

IN THE SUPREME COURT OF FLORIDA  
SUPREME COURT CASE NO. 93,821  
DISTRICT COURT CASE NO. 95-03813  
CIRCUIT COURT CASE NO. CL 94-9509 AB

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CITY OF WEST PALM BEACH,  
PETITIONER,

vs.

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND,  
STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AND LEISURE RESORTS, INC.,

RESPONDENTS.

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ON PETITION FOR DISCRETIONARY JURISDICTION FROM THE DISTRICT  
COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

**PETITIONER'S INITIAL BRIEF**

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## **PRELIMINARY STATEMENT**

References in the brief to Petitioner shall refer to the City of West Palm Beach, Florida. References to Respondents shall include the Board of Trustees of the Internal Improvement Trust Fund and the State of Florida Department of Environmental Protection. References to the Record are designated (R.\_\_\_\_). References to the transcript of the hearing on the Cross-Motions for Summary Judgment held on September 14, 1995 are designated (T.\_\_\_\_). References to the Appendix are designated (A.\_\_\_\_).

This will certify that the size and style of type used in this brief is 12 point Courier New, a font that is not proportionately spaced.

## **STATEMENT OF THE CASE AND THE FACTS**

The State of Florida (the "State") extended an invitation to riparian owners to improve lands covered by water with the Riparian Rights Act of 1856. (A.1) Almost seventy years later, in 1921, the State expanded and renewed the invitation with the Butler Act. (A.2) Under both acts, the State divested itself of title and vested full title in the riparian owner who "improved and developed" submerged lands.

Commencing in 1946, the City of West Palm Beach (the "City") improved and developed submerged lands lying in the Intracoastal Waterway at downtown West Palm Beach. Palm Harbor Marina (the "Marina" or the "Palm Harbor Marina") was constructed by the City, at the sole expense of its' taxpayers, pursuant to a permit issued by the War Department (predecessor name of the U.S. Army Corps of Engineers). [(R.21,35,39; A.3)] George R. Coslow, the War Department's Engineer in Charge, prepared a permit approval recommendation in November, 1946. (R.30) Describing the project, he wrote:

The proposed dredging consists of an area to create a boat basin 500' & 350' wide, measured east and west at the north and south ends of the basin, by approximately 1350' in length, measured north and south, and the dredging of a channel 200' wide connecting with the Intracoastal Waterway channel, all dredged to a depth of 8½' at m.l.w., with the exception of the southerly 200' of the basin which will be dredged to a depth of only 4'. The dredged material will be placed landward of a proposed bulkhead which will be constructed on the landward side of the established U.S. bulkhead line. The work includes 5 timber wharfs with the side finger piers to create berths for

small boats and with larger T-heads to accommodate larger boats, all extending lakeward of the established U.S. bulkhead line but on an alignment between U.S. pierhead points 42 and 46. The work is located immediately south of the Flagler Memorial Bridge and will form a municipal yacht basin for which there is a great demand in the Palm Beach and West Palm Beach area. Permit 6723 was issued to the City under date of 18 September 1946 authorizing similar work on the north side of Flagler Memorial Bridge which was the first step by the City in creating a yacht basin at this location. (R.30)

In describing his reason for recommending approval, Mr. Coslow wrote:

The proposed yacht basin and facilities will provide much needed berthing space for local boats operating at Palm Beach and West Palm Beach, and also for pleasure craft using the Intracoastal Waterway channel. The application is recommended for approval. (R. 30)

Approval by the War Department of the City's permit application required an evaluation of whether the proposed project would affect navigation on the Intracoastal Waterway. In that regard, Major Blaise Nemeth, Corps of Engineers, the Acting District Engineer, wrote: "Navigation will not be affected unreasonably." (R.32-33)

As the drawing that follows on Page 4 dated November, 1946, entitled "Proposed Dredging and Filling and Future Piers" shows, a yacht basin 1380 feet long and 500 feet wide at its widest point was dredged east of the new bulkhead. (R.23,25,30) A 200 foot wide north-south channel was dredged along the easterly length of the yacht basin. (R.25,29-30,52) Additionally, an east-west



access channel 200 feet wide was dredged to connect the Marina to the Intracoastal Waterway. (R.30)

As graphically depicted on the As Built drawing that follows on Page 5, approximately 26 acres were dredged, five acres were filled and a parking facility was built. (R.52) A new bulkhead 1380 feet long was constructed. (R.52) Four piers with precast reinforced concrete pilings were built and extended between 380' and 450' from the new bulkhead line. (R.52,56) Each of the piers were designed with eight or more finger piers extending outward at right angles from either side. (R.52) Each pier terminated in a balanced T-head 200' long. (R.52) Electrical and telephone connections were installed in the berths created by the finger piers. (R.25,52)





Palm Harbor Marina cost the City \$443,000<sup>1</sup> to construct in 1947-1948. (R.35,39) Revenue bonds in the amount of \$350,000 were issued and sold by the City for construction of the piers. (R.39) Construction of the concrete sheet bulkhead cost an additional \$145,000. (R.35) Marina construction commenced on May 24, 1947 and was completed on June 15, 1948. (R.25) As built drawings were prepared and dated May 1948. (R.52) An aerial photograph of Palm Harbor Marina was taken on February 1, 1953. (R.51,60;T.4;A.4)

Under the Riparian Rights Act of 1856 and the Butler Act of 1921, when the construction of Palm Harbor Marina was completed on June 15, 1948, full title to the 26 acres of submerged lands constituting a marina vested in the City. Use of Palm Harbor Marina by the City and its tenants was undisturbed for 47 years. (R.1-6) A disclaimer to the 5.26 acres of filled lands was issued by the State in 1969. (R.206-215) When the City sought a disclaimer to the remainder of the Marina, the State refused to issue the disclaimer required by law. (R.13)

As a result of the State's refusal to issue a disclaimer to the Marina, the City filed a quiet title action against the State. (R. 1-6) The State counterclaimed and sought to permanently enjoin the City from "any further claim, use, or occupation of said sovereignty lands, except for what Plaintiff may receive pursuant

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1 These are 1947 dollars. In 1998 Dollars, the amount would be \$3,246,016, applying CPI adjustments, Bureau of Labor Statistics, 10/6/98.

to a sovereignty submerged land lease." (R.12-15) Because the facts were undisputed, both sides filed motions for summary judgment. (R.62,89)

Final Summary Judgment was entered in favor of the State on October 5, 1995. (R.247-251) The trial court framed the issue as "whether dredging of open waters constitutes a 'permanent improvement' entitling the City to ownership of the dredged areas under the Butler Act." (R.248) The court found that dredging is not a "permanent improvement" under the Riparian Act of 1921. (R.250) The court ruled, however, that the City owns the submerged lands referred to as the "footprint" of the City's four piers. (R.250)

In a unanimous opinion, the Fourth District Court of Appeal reversed the trial court on August 27, 1997. (A.5) City of West Palm Beach v. Bd. of Trustees of the Internal Imp. Trust Fund, 22 Fla. L. Weekly D2028 (Fla. 4th DCA Aug. 27, 1997). The court below framed the issue as:

whether all the activities of the city in constructing a municipal marina or boat basin including four substantial piers in 1947 and 1948, and the dredging of the boat basins in between and surrounding the piers resulted in a permanent improvement so that title vested in accordance with the Butler Act. Id. at 2.

