

discretion of the contractor to implement in order to achieve a contract objective. Using the Palm and Hibiscus project as an example, the contractor could not adversely impact the level of service of the stormwater system while working on the system. The contractor decided that the best way to ensure that properties did not flood during construction was to construct temporary construction inlets. Means and methods are not dictated by the owner of a project and doing so could expose the owner to undue liability. In fact, as noted in the summary judgment of *Juno Indus. v. Heery Int'l*, 646 So. 2d 818, 822 (Fla. 5th DCA 1994), "The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for all safety precautions and programs, in connection with the Work as well as for coordinating all portions of the Work."

Moreover, the cost of the private side inlets and permanent right-of-way inlets and associated harmonization is minor compared to the overall contract. The change order amounted to \$1,615,000, or less than 5% of the total \$40,956,000 project cost.

Any large public infrastructure project as complex as Palm and Hibiscus incurs a 5% change in scope. Moreover, Palm and Hibiscus was a progressive design build project, where, by definition, the plans were not fully developed. It is not only reasonable, but expected, that a professional would deem a 5% change immaterial.

A key issue that is concerningly reiterated throughout the OIG report, although it is not representative of reality, is that there was "large scale installation of private-side yard drains". In fact, there were only eight building permits authorized for drainage connections from private properties. The remaining drains were all in the right-of-way and reasonably considered temporary construction solutions.

To provide perspective, public works permitted eight private connections out of approximately 300 properties in the Palm and Hibiscus project – less than 3% of the properties received private-side yard drains.

The report fails to mention that immaterial project changes are ordinarily reconciled through permit modifications at project close out. This was stated by the Engineer of Record (see Exhibit A) at a public committee meeting; however, no mention of these statements is made in the OIG report. While the significance of the yard drains is arguable at best, the professionals working on the project clearly arrived at the consensus that these drains were immaterial.

Perhaps there are well vetted technical or administrative reasons that DERM considers the additional temporary drains material; this, however, does not change the fact that within normal engineering practices the volume of water and tributary area are what is of importance.

It therefore stands to reason that the lack of permit revisions is not indicative of willful deception, but rather representative of ordinary project management decisions.

Claim 2

The elevation of roadways does not and did not flood properties. It is essential to understand that any water ponding on a property is only there because the water landed on that property. This is the purpose of harmonization – to ensure proper access and drainage.

The OIG report stated that an elevation of 2.2 NAVD would have been the proper elevation. However, this elevation is no different than 3.7 from a grading perspective - the adjacent property would remain lower.

In fact, the below table from the signed and sealed drainage report for Palm Island shows that the post development conditions on the south-southwest side of the island (the Coconut Lanes) exhibit a Max Stage of 1.06 or less.

Table 2- 4: Maximum Flood Stage Elevations

Location	Node	Warning Stage (ft)	Max Stage (ft)	
			5-Yr, 1-Day Storm at Low Tide	5-Yr, 1-Day Storm at High Tide
NW	CB-123	2.82	-0.75	-0.75
Before East PS	CB-131	2.95	-1.97	-1.97
Before West PS	MH-020	2.56	-2.32	-2.32
NE	CB-084	3.00	3.29	3.29
SE	CB-085	3.00	3.34	3.34
S	CB-133	2.90	1.06	1.06
S	CB-013	3.20	0.63	0.63
SW	CB-114	2.82	0.85	0.85

As seen in the last three rows of the above table, the elevation of water during the design storm event for these properties is well below, even the 2.2 NAVD recommended in the OIG report. Therefore, it stands to reason that if 2.2 NAVD would not adversely impact the properties, neither would 3.7 NAVD.

The OIG is encouraged to see Exhibit B – clearly showing the efficacy of the Palm and Hibiscus Project with before and after photographs.

If the intent was clearly to improve the quality of life of the residents and no conspiracy was at hand, the inevitable question becomes who, from an official perspective, would be responsible to obtain the necessary permits.

Contractually, the responsibility fell on the Design-Builder – Lanzo. However, from a statutory perspective, the Florida Board of Professional Engineers states that:

The engineer needs to resolve the issue, whether by correcting the design, by obtaining a formal interpretation that clarifies the requirements, or through obtaining a documented waiver or variance through legal means.

It cites that if an engineer fails to do this, the engineer could be found to be negligent pursuant to 61G15-19.001(4), F.A.C or be found guilty of misconduct pursuant to 61G15-19.001(6), F.A.C

This can be found in the following link titled: **“An Engineer’s Responsibility When Engineering Issues Are Discovered After Permitting”**

<https://fbpe.org/an-engineers-responsibility-when-engineering-issues-are-discovered-after-permitting/#:~:text=The%20engineer%20needs%20to%20resolve,or%20variance%20through%20legal%20means.>

Like hiring a roofing contractor to repair your home after a hurricane, the City hired professionals to fix the drainage system in Palm and Hibiscus Islands. It was the sole responsibility of these professionals to comply with regulatory requirements. The fact that if these licensed professionals did not properly conduct their business is not indicative of wrongdoing from City staff, but rather an oversight of the design-builder.

Beyond the broad comments stated above, it is integral to this response and to understanding of the City’s constituents that the statements quoted regarding the permanency of the yard drains be clarified.

I, Roy Coley, was installed as Director of Public Works in April of 2018. This position serves as the owner, operator, and regulator of the City’s Right of Way. Prior to this installment I held the position of Infrastructure Director, a divisional position that is charged with operating our City’s infrastructure. At no time to date has anyone from the progressive design build team, or the engineer of record notified me of any concerns related to design or permitting of this project.

As directed by commission (Resolution 2017-29840), I approved permits the connections of private property inlets to the stormwater system within the right of way. These permits were executed under my authority as the owner of the stormwater management system and the right of way and did not make any representations regarding environmental regulations. This is not only completely within our purview at public works but standard protocol for the owner of any asset. For example, when connecting to a Miami Dade Water and Sewer Department water main, one must obtain their approval. It is the same case when anchoring a pipe to an FDOT bridge, you first obtain an FDOT permit. In both cases although the owner’s consent is given, the permittee must also obtain all other regulatory approvals, including those from the environmental regulators.

I have no direct knowledge of, and therefore did not and cannot testify to, permits authorized prior to my installment in April on 2018. To be clear, the following discussions (below) cited in the report only applied to the limited permits issued by Public Works after April of 2018.

On this subject, I credit the testimony of Public Works Director, Roy Coley, who stated that the laterals and yard drains were always intended to be permanent installations and were approved for permanent use by the Public Works Department.

From a fundamental perspective, I am sure that all City staff is working to improve the conditions of the City's constituents. In fact, our own staff at Public Works have worked tirelessly to secure numerous new permits and close out old permits. The success of our close working relationship with regulators is best exemplified in the tables below, tallying results.

