Coalition Against Causeway Chaos

www.causewaychaos.org

January 25, 2017

Commissioner Wilfredo Gort
Commissioner Ken Russell
Commissioner Frank Carollo
Commissioner Francis Suarez
Commissioner Keon Hardemon

CC: Mayor Tomas Regalado

The City of Miami
3500 Pan American Drive
Miami, Florida 33133
Via Email

Subject: Flagstone Island Gardens MUSP Modification

Dear Commissioners:

This is a formal request for a Commission vote to review the pending MUSP application for the Flagstone Island Gardens project.

We are providing this letter and its attachments in advance of the pocket agenda item for Thursday's Commission meeting.

On November 21, 2016, we wrote you raising important issues about Flagstone's pending MUSP application. That original letter is attached.

Since then we have met with several Commissioners, made daily public records requests to the City, and requested a written response from the Planning and Zoning Department concerning critical questions we raised about the project. None has been provided.

However, some members of the Commission have shared comments they received from P&Z on our questions. And while we find it appalling that Miami residents with no financial interest in this project are required to shadow box with City administrators intent on withholding information from us, so be it.

Our antidote to the secrecy and contempt demonstrated by City administrators is to write each of you directly and outline why this MUSP modification must be reviewed by the Commission.

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Causewaychaos2015@gmail.com

Here is a summary of the principal reasons for demanding a review by the Commission. (Details and citations are provided in the Attachment at the end of this letter.)

1. **Not eligible as a "minor modification."**

   P&Z's approval of Flagstone's MUSP application under the "warrant" process as a *minor modification* enables Flagstone to circumvent several of the protections guaranteed the public under the Code. Among the protections denied: public hearings, comprehensive traffic and other analyses, review by the PZAB with a required supermajority vote, written findings that the requirements of Miami 21 have been met, and City Commission review.

   Should the P&Z Director be permitted to make a decision without any public hearing or input, residents must pay **$90,000** in order to appeal the Department's approval of a warrant application – a foregone conclusion given the absurdly biased and incorrect determinations up until now.

2. **Floor area manipulation**.

   Miami 21 states that a modification to a MUSP "approved under a previous code" may **not** be modified as a minor modification if it would "increase overall Development Capacity." Development Capacity is defined in Miami 21 as "floor area." Floor Area is defined as the "floor area within the inside perimeter of the outside walls of the Building including hallways, stairs, closets, thickness of walls, columns and other features, **and parking and loading areas**."

   We disagree with Mr. Garcia's assertions that the Floor Area remains the same. The current draft of the Modification explicitly acknowledges the removal of proposed garages from floor area.

   Mr. Garcia's assertion that the MUSP is being considered under the previous code criteria, *not Miami 21,* is false and is designed to mislead the Commission. It directly contradicts the City's actual documents such as the November 1, 2016 "Warrant Referral."

   The Coalition's November 21 letter revealed that according to Flagstone's own records, the current proposal increases floor area, or development capacity, by 425,760 square feet compared to the 2007 MUSP. However Flagstone's formal MUSP modification documents through early January, 2017 concealed this increase by submitting "development area" totals that – improperly – omitted "parking below grade and air conditioned, sky lit retail area."

   This omission is improper because those features are simply **not exempted** from the definition of "floor area" under Miami 21. Exhibit 2 in the Attachment section is the Flagstone working document which exposes the developer's calculations.

Flagstone's improper concealment of this fact comes as no surprise to CACC because earlier correspondence from Flagstone's general counsel shows that the Planning Department advised Flagstone to manipulate its calculations deceptively to allow consideration as a minor modification, i.e. without traffic studies, public hearings, and Commission review, AND THEN reveals that, *after approval*, the City will permit Flagstone to reinstate its original plans and again be treated as a minor modification.

When questioned by one commissioner's staff, Mr. Garcia glibly responded by saying "All they are doing is replacing the lower level or parking with retail," then acknowledged that he has "to go back and review these numbers again."

3. **Flagstone's application moves the building footprint by more than ten feet.**

Under the Code, a modification is "substantial" if "[t]he footprint of the building is proposed to be moved by more than ten (10) feet in any horizontal direction."

Flagstone's proposal extends the building footprint over 100-feet.

Mr. Garcia attempts to re-write the Code by substituting "building footprint" for "project footprint."

