



SURFRIDER FOUNDATION
SOUTH FLORIDA CHAPTER

November 17, 2006

Sent via Certified Mail

John Martinez
District Six Director
Florida Dept. of Transportation
1000 NW 111th Avenue
Miami, FL 33172

Director Martinez,

Four months ago members of our organization brought to our attention the complete closure of a public beach access easement and related parking area that is leased to Bal Harbour Village "The Village" from the Florida Dept. of Transportation "FDOT". These closures denied general public access to the .89 miles of State and Federally funded beach in The Village since no substantially similar temporary accessway and parking area were provided. Via certified mail and general discussion at a Village Council Meeting we have been petitioning The Village for the past two months to make provisions for the general public to have a substantially similar temporary access to the beach.

Through a public records request, we have discovered that there are a host of questionable activities transpiring at the 'One Bal Harbour' project site. Most egregious is the fact that a private land developer, WCI Communities "WCI", has paid in excess of \$200,000 to Bal Harbour Village to exclude the general public from access to the beach via State owned FDOT land specifically dedicated to beach access. We believe this unjust compensation is a breach of public trust and request an immediate investigation.

In addition, we request that you examine any FDOT permits associated with the 'One Bal Harbour' project located at 10295 Collins Avenue. We have outlined a list of violations that are occurring. We ask that you investigate and request the maximum enforcement capability under your jurisdiction. Nothing defines Florida more than its beautiful beaches. The willful exclusion of the public from them should be dealt with swiftly and severely.

Summary of Alleged Violations

1. Misuse of Public Lands

- 1.1. In direct violation of FL Statute 161.55, a public beach access easement was closed on July 5, 2006, and used as a storage area for materials used in the construction project without a substantially similar accessway being provided.
- 1.2. In violation of their lease agreement with the Florida Dept. of Transportation "FDOT", The Village has condoned and promoted WCI's gradual closure of public land under the Herman B. Fultz Bridge "The Bridge" at the exclusion of the public for the sole use of contractors and personnel related to the construction project.
- 1.3. It appears that in May 2006, The Village Council granted rights, not within their power, for WCI to completely exclude the general public from FDOT public land in direct violation of their lease agreement.

2. Unjust Compensation

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- 2.1. The Village and WCI appear to have knowingly entered an illegal agreement designed to provide The Village with unjust compensation from WCI for the exclusive use of the public land, owned by FDOT, under The Bridge; doing so despite written notice from FDOT that to do so could be unlawful.
- 2.2. The Village appears to have granted WCI exclusive use of the public parking lots under The Bridge for a flat rate of \$150 a day. It is estimated that the 2 parking lots under The Bridge have approximately 100 parking spaces total, which at maximum use would have a revenue potential of \$72,000 a month.
3. Breach of Public Trust
 - 3.1. The Village appears to have breached the public's trust in their stewardship of State lands by entering an illegal licensing agreement to sub-lease FDOT property despite receiving written, certified notice from FDOT that such a licensing agreement contradicts the terms of their lease; notably that the area is to remain open to the public for parking to facilitate public beach access.
 - 3.2. The Village appears to be conspiring to permanently reduce the public's ability to access the beach by designing and promoting a change in the parking lot design under The Bridge to include a Bal Harbour Village Police Sub-Station. Clearly, FDOT's lease to The Village does not condone such changes of use and The Village appears not to have sought the required written permission to pursue such changes despite having been advised by FDOT in the past to reverse unapproved changes limiting the public's access to the beach.
 - 3.3. In its apparent attempt to conspire to reduce the public parking available under The Bridge, The Village had full knowledge that such a reduction would facilitate a higher cost burden on the taxpayers whose parking access is being curtailed because of funding criteria outlined in Chapter 62B-36 of the Florida Beach Management Funding Assistance Program.
 - 3.4. Despite being granted public land by FDOT at a rate of \$1 per year for stewardship of a parking lot for public beach access, The Village charges the general public the highest parking meter rate in Dade County (.25 per ten minutes) to enhance municipality general revenue.
 - 3.5. The Village and WCI have provided repeated assurances to interested parties such as Surfrider that the public beach accessway will re-open in January 2007, while at the same time The Village provided a written letter to the Miami Herald, published on November 4, 2006, that the accessway will not re-open until mid-2007.
 - 3.6. Despite Village Mayor, Seymour Roth, providing assurances at the October 17, 2006 Village Council Meeting that arrangements would be made to provide remedies to the current closure of parking and beach access, no action to fulfill the assurances made at the Council Meeting have been made.