Approved Permits		
Permit Number	Name	Approved date
CLII-20200029	PUMP STATION NO. 3 PUMPS REPLACEMENT	5/11/2020
CLII-20200016	W. 59th Street Bioswale	5/15/2020
CLII-2020022	Cherokee Ave Outfall	5/19/2020
CLII-20200010	PALM ISLAND - NDD ROW INLETS (2 PROPERTIES)	6/11/2020
CLII-20200012	PALM ISLAND - NDD PRIVATE INLETS (25 PROPERTIES)	6/12/2020
CLII-20200038	NEIGHBORHOOD 5 LA GORCE 57 ST & N BAY RD	6/15/2020
CLII-20200010	PALM ISLAND - NDD ROW INLETS (2 PROPERTIES)	7/11/2020
CLII-20200020	Maurice Gibb Park	7/16/2020
CLII-20200053	PALM ISLAND - 14 NDD PRIVATE INLETS	9/29/2020
CLII-20200048	Hibiscus Pvt (4 properties) - BFP modification request	10/13/2020
CLII-20200051	Parking Lot P-14-RESURFACING & DRAINAGE	11/20/2020
CLII-20200064	Hibiscus Island NDD ROW inlets (3 properties)	12/21/2020
CLII-20200062	Palm Island NDD - Inlets (3) - 8 properties	12/23/2020

Closed Permits		
Permit Number	Name	Closed date
CLII-20200038	NEIGHBORHOOD 5 LA GORCE 57 ST & N BAY RD	9/1/2020
CLII-20160052	Venetian Islands Drainage Improvements	9/11/2020
CLII-20180043	19 Street PS (Partial)	9/11/2020
CLII-20180022	NAUTILUS ON STREET PARKING SHERIDAN AVENUE AND 42 STREET	9/21/2020
CLII-20200029	PUMP STATION NO. 3 PUMPS REPLACEMENT	9/21/2020
CLII-20180038	Palm and Hibiscus Island Drainage Improvements (Partial only Hibiscus)	9/22/2020
CLII-20140068	CENTER STREET SCAPE EUCLID AVENUE STREET	10/8/2020
CLII20150010	17X Parking lot - Collins and 13 Street	11/6/2020
CLII-20080015	Neigh No. 8 Bayshore.	12/7/2020
CLII-20150035	Normandy Isle Neighborhood Phase II	12/7/2020
CLII-20160023	Parking P-91 Renovation 501 72 Street	12/7/2020
CLII-20160022	Parking P-59 Renovation 4000 Royal Palm Avenue	12/7/2020

The OIG spent considerable time compiling the data in this report. He is fully aware that the Engineering Division is now charged with permitting. He did not discuss the new permitting process with the Engineering Division or endeavor properly ascertain the existing process. Instead, many assumptions were made on how the process could be improved moving forward. It is worth asking, with a track record like the one shown above, how can the OIG not have taken into consideration the demonstrably successful permitting process the City has established?

EXHIBIT A

October 23, 2019 Land Use title and video:

VIDEO 15. DISCUSSION TO REVIEW THE PALM AND HIBISCUS ROAD ELEVATION EXPERIENCE

Commissioner Samuelian

Capital Improvement Projects

Item C4 Q - September 11, 2019 Commission Meeting

October 30, 2019 title and video

R9 D DISCUSSION ON THE PALM AND HIBISCUS RESILIENCY PROJECT WITH A FOCUS ON PRIVATE PROPERTY HARMONIZATION.

VIDEO

Commissioner
Samuelian

Mark

AFTERACTION:

October 23, 2019 Land Use Committee

15. DISCUSSION TO REVIEW THE PALM HIBISCUS ROAD ELEVATION EXPERIENCE ACTION:
Item Deferred.

October 30, 2019 COMMISSION DISCUSSION/AFTERACTION:

R9 D DISCUSSION ON THE PALM AND HIBISCUS RESILIENCY PROJECT WITH A FOCUS ON PRIVATE PROPERTY HARMONIZATION. Commissioner Mark Samuelian

ACTION: Discussion held. Lilia Cardillo to place on the Commission Agenda, if received. Eric Carpenter and David Martinez to handle.

DIRECTION: • Add this item as a recurring update item each Commission Meeting. Lilia Cardillo to place on the agenda. Eric Carpenter and David Martinez to handle.

• Inspector General Centorino to investigate Palm and Hibiscus Islands and Indian Creek and identify what the permitting problem is, why did it cost so much money, and why has it taken so long? Inspector General Joseph M. Centorino to report back to the City Commission with more information. Joseph M. Centorino to handle. • Include a drop-dead date set for the harmonization agreements to be signed. Eric Carpenter and David Martinez to handle. Commissioner Samuelian explained that at the last Commission meeting, they talked about the Palm and Hibiscus neighborhood project landscape, and they mentioned they should get an update on this project. The situation is urgent. The project is frozen, and this is the last City Commission meeting until December. In his

two years on the dais, this is one of the most concerning situations that he has become aware of, because it is such an important, complex, and challenging project.

The City team is working hard but they have some big problems. At Sustainability Committee, they are providing oversight to neighborhood projects and have learned with great concern that there are issues with the County. He reached out to Commissioner Higgins and invited her to come, who came along with the Director of Environmental Resource Management, DERM, and on Wednesday they gave the City information that he summarized. The project started in 2016, it is a \$40 million project, and like they had in Indian Creek, they now have unpermitted work, and the City is in violation with up to 200 drains on public and private property. This action needs to stop. The project was stopped by DERM on July 9, 2019, and now the residents are suffering, and they do not know what is happening. DERM is waiting for the updated permit application. Also looming is their need to get individual property by property resident harmonization agreements. Given the situation they have, he would not describe it as trivial. This raises three questions; 1) how this happened; 2) how they can fix it, and 3) what changes do they need to make to their approach in their program given the learnings they have. Tonight, they need to be more tactical, they need to listen to the residents and have them understand that the entire City Commission is aware of the situation, and they are all going to act in urgency. He requested an action plan; when will they get their engineering done; when will they submit to DERM; when is a reasonable expectation for DERM approval and After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 28 of 48 completing the project, and most importantly, what can they do to help, whether it is policy or resources, what is it that this body can do, because right now they are not in a great position.

Mayor Gelber thanked Commissioner Samuelian for bringing this item before the City Commission. Although he does not like Presentation & Awards meetings becoming business meetings, he believes that this is an important topic that deserves to be discussed. This is not the time to wrestle over this item though. He will be meeting with Mr. Hefty, Director of DERM, tomorrow to discuss the situation. He would like to hear from the Administration today, but they will not be taking any action tonight about the project. He is not sure the item is fully "cooked" between the City and the County. Eric Carpenter, Assistant City Manager, stated that the most concerning of all items is the characterization of the permit discussion. The fact is that the City started construction in July 2016 on the stormwater system on Palm and Hibiscus Islands; they had a full permit issued from DERM in May 2016 before the City ever broke ground on the stormwater system. Throughout the project, the stormwater system has gone through an evolution. This is different from what happened in Indian Creek, where the City bypassed a Federal permitting process. In this case, the City is going through a permit modification process and it is a judgment call of DERM as to when is the most appropriate time to go through that permit modification process, because a vast majority of all Class 2 permits go through modifications at the closeout. Seldom does anyone install a stormwater project that is the same as what was designed and permitted originally. He would like to invite the representatives of the design/builder

to talk briefly about what their thought process was in not going for that permit modification at the time that they began to do that work, but he acknowledged it was a judgment call by DERM. He acknowledged that they are working through it with them and they are going to continue to work through it with them. He is happy to say that he has spent six hours at DERM over the last two days and they had positive discussions with their water control section, and thinks they are headed in an exceptionally good direction.

There have clear objectives that they set forward for the City and they will be able to deliver them. They are committed to delivering the permit closeout documents that were requested by DERM before Thanksgiving.

