

The 2000 Condominium Association, Inc.  
2000 S. Ocean Blvd.  
Palm Beach, FL 33480

The 2100 Condominium Association, Inc.  
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February 7, 2021

Mayor Gail L. Coniglio  
Town Council  
Town of Palm Beach  
Palm Beach, FL 33480

Dear Mayor Coniglio and Town Council Members,

As the Presidents of the 2000 and 2100 Condominium Associations at Sloan's Curve, we are writing in response to the inaccurate assertions which Town officials placed in the public record in their memo dated February 4, 2021 re "2021 Reach 7/Phipps Ocean Park Beach Nourishment Update".

We all share common goals; we want our shore and the shores of our neighbors to be nourished this Winter and Spring and believe we can resolve our differences in a matter of hours, assuming good faith negotiations by the parties.

However, as Officers and Directors of our Associations, we have a fiduciary responsibility to our 192-unit owners and cannot endorse a plan our Coastal Engineer warns poses a significant threat to their properties, values, and safety, without agreements, that should adverse events occur from any cause, the Town will take prompt and pre-agreed reasonable actions.

We have filed no challenge to the FDEP permit for this project, because no FDEP Permit has yet been issued, and we don't know when it will be. In fact, the Town did not even file its final plans for a permit until last week on February 2, 2021. Therefore, the Town's ability to prevent us from filing a challenge is totally within its control.

Town officials have the responsibility for shore protection and have had the stewardship responsibility for the supposed \$10 Million of FEMA funds for at least three years. Any responsibility for the failure to implement a planned shore protection initiative or to effectively utilize Town, County, State, and/or Federal monies belongs with them, despite their efforts to shift the blame to us. The Town awarded the construction contract to Weeks Marine on October 14, 2020, yet the application process with FDEP did not begin until mid-December and the project must be completed by turtle nesting season. The Town placed this project in jeopardy itself by failing to proceed in a timely manner without considering our concerns.

As will be explained in the paragraphs below, what we have requested in the Draft Settlement Agreement is nothing more than what we have been led to believe by Town officials we are entitled to, and that they have offered to us in vague terms, which we are attempting to make explicit and enforceable.

Our previous communications prove that we have notified Town officials in a timely manner regarding our concerns re the 2016 dredging project on November 9, 2015, and regarding the current project numerous times starting on May 6, 2020. Despite the importance of this project and the amounts at stake, the Town made no effort to engage with us on this matter until January 29, 2021, when we were asked to resolve the matter immediately while we had been raising these issues, trying to get the Town's attention for the prior 9 months.

### **WHAT WE WANT DOES NOT IMPACT THE TOWN IF THERE ARE NO ADVERSE IMPACTS POST-PROJECT**

As stated above, what we want is for the Town's planned nourishment for our Associations, once the Town tells us in writing what that will be, (Item D.1. in the Draft Settlement Agreement) and the rest of Reaches 7 and 8, to proceed. However, since Erickson Consulting Engineers (ECE) has warned us that the Town's planned dredging too near our shoreline poses a substantial risk to our beaches and dunes, and thereby to our Members' properties, their values, and the safety of our Members, we cannot endorse a plan with these potential repercussions without an agreed remedy.

We realize the Town's engineering consultant disagrees with ECE's assessment, and to avoid arguing over dueling experts, we asked the Town for its assurance, that should specifically defined adverse events occur from any cause, then pre-agreed and limited remediation would be timely implemented. It's in both parties' interest that the event be tied to any cause as opposed to a specific cause, such as the dredging, because the parties would spend more time and money litigating whether the event was linked to a specific cause, than would be required to supply the limited agreed remediation. In addition, dunes and beaches erode due to weather and other natural events. However, human actions, such as dredging, nourishment, placing structures, etc. can mitigate or exacerbate the weather's impacts. Improperly located dredging off our shore allows any weather impacts to create even greater harm than without that dredging. Omitting weather impacts as a cause of erosion makes any intended contract unenforceable, or subject to very expensive and time-consuming litigation.

This same issue came up in our discussions with the Town regarding the FDOT rock revetment repair, and in response, the Town Manager sent a "comfort letter" to us on May 20, 2020, containing three key terms: "impact", "prompt action", and "appropriate storm protection". Since that date and continuing with our current discussions, we have been trying to have these terms explicitly, and enforceably defined, otherwise we would be entering into an unenforceable contract. The same situation applies to every other request in our Draft Settlement Agreement. If it's not explicit, it's not enforceable.

Other terms requested include consideration of advocating for the extension of the Phipps Park Template with a permittable width to our beaches and seeking a structural solution similar to The Breakers that will also protect hardbottom areas for our critically eroded beaches, (Sections D. 9. and 10. of the Draft Settlement Agreement) which Mr. Brazil refers to as "notable" and having "a timeline with no reasonable ending and a cost with no foreseeable limit." Both of these items were offered to us by Messrs. Crampton and Brazil in writing in response to our previous discussions re the FDOT rock revetment repair. So, like the Comfort Letter, Town officials said they would do

things for us if we didn't challenge the FDOT project or the FDEP Permit, and we agreed to accept the offers, as long as they were explicit and legally enforceable. We are in the same situation now with the dredging project.

Items D. 2. and 3. which address Reduction in the Dredge Volume and Revision of the Dredge Area build on actions the Town has already taken to modify the dredge plan to make it more acceptable to the FDEP and less threatening to our beaches. However, this modification north of our properties should also include the area directly fronting our properties.

