

October 2, 2019 Board of Adjustment Meeting

WEDNESDAY, OCTOBER 2, 2019

5:30 PM

*****Core Value of the Month - Transparency*****

Please turn off all Cell Phones and like devices prior to the start of the meeting.

- 1. CALL TO ORDER**
- 2. ROLL CALL/PLEDGE OF ALLEGIANCE**
- 3. APPROVAL OF MINUTES**
 - A. July 11, 2019**
- 4. NEW BUSINESS**
 - A. 19-04-AA: The applicant, Joe A. Winkeler of Point Mezzanine, LLC, is requesting an appeal to an administrative decision regarding the requirement of a Major Deviation to the existing Development Order No. 09-17, for the addition of docking facilities with 50 boat slips. The property in question is located in the High-Density Residential (HDR) Zoning District (Parcel ID #00-2S-24-0000-0034-0000)**
- 5. OTHER BUSINESS**
 - A. Next Meeting Date - November 6, 2019**
- 6. DIRECTOR'S NOTES**
 - A. Meeting Distribution Method**
- 7. ADJOURNMENT**

If a person decides to appeal any decision made by the City Council, committee, board, panel, or agency with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she will may need to ensure that a record of the verbatim record of the proceedings is made, which record includes the testimony and evidence upon the appeal is to be based. "Persons with disabilities who require assistance to participate in this meeting are requested to notify the City Clerk's Office 850.837.4242 at least 48 hours in advance".

CITY OF DESTIN



AGENDA ITEM

BOA MEETING DATE: October 2, 2019

TYPE OF AGENDA ITEM: Administrative Appeal

TO: Board of Adjustment

FROM: Louis Zunguze, Community Development Director
Kimberly Kopp, Land Use Attorney

DATE: September 24, 2019

SUBJECT: Administrative Appeal by Pointe Mezzanine LLC of Determination of the Community Development Director dated July 29, 2019

I. BACKGROUND:

On August 19, 2019, Joseph Winkeler/Pointe Mezzanine LLC ("Pointe Mezzanine LLC") submitted an appeal of the Community Development Director's determination of July 29, 2019 (hereinafter, the "**City Determination**") pursuant to Section 2.25.03 of the City's Land Development Code. A copy of the appeal application and City Determination are attached for your review.

Section 2.25.03. of the City's Land Development Code provides that the Board of Adjustment has the power and duty to "hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance.

Pointe Mezzanine, LLC, has proposed to construct a docking facility along the western shoreline of Destin Harbor, between the existing East Pass Towers condominium and the City's Norriego Point property. Such proposed project is a 50-slip docking facility with approximately 1 acre of dredge area located immediately offshore of the existing sheetpile wall. The proposal is anticipated to be a multi-family private docking facility to be associated with a future upland development. For clarity, boat slip ownership is proposed to be directly tied to the upland condominium development.

The upland development was previously reviewed and approved by the City under Development Order #09-17, but a marina was specifically excluded from said Development Order. Therefore, approval of a marina in connection with the upland development would require City Council review and approval of a major deviation to a major development. Whether a major deviation is required is the subject of tonight's appeal of the community development director's interpretation. This specific issue was not taken to the City Council. However, the City Council did hear items related to the request for a marina by Pointe Mezzanine LLC on August 20, 2018.

On August 20, 2018, the City Council was asked two things by Pointe Mezzanine LLC: (1) to provide input regarding proposed public benefits in connection with a docking facility for a private multifamily development; and (2) to provide a letter of concurrence from the City, as adjacent property owner, to the 25 foot setback requirement.

Because the proposed docking facility is intended to be a private multi-family facility, Florida Statutes require that the applicant provide public benefits that amount to 10% of the overall docking facility value. A recent appraisal report provided by the applicant indicated that the estimated value of the proposed docking facility is approximately \$4.7M, resulting in a required public benefit of approximately \$470,000.

In summary, the components of the public benefits presented to the City Council on August 20, 2018 included (1) the design, permitting, and construction of a life safety/rescue access dock on Norriego Point and (2) increased dredging within Destin Harbor to improve navigational safety. The costs of these two items is approximately \$80,000 and \$580,000 resulting in an anticipated total public benefit of \$660,000 (approximately \$190,000 more than the \$470,000 required by the State). The City Council rejected such benefits. See attached Minutes of 8/20/18 City Council Meeting.

In addition to the public benefit requirements, the applicant also sought a letter of concurrence for a setback waiver on 8/20/2019. This letter of concurrence would be required by FDEP (prior to permit issuance) because the northernmost proposed dock includes a proposed small portion of dock structure and a slip within 25 feet of the property owner's riparian line. The City Council declined to provide a letter of concurrence.

Notwithstanding discussions between staff and the applicant regarding the requirement that the applicant obtain an amendment to the existing development order in order to add 50 boat slips associated with the upland development, the applicant submitted an application to the Harbor Board for a 50-slip marina on February 8, 2019. The application, which is attached, also included a "Proposed Marina Site Plan." Staff informed the applicant, again, that the proper procedure was to submit an application for an amendment to the development order, as discussed on multiple occasions, and that, therefore, a hearing before the Harbor Board was not the appropriate process. As such, the Harbor Board application was not scheduled for a hearing before the Harbor Board.

Subsequent to all of the foregoing, City staff and attorneys for the applicant met to discuss the appropriate process for review of a proposed marina on the property. The Community Development Director also issued the City Determination, which is the subject of this appeal. In sum, Pointe Mezzanine LLC does not agree with the City's application of the Code, and as such, filed this appeal to the Board of Adjustment.

II. DISCUSSION:

On July 29, 2019, the Community Development Director issued the City Determination in response to Pointe Mezzanine LLC regarding its request to avoid the process for an amendment to the existing Development order. It provided, in sum, that an amendment to the existing development order would be required in order to add the proposed 50 slip docks. Specifically, the City Determination provided:

Marina or Dock

- You state that Point Mezzanine is not proposing to build a marina but contends to build a 50-slip private docking facility.
- Article 3 of the Land Development Code (LDC) states that commercial marinas contain 40 or more slips, while a marina is considered the establishment for rental of boat docks as a principal use.
- As such, the proposed 50 slip docking facility is considered a marina.

Definition of Development

- Development as defined in the Comprehensive Plan (Chapter 13-Glossary) and in the Land Development Code Article 3.00.01, includes construction, reconstruction, or alteration
...significantly disturbing the soil of a site...alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal **including any coastal construction.**
- Based on the above definition, your project is considered a development.

You note that the Upland DO expressly states that docks were not part of the request.

- We agree that docks were not part of the Development Order request. However, due to the definition of “development” noted in the Comprehensive Plan and LDC, any addition of uses, including those accessory to the primary use, must go through the deviation process.

Consistency of Review

- You reference East Pass Condominium not amending a Development Order for addition of the docks. Below are circumstances in which review of coastal construction may vary:
 - Accessory docks to single family dwellings
 - Docks or marinas are allowed as a principal use
 - Development was built prior to incorporation of the City
 - Dock or Marina is listed in an approved Development Order
- None of the instances apply to your proposal.

You also contend that the “private docking facility” is accessory to the condominium

- We agree. Otherwise, a stand-alone docking facility or marina would be considered a prohibited use.
- Furthermore, Marinas that are accessory to upland development have additional parking requirements that would affect the Upland Development Order. In such cases, the marina would need to be reviewed in concurrence with the existing Development Order.

Public Records

- You state that City Council routinely approves docks on the Consent Agenda.
 - Applications received for the review of coastal construction must first meet all applicable Code requirements prior to being scheduled for a Harbor and Waterways Board review and recommendation to the City Council.

Which Code is Applicable-Article 2 or Article 11

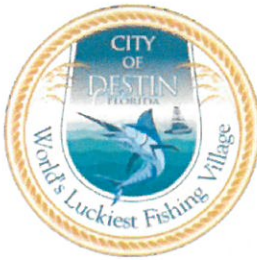
- Article 2
 - Since you consider the docking facility as accessory to the condominium project, a review under Article 2 of the Land Development Code for a Major Deviation to the existing Development Order is the appropriate process to review your proposal.
- Article 11
 - If however, you wish to decouple the docking facility from the upland development, the docking facility would be considered a principal use, it would not be permitted in the HDR Zoning District per the Land Development Code Article 7.12.06 Table 7-2 Table of Allowable Uses and the NAICS use classification.

III. CONCLUSION: Staff recommends that the BOA affirm the City Determination (Community Development Director's Correspondence of July 29, 2019).

IV. RECOMMENDED MOTION: I move to affirm the decision of the Community Development Director dated July 29, 2019.

Attachments:

1. Application for Administrative Appeal
2. DO 09-17
3. Power of Attorney
4. Harbor Board Application
5. Site Plan and Drawings
6. July 6, 2018 City Council Agenda Item
7. July 6, 2018 City Council Minutes
8. Relevant Portions of LDC
9. City Determination (Community Development Director Correspondence of July 29, 2019)



City of Destin

Community Development Department

Planning Division

City of Destin Annex

4100 Indian Bayou Trail

Destin, Florida 32541

Phone (850) 337-3123 • Fax (850) 837-7949

www.cityofdestin.com/index.aspx?nid=91

REQUEST FOR BOARD OF ADJUSTMENT PUBLIC HEARING ADMINISTRATIVE APPEAL APPLICATION

19 - 04 - AA

(project number assigned by planning staff)

A pre-application meeting is required prior to submitting this application. If a pre-application meeting has not been held, the application is considered incomplete and will not be processed. Completed applications shall be submitted to the Community Development Department – Planning Division, City of Destin Annex, 4100 Indian Bayou Trail, Destin, Florida 32541. Hearings are scheduled on the first Wednesday of each month at 5:30 pm in the City Hall Boardroom. Submittal deadlines are the third Friday each month, forty-seven days prior to the desired hearing date. This application will be forwarded to the Board of Adjustment for their consideration and action. You will be advised of the date and time of the Board of Adjustment public hearing. You must appear at this hearing or be represented by an authorized agent or attorney for the Board of Adjustment to take action on your application. The application will be terminated or tabled for failure to appear at a scheduled public hearing, unless you have provided written notice to the Planning Division. If you designate an agent or attorney to represent you in this application, you must submit a completed Agent Affidavit in a form approved by the City.

You are fully responsible for researching and knowing any and all laws, which may be applicable and affect the outcome of the any decision on your application request. The City assumes no responsibility or liability relating to your failure to research and know all applicable laws including, but not limited to, state, federal and city laws, codes, land development regulations and comprehensive plan. The City strongly recommends that all applicants consider consulting an attorney regarding their application.

You are encouraged to review, or copy, the Quasi-Judicial rules and procedures used by the Board of Adjustment at the public hearings.

1. AGENT/APPLICANT: Joe A. Winkeler/Pointe Mezzanine, LLC

Mailing Address: P.O. Box 7098

City: Destin State: FL Zip Code: 32540

Business Phone number: (850) 699-1600 Fax number: _____

Email: joeawinkeler@ozeanllc.com

2. PROPERTY OWNER:

Mailing Address: 1901 Manhattan Boulevard, Building H, Ste. 101

City: Harvey State: LA Zip Code: 70058

Business Phone number: _____ Fax number: _____

3. PROPERTY INFORMATION:

Street Address: 1 Gulf Shore Drive

Legal Description: See attached deed and legal description

(Attach a copy of the Recorded Deed and Property Record Card)

Parcel ID: 00-2S-24-0000-0034-0000

4. ZONING (To be completed by City Staff):

Current Zoning: _____ Future Land Use: _____

5. SITE DETAILS:

Total Acreage of the Property: Approx. 0.17 acres

Existing or Proposed Special Exceptions or Variances, etc:

N/A

6. APPEAL REQUEST:

Appeal interpretation of Community Development Director date July 29, 2019. See attached letter for basis of appeal.

7. REASON FOR APPEAL REQUEST:

The Community Development Director erroneously interpreted several aspects of the Land Development Code. This is an appeal to the Value Adjustment Board pursuant to section 2.25.03.A of the Land Development Code to review the interpretation. The basis for the appeal is specified in the attached letters to the City.

8. THE FOLLOWING ITEMS ARE REQUIRED FOR A COMPLETE APPLICATION:

- _____ 1. Completed Application - The applicant must fill out all applicable areas of the application. The application must be submitted to the Planning Division of the Community Development Department, City Hall Annex, 4100 Indian Bayou Trail, Destin, Florida 32541.
- _____ 2. Letter of Request - The applicant must submit a letter of request that clearly states what they are requesting.
- _____ 3. Proof of Ownership - The affidavit of ownership must be executed, notarized, and submitted. A letter of authorization is required if the applicant is other than the owner.
- _____ 4. Agent Affidavit / Special Power of Attorney (if applicable) - If the applicant is other than the owner of the property under consideration for review.
- _____ 5. Legal Description - A complete legal description of the subject property must be submitted for use in the legal advertisement.
- _____ 6. Application Fee: \$600.00 – Administrative Appeal
(FY2013 Schedule of Fees, Resolution 13-01, adopted 02/19/13, effective 03/01/13)

This is a one-time, all-inclusive fee. It includes: initial application and resubmittals; and all costs associated with administration, outside consultant reviews, legal notices and mailings.

Accepted Payments are Cash, Check, MasterCard or Visa. Checks shall be made payable to the City of Destin and submitted to the Planning Division, Community Development Department, City Hall Annex, 4100 Indian Bayou Trail, Destin, Florida 32541

- _____ 7. Site Plan - A **folded** site plan, to scale, showing the proposed improvement or location of the specific request. The site plan shall contain an affidavit that the plan accurately depicts the property, improvements and proposed improvements. The applicant may provide a current survey (not older than ninety (90) days), which provides the same information, in lieu of a site plan.
- _____ 8. Additional Information - Any other documents or requirements, which are mandated by the Code or deemed necessary by staff in reference to the specific request, made may be required.

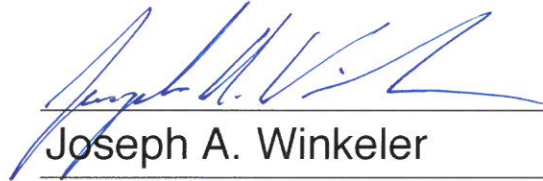
NOTE:

1. The City of Destin Planning Division will notify in writing abutting property owners of record within three hundred (300) feet of the subject property in accordance with LDC 2.17.00. The cost of this notification will be the responsibility of the applicant.
2. This application must be filled out completely and must be signed by the owner or his designated agent. If the applicant is different than the owner of the subject property, then an agent affidavit is required from the owner of the property that is under consideration for Board of Adjustment hearings. The agent affidavit must be completely filled out and submitted with this application. If the property is in multiple-ownership, then all of the owners or their designated agent(s) must sign this application.
3. A request for postponement must be submitted to the Community Development Department at least 10 working days prior to the originally scheduled meeting date. Costs for re-advertisements, public notice mailings, and all applicable fees will be the responsibility of the applicant.

I HAVE READ THE INFORMATION IN THIS APPLICATION AND HAVE FILLED IN ALL ANSWERS CORRECTLY TO THE BEST OF MY ABILITY.

APPLICANT:

SIGNATURE:



Joseph A. Winkeler

DATE: August 19, 2019

PRINTED NAME:

August 19, 2019

Via Electronic Mail Only

Louis Zunguze
Community Development Director
City of Destin
Destin City Hall Annex
4100 Indian Bayou Trail
Destin, FL 32541

Re: Point Mezzanine Docking Facility

Dear Mr. Zunguze:

We are in receipt of your July 29, 2019, interpretation of the City of Destin Land Development Code (“LDC”) in response to my request for same on behalf of Point Mezzanine, LLC (“Owner”). I enclose a formal appeal of the interpretation pursuant to LDC § 2.25.03.A. I also write separately to identify what I believe are critical, legal deficiencies with your interpretation. The following points are hereby incorporated into the appeal.

1. Marina or Private Docking Facility.

Your letter concludes that Point Mezzanine’s proposed 50 slip private docking facility is a “marina” under the City of Destin Land Development Code. The LDC defines “marinas” as “[e]stablishments for the rental of boat docks **as a principal use.** . . .”¹ Owner has never suggested that the docking facility would be a principal use. Owner has always intended the docks to be accessory to the principal condominium use. Moreover, Owner intends to sell the slips to owners of condominium units in the Point Resort; the slips will not be rented to anyone much less third parties. As such, they cannot constitute a marina.

2. Definition of Development and Applicability of LDC Article 2.

Your letter next argues that the docking facility must be processed under Article 2 because it is proposing “development” as defined in the LDC. Your analysis completely overlooks Article 11, which provides “[t]his article establishes and regulates procedures and standards by which the City controls and regulates development, construction and activities within and contiguous to the Harbor and waterways of Destin.” Emphasis added. Article 11, by its very terms, is the part of the LDC governing dock approvals, not Article 2.

Further, your letter implies that Article 11 would apply *if* the docks were being proposed

¹ Oddly, on page 2 of the letter you acknowledge that Point Mezzanine must be proposing a docking facility as an accessory use because docks are not allowed as a principal use in the applicable zoning district.

as a principal use (although it would not be permitted in the HDR zoning district). Article 11 makes no such distinction. There are a myriad of examples in the City's response to my public records requests where docks were approved as accessory uses to a condominium, and all were processed under Article 11. *See, e.g., Harbor Lights.*

Finally, you suggest the docking facility must be reviewed under Article 2 to evaluate parking needs. Once again, you overlook the fact that the parking will be provided by the condominium, and because slips will only be available to unit owners no additional parking is needed.

3. Development/Major Deviation Review Due to Addition of Dock Use.

As noted above, Article 2 does not even come into play when one is permitting docks. Thus, the "deviation" process does not apply. The mere addition of an incidental use on water is not development. It is, however, the development or construction of a dock pursuant to Article 11.

4. Consistency of Review.

Tellingly, after several rounds of public records requests and responses, the City has been unable to identify a single development like that proposed by Owner where the developer was required to process dock approvals (where no upland changes are being made) pursuant to Article 2. We asked you to identify *any* other example, and instead of doing so you provide a non-response.

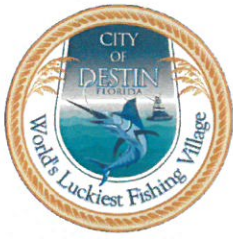
5. Conclusion.

Based on the foregoing, it is clear your interpretation of the LDC has several significant legal flaws. We are left with no choice but to appeal your interpretation to the Board of Adjustment pursuant to this letter and the enclosed. As the Community Development Director, you can reanalyze these issues on your own and arrive at a legally sound conclusion thereby mooting this appeal. Absent that, we will see this appeal through conclusion. We ask that you schedule us for a hearing before the Board of Adjustment at the next available opportunity.

Sincerely,

s/ Douglas M. Smith
Douglas M. Smith

cc: Kimberly Kopp
Gary K. Hunter, Jr.
Client



Community Development Department

Office of the Director

4100 Indian Bayou Trail | Destin, FL 32541 | Phone: 850-654-1119 | Fax: 850-460-2171 | www.cityofdestin.com

July 29, 2019

Mr. Douglas M. Smith
Hopping Green & Sams
Post Office Box 6526
Tallahassee, FL 32314

RE: Point Mezzanine Docking Facility

Dear Mr. Smith,

This letter is in response to your request to re-evaluate the previous determination that the applicant would need to apply for an amendment to the existing development order in order to add the proposed 50 slip docks. After reviewing the supplied documents, the previous determination still stands. Below are responses to your requests:

Marina or Dock

- You state that Point Mezzanine is not proposing to build a marina but contends to build a 50-slip private docking facility.
- Article 3 of the Land Development Code (LDC) states that commercial marinas contain 40 or more slips, while a marina is considered the establishment for rental of boat docks as a principal use.
- As such, your proposed 50 slip docking facility is considered a marina.

Definition of Development

- Development as defined in the Comprehensive Plan (Chapter 13-Glossary) and in the Land Development Code Article 3.00.01, includes construction, reconstruction, or alteration ...significantly disturbing the soil of a site...alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal **including any coastal construction.**
- Based on the above definition, your project is considered a development.

You note that the Upland DO expressly states that docks were not part of the request.

- We agree that docks were not part of the Development Order request. However, due to the definition of “development” noted in the Comprehensive Plan and LDC, any addition of uses, including those accessory to the primary use, must go through the deviation process.

Consistency of Review

- You reference East Pass Condominium not amending a Development Order for addition of the docks. Below are circumstances in which review of coastal construction may vary:
 - Accessory docks to single family dwellings
 - Docks or marinas are allowed as a principal use
 - Development was built prior to incorporation of the City
 - Dock or Marina is listed in an approved Development Order
- None of the instances apply to your proposal.

You also contend that the “private docking facility” is accessory to the condominium

- We agree. Otherwise, a stand-alone docking facility or marina would be considered a prohibited use.
- Furthermore, Marinas that are accessory to upland development have additional parking requirements that would affect the Upland Development Order. In such cases, the marina would need to be reviewed in concurrence with the existing Development Order.

Public Records

- You state that City Council routinely approves docks on the Consent Agenda.
 - Applications received for the review of coastal construction must first meet all applicable Code requirements prior to being scheduled for a Harbor and Waterways Board review and recommendation to the City Council.

Which Code is Applicable-Article 2 or Article 11

- Article 2
 - Since you consider the docking facility as accessory to the condominium project, a review under Article 2 of the Land Development Code for a Major Deviation to the existing Development Order is the appropriate process to review your proposal.
- Article 11
 - If however, you wish to decouple the docking facility from the upland development, the docking facility would be considered a principal use, it would not be permitted in the HDR Zoning District per the Land Development Code Article 7.12.06 Table 7-2 Table of Allowable Uses and the NAICS use classification.

If you have any questions, please contact my office at (850) 654-1119.

A. Louis Zunguze

A. Louis Zunguze, MURP
Community Development Director

Cc: Lance Johnson, City Manger
Kim Kopp, City Land Use Attorney
Dawn McDonald, Planner
Lauren Witt, Planner

Sam Brisolara, Planner
Kyle Bauman, City Attorney
Joey Forgione, Code Compliance Manager
File

Hopping Green & Sams

Attorneys and Counselors

June 21, 2019

Via Electronic Mail Only

Louis Zunguze
Community Development Director
City of Destin
Destin City Hall Annex
4100 Indian Bayou Trail
Destin, FL 32541

Re: Pointe Mezzanine Docking Facility

Dear Mr. Zunguze:

We write to follow up with you regarding the status of the application for the above-referenced project. When we met on April 19, 2019, to discuss this matter, you stated that to process the application for the above private docking facility, Pointe Mezzanine, LLC would be required to obtain a major amendment or deviation to its existing upland development order for the Pointe Beach and Yacht Club development, City of Destin Development Order 09-17 ("Upland DO"). We disagreed with your statement and endeavored to explain why that was not the case.

At the conclusion of the meeting, you said we could submit any additional information or explanation about this issue to you, and you would re-evaluate your position to see if the additional information warranted a different interpretation. This letter constitutes our client's specific request to the City for an official interpretation of the City's Land Development Code ("LDC") pursuant to LDC § 2.01.00.B. The specific matter to be interpreted is in bold below. We ask for a specific written response to this request pursuant to the LDC; to the extent the City disagrees with the analysis below, we request that it identify the specific LDC provisions that it believes mandate the application of Article 2 to the proposed private docking facility.

Must Pointe Mezzanine Amend the Upland DO to have Docks Approved?¹

A central reason for the City's refusal to process the application for the above docking facility is its belief that the Upland DO *prohibits* docks. Indeed, in a letter from you to Matt Trammell dated February 19, 2019, you stated that the "[Upland DO] explicitly excludes a

¹ In prior communications, the City has used the term "major amendment" to describe the approval it contends is needed. The actual term in the LDC, however, is major deviation. We also note that you have described the Upland DO as a "major development" when the face of the DO says it is a Minor Tier II Development.

marina.”² We submit that you are interpreting the LDC in a manner inconsistent with its plain language. A circuit court reviewing the language will interpret it *de novo*, and the City’s interpretation will receive no deference.

A major deviation (as relevant here) is defined as “[a] *deviation* from a final development plan, including *any change to a condition* in the final development order *that was expressly imposed by the City Council*.” LDC § 3.00.01 (emphasis added). The City apparently contends that the docking facility use is not approved under the Upland DO, and therefore the use is expressly prohibited. From this, the City argues that allowing the use would amount to a deviation that changes a condition of approval. But the existence (or non-existence) of docks is not a condition of approval under the Upland DO, nor was it a condition expressly imposed by the City Council. The only conditions of approval are those specifically identified on pages 1 through 3 of the Upland DO, none of which relates to docks. The Upland DO makes clear that in addition to complying with the conditions of approval, the owner must “comply with all of the comments, notes and conditions of the Technical Review Committee members *as stated on pages 13 through 22 of the attached TRC Report*.” (emphasis added) Neither the express conditions of approval nor the referenced pages of the TRC report say anything about docks.³

The Upland DO expressly states that docks were not part of the request. *See* TRC Report, p. 1. That is a far cry from an express prohibition on docks or a condition of approval expressly imposed by the City Council.⁴ The minutes of the meeting in which the original DO was approved note that the developer would be applying separately for docks following the applicable procedures. *See* Minutes of City Council Meeting dated April 11, 2005, p. 2 (Exhibit B, enclosed). The City Manager and Land Use Attorney both confirmed that the docks would be considered

² To reiterate, Pointe Mezzanine, LLC is not proposing to build a “marina” as defined under the LDC. Rather, it intends to construct a private docking facility as an accessory use for its upland development. As you are no doubt aware, accessory uses are permitted as a matter of right in the applicable High-Density Residential zoning district. *See* LDC Table 7.2. In a letter dated July 31, 2007, from the City to Pointe One, LLC, the City confirmed that docks serving the Upland DO are permitted accessory uses. *See* Exhibit A, enclosed.

³ In our meeting we pointed out that docks for East Pass Towers appear to have been approved without amendments to the East Pass Towers DO, as have docks for other developments throughout Destin. The City’s Staff nevertheless argued that developments like East Pass Towers which added docks after the uplands were improved did not need to amend their development orders to add docks because the buildings were already built. Staff also said that the purpose of reviewing the docks with the upland development is so the City can consider how adding docks will have a cumulative effect on the development. That excuse makes no sense, however, as if that were the reason for requiring the amendment the City would require amendments to completed and incomplete developments to ascertain cumulative impacts.

⁴ Staff suggested at the meeting on April 19, 2019, that docks are not permitted at this location. However, the July 31, 2007, letter attached as Exhibit A proves otherwise.

pursuant to a "separate application process." From the beginning both the City and the applicant envisioned the docks would be permitted pursuant to the City's Marina Siting Ordinance.

Consistent with the above, our client has separately applied for a dock approval in accordance with the Marina Siting Ordinance, Article 11 of the LDC, governing the approval of docks and marinas. Article 11, which is titled Marina Siting Ordinance, provides:

This article **establishes and regulates procedures and standards** by which the City controls and regulates **development, construction** and activities **within and contiguous** to the Harbor and waterways of Destin. The following regulations and prohibitions shall apply to the Harbor and waterways of Destin, LDC § 11.05.01 (emphasis added):

By its plain and unambiguous language, Article 11 trumps Article 2's **procedures and standards** when the development and construction relates to a dock. That Article 11, and not Article 2, applies is evident because the requirements of Article 2 address upland development. None of the provisions relates to construction of facilities in the waters of Destin Harbor.

Requiring Pointe Mezzanine to process its application for a docking facility as a major deviation also conflicts with the process set out in Destin's Marina Siting Ordinance. Major deviations are not even heard by the Harbor and Waterways Board ("Harbor Board"), and they are subject to approval following a quasi-judicial public hearing before the City Council. *See* LDC § 2.07.03, 2.07.00, and 2.07.02. Private docking facilities, by contrast, are heard by the Harbor Board, which makes a recommendation to the City Council. The Marina Siting Ordinance does not require a quasi-judicial hearing before the City Council under Article 11. Thus, the hearing requirements for a private docking facility conflict with the hearing requirements for major deviations.

Public records available online as well as records specifically requested from the City pursuant to chapter 119, Florida Statutes, demonstrate that the City Council routinely approves docks on the consent agenda. There are numerous instances where docks have been approved without requiring an amendment to the upland development order. At our meeting on April 19, 2019, we challenged you to produce a single example where docks were reviewed and approved pursuant to Article 2 (where the dock was being added to an existing upland DO) and, to date, the City has not produced a single example of where that has occurred. These facts undermine the City's stated position that a private docking facility must be evaluated and approved under the more onerous processes set forth in Article 2 in addition to Article 11.⁵

⁵ The only time the City appears to require amendments to upland development orders with ancillary docks to be processed as a major approval or major amendment thereto is when major upland changes are proposed with dock approvals. Even in those instances, the docking facility or marina use is not part of the substantive review under Article 2. Regardless, no upland changes are proposed in this instance.

Letter to Zunguze
June 21, 2019
Page 4

Finally, LDC § 18.00.01 mandates the creation of an application fee schedule. The schedule is required to have separate fees for major deviations to major development orders and fees for the review of docks. It makes no sense that the City is now arguing Article 2 and the fees and subsequent processes associated with same somehow apply to docks being processed under Article 11. In our view, the City has no basis under the LDC to require Pointe Mezzanine to process its application under Article 2.

In summary, the plain language of the LDC and the City's practice over the past fifteen (plus) years, as well as its inability to identify contrary examples, undermines its new position that docks must be approved under Article 2. In light of the foregoing, we ask that you re-evaluate the applicable LDC provisions and provide us with (what we believe to be) a correct interpretation of the LDC as it relates to the approval of docking facilities for previously approved upland development orders such as the Upland DO.

Thank you for your consideration.

Sincerely,

HOPPING GREEN & SAMS, P.A.

s/Douglas M. Smith

Gary K. Hunter, Jr.
Douglas M. Smith

cc: William Harrison
Joe Winkeler

Hopping Green & Sams

Attorneys and Counselors

EXHIBIT A

07/31/2007 08:47 8503370492

CITY OF DESTIN

PAGE 01/03



CITY OF DESTIN
4100 TWO TREES ROAD
DESTIN, FLORIDA 32541

Phone: (850) 837-4242 Ext. 3123

Fax: (850) 650-0693

Email: agrimmett@cityofdestin.com

To: Mr. Luke Evans

From: Toni L. Grimmert

Fax: 205.252.0956

Pages including cover sheet: 3

Date: 07/31/07

Re: Marina Use at Pointe One, LLC Property

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ FYI ☒ As Requested

● Comments:

FAX Mike C.
850 224-8551
MIKE C@HGS LAW.COM

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EXHIBIT A

07/31/2007 08:47

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CITY OF DESTIN

PAGE 02/03



CITY of DESTIN

4200 Two Trees Road • Destin, Florida 32541

www.cityofdestin.com

Office of Community Development

Voice - (850) 837-4242, ext: 3126

Fax - (850) 650-0693

kgallander@cityofdestin.com

July 31, 2007

Mr. Luke Evins
Pointe One, LLC
3512 7th Avenue South
Birmingham, AL 35222

SUBJECT: Marina Use at Pointe One, LLC Property

Dear Mr. Evins:

Based on the information provided by the City Manager, it is my understanding you are in need of confirmation by City Staff that a "marina" is an allowed use and does not violate the City's zoning regulations and is consistent with state approved comprehensive plan.

"Marinas", as defined in the City's Land Development Code, are a prohibited principal use in the High Density Residential (HDR) zoning district. However, the City does not prohibit boat docks/slips as an accessory use tied to an approved upland principal use such as a multi-family condominium. It shall also be noted and a condition that no commercial activities/uses (e.g. charter fishing boats, pontoon boat rentals, power boat rentals, jet ski rentals, parasail boat excursions, sunset or dolphin cruise boats, slip rentals to the public, etc...) are allowed in association with the boat docks/slips for the multi-family condominium upland use. Based on the information provided, the proposed accessory boat docks/slips use that is tied to the upland Point One, LLC development is not a "marina" as defined in the City's Land Development Code and thus does not violate the City's zoning regulations and is consistent with the City's state approved comprehensive plan.

For further clarification and guidance, it shall be necessary to obtain the necessary building permits for the upland primary use prior to the issuance of any building permits for the boat docks/slips facility. It shall also be necessary to obtain all state, federal, and local approvals (Harbor Board and City Council) prior to issuance of any building permits for the boat docks/slips facility.

EXHIBIT A

07/31/2007 08:47 8503370492

CITY OF DESTIN

PAGE 03/03

If you should have any questions or need further information, please do not hesitate to contact my office.

Sincerely,



Kenrick S. Gallander, AICP
Current Planning Manager

cc: Letter Log
File: Permits & Inspections Division: 1 Gulf Shore Drive
File: SP-04-45
David Bazylak, Code Enforcement/Environmental Manager
Luke Evans (Fax: 205-252-0956)

EXHIBIT B

MINUTES SPECIAL MEETING DESTIN CITY COUNCIL APRIL 11, 2005

The City Council for the City of Destin met in special session with the following members and staff present:

Destin City Council

Mayor Craig Barker
Councilmember Sam Seevers
Councilmember Jim Foreman
Councilmember Ted Corcoran

Councilmember Mel Ponder
Councilmember Cyron Marler
Councilmember Dewey Destin
Councilmember Larry Williges

Destin City Staff

City Manager Greg Kisela
Attorney for the City Bruce Leinback
Land Use Attorney Scott Shirley

City Clerk Dana Williams
Current Planning Mgr Ken Gallander
Community Dev Dir. Jerry Mucci

CALL TO ORDER, INVOCATION AND PLEDGE OF ALLEGIANCE

The Mayor called the meeting or order at 5:30 PM. Councilmember Ponder gave the invocation, which was followed by the Pledge of Allegiance.

NEW BUSINESS

- ***1. Pointe One, LLC, is requesting approval of a Major Development identified as "Norriego Pointe - A Residential Condominium." The proposed project is a multifamily residential development consisting of 79 dwelling units, parking garage, and swimming pools as part of a 9-story structure complex (125 feet from lowest finished floor of the parking garage to the highest roof per the Land Development Code height definition or 94 feet from the FEMA Base Flood Elevation to the cornice line of the building per the City adopted Comprehensive Plan: 2010 height definition). In addition to the site development, the landowner will be dedicating to the City of Destin a portion of the property for a 100-foot public right-of-way as an extension to the existing Gulf Shore Drive right-of-way. The proposed project is located on a vacant parcel, which is located northwest of East Pass Towers - Phase I and more specifically known as Property Appraiser's Parcel ID No. 00-25-24-0000-0034-0000. The total site area, less the proposed 100-foot right-of-way land dedication, is 3.964 acres, more or less.

The City Attorney swore in the following persons as interested parties in the above styled case:

Gary Hunter, Jr.
George Eller
Chuck Fuller
John Henderson

Robert Cox
Jerry Mucci
Ken Gallander
Greg Kisela

EXHIBIT B

The Land Use Attorney described the project as a 9-story structure complex, 125' from the lowest finished floor of the parking garage to the highest architectural feature of the roof or 94' feet from the FEMA base flood elevation to the cornice line as defined in the Comprehensive Plan: 2010. He requested the staff report with all attachments be entered into the record as staff's exhibit A and asked for the applicant's stipulation to the documents as well as to the conditions contained within the TRC report. Mr. Gary Hunter, of Hopping, Green & Sams law firm, so stipulated to the staff report, attachments and identified conditions. Hearing no objections, the Mayor so entered the report marking it "Staff's Exhibit A."