He introduced Holly Kremers to explain the permit modification process and what Lanzo and Wade Trim's thought process was. Holly Kremers, Vice-President, Wade Trim, explained the process they have gone through as far as permitting, and clarified that when the project started construction, they did have both systems, Palm and Hibiscus Islands, fully permitted. As construction projects go through there are some field adjustments that take place in any infrastructure system; many times, those are addressed as asbuilt and permits are closed out. To be clear, the permit modifications are unique to the west end of Palm Island. On the east end of Palm Island, the stormwater system was constructed and installed for the permitted documents without modifications. On Hibiscus Island there was a net difference of one, an 18-inch inland drain in the right of way, and there is an area where they had obstruction and was shifted around so they added one. This is normally something they would take care of during permit closeout.

The west end of Palm Avenue has been more challenging during construction, and there are two separate issues that they have been discussing with DERM about how to handle. 1) There are 17 drains that are in the right of way around the west end of Palm Avenue. When they initially designed the project, they planned to clear out more vegetation in the right-of-way by taking out some trees and they would have a grassy swale for the stormwater to collect in the right-of-way and traverse on the swale and be collected on a larger catch basin. During construction they realized there were issues with removing those trees and they decided, to preserve the trees, instead of having the water meander down the swale and going to one basin, they would have to put an intermediate secondary drainage basins through the right-of-way to capture that same water in transit to the larger drain basin. In retrospect, at that point they should have gone to DERM and ask about permit modification process, and certainly at their next project they will do that, but they thought it was something that could be handled during the as built in and they went forward with construction of capturing the same stormwater in the right of way that was After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 29 of 48 already permitted through additional inlets. The 88 drains are temporary construction drains, one of which was installed in the right of way in front of each property on north and south Coconut Lane; and they put them there because they knew that with a smaller right of way in that area, during construction and before they had a chance to do the final

harmonization drainage, they wanted to make sure they had that in place; in case of flooding issues were to occur during construction they would have a way to transmit that water away. The intent was that when the project was complete and before the stormwater system was placed in the service, those drains would be abandoned, and the permitting drainage system would be in place at that time. And for that reason, they did not include those 88 temporary constructions drains on the permit documents. They have resolution on how DERM wants to see those and they are going to add them as temporary drains to the temporary modification. They are also adding the 17 drains as part of the permanent permit modification; that piece was already done. They have enough treatment capacity to handle those areas, and they think they have all the pieces in place to move towards a resolution with all parties. Mayor Gelber announced that he plans to call a Commission Workshop on resiliency and all similar projects soon into the next Commission term, but he does not want to do that today. It is important to realize that there will soon be at least two new Commissioners elected on November 5, 2019, and he would like to give them some time to get up to speed on all that is taking place in the City. He hopes to schedule this Commission Workshop sometime soon.

The Palm and Hibiscus Islands project has been an ongoing nightmare for residents, who are simply very frustrated. There are many lessons to be learned from this experience, unfortunately probably at the expense of a great deal of disruption. The City needs to learn to do this right, and the City is taking it seriously, which is why ULI, Columbia and Harvard were asked to investigate this. With the recent king tide, he noticed that in areas where they have done work, there is not the flooding that has been in the past, as compared to areas where they have not done any work. It is important that the marketplace understands the City is serious about it, but most importantly to do it right. Eric Carpenter, Assistant City Manager, added that the good news is that the City has received clear direction from DERM and will have the engineering portion done by Thanksgiving. He has met with most property owners that have the eligibility for harmonization and private property drains. He believes that all property owners will be met with by the first week in December, and there will be a full-time contact person at the Palm Island guardhouse to answer questions regarding the harmonization agreement to hopefully facilitate the process. A landscaping contractor will be mobilizing next week to start landscaping work on the islands. Their commitment is to finish this project and not move on to another project until this one is done, and they are trying to speed up the process as much as possible. City Manager Morales believes there is confusion on the number of drains that are deemed illegal. For the Hibiscus portion the original permit provided for 125 permanent drains on Hibiscus that were in fact installed, except for one unpermitted drain indicated. On Palm Island there were 138 permitted drains in the plan that were installed; the ones that were not permitted were 17 done to not remove trees and the 88 temporary drains; most of the drains were in fact originally permitted drains. In 2017, over a year after the project begun, the City Commission, in response to concerns raised by the public that raising the road would cause flooding on their properties, adopted a policy indicating that all properties could connect to the City's system. That policy was subsequently modified late last year and codified in January of this year, that it would not be all properties, but in fact

staff would work with individual properties, on a case by case basis and evaluate whether there were properties that could have a drain either on or in front of the property, but particularly on to help deal with the drainage. Therefore, through this project there were changes made, and issues such as generators were added. In the harmonization process, during the course of this year, City staff worked with property owners and ultimately identified 98 properties, almost all of them on Palm Island, that would qualify for having an on-site private property drain, and then began the process of designing, putting together the paperwork and sitting down with property owners to look through After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 30 of 48 it. One of the issues that emerged that was resolved at the last City Commission meeting was what paperwork DERM require from the City or from the property owners. Last week DERM agreed that the harmonization agreements with the easement in them would suffice for them to rely in. He will submit the harmonization agreement once is finally signed. They met with 69 of the 98 property owners and the design work is done for those. DERM is committed to try to turn them around in two weeks.

The notion is that they can be in a position where they submit all that to DERM by December and get those permit issues. The harmonization work will take five months to do the 98 properties. Once that is done, they are a month away from doing the final lift of asphalt. Assistant City Manager Carpenter stated that if the City has an opportunity to do final lift in some areas, they may do that ahead of whatever needs to be done in other portions of the islands. City Manager Morales recommended having a drop-dead date set for the agreements to be signed, and if a property owner does not sign, they will not be getting a drain on their property. This is not a question of resources or funding, they will place more personnel out there to work with the neighbors and talk about the agreements, and they will work with Lanzo Construction to see if they can add additional crew in the area. The conversations with DERM have helped jump start the process. Mayor Gelber thanked Commissioner Samuelian and Assistant City Manager Carpenter for explaining the issues. He is meeting with Mr. Hefty tomorrow. There is a great deal of movement on this. Pierre De Agostini, Executive Director of Palm and Hibiscus Islands Homeowner Association, thanked the City Commission for letting him speak. They all learn from discussions and he learned that on a \$14 million project, the Administration had a "a-ha" moment as stated by one of the City Commissioners. The City Manager stated that in 2017, the City realized that if they raised the roads the homeowners are going to be facing inundation. It is totally mind boggling. How could this "a-ha" moment happen on a \$14 million project a year after it started. He is equally surprised that the City of Miami Beach was operating without proper permits. The true story is that since February of 2019, DERM has been asking the City to take care of a few things they need to operate, including getting the required permit. The City has still not acted on this. They all want this to move forward and be done with it. He suggested that first the City of Miami Beach acknowledges the nightmare of the situation and ask itself how it happened in the first place. This could be something that the Inspector General could do homework and investigate this, as it is a great deal of money. The City must do its work and conduct a proper draining calculation, as there is no proper drainage calculation, which is what the owners are