4. **Flagstone's Modification increases retail square footage by at least 100,000 sq. ft.**

As our November 21st letter noted, Flagstone proposes to add some 136,140 square feet of new retail development to the already approved 221,000 square feet, *disguising the new retail space as undefined "Hotel Ancillary" use.*

Mr. Garcia accepts Flagstone's characterization without proof. We disagree with that characterization. Hotel ballrooms, pre-assembly areas, meeting rooms, spas, guest rooms, arrival lobbies, sky lobbies, hotel function areas, pool decks, kitchens, back of house or storage areas, i.e. true hotel ancillary uses, *were all counted in previous plans*.

When the data are properly viewed per the code, the additional 136,140 of retail and restaurant uses are *in addition* to those which are truly and clearly "Hotel Ancillary," hence they are undoubtedly open to the public and therefore properly treated as additional retail space.

5. **Violation of Downtown Development Authority Development of Regional Impact.**

Flagstone's proposed increases in development capacity and retail square footage, as well as the increase in parking spaces and inclusion of a substantial amount of "residential" units in both hotels violate the 2004 "DDRI" Master and Increment II Development Orders.

P&Z's willingness to allow these changes as minor modifications violates State law.

Astonishingly, Mr. Garcia has suggested that he is free to ignore and violate Florida law in the performance of his official duties as a City of Miami Department official unless an agency of the State of Florida steps in to reverse such action. *His assertion is absurd on its face.*

This project has a tortured history of delays, legal problems including the continuing violation of several charter provisions, and a litany of challenges to the Country's Truth in Government provision.

Under the circumstances, it is essential that the Commission insist on a current, accurate report from the City administration and allow time for a full review so that members of the public may have a full and fair opportunity to analyze and comment on the administration's responses.

The Planning and Zoning Department should not be permitted to take any further action until public access to information and transparency into the decision process is afforded.

Less there be any question about the public's interest and intentions on matters of this nature, on November 8, 2016, Miami voters overwhelmingly approved, by an historic 84.32%, an amendment to the City Charter granting Miami residents standing to sue the City to enforce its Charter. Over 95,000 people voted "Yes."

Commissioner, the Coalition Against Causeway Chaos asks you to stop this runaway train so that the work of P&Z can be reviewed and reported back to you. The public depends on the Commission to serve as a check and balance to hold the City Administration accountable.

Should a bogus argument be made that there simply is not time for such review, there is a simple response: There is no rush. Flagstone first filed this MUSP modification in December 2014 and is only now bringing it up – presumably to meet its construction deadline of May 1.

The developer's rush is no reason to avoid the public scrutiny that the law, sound principles of open government, and the developer's previous behavior demand.

Thank you.

P.S. Please see the Attachment section for more detail and citations on the points above.

Respectfully,

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Multiple Attachments

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DETAILED POINTS AND CITATIONS

1. **Improper treatment of MUSP modification via warrant process as a "minor modification."**

   By approving Flagstone's MUSP amendment application for processing under the "warrant" process as a minor modification, P&Z is enabling Flagstone to circumvent several of the protections for the public under the Code under the exception process (section 7.1.2.6), including public hearings, comprehensive traffic and other analyses, review by the PZAB with a supermajority vote required for approval and written findings that the applicable requirements of Miami 21 have been met, and City Commission review.

   In contrast, under the warrant process, these protections are eliminated, the P&Z Director makes a decision without any public hearing or public input, and any resident must pay **$90,000** in order to appeal the Department's approval of a warrant application – a foregone conclusion given the absurdly biased and incorrect determinations up until now.

   However, it is absolutely clear that under Miami 21, Flagstone's MUSP modification application cannot be treated as a "minor modification" if it would "increase overall development capacity" of the project, and since the current modification application unquestionably increases development capacity over the 2004-2007 levels, it is simply against the law for P&Z to allow the Flagstone MUSP to be treated as a "minor modification." As noted in our previous letter, the proposed amendment increases development capacity by some 425,760 square feet, which would disqualify the application from being treated as minor if P&Z followed the law.

2. **Miami 21 Code Applies.**

   Evidently, one of Mr. Garcia's responses is that the MUSP amendment is being considered under the previous code criteria, *not Miami 21*. This answer is simply false. It directly contradicts the actual City documents by which the Flagstone MUSP

amendment is being processed, such as the November 1, 2016 "Warrant Referral" attached as Exhibit 1. The "Brief Description of the Proposal" states:

> Modification to previously approved MUSP allowed by Warrant pursuant to Article 7, Section 7.1.3.5 of the Miami 21 Code.