Mr. Hunter did not make a formal presentation, however he stated that the architect, engineer, property owner, developer and compatibility experts for the project were all in attendance and available to answer any questions the Council might have. Mr. Hunter also stated this application was no longer a development agreement but rather a request for a development order and that the litigation with neighboring property owners had been settled and ended. He added the application complies with all requirements of the Comprehensive Plan and Land Development Code.

At this point, the Mayor opened a public hearing to receive comments. Mr. George Eller asked if a marina would be included in the project. Mr. Fuller, a partner in Pointe One, LLC, responded there would be a marina in the future but that it was not included in the development being presented this evening. Mr. Eller stated that on behalf of the Board of Directors of the Charter Boat Association, they "take issue with the possibility of congestion on the south side of the Harbor." He briefly described the designated channel and explained how the south side of the shoal carries a "civilian" traffic. Mr. Eller felt if a 200' dock were built, it could cause a major traffic impact on the north side of the shoal. He stated his understanding that a marina and docks would not be considered tonight, but wanted to be on record as having stated further down the line it's construction could cause a problem.

Mr. Robert Cox also discussed his concern with a marina and loss of beach access. He conceded the land was private property and as such, the owner had a right to develop it, however he asked Council to try and "prevent future development and a marina." The City Manager and Land Use Attorney both clarified that the issue before Council this evening was not for consideration of any dock or marina project and that if those issues were to come before Council in the future, it would be a separate application process.

Mr. David Theriaque, attorney for the Holiday Isle Improvement Association, spoke next saying the association, as part of the settlement, has agreed to publicly support the project.

Hearing no others, the Mayor closed the public hearing portion.

Councilmember Williges disputed the 2nd paragraph of the compatibility report dated April 9th, which listed the zoning as PLI, saying the Council had never zoned that land. The City Manager answered that staff had provided an amended zoning map which Council approved in September (2004). Councilmember Williges agreed the Council approved the map but believes it was done erroneously. The City Manager added the transmittal memo did not specifically point out the tip of Norriego Point had not been zoned, but the applied PLI designation was clearly

EXHIBIT B

listed on the map. The Community Development Director added that PLI was the restrictive district available and further plans were to implement a conservation district.

Mr. John Henderson, from Henderson Engineering, provided a brief presentation on traffic counts, and stated that based on FDOT site impact procedures; they suggest local government to establish standards within their jurisdiction. Discussion followed on the counts within Destin's Highway 98 links and LOS procedures.

Councilmember Seevers questioned the specifics on the retaining wall on the north portion of the property. The answer provided was that it was 7' above sea level up to 7.5' with 12' coming back to the property but flush from the street.

Other discussion centered on parking options, the right-of-way and roadway and public access to the beach. Mr. John McCrory stated his company along with Rod Wright would pay to install additional parallel parking along the right-of-way. Further discussion followed on the particulars of the parking design and payment by a third party.

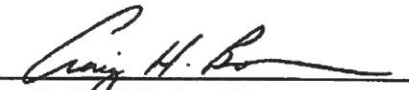
On motion of Councilmember Seevers, seconded by Councilmember Ponder, the Council voted 6-1 to approve the project as presented subject to all of the conditions identified within the TRC Report and contingent upon payment of all outstanding fees prior to issuance of the Final Development Order. Councilmember Williges cast the dissenting vote.

The City Manager reminded the Council of an emergency meeting of Council to be held Wednesday, April 13th at 8:00 AM regarding the Municipal Resort Tax, and that DCA's review of the Comprehensive Plan was anticipated April 21st.

Having no further business at this time, the meeting was adjourned at 7:05 PM.

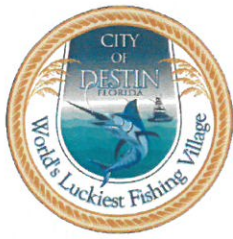
ADOPTED THIS 16TH DAY OF MAY 2005.

By:


Craig H. Barker, Mayor

ATTEST:


Dana L.S. Williams, City Clerk



Community Development Department

Office of the Director

4100 Indian Bayou Trail | Destin, FL 32541 | Phone: 850-654-1119 | Fax: 850-460-2171 | www.cityofdestin.com

February 19, 2019

Taylor Engineering
Matthew Trammell, P.E.
4300 Legendary Drive
Suite C-246
Destin, FL 32541

RE: POINTE RESORT APPLICATION

I refer to your application for review by the City's Harbor and Waterways Board regarding the Pointe Resort Project. Please note that your application as presented to the City, cannot be scheduled before the Harbor and Waterways Board at this time, because it constitutes a major amendment to the Major Development Order (Order No. 09-17) previously approved by the City on September 29, 2009.

The existing Major Development Order (Order No. 09-17) for a multifamily residential development on this property (parcel number 00-25-0000-0034-0000) located on 1 Gulf Shore Drive, explicitly excludes a marina. To that end, in order for the City to proceed with your application, you must make an application to amend this existing Major Development Order.

Should you need further assistance please contact my office.

Thank you

A. Louis Zunguze

A. Louis Zunguze, MURP

cc: Lance Johnson, City Manager
Tim Pietenpol, Interim Public Services Director
Kim Kopp, City Land Use Attorney
Dawn McDonald, Planner
Lauren Witt, Planner
Noell Bell, Building Official
Tim Whaler, Planning Advisor 3TP Ventures
Joe Bodi, Engineering Assistant II



CITY of DESTIN

4200 Two Trees Road • Destin, Florida 32541



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September 29, 2009

Order No. 09-17

Final Development Order:

"THE POINTE BEACH & YACHT CLUB" A MINOR TIER II DEVELOPMENT (SP-09-07)

Based upon the City's approval and issuance of this Development Order, on September 29, 2009, this document will serve as your Final Development Order, and includes all of the provisions and conditions in the attached Technical Review Committee Report.

PROJECT DESCRIPTION:

Pointe One, LLC, is requesting approval of a multifamily residential development consisting of 79 long term dwelling units, a parking garage, and swimming pools as part of a 9-story complex. The proposed project will be located at I Gulf Shore Drive, a vacant parcel at the west terminus of Gulf Shore Drive on Holiday Isle also identified by the Okaloosa County Property Appraiser as Parcel No. 00-2S-24-0000-0034-0000. The project also includes the development and dedication of a 100 foot extension of the Gulf Shore Drive right of way. The total site area, less the 100-foot right-of-way land dedication, is 4.017 acres.

DETERMINATIONS:

1. All the findings of the Technical Review Committee report dated September 28, 2009 are incorporated herein.

CONDITIONS OF APPROVAL:

1. Pursuant to the City of Destin Land Development Code:

Construction of infrastructure must commence within one (1) year of approval date (date from which the Final Development Order is issued by the Community Development Department) of the Final Development Order on **September 29, 2009** (no later than **September 29, 2010**), and must be completed as shown on plans approved by the Technical Review Committee.

WARNING: If the applicant/owner has not obtained a building permit(s) for either the construction of infrastructure or construction of the entire project and that construction has not commenced within one (1) year of issuance of the final development order, the final development order will become null and void and the application for development order approval must be re-initiated (Article 2, Section 2.21.00).

NOTE: Construction of infrastructure shall be defined as site work, grading, or other construction activity (not including clearing and grubbing or demolition of existing structures) related to installation of roadways, access drives, parking lots, underground utilities, stormwater or drainage facilities, or building foundations (Article 2, Section 2.21.00).

NOTE: An applicant/owner who desires to extend the twelve (12) month (1 year) deadline for either the construction of infrastructure or construction of the entire project must submit a written request to the Community Development Department, no less than thirty (30) days prior to the expiration of the twelve (12) month deadline to obtain a building permit and commence construction of infrastructure or construction of the entire project. The applicant may receive only one extension, and such extension shall not exceed one year. The applicant /owner should review Article 2, Section 2.21.00, of the Destin Land Development Code for further explanation of the Development Order extension process.

2. If the applicant fully complies with the requirements of Condition No. 1 above, the concurrency capacity allocation status for **"The Pointe Beach & Yacht Club"** will be protected. **However, the protected concurrency status will be lost and the application for development order approval must be re-initiated if:**
 - A. **Construction permit(s) in association with construction of infrastructure or construction of the entire project are not obtained in accordance with Article 2, Section 2.10.00 of the Land Development Code to maintain concurrency, or**
 - B. **Construction activity ceases for a period of one (1) year after a building permit for construction of infrastructure or construction of the entire project has been issued so that concurrency is not maintained under Article 6 of the Destin Land Development Code.**
3. The applicant must obtain City of Destin permits for the following activities on and off site (These may require appropriate bonding):
 - A. Disturbance of the City's right-of-way (Note: Applicant must obtain the proper ROW permit(s) from the Public Services Department prior to issuance of building permits, unless otherwise exempted by the Public Services Director).
 - B. Pavement cuts.
 - C. Construction of any kind.
 - D. Clearing, grubbing, or demolition.
 - E. Paving, grading, drainage, sidewalks.
 - F. Signage.
 - G. Installation of utilities.
 - H. Construction trailers.
4. The following items must be addressed in the appropriate order:
 - A. **Prior to the start of any construction**, the proposed relocation of the 14" water service line and installation of fire hydrants must be completed (Destin Fire Control District).
 - B. **Prior to obtaining any City Permits**, all outstanding fees associated with this project must be paid in full.
 - C. **Prior to obtaining any City Permits**, provide a debris & soil hauling plan (truck route) through the City. Any road damage that is determined to be caused by this project operation shall be required to be repaired prior to obtaining any Certificate of Occupancy (C.O.).

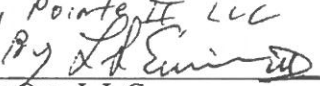
- D. **Prior to obtaining any City Permits**, a copy of the NFWFMD stormwater and a NPDES Stormwater Construction Generic Permit approval (if applicable) shall be provided.
- E. **Prior to obtaining any City Permits**, obtain a City of Destin Right-of-Way Construction Permit from the Public Services Department.
- F. **Prior to obtaining a City of Destin Right-of-Way Construction Permit**, a sidewalk easement agreement must be executed and recorded in the official records of Okaloosa County. The applicant shall provide the owner's information and legal descriptions to the City Attorney so that he can create the sidewalk easement agreement which will cover those areas of the proposed sidewalks that are located outside of the Gulf Shore Drive right-of-way and on the subject property.
- G. **Prior to the issuance of the Building Permit for the Main Condominium building**, an outdoor lighting plan shall be submitted for review and approval by the Planning Division. The outdoor lighting plan must meet the requirements of Land Development Code section 7.17.01 *Outdoor lighting standards for the marine turtle conservation zone*. All lighting outdoor lighting plans must include photometrics and must show the type of fixture, bulb size/wattage, height of pole mounted lights, type of light shield, etc. Outdoor lighting shall be shielded downward and away from adjacent properties in order to avoid spill-over and illumination into the night sky.
- H. **Prior to the issuance of a Certificate of Occupancy**, provide all required thickness, density and compaction test results for Gulf Shore Drive.
- I. **Prior to the issuance of a Certificate of Occupancy**, the condominium documents must be reviewed and approved by the City Land Use Attorney and City Staff and properly recorded as stated within the Condominium Affidavit dated March 28, 2005. Additionally, a copy of the Condominium Documents, once recorded with the state, must be submitted to the City of Destin.
- H. **Prior to obtaining a Certificate of Occupancy**, the Stormwater Operation / Maintenance Plan (SWOMP) shall be acknowledged and signed by the Owner.
- I. **Prior to the issuance of a Certificate of Occupancy**, assigned address numbers for principal buildings shall be displayed and clearly visible and legible, preferably reflective, from the street or private way on which the building fronts. *Ref. LDC Section 7.18.04*. Dwelling unit numbers must be displayed on the front door of each dwelling unit.
- J. **Prior to the issuance of a Certificate of Occupancy**, the landscaping and any outdoor lighting, if installed, must be inspected and approved by the Planning Division.
- K. **Prior to the issuance of a Certificate of Occupancy**, all applicable impact fees must be paid.
- L. **Prior to the issuance of a Certificate of Occupancy**, all outstanding fees associated with this project must be paid in full.

Additionally, the owner must comply with all of the comments, notes and conditions of the Technical Review Committee members as stated on pages 13 through 22 of the attached TRC Report dated September 28, 2009.

SIGNATURE BLOCK:

 9/29/09

Ken Gallander, AICP Date
Community Development Director

Pointe One, LLC
By Pointe One, LLC
By  10/8/09

Pointe One, L.L.C. Date
Luke Evins
Managing Member

TECHNICAL REVIEW COMMITTEE REPORT

"THE POINTE BEACH & YACHT CLUB" A MINOR TIER II DEVELOPMENT (SP-09-07)

TRC Report: September 28, 2009

ISSUE:

Applicant: Pointe One, LLC, is requesting approval of a Major Development identified as "The Pointe Beach & Yacht Club."

Request: The proposed project is a multifamily residential development consisting of 79 long-term dwelling units, parking garage, and swimming pools as part of a 9-story structure complex (115 feet from lowest finished floor of the parking garage to the highest roof per the Land Development Code height definition or 100 feet from the FEMA Base Flood Elevation to the cornice line of the building per the City adopted Comprehensive Plan: 2010 height definition). In addition to the site development, the landowner dedicated to the City of Destin a portion of the property for a 100-foot public right-of-way as an extension to the existing Gulf Shore Drive right-of-way. This request does not include any piers, docks, boat slips, or marinas.

Location: The proposed project is located on a vacant parcel, which is located northwest of East Pass Towers – Phase I and more specifically known as Property Appraiser's Parcel ID No. 00-2S-24-0000-0034-0000.

Parcel Size: The total site area, less the 100-foot right-of-way land dedication, is 3.964 acres, more or less.

Future Land Use: High Density Residential (HDR)

Zoning District: High Density Residential (HDR)

Density: Allowed: 19.9 long-term dwelling units per acre
Proposed: 79 long-term dwelling units / 4.017 acres = 19.7 long-term dwelling units per acre

Intensity: Not applicable for residential development in the HDR Future Land Use Map designation

Application Date: March 25, 2009

TRC Date: April 15, 2009

Approved Site Plan Date: September 28, 2009

DISCUSSION/FINDINGS:

The proposed request as presented and described is consistent with Comprehensive Plan: 2010 and Land Development Code, which include a Concurrency Management review, and a Level of Service review. This project is not located within the Town Center or the Harbor Community Redevelopment Areas, but is located within the Old Destin sub-area of the Multimodal Transportation District.

The Technical Review Committee (TRC) reviewed and approved the project with specific conditions as stated below.

COMPREHENSIVE PLAN/ZONING:

This application was reviewed pursuant to the City of Destin's Comprehensive Plan: 2010 and Land Development Code (LDC). The property currently has a Future Land Use designation of High Density

Residential (HDR) and a Zoning district of High Density Residential (HDR). The proposed multifamily residential land use is consistent with the intent of the HDR Future Land Use designation as an acceptable land use pursuant to Comprehensive Plan: 2010. The HDR zoning district specifically allows for the described use as a permitted use.

CONCURRENCY MANAGEMENT:

Staff has received approved Concurrency Evaluation Certificates (CEC) for the following areas:

Traffic: Renaissance Planning Group, Inc., signed the CEC on June 24, 2009.

Solid Waste: Okaloosa County Solid Waste Department signed the CEC on January 20, 2009.

Potable Water: Destin Water Users, Inc. signed the CEC on April 15, 2009.

Sanitary Sewer: Destin Water Users, Inc. signed the CEC on April 15, 2009.

Stormwater Management: The City's Stormwater Manager signed the CEC on August 20, 2009

RIGHT-OF-WAY DEDICATION:

As a condition of the issuance of the Development Order, on April 16, 2009 the applicant dedicated to the City of Destin by general warranty deed, free and clear of encumbrances, the required land in order to provide a 100' wide ROW along the northeast portion of the development as shown on sheet C3 of the construction plans dated July 31, 2009.

TRANSPORTATION ANALYSIS:

The City's Transportation Consultant, Renaissance Planning Group, Inc., reviewed the applicant's transportation concurrency analysis and found that the proposed project does not degrade the level of service of those major transportation facilities in the City of Destin (urban collectors and arterials). Therefore, transportation concurrency has been satisfied for this project. This project must comply with the Multimodal Transportation District (MMTD) Concurrency Evaluation Certificate (CEC) dated June 24, 2009.

SUBDIVISION OR PLANNED UNIT DEVELOPMENT - PLAT:

Prior to the issuance of a Certificate of Occupancy, the condominium documents must be reviewed and approved by the City Land Use Attorney and City Staff and properly recorded as stated within the Condominium Affidavit dated March 28, 2005. The condominium documents must contain a restriction against short term occupancy. Additionally, a copy of the Condominium Documents, once recorded with the state, must be submitted to the City of Destin. The applicant is not requesting approval for a Planned Unit Development (PUD).

AIRPORT PROTECTION:

As proposed, this project is not affected by nor affects the Destin – Ft. Walton Beach Airport. The applicant has indicated on the development order application that the proposed project is not within the Airport Expansion Area. NOTE: If construction necessitates the use of a crane, or other obstruction, which exceeds Federal Aviation Administration FAR 77 Standards (normally 200 feet above ground level), the applicant must request a variance from the FAA for temporary encroachment into this restrictive area and a copy of a completed FAA Form 7460, must be placed on file with the City of Destin prior to the crane, or other obstruction, penetrating the restricted airspace.

DENSITY:

Allowed: 19.9 dwelling units per acre

Proposed: 79 dwelling units / 4.017 acres = 19.7 dwelling units per acre

The project is compliant in regards to not exceeding the maximum density allowed within the High Density Residential (HDR) FLUM category.

FLOOR AREA RATIO:

Not applicable for residential land use development in the HDR Future Land Use Map designation

HEIGHT:

The High Density Residential (HDR) Zoning District is the applicable zoning district to help determine height limitations for this development in conjunction with the Tier 2 design standards.

The proposed 9-story structure is designed to be 100 feet from the FEMA Base Flood Elevation to the cornice line of the building per the City adopted Comprehensive Plan: 2010 height definition.

SETBACKS:

The proposed building meets and exceeds all of the required setbacks and buffers for the High Density Residential (HDR) zoning district: (Note: Distances provided are from the proposed facility to the nearest property lines)

<u>Setbacks</u>	<u>Required</u>	<u>Provided</u>	<u>Buffers</u>
Front:	(HT<40') = 10' – 20'	21.82'	FPLA - N/A
	(HT>40') = 30' min	30.55	
Rear:	FDEP/CCCL determined	53.66' including the	50' CON
Side:	(HT<40') = 0'	29.73'	CBLA – N/A
Side:	(HT>40') = 15'	29.73'	CBLA – N/A
Side:	(HT>100') = 25'	29.73	
Between Bldgs.:	10'	N/A	

Note: FPLA = Front Perimeter Landscaped Area, VBA = Vegetative Buffer Area, CBLA = Common Boundary Landscaped Area, CON Conservation and FDEP/CCCL = Florida Department of Environmental Protection/Coastal Construction Control Line.

WHITE SANDS ZONE:

The subject property is located in White Sand Zone I. All fill material for this project must comply with the provisions of Land Development Code Section 11.07.00. *Sand and water protection.*

PHASING:

The proposed development will not be a phased development.

ADDRESSING:

Addresses for each dwelling unit will be assigned at the time a building permit is submitted for review. The following conditions shall apply:

1. **Prior to the issuance of a Certificate of Occupancy**, assigned address numbers for the principal building shall be displayed and clearly visible and legible, preferably reflective, from the street or private way on which the building fronts. *Ref. LDC Section 7.18.04.* Dwelling unit numbers must be displayed on the front door of each dwelling unit.

SIGNS:

A request for sign approval is not part of this application.

1. **Note:** Signage, if installed, must be approved by the Community Development Department. All signage shall require the issuance of a city permit. All signage shall comply with the applicable section of the Destin Land Development Code and the Florida Building Code in effect at the time a sign application is submitted.

UTILITIES:

In accordance with Land Development Code section 20.12.00 *Underground utilities*, all existing and proposed above-ground utility lines, located on the subject property regardless of who the utilities serve, are required to be placed underground.

COASTAL MANAGEMENT AND CONSERVATION:

The proposed project is located within VE12, VE13, and VE14 special flood hazard areas per the FEMA Flood Insurance Rate Maps. A certified statement from a licensed architect has been provided and is on file, dated August 1, 2009, indicating the proposed development will be designed and constructed in compliance with the Federal Emergency Management Agency (FEMA)/National Flood Insurance Program (NFIP) standards and the requirements set forth within the City of Destin Land Development Code, Article 11, Section 11.04.00.

INGRESS/EGRESS:

Ingress and egress to the proposed project is provided by a primary entrance with divided two-way access point providing twenty feet (20') of width in each direction and located approximately one hundred sixty-five feet (165') from the eastern property line; and a secondary two way access twenty-two feet (22') in width and approximately twenty-seven feet (27') from the eastern property line.

LOADING SPACE (ZONE):

The project meets or exceeds the loading space requirements of Section 8.08.05 *On-site loading standards* of the Destin Land Development Code as indicated on the approved plans and as follows:

TOTAL REQUIRED: 1 loading space per 100,000 square feet of floor area. Gross floor area of the project 279,566 square feet/100,000 = 2.8 Required.

TOTAL PROVIDED: 3 loading spaces

PARKING:

The parking provided complies with Land Development Code Section 8.06.00. *Vehicle and bicycle parking standards*, as indicated on the approved plans.

PARKING REQUIREMENTS / MULTI-FAMILY ATTACHED DWELLING

Type/Size of Unit	Maximum vehicle spaces per unit	# of Units	Total
Studio/efficiency/1 bedroom	1.5	5	7.5
2 bedrooms	2.25	5	11.25
3 or more bedrooms	2.5	69	172.5
		Total	191.25
		80% Parking Reduction	-38.25
Minimum Bicycle Parking		Total vehicle spaces provided	153
10% of total vehicle spaces (191 x .10)		Total bicycle spaces required	19

Total motor vehicle spaces provided: 153 parking spaces (including 6 handicap spaces)

Total Motor bicycle spaces provided: 75 bicycle lockers provided

REFUSE COLLECTION:

Refuse collection is to be provided by wheeled dumpsters on each floor. All dumpsters will be moved to the parking lot for refuse collection and then returned to their floor locations. All dumpsters must be kept in their enclosures unless they are being emptied.

SIDEWALKS/PEDESTRIAN CONNECTIVITY:

10' external sidewalks are provided and appropriate crosswalk striping is in appropriate portions of the right-of-way as indicated on plans sheets C3 & C4.

OPEN SPACE/LANDSCAPE:

Open Space Requirements:

Site Development Area (Total Area): 175,001 sq. ft. (4.017 acres, more or less)

Total Required Open Space: 30% (52,500. sq. ft.)

Total Provided Open Space: 36% (63,667 sq. ft.)

Tree Requirements:

Credits for Existing Trees (2" to 6" diameter) on Site (0 trees x 2 credits per tree):	0
Credits for Existing Trees (7" to 12" diameter) on Site (0 trees x 3 credits per tree):	0
Credits for Existing Trees (13" to 19" diameter) on Site (0 trees x 4 credits per tree):	0
Credits for Existing Trees (20" to 24" diameter) on Site (0 trees x 5 credits per tree):	0
Total Reforestation Credits for saving Existing, Protected, or Preserved Trees:	<u>0</u>

Reforestation Trees Required on Site: (1 per every .10 of an acre 4.017 x 10; 40 x 20% = 8) 48

Total Reforestation Trees Required on Site: (1 per every .10 of an acre minus credits) 48

Note: Per the Land Development Code, credit shall be received on the reforestation requirement of this section by preserving existing trees. Trees required for reforestation are in addition to other required trees within Article 12, Section 12.04.04.C.

Total Reforestation Trees Required on Site:	48
Front Perimeter Trees (1 per 25') Required on Site:	0
Parking Lot Trees (1 per end row and landscape island) Required on Site:	0
Vegetative Buffer Trees, if applicable, (1 per 25') Required on Site:	
Replacement Trees (removal of trees 12" d.b.h. or greater) Required on Site:	0
TOTAL TREES REQUIRED:	48
TOTAL TREES PROVIDED:	80

Unless otherwise noted, all required trees must be a minimum of ten (10) feet high at time of planting and reach a crown of twenty (20) feet at maturity. If the twenty (20) foot crown requirement is not met, additional trees shall be added and grouped together to meet the twenty (20) foot crown. If shrubs are used in the required buffer areas, they must be a minimum of twelve (12) inches in height when measured immediately after planting. **WARNING: A Certificate of Occupancy will not be issued until the required landscape material per the approved landscape plan has been inspected and approved by the Community Development Department.**

IMPACT FEES:

The following impact fee amounts may be subject to change. Final impact fee amounts will be determinant upon the gross floor area of the overall development land use and whether exemption or credits are applicable and reevaluated at the time a Certificate of Occupancy is requested. **Any claims for exemption or credits must be made no later than the time a Certificate of Occupancy is requested. Refer to Article 19 of the Destin Land Development Code for specifics regarding impact fees.** The owner/applicant must pay the final impact fee amounts prior to the issuance of a Certificate of Occupancy:

THE POINTE BEACH & YACHT CLUB IMPACT FEES CALCULATIONS												
Floor Plan	Sq ft	# of Units per floor							Total Units	Impact Fee per unit	Total	
		1st	2nd	3rd	4th	5th	6th	7th			Impact Fee	
Unit Plan "A"	6236	1	1	1	1	1	1	1	7	\$ 2,793	\$	19,551
Unit Plan "B"	4536	1	1	1	1	1	1	1	7	\$ 2,793	\$	19,551
Unit Plan "C"	4402						4	4	8	\$ 2,793	\$	22,344
Unit Plan "D"	4054						1	1	2	\$ 2,793	\$	5,586
Unit Plan "E"	2584	4	4	4	4	4			20	\$ 2,087	\$	41,740
Unit Plan "F-1/1"	869	1	1	1	1	1			5	\$ 1,240	\$	6,200
Unit Plan "F-1/2"	1488	1	1	1	1	1			5	\$ 1,479	\$	7,395
Unit Plan "F-2"	2283	1	1	1	1	1			5	\$ 2,087	\$	10,435
Unit Plan "G"	2050	4	4	4	4	4			20	\$ 2,087	\$	41,740
									79			\$ 174,542

2009 IMPACT FEE SCHEDULE (Excerpt)

LAND USE - RESIDENTIAL	TRANS.	POLICE	PARK	LIBRARY	TOTAL
Residential, 750 - 999 sq. ft.	\$855	\$13	\$279	\$93	\$1,240
Residential, 1,000 - 1,499 sq. ft.	\$1,016	\$16	\$335	\$112	\$1,479
Residential, 1,500 - 1,999 sq. ft.	\$1,198	\$19	\$399	\$133	\$1,749
Residential, 2,000 - 2,999 sq. ft.	\$1,425	\$23	\$479	\$160	\$2,087
Residential, 3,000 - 3,999 sq. ft.	\$1,677	\$27	\$570	\$190	\$2,464
Residential, 4,000 sq. ft or >	\$1,896	\$31	\$649	\$217	\$2,793

OTHER FEES:

The fees listed below are subject to change and are based on the most recent information available (September 10, 2009). The fees must be paid by the applicant as part of the cost recovery associated with the proposed project:

City Traffic Consultant:	\$462.11 (pd.)
	\$481.43 (pd.)
	\$105.78
City Surveyor:	N/A
Re-Review Fees (Community Dev.):	\$500.00 (pd.)
Re-Review Fees (Public Services):	\$500.00 (pd.)
Administrative Costs:	\$46.71 (pd.)
City Council Advertising:	N/A
TOTAL (as of 09/10/09) =	\$105.78

STATE/FEDERAL PERMITS REQUIRED BEFORE ISSUANCE OF BUILDING PERMIT:

A copy of the FDEP Stormwater Documentation, FDEP Beaches and Shores, and NPDES approvals shall be forwarded to the Public Services Department to be stamped received and then forwarded to the Community Development Department.

PUBLIC INPUT:

Two members of the public attended the TRC meeting on April 15, 2009 and asked some questions about the project. No other public comments have been presented to staff at the time of this report.

TECHNICAL REVIEW COMMITTEE MEMBER COMMENTS, NOTES AND CONDITIONS:

DESTIN FIRE CONTROL DISTRICT:

The Destin Fire Control District approved the project in a letter dated April 6, 2009. Please refer to **Exhibit "A"** for a copy of the approval letter.

DESTIN WATER USERS:

Destin Water Users approved the project in a letter dated April 14, 2009. Please refer to **Exhibit "B"** for a copy of the approval letter.

EMBARQ:

Embarq stated it has no objections to the project in a letter dated April 8, 2009. Please refer to **Exhibit "C"** for a copy of the approval letter.

GULF POWER:

Gulf Power stated several objections to the project in a letter dated April 15, 2009. Please refer to **Exhibit "D"** for a copy of the approval letter.

OKALOOSA GAS:

Okaloosa Gas stated it had no objections to the project in a letter dated April 14, 2009. Please refer to **Exhibit "E"** for a copy of the approval letter.

WASTE MANAGEMENT:

Waste Management stated it had no objections to the project in a letter dated April 15, 2009. Please refer to **Exhibit "F"** for a copy of the approval letter.

BUILDING DIVISION:

The Building Division approved the project in a memo dated September 28, 2009. Please refer to **Exhibit "G"** for a copy of the approval letter.

PLANNING DIVISION:

The Planning Division approved the project with conditions on August 17, 2009. Please refer to **Exhibit "H"** for a copy of the approval letter.

STORMWATER MANAGEMENT:

The stormwater management plan was found acceptable and approved with conditions on June 1, 2009. Please refer to **Exhibit "I"** for the **stormwater** related notes and conditions.

PUBLIC SERVICES DEPARTMENT:

The Public Services Department issued a memorandum of no objection to the project with conditions on August 13, 2009. Please refer to **Exhibit "J"** for the Public Services Department conditions.

Destin Fire Control District

345 Airport Road - Destin, Florida 32541
Telephone (850) 837-8415 Fax (850) 837-4715



TECHNICAL REVIEW COMMITTEE CONCEPTUAL APPROVAL Chief Kevin Satter

DATE: 6 April 2009

To: PLANNING & ZONING DIRECTOR
CITY OF DESTIN
4100 TWO TREES RD.
DESTIN, FL 32541

THE DESTIN FIRE CONTROL DISTRICT INSPECTION DEPARTMENT HAS REVIEWED THE FOLLOWING FOR CONCEPTUAL APPROVAL AT THE TECHNICAL REVIEW COMMITTEE. COMPLETE SEALED CONSTRUCTION PLANS MUST BE SUBMITTED AND REVIEWED FOR COMPLIANCE BEFORE ANY BUILDING PERMIT MAY BE ISSUED.

Fire Inspect Fee is applicable and due before a letter of Approval for Building Permit is issued.
Plan Review Fee is applicable and due before a letter of Approval for Building Permit is issued.

LOCATION: 1 Gulf Shores Drive

PROJECT: The Pointe Beach & Yacht Club

IMPACT FEE USE: Residential
Commercial

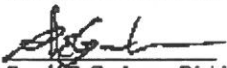
OCCUPANCY: Apartment

OWNER/CONTRACTOR: Pointe One, LLC (Luke Evans, 205-251-2200)
Henderson Eng., (John Henderson, 850-835-8430)

☒ **APPROVED AS PRESENTED**
Proposed relocation of 14" water service line and installation of fire hydrants must be completed prior to the start of any construction.

☐ **DISAPPROVED FOR THE FOLLOWING:**

NOTE: Any underground Fire Line supplying an automatic sprinkler shall be installed by a Licensed Sprinkler Contractor or a Contractor V licensed by the State Fire Marshal.


Ronald E. Gerdeman, Division Chief
FIRE PREVENTION BUREAU
DESTIN FIRE CONTROL DISTRICT



A Heart Ready
Community



An Advanced Life
Support Service



DESTIN WATER USERS INC.

P.O. BOX 308 DESTIN, FL. 32541-0308 (904) 327-6146

DATE: April 14, 2009

TO: THE CITY OF DESTIN - COMMUNITY DEVELOPMENT
4200 TWO TREES ROAD
DESTIN, FLORIDA 32541

PROJECT: Norriego Pointe Condominium
PROJECT NUMBER: SP-04-05
CONTACT: Henderson Engineering - John Henderson 622-6264
LOCATION: West end of Gulf Shore Drive

☒ PROJECT QUESTIONNAIRE WAS COMPLETED AND RETURNED TO DESTIN WATER USERS.

THIS LETTER CERTIFIES THAT THIS PROJECT HAS BEEN REVIEWED BY DESTIN WATER USERS INC. AT A TECHNICAL REVIEW COMMITTEE MEETING AND IS CONCEPTUALLY:

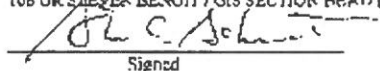
Approved

(Subject to the following, which shall be a condition of the Development Order with the City of Destin)

- I. ALL REVISIONS TO THE WATER AND/OR SEWER UTILITIES OF ANY PREVIOUSLY APPROVED PROJECT MUST BE REAPPROVED BY DESTIN WATER USERS, INC. IN WRITING AT LEAST 24 HOURS PRIOR TO IMPLEMENTATION.
- II. FIELD VERIFIED "AS-BUILT" PLANS INCLUDING ALL UTILITY INFRASTRUCTURES MUST BE FURNISHED TO DESTIN WATER USERS, INC. PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPATION.

1. The lift station shall be privately owned unless a complete set of specifications are issued, reviewed and approved for DWU ownership.
2. Our records indicate an existing utility easement across this property. Please include this easement on the utility plans.

IF YOU HAVE QUESTIONS OR CONCERNS PLEASE CALL MYLENE SCHMITT / FIELD OPERATIONS MANAGER (RS) 837-6146 ext. 106 OR SHERYEN BENOIT / GIS SECTION HEAD (RS) 837-6146 ext. 214.


Signed

QUALITY SERVICE SINCE 1964

Voice | Data | Internet | Wireless | Entertainment

RECEIVED

EMBARQ

April 6, 2009

APR 8 2009

COMMUNITY
DEVELOPMENT

Embarq
Mailstop: FLF-Wall
6500 DeSoto Blvd
Fort Walton Beach, FL 32547
embarq.com

City of Destin
Community Development Department
4200 Two Trees Road
Destin, FL 32541

Re: SP-09-07, The Pointe Beach and Yacht Club, 1 Gulf Shore Dr

Embarq has no objections to this project at this time.

If you should require any additional information, please contact Keith Nance at
850-664-3751.

Sincerely,

Keith Nance /mh

Keith Nance - Network Engineer

/mh

cc: Chron File

19901 Emerald Coast Parkway
Ft. Walton Beach, Florida 32541-3437

Tel 850.744.4733

RECEIVED

APR 15 2009

COMMUNITY
DEVELOPMENT



Date: April 15, 2009

To: Technical Review Committee

From: Gulf Power Company

SP-09-07, The Pointe Beach & Yacht Club, 1 Gulf Shore Dr

Gulf Power Company has the following objections involving the proposed service to the new building referenced above.

1. The service size and new electrical load requirements need to be stated.
2. Transformer location needs to be stated.
3. The lift station electrical voltage requirements need to be stated.
4. Any existing facility relocations will also need to be stated.
5. Easements will be required for any Gulf Power facilities on private property.

Thank you,



Tom Richardson
trichar@southernco.com
850-833-4881



Okaloosa Gas District

**OKALOOSA GAS DISTRICT
TECHNICAL REVIEW COMMITTEE, DESTIN
DATE 04/14/2009**

BUSINESS:

SP-09-07, The Pointe Beach & Yacht Club, 1 Gulf Shore Dr.