Situation in Brief

WCI Communities summarily closed the public beach accessway under the Herman B. Fultz Bridge (The Bridge) in Bal Harbour on July 5, 2006 along with its associated parking lot, which the public had been gradually restricted from for WCI's benefit since 2004. Upon hearing of these actions from the general public, Surfrider submitted certified letters on September 22, 2006 to The Village requesting immediate recourse. In response, The Village forwarded a letter from Michael Patrizio, Senior Project Manager for the One Bal Harbour Project, which noted the following: "Unfortunately, the development agreement



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never considered the public inconvenience created by this closure.” As well Mr. Patrizio justifies the closures by stating “a comprehensive plan regarding the closures of both the Beachwalk and Collins Avenue has been represented, reviewed and approved by all municipalities”.

We advised The Village via certified mail and at their October 17, 2006 Council Meeting that “a developer and one or more municipalities may neither contract nor plan in violation of state law”. Specifically, we noted the requirements of Florida Statute 161.55. We reiterated that the statute requires a temporary beach accessway of “substantially similar quality and convenience” be provided the general public when an existing beach accessway and its attributes are limited by development in the Coastal Building Zone.

We received assurances that a temporary beach accessway would open by November 1, 2006 (4 months after closure of the current beach accessway) at 10201 Collins Avenue on the property of Joseph Imbesi, owner of the private entity ‘Bal Harbour Club’. This was being made available by the generosity of Mr. Imbesi, but public parking was not going to be available. We immediately reiterated that, despite these efforts, the proposal was NOT a beach accessway of “substantially similar quality and convenience” to the general public. While unofficial usage of this beach accessway has been going on, The Village has not provided ‘official notice’ that this accessway is open to the general public despite written assurance that they would do so.

Surfrider contacted Mr. Imbesi to see if WCI or The Village had made a reasonable offer to lease a portion of his private property for parking purposes in order to create the required beach accessway stipulated by 161.55. Mr. Imbesi responded: “No”. Surfrider immediately sent a certified letter to The Village, WCI and Mr. Imbesi reiterating the requirements of 161.55 and attempting to facilitate discussion between the parties to quickly resolve the situation.

Prior to and during this time, Surfrider had also submitted public records requests to The Village regarding our desire to see building plans for proposed renovations (re-development) of the beach accessway and associated parking lot. Once we were provided these drawings, we immediately recognized that the re-design of the existing parking lot would create a dramatic reduction in the amount of parking available to the general public. That reduction would, in turn, create a greater cost burden on the general public for future beach re-nourishment projects in Bal Harbour. State funding criteria is based upon the amount of public parking available. Reduction thereof would reduce State funding, thus increasing the local agency’s (Dade County) burden. When we brought this to The Village’s attention their attitude was dismissive. Village Manager Treppeda wrote, “FYI, the County, State and Federal gov’t have always paid the entire cost of beach re-nourishment”. We took this to mean” ‘what do we care if it doesn’t cost us?’

To ascertain the additional cost the Dade County general public would be bearing for the reduction of parking being proposed, Surfrider served a public records request on The Village for the current Civil Engineering drawings for the parking lots under The Bridge. We received a written response from Mr. Treppeda: “I checked with our Building Official and he knows of no plans in our possession that show the existing parking layout...” He went on to recommend: “Florida DOT would be the best place to find plans since they own the bridge and the property under it.”

Per Mr. Treppeda’s recommendation, Surfrider submitted a public records request to FDOT District 6 for Civil Engineering drawings of the current parking configuration under The Bridge. Harvey Shone, Legal Rights of Way Specialist with FDOT District 6, noted that they have no such drawings; they would be the responsibility of the entity to which FDOT leases the property under The Bridge. When pressed for who that would be, Mr. Shone noted he would pull the file and allow me to review it so I could pursue the matter further with the correct agency.



