

**TOWN OF OCEAN BREEZE
REGULAR TOWN COUNCIL MEETING
AGENDA**

October 14, 2019, 10:30 am
Ocean Breeze Resort Clubhouse Pineapple Bay Room
700 NE Seabreeze Way, Ocean Breeze, FL

***PLEASE TURN OFF CELL PHONES –
SPEAK DIRECTLY INTO MICROPHONE***

- 1. Call to Order, President De Angeles**
 - Pledge of Allegiance
 - Roll Call
- 2. Approval of Minutes** – Regular Meeting, Monday, September 9, 2019 (Motion, second, all in favor)
- 3. Presentation by Town Council Candidates for the November 5, 2019 Election**
- 4. Request by Sun Communities to reconfigure the layout of several private docks along the Indian River** (Motion, second, all in favor)
- 5. Comments from the public on topics not on the Agenda**
- 6. Comments from the Council on topics not on the Agenda** – Council Member Locatis update on meeting with Sun Communities regarding hurricane preparedness
- 7. Comments from Town Management Consultant Terry O'Neil**
- 8. Comments from Mayor Ostrand –**
- 9. Announcements –**
 - Regular Town Council Meeting – Monday, November 11, 2019 at 10:30 am to be held at Ocean Breeze Resort Clubhouse, Pineapple Bay Room, 700 NE Seabreeze Way, Ocean Breeze, FL
 - Regular Election to be held at Langford Park, 2369 NE Dixie Hwy, Jensen Beach on Tuesday, November 5, 2019 from 7:00 am – 7:00 pm
 - Canvassing Board Meeting Wednesday, November 6, 2019 at 10:00 at Ocean Breeze Town office, 1508 NE Jensen Beach Blvd, Jensen Beach
- 10. Adjourn** (Motion, second, all in favor)

TOWN OF OCEAN BREEZE
MINUTES REGULAR TOWN COUNCIL MEETING
Monday, September 9, 2019
Ocean Breeze Jensen Beach Clubhouse, Pineapple Bay Room – 10:30 a.m.
700 NE Seabreeze Way, Ocean Breeze, FL 34957

1. **Call to Order** – President De Angeles called the meeting to order at 10:30 a.m.
 - Pledge of Allegiance – Mayor Ostrand led the Pledge of Allegiance
 - Roll Call – Mayor Karen M. Ostrand, President Ken De Angeles, Vice-President Ann Kagdis, Council Members Kevin Docherty, Richard Gerold, Terry Locatis and David Wagner
 - Staff Present – Town Management Consultant, Terry O’Neil; Town Attorney, Rick Crary, Town Clerk, Pam Orr, and Bookkeeper/Clerical Assistant, Kim Stanton
2. **Approval of Minutes** – Council Member Wagner, seconded by Council Member Locatis, made a Motion to approve the Minutes of the August 12, 2019 Regular Meeting.
All in favor; Yes: De Angeles, Kagdis, Gerold, Docherty, Locatis, Wagner; No: None; Motion Passed
3. **Approval of Rescheduled Public Hearing Dates for Tentative and Final Budget/Millage Adoption (Rescheduling Due to Hurricane Dorian)** – President De Angeles asked for approval of the following rescheduled meetings to be held at Ocean Breeze Resort Clubhouse, Pineapple Bay Room, 700 NE Seabreeze Way, Ocean Breeze, Florida:
 - Tentative Budget and Proposed Millage Rate Hearing–Wednesday, September 11, 2019 at 5:01 p.m.
 - Final Budget and Proposed Millage Rate Hearing–Wednesday, September 18, 2019 at 5:01 p.m.

Vice-President Ann Kagdis, seconded by Council Member Wagner, made a Motion to approve the rescheduled public hearing dates for the Tentative and Final Budget Millage Adoption for F/Y 2020.
All in favor; Yes: De Angeles, Kagdis, Gerold, Docherty, Locatis, Wagner; No: None; Motion Passed

President De Angeles announced the 2019 Election and Town Clerk announced the list of candidates and that the election would take place Tuesday, November 5, 2019 at Langford Park.

President De Angeles asked for discussion regarding the increase in the number of signs along Jensen Beach Boulevard in front of Ocean Breeze Plaza.

Vice-President Kagdis stated that the owners of the Plaza were contacted and that the Mayor was following up on the issue.

Council Member Gerold asked about Martin County’s sign ordinance.

Mr. O’Neil answered that Martin County had not completed the update on its sign ordinance. He stated that in the interim staff would contact Martin County to ask if the activity was occurring in the right-of-way, which was outside the Town limits. He added that the County had prohibitions against these temporary signs. He stated that staff would work with Martin County. He suggested holding off on a Town sign ordinance until the County’s ordinance was complete. He commented that staff would speak with Martin County to have the signs removed from the sidewalks and power poles. He stated that if the Town believed the County’s sign ordinance was taking too long the Council could consider an abbreviated targeted ordinance, dealing only with temporary signs.

Mayor Ostrand stated that the Town should know where the right-of-way was located in order to put up the Town signs.

Mr. O'Neil replied that the Town had contacted the owners of Ocean Breeze Plaza regarding the Town signs and had not yet received an answer. He added that the County would indicate where the right-of-way would begin and end. He commented that it might be necessary to get a surveyors' opinion, but that was not an expense he would suggest if the Town could coordinate with the County.

4. Comments from the public on topics not on the Agenda – Candi McKenzie asked about the status of the review of the amendments and the prospectus with Sun.

Mr. O'Neil answered that Sun Communities applied for a series of minor amendments to the PUD and there was a public hearing, and that the Council approved their request.

Council Member Gerold stated that the Minutes of that meeting were available at the Town Office and on the Town web-site.

Mr. O'Neil asked the Town Clerk to forward the Minutes of that meeting to Ms. McKenzie.

President De Angeles asked for further comments from the public.

There were none.

5. Comments from the Council on topics not on the Agenda – Council Member Wagner asked for an update on the sidewalk at West End.

Mr. O'Neil answered that after inspection, he had communicated with Mr. Walters that the sidewalk, as well as a portion of the road, was giving way. He commented that he had reminded Mr. Walters last week about the repair and that the Town Clerk had sent an email. He stated that this was a safety issue and should be addressed and mentioned that a notice of violation could be issued.

Mayor Ostrand confirmed that the pavers had been repaired.

Council Member Locatis stated that in the interest of the health, safety and welfare of the residents, he was concerned about hurricane preparation.

Discussion ensued.

Mr. O'Neil responded to a concern regarding sheds and stated that staff had completed a survey of all sheds in the community including those on RV sites and that the status of roughly ten older units were uncertain. He added that of the remaining sheds considerable progress had been made in winnowing down the list of questionable sheds; also, that there were quite a few RV sheds moved without permits. He commented that the Town had to do some research to determine if a shed had been legally permitted. He continued that the Town had been coordinating with Sun Communities and Sun was predisposed to see sheds that were not permitted dealt with in some fashion. He stated that would be a decision that Sun would have to make and come before the Town for some accommodations for these older sheds. He stated if the sheds were located properly, safe and the Building Official thought they were workable, he believed it was better for residents to have sheds in order to contain property of individuals.

Mr. O'Neil stated that in the past, with regard to hurricane preparation, he and County representatives had reported to the Town Council that Sun Communities was private property and hurricane preparation was driven by Sun. He added a close coordination effort with the the Emergency Operations Facility was immediately shared with Sun and the agreement had been that Sun would disseminate that information. He stated that he had been told that Sun had passed along information through door to door contacts or emails. He commented that Sun's email list for the residents was proprietary and that Town staff did not have, nor would be given, access to that list.

Mr. O'Neil suggested that an invitation be extended to Sun to have discussions regarding this issue. He added that while at the Emergency Operations Center he spoke to Mr. Walters multiple times during the event and found him to be very responsive.

Council Member Locatis suggested that all residents going north for the summer be advised to clear furniture and plants from their porch and put everything away and that this should be communicated to all residents.

Mr. O'Neil answered that the suggestion would be strongly relayed. He spoke about the issue of evacuation and the Sheriff's Department responsibility for issuing evacuation notices, particularly for the island and low lying areas. He stated that the Sheriff's Department cannot physically enforce mandatory evacuations.

Council Member Locatis stated that he was referring to preparation and that residents did not realize what they need to do for hurricane preparation.

President De Angeles stated that Sun should send notices to all home owners, especially those that were leaving, reminding them of hurricane season and how to prepare their home. He asked if sheds had to be tied down, whether permitted or not.

Mr. O'Neil spoke about his discussion with the Building Official and stated that as long sheds were legally permitted, they were legal, non-conforming sheds. He added that the Town would encourage these sheds to be tied down and perhaps Sun could play some role with helping residents have their legal, non-conforming sheds tied down. He stated that the problem had somewhat diminished with the enforcement of questionable sheds.

Deidre Henry, 107 NE Bay Drive, Ocean Breeze, stated that she asked Sun if her neighbor's shed was tied down and that she was posing the question because she remained unsure.

Mr. O'Neil answered that the Town had been and would continue to enforce the regulations in place. He added that there were some sheds that were not finished, but that no one would enter onto private property to secure them. He stated that Sun was aware of these issues and by the next meeting, he would report back to Ms. Henry on that status.

Mr. De Angeles stated that this was an important issue and for the safety of other residents.

Mr. O'Neil stated that if shed permit records could not be located, the Town Council would advise Staff to use enforcement. He commented that Mr. Cray could be hired if there was non-compliance. He added that the process would involve official notices, and perhaps court action. He remarked that Sun Communities would also play a role.

The Town Clerk explained to Ms. Henry that Sun had taken care of her neighbors shed.

Council Member Gerold commented that he believed it was the Resort's responsibility to secure the safety of the residents. He suggested a meeting with Staff, Council Members and certain residents about Sun's expectations upon mandatory evacuation orders. He continued that several houses had furniture on their carport and also on their deck and he spoke about houses on the island not secured. He stated that this was a matter of safety and was the responsibility of Sun; and that clarification was needed.

He asked for an update regarding the erosion issue with the resident on South Street, Tony Richmond.

Mr. O'Neil answered that language was put in the PUD Amendment saying that D.R. Horton was not able to shift the wall until they addressed the issue of erosion to the satisfaction of the Town's consulting engineer and staff. He stated that an on-site meeting with all parties involved was scheduled for Wednesday, September 11th.

Discussion ensued regarding the timing of D.R. Horton installing their fence, the location of the fence, the County Engineering Department's feedback and the Town's commitment to follow-up on the matter.

Council Member Docherty asked about the status of the "Your Speed" signs.

Mr. O'Neil explained the status of the "Your Speed" signs and commented that Staff would attempt to obtain a specific date for installation.

Vice-President Kagdis asked when the shade cover on the dock would be installed.

Mr. O'Neil answered that the permit was good for 180 days and if the permit lapsed, Sun would have to reapply for another permit.

Council Member Gerold explained his understanding of the delay and added that the dock contractors were in the process of doing the work.

Vice-President Kagdis asked about the transfer of the account at TD Bank and higher interest rates with the Florida Municipal Investment Trust.

Mr. O'Neil answered that at the Budget hearing on September 11th, he would like Holly Vath the Town's Financial Consultant to answer questions regarding investing Town dollars.