saying, how do they know it is going to work. The City needs to put proper resources, hire proper people, and do the drainage calculations. Additionally, the homeowners must sign the harmonization letter for this to move forward. But the homeowners are fearful that the harmonization letter draft has been challenged on several occasions. For each property there have been different layout provided one was in front of the property or the side. They are asking or suggesting to those 98+ homeowners to hire a law firm, as it is a legal document, and hire a civil engineer firm to help them establish a counterpoint to the City's actions. If the City could provide a guarantee that the project will be finished right, it would make it easier for homeowners not to hire expensive professionals. He urged everyone on the City Commission to continue working on this item. They need to have a seawall policy. Roadway project is what is called but the issue is resiliency and raising of the water. The reason is called Roadway project is because it was the City's approach to raise the roads. However, the true subject is what is the City doing with the rising water. Part of the equation is the necessity to have contiguous seawalls to provide incentive to the homeowners to renew the seawall. Seawalls cost about \$1,000 per square linear feet, and the City needs to provide that incentive. At the next king tide, the water is going to come in and if neighbors have not built the proper seawall; there will be flooding. The City needs to do it right and reset the clock. The City needs to have a timeline and resources. Homeowners want to make it happen; it is a fantastic opportunity in what is currently a nightmare situation for the City Commission and future City Commissions to rise up to the occasion to show, not only to the residents of Palm and Hibiscus and Star Islands, but all the residents that live in Miami Beach and in the State of Florida, what leadership, courage, determination, and vision can do with a very acute problem. Mayor Gelber thanked Pierre for his leadership in the community. Andres Asion owns two properties on Palm Avenue and both properties flood in the backyard when it rains six inches or more. Some houses on Palm Island do not allow access to their parking garages because the road raising floods their property so badly. His elderly parents' living room is under street level, which will get flooded for sure. This has been a nightmare situation for the past four to five years and still nothing gets done. He invited the City Commission to come to his house and he will show them what is happening. At the end of the day, this is a test for other neighborhoods, and they should see exactly what is happening there. Regarding the seawalls, the entrance to Palm Island, which on either side of the bridge belongs to the City, that seawall does not exist. Whenever there is a high tide, the water goes right into the grass and into the islands and there is no seawall from the City to stop it. Mr. De Agostini added that it is ironic that the City is willing to have someone posted at the guardhouse, because it shows the lack of communication between the City and the Post Master, that guardhouse is now a post office annex because they refuse to deliver for lack of communication. They need to resolve that. The residents that live around the west circle of Palm Avenue are looking at the generator, which is 20 to 30 feet in height, so they are at the ground level. He requested the plan from CIP on the landscape that is going around the generator and he was told it was not designed yet. Those are additional points for this City Commission that they trust to be able to fix it, take care, and be a shining example of what can be done. Commissioner Góngora thanked Commissioner Samuelian for putting this item on the Agenda because the residents of Palm and Hibiscus Islands have been frustrated since

they were running for office two years ago. Commissioner Góngora has not seen the movement that he anticipated. Both this project and Indian Creek have been troubling and upsetting to him, as they are both situations where the proper permits were not pulled. They modified and amended these projects for tens and millions of dollars over the past two years, given both projects more money to try to appease the resident complaints, but the work does not get done. He is just as frustrated as them, because they keep asking why this is happening and why this is going on, and they are not getting answers either, except when a Commissioner puts it on the Agenda. He likes Mr. Agostini's idea and publicly requested to send this item to the Inspector General to look into the Palm and Hibiscus Islands projects as well as the Indian Creek project, find out what went wrong with permitting, why they budgeted so much money and it has gone over budget, why the projects are not working correctly, and why residents are waiting for years with no result. He formally requested to refer an investigation and oversight into the money and permitting in these two projects to the Inspector General and report back to the City Commission. Joseph M. Centorino General to handle.

Commissioner Samuelian appreciates the response from the Administration and the residents who have shown incredible patience with this situation and he summarized as follows: 1) the City needs to act with urgency and get this done; 2) the City needs to do a much better job engaging with residents. These 90+ harmonization agreements are not a trivial task and he is curious as to how the Administration is going to approach that and what the timing is. 3) He appreciates Mayor Gelber having this body continue to engage. The Workshop idea is excellent, but he requested keeping this item on the Agenda for each meeting so they can monitor progress, and 4) the seawalls issue will be discussed at Sustainability and Resiliency Committee. Finally, he also agrees with his colleague that when they brought in the Inspector General, it was to address waste and inefficiency, After Action October 30, 2019 City of Miami Beach Commission Meeting/Presentations & Awards Page 32 of 48 and he thinks this is a classic example. He has communicated his interest in having the Inspector General investigate the issue. City Manager Morales reminded the City Commission that when they designed these projects, they did not include generators, because they would be huge pieces of equipment in the middle of residential neighborhoods. They did not originally recommend it in this project or others, as they knew the impact of them aesthetically in the neighborhoods, not to mention the cost. However, this neighborhood came forward and insisted on having permitted generators. It is not an "a ha" moment; they figured there would be an "a ha" moment in the neighborhood when they saw generators installed. Obviously, they will be designing the landscaping around the generators, but they did not think they would be popular, and he is not shocked to see that they are not. With respect to the drainage, they have met with 69 property owners of the 98 drains on private property; that drainage work is done as part of the package sent. After January, they were able to do the analysis work and they presented to them the harmonization agreements. Those are the ones that out of the 69, 10 had comments on them; the only ones they are now finishing design work on are the 29 that are left, and they believe that will be completed soon. Assistant City Manager Carpenter added that they will have that done and will meet with each property owner by the first week of December. Mayor Gelber thanked everyone for the discussion.

EXHIBIT B

Flood Mitigation Results

Palm Island 316 South Coconut Ln



BEFORE

Tides: 1.40 ft NAVD 10/17/12



AFTER

Tides: 1.88 ft NAVD 10/15/19

Flood Mitigation Results

Palm Island 303 North Coconut Ln



BEFORE

Tides: 1.42 ft NAVD 10/17/12

AFTER

Tides: 1.88 ft NAVD 10/15/19

Firtel, Lauren

From: Centorino, Joseph
Sent: Tuesday, January 19, 2021 9:18 AM
To: Firtel, Lauren
Cc: McGee, James; Singer, Jani; Alonso, Elisa
Subject: RE: Response to OIG draft report No. 20-07 on Palm and Hibiscus Island

Ms. Firtel,

Thank you for your thoughtful response to the Draft Report. It will be included in our final draft.

Joe Centorino



Joseph M. Centorino

Inspector General

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From: Firtel, Lauren <LaurenFirtel@miamibeachfl.gov>
Sent: Monday, January 18, 2021 8:50 PM
To: Centorino, Joseph <JosephCentorino@miamibeachfl.gov>
Cc: McGee, James <JamesMcGee@miamibeachfl.gov>; Singer, Jani <JaniSinger@miamibeachfl.gov>; Alonso, Elisa <ElisaAlonso@miamibeachfl.gov>
Subject: Response to OIG draft report No. 20-07 on Palm and Hibiscus Island

Hello Mr. Joseph M. Centorino,

I wanted to submit a brief statement to acknowledge receipt and (mostly) understanding the 176-page Palm and Hibiscus Inspector General draft report. I read it thoroughly and in its entirety. I do not think it is my place to critique the wholistic subject matter, city leadership or project team players in a positive or negative light; nor am I in a position of authority to decide right or wrong throughout the scenario.

For the time span discussed in this report, I was a public information specialist in the Office of Capital Improvement Projects (CIP) – a significantly subordinate position in the bigger picture. It was my job to work with the project team and our PIO consultant to create messaging that explained project objectives to the stakeholders on the islands and respond to resident questions or general project inquiries. Often, the PIO team is tasked with making technical construction details into “plain language” descriptions that the general public will understand. As part of CIP procedure, project managers review all advisory drafts and messaging for content accuracy before they are distributed by the PIO team.