Finally, items D. 7. and 8. which address the trigger event and defined remediation are only required if the specified erosion from any cause occurs, and since the Town will already have a stockpile of more than 15,000 cubic yards of sand at Phipps Park as a result of this project, the Town's estimated maximum financial liability to implement this condition is estimated at less than \$1 million. It does not make sense to forego \$10 million with certainty to avoid the potential of having to spend less than \$1 million.

The Town is justifiably concerned about establishing a precedent. However, we believe the unique situation of our beaches, and the unique and unrelenting impacts of man-made structures and events, such as the nearby rock revetment, groin, boulder debris fields, inability to nourish our beaches, and the recent dredging are site-specific and unique and would protect the Town from establishing a precedent.

### **TIMELINE OF EVENTS**

Mr. Brazil's memo mentions that the Town received a draft "settlement agreement" on February 4, 2021, leading readers to believe that at the 11<sup>th</sup> hour, our Associations presented the Town with outrageous and impossible demands. These topics were discussed with the Town on February 2, 2021 and the Town asked us to draft the Agreement and get it to them as soon as possible. Although we asked the Town for comments and held a call to negotiate the Agreement, the Town had no comments.

Mr. Brazil also failed to mention that our concerns regarding near shore dredging were written to the Town on November 9, 2015 regarding the 2016 project, and regarding the 2021 project:

1. On May 6, 2020 Mr. Brodsky, the President of the 2000 Condominium Association wrote to Messrs. Crampton, Blouin, Brazil and Weber regarding dredging from the nearshore borrow site:  
"We've yet to see the specifics of this plan, but have serious concerns that this solution will dramatically worsen the beach erosion, while mere dune re-nourishment has consistently failed to produce sustainable shore protection to the properties of the Sloan's Curve Associations."
2. On June 21, 2020, Mr. Brodsky wrote to Messrs. Crampton, Blouin, and Weber: "The rock revetment repair and near shore dredging to enable the Reach 7 beach nourishment will make our situation even worse."

3. On August 5, 2020, Mr. Brodsky wrote to Messrs. Crampton, Blouin, Brazil and Weber: “Our concern was increased and heightened when we learned of the nearshore dredging planned for the 2021 Reach 7 beach nourishment.”
4. On December 15, 2020, representatives of ECE, our Associations, and our attorneys held a Zoom call with Messrs. Brazil and Weber to inform the Town of our findings that in 2016 the contractor violated the permit and overdredged the SB-2 Borrow Site before we presented these findings to FDEP.
5. On December 31, 2020, the ECE Report was delivered to FDEP and the Town, demonstrating adverse effects of the proposed dredge event and documenting 2016 dredge violations based on Town data. ECE’s report included modelling demonstrating that the Reaches 6 and 7 dredging had led to dramatically worse beach erosion for all nearby impacted beaches. The Town and its engineer stated that they disagreed with the analysis and conclusions, yet changed the specs for the 2021 dredging, which caused a delay in the permitting process. If the analysis was wrong, why did the Town change the project specs?
6. On February 1, 2021, in a conference call with Mr. Blouin, he indicated, as did Mr. Brazil on February 3, 2020 that they did not know the status of the dredge required for the upcoming beach nourishment, nor when it would be available.
7. On the February 1, 2021, Mr. Blouin also indicated that the project mobilization had been “paused” although he did not reveal why.
8. On February 2, the Town submitted revised IPA project plans to FDEP as part of the ongoing application process. This was a required step before FDEP can approve the Town’s permit.

Despite repeated formal and informal notices about our Associations’ concerns regarding the planned dredging, the Town failed until January 29, 2021 to contact Mr. Brodsky about addressing our concerns, which can be satisfied by merely making explicit and enforceable what we’ve been led to believe we’re entitled to.

### **OTHER INACCURATE STATEMENTS IN THE MEMO**

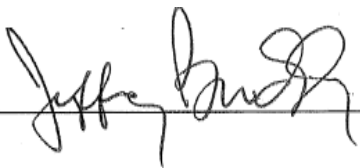
In addition to all the misstatements cited above, the following require correction:

1. Steven Tannenbaum is the President of the 2100 Association
2. “...no increased erosion of the shoreline occurred...” after the 2016 dredging of the same borrow area planned for the 2021 dredging. The Town’s own records indicate that the very severe documented erosion rates occurred on the beaches in Reaches 6 and 7 nearest to the dredge area after 2016 The current rate of loss at our shorelines is three times the loss rate eight years ago. ECE’s analysis of the Town’s survey data has shown that this is due to the poorly located borrow area and dredge depth.
3. The Town officials have to date failed to specify the amount of sand will be placed on our beaches this year.
4. “The shoreline in this area is in good condition and the sand from previous dune projects is still present”. This completely ignores the losses in dune size and volume that have taken place and the inadequate protection remaining. Only a small fraction of previously placed sand still remains.

5. Mr. Brazil describes as “notable” our request for 5 years of “quarterly physical monitoring”.  
Item D. 6. We were told that Mr. Weber monitors all the Town’s beaches monthly.

In closing, we repeat that the Town and Associations both want the same things. However, we need explicit enforceable assurances that the dredging project won’t leave our beaches and dunes in a dramatically worsened condition with no explicit remediation. The Town should not be concerned about promising remediation for an event its staff and experts say won’t occur, nor establishing a precedent, and the Town should not forego \$10 million with certainty, to avoid the risk of spending less than \$1million. The future of this project is in your hands.

Very truly yours,



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Jeffrey Brodsky  
President of the 2000 Condominium Association, Inc.



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Steven Tannenbaum  
President of the 2100 Condominium Association, Inc.