COMMENTS:

Please be advised that Okaloosa Gas has no objection to the above subject proposal development. Gas is nearby within the adjacent property.

If you should have any questions, or require additional information, please call me @ (850) 729-4870.

Submitted by:

Essa Rhebi

Essa Rhebi
Systems Engineer



Waste Management, Inc. of Florida
108 Hill Avenue
Fort Walton Beach, FL 32548
1-800-862-7141
(850) 664-6659 Fax

RECEIVED

SEP 29 2009

**COMMUNITY
DEVELOPMENT**

April 15, 2009

TO: Staff
FROM: Staff
Subject: New Development
Pointe Condo and Yacht Club

Dear Staff,

This letter is to inform staff and the developer that Waste Management has no objection at this time to the above location with regards to waste removal. Waste Management reserves the right to re-evaluate in the event of future changes to above property.

Sincerely,

Steve Coxkman
Waste Management Inc of Florida

Waste Management, Inc. of Florida



CITY OF DESTIN

Community Development Department

Permit & Inspection Division

Memorandum

RECEIVED

SEP 28 2009

**COMMUNITY
DEVELOPMENT**

To: Technical Review Committee
CC: Lorry Bullock, Building Official *LB*
From: Nirel Dell, Building Inspector *ND*
Date: 9/28/09
Re: SP-09-07 The Pointe Beach and Yacht Club

A review of the plans submitted resulted in the following comments:

- 1) 2 full sets of signed and sealed construction plans, specifications and related documents as required by the Florida Building Code, Chapter 1 must be submitted to and be reviewed by the building department prior to issuance of a permit.
- 2) Proper permitting must be applied for and approval prior to any work being performed on mentioned property, i.e., demolition, site work, new construction, etc.
- 3) All Common areas which include walkways, public use areas, public restrooms, etc., shall be on an accessible route, and comply with chapter 11 of the Florida Building code.
- 4) The building plans show it located in a flood zone: VE. All construction shall follow our adopted flood plain management ordinances, and all construction below base flood elevation shall be open and unobstructed.

TRC Review Comments



CITY of DESTIN

3200 Indian Bayou Trail • Destin, Florida 32541

www.cityofdestin.com

PLANNING DIVISION

Phone: 904.243.1400 Fax: 904.243.0677

destin@cityofdestin.com

August 17, 2009

Mr. John G. Henderson, P.E.
Henderson Engineering & Environmental, Inc.
35 Carol Place
Ft. Myers, Florida 33909-4635

Subject: TRC Review for SP-09-117: The Points Beach & Yacht Club, a Minor Tier 2 Development

Dear Mr. Henderson:

A 3rd submittal package was received on July 31, 2009. The following TRC comments are provided for your review and comment. Please ensure you read the comments and **bolded** notes listed below.

Review Process Timeline:

- TRC Meeting: April 15, 2009
- Applicant's 1st re-submittal deadline: May 15, 2009
- Actual re-submittal date: May 15, 2009
- TRC 1st re-submittal review deadline: June 1, 2009 (based on typical 10 working day turnaround)
- Actual re-submittal review date: June 2, 2009
- Applicant's 2nd re-submittal deadline: July 2, 2009
- Actual re-submittal date: July 31, 2009
- TRC 2nd re-submittal review deadline: August 14, 2009 (based on typical 10 working day turnaround)
- Actual re-submittal review date: August 17, 2009

4. Planning Division Comments: Approval with conditions.

1. Invoices: CD-09-63 for \$328.04, CD-09-65 for \$23.63 and CD-09-68 for \$129.76 are outstanding and must be paid prior to the Planning Division issuing the Development Order.
2. Prior to the issuance of the Building Permit for the Main Condominium building, an outdoor lighting plan shall be submitted for review and approval by the Planning Division. The outdoor lighting plan must meet the requirements of Land Development Code section 7.17.01 *Outdoor lighting standards for the marine turtle conservation zone*. All lighting outdoor lighting plans must include photometrics and must show the type of fixture, bulb size/wattage, height of pole mounted lights, type of light shield, etc. Outdoor Lighting shall be shielded downward and away from adjacent properties in order to avoid spill-over and illumination into the night sky.

Page 2 of 3

August 17, 2009

IRC Review for SP494-07: The Pointe Beach & Yacht Club, a Minor Tier 2 Development

3. Prior to the issuance of a Certificate of Occupancy, the condominium documents must be reviewed and approved by the City Land Use Attorney and City Staff and properly recorded as stated within the Condominium Affidavit dated March 28, 2005. Additionally, a copy of the Condominium Documents, once recorded with the state, must be submitted to the City of Destin.
 4. Prior to the issuance of a Certificate of Occupancy, assigned address numbers for principal buildings shall be displayed and clearly visible and legible, preferably reflective, from the street or private way on which the building fronts. Ref. LDC Section 7.16.04. Dwelling unit numbers must be displayed on the front door of each dwelling unit.
 5. Prior to the issuance of a Certificate of Occupancy, the landscaping and any outdoor lighting, if installed, must be inspected and approved by the Planning Division.
 6. Prior to the issuance of a Certificate of Occupancy, all applicable impact fees must be paid.
- B. Transportation Comments: Approved. Refer to the attached approval letter dated June 24, 2009. To discuss transportation related comments, please contact Mr. Tim Whider of Renaissance Planning Group at 813-254-7741, ext. 208.
- C. Stormwater Management Comments: Previously approved with conditions. Refer to the attached approval memo dated June 1, 2009. To discuss these stormwater related comments, please contact Mr. David Forstrom, Planner / Floodplain Manager at 837-4242 ext. 3130.
- D. Right of Way and Wetlands Impact Review Comments: Approved with conditions. Refer to the attached approval memo dated August 12, 2009. To discuss these comments, please contact Mr. Joseph D. Bodi/Engineering Assistant II at 837-4242 ext. 3186.

Now that the Development Order application has been approved, please submit 7 sets (24" x 36") of plans (Civil Engineer, Architect and Landscape Architect) to the Planning Division. Each set of plans must be signed, sealed and dated by the design professional. Three of the plan sets will be stamped approved and signed and given to the owner/applicant. The first set is to be submitted with the required Building Permit, the second set is for the owner's records, and the third set is to be kept on site by the contractor during construction of the project. The fourth and fifth set will be stamped approved, signed, and provided to Destin Water Users, Inc. and the Destin Fire Control District for their records. The sixth and final sets are for the Planning Division's and the Public Services Department records.

Page 3 of 3

August 17, 2009

TRC Review for SP-09-07: The Points Beach & Yacht Club, a Minor Tier 2 Development

If you have questions or need additional information, please feel free to contact my office.

Sincerely,



Hank Woodard, AICP
Planner

ITW:

Attachments: Invoices: CD-09-63, CD-09-65 and CD-09-68
Transportation Comments dated June 24, 2009
Stormwater Comments dated June 1, 2009
Right of Way & Wetlands Impact Comments dated August 12, 2009

cc: File: SP-09-07
File: Letter Log

OFFICE OF COMMUNITY DEVELOPMENT STORMWATER REVIEW

MEMORANDUM



DATE: June 1, 2009
 TO: Hank Woolfard, Planner
 FROM: David M. Forsstrom, Planner & Stormwater/Hydroplain Manager
 SUBJECT: SP-09-07, The Pointe Beach & Yacht Club, a Minor Development located at 1 Gulf Shore Drive
 1st Re-submittal Stormwater Review Comments

We received a re-submittal on May 15, 2009 from Henderson Engineering & Environmental, Inc. The Stormwater Management Plan (SWMP) and the construction drawings are hereby approved with the following conditions as noted:

1. **Note:** The Engineer of Record is cautioned to review the construction documents as submitted to assure thorough information is provided to allow proper construction. All stormwater management facilities shall be required to be constructed per the Codes of the City of Destin.
2. **Condition:** Prior to obtaining a Certificate of Occupancy, the Stormwater Operation/Maintenance Plan (SWOMP) shall be acknowledged and signed by the Owner.
3. **Condition:** Prior to obtaining any City permit, a copy of the NFWFMD stormwater permit and a NPDES Stormwater Construction Generic Permit (if applicable) shall be provided.
4. **Condition:** Prior to obtaining any City permit, an original signed and sealed Stormwater Concurrence Certificate shall be provided to the City.
5. **Condition:** If groundwater is observed standing in the storm structures, the SWMP shall be considered in non-compliance and a revised stormwater plan shall be resubmitted for review and approval.

If you have questions or need additional information, please contact my office.

Sincerely,

David M. Forsstrom, CFM
 Planner & Stormwater/Hydroplain Manager

File: SP-09-07
 Letter Log

OFFICE OF PUBLIC SERVICES

MEMORANDUM

RECEIVED

AUG 13 2009

COMMUNITY
DEVELOPMENT

August 12, 2009

TO: Planner/Hank Woolard

FROM: Engineering Assistant II/ Joseph D. Bort *JDB*

SUBJECT: SP-09-07 The Points Beach & Yacht Club, 1 Gulf Shore Drive
Right of Way & Wetlands Impact Review ONLY

A resubmittal was received on August 4, 2009 and the right-of-way & wetlands areas only were reviewed. Public Services Dept. has no objection with the following conditions:

1. **Condition:** Prior to obtaining any City permits, obtain a City of Destin Right-of-Way Construction Permit from the Public Services Department.
2. **Condition:** Prior to obtaining a City of Destin Right-of-Way Construction Permit permits, obtain a FDOT Connection permit and submit copy to the Public Services Director.
3. **Condition:** Refer to FDOT Article 8, Transportation, - The developer/owner, engineer of record and the contractor shall make themselves familiar with these codes and comply with the codes prior to obtaining a Certificate of Occupancy.
4. **Condition:** Refer to FDOT Article 11.09.00, Illicit Discharge - The developer/owner, engineer of record and the contractor shall make themselves familiar with these codes and comply with the codes prior to obtaining a Certificate of Occupancy.
5. **Condition:** Contractor shall not be allowed to utilize ANY public right-of-ways for any loading/unloading, staging or storage of construction materials, equipment or vehicles or unauthorized construction. Authorization may be given on a case by case basis, if the contractor can prove that it is necessary for public AND job site safety. Each case may require additional permitting. Failure to comply with this requirement may void your city right-of-way construction permit until the violation is corrected. Voided permits must be resubmitted and application fees shall be assessed.
6. **Condition:** Prior to obtaining any city permit, provide a debris & soil hauling plan (truck route) through the City. Any road damage that is determined to be caused by this project operation shall be required to be repaired prior to obtaining any Certificate of Occupancy (C.O.).
7. **Condition:** During construction crane booms shall not swing out over the ROW or adjacent private properties on either side of the project. These areas are open to the public and not part of the construction site. Authorization may be given if the contractor can prove that it is necessary for public safety. The City can not authorize encroachments over adjacent private properties, the developer must obtain the affected property owner's consent.

EXHIBIT "J"

Page 2 of 2

August 12, 2009

SP-09-07 The Pointe Beach & Yacht Club, 1 Gulf Shore Drive

8. **Condition:** Prior to commencing any work on the boardwalk and/or docks, obtain the proper FDEP permit and submit copy to the Public Services Dept.
9. **Condition:** Provide owner's information and legal descriptions for our City Attorney to create an easement document for the sidewalks outside but adjacent of the ROW. **These agreements must be executed and recorded prior to obtaining a Right-of-Way Construction Permit.**
10. **Condition:** Provide information on the street lights within the ROW for review for acceptance by the city.
11. **Condition:** All exterior lighting that can be seen from the beach must meet appropriate codes including but not limited to marine turtle friendly standards.
12. **Condition:** Stormwater structures within the ROW shall have a 2' deep sediment trap and an open bottom.
13. **Condition:** Drainage piping under the road shall be Reinforced Concrete Pipe (RCP) only.
14. **Condition:** Irrigation lines under the road and sidewalks shall be sleeved.
15. **Condition:** Provide all required thickness, density and compaction test results for Gulf Shore Dr. prior to any Certificate of Occupancies (C.O.).
16. **Condition:** All infrastructure in the right-of-way shall be accepted for maintenance by the City by the procedure outlined in LDC Article 2.22.00.E.

cc:

PS Files

AGENT AFFIDAVIT ^{OF OWNERSHIP}
~~SPECIAL POWER OF ATTORNEY~~

KNOWN ALL MEN BY THESE PRESENTS, THAT I, Ponte Mezzanone, LLC am
presently the owner and/or leaseholder at 16411 Stone Dove Dr, Destin, FL and desiring
~~to execute a Special Power of Attorney, have made, constituted and appointed, and by these presents do~~
~~make, constitute and appoint~~ _____

~~whose address is _____, County of _____, State of _____,~~

~~my Attorney-in-Fact to act as follows, GIVING AND GRANTING unto said attorney full power to act as
my agent in any and all matters pertaining to: _____.~~

~~FURTHER, I do authorize the aforesaid Attorney-in-Fact to perform all necessary acts in the execution of
the aforesaid authorization with the same validity as I could effect if personally present. Any act or thing
lawfully done hereunder by the said attorney shall be binding on myself and my heirs, legal and personal
representative, and assigns.~~

~~PROVIDED; however, that any and all transactions conducted hereunder for me or for my account shall
be transacted in my name, and that all endorsements and instruments executed by the said attorney for the
purpose of carrying out the foregoing powers shall contain my name, followed by that of my said attorney
and the designation "Attorney-in-Fact."~~

OWNER

[Signature]
Signature

Joseph L. A. Winkler
Printed Name

as Authorized Representative

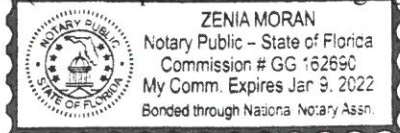
STATE OF Florida

COUNTY OF Bay

The foregoing instrument was acknowledged before me this 19 day of August, 2019.

by Joseph A. Winkler

(name of person acknowledging)

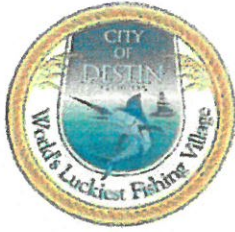


[Signature]
Signature of Notary

Zenia Moran
Printed Name of Notary or Seal

Personally known _____ OR Produced Identification X

Type of Identification Produced Driver's License (W524-481-76-002-0)



City of Destin

Community Development Department

Planning & Zoning Division

City of Destin Annex

4100 Indian Bayou Trail

Destin, Florida 32541

Phone (850) 837-4242 • Fax (850) 460-2171

planning@cityofdestin.com

APPLICATION for HARBOR BOARD

Harbor Board meets the 4th Monday, all applications must be submitted at least 2 weeks prior.

Description of work: **POINTE RESORT**

1. APPLICANT INFORMATION:

Name: **ROBERT J. GUIDRY**

Mailing Address: **1901 MANHATTAN BLVD, BLDG H, STE 101 HARVEY, FL 70058**

Phone: **(504) 585-0247**

Fax: **(504) 566-0210**

Email: **MARK.EMBREE@ARLAW.COM**

2. PROPERTY TO BE REVIEWED:

Street Address: **1 GULF SHORE DR DESTIN, FL 32541**

Parcel ID #: **00-2S-24-0000-0034-0000 (Marina Parcel); 00-2S-24-0000-0034-0020 (Upland Parcel)**

3. **FEE:** **\$40.00 Residential**
\$80.00 Commercial

Cash, Check, MasterCard or Visa

Marine Applications, Fees & Letters per FY2017 Schedule of Fees,
adopted 02/21/17, effective 02/22/17.

Must be paid when submitting application.

4. ADDITIONAL DOCUMENTATION REQUIRED:

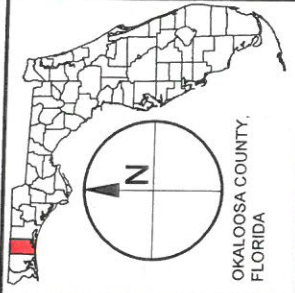
- a. Complete detailed drawings and site plan.
- b. Adjacent property owner mailing information.

State and Federal permits required prior to submission for Harbor Board approval.

APPLICANT'S SIGNATURE: _____

DATE: _____

ATTACHMENT A
DRAWINGS AND SITE PLAN



OKALOOSA COUNTY,
FLORIDA

PROJECT SITE
GULFSHORE DRIVE (WEST END)
SECTION: 00
TOWNSHIP: 2S
RANGE: 23W
LATITUDE: 30.39111° N
LONGITUDE: 86.50833° W

Destin Harbor

East Pass

Choctawhatchee Bay

U.S. HIGHWAY 90

Gulf Of Mexico

AERIAL: FDOT, 2007

0 2,000' 4,000'

SCALE: 1" = 2,000'



TAYLOR ENGINEERING INC.
4300 LEGENDARY DRIVE
SUITE C246
DESTIN, FL 32541
CERTIFICATE OF AUTHORIZATION # 4815

FIGURE 1
PROJECT LOCATION MAP
POINTE RESORT
OKALOOSA COUNTY, FLORIDA

PROJECT	C2017-004-01
DRAWN BY	CAS/NP
SHEET	1 of 20
DATE	NOV 2018

PRELIMINARY DRAWINGS: THESE DRAWINGS ARE NOT IN FINAL FORM, BUT ARE BEING TRANSMITTED FOR AGENCY REVIEW.

MATTHEW TRAMMELL P.E. # 69244

DATE

GENERAL NOTES:

1. ALL ELEVATIONS REFERENCE THE 1988 NORTH AMERICAN VERTICAL DATUM (NAVD 88).
2. ALL DRAWING COORDINATES REFERENCE STATE PLANE FLORIDA NORTH NAD 83.
3. AERIAL IMAGERY TAKEN IN 2016 AND OBTAINED FROM FLORIDA DEPARTMENT OF TRANSPORTATION, UNLESS NOTED OTHERWISE. AERIAL IMAGERY DISPLAYED HEREON FOR INFORMATIONAL PURPOSES ONLY, NO PHOTOGRAPHIC ACCURACY IS IMPLIED BY THIS MAP.
4. EXISTING PARCEL BOUNDARIES AND TOPOGRAPHY SURVEYED ON SEPTEMBER 13, 2017 BY GUSTIN, COTHERN AND TUCKER, INC.
5. DESTIN HARBOR ENTRANCE CHANNEL BATHYMETRY SURVEYED ON JANUARY 21, 2016 BY GUSTIN, COTHERN AND TUCKER, INC.
6. FEDERAL NAVIGATION CHANNEL LIMITS OBTAINED FROM THE U.S. ARMY CORPS OF ENGINEERS MOBILE DISTRICT DRAWING FILE "DESTIN, FLORIDA, WEST BAY TO SANTA ROSA SOUND. EAST PASS PROPOSED DREDGING AND DISPOSAL LOCATION." SHEET 2 OF 13, DATED JULY 2008. (FDEP MAINTENANCE DREDGING PERMIT #0288799-001-JC). FEDERAL NAVIGATION CHANNEL MARKERS DERIVED FROM FILE "ENTRANCE CHANNEL STA 43+00 TO STA 95+00 CONDITION SURVEY" DATED SEPT. 2012.
7. TIDAL DATUMS OBTAINED FROM NOAA CENTER FOR OPERATIONAL OCEANOGRAPHIC PRODUCTS AND SERVICES ([HTTP://TIDESANDCURRENTS.NOAA.GOV/](http://tidesandcurrents.noaa.gov/)).
8. CONSTRUCTION SHALL NOT VIOLATE STATE WATER QUALITY STANDARDS.
9. THE PROPOSED PROJECT DOES NOT INCLUDE ANY IMPACTS TO EXISTING NATURAL RESOURCES, WETLAND AREAS OR SEAGRASSES

GENERAL DOCKING FACILITY NOTES:

1. NO FUELING FACILITIES OR LIVEBOARDS ARE PROPOSED.
2. THE DOCKING FACILITY WILL INCLUDE A SEWAGE PUMP-OUT SYSTEM CONNECTED TO AN UPLAND CENTRALIZED SEWER COLLECTION SYSTEM.
3. STRUCTURE ELEVATIONS AND CONSTRUCTION MATERIALS ARE SUBJECT TO CHANGE IN THE FINAL DESIGN. PILE EMBEDMENT AND DIMENSIONS WILL BE DETERMINED DURING FINAL DESIGN.
3. DOCK PILINGS WILL BE WRAPPED TREATED TIMBER OR OTHERWISE MADE FROM NON-LEACHING MATERIALS.
4. THE LOCATION OF TURBIDITY CURTAINS SHOWN ON THESE DRAWINGS FOR INFORMATIONAL PURPOSES ONLY. TURBIDITY CURTAINS SHALL BE LOCATED AND REPOSITIONED BY THE CONTRACTOR USING BEST MANAGEMENT PRACTICES TO ASSURE WATER QUALITY STANDARDS ARE MAINTAINED THROUGHOUT CONSTRUCTION.

GENERAL DREDGE AND FILL NOTES:

1. ALL PROPOSED DREDGE MATERIAL SHALL BE MECHANICALLY OR HYDRAULICALLY DREDGED FROM THE DREDGE AREA DESIGNATED IN THESE DRAWINGS. FOR MECHANICAL DREDGING, DREDGED MATERIAL SHALL BE PLACED ALONG THE UPLANDS AND REGRADED ON-SITE. FOR HYDRAULIC DREDGING, DREDGED MATERIAL SHALL BE PUMPED TO THE PROPOSED UPLAND DREDGE MATERIAL MANAGEMENT AREA AND DEWATERED IN-PLACE. NO DIRECT DISCHARGE TO OPEN WATERS IS PROPOSED.
2. DREDGE MATERIAL MANAGEMENT AREAS (DMMA's) WILL BE SITED TO REMAIN WITHIN THE APPLICANT'S UPLAND PROPERTY AND ABOVE THE MEAN HIGH WATER LINE. DMMA's WILL INCLUDE STAKED HAY BALES, TURBIDITY CURTAINS, AND/OR OTHER BMPS AT ANY CONTROLLED OVERFLOW/DISCHARGE AREAS.

PROPOSED DOCK PLAN:

1. TOTAL NUMBER OF PERMANENT SLIPS: 50
2. FLEXIBLE MOORING AREA: ~ 328 L.F. (3 SLIPS)
3. FIXED TIMBER DOCK AREA: ~12,179 S.F.
4. PROPOSED SOVEREIGN SUBMERGED LAND LEASE AREA: 100,174 S.F. (2.30 ACRES)

PROPOSED DREDGE PLAN:

1. TOTAL RIP RAP: ~ 600 L.F. (~ 9,000 C.F.)
2. PROPOSED TOTAL DREDGE AREA: ~ 39,438 S.F. (~0.9 ACRE)
3. DREDGE VOLUME BELOW MHW: ~ 2,898 C.Y.
DREDGE VOLUME ABOVE MHW: ~ 5,957 C.Y.
TOTAL DREDGE VOLUME: ~8,855 C.Y.
4. PROPOSED DMMA CAPACITY: ~14,180 C.Y.

TIDAL DATUM REFERENCE:

MHHW ——— 0.73'
MHW ——— 0.72'

MSL ——— 0.40'

MLW ——— 0.13'
MLLW ——— 0.12'
NAVD 88 ——— 0.00'



TAYLOR ENGINEERING INC.

4300 LEGENDARY DRIVE
SUITE C246
DESTIN, FL 32541

CERTIFICATE OF AUTHORIZATION # 4815

FIGURE 2
GENERAL NOTES
POINTE RESORT
OKALOOSA COUNTY, FLORIDA

PROJECT C2017-004-01 DRAWN BY CAS/MP SHEET 2 of 20 DATE NOV 2018

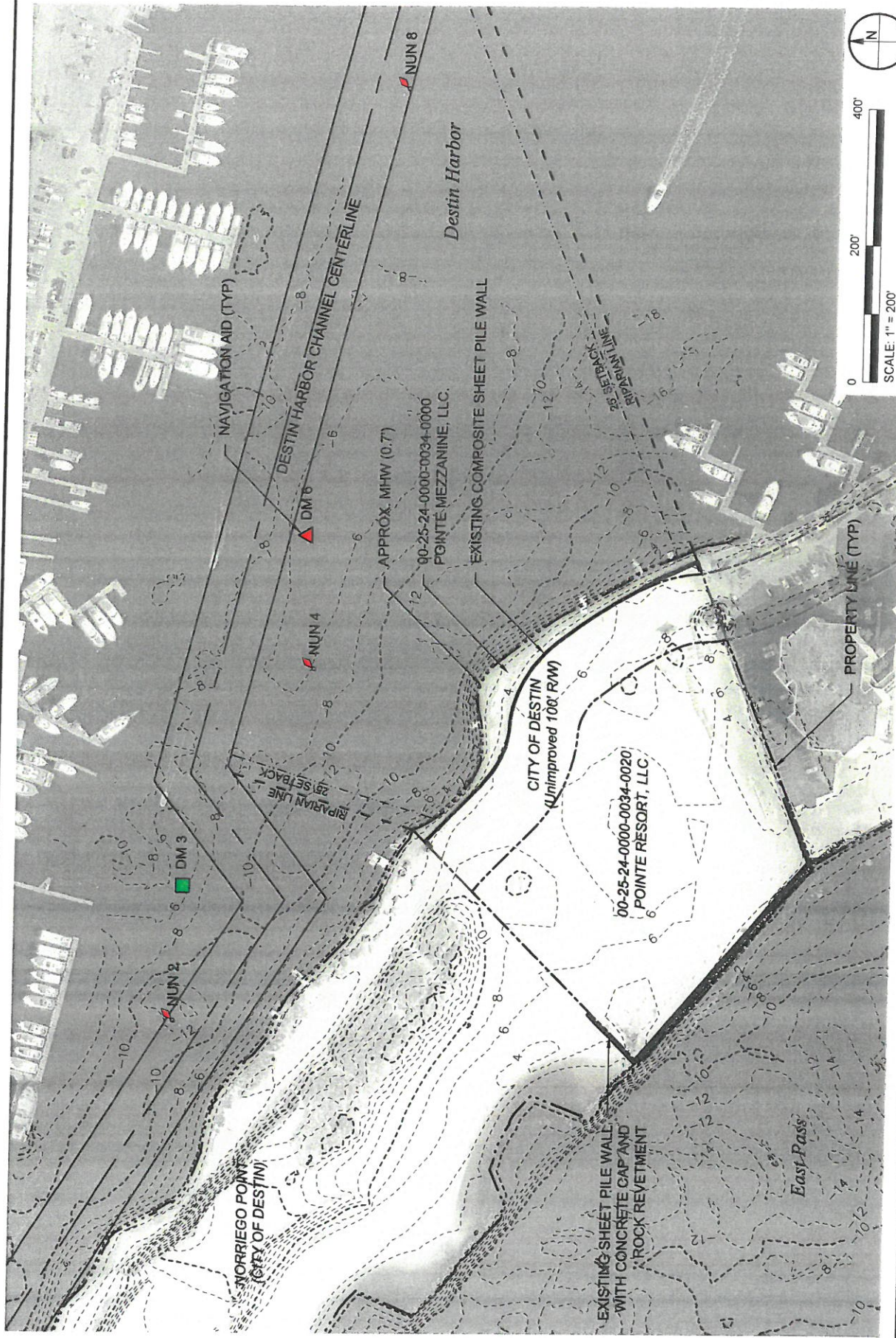
SEAL

MATTHEW TRAMMELL, P.E. # 69244

DATE

CATHY BIELL X:\SYS\PROJECTS\2017\004-01 POINTE RESORT MARINAPERMIT\2017-004 P-001.DWG 11/15/2018 11:00:10 AM

PRELIMINARY DRAWINGS: THESE DRAWINGS ARE NOT IN FINAL FORM, BUT ARE BEING TRANSMITTED FOR AGENCY REVIEW.



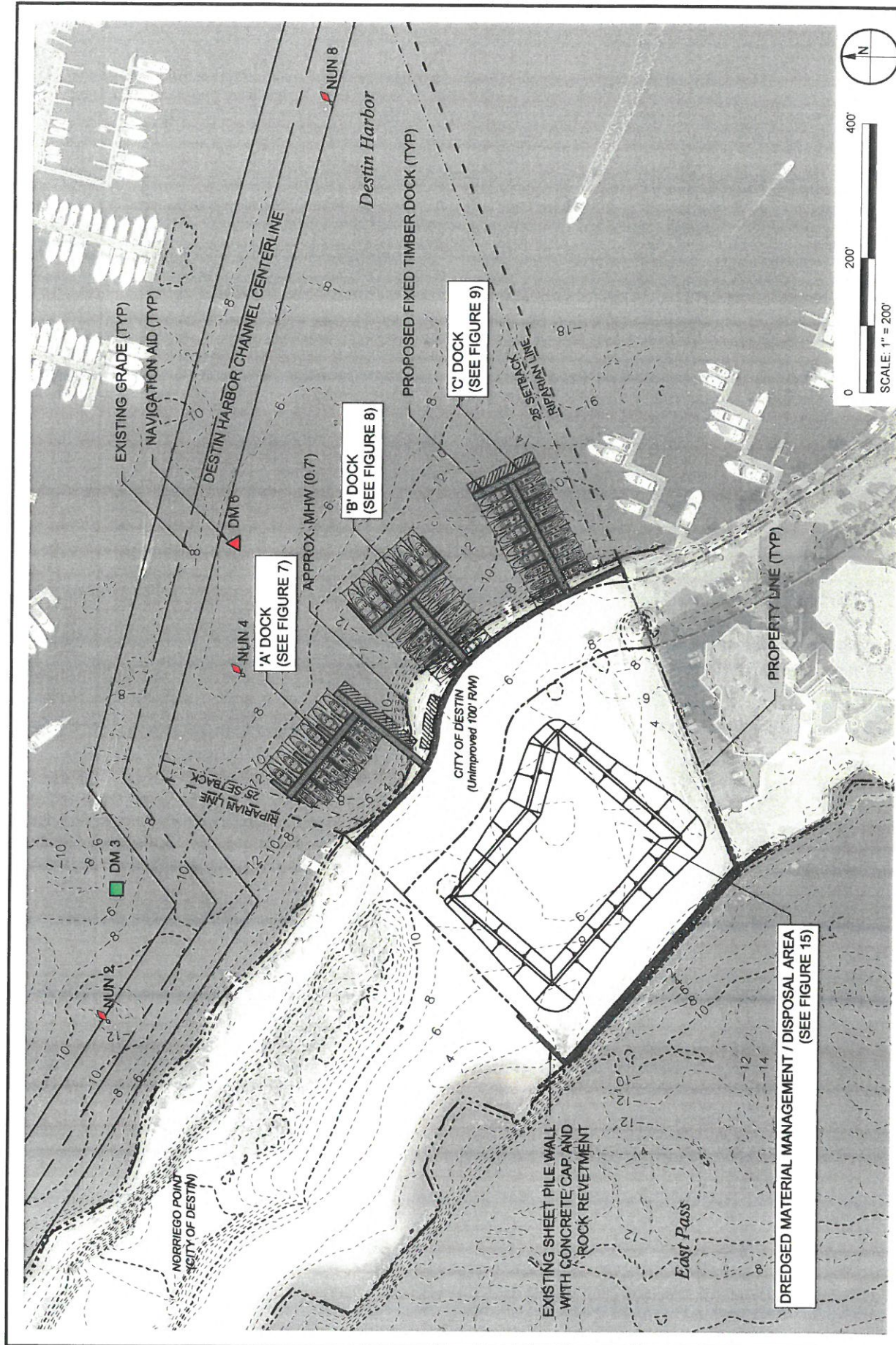
TAYLOR ENGINEERING INC.
 4300 LEGENDARY DRIVE
 SUITE C246
 DESTIN, FL 32541
 CERTIFICATE OF AUTHORIZATION # 4615

FIGURE 3
 EXISTING CONDITIONS
 POINTE RESORT
 OKALOOSA COUNTY, FLORIDA

PROJECT	C2017-004-01
DRAWN BY	CAS/NP
SHEET	3 of 20
DATE	NOV 2018

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DATE
 MATTHEW TRAMMELL, P.E. # 00244



TAYLOR ENGINEERING INC.