Relying on the Third District Court of Appeal's opinion in State Bd. of Trustees of Internal Imp. Trust Fund v. Key West Conch Harbor, Inc., 683 So.2d 144 (Fla. 3d DCA 1996), rev.denied, 695 So.2d 698 (Fla. 1997) and the First District Court of Appeal's

opinion in Jacksonville Shipyards, Inc. v. Dep't of Natural Resources, 466 So.2d 389 (Fla. 1st DCA 1985), the court below reversed the trial court and remanded for entry of a final judgment in favor of the City.

A Motion for Rehearing, Rehearing En Banc, or Certification of a Question of Great Public Importance was filed by the Attorney General on behalf of the State. On June 10, 1998, a divided three-judge panel withdrew its earlier opinion and affirmed the final judgment entered below, holding that the City owned the footprints under the piers, but not the area between and surrounding the piers. City of West Palm Beach v. Bd. Of Trustees of the Internal Imp. Trust Fund. 714 So.2d 1060 (Fla. 4th DCA 1998)(A.6).

As framed by the divided panel, the issue became:

whether the City has fee simple title to the submerged lands, a form of ownership which could give rise to expansion of the existing marina or even to the filling in of the submerged lands for more intensive development. Id. at 1061.

Pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(vi), the court below certified conflict with the Third District Court of Appeal's decision in Key West Conch Harbor, supra. Motion for Rehearing, Rehearing En Banc and Certification of a Question of Great Public Importance filed by the City was summarily denied. A Notice to Invoke the Discretionary Jurisdiction of this Court was timely filed.

## SUMMARY OF ARGUMENT

Title to Palm Harbor Marina vested in the City in 1948 by the express terms of the Butler Act. Under the Act, the State of Florida divested itself of all right, title and interest to all lands covered by water lying in front of any lands owned by any person, natural or artificial, if the owner actually bulk-headed or filled in or permanently improved such submerged lands. This divestiture of title extended from the uplands waterward to the edge of the channel and vested full title in the submerged lands in the riparian owner.

Construction of Palm Harbor Marina, pursuant to a War Department permit, constitutes a "permanent improvement" under the Act. Permanent improvement, by its plain meaning and as construed by Florida courts includes construction of a 26 acre marina consisting of 5.26 acres of upland fill, a parking facility, a 1380 foot long bulkhead, four piers with 68 finger piers, two 200 foot wide access channels and the dredging essential to such construction.

The Fourth District Court of Appeal's conclusion that lands lying under open water is never subject to divestiture under the Butler Act expressly and directly conflicts with the decisions in Jacksonville Shipyards, Inc. v. Dep't of Natural Resources, 466 So.2d 389 (Fla. 1st DCA 1985) and State Bd. Of Trustees of Internal Imp. Trust Fund v. Key West Conch Harbor, Inc., 683 So.2d 144 (Fla.

3d DCA 1996), rev.denied, 695 So.2d 698 (Fla. 1997). In both those cases, title to land lying under open water was confirmed in the upland owner who permanently improved the submerged lands.

The State's argument that the City's title to the entire Marina violates the public trust is unfounded. This case is really about lease monies and who gets them. The public will be in no different position if the City owns the Marina or leases submerged lands from the State.

The lower court's concern that the City's title could result in the ability to "fill" submerged lands between its piers is equally unfounded. In reality, the lands cannot be filled. Federal and state regulations make such a likelihood virtually impossible.

The lower court's ruling limits the City's title in a way that renders Palm Harbor Marina functionally meaningless. While the rule of strict statutory construction may apply, the Butler Act must be construed to avoid an absurd result. For the City to have title to the footprints beneath its piers, but be unable to dock boats at those same piers without paying fees to the State is an absurd result and fundamentally unfair.

It is important for the City, and those who follow, that fair treatment be upheld by this Court. A riparian owner who previously satisfied the express requirements of the Butler Act and permanently improved submerged lands is entitled to have title to those lands confirmed.



## ARGUMENT

A 26 ACRE MARINA PROJECT DEVELOPED IN 1947 CONSISTING OF 5.26 ACRES OF UPLAND FILL, A 1380 FOOT LONG BULKHEAD, FOUR PIERS WITH 68 FINGER PIERS, AND DREDGING ESSENTIAL TO CONSTRUCTION AND OPERATION OF THE MARINA IS A "PERMANENT IMPROVEMENT" UNDER THE BUTLER ACT

### A. The Conflict

In June, 1998, the Fourth District Court of Appeal declared that "land under open water can never be subject to divestiture under the Butler Act, even where it has been dredged incident to a permanent improvement." See City of West Palm Beach v. Board of Trustees of Internal Imp. Trust Fund, 714 So.2d 1060 (Fla. 4th DCA 1998). Hence, the court below confirmed title in the City only to that portion of submerged land lying directly beneath the City's piers, i.e. the "footprints," and not to the remainder of the land under open water between the piers, the fingers piers, and in the boat basin east of the pierhead line, all of which were part and parcel of the Marina construction.

In stark contrast, in 1985, the First District Court of Appeal confirmed title to 17.3 acres of land lying under open water and between piers in Jacksonville Shipyards, Inc. V. Department of Natural Resources, 466 So.2d 389 (Fla. 1st DCA 1985). Similarly, in 1996, the Third District Court of Appeal confirmed title to land under open water lying within 500 feet of a concrete bulkhead and surrounding a dock in State Bd. Of Trustees of Internal Imp. Trust

Fund v. Key West Conch Harbor, Inc., 683 So.2d 144 (Fla. 3d DCA 1996), review denied, 695 So.2d 698 (Fla. 1997).