President De Angeles asked the Town Council if it would be beneficial for one of the Council Members and Mr. O'Neil to meet with Chris Walters and review some of the things that Council Member Locatis brought up regarding hurricane preparations.

Mr. O'Neil agreed and stated that the meeting would include a single Council Member and the Mayor.

Council Member Locatis stated that he would attend.

Mr. O'Neil stated that this would be a request of Sun Communities.

Mayor Ostrand thanked Mr. O'Neil for all his efforts during the hurricane, stating he was in constant contact with Sun, as was she. She stated that she was contacted several times regarding certain issues and spoke with Chris Walters and she added that Mr. Walters did have someone on property taking care

of some of the items. She commented that the mandatory leave notice required most of the workers, including Chris and Cindy Walters, to leave, stating that Gena May informed her of this with a personal telephone call. She added that Sun Communities sent out a letter and knocked on every single door handing out flyers. She urged that when Sun Communities closed a contract for a residence, new purchasers should be advised as to what was expected in this Resort at the time of a hurricane. She stated no such information was being provided to new home owners, renters or recreational vehicle owners. She asked if Mr. O'Neil would set up a meeting with Chris to discuss this further.

President De Angeles asked for further comments from the Council.

There were none.

6. Comments from Town Management Consultant Terry O'Neil – Mr. O'Neil stated that under the OBE PUD plan that there were a series of docks that were called for on the Indian River. He commented that an application for permit came in to the office for a boat lift. He stated that he was uncertain about the matter and had reached out to Marcela Cambor. He stated that the lift required a DEP permit and a Town permit. He stated that absent objections from the residents, he did not believe a PUD Amendment would be necessary, but that he was asking for guidance from the Town Council.

Discussion Ensued.

7. Comments from Mayor Ostrand – Mayor Ostrand spoke about an email she had received from the Executive Director of the Environmental Studies Center. She discussed the mangrove planting project that had been planned but it was decided with the wave action at that location, the baby mangroves would not survive. She shared the history of the Town with the Environmental Studies Center. She remarked that the Environmental Studies Center would now like the Town to join them in some other efforts including hatching baby alligators and remodel one of the rooms. She stated that she had no record of the costs, but wanted feedback from the Council.

Vice-President Kagdis stated that the Town had always contributed marginally to the Environmental Studies Center. She commented that the Town had originally committed to \$5,000 for the mangrove planting project because that was part of the Indian River Drive grant project. She did not believe the Town could arbitrarily shift those funds to another project. She added that the Town had given the Environmental Studies Center a contribution as part of the regular budget. She did not agree that a major project with the Environmental Studies Center be undertaken.

President De Angeles agreed, stating that the Environmental Studies Center was part of the Martin County School District and was not an independent, community service center.

Council Member Gerold spoke about a wish list put out at the beginning of the school year for certain educational systems that were not directly related to the school district and that this project was on that list. He stated that these items should be sponsored by donations from the public directly to the Environmental Studies Center, not public dollars. He stated that he agreed with Vice-President Kagdis.

Mayor Ostrand spoke about the future expectations of the Town of Ocean Breeze. She suggested a workshop in November, after the election, with discussions on the future of the Town.

Vice-President Kagdis suggested December or January to allow all residents to return.

Mayor Ostrand asked about January, 2020.

Vice-President Kagdis, seconded by Council Member Docherty, made a motion that the Town Council schedule a workshop to discuss the future of the Town in January, 2020.

All in favor; Yes: De Angeles, Kagdis, Gerold, Docherty, Locatis, Wagner; No: None; Motion Passed

8. Announcements – President De Angeles announced the following meetings to be held at Ocean Breeze Resort Clubhouse, Pineapple Bay Room, 700 NE Seabreeze Way, Ocean Breeze, FL

- Regular Town Council Meeting – Monday, October 14, 2019 date 10:30 a.m.
- Tentative Budget and Proposed Millage Rate Hearing – Wed., September 11, 2019 at 5:01 pm
- Final Budget and Proposed Millage Rate Hearing – Wed., September 18, 2019 at 5:01 pm

9. Adjourn – Council Member Wagner, seconded by Vice-President Kagdis, made a Motion to adjourn the meeting at 11:25 a.m.

All in favor: De Angeles, Kagdis, Docherty, Gerold, Locatis, Wagner; Opposed: None; Motion Passed: (6-0)

Respectfully Submitted,

Pam Orr,

Town Clerk

Minutes approved: _____

Memorandum

To: Town Council and Mayor

From: Terry O'Neil, Town Mgmt. Consultant

Cc: Pam Orr, Town Attorney

Rick Crary, Town Attorney

Date: October 8, 2019

Re: Request by Sun Communities to reconfigure the layout of several private docks along the Indian River.

Subsequent to the Town's approval of the Ocean Breeze Resort, the Florida Department of Environmental Protection (FDEP) determined that several proposed docks along the Indian River, generally depicted by the development's initial master plan, should be lengthened to address both functionality and environmental concerns. As a result, in approving the first of potentially 14 docks, the agency has called for a dock length of 25 feet. For future dock applications, it is anticipated that FDEP may increase this figure by as much as 5 feet due to varying depths and bottom characteristics. Further, the dock layout okayed by FDEP includes two boat lifts per dock, rather than a "t-shape" design as originally proposed. Council members discussed the use of boat lifts at an earlier meeting and considered them a safer alternative.

Recommendation

In light of FDEP's requirements, as well as the environmental and safety advantages that result from a revised design, staff fully supports Sun's request to vary the configuration of its tenant's docks from the original layout. As a condition of approval, however, staff recommends that Sun be asked to execute the attached agreement, prepared by the Town Attorney, which generally (1) limits the use of docks to tenants only and (2) requires further Council approval if any of the future docks are to exceed 30 feet in length. Sun's Planning Representative, Marcela Cambor, will attend the 14th meeting to present the company's request and answer questions.

Attached Documents:

- October 7, 2019 Cover Letter
- "Exhibit C" and "Master Plan" documents showing dock layout as originally proposed
- Survey document, "Typical Dock Layout" showing FDEP-approved design, including lifts
- Agreement Regarding Unit Owner Docks
- FDEP Dock Permit Application and Review



MARCELA CAMBLOR & ASSOCIATES, INC
Town Planning • Architectural Design

October 7, 2019

Terry O'Neil
Town Manager, Town of Ocean Breeze

RE: OCEAN BREEZE EAST PUD DOCKS

Dear Mr. O'Neil:

Attached please find materials to describe, clarify and support the provision of docks as a component of the Ocean Breeze East PUD.

Enclosed are:

- OBEPUD master plan depicting the ability to construct up to 14 docks;
- Typical dock as deemed feasible by the Florida Department of Environmental Protection
- Florida DEP dock permit.

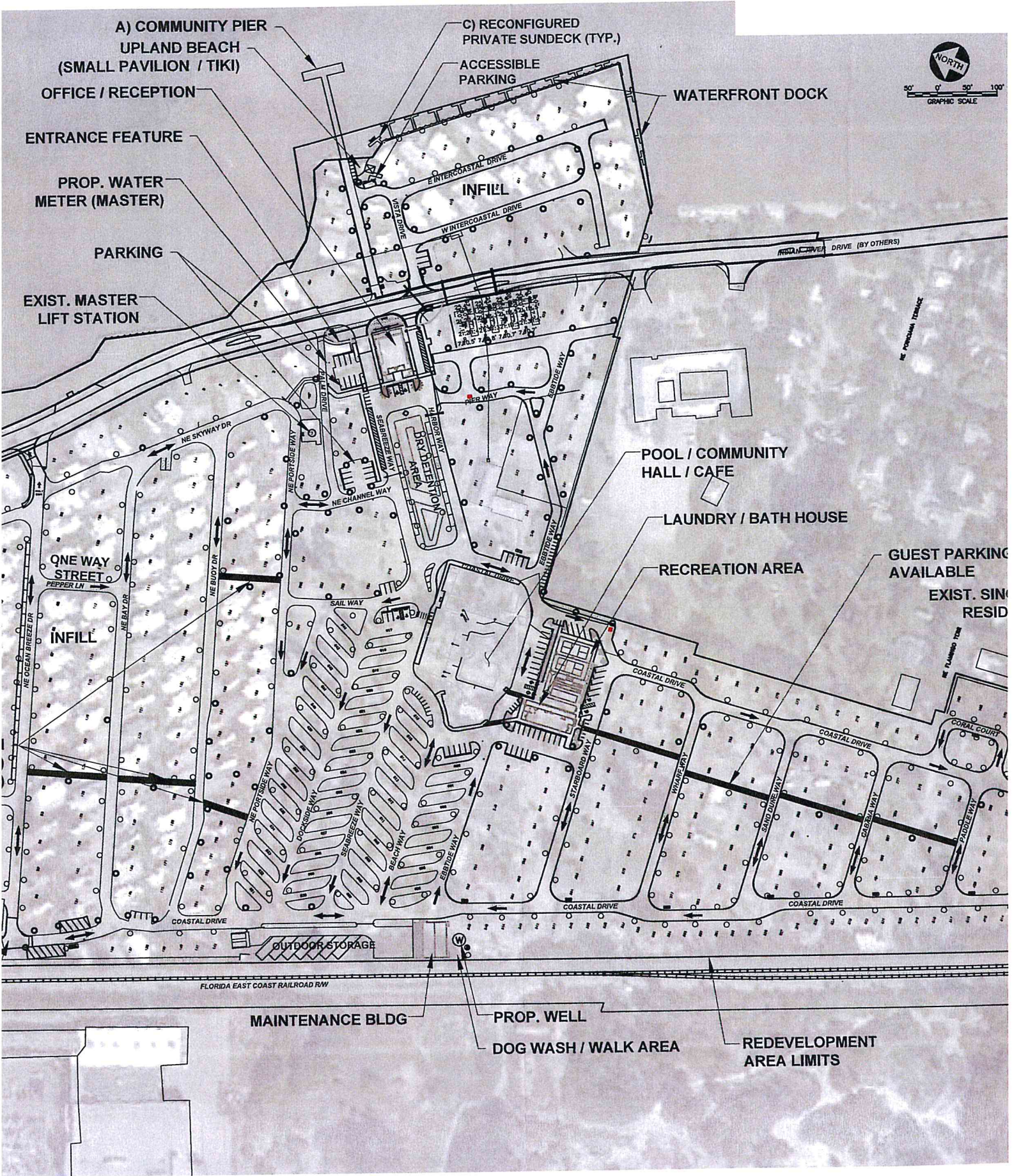
I would like to take this opportunity to clarify the following regarding the proposed boat docks:

- The docks were initially incorporated into the OBE PUD as a recommendation by the Town Council;
- docks were conceptually depicted in the shape of a "T", but the approving agency has deemed that it is safer to maintain a conventional "I" shape, less intrusive and safer (in essence a configuration of less impact than the conceptually envisioned in the OBEPUD plan);
- docks are conceptually depicted to extend to a black, unlabeled line that coincides with the Edge of TITF deed. At the time the applicant did not want to imply it had approvals or control beyond this line;
- the permitting agency has deemed that the appropriate, safe length for a private dock is as depicted in the attached exhibit and permit;
- as other docks are planned, while there may be slight variations in length (longer or shorter), docks will be designed in a manner as to not affect other existing or future docks. Variations of over 5' in length are not anticipated; and finally,
- docks are for use of the individual site to which the dock is attached and shall not be loaned or subleased to others.