4300 LEGENDARY DRIVE
SUITE C246
DESTIN, FL 32541

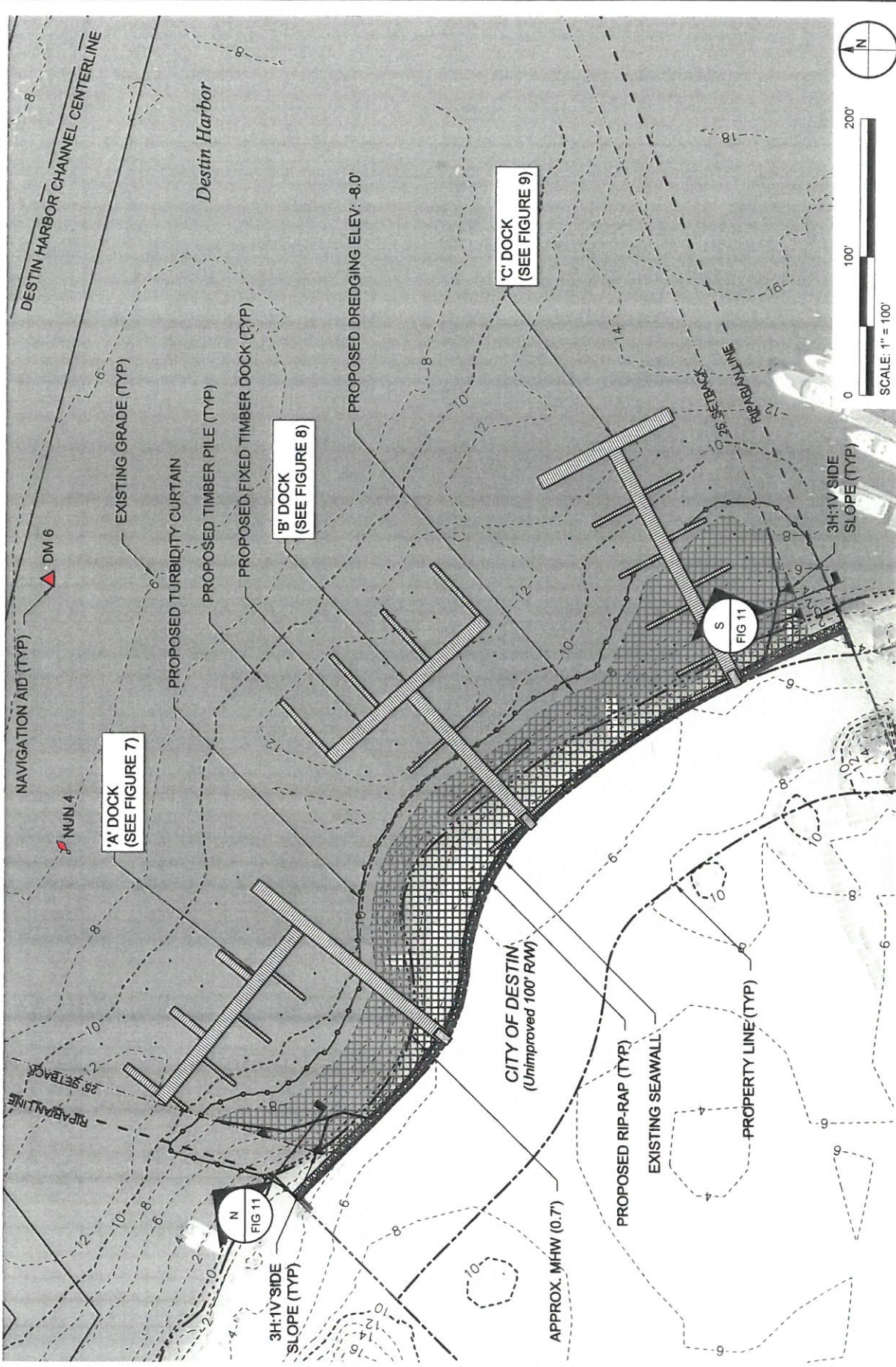
CERTIFICATE OF AUTHORIZATION # 4815

FIGURE 4
PROJECT OVERVIEW
POINTE RESORT
OKALOOSA COUNTY, FLORIDA

PROJECT	C2017-004-01	SEAL
DRAWN BY	CAS/NP	
SHEET	4 of 20	
DATE	NOV 2018	

MATTHEW TRAMMELL P.E. # 69244
DATE

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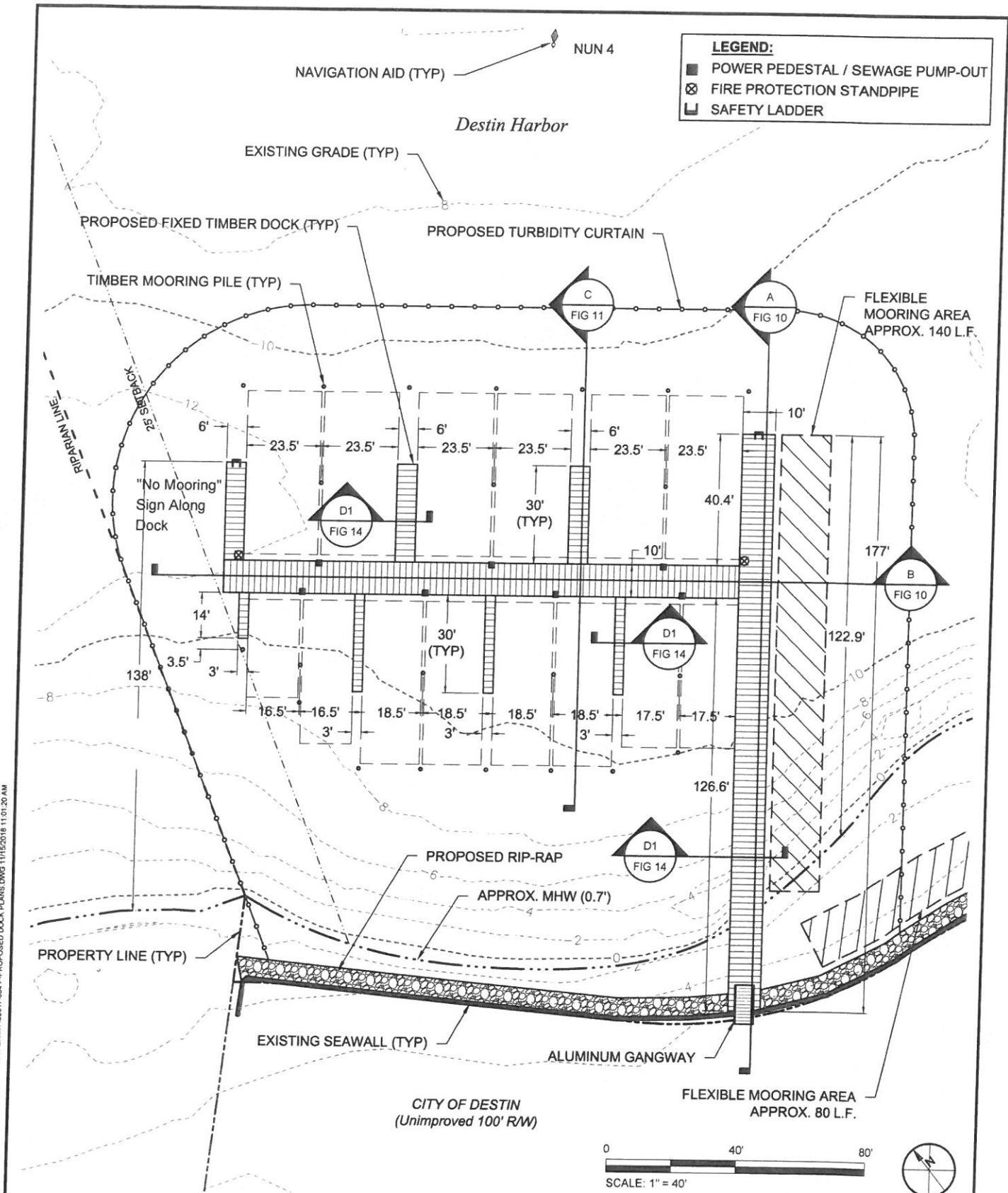
TAYLOR ENGINEERING INC.
 4300 LEGENDARY DRIVE
 SUITE C246
 DESTIN, FL 32541
 CERTIFICATE OF AUTHORIZATION # 4815

FIGURE 6
 PROPOSED MARINA DREDGE PLAN
 POINTE RESORT
 OKALOOSA COUNTY, FLORIDA

PROJECT	C2017-004-01	SEAL
DRAWN BY	CAS/NP	
SHEET	6 of 20	
DATE	NOV 2018	

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CATHY SHELLEY'S\PROJECTS\C2017\004-01 POINTE RESORT MARINA\PMIT\C2017-004 P-PROPOSED DOCK PLANS.DWG 11/15/2018 11:01:20 AM



TAYLOR ENGINEERING INC.

4300 LEGENDARY DRIVE
SUITE C246
DESTIN, FL 32541

CERTIFICATE OF AUTHORIZATION # 4815

PROJECT C2017-004-01 DRAWN BY CAS/NP SHEET 7 of 20 DATE NOV 2018

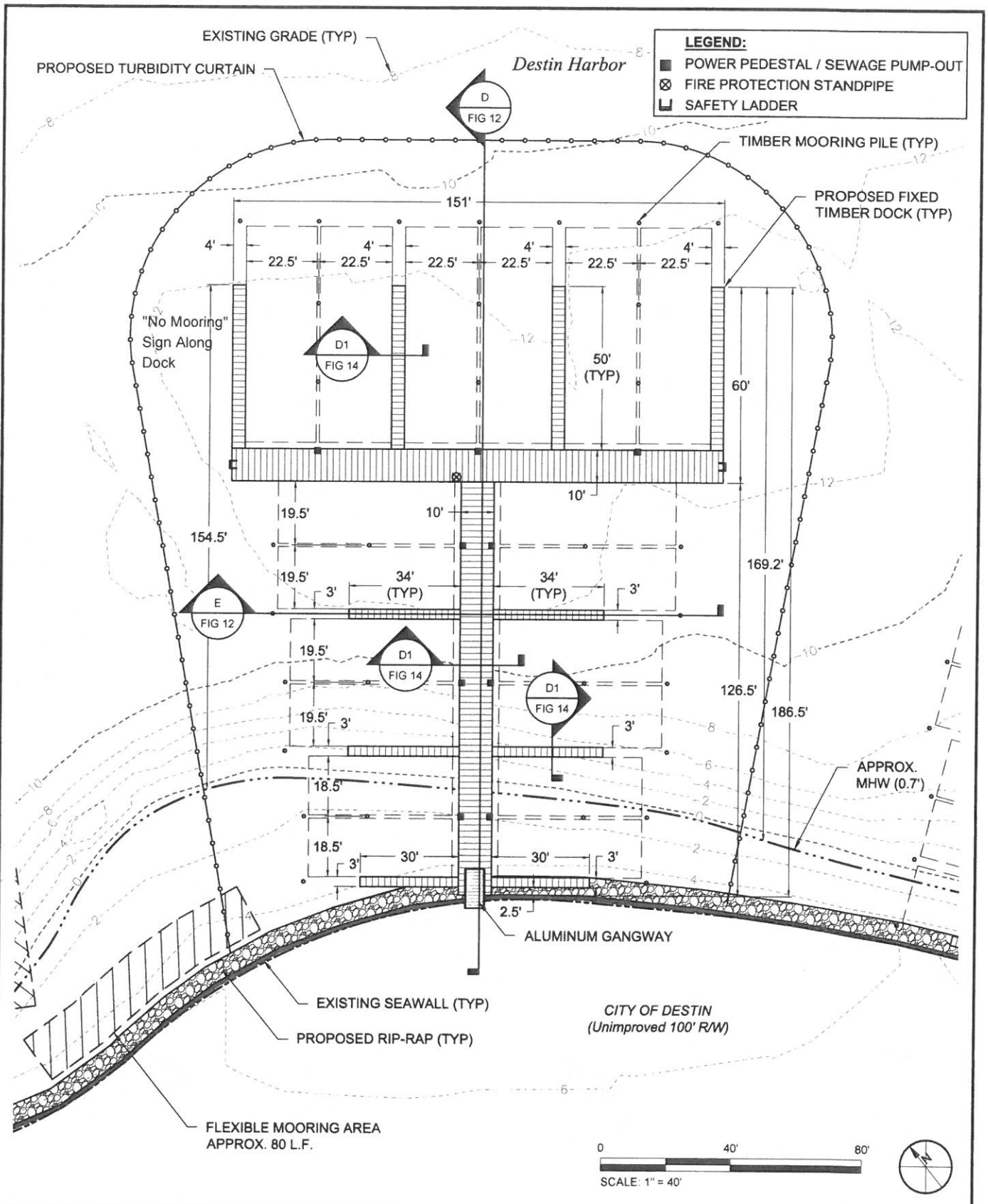
SEAL

MATTHEW TRAMMELL P.E. # 69244

DATE

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CATHY SHELL X:\SYS\PROJECTS\2017\004-01 POINTE RESORT MARINA\PERMIT\2017-004 P-PROPOSED DOCK PLANS.DWG 11/15/2018 11:01:25 AM

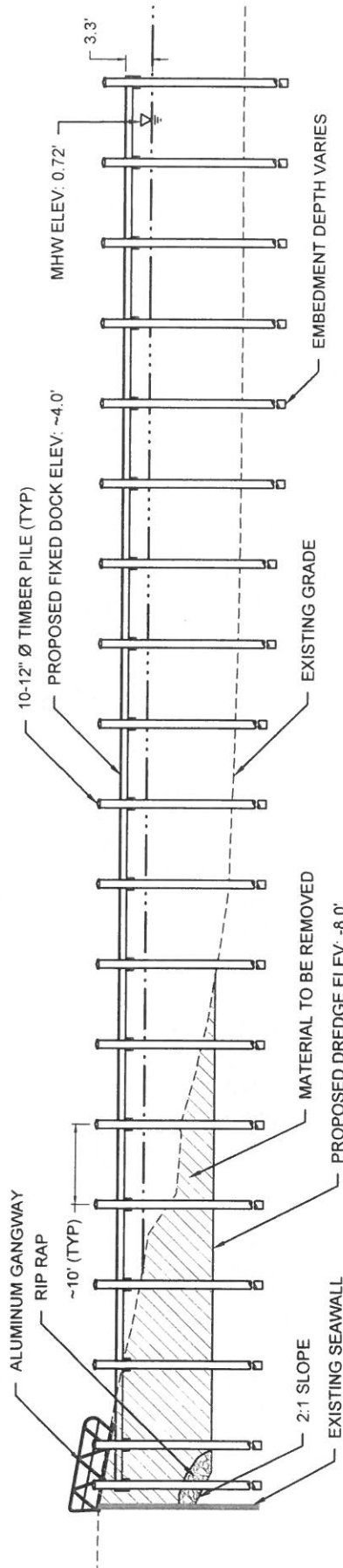


 TAYLOR ENGINEERING INC. 4300 LEGENDARY DRIVE SUITE C246 DESTIN, FL 32541 CERTIFICATE OF AUTHORIZATION # 4815	FIGURE 8 PROPOSED DOCK PLAN - 'B' POINTE RESORT OKALOOSA COUNTY, FLORIDA			SEAL
	PROJECT C2017-004-01	DRAWN BY CAS/NP	SHEET 8 of 20	DATE NOV 2018

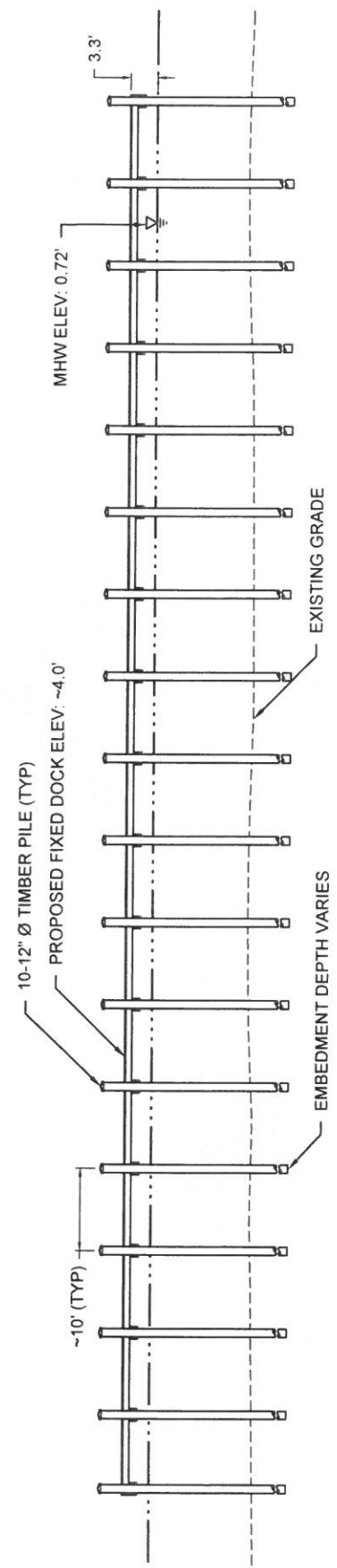
MATTHEW TRAMMELL P.E. # 69244

DATE

PRELIMINARY DRAWINGS: THESE DRAWINGS ARE NOT IN FINAL FORM, BUT ARE BEING TRANSMITTED FOR AGENCY REVIEW.

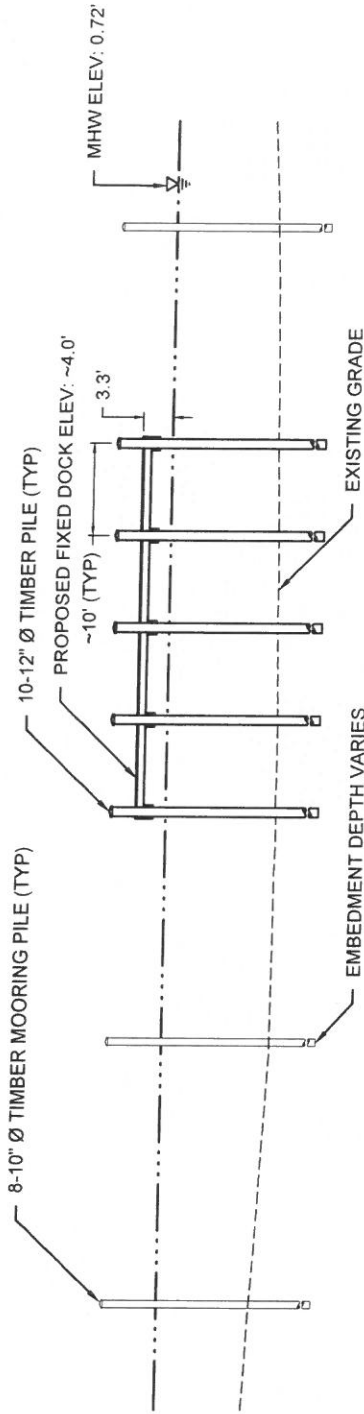


A
FIG 7
'A' DOCK - SECTION A
SCALE: 1" = 20'

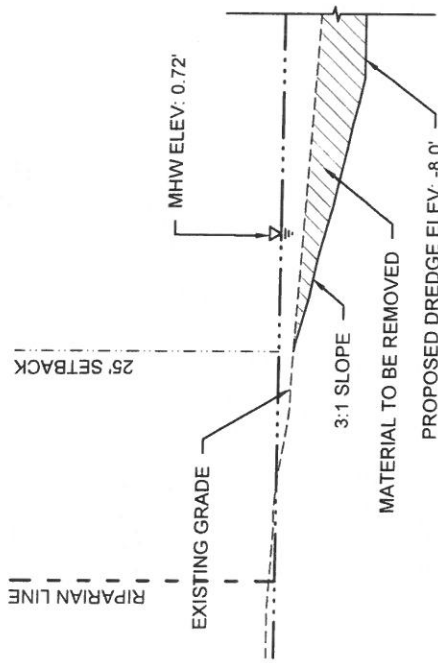


B
FIG 7
'A' DOCK - SECTION B
SCALE: 1" = 20'

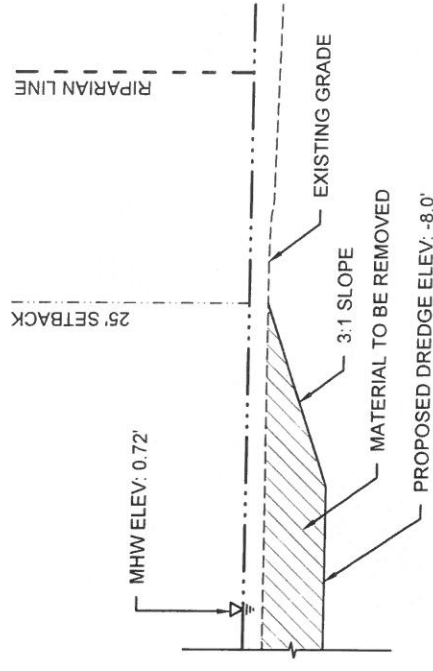
 TAYLOR ENGINEERING INC. 4300 LEGENDARY DRIVE SUITE C246 DESTIN, FL 32541 CERTIFICATE OF AUTHORIZATION # 4815	FIGURE 10 SECTIONS - 'A' DOCK POINTE RESORT OKALOOSA COUNTY, FLORIDA		PROJECT: C2017-004-01 DRAWN BY: CAS/NP SHEET: 10 of 20 DATE: NOV 2018	SEAL MATTHEW TRAMMELL P.E. # 69244
	PRELIMINARY DRAWINGS: THESE DRAWINGS ARE NOT IN FINAL FORM, BUT ARE BEING TRANSMITTED FOR AGENCY REVIEW.			
	DATE			
	PROJECT			



C 'A' DOCK - SECTION C
 FIG 7 SCALE: 1" = 20'



N SIDE SLOPE DREDGE SECTION - NORTH
 FIG 6 SCALE: 1" = 20'



S SIDE SLOPE DREDGE SECTION - SOUTH
 FIG 8 SCALE: 1" = 20'

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 CERTIFICATE OF AUTHORIZATION # 4815

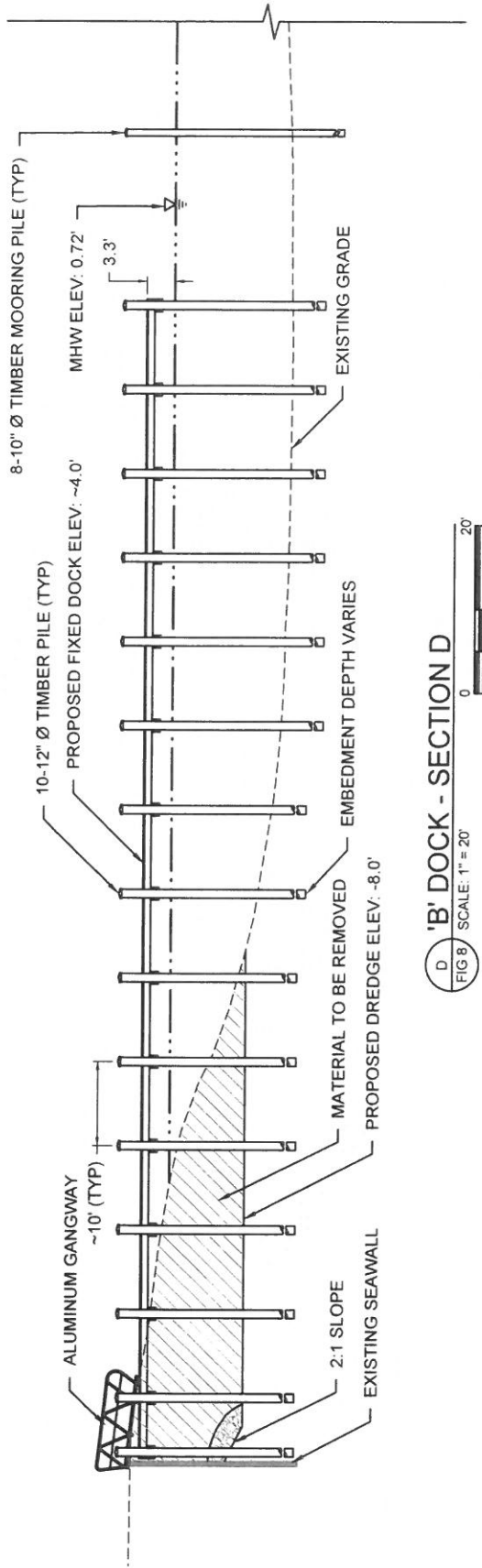
FIGURE 11
 SECTIONS - 'A' DOCK
 POINTE RESORT
 OKALOOSA COUNTY, FLORIDA

PROJECT	C2017-004-01
DRAWN BY	CAS/NP
SHEET	11 of 20
DATE	NOV 2018

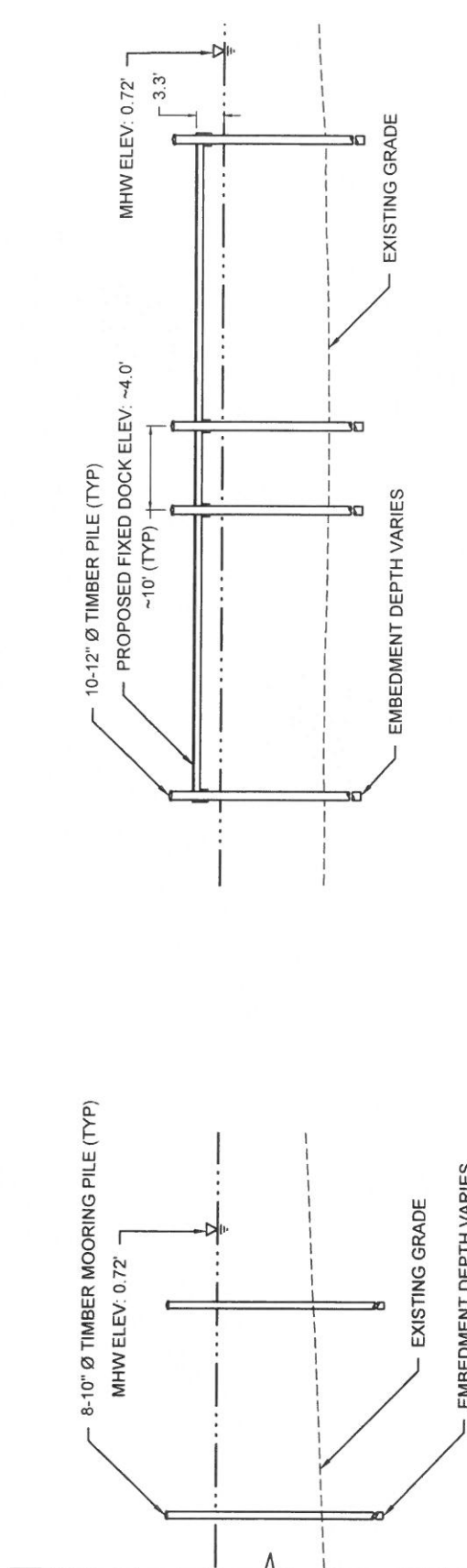
PRELIMINARY DRAWINGS: THESE DRAWINGS ARE NOT IN FINAL FORM, BUT ARE BEING TRANSMITTED FOR AGENCY REVIEW.

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DATE



D
FIG 8
SCALE: 1" = 20'



D
FIG 8
SCALE: 1" = 20'

E
FIG 8
SCALE: 1" = 20'

TAYLOR ENGINEERING INC.

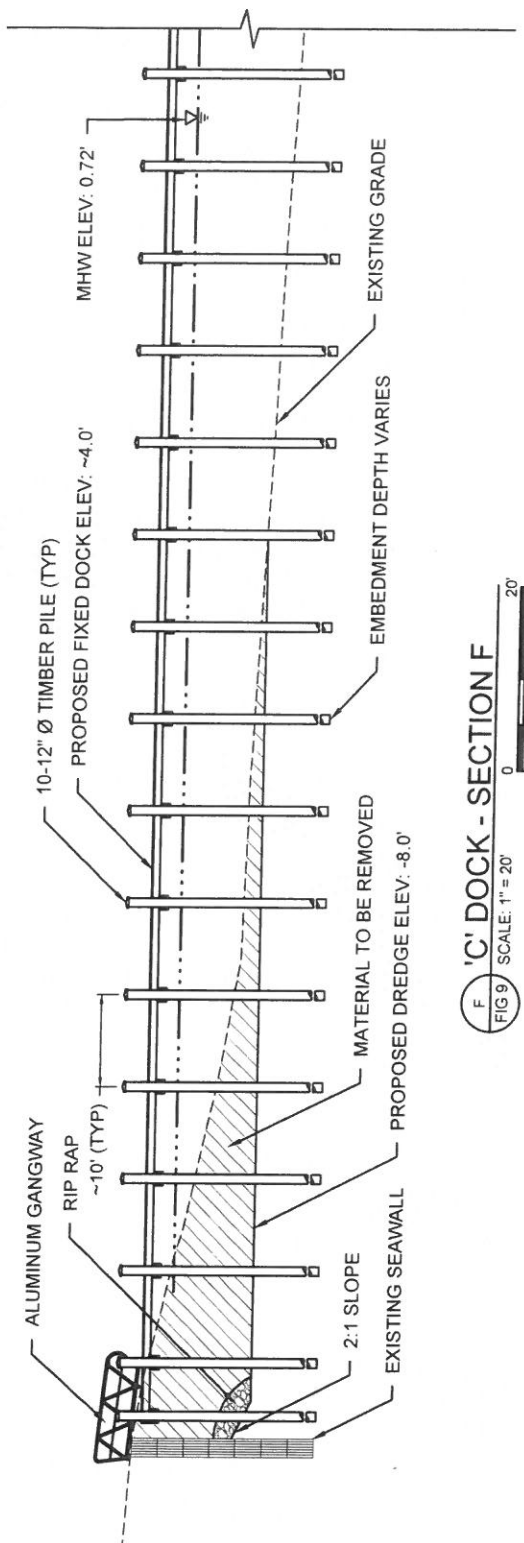
4300 LEGENDARY DRIVE
SUITE C246
DESTIN, FL 32541
CERTIFICATE OF AUTHORIZATION # 4815

FIGURE 12
SECTIONS - 'B' DOCK
POINTE RESORT
OKALOOSA COUNTY, FLORIDA

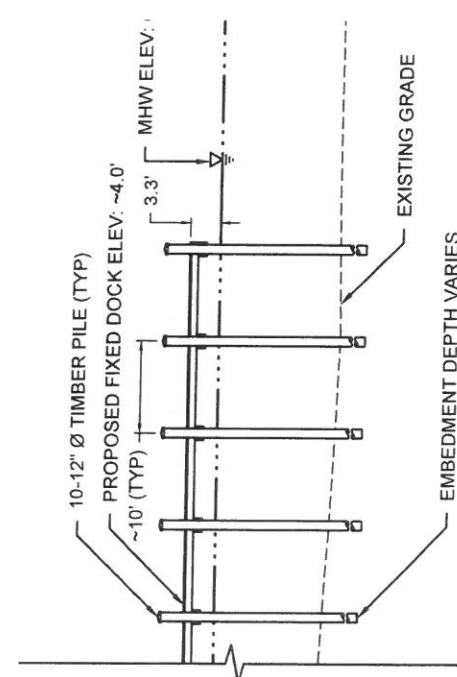
PROJECT	C2017-004-01
DRAWN BY	CAS/NP
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DATE	NOV 2018

MATTHEW TRAMMELL P.E. # 69244

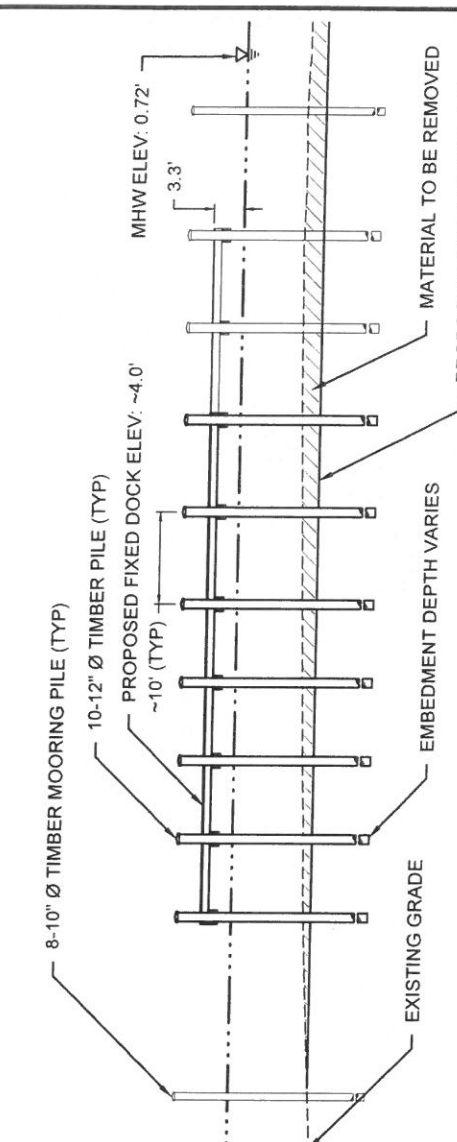
PRELIMINARY DRAWINGS; THESE DRAWINGS ARE NOT IN FINAL FORM, BUT ARE BEING TRANSMITTED FOR AGENCY REVIEW.



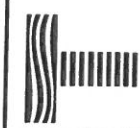
F 'C' DOCK - SECTION F
 FIG 9 SCALE: 1" = 20'



F 'C' DOCK - SECTION F (CONTINUED)
 FIG 9 SCALE: 1" = 20'



G 'C' DOCK - SECTION G
 FIG 9 SCALE: 1" = 20'



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 4300 LEGENDARY DRIVE
 SUITE C246
 DESTIN, FL 32541
 CERTIFICATE OF AUTHORIZATION # 4815

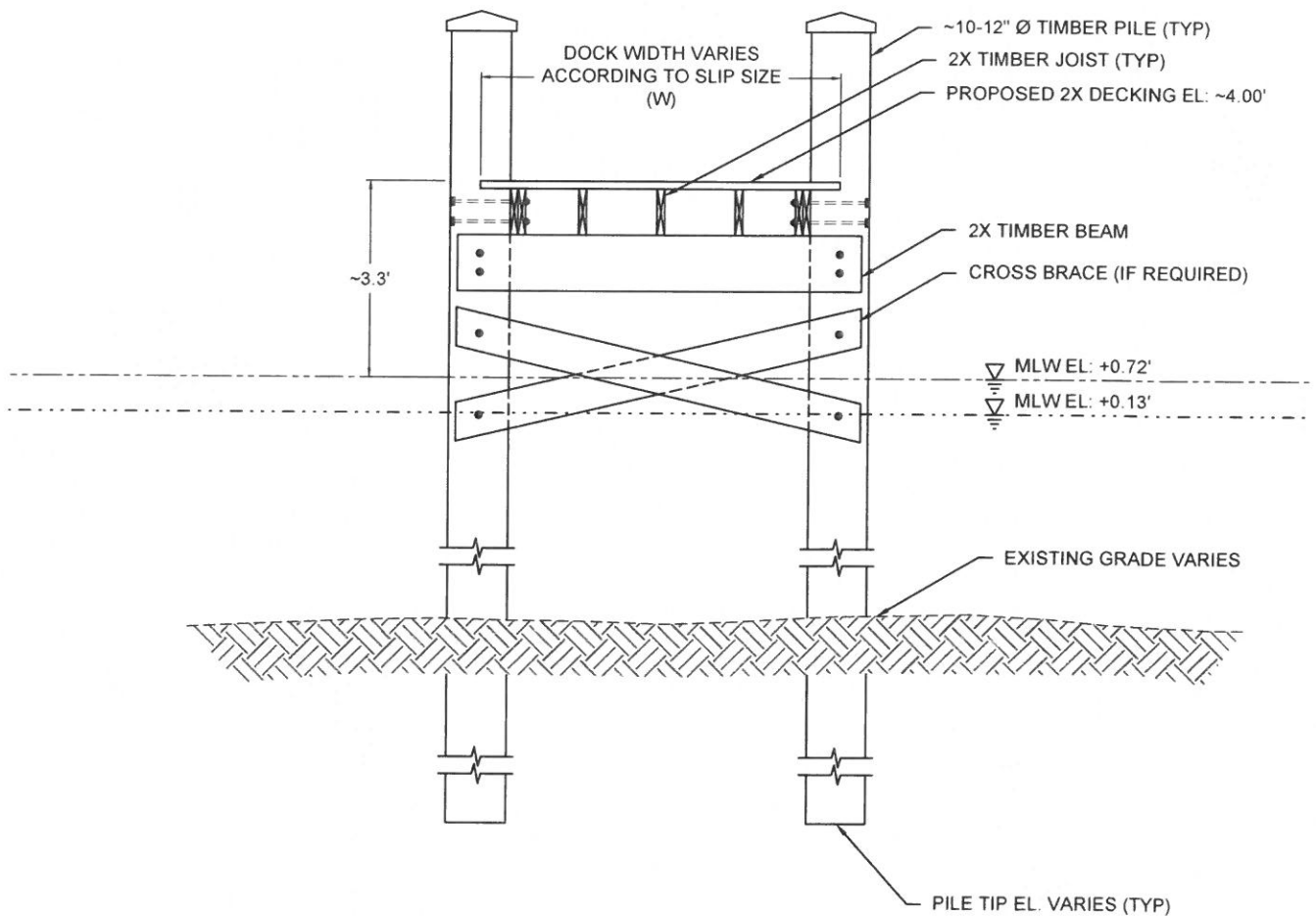
FIGURE 13
 SECTIONS - 'C' DOCK
 POINTE RESORT
 OKALOOSA COUNTY, FLORIDA

PROJECT	C2017-004-01
DRAWN BY	CAS/NP
SHEET	13 of 20
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PRELIMINARY DRAWINGS. THESE DRAWINGS ARE NOT IN FINAL FORM, BUT ARE BEING TRANSMITTED FOR AGENCY REVIEW.