As this Court is aware, the Fourth District Court of Appeal certified conflict with Key West pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(vi). That rule applies to a certified conflict with another district court. Based on the Fourth District's construction of the Butler Act, however, the district court's opinion implicitly conflicts with Jacksonville Shipyards, as well.

B. The Butler Act

The City seeks title to Palm Harbor Marina, including its submerged lands, in its entirety. Under the analysis of the First and Third District Courts of Appeal, title to the entire 26 acre marina, including land lying under open water, vested in the City of West Palm Beach in 1948 according to the express provisions of the Butler Act, Chapter 8537, Laws of Florida, 1921, formerly §271.01, Fla. Stat., and its predecessor statute, "An Act to Benefit Commerce" (Riparian Rights Act), Chapter 791, Laws of Florida, 1856.

This Court has noted that the clear purpose of both the Riparian Rights Act and the Butler Act was to stimulate and encourage the improvement of submerged lands and to improve the foreshore in the interest of commerce and navigation. Duval Engineering and Contracting Company v. Sales, 77 So.2d 431, 433(Fla. 1954).

Indeed, this is the precise intent and effect of the Butler Act. In order to encourage commerce and the development of waterfront properties, the state divested itself of the ownership of submerged lands extending from the upland property waterward to the channel. Specifically, Section 1 of the Butler Act provided as follows:

Section 1. Whereas, It is for the benefit of the State of Florida that water front property be improved and developed; and

Whereas, the State being the proprietor of all submerged lands and water privileges within its boundaries, which prevents the riparian owners from improving their water lots; therefore

The State of Florida, for the consideration above mentioned, subject to any inalienable trust under which the State holds said lands, divests itself of all right, title and interest to all lands covered by water lying in front of any tract of land owned by the United States or by any person, natural or artificial, or by any municipality, county or governmental corporation under the laws of Florida, lying upon any navigable stream or bay of the sea or harbor, as far as to the edge of the channel, and hereby vests the full title to the same, subject to said trust in and to the riparian proprietors, giving them the full right and privilege to build wharves into streams or waters of the bay or harbor as far as may be necessary to affect the purpose described, and to fill up from the shore, bank or beach as far as may be desired, not obstructing the channel, but leaving full space for the requirements of commerce, and upon lands so filled in to erect warehouses, dwellings, or other buildings and also the right to prevent encroachments of any other person upon all such submerged land in the direction of their lines continued to the channel by bill in chancery or at law, and to

have and maintain action of trespass in any court of competent jurisdiction in the State, for any interference with such property, also confirming to the riparian proprietors all improvements which may have heretofore been made upon submerged lands.

Provided, that the grant herein made shall apply to and affect only those submerged lands which have been, or may be hereafter, actually bulk-headed or filled in or permanently improved continuously from high water mark in the direction of the channel, or as near in the direction of the channel as practicable to equitably distribute the submerged lands and shall in no wise affect such submerged lands until actually filled in or permanently improved. (emphasis added)

Thus, by the very terms of the Butler Act, the State of Florida divested itself of all right, title, and interest to all submerged lands lying in front of any tract of land as far as to the edge of the channel and vested full title in the same to the riparian owners.

Moreover, under the Butler Act, the riparian owner was specifically granted the right to prevent encroachments of any other person upon all such submerged land in the direction of the extension of their property lines continued to the channel. The Butler Act also specifically granted the riparian owner the statutory authority to maintain an action in trespass for any interference with such submerged lands.

The grant of the Butler Act, however, was made subject to an express proviso, i.e., the grant applied only to those submerged lands which had been or were thereafter actually bulk-headed **or**

filled in **or** permanently improved. As the legislature's use of the "disjunctive conjunctive" indicates, title vested in the riparian owner by the express terms of the Act if the riparian owner did any of one of the following: bulkheaded; **or** filled in; **or** permanently improved. See Jacksonville Shipyards, supra, at 391.

The provisions of the Butler Act remained in effect in Palm Beach County until repealed in 1957 by Chapter 57-362 (Laws of Florida, 1957, now §253.12, Fla. Stat.) (See A.7) This amendment and a prior statute which applied throughout Florida, except for Dade and Palm Beach Counties (see Chapter 26776, Laws of Florida, 1951), (See A.8), essentially reversed the State's then long-time policy of encouraging waterfront development of submerged lands and adopted the current law that title to all sovereignty tidal water bottoms is vested in the State. Significantly, Chapter 57-362 (Section 9) included the provision that "The title to all lands heretofore filled or developed is hereby confirmed in the upland owners and the trustees shall on request issue a disclaimer to each such owner." (now §253.129, Fla. Stat.)

In a 1976 opinion, the First District Court of Appeal in Board of Trustees of the Internal Improvement Trust Fund v. Bankers Life and Casualty Company, 331 So.2d 381 (Fla. 1st DCA 1976) recounted the history of ownership of submerged lands in the State of Florida in relation to the Butler Act and its eventual repeal in 1957. In discussing the issue, the Court wrote:

In 1921, the legislature enacted Chapter 8537, Laws of Florida, commonly known as the Butler Act, and plaintiff derives its rights from that statute. The Butler Act was obviously enacted for the purpose of encouraging the development of waterfront property in Florida. The court judicially knows that much upland in Florida bordering upon navigable waters is very low and marshy. When the Butler Act was adopted, Florida was much more sparsely populated than today, and was striving to attract tourists, investors, new citizens and industries to the state. Bankers Life, supra, at 382.

In considering the legislative intent and purpose of the Riparian Rights Act and Butler Act, it is worth noting that in 1850, which was six (6) years before the date of the enactment of the Riparian Rights Act (1856), the estimated population of the entire state of Florida was approximately 87,445. In 1920, shortly before the adoption of the Butler Act (1921), the population of the State was estimated to be approximately 868,470 people. By 1950 and seven (7) years before the repeal of the Butler Act (1957), the population had climbed to 2,771,305. In 1960, the population of the State was 4,951,560 people. The current population is estimated to be more than 14,000,000 people.<sup>2</sup>

Accordingly, the Court in Bankers Life, supra, observed that:

Apparently the Butler Act served its purpose. The development of waterfront property was phenomenal, and by 1957 had reached the point where the public interest required limitations

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2 Florida Statistical Abstract. 28th Ed. (1994), Bureau of Economic and Business Research, College of Business Administration, University Press of Florida, Gainesville, at pages 4 and 26.

upon the extent to which upland owners could add to their land by filling. Consequently, Chapter 57-362, Laws of Florida, was enacted. This statute makes substantial changes in the law relating to the filling of the bottoms of navigable waters so as to create dry land.