I look forward to discussing this matter further with Town staff and the Council as you deem appropriate. Please call me if you have any questions.

Sincerely,

Marcela Camblor-Cutsaïmanis, AICP





Typical Dock Layout

SAV SURVEY AREA

4' X 25' GRATED DECK
SURFACE W 43%
OPEN SPACE

SEAGRASS SURVEY PERFORMED BY
BRUCE JERNER ON JUNE 27, 2019. (2) 5 SQ
FT +/- AREAS OF HALODULE WRIGHTII
OBSERVED ALONG SEAWALL



EDGE OF TIITF DEED

(-)3.5' MLW

40'

4'

40' SHORELINE

40'

50'

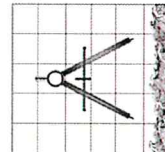
624

24

034

234

OCEAN BREEZE PARK
3000 NE INDIAN RIVER DR.
JENSEN BEACH



Jerner & Associates, Inc.
Environmental Consulting
2537 SE Alfonso Ave. Port St. Lucie, FL 34952
Ph. (772) 283-2950
JERNER@BELLSOUTH.NET

 $1'' = 20'$

Date: 7/5/19

SHEET 3

AGREEMENT REGARDING UNIT OWNER DOCKS

THIS AGREEMENT is made effective as of the ____ day of October, 2019 by and between NHC-FL143, LLC, a Delaware limited liability company, hereinafter referred to as "Sun Communities," and the Town of Ocean Breeze, a municipal corporation, hereinafter referred to as the "Town,"

WHEREAS, the Ocean Breeze East Planned Unit Development Agreement ("PUD") includes a diagram of docks connected to certain units on the Indian River, which diagram was, unlike other areas diagrammed in the PUD, uniquely intended as representational only, for the purpose of establishing the number of docks and approximate locations thereof to be allowed; and

WHEREAS, the parties understand that the Florida Department of Environmental Protection ("DEP") has jurisdiction to determine the actual minimum lengths and locations of the docks as the same extend over lands submerged beneath mean high water; and

WHEREAS, the parties wish to make reasonable adjustments to the depiction of the said docks in order that they may fully comply with regulations established by DEP; and

WHEREAS, DEP may require that the said docks be made to extend eastward of a line shown in the PUD in order to reach the depth of water required; and

WHEREAS, it appears unlikely that DEP shall require any such docks to exceed a length of 25 feet, and in no event more than 30 feet; and

WHEREAS, as a precondition to the Town's issuance of permits related to the said docks, Sun Communities has agreed to abide by the restrictive conditions stated hereinbelow:

NOW, THEREFORE, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises set forth herein, the parties hereto agree as follows:

1. The above recitals are true and correct and are incorporated herein by reference
2. Provided Sun Communities abides by conditions set forth below, the Town and Sun Communities hereby agree that the docks referenced in the PUD as attached to units may be constructed in accordance with the diagram attached hereto as Exhibit "A."
3. The designation of boundaries for the said docks as set forth herein shall remain in effect for so long as Sun Communities complies with the following reasonable conditions:

- a. Prior to the issuance by the Town of a permit for construction of a dock, Sun Communities shall first provide the Town with sufficient proof of the dimensions required by DEP, and said dock shall thereafter be constructed in accordance with such dimensions.
 - b. In no event shall any dock be permitted to exceed a length of 30 feet, unless and until Sun Communities shall first obtain Town Council approval specifically allowing for such greater length.
 - c. Sun Communities shall not permit any owner(s) or occupant(s) of a unit to which the dock is attached to rent or otherwise allow boat storage at such dock by any third party or parties, nor shall Sun Communities allow such use of a dock by anyone other than the owner(s)/occupant(s) of the unit to which such dock is attached.
4. In the event of Sun Communities' violation of one or more conditions set forth above, the Town Council, after due hearing of the matter, shall have the power to revoke this agreement, in which case the PUD shall be deemed to be in violation, and the Town shall have all remedies available thereunder, in addition to any and all other remedies as may be otherwise be available under Florida law.
5. The terms of this agreement shall inure to the benefit and be binding upon the parties and their successors and assigns.

IN WITNESS WHEREOF, we set our hands as of the date set forth above:

Witnesses:

Sign: _____

Print: _____

Sign: _____

Print: _____

TOWN:

Town of Ocean Breeze, a municipal corporation

By: Karen M. Ostrand, Mayor

Witnesses:

SUN COMMUNITIES:

NHC-FL 143, LLC,
a Delaware limited liability company

Sign: _____

Print: _____

By: NRVC-Holding Co., LLC,
a Delaware limited liability company, Sole Member

By: Sun Communities Operating Limited

Sign: _____
Print: _____

Partnership, a Michigan limited partnership, Sole
Member

By: Sun Communities, Inc., a Maryland
corporation, General Partner

By: John McLaren,
Vice-President and Chief Operating Officer

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this ____ day of ____, 2019, by
Karen M. Ostrand, as Mayor of the Town of Ocean Breeze, a municipal corporation, who is
[] personally known to me, or [] has produced _____ as
identification.

Notary Public – State of Florida
My Commission Number: _____
My Commission Expires: _____

STATE OF _____
COUNTY OF _____

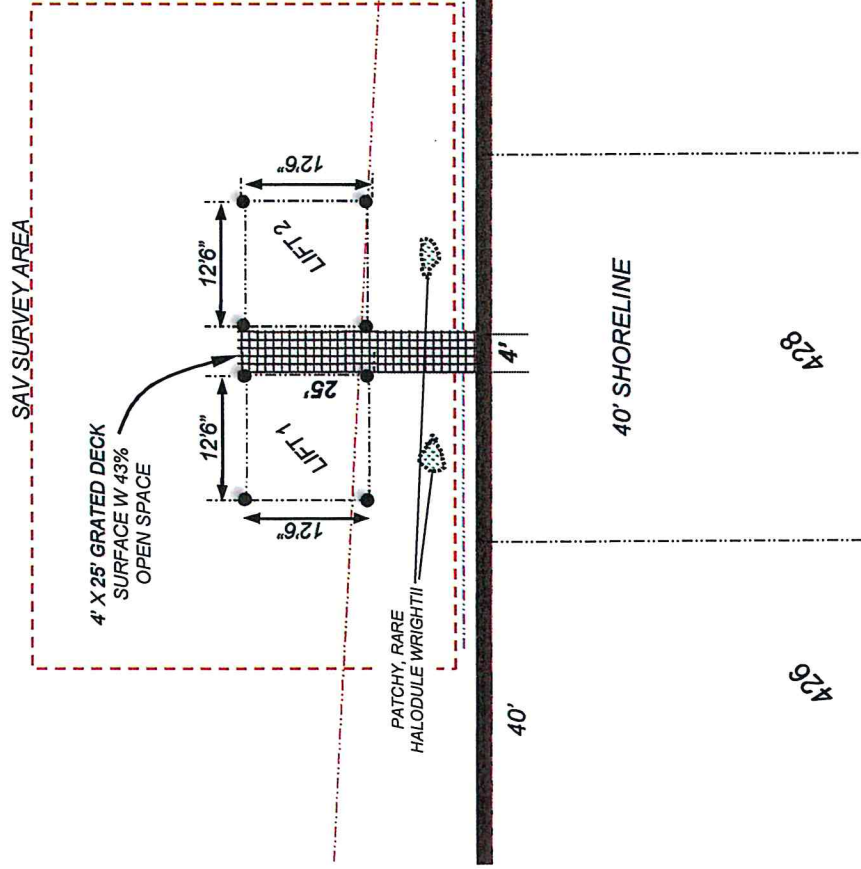
The foregoing instrument was acknowledged before me this ____ day of May, 2018, by
John McLaren, as Vice-President and Chief Operating Officer of Sun Communities, Inc., a
Maryland corporation, which is the General Partner of Sun Communities Operating Limited
Partnership, a Michigan limited partnership, which is the sole Member of NRVC-Holding
Co., LLC, a Delaware limited liability company, which is the sole Member of NHC-FL143,
LLC, a Delaware limited liability company, who is [] personally known to me, or [] has
produced _____ as identification.

Notary Public – State of Florida
My Commission Number: _____
My Commission Expires: _____



INDIAN RIVER LAGOON

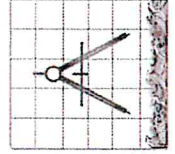
Typical Dock Layout



SEAGRASS SURVEY PERFORMED BY
BRUCE JERNER ON JUNE 27, 2019. (2) 5 SQ
FT +/- AREAS OF HALODULE WRIGHTII
OBSERVED ALONG SEAWALL.



OCEAN BREEZE PARK
3000 NE INDIAN RIVER DR.
JENSEN BEACH



Jerner & Associates, Inc.
Environmental Consulting
2537 SE Alfonso Ave. Port St. Lucie, FL 34952
Ph: (772) 283-2950
JERNER@BELLSOUTH.NET

1" = 20'

Date: 7/5/19

SHEET 3



FLORIDA DEPARTMENT OF Environmental Protection

Southeast District Office
3301 Gun Club Road, MSC 7210-1
West Palm Beach, FL 33406
561-681-6600

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

August 1, 2019

Chris Walters
3000 NE Indian River Dr.
Ocean Breeze, FL 34957
Sent via e-mail: cwalters@suncommunities.com

Re: File No.: 43-0043054-007-EE
File Name: Dumais

Dear Mr. Walters,

On July 11, 2019, we received your request for verification of exemption to install a 100 ft² dock and two boatlifts attached to the dock in the Indian River, within the Jensen Beach to Jupiter Inlet Aquatic Preserve, Outstanding Florida Waters, Class III Waters, adjacent to 3000 NE Indian River Dr., Ocean Breeze (Section 22, Township 37 South, Range 41 East), in Martin County (Latitude N 27° 14' 27.24", Longitude W 80° 13' 17.46")

Your request has been reviewed to determine whether it qualifies for (1) regulatory exemption, (2) proprietary authorization (related to state-owned submerged lands), and (3) federal approval that may be necessary for work in wetlands or waters of the United States.

Your project qualifies for all three. However, this letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity.

If you change the project from what you submitted, the authorization(s) granted may no longer be valid at the time of commencement of the project. Please contact us prior to beginning your project if you wish to make any changes.

If you have any questions regarding this matter, please contact David Kieckbusch at the letterhead address or at (561) 681-6646, David.Kieckbusch@floridadep.gov.

1. Regulatory Review – VERIFIED

Based on the information submitted, the Department has verified that the activity as proposed is exempt, under Chapter 62-330.051, (5)(b), Florida Administrative Code, from the need to obtain a regulatory permit under Part IV of Chapter 373 of the Florida Statutes.

This exemption verification is based on the information you provided the Department and the statutes and rules in effect when the information was submitted. This verification may not be valid if site conditions materially change, the project design is modified, or the statutes or rules governing the exempt activity are amended. In the event you need to re-verify the exempt status for the activity, a new request and verification fee will be required. Any substantial modifications to the project design should be submitted to the Department for review, as changes may result in a permit being required.