On page 90 where an email I sent is quoted and then you reference “Firtel’s account...” in the following paragraph – I read this to say that I had summarized the information provided by the project team in stating the contractor’s intentions and status at the time of the resolution passed by commission. In essence, I was simply doing my job.

At the top of page 91, the draft report says, “CIP’s communications with residents between January and March signaled the City’s plans to use those right-of-way drainpipes for their intended purpose: as permanent connection points for private-side yard drains to the mainline pipe.” I can see how in retrospect and with reading the advisories parallel to researching/creating the draft report how one might conclude that “stormwater and secondary drainage installation” alludes to the above. However, while we were writing these notices, we were very much in the day-to-day communications and decidedly unaware of any intentions to make the drains permanent later in the project.

Admittedly, as a communications professional I was not in the loop on the various sets of plans, permits or regulatory agency visits to the project site. Please note (with some humility) that while the communications/outreach team works closely with the project team and engineers – we are not trained in permitting processes and/or regulatory agency requirements.

I am not sure of your end-goal in releasing this report. I, for one, would like to put this messy series of events behind us and put our lessons learned and collective city leadership efforts into how we can educate, share or explain things better in the future – both internally and externally.

Thank you for considering my standpoint, and my general input in this response.

MIAMI BEACH

Lauren Firtel, Neighborhood Affairs Coordinator

MARKETING & COMMUNICATIONS DEPARTMENT

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We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

Memorandum

Date: January 22, 2021

To: Mr. Joseph Centorino, Inspector General

From: Mina Samadi, Senior Capital Project Coordinator 

Subject: Office of Inspector General Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project
OIG No. 20-07

Please accept this memorandum as my statement regarding the reference report prepared by your office and provided to me on December 4, 2020 at 7:24 PM.

It appears that this report selectively expresses unsubstantiated statements by some individuals, as true statements of facts. In addition, this report does not mention the requirement and responsibilities stipulated in the DCP and the City's Contract with the Design/Builder in regard to development of contract documents and permitting. Some of the language directly taken from the Design/Build Contract is listed below:

- “1.19 "Guaranteed Maximum Price (GMP)" means the mutually agreed maximum contract value to be paid to the Design-Builder for all services, labor, equipment, and materials for design services during construction, **permit**, administer, coordinate, inspect, construct, and install the Project within the described scope and time specified in the Contract Documents (and shall include, ...”

- “2.2 It is the intent of the Contract Documents to result in the design and construction of a fully complete, fully functional Project, ready in all aspects to be put to its intended use, that is designed and constructed by the Design-Builder in accordance with the City reviewed and **fully-permitted** Contract Documents prepared by Design-Builder and accepted by the City.

“The Project includes furnishing all planning, engineering, design **and permitting services**, as well as all construction labor, materials and equipment, services and incidentals necessary to design and build the Project in accordance with the Contract Documents, including the Design Criteria Package..... “

“**It will be the sole responsibility of the Design-Builder to secure all permits not provided by the City**, and to provide signed and sealed design documents for construction and installation which comply with all regulatory requirements, Applicable Laws, and the Contract Documents.”

- “3.6.2 **The Design-Builder shall be responsible for obtaining all necessary licenses and permits not being provided by the City**, and for complying with Applicable Laws in connection with the prosecution of the Work.”

It is the Design/Builder's responsibility to obtain all the relevant permits for construction of the project.



Joseph M. Centorino, Inspector General

Eric Carpenter
Assistant City Manager
City of Miami Beach, Florida
c/o Attorney Michael Band

Re: Response to Office of Inspector General (OIG) Draft Report 20-07 dated Jan. 21, 2021
("Carpenter Response Memorandum")

Eric,

Thank you for meeting with us on Friday along with Mr. Band to hear your concerns about the draft of our report on the Palm and Hibiscus project. As I explained, it is not possible to provide you with four additional months to submit responses. However, as I indicated during the meeting, in light of the views expressed during the meeting, I will allow you an additional week to provide responses to material questions of fact and take two additional steps.

First, as discussed, to ensure that we have a fuller understanding of the basis of your concerns, this letter provides questions of act that you are welcome to address. You will see that they are derived in part from your memorandum. Direct answers to these questions will assist our efforts to evaluate your concerns and, as appropriate, revise the text of the final report. I promise that I will carefully consider your responses to these questions and, additionally, ensure that they are included in the report's Appendix.

Secondly, I have directed that additional statements that you made during recorded and sworn interviews OIG staff be included in the final report in order to (a) more fully reflect the views you conveyed in your memorandum and (b) provide fuller and more nuanced expression of your views about the challenges that issue of sea level rise generally and the Palm and Hibiscus project specifically posed for you as an Administrator and Licensed Professional Engineer. I will also include a Note on Context that will acknowledge your statement that progress has been made on the project and that it may be nearing completion.

The Carpenter Response Memorandum states: "Notwithstanding, the OIG's report includes, in our opinion, a significant amount of innuendo and editorializing which, in our opinion, serves no purpose other than insinuate wrongdoing where none has occurred."

Question #1. Please identify each sentence in the report regarding you personally or your actions as Public Works Director and/or Assistant City Manager that you believe contain “innuendo and editorializing.”

Question #2. Please identify each sentence in the report about you personally or your actions as Assistant City Manager and/or Public Works Director that “insinuate wrongdoing where none has occurred.”

The Carpenter Response Memorandum states: “In the end, the OIG's draft report has clearly omitted or manipulated facts to substantiate some objective that we are not privy to, but which, in our opinion, is intended to be punitive and not instructive” and also states, “To imply that there was a coordinated conspiracy to the contrary is outlandish, lazy, and unbecoming of a professional tasked with improving the City of Miami Beach.”

Question #3. Please identify each statement in the draft report about you or your actions that you believe is false or in error; any instance in which you believe a material fact is “clearly omitted”; and each statement that you believe contains a fact that is “manipulated” with punitive intent.

Question #4. Please identify each statement in the draft report that you believe states or implies that you personally are part of a “coordinated conspiracy” or that you believe defames or libels your professional reputation.

As set forth in the report, on Oct. 9, 2015 former City Engineer Bruce A. Mowry attended a meeting convened by the Capital Improvement Project's (CIP) office and notified CIP staff of a decision by the City Administration to require the use of the minimum grate elevation criteria of 2.7 NAVD for all areas of Palm and Hibiscus Islands. This decision effectively rescinded an earlier waiver of that criteria for west Palm Island. That waiver had enabled then Engineer of Record Orlando A. Rubio to establish a minimum crown-of-road elevations of 2.2 feet NAVD for North and South Coconut Lanes.

The decision Mowry conveyed to CIP staff on Oct. 9, 2015 also had the consequent effect of requiring that the minimum crown of road elevations in West Palm Island be raised an additional foot above 2.2 feet NAVD to 3.2 feet NAVD. Further, the decision required extensive revision of the stormwater and hardscape sections of the plans prepared by Rubio that had been submitted Oct. 11, 2015 to the South Florida Water Management District with an application for an Environmental Resources Permit.

Mr. Mowry has stated that he did not act unilaterally in this matter; that he consulted with you about his recommendation to require the minimum grate elevation criteria for the project; and that, as his supervisor, you approved this decision. Further, Mr. Mowry has stated that you also approved the decision on or about Oct. 30, 2015 approving conceptual plans by Wade Trim for the design and construction of a right-of-way drainage system that was designed to connect to

private-side yard drains in the future. Finally, Mr. Mowry has stated that you approved a proposal and plan by the City Administration on or about November 2015 to seek a change in policy that would allow residents to connect privately-owned yard drains to public drainage system.