Chapter 57-362 was designed to, and did, withdraw the blanket right of upland owners to acquire title to adjoining bottoms between the high water line and the channel of adjacent waters. This statute (and later amendments not material here) provided much greater protection to the public enjoyment of the waters over these bottoms and much greater protection of the ecology which would be affected by filling. Bankers Life, supra, at 383.

In the case at bar, the State is attempting to apply post-1957 concepts of Florida law and public policy as they pertain to submerged lands when, in fact, the law and policy applicable to this case is the Butler Act, a state law which specifically encouraged and rewarded a riparian owner who actually bulkheaded, or filled in or permanently improved submerged lands. Moreover, even when the Butler Act was repealed, Section 9 of Chapter 57-362 expressly recognized that this change in public policy was not intended to affect title to lands that had previously been developed in accordance with the Butler Act. The Trustees of the Internal Improvement Trust Fund were directed to issue a disclaimer upon request of an upland owner who had filled or developed submerged lands. (See A.7, and §253.129, Fla. Stat.)

It is within the framework of this 100 years of statutory history that the City's title claim must be reviewed. The issue in

this case is whether the activities of the City in constructing Palm Harbor Marina were such that title vested in the City in 1948 by operation of the Butler Act. The City dredged and actually constructed a bulkhead over 1380 feet long. The City dredged and actually filled in over five acres of submerged lands. The City dredged and permanently improved the submerged lands by constructing four piers with 68 finger piers, berths and utilities hookups, together with a 200 foot wide north-south access channel and a 200 foot wide east-west channel.

The State acknowledges that the City bulkheaded and filled in submerged lands and concedes title to such filled lands. The State concedes that the construction of the piers in question constituted a permanent improvement so as to vest title in 1948 to the lands comprising the footprint of the piers in the City pursuant to the Act. (T.25) The State argues, however, that the remainder of construction of Palm Harbor Marina, i.e., the dredging necessary to create the yacht basin and two 200 foot wide access channels (the dredging necessary to render the Marina functional), does not constitute a permanent improvement under the Act. Thus, the issue before this Court is whether title to the land lying under open water between and surrounding the four piers and the 68 finger piers and in the two access channels vested in the City in 1948.

As will be demonstrated below, the lower court erred in concluding that the uncontroverted dredging of 26 acres performed in conjunction with the construction of a municipal marina failed



to constitute a "permanent improvement" as contemplated by the Butler Act. It should be noted that the City is not claiming ownership to "open waters" in the Intracoastal Waterway which would interfere with navigation or commerce or seeking title by merely "digging a hole" as repeatedly mischaracterized by the State in this cause. (T.16,21,23,29) Rather, the City contends that by virtue of the title-vesting provisions of the Butler Act, it holds title to the entire marina and boat basin constructed on and over the submerged lands between and surrounding the piers that were built in 1947-1948. Simply put, the construction of the four piers with 68 finger piers in 1947-1948 and the dredging of the surrounding 26 acres of submerged lands as depicted on the "As Built Layout Plan" were integral and inseparable components of the construction of the Marina and thus, as a whole, constituted a permanent improvement as contemplated by the Butler Act.

Moreover, it is not the City's contention that dredging alone or dredging performed solely as a method of providing fill material for adjoining lands in the absence of the construction of piers, docks or a functional marina facility satisfies the "permanent improvement" requirement of the Butler Act. Dredging alone is not at issue in this cause since all dredging performed by the City was unquestionably an integral part of the overall marina and boat basin permanent improvement project.

In its cross-motion for summary judgment, the State attached copies of twelve applications for dredging in Palm Beach County.

(R.89) This effort by the State to suggest that confirming the City's title to the 26 acre Marina would somehow "open the floodgates" to title claims based on dredging is a red herring. These applications do not involve dredging essential to construction of a permanent improvement and would not be included in the scope of this Court's decision.

The record before this Court is clear and uncontested. The City's intention in constructing the piers and dredging the subject submerged lands was to create a marina facility. The public notice provided by the War Department (U.S. Engineer's Office) dated December 4, 1946 detailed the precise dimensions and locations of the four piers, with their 68 finger piers. Additionally, this notice stated that "It is proposed to dredge a yacht basin 1,350 feet long, measured in a north/south direction and 500 feet and 350 feet wide at the northerly and southerly ends, respectively. It is also proposed to dredge a channel 200 feet wide to connect the easterly side of the basin with the Federal project channel of the Intracoastal Waterway, Jacksonville to Miami, Florida." (R. 29) A November 27, 1946 Memorandum from the U.S. Corps "Engineer in Charge" to the District Engineer provided as follows:

Herewith is application by City of West Palm Beach, C/O Geo. S. Brookway, City Engineer, West Palm Beach, Fla., for permit to dredge in Lake Worth, the dredged material to be placed landward of the established U.S. bulkhead line, and to construct wharfs, all for the purpose of creating a municipal boat basin on the south side of the Flagler Memorial Bridge

in West Palm Beach, Fla. (emphasis added)  
(R.30)

After detailing the nature and extent of the dredging and piers, the memorandum provided that:

The work is located immediately south of the Flagler Memorial Bridge and will form a municipal yacht basin for which there is great demand in the Palm Beach and West Palm Beach area. (R.30)

The memorandum concluded by stating that:

The proposed yacht basin and facilities will provide much needed berthing space for local boats operating at Palm Beach and West Palm Beach, and also for pleasure craft using the Intracoastal Waterway channel. The application is recommended for approval.(R. 30)

From this undisputed history, it is obvious that the City performed the dredging of the submerged lands in question in order to construct a permanent improvement consisting of 5.26 acres of upland fill, a parking facility, a 1380 foot long bulkhead, four substantial piers with 68 finger piers, a 200 foot wide north-south channel along the east side of the bulkhead and a 200 foot wide east-west access channel to the Intracoastal with the express purpose of creating a municipal marina and yacht basin for which there was great demand.

