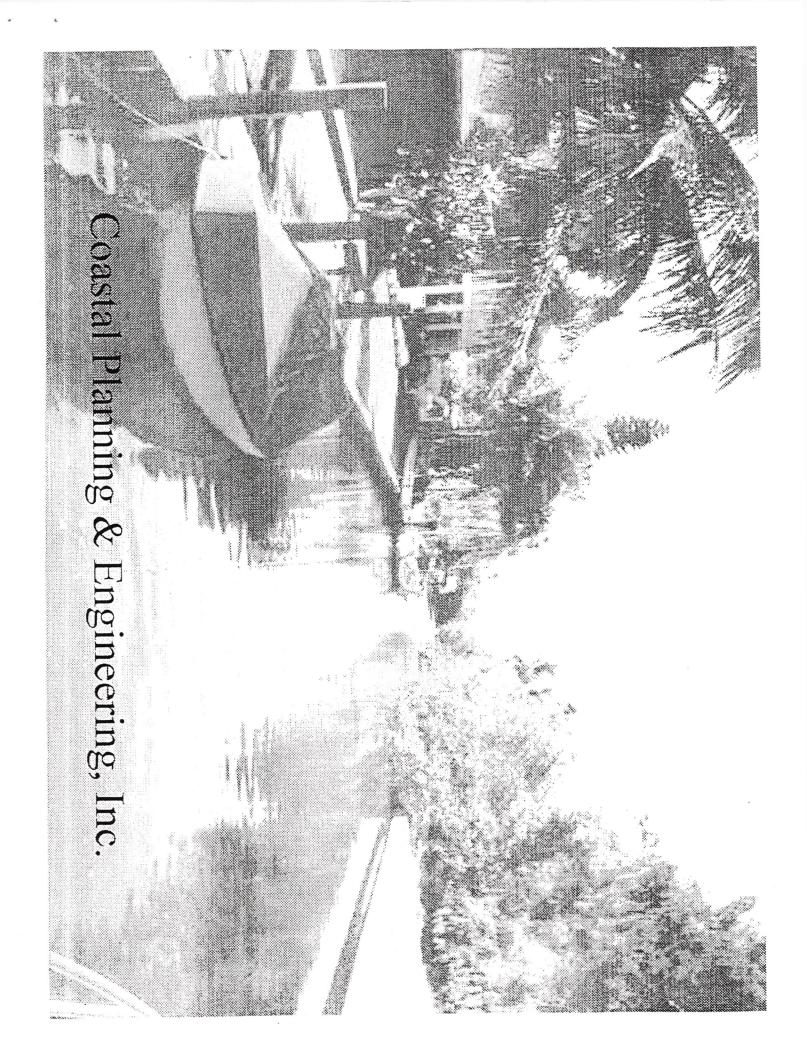
Disposal Site

20)
Gulf Bay
Dr.

Potential savings of \$400,000

Cost Estimates

Total	Overlook Park or Water Tank	Bayfront Park	Lyons Lane	Disposal Site
	33-53	22-32	1-1-9	Canals
\$1,538,000	\$405,000	\$390,000	\$743,000	Cost



Program Decisions

- How does the Town want to address the Jungle Queen, Tarawitt and St Judes canals?
- Are the spoil disposal sites acceptable?
- Does the Town want to rethink the use of the Durante Park South disposal site?
- Funding alternatives?