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MEMORANDUM

TO: Padre Isles POA Board of Directors  
PROM: John D. Bell  
DATE: August 6, 2007  
RE: Mooring Areas and Navigation Channels

Several questions have been raised over the past few months concerning the use of Mooring Areas and Navigation Channels. About two years ago, the Board developed the process for the issuance of Mooring Permits under certain circumstances, but that process has not been utilized in addressing the various issues in mooring vessels on the Island.

Background

The Protective Covenants for each of the subdivisions in Padre Isles generally define a "Navigation Channel" as being that portion of each waterway or canal not included within any Water Building Area or within any Mooring Area. The various Mooring Areas and Water Building Areas are delineated on the plats for the different subdivisions comprising Padre Isles. The Navigation Channels range anywhere from a minimum of 60 feet to an excess of 250 feet.

The Covenants further provide that no "obstructions" are permitted in any Navigation Channel. This prohibition appears both in the definition of the Navigation Channel as well as in other places in the Covenants. The Covenants specifically allow docks, piers and mooring posts within Mooring Areas after they have been approved in writing by the Architectural Control Committee. Although, the term "obstruction" is not defined in the Covenants, in other places in the Covenants the term is utilized in conjunction with the term "structure" and with "docks, piers and mooring posts."

The issue of whether a moored vessel could be considered an obstruction was litigated in a case in which a vessel was moored perpendicular to the bulkhead and projected over 30 feet into a Navigation Channel wall beyond the 10-foot Mooring Area. It was the POA's contention that an improperly moored vessel in that manner constituted an obstruction, and the Court granted Summary Judgment in favor of the POA's position in that case. Obviously, a vessel underway would not be an obstruction, and vessels moored in a manner approved by the POA consistent with proper navigation safety would not be considered obstructions.

### Mooring Permits

In late 2005, the Board approved a Mooring Permit process in order to authorize property owners with Mooring Areas to encroach into the Navigation Channel with their moored vessels in a regulated manner consistent with the efficient use of the Navigation Channel. Standards were developed by the Board requiring that at least 60 feet of fairway be maintained in the Navigation Channel. No docks, piers or mooring posts are allowed in the Navigation Channel under a Mooring Permit. Only the vessel is allowed to protrude into the Navigation Channel in the manner approved in connection with the issuance of the Mooring Permit.

The issuance of Mooring Permits is within the Board's authority as part of its responsibilities for the maintenance and utilization of the common areas within the Padre Isles subdivision. The Navigation Channels are part of those common areas, and the Board has the ability to properly manage those common areas in a manner to benefit the owners within Padre Isles. Within that exercise of discretion in management, however, the Board may not grant permits to install docks, piers or mooring posts in the Navigation Channel that would be in direct violation of the expressed terms of the Covenants.

An issue was discussed recently concerning the possibility of allowing mooring buoys or anchors within the Navigation Channel in order to assist in the mooring of vessels located in whole or in part within the adjacent Mooring Area. The placement of mooring buoys is not expressly prohibited by the Covenants, so the Board could adopt reasonable procedures for the placement of such buoys in a way that did not materially interfere with use of the Navigation Channel. Issues to consider would include the following:

1. An overall distance limit should be imposed restricting the placement of mooring buoys within a certain number of feet of the bulkhead.
2. The mooring buoys should be of an approved type and design which includes reflective materials in order to avoid their becoming a hazard to navigation at night at times when the vessel is not present.
3. The required fairway measurements of a minimum of 60 feet should be addressed so that the mooring buoys do not interfere with the fairway.
4. The placement of the mooring buoys should be specifically set on the Mooring Permit so that their number and location are approved as part of the permit process.

The Board may wish to revisit the fee structure for the issuance of Mooring Permits. The fee process is solely within the Board's reasonable discretion in determining what is necessary to offset the POA's expenses and interests in this regard.

In order to change the area designated for the construction of docks, piers and mooring posts, the Mooring Area would have to be revised by the filing of a replat of the area. The replatting process requires approval by the City, and typically a replat of one lot can be approved administratively at the Department of Development Services without having to go before the Planning Commission. An engineering firm must prepare the replat, and the replat will have to be approved by the property owner(s) and the POA as the owner of the Mooring Area.

The POA should utilize the same standards in considering approval of replats as applied to Mooring Permits in that a minimum 60-foot fairway should be maintained. The building plans for any docks, piers or mooring posts should take into consideration the need for reflective material on those structures which are substantially out of alignment with the normal Mooring Area line in that subdivision.

Once the replat has been approved and filed of record in the Nueces County Official Public Records, the definition of the Mooring Area is changed for that property, so the Navigation Channel is reduced automatically.

#### Change in Covenants

A third option would be to amend the Protective Covenants to change the definition of a Navigation Channel. Currently, the Navigation Channel is defined as being that area of each canal or waterway that is not located within any Mooring Area. That definition could be changed to provide that a Navigation Channel is restricted to those areas a minimum of 60 feet in width which are outside any Water Building Areas, Mooring Areas, or other "Special Mooring Areas" as determined by the Board.

Additional study would need to be conducted in the Protective Covenants to determine how many sections might need to be amended in order to effect the desired change, but the basic intent would be to authorize the Board to grant permits to construct docks, piers and mooring posts in certain areas outside the platted Mooring Areas or Water Building Areas. In any event, the Board would need to follow standards to maintain a minimum clear fairway width for the Navigation Channel.

#### Conclusion

The current Mooring Permit application form and standards that were approved by the Board and put into effect in January 1, 2006 are available at the POA office. The Board has authority under the Covenants to regulate the use of the Navigation Channels so long as no docks, piers or mooring posts are allowed to be constructed within the Channels.