The City's contention that title vested in 1948 to the entire 26 acre marina project, including the land that was dredged but has not been filled or covered by a pier, is not an issue of first impression. The pertinent cases interpreting the provisions of the Butler Act clearly support the conclusion that the dredging of the

submerged lands in question as part of the construction of a marina and boat basin was a permanent improvement so as to have vested title in the City in 1948. In 1957, this Court, in discussing the Butler Act noted that the Act expanded the riparian rights of an upland owner "to dredge, bulkhead and fill in front of his land to the edge of the channel." Hayes v. Bowman, 91 So.2d 795 (Fla. 1957) at page 800 (emphasis added) The Court then went on to note that no title was acquired under the Butler Act "until such submerged lands are actually filled in or permanently improved." Hayes, supra at page 800.

In Key West Conch Harbor, supra, the Third District Court of Appeal considered whether construction of moorings and a dock were sufficient to convey title to the submerged lands surrounding the dock. Key West Conch Harbor's predecessor in title had constructed a 373 foot pier prior to repeal of the Butler Act. Additionally, a 138 foot extension was added to the pier prior to the Act's repeal. The district court affirmed the order below confirming Key West Conch Harbor's title and fee simple interest in the submerged lands lying within 500 feet of its concrete bulkhead.

In Key West Conch Harbor, like the case at bar, the State conceded that the landowner is entitled to the "footprint" of the pier. The Key West court recognized, however, that the "surrounding land and other improvements under the Act must be considered in addition to the dredged land." Id. at 145. Dredging alone, the Third District observed, would not be sufficient to

transfer title under the Butler Act. This dredging, however, the court noted, was not done for the sole purpose of filling another parcel of land. Rather, "the dredging was done to the waters around an improvement, to wit: a dock." Id.

According to the Third District Court of Appeal, in construing the Butler Act, "the definition of an 'improvement' certainly includes the construction of a dock or pier." Id. at 145, citing Dept. of Natural Resources v. Industrial Plastics Technology, Inc., 603 So.2d 1303 (Fla. 5th DCA 1992), rev. den., 617 So.2d 318 (Fla. 1993). Significantly, the Fifth District Court of Appeal in that case said: "In the context of acquisition of submerged lands, 'improvements' have been held to include buildings, wharfs, piers, dry-docks and other structures affixed to tidal or submerged lands which were constructed for business, commercial, recreational, residential or other beneficial use or purposes." Industrial Plastics at 1306.

The precise issue before this Court was also raised in Jacksonville Shipyards, supra, i.e., whether certain improvements made by the landowner in that case constituted "permanent improvements" under the Butler Act so as to vest title in the riparian landowner. There, the question was whether the upland owner was entitled to the issuance of a disclaimer (pursuant to §253.129, Fla. Stat.) by the State to 17.30 acres of submerged lands in the St. Johns River in Duval County.

Jacksonville Shipyards, the appellant, claimed title in

accordance with the Butler Act on the grounds that the submerged lands in question had been permanently improved prior to the repeal of the Butler Act. Despite the plain language of the Butler Act, the State contended that neither bulkheading nor the permanent improvement of the submerged lands were acts sufficient to vest title in the upland owner. Rather, the State insisted that the submerged lands must be "filled in" before title could vest in the upland owner. Jacksonville Shipyards, supra at page 391.

In analyzing the application of the Butler Act to the facts in that case, the Court observed that:

Prior to May 29, 1951, appellant made certain structural additions to the adjacent submerged lands now in question, including piers, docks, wharves, dry docks, railroad trestles and dredging. (emphasis added). Jacksonville Shipyards, supra at page 380.

A footnote in this decision (footnote 3) adds that:

3.The record, consisting of various dated maps, plats, surveys, and photographs, reflects improvements existing before May 29, 1951, consisted of, inter alia: a marine railway dry dock since 1885; two docks and a pier with a 30-ton, shear leg crane since 1936; 4500-ton floating dry dock since 1905; and a 12,000-ton floating dry dock; two gantry cranes; 446.2 feet of bulkheading as early as 1936; dredging of the open waters between these piers and docks approximately every six months; . . . (emphasis added) Jacksonville Shipyards, supra at page 390.

Based upon this record, after recounting that the major objectives of the Butler Act were the creation or evolution of commerce and to encourage upland owners to improve their waterfront

property, the First District Court of Appeal determined that "The plain language of the Butler Act provides for acquisition of title to submerged lands by bulkheading, filling, or permanently improving." Jacksonville Shipyards, supra, at page 393, (emphasis added.) The court concluded that "the improvements to the submerged lands made prior to May 29, 1951, are indeed 'permanent improvements' under the Butler Act . . ." and the State was ordered to issue a disclaimer to all of the submerged lands in question. Jacksonville Shipyards, supra at pages 391, 393.

Consequently, this decision confirms that the submerged lands in question were considered permanently improved in their entirety as contemplated by the Butler Act as a result of the construction of piers, docks and the like and the dredging of the waters adjacent to or between the piers and docks. The Court made no exclusion in its ruling for dredged lands between docks and piers. Likewise, under the facts of the case at bar, the City has permanently improved the entire area of the lands in question by virtue of the City's construction of the subject piers and the dredging of a yacht basin essential to the function of the Marina. This case is both factually and legally indistinguishable from Jacksonville Shipyards, supra.

Significantly, in its June, 1998 opinion, the court below acknowledged Jacksonville Shipyards. The court said:

Jacksonville Shipyards demonstrates the type of permanent improvement contemplated by the Act in the absence of fill. The case involved

significant structures and development, including a marine railway dry dock, two docks and a pier with a 30 ton crane, a 4,500 ton floating dry dock, a 12,000 ton floating dry dock, 446.2 feet of bulkheading, and three separate piers with warehouses.

And, the court went on:

The first district held that the Butler Act vested the landowner with title to the 17.30 acres, apparently including the dredged underwater land between the piers and docks. The court never honed in on the issue of whether dredged land in the spaces between intense development was subject to the act.

Respectfully, the lower court ignores the plain holding of the Jacksonville Shipyards case. While dredging of the 17.30 acres may not have been explicitly addressed in the issue before the court, the fact remains that title to the land lying under open water and between the docks and piers was confirmed in the upland owner because that riparian owner constructed "permanent improvements" as required by the Butler Act. Moreover, by any logical reading of the Butler Act, the construction of a marina, including the dredging essential to its construction, clearly constitutes a "permanent improvement."