2. Proprietary Review- NOT REQUIRED, GRANTED

The Department acts as staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) and issues certain authorizations for the use of sovereign submerged lands. The Department has the authority to review activities on sovereign submerged lands under Chapters 253 and 258 of the Florida Statutes, and Chapters 18-20 and 18-21 of the Florida Administrative Code.

The activity appears to be located on sovereign submerged lands owned by the Board of Trustees. The activity is not exempt from the need to obtain the applicable proprietary authorization. As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that a portion of the activity qualifies for a letter of consent under Section 253.77, Florida Statutes, to construct and use the activity on the specified sovereign submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein.

During the term of this Letter of Consent you shall maintain satisfactory evidence of sufficient upland interest as required by paragraph 18-21.004(3)(b), Florida Administrative Code. If such interest is terminated or the Board of Trustees determines that such interest did not exist on the date of issuance of this Letter of Consent, this Letter of Consent may be terminated by the Board of Trustees at its sole option. If the Board of Trustees terminates this Letter of Consent, you agree not to assert a claim or defense against the Board of Trustees arising out of this Letter of Consent.

A portion of the project occurs on state lands and as long as the work is performed as described in the attached project drawings, is wholly located within the boundaries of the existing land conveyed by the state in Deed 19496 and is consistent with the terms and conditions therein, we have no objection to the project. Therefore, consider this letter to also constitute the authority sought under Section 253.77, F.S. to pursue this project.

Special Consent Conditions

1. The applicant agrees to indemnify, defend and hold harmless the Board of Trustees and the State of Florida from all claims, actions, lawsuits and demands in any form arising out of the authorization to use sovereignty submerged lands or the applicant's use and construction of structures on sovereignty submerged lands. This duty to indemnify and hold harmless will include any and all liabilities that are associated with the structure or activity including special assessments or taxes that are now or in the future assessed against the structure or activity during the period of the authorization.
2. Failure by the Board of Trustees to enforce any violation of a provision of the authorization or

waiver by the Board of Trustees of any provision of the authorization will not invalidate the provision not enforced or waived, nor will the failure to enforce or a waiver prevent the Board of Trustees from enforcing the unenforced or waived provision in the event of a violation of that provision.

3. Applicant binds itself and its successors and assigns to abide by the provisions and conditions set forth in the authorization. If the applicant or its successors or assigns fails or refuses to comply with the provisions and conditions of the authorization, the authorization may be terminated by the Board of Trustees after written notice to the applicant or its successors or assigns. Upon receipt of such notice, the applicant or its successors or assigns will have thirty (30) days in which to correct the violations. Failure to correct the violations within this period will result in the automatic revocation of this authorization.
4. All costs incurred by the Board of Trustees in enforcing the terms and conditions of the authorization will be paid by the applicant. Any notice required by law will be made by certified mail at the address shown on page one of the authorization. The applicant will notify the Board of Trustees in writing of any change of address at least ten days before the change becomes effective.
5. This authorization does not allow any activity prohibited in a conservation easement or restrictive covenant that prohibits the activity.

General Conditions for Authorizations for Activities

All authorizations granted by rule or in writing under Rule 18-21.005, F.A.C., except those for geophysical testing, shall be subject to the general conditions as set forth in paragraphs (a) through (i) below. The general conditions shall be part of all authorizations under this chapter, shall be binding upon the grantee, and shall be enforceable under Chapter 253 or 258, Part II, F.S.

(a) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.

(b) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.

(c) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in Sections 253.04 and 258.46, F.S., or Chapter 18-14, F.A.C.

(d) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.

(e) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in Rules 68A-27.003, 68A-27.004, and 68A-27.005, F.A.C.

(f) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.

(g) Structures or activities shall not create a navigational hazard.

(h) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of Rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.

(i) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under Paragraph 18-21.004(1)(f), F.A.C., or any other applicable law.

3. Federal Review - APPROVED

Your proposed activity as outlined in your application and attached drawings qualifies for Federal authorization pursuant to the State Programmatic General Permit V-R1, and a **SEPARATE permit** or authorization **will not be required** from the Corps. Please note that the Federal authorization expires on July 26, 2021. However, your authorization may remain in effect for up to 1 additional year, if provisions of Special Condition 19 of the SPGP V-R1 permit instrument are met. You, as permittee, are required to adhere to all General Conditions and Special Conditions that may apply to your project. Special conditions required for your project are attached. A copy of the SPGP V-R1 with all terms and conditions and the General Conditions may be found at <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book>.

Authority for review - an agreement with the USACOE 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.

Additional Information

Please retain this letter. The activities may be inspected by authorized state personnel in the future to ensure compliance with appropriate statutes and administrative codes. If the activities are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 18-14, F.A.C.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until a subsequent order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;

- (b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. You cannot justifiably rely on the finality of this decision unless notice of this decision and the right of substantially affected persons to challenge this decision has been duly published or otherwise provided to all persons substantially affected by the decision. While you are not required to publish notice of this action, you may elect to do so pursuant Rule 62-110.106(10)(a).

The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C. If you do not publish notice of this action, this waiver will not apply to persons who have not received a written notice of this action.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

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.

EXECUTION AND CLERKING

Executed in West Palm Beach, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Christopher Weller
Environmental Manager
Southeast District

Enclosures:

62-330.051(5)(b), F.A.C.
Project drawings, 4 pages

Project No.: 43-0043054-007-EE
Project Name: Dumais
Page 7 of 6

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:

FDEP – Chris Weller, David Kieckbusch
Bruce Jerner, jerner@bellsouth.net

Additional mailings:
Irene Arpayoglou, Irene.Arpayoglou@dep.state.fl.us

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.



Clerk

August 1, 2019
Date

62-330.051 Exempt Activities.

The activities meeting the limitations and restrictions below are exempt from permitting. However, if located in, on, or over state-owned submerged lands, they are subject to a separate authorization under chapters 253 and 258, F.S., as applicable.

(5) Dock, Pier, Boat Ramp and Other Boating-related Work –

(b) Installation of private docks, piers, and recreational docking facilities, and installation of local governmental piers and recreational docking facilities, in accordance with section 403.813(1)(b), F.S. This includes associated structures such as boat shelters, boat lifts, and roofs, provided:

1. The cumulative square footage of the dock or pier and all associated structures located over wetlands and other surface waters does not exceed the limitations in section 403.813(1)(b), F.S.;
2. No structure is enclosed on more than three sides with walls and doors;
3. Structures are not used for residential habitation or commercial purposes, or storage of materials other than those associated with water dependent recreational use; and
4. Any dock and associated structure shall be the sole dock as measured along the shoreline for a minimum distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot.

Special Conditions for Federal Authorization for SPGP V-R1

Note: JAXBO (Jacksonville District's Programmatic Biological Opinion), referenced throughout, may be found online in the Jacksonville District Regulatory Division Sourcebook, or at <http://cdm16021.contentdm.oclc.org/utis/getfile/collection/p16021coll3/id/577>.

The SPGP V-R1 instrument and all attachments may be found online through the Sourcebook, or at <https://www.saj.usace.army.mil/SPGP/>

In addition to the conditions specified above, the following Special Conditions apply to all projects reviewed and/or authorized under the SPGP V-R1.

Special Conditions for All Projects

1. Authorization, design and construction must adhere to the terms of the SPGP V-R1 instrument including the Procedure and Work Authorized sections.
2. Design and construction must adhere to the PDCs for In-Water Activities ([Attachment 6](#), from PDCs AP.7 through AP11, inclusive, of JAXBO) (Reference: JAXBO PDC AP.1.).
3. All activities performed during daylight hours (Reference: JAXBO PDC AP.6.).
4. For all projects involving the installation of piles or sheet piles, the maximum number of piles, sheet piles or concrete slab walls or boatlift I-beams installed by impact hammer per day is limited to no more than 5 per day. Any installation of metal pipe or metal sheet pile by impact hammer is not authorized (Reference: Categories D and E of JAXBO PDCs for In-Water Noise from Pile and Sheet Pile Installation, page 86.).
5. Projects within the boundary of the NOAA Florida Keys National Marine Sanctuary require prior approval from the Sanctuary (Reference: JAXBO PDCs AP.14 and A1.6).
6. Notifications to the Corps. For all authorizations under this SPGP V-R1, including Self-Certifications, the Permittee shall provide the following notifications to the Corps:
 - a. Commencement Notification. Within 10 days before the date of initiating the work authorized by this permit or for each phase of the authorized project, the Permittee shall provide a written notification of the date of commencement of authorized work to the Corps.
 - b. Corps Self-Certification Statement of Compliance form. Within 60 days of completion of the work authorized by this permit, the Permittee shall complete the "Self-Certification Statement of Compliance" form ([Attachment 32](#)) and submit it to the Corps. In the event that the completed work deviates in any manner from the authorized work, the Permittee shall describe the deviations between the work authorized by this permit and the work as constructed on the "Self-Certification Statement of Compliance" form. The description of any deviations on the "Self-Certification Statement of Compliance" form does not constitute approval of any deviations by the Corps.
 - c. 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 the enclosed form ([Attachment 2](#)).

- d. 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.

(1) For standard mail: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, P.O. Box 4970, Jacksonville, FL, 32232-0019.

(2) For electronic mail: SAJ-RD-Enforcement@usace.army.mil (not to exceed 10 MB).
The Permittee shall reference this permit number, SAJ- 2015-02575 on all submittals.

7. The District Engineer reserves the right to require that any request for authorization under this SPGP V-R1 be evaluated as an Individual Permit. Conformance with the terms and conditions of the SPGP V-R1 does not automatically guarantee Federal authorization.

8. On a case-by-case basis, the Corps may impose additional Special Conditions which are deemed necessary to minimize adverse environmental impacts.

9. Failure to comply with all conditions of the SPGP V-R1 constitutes a violation of the Federal authorization.

10. No structure or work shall adversely affect or disturb properties listed in the National Register of Historic Places or those eligible for inclusion in the National Register. Prior to the start of work, the Applicant/Permittee or other party on the Applicant's/Permittee's behalf, shall conduct a search of known historical properties by contracting a professional archaeologist, and contacting the Florida Master Site File at 850-245-6440 or SiteFile@dos.state.fl.us. The Applicant/Permittee can also research sites in the National Register Information System (NRIS). Information can be found at <http://www.cr.nps.gov/nr/research>.

a. If, during the initial ground disturbing activities and construction work, there are archaeological/cultural materials unearthed (which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, 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), the Permittee shall immediately stop all work in the vicinity and notify the Compliance and Review staff of the State Historic Preservation Office at 850-245-6333 and the Corps Regulatory Project Manager to assess the significance of the discovery and devise appropriate actions, including salvage operations. 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 C.F.R. § 325.7.

b. In the unlikely event that human remains are identified, the remains will be treated in accordance with Section 872.05, Florida Statutes; all work in the vicinity shall immediately cease and the local law authority, and the State Archaeologist (850-245-6444) and the Corps Regulatory Project Manager shall immediately be notified. Such activity shall not resume unless specifically authorized by the State Archaeologist and the Corps.

11. The Permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with these laws. The Permittee should contact

the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

12. For Projects authorized under this SPGP V-R1 in navigable waters of the U.S., 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.