Similarly, the "Warrant Application" attached to the Warrant Referral, in the Detailed Description of Proposed Work Only" by the Zoning Plans Examiner states:

> Pursuant to Article 7, Section 7.1.3.5.d.1 of the Miami 21 Code and analysis from the Office of Zoning, proposed modifications to a previously approved MUSP shall be allowed by Warrant.

Mr. Garcia's Alternative Truth Argument that "it's not Miami 21" is untenable and unworthy of any city official, much less the director of one of the most important departments in the City.

3. **Under Miami 21, Flagstone's Proposed Increase in Development Capacity Precludes Treatment as a Minor Modification.**

Under section 7.2.3.5 of the Miami 21 Code, a modification to a Major Use Special Permit "approved under a previous code" may not be modified as a minor modification if it would "increase overall Development Capacity." Development Capacity is defined in Miami 21 as "floor area." Floor Area is defined as the "floor area within the inside perimeter of the outside walls of the Building including hallways, stairs, closets, thickness of walls, columns and other features, *and parking and loading areas*." Section 1.2, Miami 21 Code.[1]

In CACC's November 21 letter, we showed that according to Flagstone's own records, the current proposal increases floor area, or development capacity, by 425,760 square feet compared to the 2007 MUSP, but that Flagstone's formal MUSP modification documents through early January, 2017 *concealed this increase* by submitting "development area" totals that – improperly – omitted "parking below grade and air conditioned, sky lit retail

1. Mr. Garcia, and others on the City staff, also tried to justify ignoring Code by stating that "Floor Lot Ratio," or "FLR," is the proper measure for whether a modification is or isn't minor. This argument completely misrepresents the Code. An increase in development capacity precludes a finding of minor modification. Development capacity is defined as "Floor Area," which includes parking and loading areas. "Floor Lot Ratio," or FLR, is completely different, and is a measure, of density relative to lot size. It is defined as "The multiplier to the Lot Area that determines the maximum Floor Area allowed above grade in a given Transect Zone."

area." This omission is improper because those features are simply not exempted from the definition of "floor area" under Miami 21. Exhibit 2 is the Flagstone working document which exposes the developer's calculations.

Flagstone's improper concealment of parking and sky-lit retail area came as no surprise to CACC because through public records requests and court proceedings we uncovered earlier correspondence from Flagstone's general counsel showing that the Planning Department advised Flagstone to manipulate its calculations deceptively to allow consideration as a minor modification, i.e. without traffic studies, public hearings, and Commission review, and then, *after approval*, reinstate its original plans and again be treated as a minor modification:

Dear Mehmet,

City Planning has confirmed to us this morning that all supplemental drawing submitted by Nichols have resolved the issues which were pending with the City. However, for now, in order to keep all plans within a minor modification, City Planning has asked that we remove the skylights from the current submittal. Once we submit the new MUSP application package (which Nichols will need a few days to complete- all revised drawings supplemented must be presented in one package with full MUSP revised application) and it has been determined minor, we can then go back with revision submittal to add the skylights. Nichols' office and I both agree with this strategy.

Please, confirm you are in agreement to submit our application as set forth above.

Thank you and best regards,

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However, on January 19, 2017, less than a week ago, in response to our daily public records requests for current Flagstone MUSP modification records, the City produced an updated Flagstone MUSP Modification Application booklet which, *for the first time*, acknowledged that in its calculations of "total development capacity sq. ft." omit parking below grade. See Exhibit 3. With this admission, it is mandatory for the Planning and Zoning Department to count below grade parking in its determination of development capacity. Based on the available information, this total is between 346,293 and 389,685

square feet.[2] Consequently, at a minimum, the development capacity of the amended Flagstone MUSP would be at least 2,162,392 square feet, and possibly as much as 2,206,067 square feet. Compared with the 1,879, 757 square feet of the 2007 MUSP, Flagstone's current application unquestionably increases development capacity and cannot be considered a "minor modification."

When questioned by one commissioner's staff on January 23 about P&Z's failure to follow the definitions in Miami 21, Mr. Garcia glibly responded by saying "All they are doing is replacing the lower level or parking with retail." Evidently, upon hearing these words come out of his mouth, he realized the absurdity of the argument, and stated: "Well, I think I have to go back and review these numbers again." This is not only an understatement. It's but one example of the egregious errors made by the Planning and Zoning Department on the Flagstone MUSP modification.