Question #5. Did Mr. Mowry consult with you in on or before Oct. 9, 2015 about his recommendation to require the minimum grate elevation of 2.7 NAVD for all areas of Palm Island and did you approve this change in the modified criteria for West Palm Island? If yes, when did you approve this change for the Palm and Hibiscus project?

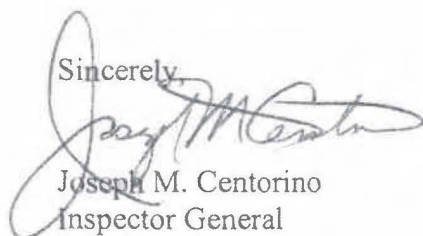
Question #6. Did Mr. Mowry consult with you before approving on Oct. 30, 2015 the Wade Trim conceptual plans to build a drainage system that accommodated the future connection of yard drains on private lots and did you approve of this plan and engineering solution for west Palm Island?

Question #7. Did Mr. Mowry consult with you on or before November 2015 about a plan to seek a change in City policy to allow the connection of private-side yard drains and did you approve that plan in 2015?

Question #8. When and by what means did you communicate any of the decisions or actions referenced in Questions #6 through #8 above to former City Manager Jimmy Morales and the City Commission. When did Mr. Morales approve each decision?

Question #9. When and by what means do you believe the City Commission was first notified of the above-referenced decision by the City Administration and notified of the potential costs and consequences of those decisions, specifically including (a) the decision to require the minimum grate elevation criteria of 2.7 NAVD in all areas of Palm and Hibiscus Island and (b) the City Administration's decision to have Lanzo Construction Co. Florida and Wade Trim design and build a public drainage system that was designed to connect to private-side yard drains in the future.

Sincerely,



Joseph M. Centorino
Inspector General



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139, www.miamibeachfl.gov

MEMORANDUM

To: Joseph Centorino, Inspector General

From: Eric Carpenter, Assistant City Manager *EC*

Date: February 1, 2021

Subject: Response to Office of Inspector General Draft Report 20-07 Supplemental Questions

This letter is meant to serve as the direct responses to the additional questions posed by the Office of Inspector General (OIG) following our in person meeting on January 22, 2021. This is meant to be a supplement to the overall City Administration response and my individual response to the draft report 20-07 and should be reviewed in conjunction with the more comprehensive responses submitted previously. This is not an exhaustive list, as I was only provided a week to identify all of the myriad of misrepresented items in a 167 page report.

The responses to the specific questions are provided below in order:

- 1) Question: Please identify each sentence in the report regarding you personally or your actions as Public Works Director and/or Assistant City Manager that you believe contain "innuendo and editorializing".

Answer:

- a. Page 83 The quote from the City's FAQ document is "Currently this [private-tie in] is not an option for private property owners, but we are exploring options to provide our residents with additional water management options in the future." Somehow the OIG gleaned from that statement the following opinion: "While expressed in nuanced language, the answers indicated that the City recognized the risk that raising roads would cause new flooding on private lots; was unwilling to assume a city-wide duty to prevent such flooding; and intended to shift the legal responsibility for any flood damage caused by elevating roads to individual property owners." This is a significant inference, from a relatively simple statement by the City and it appears that this opinion is at best unfounded.
- b. Page 85 how is responding to a media inquiry proof that the "City officials used the news media to generate support for the new policy"
- c. Page 86 "Lanzo's design team was concerned about regulatory implications of converting temporary drains to permanent fixtures" what is the basis for this statement since they were not contractually obligated to perform this work until the change order was approved in October 2018, well after they had communicated the changes to DERM in the May 10, 2018 letter.
- d. Page 89 "During the panel, Carpenter and Mowry did not mention their ongoing and unprecedented plan to build a public drainage system that was designed to connect private-side yard drains to the public drainage system." What does this insinuate,

because one of the many initiatives that were being directed by Commission was not mentioned, it is somehow a conspiracy, even though two months earlier in the public City Commission meeting direction was given to make connections.

- 2) Question: Please identify each sentence in the report about you personally or your actions as Assistant City Manager and/or Public Works Director that “insinuate wrongdoing where none has occurred”.

Answer:

- a. Page 86 “Subsequent events and records examined during the investigation, support a conclusion that the primary purpose of the resolution was to provide after-the-fact authorization and legal justification for the private-side drains the City had already allowed”. No proof to support this position and furthermore, there were no private drains in April 2017. Report fails to acknowledge the evolution of the policy direction from June 2015 to April 2017 was primarily for the City to bear the cost.
- b. Page 97 “The City and Lanzo failed to submit a notarized request for the extension with responses to the five questions”. Even though the extension of the permit was the responsibility of Lanzo, if the intent was to not inform DERM the extension would have been a better path than to reapply for the permit, however, this is drafted to make it seem it was part of some scheme. Interestingly the same five questions with detailed answers were provided in the letter dated May 10, 2018.
- c. Page 116 “One gets the impression that the motivation behind the retention of so many consultants could have more to do with insulating the decision-makers from responsibility, than it does with marshalling the professional expertise with the necessary brainpower to ensure the project’s success.” The City uses best practices for management of complex construction projects. In this particular case we only have one consultant and a design/builder. This is clearly a misguided statement as it is contradicted by Recommendation #4 of the OIG report which suggests adding another consultant.

- 3) Question: Please identify each statement in the draft report about you or your actions that you believe is false or in error; any instance in which you believe a material fact is “clearly omitted”; and each statement that you believe contains a fact that is “manipulated” with punitive intent.

Answer:

- a. Page 5 General Observations Item 10. No reference to May 10, 2018 letter notifying DERM of the changes to the project.
- b. Page 9 “City and Lanzo directed two engineering firms and engineers...to develop distinctly different construction plans for different purposes.” City gave a revised drainage directive to the Design/Builder, no facts to conclude the City dictated who was to do the work or that there was a different purpose.
- c. Page 11 “At no time did the City and Lanzo advise the SFWMD and DERM of the significant changes in design” changes were provided to DERM in writing on May 10, 2018. SFWMD has determined that no permit modifications are required.
- d. Page 11 “The City and Lanzo proceeded with this work during the Spring and Summer of 2018, after rejecting a recommendation from Wade Trim that the City and Lanzo notify the SFWMD and DERM of the new phase of construction”. There was no rejection of any recommendation from Wade Trim regarding the regulatory

requirements, in fact DERM was notified, via the May 10, 2018 letter from Wade Trim, within two months of first discussions regarding the need for modifications on west Palm Island permit.