13. The SPGP V-R1 will be valid through July 26, 2021 unless suspended or revoked by issuance of a public notice by the District Engineer. The Corps, in conjunction with the Federal resource agencies, will conduct periodic reviews to ensure that continuation of the permit during the period ending July 26, 2021, is not contrary to the public interest. The SPGP V-R1 will not be extended beyond July 26, 2021, but may be replaced by a new SPGP. If revocation occurs, all future applications for activities covered by the SPGP V-R1 will be evaluated by the Corps.

14. If the SPGP V-R1 expires, is revoked, or is terminated prior to completion of the authorized work, authorization of activities which have commenced or are under contract to commence in reliance upon the SPGP V-R1 will remain in effect provided the activity is completed within 12 months of the date the SPGP V-R1 expired or was revoked.

Special Conditions for Docks, Piers, Associated Facilities, and other Minor Piling-Supported Structures

1. For temporary structures associated with marine events. Upon completion of the event, these structures must be removed and, to the maximum extent practical, the site must be restored to pre-construction elevations. Water depths in the area of marine events must be deep enough to support at least 5 ft of water depth under the keel of a vessel and between the keel of a vessel and Endangered Species Act listed coral colonies, if present, when transiting to the mooring areas (Reference: JAXBO PDC A2.1.4.).

2. Educational Signs. For commercial, multi-family, or public facilities, and marine events, signs must be posted as described below (Reference: These replicate JAXBO PDCs A.2.2 and A.2.2.1 to A.2.2.3., inclusive, within the table PDCs Specific to Activity 2 - Pile Supported Structures and Anchored Buoys, starting on page 112.):

- a. (A2.2.) For commercial, multi-family, or public facilities, and marine events, signs must be posted in a visible location(s), alerting users of listed species in the area susceptible to vessel strikes and hook-and-line captures. The most current version of the signs that must be downloaded and sign installation guidance are available at:
(http://sero.nmfs.noaa.gov/protected_resources/section_7/protected_species_educational_signs/index.html). The signs required to be posted by area are stated below:

- (1) (A2.2.1.) All projects in Florida shall use the Save Sea Turtle, Sawfish, and Dolphin sign. These signs shall include contact information to the sea turtle and marine mammal stranding networks and smalltooth sawfish encounter database.

- (2) (A2.2.2.) Projects within the North Atlantic right whale educational sign zone shall post the Help Protect North Atlantic Right Whales sign.
 - (3) (A2.2.3.) On the east coast of Florida, projects located within the St. Johns River and those occurring north of the St. Johns River to the Florida-Georgia line shall post the Report Sturgeon sign. On the west coast of Florida, projects occurring from the Cedar Key, Florida north to the Florida-Alabama line.
3. Monofilament Recycling Bins. For commercial, multi-family, or public facilities, monofilament recycling bins must be provided as described below (Reference: The below replicates PDC A.2.3 within the table PDCs Specific to Activity 2 - Pile Supported Structures and Anchored Buoys, the PDC itself on page 113 of the JAXBO.):
 - a. (A2.3.) For commercial, multi-family, or public facilities, monofilament recycling bins must be provided at the docking facility to reduce the risk of turtle or sawfish entanglement in, or ingestion of, marine debris. Monofilament recycling bins must:
 - (1) (A2.3.1.) Be constructed and labeled according to the instructions provided at <http://mrrp.myfwc.com>.
 - (2) (A2.3.2.) Be maintained in working order and emptied frequently (according to <http://mrrp.myfwc.com> standards) so that they do not overflow.
4. North Atlantic Right Whale. The attached North Atlantic Right Whale Information Form ([Attachment 27](#)) describes the presence of North Atlantic right whales in the area and the Federal regulations governing the approach to North Atlantic right whales. (The FDEP or Designee will attach this document to their authorizations for a dock project (new construction, repair, or replacement) at a private residence located within 11 nautical miles of North Atlantic right whale critical habitat as measured in a radius from the center of the nearest inlet to open ocean described by [Attachment 29](#), the North Atlantic Right Whale Educational Sign Zones (from Section 2.1.1.4 of JAXBO, pages 31 and 32, inclusive) (Reference: JAXBO PDC A2.4.).
5. Aids to Navigation. Aids to navigation must be approved by and installed in accordance with the requirements of the U.S. Coast Guard (i.e., 33 C.F.R., chapter I, subchapter C, part 66, Section 10 of the Rivers and Harbors Act, and any other pertinent requirements) (Reference: JAXBO PDC A2.5.).
6. Lighting for docks installed within visible distance of ocean beaches. If lighting is necessary, then turtle-friendly lighting shall be installed. Turtle-friendly lighting is explained and examples are provided on the Florida Fish and Wildlife Conservation Commission website: <http://myfwc.com/wildlifehabitats/managed/sea-turtles/lighting/> (Reference: JAXBO PDC A2.8.).
7. Construction Location. Project construction shall take place from uplands or from floating equipment (e.g., barge); prop or wheel-washing is prohibited (Reference: JAXBO PDC A2.9.).
8. Regarding submerged and emergent aquatic vegetation, the design and construction of a Project must comply with the following:
 - a. A pile supported structure (i) that is located on a natural waterbody (i.e., outside an artificial waterway that was excavated for boating access and is bordered by residential properties) and (ii) that is within the range of seagrass (estuarine waters within all coastal counties except for

Nassau, Duval, St Johns, Flagler and Volusia north of Ponce Inlet), will be constructed to the following standards:

- (1) Must comply with or provide a higher level of protection than, the protective criteria in the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's "Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat" updated November 2017 ([Attachment 5](#)).
 - (2) In addition to (1), above, IF the project is within range of Johnson's seagrass (the range of Johnson's seagrass is defined as Turkey Creek/Palm Bay south to central Biscayne Bay in the lagoon systems on the east coast of Florida), THEN the design and construction shall comply with, in some cases, the more restrictive requirements within paragraph 8.c., below (Reference: JAXBO PDC A2.17).
- b. For all other Projects,
- (1) Within the range of Johnson's seagrass (the range of Johnson's seagrass is defined as Turkey Creek/Palm Bay south to central Biscayne Bay in the lagoon systems on the east coast of Florida), the presence of submerged aquatic vegetation will be determined utilizing the "Submerged Aquatic Vegetation Survey Guidelines" ([Attachment 7](#)). If no survey performed, aquatic vegetation, including Johnson's seagrass, will be presumed to be present for purposes of this Special Condition.
 - (2) Outside the range of Johnson's seagrass but within the range of seagrass (estuarine waters within all coastal counties except for Nassau, Duval, St Johns, Flagler and Volusia County north of Ponce Inlet) and within tidal waters, the presence of seagrass and tidal freshwater submerged aquatic vegetation will be determined using the "Submerged Aquatic Vegetation Survey Guidelines" ([Attachment 7](#)) unless a site visit or aerial photography observes absence during the growing season (if water depth and clarity allows) or aquatic vegetation has not been found in the vicinity in the past.
 - (3) Pile-supported structures, IF aquatic vegetation is present (including seagrass, tidal freshwater submerged aquatic vegetation and emergent vegetation), THEN must comply with or provide a higher level of protection than, the protective criteria in the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's "Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat" updated November 2017 ([Attachment 5](#)).
 - (4) In addition to (1) to (3) above, IF the proposed dock or proposed structure is within range of Johnson's seagrass (the range of Johnson's seagrass is defined as Turkey Creek/Palm Bay south to central Biscayne Bay in the lagoon systems on the east coast of Florida), and IF the proposed dock or proposed structure falls within the following scenarios, THEN the design and construction shall comply with, in some cases, the more restrictive requirements within paragraph 8.c., below. (Reference: The following replicates "Scenario B" as defined within A2.17., PDCs for Docks or Other Minor Structures of JAXBO.):
 - (i) Dock replacement in the exact footprint (i.e., same location/configuration/size) as the previous dock and:
 - (a) within Johnson's seagrass critical habitat with No current seagrass survey (completed no earlier than 1 year before submitting the application); or, Johnson's seagrass under the dock; or, Native seagrass, other than Johnson's seagrass, under the dock; or,
 - (b) within the Range of Johnson's seagrass (outside of critical habitat) with No current seagrass survey or, Johnson's seagrass under the dock,

- (ii) New docks or dock expansions and:
 - (a) within Johnson's seagrass critical habitat; or,
 - (b) within the Range of Johnson's seagrass (outside of critical habitat) with: No current seagrass survey (completed no earlier than 1 year before submitting the application) or, Johnson's seagrass within property limit.
- c. The following additional restrictions apply when required by paragraphs 8.a.(2) or 8.b.(4), above (Reference: The following replicates the "Dock PDCs for Scenario B" within A2.17. PDCs for Docks or Other Minor Structures of JAXBO.):
 - (1) To avoid and minimize impacts to Johnson's seagrass and native, non-listed seagrasses to the maximum extent practicable:
 - (i) The dock must be positioned to avoid and minimize effects to Johnson's seagrass.
 - (ii) Over any area that contains Johnson's seagrass or native, non-listed seagrasses, the dock shall be oriented in a north-south orientation to the maximum extent that is practicable to allow maximum sunlight under the structure.
 - (iii) If practicable, terminal platforms shall be placed in deep water, waterward of Johnson's seagrass beds or native, non-listed seagrasses beds or in an area devoid of Johnson's seagrass or native, non-listed seagrasses.
 - (iv) Piles must be spaced a minimum of 10 ft apart in any area that contains Johnson's seagrass to minimize direct impacts.
 - (v) Piles shall be installed in a manner that will not result in the formation of sedimentary deposits (e.g., donuts or halos) around the newly installed pilings.
 - (vi) No covered boat lifts are allowed over any Johnson's seagrass.
 - (2) Decking options: Deck surfaces (parallel with the water) that are located waterward of the MHWL must be constructed of grated materials or plank construction or a combination of the both methods (e.g. plank decking on the walkway and grated decking on the terminal platform). These decking options are described below:
 - (i) For grated decking:
 - (a) Height requirement: The surface of the structure, including the dock walkway (the over- water narrow portion connecting the terminal platform to the shore and any over-water ramp required for access) and the dock, must be a minimum of 3 ft above MHW when constructed with grated decking.
 - (b) Size limitations: The dock walkway is limited to a width of 4 ft. The terminal platform is limited to a total area of 160 ft². Marginal docks are limited to a width of 5 ft. The 5 ft width restriction is measured from wet side of the seawall. For example, if a seawall cap is 3 feet overwater then the dock would be limited to 2 feet.
 - (c) Material description: Decking materials shaped in the form of grids, grates, lattices, etc., to allow the passage of light through the open spaces. These materials must provide a minimum of 43% open space.
 - (ii) For plank decking:
 - (a) Height requirement: The surface of the structure, including the dock walkway (the over- water narrow portion connecting the terminal platform to the shore and any over-water ramp required for access) and the dock, must be a minimum of 5 ft above MHW when constructed of plank decking.
 - (b) Size limitations: The dock walkway is limited to a width of 4 ft. The terminal platform is limited to a total area of 120 ft². Marginal docks are limited to a width of 5 ft.