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SLIP SIZE AND WIDTH (W)	
SLIP SIZE	W
30' - 50'	3' - 6'
66'	4'
MAIN ACCESS DOCK	10'



D1 TYPICAL FIXED FINGER PIER TIMBER DOCK
NOT TO SCALE



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4300 LEGENDARY DRIVE
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FIGURE 14
TYPICAL FIXED TIMBER DOCK
POINTE RESORT
OKALOOSA COUNTY, FLORIDA

PROJECT: C2017-004-01 DRAWN BY: CAS/NP SHEET: 14 of 20 DATE: NOV 2018

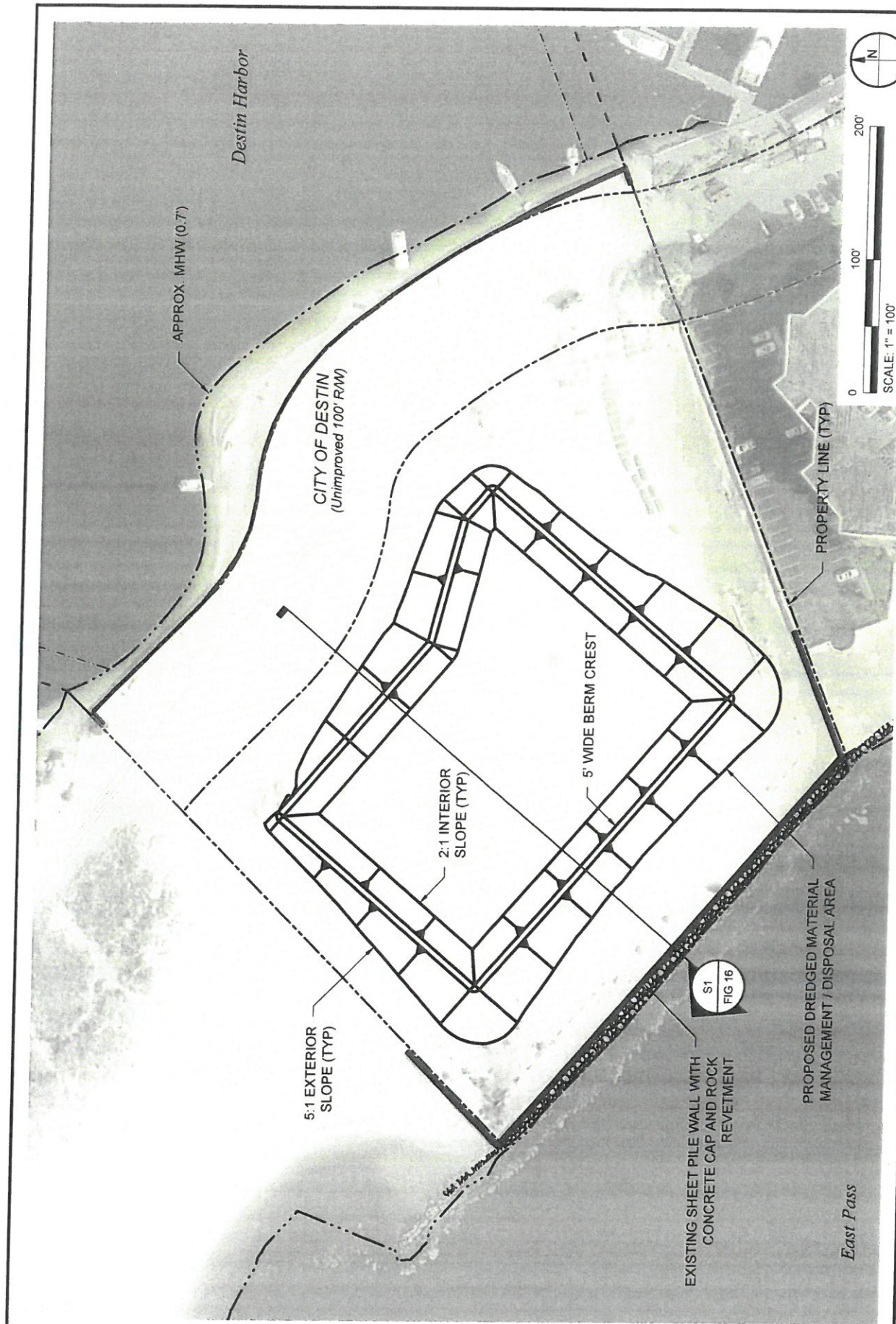
SEAL

MATTHEW TRAMMELL P.E. # 89244

DATE

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CATHY SHELL X:\EVS\PROJECTS\C2017-004-01 POINTE RESORT MARINA\PERMIT\C2017-004 P-DOCK DETAILS.DWG 11/15/2018 11:01:55 AM



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4300 LEGENDARY DRIVE
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FIGURE 15
DREDGED MATERIAL MANAGEMENT / DISPOSAL AREA SITE PLAN
POINTE RESORT
OKALOOSA COUNTY, FLORIDA

PROJECT	C2017-004-01
DRAWN BY	CAS/NP
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DATE	NOV 2018

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DATE

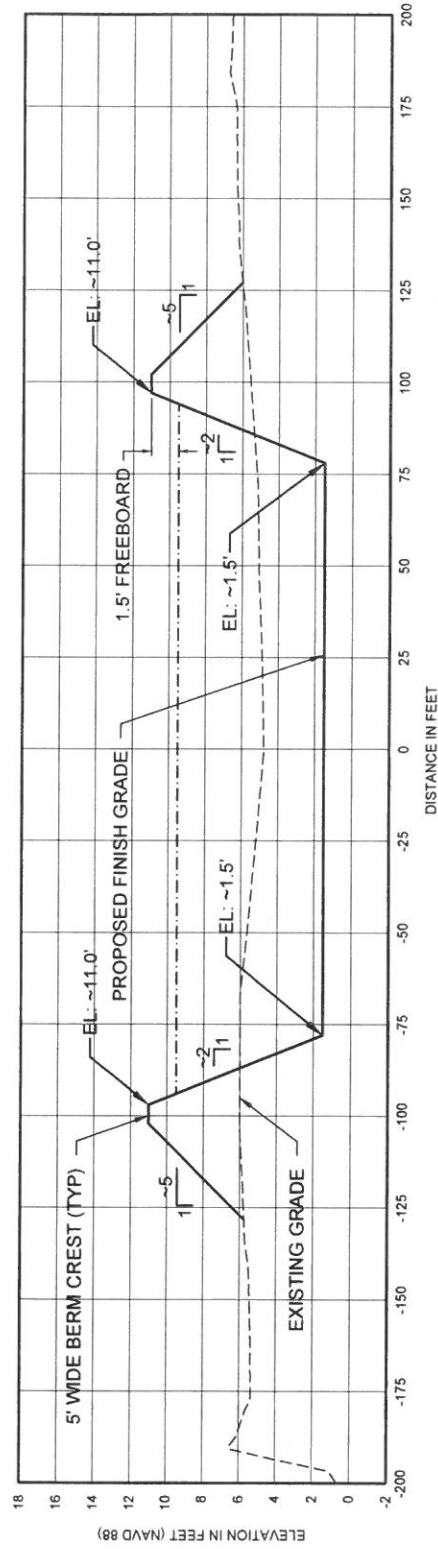


FIG 15 DREDGED MATERIAL MANAGEMENT / DISPOSAL AREA TYPICAL SECTION
 SCALE: 1" = 50'
 V-Scale: 1" = 10'

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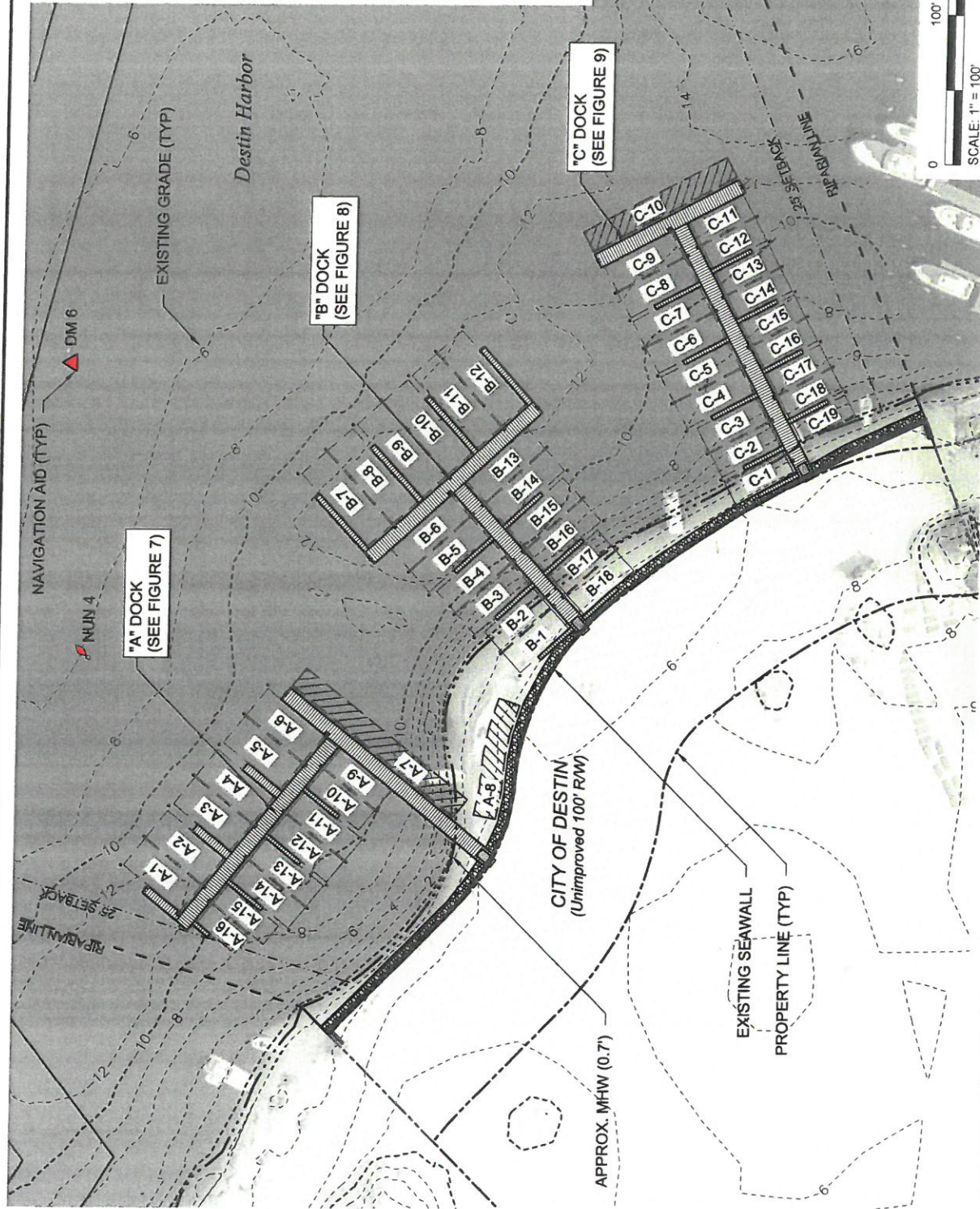
FIGURE 16
 DREDGED MATERIAL MANAGEMENT DISPOSAL AREA TYPICAL SECTION
 POINTE RESORT
 OKALOOSA COUNTY, FLORIDA

PROJECT	C2017-004-01	SEAL
DRAWN BY	CAS/NP	
SHEET	16 of 20	
DATE	NOV 2018	

MATTHEW TRAMMELL P.E. #09244

PRELIMINARY DRAWINGS: THESE DRAWINGS ARE NOT IN FINAL FORM, BUT ARE BEING TRANSMITTED FOR AGENCY REVIEW.

SLIP SCHEDULE		
SLIP ID	SLIP SIZE (L x W)	QTY
A-1 thru A-6	50' x 23'	6
A-7	140' x 15'	1
A-8	80' x 15'	1
A-9 thru A-10	44' x 17'	2
A-11 thru A-14	50' x 18'	4
A-15	44' x 16'	1
A-16	30' x 16'	1
B-1 thru B-2	44' x 18'	2
B-3 thru B-4	50' x 19'	2
B-5 thru B-6	54' x 19'	2
B-7 thru B-12	66' x 22'	6
B-13 thru B-14	54' x 19'	2
B-15 thru B-16	50' x 19'	2
B-17 thru B-18	44' x 18'	2
C-1 thru C-3	44' x 18'	3
C-4 thru C-9	50' x 19'	6
C-10	108' x 15'	1
C-11 thru C-16	40' x 17'	6
C-17 thru C-18	44' x 18'	2
C-19	40' x 15'	1



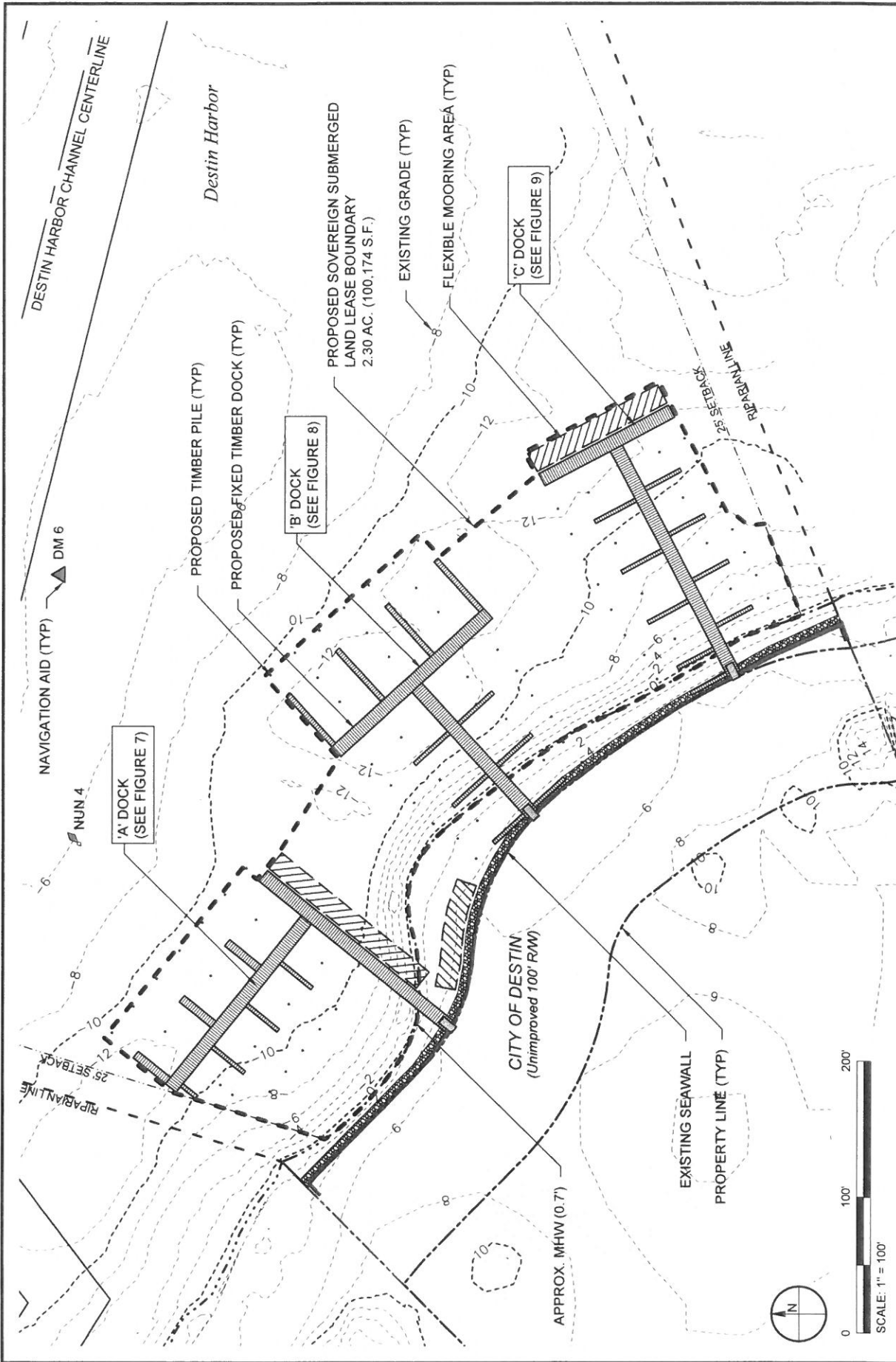
PROJECT	C2017-004-01
DRAWN BY	CAS/NP
SHEET	17 of 20
DATE	NOV 2018

FIGURE 17
PROPOSED MARINA SLIP PLAN
POINTE RESORT
OKALOOSA COUNTY, FLORIDA

TAYLOR ENGINEERING INC.
4300 LEGENDARY DRIVE
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CERTIFICATE OF AUTHORIZATION # 4815

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MATTHEW TRAMMELL, P.E. # 90244
DATE



TAYLOR ENGINEERING INC.

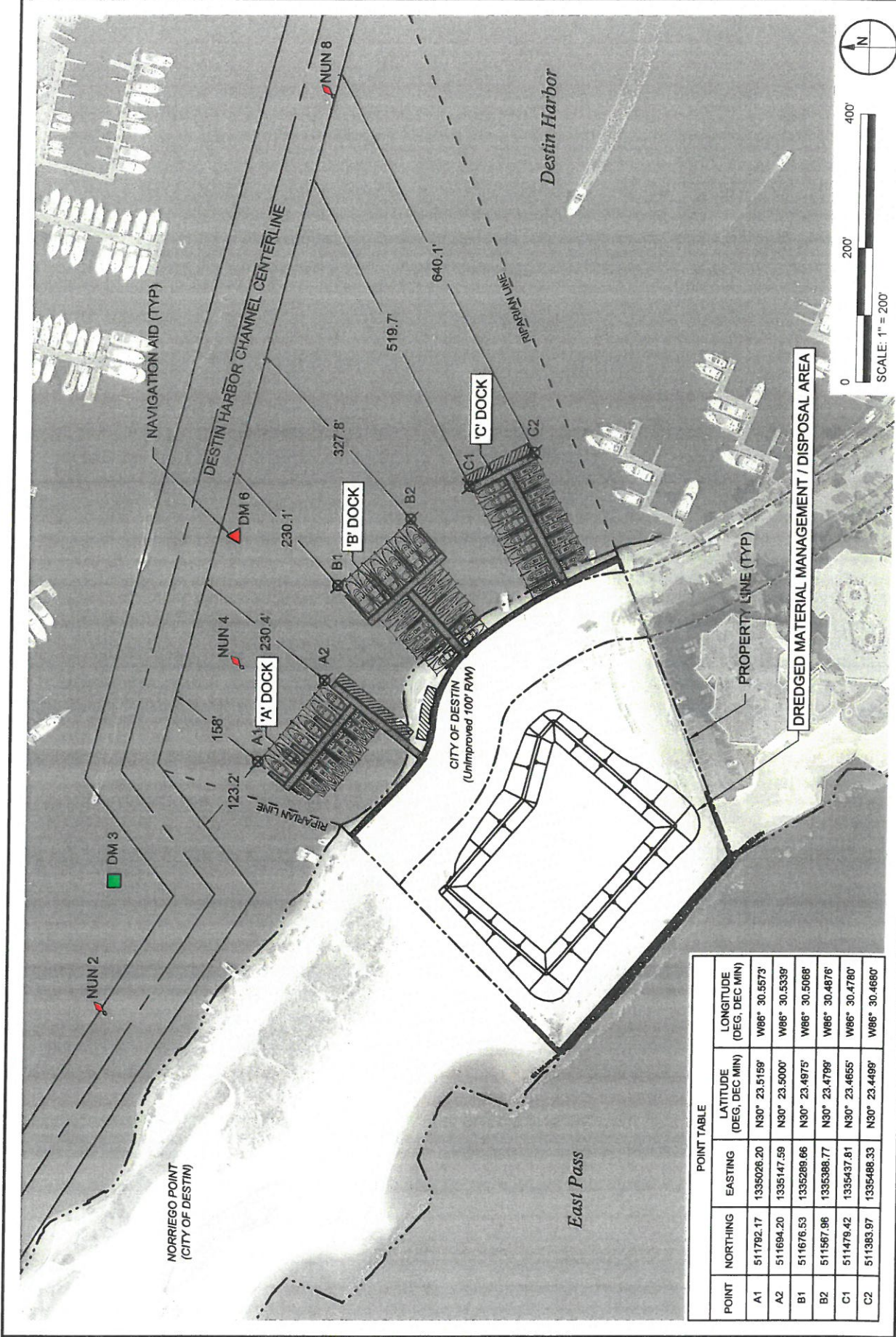
4300 LEGENDARY DRIVE
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CERTIFICATE OF AUTHORIZATION # 4815

FIGURE 18
PROPOSED SOVEREIGN SUBMERGED LAND LEASE BOUNDARY
POINTE RESORT
OKALOOSA COUNTY, FLORIDA

PROJECT	C2017-004-01
DRAWN BY	CAS/NP
SHEET	18 of 20
DATE	NOV 2018

SEAL
MATTHEW TRAMMELL P.E. # 69244
DATE

PRELIMINARY DRAWINGS: THESE DRAWINGS ARE NOT IN FINAL FORM, BUT ARE BEING TRANSMITTED FOR AGENCY REVIEW.



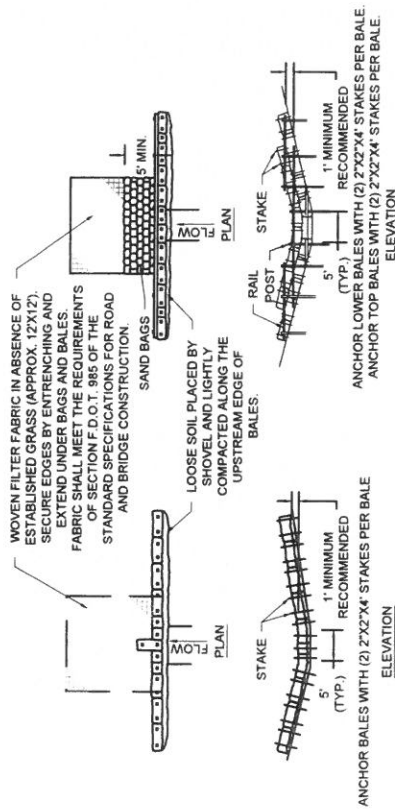
POINT TABLE

POINT	NORTHING	EASTING	LATITUDE (DEG, DEC MIN)	LONGITUDE (DEG, DEC MIN)
A1	511792.17	1335026.20	N30° 23.5'58"	W86° 30.5573'
A2	511694.20	1335147.59	N30° 23.5000'	W86° 30.5338'
B1	511676.53	1335289.66	N30° 23.4975'	W86° 30.5068'
B2	511567.96	1335388.77	N30° 23.4789'	W86° 30.4876'
C1	511479.42	1335437.81	N30° 23.4655'	W86° 30.4780'
C2	511383.97	1335488.33	N30° 23.4499'	W86° 30.4680'

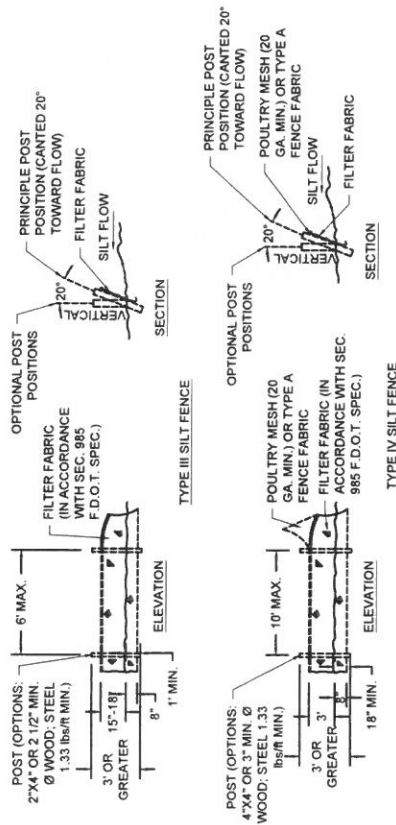
TAYLOR ENGINEERING INC.
 4300 LEGENDARY DRIVE
 SUITE C246
 DESTIN, FL 32541
 CERTIFICATE OF AUTHORIZATION # 4815

FIGURE 19
 FEDERAL NAVIGATION CHANNEL OFFSETS
 POINTE RESORT
 OKALOOSA COUNTY, FLORIDA

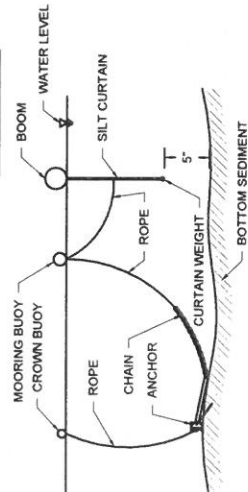
PROJECT: C2017-004-01
 DRAWN BY: CAS/NP
 SHEET: 19 of 20
 DATE: NOV 2018



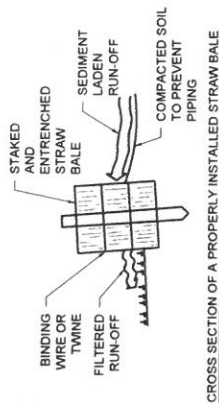
TYPICAL STRAW BALE DETAIL



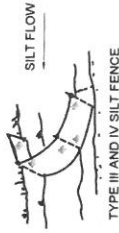
TYPE IV SILT FENCE



TURBIDITY CURTAIN DETAIL



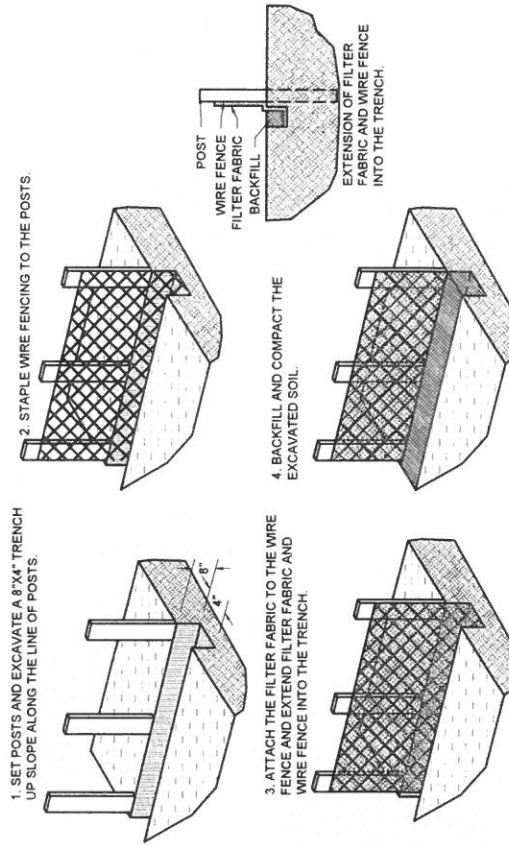
CROSS SECTION OF A PROPERLY INSTALLED STRAW BALE



TYPE III AND IV SILT FENCE

DITCH INSTALLATION AND SPACING FOR TYPE III &
TYPE IV FENCE TO BE IN ACCORDANCE WITH
SHEET 1 OF 3, OF THE F.D.O.T. INDEX NO. 102

DO NOT DEPLOY IN A MANNER THAT SILT FENCES WILL ACT AS A DAM ACROSS PERMANENT FLOWING WATERCOURSES. SILT FENCES ARE TO BE USED AT UPLAND LOCATIONS AND TURBIDITY BARRIERS USED AT PERMANENT BODIES OF WATER.



SILT FENCE INSTALLATION DETAILS

FIGURE 20

EROSION AND TURBIDITY CONTROL DETAILS
POINTE RESORT
OKALOOSA COUNTY, FLORIDA

PROJECT	C2017-004-01	SEAL
DRAWN BY	CAS/NP	
SHEET	20 of 20	
DATE	NOV 2018	MA

MATTHEW TRAMMELL P.E.# 69244

ATTACHMENT B

ADJACENT OWNER MAILING INFORMATION

[Zoom County](#)
[Zoom to Box](#)
[Zoom In](#)
[Zoom Out](#)
[Pan by Hand](#)
[Get Info](#)
[Zoom To Parcel](#)
[Center On Parcel](#)
[Measure](#)
[Area Tool](#)
[Print Page](#)
[Search Sales](#)
[Additional Options](#)



Reports

Parcel

View as: [Google Earth](#) | [Bird's Eye](#) | [Google Maps & Street View](#)

PARCEL INFORMATION TABLE

Selected Parcel	00-25-24-0000-0023-0000 (Click for Complete Card)
DOR Property Usage	MUNICIPAL (008900)
Calculated Acreage (GIS)	9.28
Calculated GIS acreage is computer generated. It is for informational purposes only and does not replace deed or survey information.	
Property Use	MUNICIPAL
Land Use	008900

OWNERSHIP INFORMATION

Name	CITY OF DESTIN
Mailing Address	4200 INDIAN BAYOU DR DESTIN, FL 325410000
Situs/Physical Address	GULF SHORE DR

VALUES:

Land Value	6,935,118
Aq Land Value	0
Building Value	0
Misc Value	0
Just Value	6,935,118
Assessed Value	6,935,118
Exempt Value	6,935,118
Taxable Value	0

LAST 2 SALES

Date	Price	Vacant?	Qual
2010-07	100	V	U
1961-09	0	V	Q

Parcel List

Legend

Measure

Okaloosa County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.

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[Additional Options](#)



Reports

Parcel

View as: [Google Earth](#) | [Bird's Eye](#) | [Google Maps & Street View](#)

PARCEL INFORMATION TABLE

Selected Parcel	00-25-24-0708-0000-4080 (Click for Complete Card)
DOR Property Usage	CONDOMINIA (000400)
Calculated Acreage (GIS)	2.15
Calculated GIS acreage is computer generated. It is for informational purposes only and does not replace deed or survey information.	
Property Use	CONDOMINIA
Land Use	

OWNERSHIP INFORMATION

Name	CLARK ANDREW R & JORDAN B
Mailing Address	100 GULF SHORE DR #408 DESTIN, FL 32541
Situs/Physical Address	100 GULF SHORE DR 408 DESTIN

VALUES:

Land Value	0
Ag Land Value	0
Building Value	431,500
Misc Value	0
Just Value	431,500
Assessed Value	431,500
Exempt Value	0
Taxable Value	431,500

LAST 2 SALES

Date	Price	Vacant?	Qual
2018-08	650,000	I	Q
2014-01	500,000	I	Q

Parcel List

Legend

Measure

Okaloosa County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.

ATTACHMENT C
REGULATORY AUTHORIZATIONS



FLORIDA DEPARTMENT OF Environmental Protection

Northwest District
160 W. Government Street, Suite 308
Pensacola, Florida 32502

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

Permittees/Authorized Entities:

Pointe Mezzanine, LLC and
Pointe Resort, LLC
c/o Robert Guidry
1901 Manhattan Blvd.
Building H, Suite 101
Harvey, Louisiana 70058
Mark.embree@arlaw.com

Pointe Resort Docking Facility

Authorized Agent:

Matthew Trammell
Taylor Engineering Inc.
4300 Legendary Drive, Suite C246
Destin, Florida 32541
mtrammell@taylorengeering.com

Environmental Resource Permit

**State-owned Submerged Lands Authorization – Granted Pending Document
Execution**

**U.S. Army Corps of Engineers Authorization – Separate Corps Authorization
Required**

Okaloosa County
Permit No.: 0251677-007-EI/46
Lease File No.: 460338621

Permit Issuance Date: January 03, 2019
Permit Construction Phase Expiration Date: January 03, 2024

Consolidated Environmental Resource Permit and Sovereignty Submerged Lands Authorization

Permittees: Pointe Mezzanine, LLC and Pointe Resort, LLC

Grantee: Pointe Mezzanine, LLC

Permit No: 0251677-007-EI/46

PROJECT LOCATION

The activities authorized by this permit and sovereignty submerged lands authorization are located at the west end of Gulf Shore Drive, Destin, Florida 32541, Parcel IDs 00-2S-24-0000-0034-0000 and 00-2S-24-0000-0034-0020, in Section 00, Township 02 South, Range 22 West in Okaloosa County, at 30°23'28.20" North Latitude, 86°30'31.80" West Longitude.

PROJECT DESCRIPTION

The permittee is authorized to construct a 53-slip private residential multi-family docking facility and to dredge approximately 8,855 cubic yards of materials. In addition, the permittee is authorized to install a fixed sewage pumpout system connected to an upland collection system and place approximately 600 linear feet of riprap along an existing bulkhead which is the boundary between uplands and the dredge limits. The docking facility will consist of 50 permanent slips and 3 flexible mooring areas for a total of 53 slips. This facility will be used in conjunction with an upland 79-unit condominium. The proposed dredging will consist of 2,898 cubic yards of sovereignty submerged lands and 5,957 cubic yards of privately owned uplands for a total of 8,855 cubic yards of dredged materials. The proposed dredge depth is -8 feet NAVD88. The project is located within Destin Harbor, a Class III Florida Waterbody, Prohibited Shellfish Harvesting Area. Those activities include the preemption of 100,174 square feet of state-owned sovereignty submerged lands. Authorized activities are depicted on the attached exhibits.

The permittee's net positive public benefit required by rule 18-21.004(4)(b)2.e., F.A.C., shall be a cash contribution to the Trust for Public Land in the amount of \$500,000 for the Leonard Destin Park project. The permittee shall provide proof to the Department's Northwest District Office that the \$500,000 has been paid to the Trust for Public Land prior to the permittee's receipt of a fully executed lease.

AUTHORIZATIONS

Pointe Resort Docking Facility

Environmental Resource Permit

The Department has determined that the activity qualifies for an Environmental Resource Permit. Therefore, the Environmental Resource Permit is hereby granted, pursuant to Part IV of Chapter 373, Florida Statutes (F.S.), and Chapter 62-330, Florida Administrative Code (F.A.C.).

Sovereignty Submerged Lands Authorization

The activity is located on sovereignty submerged lands owned by the State of Florida. It therefore also requires authorization from the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Article X, Section 11 of the Florida Constitution, and Section 253.77, F.S. On December 4th, 2018, the Board of Trustees granted authority for the Department, acting as staff to the Board in accordance with Sections 253.002, F.S., to proceed with issuance of a lease for the use for the activity described.

Permittees: Pointe Mezzanine, LLC and Pointe Resort, LLC

Permit No.: 0251677-007-EI/46

Page 2 of 16

The final documents required to execute the lease will be sent to the permittee/lessee by the Department's Division of State Lands for execution. The Department intends to issue the lease, upon satisfactory execution of those documents, including payment of required fees and compliance with the conditions in the previously issued Recommended Consolidated Intent to Issue lease. **You may not begin construction of the activities described until you receive a copy of the executed lease from the Department.**

Federal Authorization

Your proposed activity as outlined on your application and attached drawings **does not qualify** for federal authorization pursuant to the State Programmatic General Permit and a **SEPARATE permit** or authorization **shall be required** from the U.S. Army Corps of Engineers (Corps). You must apply separately to the Corps using the federal application form (ENG 4345). More information about Corps permitting may be found online in the Jacksonville District Regulatory Division Sourcebook. **Failure to obtain Corps authorization prior to construction could subject you to federal enforcement action by that agency.**

Authority for review – an agreement with the Corps entitled “Coordination Agreement Between the U.S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection, or Duly Authorized Designee, State Programmatic General Permit,” Section 10 of the Rivers and Harbor Act of 1899, and Section 404 of the Clean Water Act.

Coastal Zone Management

Issuance of this authorization also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act.

Water Quality Certification

This permit also constitutes a water quality certification under Section 401 of the Clean Water Act, 33 U.S.C. 1341.

Other Authorizations

You are advised that authorizations or permits for this activity may be required by other federal, state, regional, or local entities including but not limited to local governments or municipalities. This permit does not relieve you from the requirements to obtain all other required permits or authorizations.

The activity described may be conducted only in accordance with the terms, conditions and attachments contained in this document. Issuance and granting of the permit and authorizations herein do not infer, nor guarantee, nor imply that future permits, authorizations, or modifications will be granted by the Department.

PERMIT CONDITIONS

The activities described must be conducted in accordance with:

- **The Specific Conditions**
- **The General Conditions**
- **The limits, conditions and locations of work shown in the attached drawings**
- **The term limits of this authorization**

You are advised to read and understand these conditions and drawings prior to beginning the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings herein. If you are using a contractor, the contractor also should read and understand these conditions and drawings prior to beginning any activity. Failure to comply with these conditions, including any mitigation requirements, shall be grounds for the Department to revoke the permit and authorization and to take appropriate enforcement action. Operation of the facility is not authorized except when determined to be in conformance with all applicable rules and this permit and sovereignty submerged lands authorization, as described.