- e. Page 12 "The deception of the SFWMD and DERM lasted 31 months" this is clearly untrue from the timelines unless you disregard the May 10, 2018 letter.
- f. Page 12,14 several allusions to "cost overruns", "soaring costs" and "cost escalation" that did not occur. (Please refer to December 9, 2015 contract amendment setting the price at \$38.5 million).
- g. Page 13 "In January 2016, the City Commission awarded Lanzo a \$36.5 million contract, plus 10% contingency." The contract was actually awarded in July 2013 and was amended in December of 2015 to include a construction cost of \$38.5 million including a 10% contingency.
- h. Page 13 "At the time of the award, the City did not have finished construction plans for building the stormwater drainage system, drainage studies verifying the system's expected performance, or a reliable basis for determining how much the non-standard system would cost or how long it would take to build." Almost all Design/Build projects agree on a final cost prior to completion of plans, there was a cost estimate provided by an independent 3rd party cost estimator as well as the Design Criteria professional and we had a schedule that the Design/Builder was contractually bound to meet.
- i. Page 15 assertions of a "whistleblower" must accompany facts that they uncovered something that was not already provided in writing to the agency, which is not the case here.
- j. Page 45 "...set a precedent of making significant changes to the plans after construction had begun." Construction had not begun at the point in time referenced in this statement.
- k. Page 60 there is no mention of the fact that the Commission Memorandum included documents that clearly identified "City Directive of October 12, 2015 (2.7 NAVD-minimum)" as well as the reference to "RFI-035 (Private Drainage Accomodation)".
- l. Page 78 "Coley said lateral pipes and right-of-way drainpipes on the plans approved by Public Works were not intended to be temporary construction drains." I believe Mr. Coley has clarified the difference between permanent private-side drains and temporary construction drains and this particular assertion is taken out of context.
- m. Page 83 "The FAQ statement that "water will not flow from the elevated City street into private property" was, at this point, an aspiration and design objective of the construction plans, but was not true." The water can be contained within the right-of-way of an elevated road. The difference between water not flowing off of private property; and water flowing from the elevated roadway is being confused.
- n. Page 84 please provide any proof that private-side yard drains were in place by March 31, 2017 as stated.
- o. Page 95 "...did not approve \$17,500 for engineering services associated with notifying SFWMD and DERM about the City's plans to install private-side yard drains and obtain permit modifications" These design services were part of the Design/Build teams existing scope this was a cost discussion regarding the change order.
- p. Page 97 Sanchez emailed the application on May 15, 2018 not May 10, 2018. This is important because DERM had already seen the letter that described all of the changes.

- q. Page 99 "The statement did not describe the unpermitted construction in detail and minimized as "few" the number of properties that would have one or more drains installed." There is significant detail on what work was performed and more than enough information to clearly show there have been changes that will need to be either done through a permit modification or reflected in the as-built close out package. The issuance of the permit clearly signaled the intention by DERM to use the latter.
- 4) Question: Please identify each statement in the draft report that you believe states or implies that you personally are part of a "coordinated conspiracy" or that you believe defames or libels your professional reputation.

Answer:

- a. Page 20 "The permanent right-of-way drainpipes were available during construction to mitigate flooding. But the evidence, and sworn statements of multiple witnesses, established that their description as "temporary construction drains" was a legal fiction." I have addressed extensively the difference between the stub out pipes that do not have any drain connected; temporary construction drains; and permanent private-side yard drains. This statement clearly confuses the different situations in order to make it seem nefarious.
- b. Page 86 "Subsequent events and records examined during the investigation, support a conclusion that the primary purpose of the resolution was to provide after-the-fact authorization and legal justification for the private-side drains the City had already allowed" this April 2017 Resolution was a reaffirmation of the Commission directives prior and please provide any proof of private-side yard drains installed by this date.
- c. Page 87 Garcia states "I can say that on many occasions, I raised red flags and I tried to push back, but it felt like just the support wasn't there, you know, going up the chain, so to speak..." Garcia never made any attempt to speak to me on this matter and it is my understanding that he never spoke to the CIP Director about his concerns either.
- d. Page 152 "In my professional opinion, Ms Kremers and Mr. Carpenter misstated the disclosure obligations of a permittee and mischaracterized the Rubio plans." It is and will remain my professional opinion that if you do not change the contributory area or the amount of water flowing into a drainage system that the location of the pipes or the inclusion of stub outs are immaterial.
- e. Page 152 "In my opinion, Carpenter also mischaracterized the practices of DERM and other regulatory agencies regarding the use of As-Built plans." I believe that the definition of "substantial" in substantial modification is based upon the judgment of the specific agencies and even the individual regulators. As a result, I ask how can stating that it is a "judgment call" be a mischaracterization.
- 5) Question: Did Mr. Mowry consult with you in on or before Oct. 9, 2015 about his recommendation to require the minimum grate elevation of 2.7 NAVD for all areas of Palm Island and did you approve this change in the modified criteria for West Palm Island? If yes, when did you approve this change for the Palm and Hibiscus project?

Answer: To my knowledge I was not involved in discussions regarding the inlet elevations on west Palm Island during this time period, and I am not surprised as there was clear

direction from Commission regarding the inlet grate elevation. The minimum grate elevation was set at 2.7 NAVD by Resolution 2014-28499 (February 12, 2014) which set the tailwater elevation at 2.7 NAVD and consequently the lowest inlet elevation. Furthermore, this was buttressed by Resolution 2015-28921 (February 11, 2015) which reconfirmed the 2.7 NAVD tailwater condition as well as setting the crown of road at 3.7 NAVD. I do recall later in the project, once the road was constructed, being surprised the elevation of the road was below 3.7 NAVD for west Palm Island, as that was not discussed with me.

- 6) Question: Did Mr. Mowry consult with you before approving on Oct. 30, 2015 the Wade Trim conceptual plans to build a drainage system that accommodated the future connection of yard drains on private lots and did you approve of this plan and engineering solution for west Palm Island?

Answer: More than four years after the fact, I am not sure of when the initial discussions took place in relation to the October 30, 2015 date but I was consulted on the need to provide stub outs to allow for the possibility of future connections without disturbing the work that needed to be done on the roadway. I believed then as I do now, the flexibility to consider future modifications is a good thing and can save significant cost after the fact. I feel the need to reiterate, until brought to my attention by the OIG, I was not aware that there were two sets of plans. Although, I still contend that the introduction of stub out pipes does not change the functionality or water treatment requirements as set forth by Chapter 24 of the Miami-Dade County code.

- 7) Question: Did Mr. Mowry consult with you on or before November 2015 about a plan to seek a change in City policy to allow the connection of private-side yard drains and did you approve that plan in 2015?

Answer: The City Commission gave direction to the Administration on June 10, 2015 to prepare a framework to allow private connections to the public stormwater system. So yes there were many conversations regarding this matter. However, there was no definitive plan for me to approve, the concepts continued to evolve over the next four years. One important milestone in that evolution is when on April 26, 2017 the Commission refined the direction to the Administration on how to implement private-side yard drains and further codified the criteria on September 12, 2018.

- 8) When and by what means did you communicate any of the decisions or actions referenced in Questions #6 through #8 (sic) above to former City Manager Jimmy Morales and the City Commission. When did Mr. Morales approve each decision?

Answer: Information was provided in agenda memos drafted by the Public Works and CIP Departments and submitted to Mr. Morales for inclusion in the Commission Agendas. It was the Commission that, as identified above and below, gave the direction to the City Manager, in duly noticed public hearings what to do on this project consistent with staff recommendations.

- 9) Question: When and by what means do you believe the City Commission was first notified of the above-referenced decision by the City Administration and notified of the potential costs and consequences of those decisions, specifically including (a) the decision to require

the minimum grate elevation criteria of 2.7 NAVD in all areas of Palm and Hibiscus Island and (b) the City Administration's decision to have Lanzo Construction Co. Florida and Wade Trim design and build a public drainage system that was designed to connect to private-side yard drains in the future.