- (c) Material description: Deck boards may be constructed of any material. Deck Boards must be installed to provide a minimum of a 0.5-in gap between individual deck boards.
- d. Aids to Navigation in Acropora critical habitat. The distance from Aids to Navigation (ATONs) to ESA-listed corals and Acropora critical habitat shall ensure there are no impacts to the corals or the essential feature of Acropora critical habitat from the movement of buoys and tackle. The appropriate distance shall be based on the size of the anchor chain or other tackle to be installed to secure the buoy to its anchor, particularly when the design of the ATON does not prohibit the contact of tackle with the marine bottom. In all cases, buoy tackle will include flotation to ensure there is no contact between the anchor chain or line and the marine bottom (Reference: JAXBO PDC A2.10.).

General Conditions for Federal Authorization for SPGP V-R1

1. The time limit for completing the work authorized ends on July 26, 2021.
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.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner on the enclosed form 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.
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.

Further Information:

1. 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.
2. 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.
3. 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.
4. 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.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 3 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.
5. 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 CER 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.
6. 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 the enclosed form.
7. 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 U.S. Army 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, relocation or alteration.

Department of the Army Permit Transfer for SPGP V-R1

PERMITEE: _____

PERMIT NUMBER: _____ DATE: _____

ADDRESS/LOCATION OF PROJECT:

(Subdivision)

(Lot)

(Block)

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. Although the construction period for works authorized by Department of the Army permits is finite, the permit itself, with its limitations, does not expire.

To validate the transfer of this permit and the associated responsibilities associated with compliance with its terms and conditions, have the transferee sign and date below and mail to the U.S. Army Corps of Engineers, Enforcement Branch, Post Office Box 4970, Jacksonville, FL 32232-0019.

(Transferee Signature)

(Date)

(Name Printed)

(Street address)

(Mailing address)

(City, State, Zip Code)

STANDARD MANATEE CONDITIONS FOR IN-WATER WORK
2011

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 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 Florida Fish and Wildlife Conservation Commission (FWC) must be used (see MyFWC.com/manatee). One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 1/2" 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. Questions concerning these signs can be sent to the email address listed above.

CAUTION: MANATEE HABITAT

All project vessels

IDLE SPEED / NO WAKE

When a manatee is within 50 feet of work
all in-water activities must

SHUT DOWN

Report any collision with or injury to a manatee:



Wildlife Alert:

1-888-404-FWCC(3922)

cell *FWC or #FWC



**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

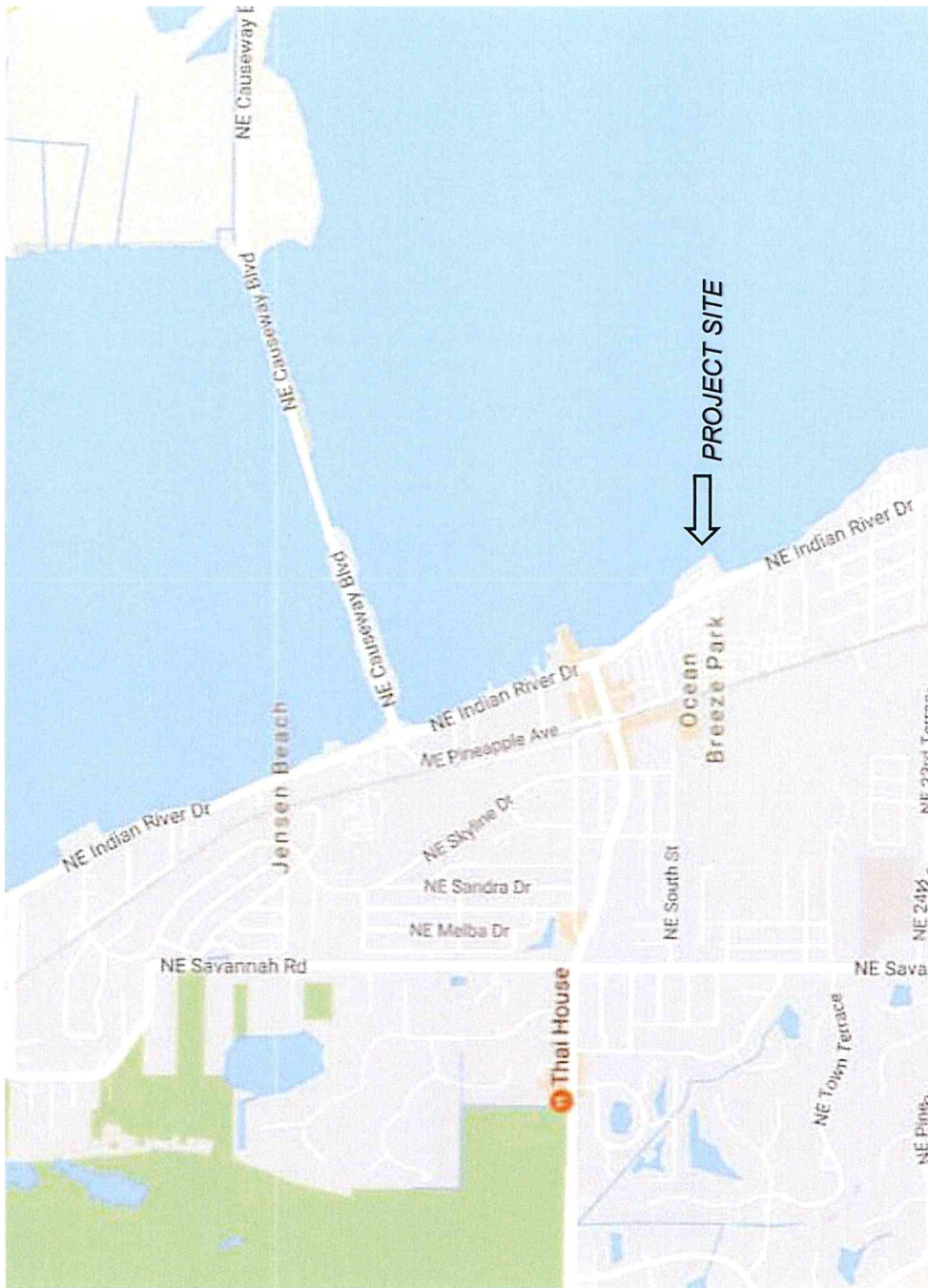
SEA TURTLE AND SMALLTOOTH SAWFISH CONSTRUCTION CONDITIONS

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

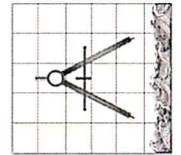
- a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these 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.

- h. Any collision(s) with and/or injuries to any whale, or sturgeon occurring during the construction of a project, shall be reported immediately to NMFS's Protected Resources Division (PRD) at (727-824-5312).
- i. Reports to NMFS's Protected Resources Division (PRD) may be made by email to takereport.nmfs@noaa.gov.
- j. Sea turtle and marine stranding/rescue organizations' contact information is available by region at <http://www.nmfs.noaa.gov/pr/health/networks.htm>.
- k. Smalltooth sawfish encounters shall be reported to <http://www.flmnh.ufl.edu/fish/sharks/sawfish/sawfishencounters.html>.
- l. All work must occur during daylight hours.





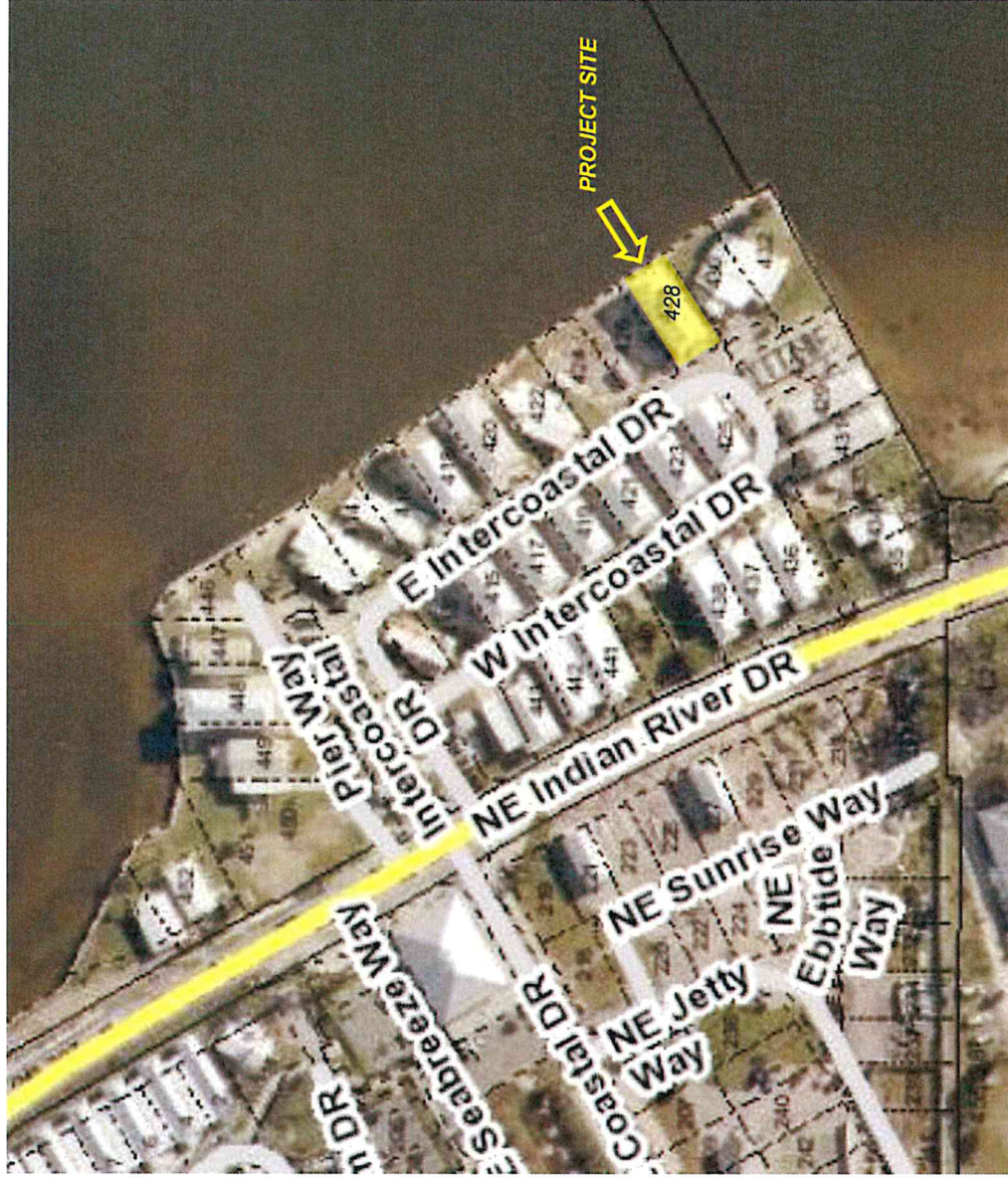
**OCEAN BREEZE PARK
3000 NE INDIAN RIVER DR. LOT 428
JENSEN BEACH**



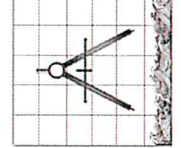
Jerner & Associates, Inc.
Environmental Consulting
2537 SE Alfonso Ave. Port St. Lucie, FL 34952
Ph: (772) 283-2950
JERNER@Bellsouth.net

Date: 7/5/19

SHEET 1



OCEAN BREEZE PARK
3000 NE INDIAN RIVER DR.
JENSEN BEACH



Jerner & Associates, Inc.
Environmental Consulting
2537 SE Alfonso Ave. Port St. Lucie, FL 34952
Ph. (772) 283-2950
JERNER@BELLSOUTH.NET

Date: 7/5/19

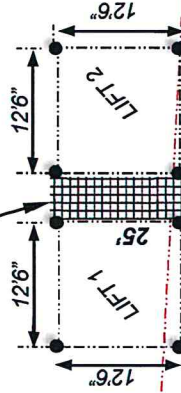
SHEET 2



INDIAN RIVER LAGOON

SAV SURVEY AREA

4' X 25' GRATED DECK
SURFACE W 43%
OPEN SPACE



PATCHY, RARE
HALODULE WRIGHTII

EDGE OF TIDE DEED

(-3.5' MLW)

40'

4'

40' SHORELINE

40'

50'

426

428

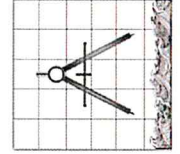
430

432

SEAGRASS SURVEY PERFORMED BY
BRUCE JERNER ON JUNE 27, 2019. (2) 5 SQ
FT +/- AREAS OF HALODULE WRIGHTII
OBSERVED ALONG SEAWALL.