In Department of Natural Resources v. Industrial Plastics Technology, Inc., 603 So.2d 1303 (Fla. 5th DCA 1992), the issue before the court was whether a wooden boat dock and boathouse used in conjunction with a private residence were "permanent" improvements as contemplated by the Act. The State contended that the dock and boathouse were not truly permanent improvements under



the statute. The Court concluded that the Butler Act included both residential and commercial improvements and that a wooden boat dock and boathouse were, in fact, permanent improvements "in the same sense and manner as a house made of wood." Id. at 1306. A wooden boat dock and boathouse were both deemed to last long enough in the context of human life to be classified as permanent improvements. Title in the riparian owner was confirmed.

The word "permanent" implies that there is no intention of removing or abandoning it and that it will remain until its purpose has been accomplished. See Texas and Pacific Railroad Company vs. City of Marshall, 136 U.S. 393, 34 L.Ed. 385, 10 S.Ct. 846 (1889). In City of Marshall, supra, the Supreme Court stated that a fair meaning of a "permanent establishment of a railroad terminus, including machine shop, was that there was no intention at the time of removing or abandoning it, and that the word permanent does not mean forever or lasting forever or existing forever." 136 U.S. at 403.

Other Florida case law also reveals that the word "permanent" does not always denote lasting forever or have a meaning opposite from temporary. Rather, the word "permanent" in a statute is often construed according to its nature in relation to the subject matter of the statute. Indeed, the requirement of permanency has been found satisfied where "presence is consistent with continuity and not sporadically or temporarily present." See City of Lakeland vs.

Lawson Music Company, 301 So.2d 506 at 508, (Fla. 2d DCA 1974), and cases cited therein.

Palm Harbor Marina has been operated at the subject location continuously, for fifty years. This continuous operation meets the concept of "permanency" described in the decisional law above, and as that concept appears in the Butler Act.

Further, the concept of "improving" real estate is not limited to construction of structures on or above the land in question, but also applies to any alteration of the land which makes it more valuable or more useful for its intended purpose. The term "improvements" includes everything that makes a piece of property better, renders it more useful or enhances its value. As stated in Volume 1, Fla. Jur. 2d. Accession, Section 8:

Generally, the term 'improvement' includes everything that permanently enhances the value of premises for general uses. It is used interchangeably with the word 'betterment'. The term encompasses not only buildings and fixtures but also many other things. Common illustrations are party walls; substantial additions to the repairs in an existing building; a well; an ornamental garden; and the draining, filling, clearing, ditching, grading, paving, landscaping, subdividing, fitting for cultivation and cultivation of land." (See cases cited therein.)

Black's Law Dictionary, Fifth Edition, defines "improvement" as "[a] valuable addition made to property (usually real estate) or an amelioration in its condition, amounting to more than mere repairs or replacement, costing labor or capital, and intending to enhance its value, beauty or utility or to adapt it for new or

further purposes." The dredging performed by the City in the case at bar undoubtedly was indispensable to enhancing the value of the submerged lands and, in fact, to adapting the lands for a new purpose, i.e., a municipal marina and boat basin.

Another definition of the term "improve" is found at §713.01 (12) Fla. Stat., (Construction Lien Law) where "improve" is defined to mean build, erect, place, alter, remove, repair or demolish any improvement over, upon, connected with or beneath the surface of real property, or excavate any land, or furnish materials for any of these purposes or perform any labor or services upon improvements, . . . At paragraph (13), under that same section "improvement" is defined to mean "any building structure, construction, demolition, excavation, landscaping or any part thereof existing, built, erected, placed, made or done on land or real property for its permanent benefit." (emphasis added)

The City spent over \$400,000 in 1948 to construct Palm Harbor Marina, more than \$3,000,000 in today's dollars. The evidence of record leaves no question but that the dredging of the 26 acre area of the marina and boat basin has effected a "permanent benefit" on the submerged lands in question. Their use has been enhanced in terms of the inherent value of the use to which those lands could be put after the dredging, i.e., for marina facility purposes. That is the very type of use envisioned by the title transfer language in the Butler Act. The utilization of the submerged lands

as a marina both improved the submerged lands, encouraged commerce and navigation, and resulted in the development of the uplands.

C. The Public Trust Doctrine

By its express terms, the City has performed the activities required under the Butler Act to vest title in Palm Harbor Marina, in its entirety, in 1948. Moreover, the cases interpreting the Butler Act discussed above confirm that the City has fulfilled the requirements of the Act. Nonetheless, the State argued, and a divided district court panel agreed, that the vesting of title to the land lying under open water would breach the doctrine of the public trust. (T.18) City of West Palm Beach, supra, at 1063. The State's argument and the lower court's concern are refuted by the public trust doctrine itself and the precedent from this Court which shows that the doctrine does not apply.

The "public trust doctrine" finds its origin as part of the historical analysis of ownership of submerged lands. Prior to the date when Florida became a state, it was the policy of the federal government to hold title to lands under navigable waters for the use of the public. When Florida was admitted to the Union as a state, it became the owner by virtue of its sovereignty of all submerged lands within its territorial limits. Having acquired title by virtue of its sovereignty and not by conveyance, grant or patent, such lands became known as sovereignty lands. With reference to sovereignty lands, it was held, prior to the enactment of the Butler Act that:

The trust with which these lands are held by the state is governmental, and cannot be wholly alienated. For the purpose of enhancing and improving the rights and interests of the whole people, the state may by appropriate means grant to individuals the title to limited portions of the lands, or give limited privileges therein, but not so as to divert them from their proper uses, or so as to relieve the state of the control and regulation of the uses afforded by the land and waters. State ex rel. Ellis v. Gerbing, 56 Fla. 603, at page 612, 47 So. 353, at page 356 (1908).

With this common law background, in 1856 the Florida legislature enacted the Riparian Rights Act "For the Benefit of Commerce" which provided for the divestiture of title to submerged lands upon which wharves and warehouses were built. Thereafter, declaring that it was "For the Benefit of the State that waterfront property be improved and developed," the Legislature in 1921 enacted the Butler Act by authorizing the divestiture of submerged lands which were bulkheaded **or** filled **or** permanently improved.

Referring to the Butler Act, and its predecessor Riparian Right Act of 1856, in Pembroke v. Peninsula Terminal Company, 108 Fla 46, 146 So. 249 (1933) this Court stated that "These acts ... evidence a public policy established under legislative authority beginning as far back as 1856, under which the state may part with the title to certain portions of its lands under navigable waters, of the kind and under the conditions described in the statutes, which policy and authority cannot be lightly disregarded by the courts." Pembroke, supra at page 257.