SPECIFIC CONDITIONS – ADMINISTRATIVE/EMERGENCIES

1. The construction phase expires at 11:59 p.m. on the date indicated on the cover page of this permit.
2. For emergencies involving a serious threat to the public health, safety, welfare, or environment, the emergency telephone contact number is (800) 320-0519 (State Warning Point). The Department telephone number for reporting nonthreatening problems or system malfunctions is (850) 595-0663, day or night.
3. The mailing address for submittal of forms for the “Construction Commencement Notice”, “As-Built Certification ...”, “Request for Conversion of Stormwater Management Permit Construction Phase to Operation and Maintenance Phase”, or other correspondence is FDEP, SLERP, Northwest District Office, 160 W Government Street, Pensacola, Florida 32502-5794.

SPECIFIC CONDITIONS – PRIOR TO ANY CONSTRUCTION

4. Prior to the initiation of any work authorized by this permit, floating turbidity screens with weighted skirts that extend to within 1 ft. of the bottom shall be placed around the active construction areas of the site. The screens shall be maintained and shall remain in place for the duration of the project construction to ensure that turbidity levels outside the construction area do not exceed 29 NTU’s above background levels. The permittee shall be responsible for ensuring that turbidity control devices are inspected daily and maintained in good working order so that there are no violations of state water quality standards outside of the turbidity screens.
5. The permittee’s net positive public benefit project [pursuant to rule 18-21.004(4)(b)2.e., F.A.C.] is a contribution of \$500,000 to the Trust for Public Land for exclusive application towards water-access amenities at the Leonard Destin Park. Prior to receipt of a fully executed lease, the permittee shall submit proof to the Department’s Northwest District Office that the \$500,000 has been paid to the Trust for Public Land.

SPECIFIC CONDITIONS – CONSTRUCTION ACTIVITIES

6. If the approved permit drawings and/or narrative conflict with the specific conditions, then the specific conditions shall prevail.
7. This permit does not authorize the construction of any additional structures not illustrated on the permit drawings. Examples of additional structures include but are not limited to impervious surfaces, walkways, awnings, enclosed sides and covers over slip areas, finger piers, step-down stairs, storage closets and decking.
8. Best management practices for erosion control shall be implemented and maintained at all times during construction to prevent siltation and turbid discharges in excess of State water quality standards pursuant to Rule 62-302, F.A.C. Methods shall include, but are not limited to the use of staked hay bales, staked filter cloth, sodding, seeding, and mulching; staged construction; and the installation of turbidity screens around the immediate project site.
9. The permittee shall be responsible for ensuring erosion control devices/procedures are inspected and maintained daily during all phases of construction authorized by this permit until areas disturbed during construction are sufficiently stabilized to prevent erosion, siltation, and turbid discharges.
10. The following measures shall be taken by the permittee whenever turbidity levels within waters of the State surrounding the project site exceed 29 NTU's above background:
 - a. Immediately cease all work contributing to the water quality violation.
 - b. Modify the work procedures that were responsible for the violation, and install more turbidity containment devices and repair any non-functioning turbidity containment devices.
 - c. Notify the Department of Environmental Protection, Submerged Lands & Environmental Resources Program, Compliance and Enforcement Section, Northwest District Office, 160 W Government Street, Pensacola, Florida 32502-5794, in writing or by telephone at (850)595-8300 within 24 hours of the time the violation is first detected.
11. Unauthorized impacts to wetlands or the littoral zone as a result of the pier or dock construction shall be reported immediately to the Department.
12. There shall be no stock piling of tools, materials, (i.e., lumber, pilings, riprap, and debris) within wetlands, along the shoreline within the littoral zone, or elsewhere within waters/waters of the state.
13. All cleared vegetation, excess lumber, scrap wood, trash, garbage and any other type of debris shall be removed from wetlands/waters of the state within 14 days of completion of the work authorized in this permit.
14. Construction equipment shall not be repaired or refueled in wetlands or elsewhere within waters of the state.
15. All watercraft associated with the construction of the permitted structure shall only operate within waters of sufficient depth so as to preclude bottom scouring and prop dredging.
16. Riprap shall be placed along the toe of the entire bulkhead, approximately 600 linear feet. The slope of the riprap shall be no steeper than 2:1, Horizontal/Vertical.

17. "Riprap" shall consist of unconsolidated boulders, rocks, or clean concrete rubble with no exposed reinforcing rods or similar protrusions. The riprap shall be free of sediment, debris and toxins or otherwise deleterious substances. Riprap shall have a diameter of at least 12 inches to 3 feet.

18. Handrails shall be installed along western waterward faces of the western-most finger piers on "A-dock" and "B-dock" concurrently with dock construction. Handrails shall be constructed to eliminate access by boaters and shall be maintained for the life of the facility. "No Mooring" signs shall be posted on the waterward faces of these structures. The "No Mooring" signs must be installed prior to occupancy.

19. The waterward corners of the dock shall be marked by a sufficient number of reflectors so as to be visible from the water at night by reflected light. The reflectors shall not be green or red in color.

SPECIFIC CONDITIONS – SEWAGE PUMPOUT FACILITIES

20. Employees and users of the docking facility shall be trained in the proper use and maintenance of the sewage pump-out system.

21. The sewage pump-out and the upland sewage collection system shall be connected to a department permitted wastewater treatment plant. Please note: direct sewage pump-out hook-up to a wastewater treatment plant may require a permit from the Department's Water Facilities Section.

SPECIFIC CONDITIONS – DREDGING & SPOIL CELL CONDITIONS

22. No dredging or filling of submerged grassbeds or live bottom communities is authorized by this permit.

23. No portion of any dredge related equipment, shall be stored, anchored on, or laid on or over seagrass beds without prior Department approval. Anchoring done to secure the dredge or equipment shall be done within the navigation channel or in areas where seagrass beds are not present during dredging and related activities.

24. Areas to be dredged shall be dredged in accordance with the attached permit drawings and shall not exceed the areas and depths indicated on those drawings. The dredged material shall be placed in the self-contained, upland disposal site, as depicted on Sheet 15 of 21. The dewatering/disposal area shall be constructed in a manner which shall prevent the escape of dredged material and associated effluent into wetlands and surface waters. Discharge of water or dredged material to waters of the State shall not be allowed during disposal or transport.

25. The dredge area shall be excavated mechanically or hydraulically. All spoil material shall be properly contained during operation within the project area as well as during transportation to the upland spoil site in a manner that prevents return of the spoil material to wetlands and other surface waters.

26. If at any time spoil disposal cell banks are not stable (i.e., develop a break or leak), corrective actions shall be taken immediately and the Department of Environmental Protection, Submerged Lands & Environmental Resources Program, Compliance Assurance Program, Northwest District Office, 160 W Government Street, Pensacola, Florida 32502-5794, shall be notified. The

Department telephone number for reporting problems, malfunctions or exceedances under this permit is (850)595-8300 during normal working hours.

SPECIFIC CONDITIONS – MARINE TURTLES AND MANATEES

27. All on-site project personnel are responsible for observing water-related activities for the presence of marine turtles and manatee(s). All in-water operations, including vessels, must be shut down if a sea turtle or manatee comes within 50 feet of the operation. Activities will not resume until the animal(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the animal(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.

28. Any **collision** with or injury to a marine turtle or manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922, and to FWC at ImperiledSpecies@myFWC.com. Any collision with and/or injury to a sea turtle should also be reported immediately to the Sea Turtle Stranding and Salvage Network (STSSN) at SeaTurtleStranding@myfwc.com

SPECIFIC CONDITIONS – SHOREBIRDS

29. Shorebird Nesting Surveys. The term “shorebird” refers to all solitary nesting shorebirds and colonial nesting seabirds. If any project related activities involving movement of equipment or operation of vehicles on the beach are conducted at any time during shorebird breeding season, surveys shall be conducted, and buffers established for the protection of shorebirds, their nests, eggs and chicks. Shorebird breeding season dates for this project area is **February 15 through September 1** (note that while most species have completed the breeding cycle by September 1, flightless young may be present through September and must be protected if present).

30. Pre-Construction Meeting. The Permittee is responsible for arranging a meeting with the U.S. Fish and Wildlife Service (USFWS), the Florida Fish and Wildlife Conservation Commission (FWC), and the Bird Monitor(s) before any work begins. The Permittee shall notify the USFWS, the FWC Regional Species Conservation Biologist (contact information available at: <http://www.myfwc.com/shorebirds>), and the Bird Monitor(s) at least 10 business days before the date of that meeting. The purpose of this meeting is to ensure that the Permittee and Bird Monitor(s) fully understand and agree with the protection measures and any additional site-specific measures that need to be taken before, during, and after construction.

31. Bird Monitor Qualifications. Nesting shorebird surveys should be conducted by trained, dedicated individuals (Bird Monitor) with proven shorebird identification skills and avian survey experience. Bird Monitors shall meet the minimum qualifications outlined at <http://myfwc.com/shorebirds>

32. Bird Survey Protocols. Prior to any construction or shorebird surveys, a list of Bird Monitors with their contact information, summary of qualifications including bird identification skills, and avian survey experience shall be provided to the FWC (see <http://myfwc.com/shorebirds> for FWC Regional Biologist Contacts) and copied to DEP for review and consultation. Bird Monitors shall use the following survey protocols:

- a) Bird Monitors shall review and become familiar with the general information, employ the data collection protocol, and implement data entry procedures outlined on the FWC's FSD website (<http://www.flshorebirddatabase.org>). An outline of data to be collected, including downloadable field data sheets, is available on the website.
- b) Breeding season surveys shall be conducted in all potential beach-nesting bird habitats within the project boundaries that may be impacted by construction or pre-construction activities. One or more shorebird survey routes shall be established in the FSD website to cover these areas. [Note that breeding season varies by species. Most species have completed the breeding cycle by September 1, but flightless young may be present through September. Please see (<http://www.myfwc.com/shorebirds>) for breeding season dates.] Portions of the project area that will have no project-related activities (including any vehicle or equipment movement) during the nesting season may be excluded from the survey requirements.
- c) During the pre-construction and construction phases of the project, surveys for detecting breeding activity and the presence of flightless chicks shall be completed on a daily basis prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt breeding behavior or cause harm to the birds or their eggs or young. Once construction is completed and all personnel and equipment have been removed from the beach, surveys shall be conducted at least weekly through the end of the breeding season.
- d) Surveys shall be conducted by walking the length of the project area and visually surveying for the presence of shorebirds exhibiting breeding behavior, shorebird chicks or shorebird juveniles, as outlined in the FSD *Breeding Bird Protocol for Shorebirds and Seabirds*. Use of binoculars is required.
- e) Once breeding or nesting behavior is confirmed by the presence of a scrape, eggs or young, the Permittee (or their designee) shall notify the FWC Regional Species Conservation Biologist (see <http://myfwc.com/shorebirds> for FWC Regional Biologist Contacts) within 24 hours. All breeding activity shall be reported to the FSD website within one week of data collection.

33. Beach Driving. All vehicles driven on the beach shall be operated in accordance with the FWC's Best Management Practices for Operating Vehicles on the Beach (<http://myfwc.com/conservation/you- conserve/wildlife/beach-driving/>). Specifically, the vehicle must be operated at a speed less than 10 mph (<6 mph within 100 feet of a posted shorebird nesting area) and run at or below the high-tide line. All personnel associated with the project shall be instructed about the potential presence of nesting shorebirds and sea turtles and the potential of chicks and sea turtle hatchlings to be outside posted areas and the need to avoid Take of (including disturbance to) these protected species.

34. Shorebird Buffer Zones and Travel Corridors. Within the project area, the Permittee shall establish a disturbance-free buffer zone around any location where the Bird Monitor has observed shorebirds engaged in breeding behavior, including territory defense. A 300-foot wide buffer shall be established to prevent disturbance (this distance is based on published studies). All construction activities, movement of vehicles, stockpiling of equipment, and pedestrian traffic are prohibited in the buffer zone. Smaller-site specific buffers may be established if approved in writing by the FWC Regional Species Conservation Biologist (contact information available at: <http://www.myfwc.com/shorebirds>). Separate buffers may be necessary for pedestrians and equipment or vehicular traffic.

- a) The Bird Monitor shall keep breeding sites under sufficient surveillance to determine if birds appear agitated or disturbed by construction or other activities in adjacent areas. If birds do appear to be agitated or disturbed by these activities, then the width of the buffer zone shall be increased immediately to a sufficient size to protect breeding birds.
- b) Reasonable and traditional pedestrian access should not be blocked where breeding birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beachgoers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be tolerated when breeding was initiated within 300 feet of an established beach access pathway. As stated above, these site-specific buffers must be approved in writing by the FWC Regional Species Conservation Biologist.
- c) Designated buffer zones shall be marked (according to FSA Posting Guidelines: <http://flshorebirdalliance.org/resources/instructions-manuals.aspx>) with posts, twine and FWC-approved signs stating "Do Not Enter, Important Nesting Area" or similar language around the perimeter (see Figure 1). Posts shall not exceed 3 feet in height once installed. Symbolic fencing (twine, string or rope) should be placed between all posts at least 2.5 feet above the ground and rendered clearly visible to pedestrians. If pedestrian pathway and/or equipment travel corridor modifications are approved by the FWC Regional Species Conservation Biologist, these shall be clearly marked. The posting shall be maintained in good repair until breeding is completed or terminated. Although solitary nesters may leave the buffer zone with their chicks, the posted area continues to provide a potential refuge for the family until breeding is complete. Breeding is not considered to be completed until all chicks have fledged.
- d) Travel corridors shall be designated and marked outside the buffer areas so as not to cause disturbance to breeding birds. Heavy equipment, other vehicles, or pedestrians may transit past breeding areas in these corridors. However, other activities such as stopping or turning heavy equipment and vehicles shall be prohibited within the designated travel corridors adjacent to the breeding site. When flightless chicks are present within or adjacent to travel corridors, movement of vehicles shall be adequately monitored by the Bird Monitor, who shall advise the contractor whose responsibility it is to ensure no chicks are in the path of the moving vehicle and no tracks capable of trapping flightless chicks result.
- e) It is recommended that the Bird Monitor conduct a shorebird education and identification program with the Permittee and on-site staff to ensure protection of precocial (mobile) chicks.

35. Notification. If the Bird Monitor finds that shorebirds are breeding within the project area, a bulletin board shall be placed and maintained in the construction staging area with the location map of the construction site showing the bird breeding areas and a warning, clearly visible, stating that "NESTING BIRDS ARE PROTECTED BY LAW INCLUDING THE FLORIDA ENDANGERED AND THREATENED SPECIES ACT AND THE STATE and FEDERAL MIGRATORY BIRD ACTS".

36. Equipment Storage and Placement. If it will be necessary to extend construction pipes past a known shorebird nesting site, then those pipes shall be placed landward of the site before birds are active in that area. No pipe or sand shall be placed seaward of a shorebird nesting site during the shorebird nesting season.

37. Equipment Tracks. All tracks, holes, or ruts above mean high tide shall be removed from the beach after completion of the authorized activities, unless otherwise determined by FWC biologists. Before filling, all holes or ruts shall be inspected for the presence of flightless young.

SPECIFIC CONDITIONS – OPERATION AND MAINTENANCE ACTIVITIES

38. Prior to opening the docking facility for use, the permittee shall provide adequate upland parking facilities, which may require a stormwater treatment (ERP) permit from the Department.

39. The number of vessels moored at the docking facility shall not exceed the number of approved and constructed residential units of the upland condominium.

40. Waterborne craft moored over sovereign submerged lands at the docking facility, on either a temporary or permanent basis, shall not extend beyond the limits of the sovereignty submerged land lease. The slip sizes shown on the attached permit drawings and on the survey to be attached to the sovereignty submerged land lease indicate a length over all (LOA) for the slips designated. The permittee shall take all measures necessary to ensure all boats moored over sovereign submerged lands at the docking facility are completely within the limits of the submerged land lease.

41. Boat mooring at the docking facility shall be limited to no more than a total of 55 vessels. Any further expansion in vessel capacity will require an additional Net Positive Environmental Benefit evaluation.

42. Slips shall not be occupied by liveaboards. A liveaboard is defined as a vessel docked at a facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within any thirty (30) day period.

43. There shall be a minimum 12-inch clearance between the deepest draft of the vessels (with the motor in the down position) and the bottom of the waterbody at mean low water so as to preclude bottom scouring or prop dredging.

44. Overboard discharges of trash, human or animal waste, or fuel shall not occur at the facility.

45. No fueling facilities or fuel storage shall be allowed at the facility or within the associated uplands.

46. Boat maintenance or repair activities requiring removal of a vessel from the water, or removal of major portions of the vessel, including the engine, for purposes of routine repair or maintenance on site, shall be prohibited for the life of the facility, except where removal is necessitated by emergency conditions which have resulted in or can result in the sinking of a vessel. Specifically prohibited shall be hull cleaning, hull painting, and discharges or release of oils or greases associated with engine and hydraulic repairs, and related metal-based bottom paints associated with hull scraping, cleaning, and painting. Minor repairs and boat maintenance that will not cause or contribute to the release of water pollutants and which are performed by owners or qualified marine mechanics are allowed.

GENERAL CONDITIONS FOR INDIVIDUAL PERMITS

The following general conditions are binding on all individual permits issued under chapter 62-330, F.A.C., except where the conditions are not applicable to the authorized activity, or where the conditions must be modified to accommodate project-specific conditions.

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in accordance with Rule 62-330.315, F.A.C. Any deviations that are not so authorized may subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.
2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase, and shall be available for review at the work site upon request by the Agency staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.
3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual* (Florida Department of Environmental Protection and Florida Department of Transportation June 2007), and the *Florida Stormwater Erosion and Sedimentation Control Inspector's Manual* (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), which are both incorporated by reference in subparagraph 62-330.050(9)(b)5., F.A.C., unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.
4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the Agency a fully executed Form 62-330.350(1), "Construction Commencement Notice," [October 1, 2013], which is incorporated by reference in paragraph 62-330.350(1)(d), F.A.C., indicating the expected start and completion dates. A copy of this form may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C. If available, an Agency website that fulfills this notification requirement may be used in lieu of the form.
5. Unless the permit is transferred under Rule 62-330.340, F.A.C., or transferred to an operating entity under Rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms and conditions of the permit for the life of the project or activity.

6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:
 - a. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex – “Construction Completion and Inspection Certification for Activities Associated With a Private Single-Family Dwelling Unit” [Form 62-330.310(3)]; or
 - b. For all other activities – “As-Built Certification and Request for Conversion to Operational Phase” [Form 62-330.310(1)].
 - c. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.
7. If the final operation and maintenance entity is a third party:
 - a. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as- built certification, whichever comes first, the permittee shall submit, as applicable, a copy of the operation and maintenance documents (see sections 12.3 thru 12.3.3 of Volume I) as filed with the Department of State, Division of Corporations and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which the activity is located.
 - b. Within 30 days of submittal of the as- built certification, the permittee shall submit “Request for Transfer of Environmental Resource Permit to the Perpetual Operation Entity” [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.
8. The permittee shall notify the Agency in writing of changes required by any other regulatory agency that require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.
9. This permit does not:
 - a. Convey to the permittee any property rights or privileges, or any other rights or privileges other than those specified herein or in Chapter 62-330, F.A.C.;
 - b. Convey to the permittee or create in the permittee any interest in real property;
 - c. Relieve the permittee from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance; or
 - d. Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the permittee.
10. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.
11. The permittee shall hold and save the Agency harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any project authorized by the permit.

12. The permittee shall notify the Agency in writing:

- a. Immediately if any previously submitted information is discovered to be inaccurate; and
- b. Within 30 days of any conveyance or division of ownership or control of the property or the system, other than conveyance via a long-term lease, and the new owner shall request transfer of the permit in accordance with Rule 62-330.340, F.A.C. This does not apply to the sale of lots or units in residential or commercial subdivisions or condominiums where the stormwater management system has been completed and converted to the operation phase.

13. Upon reasonable notice to the permittee, Agency staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.

14. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, work involving subsurface disturbance in the immediate vicinity of such discoveries shall cease. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section, at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Such subsurface work shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and notification shall be provided in accordance with Section 872.05, F.S.

15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 62-330.201, F.A.C., provides otherwise.

16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other uplands in a manner that does not require a permit under Chapter 62-330, F.A.C., or cause violations of state water quality standards.

17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the Agency will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.

18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with subsection 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.

FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S. by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this action is filed with the Clerk of the Department.

Thank you for applying to the Submerged Lands and Environmental Resource Permit Program. If you have any questions regarding this matter, please contact Wade Dandridge at the letterhead address, at 850-595-0655, or at Wade.Dandridge@FloridaDEP.gov

EXECUTION AND CLERKING

Executed in Orlando, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Emile D. Hamilton
Director of District Management

EDH:wd

Attachments:

Project Drawings and Design Specs., 21 pages

Florida Fish and Wildlife Conservation Commission Recommendations, 5 pages

Copies of 62-330 forms may be obtained at: <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/forms-environmental-resource>

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document and all attachments were sent on the filing date below to the following listed persons:

Florida DEP, Kim.Allen@FloridaDEP.gov, agency_clerk@FloridaDEP.gov,
Kathy.Griffin@FloridaDEP.gov, Pearce.Barrett@FloridaDEP.gov
Kristen Sella, Florida Fish and Wildlife Conservation Commission, Kristen.sella@myfwc.com
Okaloosa County, mmartinez@co.okaloosa.fl.us, jautrey@co.okaloosa.fl.us,
sbitterman@co.okaloosa.fl.us, propertyappraiser@okaloosapa.com
Joe Winkeler, joeawinkeler@oceanllc.com
William Harrison, wharrison@harrisonrivard.com
Concerned Persons: daculamike@aol.com, phaseliner@aol.com, salty.gators@yahoo.com,
pmitchell@earthlink.net, crystalchel@gmail.com, rgalbers@charter.net, gtad@cox.net,
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larrymcanally@gmail.com, grandoneal@comlinkinc.net, darrylshelton01@gmail.com,
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russw818@gmail.com, gcpetty@gmail.com, cristyrpsgt@gmail.com

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.



Syed Shabbir Azher Rizvi
Clerk

January 3, 2019
Date



**Florida Fish
and Wildlife
Conservation
Commission**

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Panama City

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Thomas H. Eason, Ph.D.
Assistant Executive Director

Jennifer Fitzwater
Chief of Staff

**Division of Habitat and
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Kipp Frohlich
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800-955-8771 (T)
800 955-8770 (V)

MyFWC.com

November 21, 2018

Mr. Wade Dandridge
Department of Environmental Protection
Northwest District
160 West Government Street, Suite 308
Pensacola, FL 32502-5740

Re: Pointe One Development and Dredge, File No. 0251677-007-EI/46, Pointe
Mezzanine, Norriego Point, Okaloosa County, Florida

Dear Mr. Dandridge:

Florida Fish and Wildlife Conservation Commission (FWC) staff has coordinated agency review of the above-referenced Environmental Resource Permit (ERP) application. We provide the following comments and recommendations as technical assistance during your review of the ERP application under Chapter 373, Florida Statutes (F.S.), and in accordance with FWC's authorities under Chapter 379, F.S.

Project Description

The project **proposes the creation of a 53-slip docking facility** and a Dredged Material Management Area (DMMA) located at the terminal end of Gulf Shore Drive on Norriego Point, Destin. The **docking facility extends into Destin Harbor**. The proposed project includes three **(3) primary dock structures capable of mooring boats ranging in size from 40 to 60 feet in length**. The project also includes dredging a small area seaward of the existing bulkhead to a depth of -8 feet, NAVD. This dredged material is proposed to be dewatered within a contained DMMA constructed on the uplands of the property. No fueling facilities or liveaboard vessels are proposed. The dredge area does not include salt marsh or seagrass area resources.

Potentially Affected Resources

The Florida Fish and Wildlife Conservation Commission has reviewed the above referenced application and have concluded that the proposed project may potentially affect the Florida manatee (*Trichechus manatus latirostris*), loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempii*) turtles, as well as state-listed least terns (*Sterna antillarum*) and snowy plover (*Charadrius nivosus*).

This project site is less than 0.3 miles away from a least tern colony that has been active in recent years and a least tern was documented as nesting within the proposed project site as recently as 2018. Sandy areas may attract ground nesting species such as least terns or other imperiled beach-nesting birds (IBNB) during nesting season. Least terns deposit their eggs in shallow depressions or scrapes in the substrate, possibly lined with pebbles, grasses, or coquina shells (FWC 2013). Egg-laying usually begins in late April or early May and colonies may range in size from a few breeding pairs to many hundreds (FWC 2013). FWC staff recommends conducting the sand placement activities outside of the shorebird breeding season (February 15 to September 1) if feasible.



Comments and Recommendations

Florida Fish and Wildlife Conservation Commission (FWC) staff has reviewed the above-referenced application under 373.414(1)(a) 2, F.S., for wildlife impacts. It is our recommendation that the following measures, if they are made conditions of the permit, will satisfy the statute's requirements:

Marine Turtles and Manatees

- 1) All on-site project personnel are responsible for observing water-related activities for the presence of marine turtles and manatee(s). All in-water operations, including vessels, must be shut down if a sea turtle or manatee comes within 50 feet of the operation. Activities will not resume until the animal(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the animal(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- 2) Any **collision** with or injury to a marine turtle or manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922, and to FWC at ImperiledSpecies@myFWC.com. Any collision with and/or injury to a sea turtle should also be reported immediately to the Sea Turtle Stranding and Salvage Network (STSSN) at SeaTurtleStranding@myfwc.com.

Shorebirds

The following conditions are intended to avoid anticipated shorebird impacts associated with the construction of the project and may not address all potential shorebird impacts related to the project.

- 1) Shorebird Nesting Surveys. The term "shorebird" refers to all solitary nesting shorebirds and colonial nesting seabirds. If any project related activities involving movement of equipment or operation of vehicles on the beach are conducted at any time during shorebird breeding season, surveys shall be conducted, and buffers established for the protection of shorebirds, their nests, eggs and chicks. Shorebird breeding season dates for this project area is **February 15 through September 1** (note that while most species have completed the breeding cycle by September 1, flightless young may be present through September and must be protected if present).
- 2) Pre-Construction Meeting. The Permittee is responsible for arranging a meeting with the U.S. Fish and Wildlife Service (USFWS), the Florida Fish and Wildlife Conservation Commission (FWC), and the Bird Monitor(s) before any work begins. The Permittee shall notify the USFWS, the FWC Regional Species Conservation Biologist (contact information available at: <http://www.myfwc.com/shorebirds>), and the Bird Monitor(s) at least 10 business days before the date of that meeting. The purpose of this meeting is to ensure that the Permittee and Bird Monitor(s) fully understand and agree with the protection measures and any additional site-specific measures that need to be taken before, during, and after construction.

- 3) Bird Monitor Qualifications. Nesting shorebird surveys should be conducted by trained, dedicated individuals (Bird Monitor) with proven shorebird identification skills and avian survey experience. Bird Monitors shall meet the minimum qualifications outlined at <http://myfwc.com/shorebirds>.
- 4) Bird Survey Protocols. Prior to any construction or shorebird surveys, a list of Bird Monitors with their contact information, summary of qualifications including bird identification skills, and avian survey experience shall be provided to the FWC (see <http://myfwc.com/shorebirds> for FWC Regional Biologist Contacts) and copied to DEP for review and consultation. Bird Monitors shall use the following survey protocols:
 - a) Bird Monitors shall review and become familiar with the general information, employ the data collection protocol, and implement data entry procedures outlined on the FWC's FSD website (<http://www.flshorebirddatabase.org>). An outline of data to be collected, including downloadable field data sheets, is available on the website.
 - b) Breeding season surveys shall be conducted in all potential beach-nesting bird habitats within the project boundaries that may be impacted by construction or pre-construction activities. One or more shorebird survey routes shall be established in the FSD website to cover these areas. [Note that breeding season varies by species. Most species have completed the breeding cycle by September 1, but flightless young may be present through September. Please see (<http://www.myfwc.com/shorebirds>) for breeding season dates.] Portions of the project area that will have no project-related activities (including any vehicle or equipment movement) during the nesting season may be excluded from the survey requirements.
 - c) During the pre-construction and construction phases of the project, surveys for detecting breeding activity and the presence of flightless chicks shall be completed on a daily basis prior to movement of equipment, operation of vehicles, or other activities that could potentially disrupt breeding behavior or cause harm to the birds or their eggs or young. Once construction is completed and all personnel and equipment have been removed from the beach, surveys shall be conducted at least weekly through the end of the breeding season.
 - d) Surveys shall be conducted by walking the length of the project area and visually surveying for the presence of shorebirds exhibiting breeding behavior, shorebird chicks or shorebird juveniles, as outlined in the FSD *Breeding Bird Protocol for Shorebirds and Seabirds*. Use of binoculars is required.
 - e) Once breeding or nesting behavior is confirmed by the presence of a scrape, eggs or young, the Permittee (or their designee) shall notify the FWC Regional Species Conservation Biologist (see <http://myfwc.com/shorebirds> for FWC Regional Biologist Contacts) within 24 hours. All breeding activity shall be reported to the FSD website within one week of data collection.
- 5) Beach Driving. All vehicles driven on the beach shall be operated in accordance with the FWC's *Best Management Practices for Operating Vehicles on the Beach* (<http://myfwc.com/conservation/you-serve/wildlife/beach-driving/>). Specifically, the vehicle must be operated at a speed less than 10 mph (<6 mph within 100 feet of a

posted shorebird nesting area) and run at or below the high-tide line. All personnel associated with the project shall be instructed about the potential presence of nesting shorebirds and sea turtles and the potential of chicks and sea turtle hatchlings to be outside posted areas and the need to avoid Take of (including disturbance to) these protected species.

- 6) Shorebird Buffer Zones and Travel Corridors. Within the project area, the Permittee shall establish a disturbance-free buffer zone around any location where the Bird Monitor has observed shorebirds engaged in breeding behavior, including territory defense. A 300-foot wide buffer shall be established to prevent disturbance (this distance is based on published studies). All construction activities, movement of vehicles, stockpiling of equipment, and pedestrian traffic are prohibited in the buffer zone. Smaller-site specific buffers may be established if approved in writing by the FWC Regional Species Conservation Biologist (contact information available at: <http://www.myfwc.com/shorebirds>). Separate buffers may be necessary for pedestrians and equipment or vehicular traffic.
 - a) The Bird Monitor shall keep breeding sites under sufficient surveillance to determine if birds appear agitated or disturbed by construction or other activities in adjacent areas. If birds do appear to be agitated or disturbed by these activities, then the width of the buffer zone shall be increased immediately to a sufficient size to protect breeding birds.
 - b) Reasonable and traditional pedestrian access should not be blocked where breeding birds will tolerate pedestrian traffic. This is generally the case with lateral movement of beach-goers walking parallel to the beach at or below the highest tide line. Pedestrian traffic may also be tolerated when breeding was initiated within 300 feet of an established beach access pathway. As stated above, these site-specific buffers must be approved in writing by the FWC Regional Species Conservation Biologist.
 - c) Designated buffer zones shall be marked (according to FSA Posting Guidelines: <http://flshorebirdalliance.org/resources/instructions-manuals.aspx>) with posts, twine and FWC-approved signs stating "Do Not Enter, Important Nesting Area" or similar language around the perimeter (see Figure 1). Posts shall not exceed 3 feet in height once installed. Symbolic fencing (twine, string or rope) should be placed between all posts at least 2.5 feet above the ground and rendered clearly visible to pedestrians. If pedestrian pathway and/or equipment travel corridor modifications are approved by the FWC Regional Species Conservation Biologist, these shall be clearly marked. The posting shall be maintained in good repair until breeding is completed or terminated. Although solitary nesters may leave the buffer zone with their chicks, the posted area continues to provide a potential refuge for the family until breeding is complete. Breeding is not considered to be completed until all chicks have fledged.
 - d) Travel corridors shall be designated and marked outside the buffer areas so as not to cause disturbance to breeding birds. Heavy equipment, other vehicles, or pedestrians may transit past breeding areas in these corridors. However, other activities such as stopping or turning heavy equipment and vehicles shall be prohibited within the designated travel corridors adjacent to the breeding site. When flightless chicks are present within or adjacent to travel corridors, movement of vehicles shall be adequately monitored by the Bird Monitor, who

DEPARTMENT OF THE ARMY PERMIT

Permittee: ROBERT GUIDRY
POINTE MEZZANINE, LLC
1901 MANHATTAN BLVD, BUILDING H, SUITE 101
HARVEY, LOUISIANA 70058

Permit No: SAJ-2005-06882 (SP-MDZ)

Issuing Office: U.S. Army Engineer District, Jacksonville

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Construct a new private commercial marina. The marina will be comprised of three dock structures (Docks A, B, and C) to accommodate a total of 51 slips and 4 flexible mooring areas. The flexible mooring areas will be used for larger vessels ranging in size from 60 to 100-feet in length. Dock A will consist of 4,350 square feet of structure to accommodate 14 slips with two flexible mooring areas (70 linear feet and 140 linear feet). Dock B will consist of 4,235 square feet of structure to accommodate 18 slips with one flexible mooring area measuring 80 linear feet. Dock C will consist of 3,870 square feet of structure to accommodate 19 slips with one flexible mooring area measuring 108 linear feet. The marina will be constructed with an estimated total of 480 timber piles for all docks, finger piers, and mooring piles. All pilings will be installed utilizing low-pressure jetting. Any treated timber pilings utilized for the project will be wrapped to minimize leaching into the aquatic environment.

The proposed project will also involve dredging in the area immediately waterward of the existing seawall in Destin Harbor. The dredging aspect of the project is depicted on sheets 6, 10, 12, and 13 of the project drawings. The project will involve excavation of 3,320 cubic yards above the plane of the Mean High Water Line (MHWL) and dredging of 6,340 cubic yards from 43,772 square feet (1.004 acre) to a depth of 8.7-feet below the plane of the MHWL. Dredged material will be placed in an on-site upland spoil containment area with no return water to surrounding surface waters.

PERMIT NUMBER: SAJ-2005-06882 (SP-MDZ)
PERMITTEE: Pointe Mezzanine, LLC
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The proposed project includes the installation of riprap along 596-linear feet of the waterward face of the existing seawall and will extend a maximum of 7-feet from the toe of the seawall into the waterway.

Project Location: The project will affect waters of the United States associated with Destin Harbor. The project site is located at Tax Parcel ID: 00-2S-24-0000-0034-0000, on Gulf Shore Drive, in Section 04, Township 02 South, Range 23 West, Destin, Okaloosa County, Florida.

Directions to site: From Destin, travel east on US-98. Turn right onto Gulf Shore Drive. Follow Gulf Shore Drive to the end where it terminates in the parking lot of East Pass Towers Yacht Club. The project site is located to the north of the parking lot.