OCEAN BREEZE PARK
3000 NE INDIAN RIVER DR.
JENSEN BEACH



Jerner & Associates, Inc.
Environmental Consulting
2537 SE Alfonso Ave. Port St. Lucie, FL 34952
Ph: (772) 283-2950
JERNER@BELLSOUTH.NET

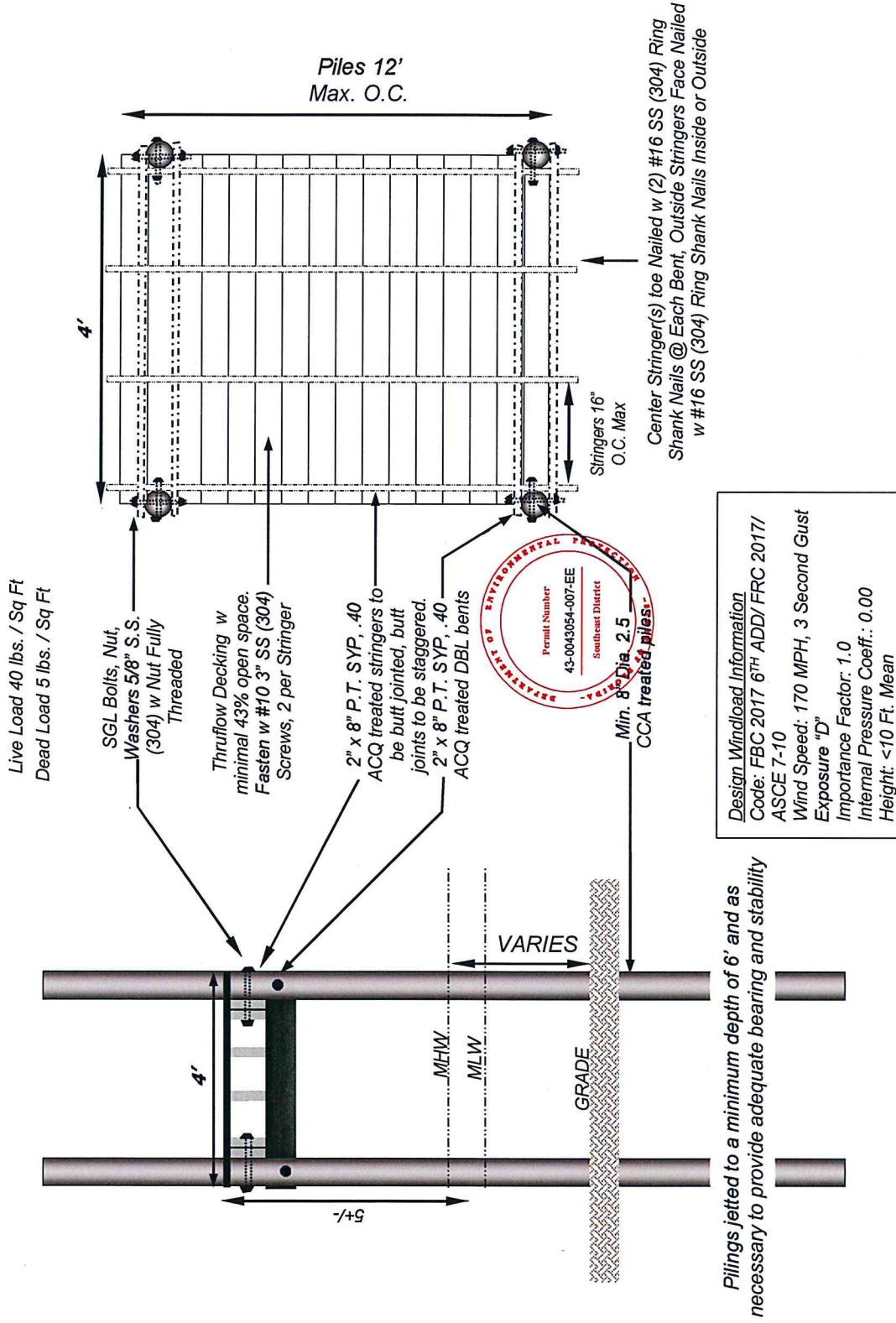
1" = 20'

Date: 7/5/19

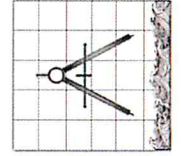
SHEET 3

Pier Section Thru

Pier Plan View



OCEAN BREEZE PARK
3000 NE INDIAN RIVER DR. LOT 428
JENSEN BEACH



Jerner & Associates, Inc.
Environmental Consulting
2537 SE Alfonso Ave. Port St. Lucie, FL 34952
Ph: (772) 283-2950
JERNER@BELLSOUTH.NET

Date: 7/5/19

SHEET 4

GENERAL INFORMATION ITEMS

The attached items (i.e.: correspondence, e-mails, reports, etc.) are provided as general information and are not necessarily subject to discussion during this morning's meeting unless Council Members or the Mayor wish to do so.

From: Patricia Christensen <pchristensen@tcrlc.com>
Sent: Friday, September 27, 2019 8:37 AM
To: Patricia Christensen
Cc: Christina Flores (CFlores@cityofpsl.com); Brandon Dolan; MStokes
Subject: You are Invited

Importance: High

You are invited to the
Treasure Coast Regional League of Cities
October Lunch Meeting
When: October 16, 2019
Where: The Historic Seminole Inn in Indiantown

Come join us in the newest Florida Town, Indiantown and
Experience a little bit of history and enjoy a wonderful (free) lunch buffet,
While listening to our speaker, Clay Austin.
Clay will speak on the Florida Municipal Insurance Trust (FMIT)

If you have never heard about the Florida Municipal Insurance Trust and
want to learn more or want to hear how FMIT can benefit your city, this is
a great opportunity.

Board Meeting at 10:00 AM
Networking at 11:00 AM
Lunch and Speaker at 11:30 AM

Please email Patricia with your attendance RSVP at
pchristensen@tcrlc.com

**SEAWALK
EROSION
COMPLAINT**

**CORRESPONDENCE
TO DATE**

From: Shaun G. MacKenzie, P.E. <Shaun@mackenzieengineeringinc.com>
ent: Wednesday, October 2, 2019 2:00 PM
to: townclerk@townofoceanbreeze.org
Cc: twoneil@aol.com; 'Karl K Albertson'; 'Kristen L Northup'
Subject: RE: Seawalk Neighbor

Got it. We'll take a look. Based on a quick perusal of the information provided, there is no opinion provided from a professional.

-----Original Message-----

From: townclerk@townofoceanbreeze.org [mailto:townclerk@townofoceanbreeze.org]
Sent: Wednesday, October 02, 2019 1:55 PM
To: Shaun G. MacKenzie, P.E. <Shaun@mackenzieengineeringinc.com>
Cc: twoneil@aol.com; 'Karl K Albertson' <kkalbertson@drhorton.com>; 'Kristen L Northup' <KLNorthup@drhorton.com>
Subject: Seawalk Neighbor

Hi Shaun:

Mr. Richmond was in today, shortly after you left. He dropped off a letter from his attorney which is attached along with the letter and attachments that the Town sent him.

Please go forward with your review and comments. We appreciate your assistance in this matter.

Have a great day!

Pam Orr
Town Clerk

Town of Ocean Breeze
P. O. 1025
Jensen Beach, FL 34958
772-334-6826 Office
772-334-6823 Fax
townclerk@townofoceanbreeze.org
Please make note of our new email address

*Under Florida Law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic email to this entity.

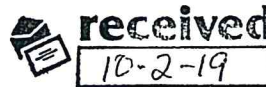
-----Original Message-----

From: townclerk@townofoceanbreeze.org <townclerk@townofoceanbreeze.org>
Sent: Wednesday, October 2, 2019 12:06 PM
To: townclerk@townofoceanbreeze.org
Subject: Copier Scans

S 2551ci
[00:17:c8:25:92:48]

ATTORNEYS AT LAW

MILDNER & ASSOCIATES, P.A.



ROY T. MILDNER, Esq.

OF COUNSEL
GLENN M. BLAKE, Esq.

MICHAEL R. OHLE, Esq.

LOUIS N. LARSEN, Esq.

October 2, 2019

Town of Ocean Breeze
700 NE Seabreeze Way
Ocean Breeze, FL 34957

In Re: 1592 NE South Street/Erosion Issues

Dear Sirs:

Please be advised that the undersigned law firm represents Tony Richmond with regard to various legal matters that arise from time to time. With regard to the substantial elevation variance between my client's home located at 1592 South Street and residential lots in Seawalk Subdivision directly behind my client's property, we have substantial concerns about the sizeable variation and elevations at the back of his property abutting the Seawalk Subdivision. Currently, there is a established developed berm which is as high as 8 feet above my client's ground elevation on the southwest corner of his lot which has the same elevation on his lot which decreases to the same elevation on the southeast corner. Seawalk proposes to put up a 6' vinyl fence which would be ok on the eastern part of the back abutting lot line however would be below the ground level on the western corner of his lot as the dirt would go straight up behind the fence. Seawalk Subdivision's drainage should go to the south to there road and not to my client's property to the north. Unfortunately, there is no easement for drainage between his lot and the Seawalk Subdivision.

Therefore, so as to not disturb my client's established and well developed berm on the property line it would be impossible to place the fence on the property line without disturbing my client's property. Obviously the fence is not engineered or designed to be a retaining wall which it would be as my lot is over 8' high on the southwestern corner. My client's proposal is for there to be a concrete retaining wall that the vinyl fence could be placed on top of so as to retain any soil and/or drainage from the Seawalk Subdivision onto my client's property to the north. I have enclosed herewith the elevations which my client has previously given to the town done by the surveyor.

Sincerely,



Roy T. Mildner, Esquire
RTM/lac

cc: client

Mr. Richmond would be
happy with a vinyl wall.