A historical perspective on the Butler Act was provided by this Court in Trustees of the Internal Improvement Trust Fund v. Claughton, 86 So.2d 775 (Fla. 1956), as follows:

No authority need be cited for the proposition that a grant in derogation of sovereignty must be strictly construed in favor of the sovereign. And since the grant made by the Butler Bill, as construed by this Court, appears to have gone far beyond the original intention of the 1856 Riparian Rights Act -- which was limited to filling in and bulkheading as an aid to commerce and navigation only -- it is even more important that the grant therein made should not be extended beyond its terms. Despite the language of the Butler Bill that the grant therein was made "subject to any inalienable trust under which the state holds all submerged lands and water privileges within its boundaries," this Court knows, since everyone knows it, that the Butler Bill has operated to divest the State of its sovereign lands just as effectively as though a grant thereof without such limitation had been made to a riparian owner. (emphasis added)

In 1924 the Florida Supreme Court held the Butler Act to be constitutional. Buford v. City of Tampa, 88 Fla. 196, 102 So. 336 (1924). In declaring that "this court has never held that the state could not by act of the Legislature divest itself of title to such lands ...", the Court expressly rejected the State's argument made in this case that the public trust doctrine precluded the vesting of title to the submerged lands in the riparian owner. Buford v. City of Tampa, supra, at page 340. This Court expressly recognized that: "Indeed, it is within the power of the Legislature so to dispose of such lands without any express constitutional

authorization therefor." Buford v. City of Tampa, supra, at page 341. Moreover, in the subsequent case of Deering v. Martin, 95 Fla. 224, 116 So. 54 (1928), this Court held that the public trust doctrine cannot be taken to such an extent as to preclude the State from transferring ownership to submerged lands. See also Pembroke, supra, at page 254.

The only limitation placed upon the riparian owner who improved or developed such submerged lands was that in exercising the rights given under these Acts, the owner should construct the improvement so as not to obstruct the channel, and so that full space would be left for the requirements of commerce. Holland v. Ft. Pierce Financing and Construction Company, 157 Fla. 649, 27 So.2d 76 (1946). In analyzing the riparian landowner's claim under these acts, the Court placed some significance on the fact that federal permits had been obtained for the construction of the improvements from "U.S. engineers, whose province it is to determine whether the proposed improvement will interfere with navigation and commerce." Id.

It is worth noting that in the Holland case, prior to the filling of the submerged lands, the waters were utilized for boating and commercial fishing. Also, the State contended that the filling of the lands resulted in a private owner monopolizing the port facilities of the harbor in which the filled lands were located. In upholding the claim of title to the filled lands, the Court again expressly rejected the argument that the "inalienable

trust doctrine" was violated by the title vesting provisions of the Butler Act. Specifically the Court stated that:

We cannot agree with the appellant's contention that appellee's improvement of the area involved, and its subsequent use amounted to a transgression of the inalienable trust doctrine. We think the test in cases of this kind is: That if the grant of sovereignty lands to private parties is of such nature and extent as not to substantially impair the interest of the public in the remaining lands and waters it will not violate the inalienable trust doctrine. Pembroke v. Peninsula Terminal Co., supra. Holland, supra, at 81.

Thus, in the case at bar, the State has the burden of demonstrating that the vesting of title in the City to Palm Harbor Marina would in some manner substantially impair the interest of the public in the remaining lands and waters. The State has presented no proof in this regard and there is no indication in the record below that the continued use of the subject lands as a marina facility will adversely affect the public interest.

When the War Department issued its permit for construction of Palm Harbor Marina, Major Blaise Nemeth expressly wrote: "Navigation will not be affected unreasonably." It is important to place the public trust doctrine in the context of a municipal marina as shown on the permit application the War Department approved. Palm Harbor Marina is located in the Intracoastal Waterway. Boating and fishing continue today. There is no obstruction in the Intracoastal channel as a result of the Marina.



In framing the issue, the court below began its analysis by noting what this case is not about. The court noted that this case does not concern the City's entitlement to a disclaimer as to the land beneath the footprint of the piers. As the court observed, "the Board conceded that point in the trial court." Id. at 1061.

It is most troubling, however, that the court said "Nor does this case involve the City's ability to continue to dredge in the area surrounding the piers, so that the marina will continue to be viable." Id. And, in equally troubling fashion, the court stated in Footnote 5, page 1066:

Appellees have conceded that the City has "the right to use their marina" and "to use the waters around their docks." The record reflects that when the Butler Act was in effect the state freely granted upland owners permission to dredge on the condition that the public retained its right to the open waters.

Both statements by the court below suggest that there is no consequence to the City if this Court limits the City's title to the "footprints" of the piers. Such a suggestion is entirely without record or legal support. At no time has the State conceded the City's right to "use" its Marina without title to the entire Marina. In fact, the State's answer and counterclaim reveal just the opposite. The State seeks to permanently enjoin the City from "any further claim, use, or occupation of said sovereignty lands, except for what Plaintiff may receive pursuant to a sovereignty submerged land lease."

In other words, the conceded "use" to which the court below mistakenly refers, is use under the terms and conditions of a sovereignty submerged land lease. Simply put, the City can continue to use the land lying under water between the piers and finger piers of Palm Harbor Marina if the City pays the State to do so.

The State's authority to demand a sovereignty submerged land lease comes from Chapter 253, Florida Statutes and Chapter 18, Florida Administrative Code. Section 18-21 of the Florida Administrative Code provides that the standard annual lease fee shall be seven percent of the rental value from the wet slip rental area or the base fee whichever is greater. Rental value is calculated by multiplying the total number of linear feet for rent in the wet slip rental area times the weighted, average, monthly per linear foot rental rate times twelve.

Palm Harbor Marina is a large marina. This Court has only to look at the As Built Drawing which appears in the record below to ascertain that the State would receive a substantial financial benefit if the City's title to the entire marina is not confirmed.

A determination of title to the submerged lands will not affect the public trust. If the State owns the submerged lands, it does not want to cease operation of Palm Harbor Marina. It wants lease fees. If the City owns the submerged lands, Palm Harbor Marina will continue its operation.

This case is really about money and who gets it. Palm Harbor Marina will continue to operate as it has since 1948. If the State owns most of the marina, however, the citizens of West Palm Beach will pay money to the State.