4. **Flagstone's application would not be "minor" because it moves the building footprint by more than ten feet.**

Under Code section 2215.1, a modification is "substantial" if "[t]he footprint of the building is proposed to be moved by more than ten (10) feet in any horizontal direction." Flagstone's proposal extends the building footprint over 100-feet to the south to encompass much of Tract C, in contrast to the previous approval which did not propose any building footprint on Tract C. In response, Mr. Garcia has stated that the "project footprint" has not changed. However, he cannot re-write the Code to its own taste to confuse "project footprint" with "building footprint" as a way to justify treatment of Flagstone's proposal as a Warrant.

5. **Flagstone's MUSP Modification Would Increase Retail Square Footage by At Least 140,000 Square Feet.**

As CACC's letter noted, Flagstone proposes to add some 136,140 square feet of new retail development to the approved 221,000 square feet, disguising the new retail space as undefined "Hotel Ancillary" use. Mr. Garcia, in his conversations with commissioners and staff, simply supports, without numeric proof, Flagstone's characterization. However, the hotel ballrooms, pre-assembly areas, meeting rooms, spas, guest rooms, arrival lobbies, sky lobbies, hotel function areas, pool decks, kitchens, back of house or storage areas, i.e. true hotel ancillary uses, were all counted in previous plans. When the data is properly considered, the additional 136,140 in retail and restaurant uses are in

[2] In Exhibit 2, the area of the below grade parking subtracted from Flagstone's supposed total was 346,293. In Exhibit 3, the difference between all levels of parking included in the 2004-2007 MUSPs, 734,920, and the total amount of parking counted in 2016, 345,235, is 389,685 square feet.

addition to those which are truly and clearly "Hotel Ancillary," hence they are undoubtedly open to the public and therefore properly treated as additional retail space.

6. **Violation of Downtown Development Authority Development of Regional Impact.** Flagstone's proposed increases in development capacity and retail square footage, as well as the increase in parking spaces (from 1650 to 1752) and inclusion of a substantial amount of "residential" units in both hotels, violate the 2004 Downtown Development Authority Development of Regional Impact ("DDRI") Master and Increment II Development Orders ("2004 DDRI Amendment"). In addition, P&Z's willingness to allow these changes to be treated as minor modifications also violates State law.

   Shockingly, Mr. Garcia has informed at least two commissioners that it is "not the Planning and Zoning Department's responsibility to ensure compliance with State law." Mr. Garcia seems to be saying that he is free to ignore and violate Florida law in the performance of his official duties as a City of Miami Department official unless an agency of the State of Florida steps in to reverse such action, which should set off alarm bells everywhere. The assertion absurd on its face.

   The DDRI development order containing these restrictions was duly enacted in a resolution by the City of Miami Commission on June 4, 20104, R-04-425. Is Mr. Garcia saying he is free unilaterally to pick and choose which provisions of a City Resolution he wants to enforce? In addition, the City's Comprehensive Master Plan, Policy LU-1.4.12, states "[t]he City will continue to implement the Downtown DRI development orders for downtown and Southeast Overtown/Park West . . . ." The Comp Plan was adopted by the City of Miami as an ordinance and is binding as law. Further, under Section 163.3161, Florida Statutes, "no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act." *Payne v. City of Miami*, 52 So.3d 707 (Fla. 3d DCA 2010). Similarly, "[t]he statute's requirement that all zoning action conform to an approved land use plan is, in effect, a limitation on a local government's otherwise broad zoning powers." *Machado v. Musgrove*, 519 So.2d 629 (Fla. 3d DCA 1987).

7. **City Residents Voted Overwhelmingly for Transparency and Accountability in City Government.**

   This project has a tortured history of legal problems, including the continuing violation of several charter provisions. Under the circumstances, it is essential that the Commission insist on a current, accurate report from the City administration of Flagstone's MUSP modification application, and members of the public must have and full and fair opportunity to review, analyze, and comment on the administration's responses, before the Department should be permitted to take any further action. This is what the law requires, and this is what the public overwhelmingly expects from their elected officials.

On November 8, 2016, the City of Miami electorate overwhelmingly approved, by a vote of 84.32%, an amendment to the City Charter granting Miami residents standing to sue the City to enforce its Charter.[3] Over 95,000 people voted "Yes." The amendment was approved by the highest margin of any local referendum in Miami-Dade County.[4] The overwhelming majority of the City's voters made it clear that they believe they are entitled to openness and accountability by local government.