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It is at this time, November 8, 2006, upon reviewing FDOT District 6 files concerning The Bridge, that Surfrider becomes aware of the extent of The Village's and WCI's misuse of public lands, unjust compensation, and breach of public trust. The aforementioned file shows that The Village is the responsible agency for retaining Civil Engineering drawings for the parking area under The Bridge because since 1970 they have held a lease of \$1 per year for use of the FDOT public land. The file shows that since that time, The Village has been chronically late in paying its \$1 yearly fee and has required constant prompting from FDOT not only for payment, but for maintaining required insurance. In addition, in 1987 The Village summarily attempted to put up a fence and restrict public access, needing guidance by FDOT to correct the matter. Again in 2002, the Village summarily attempted to restrict hours of access, changed signage, and began towing vehicles, again requiring FDOT intervention to correct the matter.

At that time, FDOT advised The Village that the lease first executed in 1970 needed to be updated, and a new lease would be generated. As part of the new lease executed June 2003, FDOT specified in Section 2 'Use': "The leased property shall be used solely for the purpose of Parking and Public Beach Access." It also requires that the Lessee (The Village) "use and occupy leased property in a careful and proper manner, and not commit any waste thereon. Lessee will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the property."

An addendum to the lease further specifies: "Parking lot to remain open daily to the public between the hours of six (6am) to ten (10pm)..." It should be noted that the new lease clearly requires "prior written approval from FDOT" before any future changes in hours or for physical improvements. The Village Council formally approved the lease and addendum in May 2003 through Resolution 644 whose title, in pertinent part, reads "...allowing Village to utilize DOT right of way at State road A-1-A for parking and public beach access..."

The year following the execution of the lease, a Mr. Sorenson from WCI Communities faxed a "License Agreement for Use of Property" to FDOT. Essentially, WCI was requesting temporary parking under The Bridge for vehicles belonging to Licensee's employees, agents and contractors who are working on the One Bal Harbour project. The agreement was to commence on January 2004 at a rate of \$150 a month and remain in effect until the project was completed. FDOT Property Management Administrator Paul Wilson immediately responded to the fax with a certified letter to Village Manager Treppeda four days later noting, "...the Department could not approve the proposed license agreement".

Mr. Wilson documented in emails at that time and in a letter, that Mr. Treppeda with The Village and Mr. Sorenson representing WCI were made aware that the parking area was to remain open to the public between the hours of 6am and 10pm as stipulated in the Addendum to the Lease Agreement. The file at FDOT concludes at this point with no other documentation supporting the actions that took place thereafter. There is no mention or documentation that The Village sought FDOT written approval, as required in their lease, for re-designing the parking area under The Bridge, nor for the complete closure of the parking area that later took place.

Surfrider members can attest that, prior to 2004, The Village had excluded the public from parking in portions of the parking lots under The Bridge. Essentially, this area appeared reserved (more or less taken over) by municipal vehicles. As construction of the One Bal Harbour project progressed, construction related vehicles began to park in all areas under The Bridge, often leaving less than a dozen spaces for the general public. This often precipitated a "full lot", and no ability for members of the general public to park their vehicles and access the public beach.

Then on July 5, 2006 the parking area and beach accessway were summarily closed and a sign posted: "WCI Parking Only – All others will be towed at Owner's expense".



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Summary

In light of the recent findings at FDOT, Surfrider submitted a public records request to The Village on November 8, 2006, for documentation related to our allegations. The Village did not fully respond to our request, but they have disclosed some financial records that bear further scrutiny.

In order to assist your investigation, we have enclosed copies of FDOT's lease of public land to The Village, FDOT correspondence instructing The Village not to proceed with the WCI Licensing Agreement, the executed Licensing Agreement that FDOT instructed The Village not to enter into, and some of the higher value checks written from WCI to The Village purportedly for use of the public parking area.

Despite our written and verbal communications, The Village and WCI have continually resisted and delayed efforts to rectify these alleged violations, often blaming one another for responsibility, thus continuing exclusion of the general public from historically open access to this coastal area. We sincerely hope that the full enforcement powers of the Florida Department of Transportation will promptly result in beach access, including parking, for the public. In addition, we request and anticipate that all parties involved in illegal activities will be penalized to the fullest extent of the law.

Sincerely,

Theodore J. Marshall
Vice-Chairman
Surfrider Foundation
South Florida Chapter