It is undisputed that the City has operated its Marina without interference from the State for more than fifty years. Under the express provisions of the Butler Act, and the construction of that Act by the First and Third District Courts of Appeal, title to the entire Marina, including land lying under water, vested in 1948. It would be fundamentally unfair to the citizens of the City of West Palm Beach to declare that now, fifty years later, only a portion of the Marina belongs to the City and the City will have to pay the State to use the remainder.

D. "Filling In" Not an Issue

In addition to the lower court's misunderstanding regarding the City's right to use Palm Harbor Marina, the statement of the issue in the June, 1998 decision raised a concern that is simply not before the Court. The court below said that the issue in this case is "whether the City has fee simple title to the submerged lands, a form of ownership which could give rise to expansion of the existing marina or even to the filling in of the submerged lands for more intensive development."

As if to emphasize the spectre of "filling in" the lands between the piers, the lower court footnoted an exchange between the City's counsel and the trial judge below. This statement of

the issue overlooks the fact that if the City's activities in constructing the marina and boat basin constitute a permanent improvement under the Butler Act, then by operation of law, fee simple title to Palm Harbor Marina vested in the City in 1948.

More importantly, the right to fill in the land, as an incident of ownership, is not an unfettered right. Any attempt to fill in the lands in question is subject to substantial state and federal regulation. On the federal level, the Corps of Engineers, Department of the Army, and the Coast Guard both have jurisdiction over the City's right to fill. See C.F.R. Part 320, §§320.1, 320.2; Part 321, §321.1, Part 322; Part 323; Part 325 and See U.S.C.A. Title 14. Coast Guard. At the State level, the Department of Environmental Protection and the Board of Trustees of the Internal Improvement Trust Fund have regulatory jurisdiction over the right to fill. See Chapter 253, Fla. Stat.

The City has no intention to fill in between the Marina piers. The City spent large sums of money to create Palm Harbor Marina and wishes to preserve it for the benefit of its citizens. Nothing in the record suggests otherwise. Whether fee ownership legally entitles the City to expand the marina or fill in the submerged lands is simply not an issue in this cause.

E. Avoid Absurd Result

In an attempt to distinguish Key West and Jacksonville Shipyards, the court below cites State v. Black River Phosphate Co. 32 Fla. 82, 13 So. 640 (Fla. 1893), a case decided before the

passage of the Butler Act for the proposition that "title to lands subject to the public trust cannot pass unless denoted by clear and special words." The court below goes on to say that the Butler Act does not mention "dredging" as it does bulkheading or filling. The court concludes that "if the legislature had intended to grant title to land that was only dredged, it would have so stated, as it did in the case of land that was filled or bulkheaded."

The court's conclusion overlooks two significant facts. The Butler Act expressly provides for title to pass if land is bulkheaded, filled in or "permanently improved." More importantly, this case does not involve land that was "only dredged."

The City filled in over five acres of submerged lands. The City built a bulkhead over 1300 feet long. The City constructed a "permanent improvement," i.e. a marina consisting of a parking facility on the filled uplands, a new bulkhead, four piers with 68 fingers piers, berths and utility hookups, a 200 foot wide north-south channel extending the length of the bulkhead and a 200 foot wide east-west access channel to the Intracoastal.

In addition to the factual matters that undermine the court's reliance on Black River Phosphate, the court's opinion overlooks other long-standing rules of statutory construction. As this Court has often declared, all parts of a statute must be read together to achieve a consistent whole. See Forsythe v. Longboat Key Beach Erosion Control District, 604 So.2d 452 (Fla. 1992). Moreover, it is a fundamental rule of construction that statutory language

cannot be construed so as to render any portion of the statute meaningless. Snively Groves v. Mayo, 184 So. 839 (Fla. 1938). And, no literal interpretation should be given a statute that leads to an unreasonable or ridiculous conclusion or to a purpose not designated by the lawmakers. City of Boca Raton v. Gidman, 440 So.2d 1277 (Fla. 1983).

In Key West, supra, the Third District, in construing the Butler Act, determined that the definition of an "improvement" certainly includes the construction of a dock or pier. Although the State conceded that the landowner was entitled to the "footprint" of the pier, as it did in the case at bar, the Third District nevertheless observed that: "it seems that the pier would be, for the most part, useless without some incidental dredging."

Similarly, the court below in its August, 1997 opinion, also observed: "Here, the piers would clearly be useless as part of the marina without the dredged area in between and surrounding." What the court said could not be more true. Palm Harbor Marina is a 26 acre facility with a yacht basin for boats and large yachting vessels. If the City does not have the right to bring the boats and yachts to the piers and finger piers, the Marina has no use.

This Court in City of Boca, supra, stated with clarity: "No literal interpretation should be given that leads to an unreasonable or ridiculous conclusion or to a purpose not designated by the lawmakers." In both the Riparian Rights Act and the Butler Act, the purpose could not have been made more clear.

Both Statutes were enacted to benefit commerce and to encourage the improvement and development of submerged lands. Nowhere in the Butler Act or its predecessor does the legislature limit its title-vesting provisions to submerged lands over which a structure has been built. That is virtually the same as saying that a condition precedent to title vesting is filling in submerged land, an argument expressly rejected in Jacksonville Shipyards.

In 1947-48, the City took all appropriate action pursuant to the War Department permit to make the Marina operationally functional--filled the uplands, built the bulkhead and piers, and dredged around the piers and to the Intracoastal channel creating a marina and yacht basin. In order to avoid an absurd result under the Butler Act, the City needs a legally functional marina. That means that the City needs the legal right to access the Marina basin and to dock vessels at the Marina berths, without paying lease fees to the State of Florida. To rule that the submerged lands lying between the piers and in the access channels have not been permanently improved renders Palm Harbor Marina functionally meaningless. That is an absurd result and fundamentally unfair.

#### CONCLUSION

For the foregoing reasons, this Court should reverse the Final Judgment entered below and direct the Court to enter Final Summary Judgment in favor of the City thereby quieting fee simple title in and to the subject lands in the City of West Palm Beach. The State should further be ordered to issue a disclaimer to the City in

accordance with Section 253.129, Fla. Stat., thereby confirming title in the City of West Palm Beach in and to the subject lands.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to Gary M. Dunkel, Esquire, Lewis, Vegosen & Rosenbach, P.A., 500 Australian Avenue So., 10th Floor, West Palm Beach, FL 33401, Maureen Malvern, Esquire, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, FL 32399, and Robert A. Butterworth, Jr., Esquire, Office of the Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this \_\_\_\_\_ day of November, 1998.

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