Approximate Central Coordinates: Latitude 30.391023°
Longitude -86.508632°

Permit Conditions

General Conditions:

1. The time limit for completing the work authorized ends **January 24, 2024**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

PERMIT NUMBER: SAJ-2005-06882 (SP-MDZ)
PERMITTEE: Pointe Mezzanine, LLC
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4. If you sell the property associated with this permit, you must obtain the signature and the mailing address of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. **Reporting Address:** The Permittee shall submit all reports, notifications, documentation and correspondence required by the general and special conditions of this permit to the following address:
 - a. For standard mail: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, 41 North Jefferson Street, Suite 301, Pensacola, Florida, 32502-5794.
 - b. For electronic mail SAJ-RD-Enforcement@usace.army.mil (not to exceed 10 MB).
 - c. The Permittee shall reference this permit number, SAJ-2005-06882 (SP-MDZ), on all submittals.
2. **Commencement Notification:** Within 10 days from the date of initiating the work authorized by this permit, the Permittee shall provide a written notification of the date of commencement of authorized work to the Corps.
3. **As-Built Certification:** Within 60 days of completion of the work authorized by this permit, the Permittee shall submit as-built drawings of the authorized work and a completed "As-Built Certification By Professional Engineer" form (Attachment) to the Corps. The as-built drawings shall be signed and sealed by a registered professional engineer and include the following:
 - a. A plan view drawing of the location of the authorized work footprint, as shown on the permit drawings, with transparent overlay of the work as constructed in the

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PERMITTEE: Pointe Mezzanine, LLC
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same scale as the permit drawings on 8½-inch by 11-inch sheets. The plan view drawing should show all "earth disturbance," including wetland impacts and water management structures.

- b. A list of any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the attached "As-Built Certification By Professional Engineer" form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or "As-Built Certification By Professional Engineer" form does not constitute approval of any deviations by the Corps.
 - c. Include the Department of the Army permit number on all sheets submitted.
4. **Agency Changes/Approvals:** Should any other agency require and/or approve changes to the work authorized or obligated by this permit, the Permittee is advised a modification to this permit instrument is required prior to initiation of those changes. It is the Permittee's responsibility to request a modification of this permit from the Pensacola Permits Section. The Corps reserves the right to fully evaluate, amend, and approve or deny the request for modification of this permit.
5. **Assurance of Navigation and Maintenance:** The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structures or work herein authorized, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
6. **Posting of Permit:** The Permittee shall have available and maintain for review a copy of this permit and approved plans at the construction site.
7. **Turbidity Barriers:**
- a. Shall be used throughout construction to control erosion and siltation and ensure that turbidity levels within the project area do not exceed background conditions.

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PERMITTEE: Pointe Mezzanine, LLC
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- b. Shall be made of material in which listed species cannot become entangled (i.e., reinforced impermeable polycarbonate vinyl fabric [PVC]), and shall be monitored to ensure listed species are not entangled or trapped in the project area.
 - c. Shall be removed promptly when the work is complete and the water quality in the project area has returned to background conditions.
 - d. Shall not block entry to or exit from designated critical habitat.
8. **Fill Material:** The Permittee shall use only clean fill material for this project. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction materials, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.
9. **Dredged material Disposal:** The Permittee shall place all dredged material in a self-contained, upland disposal site as detailed on drawing sheets 4, 15, and 16 of 20. The Permittee shall maintain the upland disposal site to prevent the discharge of dredged material and associated effluent into waters of the United States.
10. **Standard Manatee Conditions:** The Permittee shall comply with the "Standard Manatee Conditions for In-Water Work – April 2013" provided as an attachment to this permit.
11. **Sea Turtle and Smalltooth Sawfish Conditions:** The Permittee shall comply with National Marine Fisheries Service's "Sea Turtle and Smalltooth Sawfish Construction Conditions" dated March 23, 2006, provided as an attachment to this permit.
12. **Project Design Criteria (PDCs) for In-Water Activities:** The Permittee shall comply with National Marine Fisheries Service's "PDCs for In-Water Activities" dated November 20, 2017 provided as an attachment to this permit.
13. **Daylight Hours:** All activities must be completed during daylight hours.
14. **Cultural Resources/Historic Properties:**
- a. No structure or work shall adversely affect impact or disturb properties listed in the National Register of Historic Places (NRHP) or those eligible for inclusion in the NRHP.

PERMIT NUMBER: SAJ-2005-06882 (SP-MDZ)
PERMITTEE: Pointe Mezzanine, LLC
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- b. If during the ground disturbing activities and construction work within the permit area, there are archaeological/cultural materials encountered which were not the subject of a previous cultural resources assessment survey (and which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Corps within the same business day (8 hours). The Corps shall then notify the Florida State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions.
- c. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with the above Special Condition ; and if deemed necessary by the SHPO, THPO(s), or Corps, in accordance with 36 CFR 800 or 33 CFR 325, Appendix C (5). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume on non-federal lands without written authorization from the SHPO for finds under his or her jurisdiction, and from the Corps.
- d. In the unlikely event that unmarked human remains are identified on non-federal lands, they will be treated in accordance with Section 872.05 Florida Statutes. All work and ground disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Corps, and State Archeologist within the same business day (8-hours). The Corps shall then notify the appropriate SHPO and THPO(s). Based, on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Corps may modify, suspend or revoke the permit in accordance with 33 CFR Part 325.7. Such activity shall not resume without written authorization from the State Archeologist and from the Corps.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

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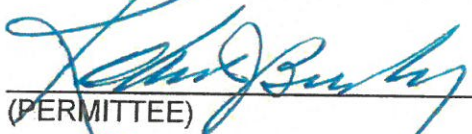
2. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal projects.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.

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- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.
 - d. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.
6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


(PERMITTEE)

2-7-19
(DATE)


(PERMITTEE NAME-PRINTED)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER)
for Andrew Kelly, P.E.
Colonel, U.S. Army
District Commander

(DATE)

PERMIT NUMBER: SAJ-2005-06882 (SP-MDZ)
PERMITTEE: Pointe Mezzanine, LLC
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PERMIT TRANSFER

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFeree-SIGNATURE)

(DATE)

(NAME-PRINTED)

(ADDRESS)

(CITY, STATE, AND ZIP CODE)

PERMIT NUMBER: SAJ-2005-06882 (SP-MDZ)
PERMITTEE: Pointe Mezzanine, LLC
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***Attachments to Department of the Army
Permit Number SAJ-2005-06882***

1. PERMIT DRAWINGS: 20 pages, dated September 19, 2018
2. AS-BUILT CERTIFICATION FORM: 2 pages
3. MANATEE CONDITIONS: 1 page, *Standard Manatee Conditions for In-Water Work – 2013*
4. SEA TURTLE – SAWFISH CONDITIONS: 1 page, *Sea Turtle and Smalltooth Sawfish Construction Conditions, revised March 23, 2006*
5. JAXBO PDCs FOR IN-WATER ACTIVITIES: 3 pages, *PDCs for In-Water Activities dated November 20, 2017*
6. WATER QUALITY CERTIFICATION: 42 pages, Specific Conditions of the water quality permit/certification in accordance with General Condition number 5 on page 2 of this DA permit

AS-BUILT CERTIFICATION BY PROFESSIONAL ENGINEER

Submit this form and one set of as-built engineering drawings to the U.S. Army Corps of Engineers, Enforcement Section, 41 North Jefferson Street, Suite 301, Pensacola, Florida, 32502. For electronic mail saj-rd-enforcement@usace.army.mil (not to exceed 10 MB). If you have questions regarding this requirement, please contact the Enforcement Branch at 904-232-3131.

1. Department of the Army Permit Number: SAJ-2005-06882 (SP-MDZ)

2. Permittee Information:

Name: _____

Address: _____

3. Project Site Identification (physical location/address):

4. As-Built Certification: I hereby certify that the authorized work, including any mitigation required by Special Conditions to the permit, has been accomplished in accordance with the Department of the Army permit with any deviations noted below. This determination is based upon on-site observation, scheduled, and conducted by me or by a project representative under my direct supervision. I have enclosed one set of as-built engineering drawings.

Signature of Engineer

Name (Please type)

(FL, PR, or VI) Reg. Number

Company Name

City

State

ZIP

(Affix Seal)

Date

Telephone Number

Date Work Started: _____ Date Work Completed: _____

Identify any deviations from the approved permit drawings and/or special conditions (attach additional pages if necessary):

STANDARD MANATEE CONDITIONS FOR IN-WATER WORK

2013

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at ImperiledSpecies@myFWC.com
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 ½" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at MyFWC.com/manatee. Questions concerning these signs can be sent to the email address listed above.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701

SEA TURTLE AND SMALLTOOTH SAWFISH CONSTRUCTION CONDITIONS

The permittee shall comply with the following protected species construction conditions:

- a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.
- b. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.
- c. Siltation barriers shall be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.
- d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.
- e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure its protection. These precautions shall include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment shall cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.
- f. Any collision with and/or injury to a sea turtle or smalltooth sawfish shall be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.
- g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation.

Revised: March 23, 2006

O:\forms\Sea Turtle and Smalltooth Sawfish Construction Conditions.doc



**U.S. Army Corps of Engineers Jacksonville District's Programmatic Biological
Opinion (JaxBO) Project Design Criteria (PDCs) for In-Water Activities**

November 20, 2017

- 1) **(AP.7.) Education and Observation:** The permittee must ensure that all personnel associated with the project are instructed about the potential presence of species protected under the ESA and the Marine Mammal Protection Act (MMPA). All on-site project personnel are responsible for observing water-related activities for the presence of protected species. All personnel shall be advised that there are civil and criminal penalties for harming, harassing, or killing ESA-listed species or marine mammals. To determine which species may be found in the project area, please review the relevant Protected Species List at:
http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/index.html
- 2) **(AP.8.) Reporting of interactions with protected species:**
 - a) Any collision(s) with and/or injury to any sea turtle, sawfish, whale, or sturgeon occurring during the construction of a project, shall be reported immediately to NMFS's Protected Resources Division (PRD) at (1-727-824-5312) or by email to takereport.nmfs@noaa.gov and SAJ-RD-Enforcement@usace.army.mil.
 - b) Smalltooth sawfish: Report sightings to 1-844-SAWFISH or email Sawfish@MyFWC.com
 - c) Sturgeon: Report dead sturgeon to 1-844-STURG 911 (1-844-788-7491) or email nmfs.ser.sturgeonnetwork@noaa.gov
 - d) Sea turtles and marine mammals: Report stranded, injured, or dead animals to 1-877-WHALE HELP (1-877-942-5343).
 - e) North Atlantic right whale: Report injured, dead, or entangled right whales to the USCG via VHF Channel 16.
- 3) **(AP.9.) Vessel Traffic and Construction Equipment:** All vessel operators must watch for and avoid collision with species protected under the ESA and MMPA. Vessel operators must avoid potential interactions with protected species and operate in accordance with the following protective measures:
 - a) *Construction Equipment:*
 - i) All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while operating in water depths where the draft of the vessel provides less than a 4-foot (ft) clearance from the bottom, and in all depths after a protected species has been observed in and has departed the area.
 - ii) All vessels will follow marked channels and/or routes using the maximum water depth whenever possible.
 - iii) Operation of any mechanical construction equipment, including vessels, shall cease immediately if a listed species is observed within a 50-ft radius of

construction equipment and shall not resume until the species has departed the area of its own volition.

- iv) If the detection of species is not possible during certain weather conditions (e.g., fog, rain, wind), then in-water operations will cease until weather conditions improve and detection is again feasible.

b) *All Vessels:*

- i) Sea turtles: Maintain a minimum distance of 150 ft.
- ii) North Atlantic right whale: Maintain a minimum 1,500-ft distance (500 yards).
- iii) Vessels 65 ft in length or longer must comply with the Right Whale Ship Strike Reduction Rule (50 CFR 224.105) which includes reducing speeds to 10 knots or less in Seasonal Management Areas (<http://www.fisheries.noaa.gov/pr/shipstrike/>).
- iv) Mariners shall check various communication media for general information regarding avoiding ship strikes and specific information regarding right whale sightings in the area. These include NOAA weather radio, USCG NAVTEX broadcasts, and Notices to Mariners.
- v) Marine mammals (i.e., dolphins, whales [other than North Atlantic right whales], and porpoises): Maintain a minimum distance of 300 ft.
- vi) When these animals are sighted while the vessel is underway (e.g., bow-riding), attempt to remain parallel to the animal's course. Avoid excessive speed or abrupt changes in direction until they have left the area.
- vii) Reduce speed to 10 knots or less when mother/calf pairs or groups of marine mammals are observed, when safety permits.

- 4) **(AP.10.) Turbidity Control Measures during Construction:** Turbidity must be monitored and controlled. Prior to initiating any of the work covered under this Opinion, the Permittee shall install turbidity curtains as described below. In some instances, the use of turbidity curtains may be waived by the USACE project manager if the project is deemed too minimal to generate turbidity (e.g., certain ATON installation, scientific survey device placement, marine debris removal) or if the current is too strong for the curtains to stay in place. Turbidity curtains specifications:

- a) Install floating turbidity barriers with weighted skirts that extend to within 1 ft of the bottom around all work areas that are in, or adjacent to, surface waters.
- b) Use these turbidity barriers throughout construction to control erosion and siltation and ensure that turbidity levels within the project area do not exceed background conditions.
- c) Position turbidity barriers in a way that does not block species' entry to or exit from designated critical habitat.
- d) Monitor and maintain turbidity barriers in place until the authorized work has been completed and the water quality in the project area has returned to background conditions.
- e) In the range of ESA-listed corals (St. Lucie Inlet, Martin County south to the Dry Tortugas and the U.S. Caribbean) and Johnson's seagrass (Turkey Creek/Palm

Bay south to central Biscayne Bay in the lagoon systems on the east coast of Florida):

- i) Projects that include upland earth moving (e.g., grading to install a building or parking lot associated with a dock and seawall project), must install sediment control barriers to prevent any upland sediments from reaching estuarine or marine waters.
 - ii) The turbidity curtain requirement cannot be waived for any project that moves or removes sediment (e.g., dredging, auger to create a pile, trenching to install a cableline). If turbidity curtains are not feasible in an area based on site conditions such as water current, high wave action, or stormy conditions, the project must undergo individual Section 7 consultation and is not covered under this Programmatic Opinion.
- 5) **(AP.11.) Entanglement:** All turbidity curtains and other in-water equipment must be properly secured with materials that reduce the risk of entanglement of marine species (described below). Turbidity curtains likewise must be made of materials that reduce the risk of entanglement of marine species.
- a) In-water lines (rope, chain, and cable, including the lines to secure turbidity curtains) must be stiff, taut, and non-looping. Examples of such lines are heavy metal chains or heavy cables that do not readily loop and tangle. Flexible in-water lines, such as nylon rope or any lines that could loop or tangle, must be enclosed in a plastic or rubber sleeve/tube to add rigidity and prevent the line from looping and tangling. In all instances, no excess line is allowed in the water.
 - b) Turbidity curtains and other in-water equipment must be placed in a manner that does not entrap species within the construction area or block access for them to navigate around the construction area.

CITY OF DESTIN



AGENDA ITEM

COUNCIL MEETING DATE: August 20, 2018

TYPE OF AGENDA ITEM: Action Item

TO: City Council

THRU: Jennifer Bryla
Kimberly Kopp, Land Use Attorney
David Campbell, Public Services Director

FROM: Carisse LeJeune

DATE: July 6, 2018

SUBJECT: Request by Pointe Mezzanine LLC for a 25-foot setback waiver and proposed public benefit for Pointe Resort Docking Facility (This item does not constitute a commitment for approval of the proposed Docking Facility).

I. BACKGROUND:

This evening, the City Council is being asked to do two things: 1. Provide input regarding proposed public benefits in connection with a docking facility for a private multifamily development; and
2. Provide a letter of concurrence from the City, as adjacent property owner, to the 25 foot setback requirement.

II. DISCUSSION:

At a future date, Pointe Mezzanine, LLC, intends to propose a docking facility along the western shoreline of Destin Harbor, between the existing East Pass Towers condominium and the City's Norriego Point property. Such proposed project is a 50-slip docking facility with approximately 1 acre of dredge area located immediately offshore of the existing sheetpile wall. The proposal is anticipated to be a multi-family private docking facility to be associated with a future upland development. For clarity, boat slip ownership is proposed to be directly tied to the upland condominium development.

The upland development was previously reviewed and approved by the City under Development Order #09-17, but a marina was specifically excluded from said Development Order. Therefore, approval of a marina in connection with the upland development would require City Council review and approval of a major deviation to a major development. Any outstanding issues related to the Development Order and/or any application for a major deviation are not before the City Council this evening.

At this time, the City Council is being asked to do two things: 1. Provide input regarding proposed

public benefits in the event the facility is approved at a future date; and

2. Provide a letter of concurrence from the City, as adjacent property owner, to the 25 foot setback requirement.

Because the proposed docking facility is intended to be a private multi-family facility, Florida Statutes require that the applicant provide public benefits that amount to 10% of the overall docking facility value. A recent appraisal report provides that the estimated value of the proposed docking facility is approximately \$4.7M, resulting in a required public benefit of approximately \$470,000.

The property owner's consultant has provided a letter outlining the proposed public benefit elements and associated costs, as shown in the attachments. The proposed public benefits exceed the minimum public benefits required by law.

In summary, the components of the public benefits include (1) the design, permitting, and construction of a life safety/rescue access dock on Norriego Point and (2) increased dredging within Destin Harbor to improve navigational safety. The costs of these two items is approximately \$80,000 and \$580,000 resulting in an anticipated total public benefit of \$660,000 (approximately \$190,000 more than the \$470,000 required by the State).

As the proposed public benefit activities would occur offshore of City property and within submerged lands, the property owner anticipates the City would be listed as the permittee (i.e. applicant) on all regulatory permits, with details of the proposed projects approved by the City prior to permit application submittal. For clarity, costs and efforts associated with the planning, design, permitting and construction of the proposed projects would be provided by Pointe Mezzanine, LLC to fulfill the public benefit requirements of the proposed docking facility.

In addition to the public benefit requirements, the applicant is also seeking a letter of concurrence for setback waiver. This letter is required by FDEP (prior to permit issuance) as the northernmost dock includes a small portion of dock structure and a slip within 25 feet of the property owner's riparian line. Of note, no structures or boat slips are proposed within the City's riparian waters. The setback waiver and associated permit drawings are provided in the agenda backup material.

A. Link to Strategic Goals / Objectives:

B. Effect on Budget (EOB):

C. Level of Service (LOS):

III. CONCLUSION: The property owner is seeking approval for a letter of concurrence for the 25-ft setback waiver and the proposed public benefit as outlined above (Destin Harbor dredging and life safety dock).

It has been communicated to the applicant that any approval of setback waiver or of a proposed public benefit shall not constitute approval of a marina, and that the City Council will have additional opportunities to consider, approve, or deny any future request for a marina on the property.

IV. RECOMMENDED MOTION: I move to approve/deny the property owner's request for a letter of concurrence for the 25-ft setback waiver and the proposed public benefit as outlined above (Destin Harbor dredging and life safety dock).

Attachments:

1. Speaker Form_Trammell
2. 2018-06-12 Public Benefit Letter
3. 2018-06-12 Public Benefit
Presentation
4. 2018-06-12 Public Benefit FIGURES
5. 0975_setback_waiver_ltr
6. 06.08.18 Point Resort DO 09-17
Letter
7. Winkeler Harrison Speaker Forms
8. Pointe Resort Permit Dwgs
9. OCSD 20180612_154325
10. HIIA Settlement Recorded
11. Harbor Dredging FDEP Permit

**MINUTES
REGULAR MEETING
DESTIN CITY COUNCIL
AUGUST 20, 2018
CITY HALL ANNEX COUNCIL CHAMBERS
6:00 PM**

The Council of the City of Destin met in regular session with the following members and staff present:

Destin City Council

Mayor Gary Jarvis

Councilmember Chatham Morgan

Councilmember Parker Destin

Councilmember Cyron Marler

Councilmember Tuffy Dixon

Councilmember Rodney Braden

Councilmember Prebble Ramswell

Councilmember Skip Overdier

Destin City Staff

Interim City Manager Lance Johnson

Public Information Manager Doug Rainer

Deputy City Manager Steve Schmidt

Parks & Recreation Director Lisa Firth

Land Use Attorney Kimberly Kopp

City Clerk Rey Bailey

HR Manager Karen Jankowski

IT Manager Webb Warren

Finance Director Bragg Farmer

City Attorney Jeffrey Burns

CALL TO ORDER, INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Gary Jarvis called the meeting to order at 6:00 PM. He asked for a moment of silence; which was followed by the Pledge of Allegiance.

AGENDA APPROVAL

Motion by Councilmember Dixon, seconded by Councilmember Marler, to move agenda item #7(J) – Interim City Manager Contract up front following Approval of Minutes passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted “yes”).

Councilmember Dixon moved for the Council to vote on the motions approved by the CRA Board at their meeting preceding this Council meeting, under agenda item #2A; seconded by Councilmember Marler. Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted “yes”).

Motion by Councilmember Braden, seconded by Councilmember Marler, to approve the agenda, as amended, passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted “yes”).

The City Attorney announced there was an amendment made to the resolution for the Interim City Manager contract, copies of which were provided to the Council earlier.

1. APPROVAL OF MINUTES

A. Approval of minutes of July 2, 2018 regular city council meeting

Motion by Councilmember Marler, seconded by Councilmember Overdier, to approve minutes of July 2, 2018 regular city council meeting passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes").

Next item discussed was agenda item #7(J)

2. PROCLAMATIONS / RECOGNITIONS / **SPECIAL PRESENTATIONS / ANNOUNCEMENTS

A. Question and Answer session with Restore Act Coordinator

Councilmember Overdier moved to approve the following motions that were previously adopted by the CRA Board; seconded by Councilmember Marler.

- **The handicap parking be moved to either willing adjacent property owner or to the Marler Street Parking Lot;**
- **The sidewalk above bluff grade be moved to minimally affect any existing trees on the property or adjacent properties;**
- **The bluff be maintained and that a gradual ramp be constructed along the west property line all the way down to the harbor boardwalk, allowing for switchbacks running perpendicular;**
- **The bathrooms and the resource room stay on the lower southern part of the property and be incorporated into the bluff;**
- **When the bathrooms are redesigned to fit the bluff that the bathrooms and bandstand be designed to face due south, and that there not be any shades or canopies on either the east or west sides, but only over the top of the bandstand;**
- **To incorporate more of the park elements above the bluff grade;**
- **That if estimates for the park redesign comes back over \$30,000 that it get sent out for rebid.**

Councilmember Destin announced he would abstain from voting as he is related to one of the litigants concerning this park.

Motion passed 5-1 (Council members Morgan, Marler, Overdier, Dixon and Ramswell voted "yes"; Councilmember Braden voted "no"; Councilmember Destin abstained from voting).

B. Request by Pointe Mezzanine LLC for a 25foot setback waiver and proposed public benefit for Pointe Resort Docking Facility

Mr. Matt Trammell from Taylor Engineering addressed the proposed project as well as the proposed public benefit. He stated that Pointe Mezzanine, LLC intends to propose a docking facility along the western shoreline of Destin Harbor, between the existing East Pas Towers condominium and the City's Norriego Point property. Such proposed project is a 50-slip docking facility with approximately one acre of dredge area located immediately offshore of the existing sheet pile wall. The proposal is anticipated to be a multi-family private docking facility to be associated with a future upland development. Because the proposed docking facility is intended to be a private multi-family facility, Florida Statutes require that the applicant provide public benefits that amount to 10 percent of the overall docking facility value. The components of the public benefits include: (1) The design, permitting, and construction of a life safety/rescue access dock on Norriego Point, and (2) Increased dredging within Destin Harbor to improve navigational safety. At this time, the City Council is being asked to do two things: (1) Provide input regarding proposed public benefits in the event the facility is approved at a future date, and (2) Provide a letter of concurrence from the City, and adjacent property owner, to the 25 foot setback requirement.

Mr. Trammell provided the following presentation on the proposed project:

Project History

- Development Order applied for in 2009
 - ❖ Existing DO includes 79-unit condominium, marina, associated parking and amenities (marina, pool, etc.)
 - ❖ DO issued August 2009
 - ❖ DOI extended through May 2022
- Marina project originally applied for in 2006/2007
 - ❖ 51 slip facility with approximately 590 cubic yard of dredging
 - ❖ Private facility requiring public benefit
 - ❖ City-approved public benefit measures
 - 100-foot right-of-way deed along private parcel
 - Restroom facility on Norriego Point
 - Destin Harbor dredging

Project Overview

- Proposed docking facility
 - ❖ 50-slips
 - 40 to 66-plus foot vessels
 - 398 linear feet flexible mooring area
 - ❖ Dredge area: 1 acre (9,300 cubic yard)
 - ❖ Marina amenities: Power, water, sewage pump out, internet
 - ❖ Private marina – requiring public benefit
- Environmental Reviews/Benefit
 - ❖ Water quality/Sediment testing
 - ❖ Hydrodynamic (flushing)analyses completed
 - ❖ No seagrass or wetland impacts

- ❖ Timber pilings wrapped in plastic
- ❖ Sewage pump-out facilities
 - No direct discharge into sewer system
- ❖ NPEB fee (paid): \$420 per slip x 55 slips = \$23,100
- ❖ City Permit Fee: 25% of construction costs = \$250,000 (estimate, to be paid prior to construction)
- Public Benefit
 - ❖ Construction outside peak summer season
 - ❖ All required parking contained within upland development site
- FDEP-required 25-foot Setback Waiver
 - ❖ All vessels moored within applicant's riparian waters
- FDEP-required Public Benefit
 - ❖ Required 10% of appraisal value
 - ❖ Public Benefit Value: \$470,000
- Proposed FDEP-required Public Benefit
 - ❖ Life Safety/Rescue Access Dock
 - ❖ Design, Permitting, Construction
 - ❖ Estimated Cost: \$80,000
- Destin Harbor Dredging
 - ❖ Remove hazardous shoals within harbor entrance
 - ❖ Increased navigational safety
 - ❖ Increased tidal circulation/enhanced water quality
 - ❖ Approximately 40,000 cubic yard
 - ❖ Design, Permitting, Construction
 - ❖ Estimated Cost: \$580,000

Requested Approval

- Requested City Approval Items
 - ❖ 25-foot Setback Waiver
- Net Positive Public Benefit
 - ❖ Life Safety/Rescue Access Dock (\$80,000)
 - ❖ Destin Harbor Dredging (\$580,000)
 - ❖ Total Estimated Public Benefit Cost: \$660,000 (14% of appraised value)
 - ❖ In addition to NPEB Fee (\$23,100) and City Permit Fee (\$250,000)

Total fees and benefits provided to the City: \$930,000

With regards to the rescue dock, Councilmember Dixon noted he was in the rescue business for 32 years and he knows for a fact the injured person would be placed on a boat and taken either to the Coast Guard station or across the harbor to a waiting ambulance. They are not going to send an ambulance all the way to the end of Holiday Isle. He added the rescue dock would end up being utilized by other people to dock their boats.

Councilmember Dixon also noted that the majority of the area to be dredged would mostly benefit the project. Furthermore, the biggest area to be dredged is located directly in front of the project. In which case, he cannot truly classify it as a public benefit.

According to Mr. Trammell, the life safety dock was proposed by the State. They wanted to see some form of response out on Norriego Point. He continued that another option is for the Sheriff's department to keep their boat moored in that dock instead of utilizing the public parking space at the coop docks. The owner would provide parking within the development order.

Mr. Trammell also noted that with regards to the comments about the dredging, it is well north of the Marina; adding the applicant does not need this dredging. The marina will be fine even if this public benefit is not approved and the dredging does not happen.

Councilmember Braden wants to know where they plan to deposit the sand they dredge out of the channel.

Mr. Trammell stated that the applicant had proposed to fund the design and permitting; but these are City permits. The City would be the permittee; and so they would be the one to determine the best use for this sand.

Councilmember Braden stated he agrees with Councilmember Dixon that the dredging is not a public benefit. He then inquired about the parking location in the marina.

According to Mr. Trammell, parking will be provided on the upland parcel; adding if there are boats in the marina, they would be required by the State and by the development order to provide that parking within the upland parcel.

Councilmember Ramswell noted it was mentioned that parking would be included in the surface parking that would be utilized for the condominiums. She asked if that was the parking that was listed in the development order; and if so, to which development order does it apply.

Mr. Joe Winkeler replied that the parking applies to the 2009 development order.

Councilmember Ramswell asked if the parking was for transient slips in the marina.

Mr. Winkeler stated that only property owners within the condominium can utilize the marina parking.

Councilmember Ramswell noted that the 2009 development order specifically excluded a marina. She asked how the applicant could bring forth a marina attached to a development order that specifically excludes it.

Mr. William Harrison explained that at the time that the upland project was approved, it was specifically stated by the City there are two separate processes. One is for the upland development, of which the development order was issued in 2009. The other is a separate

process under Chapter 11 for marina siting. It talks about the situation they are currently in where there is a certificate of occupancy issued for the upland development and a certificate of occupancy issued for the marina. In this particular case, Chapter 11 provides instructions for how those are combined and brought into a single owner at the end of the process.

Councilmember Ramswell stated she does not understand how they could allow a marina on a development order for a project that has been extended for 9 years which specifically excluded a marina. She continued that they seemed to be going out of order with this process. The applicant should have come to the Council first and requested approval for a marina before proceeding with the permitting process for a marina.

Mr. Harrison maintains that the City code requires two separate processes; adding there is a difference in a marina being excluded because it was a separate process versus a marina being prohibited. He also pointed out that the 2009 development order that was approved and the construction drawings that are on the City's website show the location of the marina; and that all these have been contemplated from the beginning.

According to the Land Use Attorney, the City has discussed this issue with the applicant prior to tonight's meeting. The City's position was the applicant could come forward with this presentation if they do desire; but, the City would require a major deviation for the development order. She also stated that the City staff and the applicant have not come into an agreement on this issue; however, the prior City Manager and Community Development Director have determined that particular process would be required. She added that if the applicant's attorney wants the City to look at the other process, they could do so; but, they are not prepared to agree with that statement tonight.

Councilmember Ramswell noted there was an original permit application done with the FDEP back in 2010; and FDEP's findings at that time had some additional benefits that were required. They are showing that the NPPB was a requirement of \$1.8 million in benefits. Two of the suggestions were the applicant building the bathroom facility on Norriego Point and extending the driveway and adding parking along the route. She asked what became of those suggestions and why the difference in dollar amounts.

Mr. Trammell explained there were several iterations and various alternatives that have been proposed; some of which have gone all the way to the Governor's Board. He continued that at one point, there was a proposal of half a million or a million dollars going directly to the Destin Heritage Park. He also explained that the reason for the major difference between the dollar amounts in 2005 versus the dollar amount today was simply the valuation of the marina. The marina value was so much higher from the 2005 appraisal versus the appraisal that was performed this year. He continued they have asked the State if the applicant should write a check to the City to provide more amenities to the City's numerous parks; but, the State did not want to consider such a proposal.

Councilmember Marler noted they have a shortage of pump out stations in the City. He asked if it would be possible to provide a pump out station for the public's use to serve as a public benefit and to place it somewhere in the area where they were planning to put the life safety dock.

Mr. Trammell explained the current infrastructure cannot support it. They cannot simply make a connection to the existing sewer. It would also be the City's decision whether or not they would want to place that infrastructure on Norriego Point since there is not a lot of room in the right-of-way or in the upland parcel.

The Mayor wants to make sure the applicant is not asking for Council's permission to build the marina at this stage; and that they are strictly offering a public benefit worth \$580,000. The applicant would still have to come back before the City Council to ask permission to build the marina or the condominium, which is an entirely separate process.

According to Mr. Winkeler, the total proposed public benefit was \$660,000; and that they are asking for a 25-foot setback waiver from the City. He added that no matter what happened tonight, they would still have to complete the FDEP as well as the USACE permitting process. They would then have to go to the Governor's cabinet, to the City's Harbor and Waterways Board, and ultimately to the City Council for approval of the marina.

Councilmember Overdier asked if they could deny the 25-foot setback and still approve the public benefit.

Mr. Trammell clarified that the recommended motion was to approve the proposed public benefit and the request for a 25-foot setback waiver. He stated this is a long and very convoluted permitting process. They cannot go to the Harbor and Waterways Board with a full FDEP and USACE permit. They cannot obtain this permit until they get the public benefit approved by the Governor's board and cabinet. They cannot finalize the marina and the proposed public benefit until they get approval from the Council tonight.

The City Attorney clarified that if the Council denies the proposed public benefit and the request for 25-foot setback waiver tonight, the applicant could still go forward and lowers the scale for the docking facility. However, they would still have to come back before the City Council for approval for the marina.

Mr. Trammell added that if the Council denies both items tonight, they would have to remove the northernmost slip and then proceed with the permitting process; adding it would then be a 49-slip instead of a 50-slip marina.

Councilmember Ramswell reiterated they are proposing a public benefit for a marina that is not in the existing development order, and the Council has not approved. She also stated that an amendment to the development order to allow a marina may invalidate some the conditions that were initially in place as well as the conditions of the extensions that were granted.

According to the Land Use Attorney, they have previously informed the applicant that if any of the conditions of the development order is changed, a major deviation would be required.

Mr. Harrison stated that he disagrees with the Land Use Attorney that this is a major deviation; reiterating that there is a difference between a marina being excluded versus a marina

being prohibited. He stated that this marina is not prohibited and Chapter 11 of the code provides for it as a separate process. He continued that when the development order was approved, the seated Council at the time advised the property owner that there were two separate process; one for the upland property and one for the marina. He also stated there was a litigation between Holiday Isle and the property owner at that time in 2004 concerning the development order that was issued by the City. There was a settlement agreement between the Holiday Isle and the property owner with a lot of provisions included in it. According to that agreement, there will be an upland condominium project and a marina; and not only that Holiday Isle would not object to them, they would also support both projects. Any minor deviations would not have to go to Holiday Isle for review; only major deviations. The agreement executed by Holiday Isle and the previous owner states that all the responsibilities included in the settlement agreement inured to the benefit or to the detriment of both parties. There were monies paid to Holiday Isle by the applicant at that time: \$45,000 towards attorney's fees; \$3,400 for pass due homeowners' association fees; and \$100,000 paid to Holiday Isle to spend at their discretion. There was also a 100-foot right-of-way transferred from the property owner to the City for the benefit of Holiday Isle and the City. He added it is now time for the property owner to come back in accordance with the settlement agreement and Chapter 11 of the Land Development Code for marina siting.

Councilmember Braden stated he would need more time to study this matter before he could make any decisions on it. He would also like to see a written documentation stating that Holiday Isle supports this project.

The Land Use Attorney clarified that the settlement agreement was between the Holiday Isle Improvements Association and the property owner; and that the City was not a party to that agreement.

The Mayor announced he would entertain any public comments regarding this particular subject at this time.

Mr. Steven Menchel, a Destin resident, stated that the public benefit, approximately \$640,000, is misleading, and it favors the applicant more than the public. He stated that none of the Norriego Point Planning Workshops had there been any mention of the need for docking facility. The current boat beaching arrangement has served the public well for decades; and that a dock is not needed nor is it wanted. It is wildly believed that such a dock would benefit the applicant more than the public. He continued that the dredge work suggested as a public benefit to the Destin Harbor navigational channel is not needed. It appears it would benefit the applicant more than the public. It would provide a deep source of sand for the Point Resort project. Alternate public benefits for the Council's consideration would be to provide funding to rebuild and upgrade the harbor flushing pump and add much needed instrumentation and maintenance items. Provide money to build additional sewage pump out stations to key points in the harbor and money to build water treatment for storm water runoff in the harbor. He further stated that parking is a critical item for any marina, and it is clearly not a consideration in the project. Any parking allocated to the marina or shared parking with the development order must be defined before the project should go forward. If the marina is part of the planned condominium, a new development order should also be required. He added that the project was considered several years ago and stalled for many issues; and that one of the major issues was safety. It is a greater

safety issue now with all the livery vessels, rentals and major new park amenities that would open next year. He suggests a professional, State-approved safety study be done before the project advances.