In the Charter Review Committee and the City Commission proceedings deciding whether to place the standing provision on the November general election ballot, and in press coverage, it was clear that one of the reasons for this charter amendment was the public's negative perception of unaccountable, back-room actions by City officials on deals like Flagstone. *See, e.g.,* David Smiley, "To Sue or Not to Sue? That is the Question." *The Miami Herald*, October 12, 2016, http://www.miamiherald.com/news/local/community/miami-dade/article107579037.html (quoting Charter Review Committee Chairman, Commissioner Francis Suarez, as stating: "The integrity of our government doesn't really have a price . . . Our residents need to feel they can enforce the law even against their own government and not be defeated by some sort of a procedural gimmick.").

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[3] Information about the referendum results can be found on the Miami-Dade County website, http://www.miamidade.gov/elections/.

[4] The only ballot measure to obtain a higher vote percentage in Miami-Dade County was the State Constitutional amendment to allow ad valorem tax relief for disabled first responders, which received 86.09%.

Coalition Against Causeway Chaos

November 21, 2016

Commissioner Wilfredo Gort
Commissioner Ken Russell
Commissioner Frank Carollo
Commissioner Francis Suarez
Commissioner Keon Hardemon

CC: Mayor Tomas Regalado

The City of Miami
3500 Pan American Drive
Miami, Florida 33133
By e-mail.

Re: Proposed Modification of Flagstone Island Gardens MUSP

On October 28, 2016, Flagstone Island Gardens moved to modify its Major Use Special Permit (MUSP) first approved in 2004 and amended in 2007. The proposed modification would increase floor area by 425,760 square feet from its 2004 plan,-- 23% more than the previous plan; increase retail space by approximately 140,000 square feet – 70% more than was approved in 2004; increase parking to prohibited levels; and introduce residential units in violation of City and State prohibitions. .

The Planning and Zoning Department has determined that these changes are "non-substantial" and intends to approve them as a Warrant, i.e. *without* public hearings, comprehensive traffic and other analyses, or City Commission review.

We request the Commission review Planning and Zoning's determinations regarding the proposed modification, under authority granted to the Commission under section 62-23 of the City Code..

The P&Z use of the Warrant process not only by-passes Code-mandated processes, it cuts out citizen participation by requiring affected City residents to pay a fee of some $90,000 to challenge the decision. Despite the Charter Amendment on the "Right to Sue" approved by 84.3% of the voters to give more say to Miami's residents, this use of the Warrant is an unacceptable barrier to public participation, transparency and governmental accountability.

Flagstone, in league with city officials, seeks to super-size this project behind closed doors. We ask the Commission to be pro-active in reviewing whether Planning and Zoning's use of a Warrant without Commission and public scrutiny is appropriate and in the interests of the City.

We recommend a motion on December 8 to examine this question.

Attached are four legal and procedural reasons why Planning and Zoning's highly questionable determination requires review by the Commissioners.

Respectfully,

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The following summarizes four principal reasons why P&Z's Warrant demands Commission review as contemplated and reflected in the Code.

1. The new Flagstone proposal increases floor area, or development capacity, by 425,760 square feet compared to that authorized in the 2007 MUSP.

Under section 7.1.3.5. d. of the Miami 21 Code, a modification to a Major Use Special Permit "approved under a previous code" may not be modified as a minor modification if it would "increase overall Development Capacity." Development Capacity is defined in Miami 21 as "Floor Area."

Documents previously supplied by Flagstone show that P&Z is trying to negate this fact by subtracting "parking below grade and an air conditioned, sky lit retail area." However, these criteria are not exempted from the definition of "Floor Area" under the Miami 21 Code. Flagstone and the City staff purport to justify this evasion by relying on "FLR" calculations instead of "Floor Area" calculation that is the methodology mandated under the plain language of the Miami 21 Code. This manipulation not only seeks to avoid the proper review of these changes, it conceals a massive 23% increase in the size of the project over what was previously approved.

Similarly, P&Z's determination is called into question by the Planning Department's egregious manipulation of the rules captured in a public records request disclosure of emails showing Flagstone was advised to manipulate its calculations deceptively to allow consideration as a minor modification, i.e. without traffic studies, public hearings, and Commission review--and then, *after approval*, reinstate its original plans to again be treated as a minor modification.