Answer: The City Commission provided the Administration with the Direction on February 2, 2014 to change the tailwater boundary condition to 2.7 NAVD which in fact sets the inlet grate elevations at 2.7 NAVD. Resolution 2015-28921 (February 11, 2015) which reconfirmed the 2.7 NAVD tailwater condition as well as setting the crown of road at 3.7 NAVD. They also provided direction on June 10, 2015 to create a framework to allow private property connections to the City drainage system. Finally the City Commission reviewed and approved the scope of work for Palm and Hibiscus Islands on December 9, 2015 which included within the backup documentation both a reference of the "City Directive of October 12, 2015 (2.7 NAVD-minimum)" as well as the reference to "RFI-035 (Private Drainage Accomodation)". As a result it is clear that the Administration was moving forward with the full authorization and approval of the City Commission under Resolution 2015-29243.

There were many decisions made that created an evolution of the Palm and Hibiscus Neighborhood Improvement project. All of my decisions were made with the best interest of the residents, and with the clear concurrence and approval of the City Commission. There were decisions made by all involved, which are now being questioned by those looking backwards. With the benefit of hindsight, any project could have been executed better, and I accept the criticism for the project delays as that impacted the residents. When you peel back all of the posturing, for a first of its kind solution, to the existential threat of sea level rise in Miami Beach, the outcome for the neighborhood should be allowed to be judged on the merits of the completed project.



Joseph M. Centorino, Inspector General

David Martinez
Director
Capital Improvement Project's Office

Re: Response to Office of Inspector General Draft Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project OIG No. 20-07 dated Jan. 21, 2021 ("Response Memorandum")

David,

Thank you for meeting with us on Friday to hear your concerns about the draft version of our report on the Palm and Hibiscus project. As I explained, it is not possible to provide you with four additional months to submit additional responses. However, as I indicated during the meeting, in light of the views expressed in the Response Memorandum and during the meeting, I will allow you an additional week to provide responses to material questions of fact and take two additional steps.

First, as discussed, to ensure that we have a fuller understanding of the basis of your concerns, this letter provides questions of fact that you are welcome to address. You will see that they are derived from your Response Memorandum. May I suggest that direct answers to these questions will greatly assist our efforts to evaluate your concerns and, as appropriate, revise the text of the final report. I promise to carefully consider your responses to these questions and, additionally, ensure that they are included in the report's Appendix.

Secondly, I have directed that additional statements that you made during the recorded and sworn interviews conducted by OIG staff be included in the final report in order to (a) address the concerns raised in the Response Memorandum and (b) provide fuller expression of your views about the challenges the project presented for CIP.

The Response Memorandum states: "I am well regarded by my peers and have established an impeccable reputation centered on integrity, honesty, and fairness. The OIG's findings, as presented in this document, are slanderous, flawed, biased and unfounded"

Question #1. Please identify each sentence in the report regarding you personally or your actions as CIP Director that you believe are slanderous, defamatory and/or libel your professional reputation.

Question #2. Please identify each sentence in the report related to the actions of current or former CIP staff that you believe are slanderous, defamatory and/or libel their professional reputations.

The Response Memorandum states: "Insufficient time has been provided in order to properly respond to the unfounded and baseless allegations represented in the OIG's report. However, it is clear to me that these allegations are based on misinformation, opinions, hearsay, and conjecture. Evidence has been ignored or avoided to establish their findings."

Question #3 Please identify each sentence in the report that you believe is false, erroneous, factually incorrect, "baseless or unfounded".

Question #4. Please identify each statement in the report that you believe is based on "misinformation, opinions, hearsay, and conjecture."

Question #5. Please identify any evidence that you believe was "ignored or avoided" and identify any additional records or facts that you believe would alter our analysis of the evidence.

The Response Memorandum states: "There has been no mismanagement, deception, negligence, or serious misrepresentations. All decisions by City officials were made will (sic) full transparency and with the support of the City Commission. There was no serious override of internal controls."

The draft report describes significant decisions or actions that do not appear to have been disclosed to the City Commission until months after the City Administration was aware of their potential costs and consequences for the project. These include:

- The City Administration's decision in October 2015 to require minimum grate elevation criteria of 2.7 NAVD for west Palm Island and the consequent raising the elevation of North and South Coconut Lanes by an additional foot or more.

Question #6 When and by what means do you believe the Commission was first notified of this decision and its potential consequences for the project's cost and schedule?

- The City Administration's decision in November 2015 to (a) build a public drainage system on west Palm Island that was designed to accommodate future connections of privately-owned yard drains in private lots and (b) inform members of the Homeowner's Association that represents Palm and Hibiscus Island that the City Administration intended to seek a change in existing policy to allow the connection of privately-owned yard drains to the public drainage system.

Question #7 When and by what means you believe the Commission was first notified of these two decisions and their potential consequences for the project's cost and schedule estimates.

- The City Administration's decision on or before February 2018 to direct the design-builder to proceed with design of a new phase of construction to install yard drains in private lots and connect those drains to unpermitted right-of-way drains under the project's existing Class II permit for construction in the right-of-way.

Question #8 When and by what means do you believe the Commission was first notified of this decision and its potential consequences for the project's cost and schedule estimates?

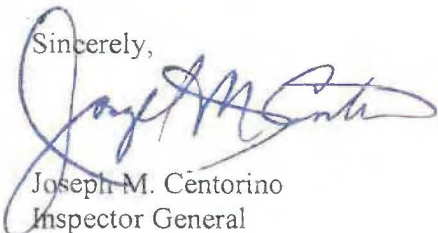
- Between October 2018 and February 2019, the Miami-Dade County Division of Environmental Resources Management (DERM) discovered that the City had installed more than 80 unpermitted right-of-way drains on west Palm Island and allowed some homeowners to connect privately-owned yard drains to the drainage system. In July 2019, DERM initiated formal enforcement action against the City.

Question #9. When and by what means do you believe the Commission was first notified of DERM's discovery of the unpermitted construction activity, and DERM's enforcement action and notified of the potential consequences for the project's cost and schedule.

The Response Memorandum states: "The design and construction cost was established initially and approved by the City Commission at \$38,500,000. After all is said and done, our total cost is \$40,965,00 despite the evolution that made a complex, multi-faceted project increasingly more difficult, including multiple scope changes and other challenges. ... This translates to just over 4% of the original cost, an inconsequential amount given the magnitude and complexity of this project." Presently, CIP's eBuilder "Actual Cost for Palm & Hibiscus Islands Enhancements" reports the following financial information: Current Budget: \$50, 232,729; Current Commitments: \$49,724,270; and \$46,754,987.

Question #10. How do you reconcile the assertion that "after all is said and done, our total cost is \$40,965,000" with the information report by eBuilder?

Sincerely,




Joseph M. Centorino
Inspector General

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

MEMORANDUM

TO: Joseph M. Centorino, Inspector General

FROM: David Martinez, PE, Director, Office of Capital Improvement Projects 

DATE: February 1, 2021

SUBJECT: Response to Office of Inspector General Letter (emailed 1/26/21, 4:52 PM) Regarding the Draft Report of Investigation on the Management of the Palm and Hibiscus Islands Neighborhood Infrastructure Improvement Project OIG No. 20-07

Mr. Centorino,

The purpose of this memorandum is to provide a response to your undated letter emailed to me on January 26, 2021. I appreciate your consideration as demonstrated in your letter and the additional one week offered to provide a response.

At this time, I will let my original response memorandum of January 21, 2021 stand on its own.

Thank you again for your consideration.