Mr. Danny Tignore, a Destin resident, stated that the intended use of the 40,000 cubic yards of sand, which, has a value of \$1.4 million, is quite uncleared; noting that the applicant would only be paying \$580,000 for the dredging. He pointed out that to raise the 3.9 acre site from the current 6 feet elevation above sea level to the required 14 feet to start construction of the building would require over 50,000 cubic yards of sand; and so, the applicant would most likely end up using the 40,000 cubic yards of sand instead of giving it to the City. He urged the Council not to let this happen if they allow the project to move forward.

Mr. Trammell maintains they are not proposing to utilize any of the 40,000 cubic yards of dredged sand; reiterating that it is the City's permit to dredge the material and it is the City's decision to use that material the way they see fit.

Ms. Marcie Bell, a Destin resident, stated that she does not understand why they mention the Governor and his cabinet and FDEP; and yet there were no mention of their conversation with Holiday Isle, Okaloosa County or the USACE. These three entities would have something to say about this project. She continued that as a homeowner on Holiday Isle, she was never required to support the marina and the rest of the project. If this project, which was originally a commercial project goes back to being commercial, the City must keep in mind the zoning for this property is HDR which does not allow commercial activity in that zone. The Holiday Isle Covenant, Conditions and Restrictions (CC&Rs) also do now allow commercial activity. She also mentioned that she has spent time studying the development order extensions, and they have always referred to development order 09/17.

Having no further comments from the public, the Mayor asked for a motion from the Council members.

Councilmember Dixon moved to deny the property owner's request for a 25-foot setback waiver and proposed public benefit for Pointe Resort Docking Facility; seconded by Councilmember Ramswell. Motion passed 5-2 (Council members Morgan, Overdier, Dixon, Ramswell and Braden voted "yes"; Council members Destin and Marler voted "no").

At this time, the City Attorney requested that both agenda items 4B and 5C be pulled. The Council moved on to discuss agenda item 4B and 5C.

C. Public Works/Public Safety Committee Report Chairman Steven Menchel

Mr. Steven Menchel, Chairman of the Public Works/Safety Committee, stated that during the August 14, 2018 meeting, the Committee unanimously approved three motions; and that the Committee requested that he brief the Council on these motions. He stated that the first motion was based on a presentation made by Mr. Stephen Deranian regarding pedestrian traffic management solution. Improving the pedestrian flow to and from the beach for safety reason

within Crystal Beach. The Committee voted unanimously in favor of the project as presented by Mr. Deranian and voted unanimously to have Mr. Deranian present his proposal to the Council for their consideration. The second motion was to recommend to the City Council to include the widening of Dolphin Street within the existing City right-of-way in the next 5 years' budget plan. This particular street has been problematic for years and there have been no plans for improvements. The third motion was to look into installing raised pavement markers on all pedestrian crosswalk along Scenic Hwy 98. Several pedestrian crosswalks along the highway are dark and these raised pavement markers should be installed for safety reason.

Councilmember Dixon moved to purchase and install raised pavement markers on all pedestrian crosswalks along Scenic Hwy 98; seconded by Councilmember Ramswell. Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes").

Councilmember Ramswell asked staff to determine the current width of Dolphin Street and whether or not it is below standard width, and then bring the information back.

The Mayor asked the Interim City Manager to reach out to Mr. Stephen Deranian to present the Pedestrian Traffic Management Solution to the Council.

3. PUBLIC COMMENTS ON AGENDA ITEMS THAT ARE NOT PUBLIC HEARINGS AND ANY OTHER MATTERS NOT ON THE AGENDA

Ms. Teresa Hebert, a Destin resident, stated that during the August 6, 2018 Council meeting, Councilmember Ramswell made some statements about the Destin Fishing Fleet and referred to some documents that she had concerning the development agreement between the Fleet and the City. It gave her a reason to be concern that some unethical activity had taken place between the Fleet and the City and so she conducted her own investigation. She tried to find these documents between the Fleet and the City to determine who prepared them, but she was unable to find them. She later determined the documents in question were in draft form which might have been given to Ms. Ramswell; and that the person who provided it might have misrepresented these documents. The actual agreement was finally signed two years later by previous Mayor Sam Seevers. She found no unethical activity between the Fleet and the City. There was also an amendment to the lease agreement/riparian right, which had nothing to do with the submerged land, which was prepared in 2009. It did not get signed by the then Mayor Craig Barker. It was actually signed over a year later by Mayor Seevers. The draft which had the museum in two places was rejected and the museum was placed on Stahlman Avenue. She continued that the riparian right has to be updated every year, and it is a very expensive proposition with the State. She also stated that this issue created a lot of confusion with the public. Citizens thought things were not being done right; and so she took it upon herself to determine that proper documents were executed and that nobody was getting away with slips or submerged land leases. She further stated that the Fleet owns the adjacent parcel that is 282 feet. Mr. Dewey Destin owns 75 feet and the State of Florida owns all the riparian areas.

Councilmember Ramswell stated that nobody gave her the documents. She received the documents as a result of a public records request that she did on email within the City. The reason it was not on public record was because the development was not ever approved. It was an agreement that was going back and forth between Ms. Mary Ann Windes, the Fleet and the City Manager. It was presented as the genesis of what started the negotiation. She continued that if they follow along the different drafts and the different versions, they could easily see how it ended up the way it was. All those documents were provided to the City Clerk, the City Council, and the attorneys who were in attendance that night and they are public record.

Mr. Richard Christie, a Destin resident, stated that he and his wife have owned a property at 235 Pelican Place, which they used basically to house friends and families, for the past 7 years. He continued that they have recently started investigating how they would use it as a short-term rental property. They applied for and obtained a State license. When they applied for a City license, he received a call from City staff who informed him the property is not zoned for short-term rental. He was also advised that he could come to the Council and apply for a variance for short-term rental license.

The Land Use Attorney suggests the applicant meet with her or Mr. Steve Schmidt after the meeting to discuss the process involved in this case.

4. CITY MANAGER REPORTS

A. Signature Authority Resolution 18-26

The City Attorney explained the resolution has to be revised since they have a new Interim City Manager.

Councilmember Overdier moved to adopt Resolution 18-26; seconded by Councilmember Marler. Motion passed 6-1 (Council members Morgan, Destin, Marler, Overdier, Ramswell and Braden voted "yes"; Councilmember Dixon voted "no").

B. Investigation Report regarding Councilmember Prebble Ramswell's Public Statements and Remarks towards Deputy City Manager Steven Schmidt

The City Attorney announced the Interim City Manager has requested that he and the Land Use Attorney look into the accuracy of the Labor Attorney's report regarding this issue; and then present their findings at the same time this report is presented.

Motion by Councilmember Destin, seconded by Councilmember Braden, to set aside the order of the day to allow the Council to consider tabling agenda item 4B passed 6-1 (Council members Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes"; Councilmember Morgan voted "no").

Councilmember Destin moved to table agenda item #4B and instruct the HR Manager, Interim City Manager, the City Attorney and Land Use Attorney to review the item; seconded by Councilmember Braden.

Councilmember Ramswell noted she had countered every single point that was made as a rebuttal in the report with additional evidence and supporting documentation, if necessary.

The Mayor recommends sharing that information with the City Manager and staff.

The Mayor called for a vote on the motion, which passes 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted “yes”).

Following this item, next item discussed was agenda item 5C.

C. FY 19 Property & Casualty Insurance

Motion by Councilmember Overdier, seconded by Councilmember Braden, to authorize the Interim City Manager to engage Mr. Tom Conley to bind Workers Compensation Insurance with the Florida Municipal Insurance Trust and to engage Mr. Paul Dawson to bind all other lines of property and Casualty coverage through Preferred Governmental Insurance Trust for Fiscal Year 2019 passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted “yes”).

5. PUBLIC HEARINGS

A. First reading of Ordinance 18-15-LC, Wheeled Vehicle on the Beach

The City Attorney read proposed Ordinance 18-15-LC by title, and then presented it to the City Council on first reading.

AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA RELATING TO THE USE OF WHEELED VEHICLES ON PUBLIC AND PRIVATE AREAS OF THE BEACH; PROVIDING FOR AUTHORITY; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR AN AMENDMENT TO LAND DEVELOPMENT CODE SECTION 11.08.02, AND CREATING SUBSECTIONS C(i) THROUGH C(v); PROVIDING FOR INCORPORATION INTO THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

According to the Mayor there was a letter written to the Council from a person that performs State-required maintenance and services and has the need to have vehicles on the beach for projects directed by the State. A special exception provision language might need to be added to this proposed ordinance.

The Land Use Attorney stated it could be considered to be included already under the public safety vehicles provision. She continued that the City Manager could also issue a permit in those circumstances. However, it is to Council’s discretion to have more clarification language put into the ordinance.

The Mayor suggests inserting some clarification language when they bring the ordinance back for second reading.

Councilmember Dixon expressed some concern that the proposed ordinance is very broad in nature. He pointed out that the title of the ordinance refers to the use of wheeled vehicles on public and private areas of the beach; however, it is not defined whether it is upward or below the erosion control line. He continued that it could also be interpreted as wheeled vehicles not being allowed on private property. He asked if they could legally stop people from driving on their beach property without violating their private property rights.

Using some analogy, the City Attorney explained that a swamp on someone's property is considered a wetland. They cannot just fill that in and do what they want with it. The EPA would not allow it because wetland is a protected environment. Also, one cannot just drive their vehicles on the dunes and killing all the birds because it is recognized as a sensitive environment. With regards to the beach, the owners do not have a complete freedom on their beach property; but the City would need to use some common sense in enforcing the regulations.

The Land Use Attorney noted that the reasons for the ordinance are laid out in the "whereas" clauses having to deal with the fact that vehicles cause erosion on the beach and other adverse effects even if they are not on the dunes. She continued that if the City Council is not comfortable with the reasons as set forth in the ordinance, they could provide the Council with additional white papers and documentation to show exactly how much damage a vehicle does to the beach.

Councilmember Dixon stated they need to have some flexibility and understanding and allow maintenance personnel to bring their equipment on the beach. He also noted that beach services that utilize a golf cart to put out their umbrellas and chairs should not be prohibited from doing so.

The Land Use Attorney noted that the way the code is written, the City Manager could issue a permit in any of those circumstances. However, if the Council feels it is not clear enough, they could work on it and put specific language in the ordinance.

Councilmember Braden moved to approve proposed Ordinance 18-15-LC on first reading, and direct staff to schedule a second reading for final adoption; seconded by Councilmember Ramswell.

Councilmember Ramswell expressed concern that it might be quite burdensome for maintenance and repair personnel to request a permit every time they need to go to the beach to do their job; adding there should probably be some exceptions for beach maintenance and repair.

The Land Use Attorney noted that the way the proposed ordinance is written, they could probably get an ongoing permit from the City Manager; however, if the Council desires for that language to be explicitly addressed in the ordinance, they could also revise it.

Councilmember Marler opines they are violating private property rights with the proposed ordinance as it is currently written because they are telling people they cannot traverse on their own property. He suggests having a clear definition for "the beach" as to where the beach ends and private property begins.

They Mayor opened a public hearing to receive comments for or against the proposed ordinance.

Ms. Marcie Bell noted that her road at Gulf Breeze Court was flooded during Hurricanes Opal and Ivan because the sand dunes were destroyed. It took a lot of years to rebuild the sand dunes. The owners of that parcel not only drive out several different vehicles to the beach for their own recreational use, but they drive over the dunes and breaking down the sand dunes that protect the properties on her street. She also noted there is a corridor there that has been provided for beach service and emergency personnel.

Mr. Alex Metz stated that he supports the ordinance but he feels it is a little hasty and non-specific. He continued that with regards to the statement that the City Manager can issue a permit for beach services sometimes they do not know who the current City Manager is and they do not know which City staff to contact. He suggests the ordinance be written with more specific language and to get people with vested interest involved and hear their specific concerns in a less formal setting.

Having no further comments, the Mayor closed the public hearing and sent the matter over to the Council members for discussion and consideration.

After some discussion, Councilmember Braden offered an amended motion to table this item to October 1, 2018 to allow City staff and Land Use Attorney to include some specificity or clearer language to address issues related to beach service personnel; seconded by Councilmember Ramswell. Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes").

B. First reading of Ordinance 18-16-LC, Vested Rights Process

The City Attorney read proposed Ordinance 18-16-LC by title, and then presented it to the City Council on first reading.

AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA AMENDING ARTICLE 2 OF THE LAND DEVELOPMENT CODE TO ESTABLISH A PROCESS FOR VESTED RIGHTS DETERMINATIONS; PROVIDING FOR INTENT; PROVIDING FOR ELIGIBILITY TO APPLY FOR A VESTED RIGHTS DETERMINATION; PROVIDING FOR APPLICATION REQUIREMENTS, APPLICATION CATEGORIES, AND APPLICATION PROCEDURES; PROVIDING FOR APPEALS; PROVIDING FOR ULTRA VIRES PROTECTIONS; PROVIDING FOR NOTICES TO THE STATE; PROVIDING FOR AUTHORITY; PROVIDING FOR INCORPORATION INTO THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The Mayor opened a public hearing to receive comments for or against the proposed ordinance.

Mr. John Snell, a resident of DeFuniak Springs, stated that his client, Affordable Banquets, has a project that is in the development order process. The City staff and consultant that were reviewing the development order stated that the flat roof and parapets are not allowed and that the building required a 5 on 12 slope or greater. He continued that Ms. Bryla, the Community Development Director informed him that the comprehensive plan and land development code are in conflict over this issue; and that there is a proposed ordinance that is before the City Council that addresses this issue and would give them some relief from the comprehensive plan. He urged the Council to vote in favor of the proposed ordinance.

Having no further comments from the public, the Mayor turned the matter over to the City Council for their discussion and consideration.

Councilmember Dixon asked if the issue brought up by the speaker is covered in this ordinance.

According to the Land Use Attorney, it is not unless they have previously applied for a development order or has an annexation agreement or fits into one of the three categories addressed in the ordinance. She also stated she is not aware of the issue the speaker brought up tonight and Ms. Bryla is no longer with the City.

Councilmember Dixon suggested that Mr. Snell meet with Mr. Steve Schmidt after this meeting and discuss this issue with him.

Councilmember Destin moved to approve Ordinance 18-16-LC, Vested Rights Process, on first reading; seconded by Councilmember Ramswell. Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes").

C. First Reading Ordinance 18-17-LC, Safety Zone Regulation

The City Attorney noted this proposed ordinance has some enforceability issues the way it is drafted. It would have to be re-drafted to include a more enforceable language.

The Land Use Attorney recommends giving staff more time to possibly speak with the first responders and the Sheriff's Office relating to the erosion control line, the immovability and enforceability of the ordinance to try to come up with some alternate ideas and then bring it back.

Councilmember Dixon noted there may be some members of the public who have been waiting to speak on this issue since it was not pulled during agenda item approval.

Motion by Councilmember Destin, seconded by Councilmember Braden, to set aside the order of the day to allow the public to speak on this issue and then for Council to consider tabling it passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes").

The Mayor announced he will now allow public comments on this issue.

Mr. Steve Hill, a Destin resident and owner of Holiday Isle Beach Service, stated it would be impossible for the City to enforce the safety zone even if they hire a lot of people.

Mr. Alex Smith, speaking for Sunny Side Beach Service, thanked the City for holding a round table discussion with beach vendors, fire department, Sheriff's Office and the City's Code Enforcement Office to discuss this matter in length. He continued there had been a general consensus of support for the safety corridor.

The Homeowners' Association President for The Caprice spoke next. He stated that he supports the safety corridor as it will allow emergency personnel a clear path to a victim in distress.

Mr. Ken Wampler, a Destin resident, expressed that it is imperative for the City to think about the enforcement of this regulation. He stated that he represents a lot of private property owners that have a deed all the way down to the waters line, and that he believes taking some of their private beach is not the intent of this regulation. He also stated that the beach service vendors, lifeguards and the private property owners want to do what is best for everybody, which is the safety of the entire public; and that proper enforcement of this issue is critical.

Ms. Kim Rozier A Destin resident, stated that she is not opposed to beach chair service; but, she is disappointed in the fact there is not a proper enforcement and penalty in place for those who abuse it. She stated that she has experienced being physically "brushed" by a beach vendor; and that she has witnessed people coming to this town to spend money here being targeted and being forced to move from the beach. She suggests that violators should have their permit to do business in Destin pulled.

Mr. Steve Pidgen, a Destin resident, noted that according to a June 26, 2002 newspaper article, the City law was for beach vendors to stay 20 feet away from the waters edge. This leaves plenty of room for people to traverse the beaches and for emergency vehicles to respond to emergencies. He wants to know when this rule was changed.

Councilmember Destin moved to table agenda item #5C and instruct the City staff and attorneys to examine it from the enforceability standpoint; seconded by Councilmember Marler. Motion passed 7-0 (Council members Morgan, Destin, Marler, Overdier, Dixon, Ramswell and Braden voted "yes")

Following this item, the next item discussed was agenda item 2C.

6. *CONSENT AGENDA

7. COMMENTS/PRESENTATIONS FROM MAYOR, COUNCIL, LAND USE ATTORNEY AND CITY ATTORNEY

A. Councilmember Braden

B. Councilmember Ramswell

Councilmember Ramswell announced that she and Councilmember Overdier recently attended the Florida League of Cities Annual Conference. It was a great opportunity for them to network and meet with other elected officials and staff from around the State. Home Rule was one of the primary topics; and that there was a lengthy discussion about it and how they would be working with the legislature to maintain Home Rule and prevent a lot of the different bills that takes Home Rule away from local government and put the State in charge of a lot of things.

C. Councilmember Dixon

D. Councilmember Overdier

E. Councilmember Marler

F. Councilmember Destin

G. Councilmember Morgan

- 1) Beach issues and code enforcement.

Councilmember Morgan pulled this item.

H. Mayor Gary Jarvis

I. Land Use Attorney

- 1) Consideration of settlement agreement in BI, Inc. litigation

Motion by Councilmember Braden, seconded by Councilmember Marler, to schedule an executive session on Wednesday, September 5, 2018, at 5:00 PM.

Councilmember Destin announced he would abstain from voting as he is related to one of the litigants in this case.

Motion passed 6-0 (Council members Morgan, Marler, Overdier, Dixon, Ramswell and Braden voted "yes"; Councilmember Destin abstained from voting).

J. City Attorney

The City Attorney announced there is a State Statute that defines "beach" as a zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation; adding that the beaches in question probably fall under this definition.

- 1) Update and reminder on deadline related to Gulf Power franchise negotiations

The City Attorney announced he has had some conversation with Gulf Power representatives earlier this week and informed them they are nearing the deadline to either the City exercising its option to purchase the electric utility or get a franchise extension from them. He continued that they have a meeting scheduled this coming Friday to further discuss this issue. He also stated he would bring back a draft resolution at the next meeting to exercise the option to

purchase. The Council would have to either exercise the option to purchase or enter into an agreement with Gulf Power at the next Council meeting.

2) Interim City Manager Contract

The City Attorney noted there was one minor change in the resolution, and that amended copies were provided to the City Council prior to the meeting.

Councilmember Dixon referred to the language on page 3, paragraph #2 of the contract that reads, "*No recommendations or actions taken by Mr. Johnson as Interim City Manager shall be held against him when he returns to his permanent position of Parks & Recreation Director.*" He stated he does not want to be bound by provision in the contract in the event Mr. Johnson has done something against the will of the Council or malfeasance while serving as Interim City Manager.

According to the City Attorney, the intent of that language was not to insulate Mr. Johnson if he does something that creates criminal liability or something that was grossly negligent. The purpose of that language is in case the Council is dissatisfied with Mr. Johnson's performance and feels he is better suited for the Parks and Recreation Director position; then they could reassign him to that position.

Councilmember Dixon noted that page 4; paragraph G of the contract gives Mr. Johnson an additional 3 paid vacation days, on top of what he is already entitled to under his title of Parks & Recreation Director. He wants to make sure the extra vacation days go away if he returns to his job as Parks & Recreation Director.

The City Attorney explained the extra 3 days is a one-time bonus for Mr. Johnson taking on the position of Interim City Manager.

Next, Councilmember Dixon referred to page 7, paragraph 7 of the contract that reads, "*Upon Interim City Manager's return to his role as Parks & Recreation Director, then Lisa Firth shall return to her position as Parks & Recreation Deputy Director, and at that time she shall receive a 15 percent raise in her Deputy Director salary....*" Councilmember Dixon argues this particular contract should only involve Mr. Johnson and not another City employee. He also stated that a 15 percent raise for Mr. Johnson and another 15 percent raise for Ms. Firth would equate to about a \$20,000 raise; and that he does not feel this type of provision should be included in this contract.

The City Attorney explained this particular provision was added in the contract at the request of Mr. Johnson's attorney. He was not directed to negotiate by the Council, but merely to bring back a contract. The Council can negotiate the terms of the contract as they see fit at this time.

Councilmember Ramswell stated this is a way of rewarding City employees that have skills they need and want to utilize. They have employees here who are fit to serve in the needed positions and they are rewarding them for their values.

Councilmember Destin agrees with Councilmember Ramswell; adding they are simply rewarding Mr. Johnson for stepping up during this very difficult time.

Councilmember Overdier stated he does not have a problem having this provision in the contract as long as the 15 percent raise brings both employees salary up to standard; adding he does not want to overcompensate or undercompensate them.

Councilmember Marler stated it is a fair compensation for both. Ms. Firth will be performing two jobs during Mr. Johnson's absence; and as for Mr. Johnson, he could be the Interim City Manager for quite a while until they hire a permanent City Manager.

Councilmember Destin moved to adopt the resolution 18-28, thus directing the execution of the proposed Interim City Manager agreement, which is retroactive to August 6, 2018; seconded by Councilmember Marler.

At this time, the Mayor announced he would allow members of the public to comment on this issue.

Ms. Teresa Hebert, a Destin resident, stated she had worked with Mr. Johnson for the last 3 years and feels he had worked tirelessly for a low income. She continued that this raise is well deserved and way overdue for both employees.

Mr. Mike Buckingham, a Destin resident, stated that he had worked with Mr. Johnson for quite a long time. He has done a great job and well deserving of this raise.

Councilmember Morgan noted that the Parks & Recreation Department is one of the few agencies within the City that really shine; adding that both employees deserve the 15 percent raise.

Having no further comments from the public, the Mayor called for a vote on the motion.

Motion passed 5-2 (Council members Morgan, Destin, Marler, Ramswell and Braden voted "yes"; Council members Dixon and Overdier voted "no").

Following this item, the Council returned to agenda item #2

Having no further business at this time, the meeting was adjourned at 9:35 PM.

2.25.00. - Board of adjustment.

2.25.03. *Functions, duties and responsibilities.* The board of adjustment shall have the following powers and duties:

- A. To hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance.
- B. To hear and decide such conditional uses as the board of adjustment is specifically authorized to pass on under the terms of any zoning ordinance, to decide such questions as are involved in the determination of when conditional uses should be granted, and to grant conditional uses with appropriate conditions and safeguards or to deny conditional uses when not in harmony with the purpose and intent of any zoning ordinance. When reviewing an application for a conditional use, the following criteria shall be considered. Any applicant for a proposed conditional use shall provide plans that demonstrate compliance with the following general criteria:
 - 1. *Size, Location, or Number of Conditional Uses.* Size, location, or number of conditional uses in an area shall be limited so as to maintain the overall character of the district in which said conditional uses are located. The proposed conditional use(s) shall be compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, drainage, dust, lighting, appearance, etc.
 - 2. *Hours of Operation.* Hours of operation may be limited by the board of adjustment to ensure compatibility with adjoining properties. For instance, hours of operation may be restricted to avoid potential adverse impacts on a conforming residential use or on an adjacent single-family residential zoning district.
 - 3. *Factors Impacting Scale and Intensity of Conditional Uses.* The size and shape of the site, the proposed access and internal circulation, and the urban design enhancements must be adequate to accommodate the proposed scale and intensity of conditional use requested. The site shall be of sufficient size to accommodate urban design amenities such as screening, buffers, landscaping, open space, off-street parking, efficient internal traffic circulation, infrastructure, and similar site plan improvements needed to mitigate potential adverse impacts of the proposed use, including its design, mass, height, and scale. The board of adjustment may impose conditions that require supplemental development standards to ensure compatibility with surrounding development.

In granting any conditional use, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with any zoning ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of the zoning ordinance.

The board of adjustment may prescribe a reasonable time limit within which the action for which the conditional use is required shall be begun or completed or both.

- C. To authorize upon appeal such variance from the terms of any zoning ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of such ordinance would result in unnecessary and undue

hardship. In order to authorize any variance from the terms of the conditions, the board of adjustment must find:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.
2. That the special conditions and circumstances do not result from the actions of the applicant.
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by any zoning ordinance to other lands, buildings, or structures in the same zoning district.
4. That literal interpretation of the provisions of any zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of any zoning ordinance and would work unnecessary and undue hardship on the applicant.
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
6. That the grant of the variance will be in harmony with the general intent and purpose of any zoning ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with any zoning ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the zoning ordinance.

The board of adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both.

- D. Under no circumstances, except as permitted above, shall the board of adjustment grant a variance to permit a use not generally or by conditional uses permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of the ordinance in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

(Ord. No. 04-23-LC, § 3, 8-16-04; Ord. No. 06-01-LC, § 4, 12-18-06; Ord. No. 10-11-LC, § 3, 12-20-10)

3.00.01. - Definitions.

Development or development activity: The carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into two or more parcels. The following activities or uses shall be considered to involve "development":

- A. Construction, reconstruction, alteration of the site, or material, change in the external appearance of a structure on land, filling, grading, paving, or otherwise significantly disturbing the soil of a site.
- B. A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.
- C. Alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any coastal construction.
- D. Commencement of drilling (except to obtain soil samples), mining, or excavation on a parcel of land.
- E. Demolition of a structure.
- F. Clearing of land.
- G. Deposit of refuse, solid or liquid waste, or fill on a parcel of land.
- H. Building, installing, enlarging, replacing or substantially restoring a structure, impervious surface, or water management system, and including the long-term storage of materials.
- I. Subdividing land into two or more parcels.
- J. A tree removal for which authorization is required under this Code.
- K. Erection of a permanent sign unless expressly exempted.
- L. Alteration of a historic property for which authorization is required.
- M. Changing the use of a site so that the need for parking is increased.
- N. Construction, elimination or alteration of a driveway onto a public street.

The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

- A. Work by a highway or road agency for the maintenance or improvement of a road if the work is carried out on land within the boundaries of the right-of-way.
- B. Work by any utility and other persons engaged in the distribution or transmission of gas or water to inspect, repair, renew, or construct on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, powerlines, towers, poles, tracks, or the like.
- C. Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.
- D. The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.
- E. The use of any land for growing plants.
- F. A change in the ownership or form of ownership of any parcel or structure.
- G. The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

The term "development," as used in the Land Development Code includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities are not development.

Marina, commercial: A marina that contains 40 or more slips set aside for fare carrying vessels. Slips in a commercial marina can only be rented to fare-carrying vessels, unless other provisions of this Code require otherwise (e.g. Section 11.05.09 requiring transient boat slips). A commercial marina must also sell fuel, ice, bait, marine supplies, recreational equipment to the public and provide at least one area suitable for the loading and unloading of engines, fuel tanks or other equipment to and from fare-carrying vessels.

Marinas: Establishments for the rental of boat docks as a principal use. Fuel sales, minor repairs, and sale of related marine and recreational equipment is allowed as an accessory use.

CHAPTER 13: - GLOSSARY

GOAL 13-1: DEFINITIONS AND ABBREVIATIONS. AS USED IN THIS COMPREHENSIVE PLAN, THE TERMS DEFINED BELOW SHALL HAVE THE FOLLOWING MEANINGS. THE DEFINITIONS ARE PROVIDED TO CLARIFY TERMS USED IN THE COMPREHENSIVE PLAN AND NOT TO ESTABLISH OR LIMIT REGULATORY AUTHORITY OF THE CITY.

OBJECTIVE 13-1.1: ESTABLISH DEFINITIONS. The Glossary of the Comprehensive Plan shall include a definition of technical terms used in the Comprehensive Plan.

Policy 13-1.1.1: Definitions within the Comprehensive Plan. The following technical terms as used in the Comprehensive Plan shall have the meanings presented below.

Development: The carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into two or more parcels. The following activities or uses shall be taken for the purposes of this Comprehensive Plan to involve "development":

- Construction, reconstruction, alteration of the size, or material change in the external appearance of a structure on land, filling, grading, paving or otherwise significantly disturbing the soil of a site.
- A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.
- Alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any coastal construction.
- Commencement of drilling (except to obtain soil samples) mining, or excavation on a parcel of land.
- Demolition of a structure.

- Clearing of land.
- Deposit of refuse, solid or liquid waste, or fill on a parcel of land.
- Building, installing, enlarging, replacing or substantially restoring a structure, impervious surface, or water management system, and including the long-term storage of materials.
- Subdividing land into two or more parcels.
- Erection of a permanent sign unless expressly exempted.
- Alteration of a historic property for which authorization is required.
- Changing the use of a site so that the need for parking is increased.
- Construction, elimination or alteration of a driveway onto a public street.

The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

- Work by a highway or road agency for the maintenance or improvement of a road if the work is carried out on land within the boundaries of the right-of-way.
- Work by any utility and other persons engaged in the distribution or transmission of gas or water to inspect, repair, renew, or construct on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, powerlines, towers, poles, tracks, or the like.
- Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.
- The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.
- The use of any land for growing plants.
- A change in the ownership or form of ownership of any parcel or structure.
- The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

The term "development," as used in the Comprehensive Plan includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities are not development.

7.12.05. Purpose and intent of zoning districts. The purpose and intent of establishing zoning districts is to ensure that all development is consistent with the goals, objectives and policies of the Comprehensive Plan, by establishing a series of zoning districts that indicate what uses are allowed and site development regulations that control the use of land in each district. All development within each zoning district shall be consistent with the purposes stated for each district.

G. **High Density Residential (HDR).** The High Density Residential zoning district implements Future Land Use Element Policy 1-2.2.4, High Density Residential of the Comprehensive Plan.

1. Purpose and intent. The High Density Residential zoning district shall apply to areas developed, redeveloped and/or maintained and conserved as permanent or seasonal single-family detached or multi-family attached residential dwelling units. It is the intent of the HDR zoning district to specifically not allow commercial hotels, motels, bed and breakfast establishments, or other commercial transient living accommodations; and all non-residential uses.
2. Principal, accessory and conditional uses. Permitted, accessory and conditional uses shall include those listed in Table 7-2, Table of Allowable Uses.
3. Performance standards. For lot area, lot width, lot depth, height, setback, density, floor area ratio, and open space standards, please refer to Table 7-3, Table of Dimensional Regulations.

TABLE 7-2: TABLE OF ALLOWABLE USES																													
	B E	L D R - V	L D R - H	L D R - H	M D R - V	M D R - H	H D R	C B N	C L	C G	C T S	R O I - G D	R O I - T D	R O I - V R	R O I - C B R	C B R	T C M U	C M U	C M U - V	S H M U	N H M U	G R M U	H I M U	B R M U	I N	A N S T	R E C	C O N	
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11.05.02. Permitting procedures. The following procedures shall be adhered to by persons desiring to construct a new dock or add to, alter or remodel, add riprap to, or reconstruct an existing dock:

- G. Marinas having ten or more slips and/or non-residential docking facilities shall require a public hearing before the City Council prior to approval.

- P. All applicants shall apply to the City and must receive preliminary approval for the proposed construction prior to taking any other action. Preliminary approval shall be considered for issuance by the City Council after review and recommendations of the Harbor and Waterways Board. If the application is for joint ownership of a dock, the applicant must obtain written permission from all title of record owners and long-term lessees of the abutting upland property. Upon approval of all appropriate federal and state agencies, final approval from the City Council shall be obtained before a permit is issued.

2.07.03. Major or minor deviations to a development order. Deviations to a development order may constitute either a major deviation or a minor deviation, as defined within Article 3, Definitions of this Land Development Code. The following regulations establish the procedures for processing such deviations.

- B. Deviations which have been determined as a major deviation(s) shall necessitate a formal amendment of such order. Such an amendment shall be reviewed and processed pursuant to the following requirements:
 - 2. Major deviations to an existing major development order shall be reviewed and processed pursuant to the requirements of Sections 2.07.00 and 2.07.01.



Community Development Department

Office of the Director

4100 Indian Bayou Trail | Destin, FL 32541 | Phone: 850-654-1119 | Fax: 850-460-2171 | www.cityofdestin.com

July 29, 2019

Mr. Douglas M. Smith
Hopping Green & Sams
Post Office Box 6526
Tallahassee, FL 32314

RE: Point Mezzanine Docking Facility

Dear Mr. Smith,

This letter is in response to your request to re-evaluate the previous determination that the applicant would need to apply for an amendment to the existing development order in order to add the proposed 50 slip docks. After reviewing the supplied documents, the previous determination still stands. Below are responses to your requests:

Marina or Dock

- You state that Point Mezzanine is not proposing to build a marina but contends to build a 50-slip private docking facility.
- Article 3 of the Land Development Code (LDC) states that commercial marinas contain 40 or more slips, while a marina is considered the establishment for rental of boat docks as a principal use.
- As such, your proposed 50 slip docking facility is considered a marina.

Definition of Development

- Development as defined in the Comprehensive Plan (Chapter 13-Glossary) and in the Land Development Code Article 3.00.01, includes construction, reconstruction, or alteration ...significantly disturbing the soil of a site...alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal **including any coastal construction**.
- Based on the above definition, your project is considered a development.

You note that the Upland DO expressly states that docks were not part of the request.

- We agree that docks were not part of the Development Order request. However, due to the definition of “development” noted in the Comprehensive Plan and LDC, any addition of uses, including those accessory to the primary use, must go through the deviation process.

Consistency of Review

- You reference East Pass Condominium not amending a Development Order for addition of the docks. Below are circumstances in which review of coastal construction may vary:
 - Accessory docks to single family dwellings
 - Docks or marinas are allowed as a principal use
 - Development was built prior to incorporation of the City
 - Dock or Marina is listed in an approved Development Order
- None of the instances apply to your proposal.

You also contend that the “private docking facility” is accessory to the condominium

- We agree. Otherwise, a stand-alone docking facility or marina would be considered a prohibited use.
- Furthermore, Marinas that are accessory to upland development have additional parking requirements that would affect the Upland Development Order. In such cases, the marina would need to be reviewed in concurrence with the existing Development Order.

Public Records

- You state that City Council routinely approves docks on the Consent Agenda.
 - Applications received for the review of coastal construction must first meet all applicable Code requirements prior to being scheduled for a Harbor and Waterways Board review and recommendation to the City Council.

Which Code is Applicable-Article 2 or Article 11

- Article 2
 - Since you consider the docking facility as accessory to the condominium project, a review under Article 2 of the Land Development Code for a Major Deviation to the existing Development Order is the appropriate process to review your proposal.
- Article 11
 - If however, you wish to decouple the docking facility from the upland development, the docking facility would be considered a principal use, it would not be permitted in the HDR Zoning District per the Land Development Code Article 7.12.06 Table 7-2 Table of Allowable Uses and the NAICS use classification.

If you have any questions, please contact my office at (850) 654-1119.

A. Louis Zunguze

A. Louis Zunguze, MURP
Community Development Director

Cc: Lance Johnson, City Manger
Kim Kopp, City Land Use Attorney
Dawn McDonald, Planner
Lauren Witt, Planner

Sam Brisolara, Planner
Kyle Bauman, City Attorney
Joey Forgione, Code Compliance Manager
File