Specifically, Flagstone's attorney wrote that she was advised "in order to keep all plans within a minor modification," to "remove the skylights from the current submittal," but that after "it has been determined minor, we can then go back with revision submittal to add the skylights." Such manipulation of our laws cannot be tolerated.

2. Contrary to Flagstone's letter to the City, the proposed modification moves the building footprint more than ten feet.

Moving the footprint more than ten feet is, by City of Miami Code of Ordinances definition -- a "substantial change" under Section 2215.1 (including as a substantial change "The footprint of the building is proposed to be moved by more than ten (10) feet in any horizontal direction").

The new proposed building footprint extends over 100-feet to the south to encompass much of Tract C; whereas, the 2004 approval did not propose any building footprint on Tract C, only an entry ramp and landscaping. Flagstone's application extends the building well beyond 10' and uses this area for the parking structure with over 250 parking spaces, a loading dock with 8 berths and area for storage. Flagstone confuses "project footprint" with "building footprint" to disguise the movement/increase in building footprint referenced in the City Code in order to justify treatment as a Warrant.

3. Flagstone is proposing to add 136,140 square feet of new retail development to the approved 225,000 square feet,

The 70% increase in retail space disguises the new retail space as undefined "Hotel Ancillary" use. Although Flagstone and the City are likely to argue that this additional square footage is automatically allowed under the Code as Hotel Ancillary, this argument is contradicted by the plans submitted.

Pages A006, A0031, and A0033. The hotel ballrooms, pre-assembly areas, meeting rooms, spas, guest rooms, arrival lobbies, sky lobbies, hotel function areas, pool decks, kitchens, back of house or storage areas, i.e. true hotel ancillary uses, are all specifically noted on the plans. The additional 136,140 in retail and restaurant uses are *in addition* to those which are truly and clearly "Hotel Ancillary," hence they are undoubtedly open to the public and therefore properly treated as additional retail space.

Per Sec. 13-53 City of Miami Code of Ordinances hotel and ancillary facilities are defined "*Hotel use* shall mean any facility containing more than one "lodging unit," as defined in the zoning ordinance, and may include meeting and banquet facilities and convenience goods and services for hotel guests, provided that the total of such ancillary facilities shall not exceed 15 percent of the gross square footage of the proposed hotel." This is also the origin of the 15% allowance used Flagstone.

4. The proposed increases violate the Downtown Development of Regional Impact Development Orders

The proposed increases in development capacity and retail square footage, as well as the increase in parking spaces (from 1650 to 1752) and inclusion of a substantial amount of "residential" units in both hotels, violate the 2004 Downtown Development Authority Development of Regional Impact ("DDRI") Master and Increment II Development Orders ("2004 DDRI Amendment").

P&Z's willingness to allow these changes to be treated as minor modifications also violates State law. Contrary to P&Z's present actions, any amendments require approval via a Notice of Proposed Change (NOPC) under section 380.06(19), Florida Statutes. That is, they require "an application to the local government to amend the development order in accordance with the local government's procedures for amendment of a development order," i.e. a properly conducted traffic study meeting State and professional criteria and showing all relevant impacts, public hearings, and a right of appeal. If approved, State law also requires review by the relevant State agencies for possible regional impacts.

To be clear, Flagstone's proposed introduction of a substantial amount of residential units in both hotels is a blatant violation of the DDRI, crossing a red line that has been well-known since the project's inception. The DDRI provides: *"[T]he City will not permit the simultaneous increase or decreases to convert a development on the Watson Island Property to residential uses."* Yet, Flagstone's latest plans clearly show portions of the hotel properties as being designated for "residential." Pages A032 and A033.

Also representative of a substantial change proposed by the application is an increased number of loading berths from 7 in 2004 to 17. This is a 240 percent increase in the number of bays for tractor/trailer deliveries. Sheet A001 shows 8 berths; however, all Level 1 Parking drawings show 17 loading berths. The increase in loading berths is likely explained by the need to service the additional 136,140 retail and restaurant space included in these plans.

The Need for Commissioners' Review.

The four examples provided above are of concern for two reasons.

- The first is the need for Commissioners and the public to be fully informed because they raise questions of our governmental process, as well as the merits of the changes.

- The second is that this project has a tortured history of legal issues involving conduct by City Officials. Contrary to some media accounts, legal remedies have not been exhausted. Approving this MUSP modification without Commission scrutiny will only insure continuation of a problematic past and reinforce the public's impression that this project continues to avoid critically important Commission oversight.