Town of Ocean Breeze

September 12, 2019

Mr. Anthony Richmond
1592 NE South Street
Jensen Beach, FL 34957
Certified Return Receipt and Regular Mail

RE: Meeting Regarding Erosion Concerns

Dear Mr. Richmond:

This letter is a follow-up to our meeting yesterday, September 11, 2019, at the Seawalk property adjacent to your property. Please find attached a copy of the agenda that was provided, including the recently amended language in D. R. Horton's PUD Amendment.

You had an opportunity to express your concerns to the attendees and the Town's consulting engineer, Shaun MacKenzie of MacKenzie Engineering. At the meeting, you provided a copy of the survey of your home which is also attached.

It was agreed that you would:

1. Reiterate your concerns in writing
2. Specify what action you would like to see D. R. Horton take, and
3. Provide any professionally prepared documentation in support of your position.

It is requested that you provide the documentation referenced above to the Town office by 12:00 noon on October 2, 2019. As discussed at the meeting, the engineering plans governing the Seawalk project are in the Town office for your review.

Thank you for taking time to meet with us. If you have any questions, please give me a call at the office 772-334-6826.

Sincerely,

Pam Orr
Town Clerk

cc: Kristen Northup, D. R. Horton
Michael Grzelka, Grzelka Engineering
Shaun MacKenzie, MacKenzie Engineering
Terry O'Neil, Town Management Consultant
Shawn Spyker, D. R. Horton
Mayor and Town Council
Lisa Wichser, Martin County Engineering

P. O. Box 1025 • Jensen Beach, FL 34958

Office: 772-334-6826 • Fax: 772-334-6823 • townofoceanbreez@bellsouth.net

Meeting Agenda

When: Wednesday, September 11, 2019 @11:00 AM

Where: Southeast Corner of Lot A

Invitees: Tony Richmond

Kristen Northup, D.R. Horton

Karl Albertson, D.R. Horton

Michael Grzelka, Grzelka Engineering

Shaun MacKenzie, MacKenzie Engineering

Terry O'Neil, Town Management Consultant

Pam Orr, Town Clerk

RE: Erosion concerns expressed by Mr. Tony Richmond

Purpose of meeting: To hear Mr. Richmond's specific concerns regarding the Seawalk Project's impacts on his property.

When will a determination be made? The Town and its engineering representative will not be deciding on remedial actions during the course of the meeting, but rather will take Mr. Richmond's concerns and DR. Horton's position into consideration before issuing a written determination, a copy of which will be provided to all parties.


3. The Revised Certificate of Occupancy (CO) Phasing Plan and Development Timetable applicable to the Site Plan prepared by Lucido & Associates, dated July 8, 2019; Number of pages: one

Revisions depicted by Exhibit "A" are described below:

- a) Changes to entry landscape plan to avoid/minimize conflicts with utilities while maintaining buffer requirements;
- b) Relocation of street trees to avoid impacts to utilities;
- c) Addition of street trees on lots by way of revised landscape plans and notes;
- d) Revision to Declaration of Covenants and Restrictions to add street tree protection and maintenance language;
- e) Changes to landscape plan for retention areas (per SFWMD permit);
- f) Addition of 6' opaque decorative fence (at developer's option) in Phase 3 along south property line;
- g) Relocation of 6' opaque, decorative fence to property line for lots 1 through 10; (no activity under this provision may be undertaken until: (1) the Town's engineering representative has determined whether erosion on abutting lots to the north, fronting South Street, has occurred or will occur as a result of the applicant's construction activities and, (2) if such is the case, the anti-erosion steps or remedial improvements recommended by the Town's engineering representative and required by the Town have been completed).
- h) Modification to CO phasing plan to allow clearing/development of Phase 4 upon completion of the infrastructure in Phases 1 and 2;
- i) Modification of CO Phasing Plan to create completed sidewalk loop allowing issuance of CO's in Phases 1 and 2 prior to completion of all sidewalks in Phases 1 and 2;
- j) Modification of CO Phasing Plan to require the 2nd layer of asphalt within 24 months or prior to the issuance of 85% of the COs in each phase, whichever comes first;
- k) Modification of the community pool and deck, thereby reducing the pool's dimensions from approximately 30' x 50' to approximately 20' x 40' and reducing the surrounding deck's width from approximately 80' to approximately 70'.

SECTION 2. Dust control. At all times the applicants shall ensure that cleared areas within the development are stabilized via sodding, hydro seeding, watering or other recognized method such that appreciable windborn dust does not emit from the site.

SECTION 3. Town ordinances and Town resolutions or parts thereof, and other parts of

 **received**
9-11-19

1. THERE SHOULD BE AN ORIGINAL TOPOGRAPHIC SURVEY OF THE SUBDIVISION ENCOMPASSING YOUR PROPERTY.
2. THERE SHOULD BE A DRAINAGE PLAN IN PLACE FOR THE SUBDIVISION THAT WILL SHOW THE DRAINAGE PLAN WHEN IT COMES TO YOUR PROPERTY.
3. THE DEVELOPER IS OBLIGATED TO DEMONSTRATE TO THE COUNTY THAT THEY ARE NOT NEGATIVELY IMPACTING THE SURROUNDING PROPERTIES.
4. WHAT I HAVE SEEN PHYSICALLY (SURVEYOR) IS THAT THE REAR LINE OF THE LOTS BEHIND YOU ARE GOING TO BE 2-3 FEET HIGHER THAN YOUR YARD. THE CENTERLINE OF THE NEW ROAD BEHIND IS AT 28.1' WHICH IS ALREADY 2 FEET HIGHER THAN YOUR YARD, THEY STILL NEED TO GO UP 1.5 FEET TO GET TO A FINISHED FLOOR. THE HOUSE BEHIND WILL BE AT 29.6 FEET MINIMUM VS. YOUR 26.2 FEET FOR YOUR HOUSE.

SITE BENCHMARK X PAINTED
IN ROAD ELEVATION = 23.80
N.A.Y.D.'88

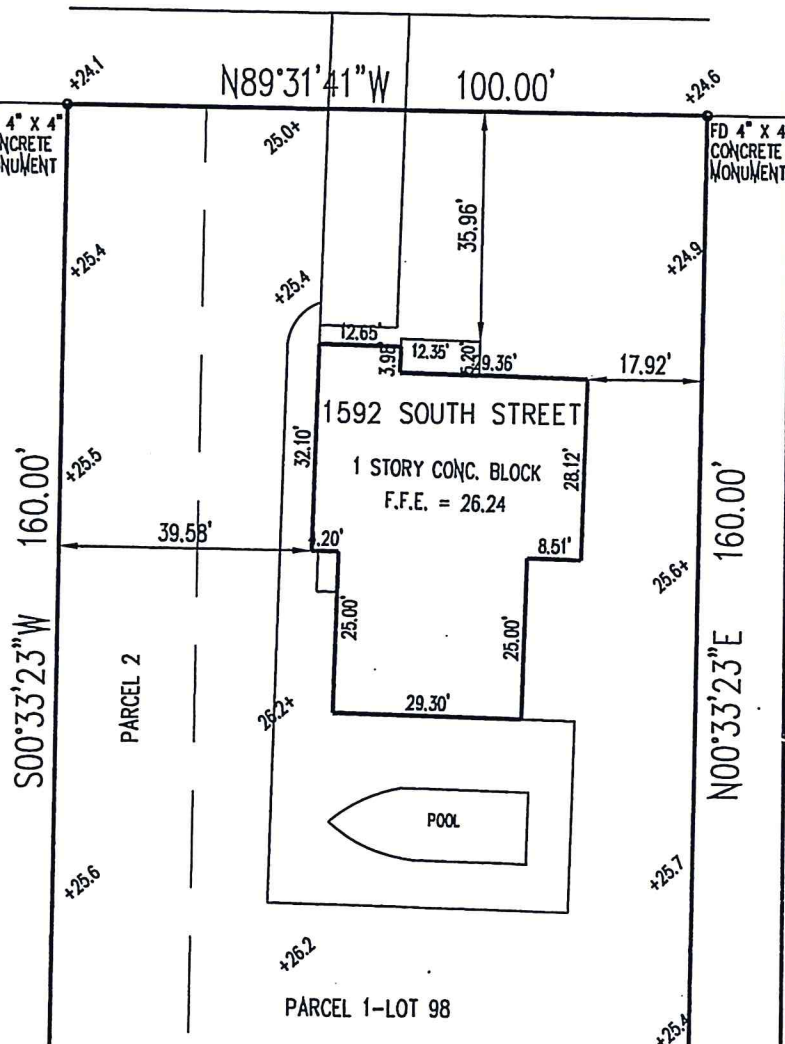
NE SOUTH STREET

50' R.O.W. - 20' ASPHALT ROAD

- Unless otherwise noted only platted easements are shown hereon.
2. No underground utilities or improvements were located unless otherwise shown.
3. This site lies within Flood Insurance Rate Map Zone X.
4. Flood Zone shown hereon is an interpretation by the surveyor and is provided as a courtesy. The flood zone should be verified by a determination agency.
5. Bearings shown hereon are based on the East line of Lot 98 as being N00°33'23"E according to the Plat described hereon.
6. P.U.D.E. denotes Public Utilities and Drainage Easement.
7. All Lot dimensions shown are per plat unless otherwise shown.

REMAINDER LOT 99

ABBREVIATIONS:
 R.O.W. = Right of Way
 CONC. = Concrete
 R = Radius of curve
 L = Length of curve
 Δ = Delta of Curve
 MEAS. = Measured
 SET = Set 5/8" iron rebar with yellow cap marked "PSM 5543"
 X-X-X-X = Chain Link Fence
 O-O-O-O = Wood Fence
 ⊗ = Power Pole
 ⊞ = Water Meter
 ⊠ = Bell South
 OH-OH-OH = Over Head Wires
 ⊕ = Well
 S.F. = Square Foot



From: Lisa Wichser <lwichser@martin.fl.us>
Sent: Monday, August 19, 2019 1:00 PM
To: townclerk@townofoceanbreeze.org
Cc: twoneil@aol.com; Michael Uhazie
Subject: RE: Meeting with Engineers

Hi Pam,

Just to be clear, I was meeting with Michael Grzelka on Wednesday regarding an unrelated matter at 11:00 and so asked him to discuss the easement / erosion / FPL issue with me afterwards. I did not intend to meet with D.R. Horton, I was hoping to get clarification regarding a discussion I had with Mr. Richmond earlier in the week. I was unclear what his issues were. Mr. Grzelka, Ms. Northup, and Mr. Spyker explained that D.R. Horton met with the Town Commission met on Monday morning to request an amendment to its Planned Unit Zoning Agreement. They explained that the proposed fence will be 5-feet south of the property line east of NE Skyline Drive and 6 to 18 inches south of the property line west of NE Skyline Drive. They also explained that the higher ground south of Mr. Richmond's property would be graded from the property line at a 4 : 1 (horizontal : vertical) slope away from Mr. Richmond's property and that the new slope would be stabilized within 30 days. Further they explained that it was evident that the utility pole was on Mr. Richmond's property and that it was owned and occupied by AT&T with FPL collocated on it. They indicated they were working with AT&T and FP&L to see if a taller pole could be installed with a deeper burial depth.

With a clearer understanding of the situation, I determined that Martin County has no jurisdiction over Mr. Richmond's concerns about the fence location, the pole, or the proposed lot grading adjacent to his property, although I did agree that a 4 : 1 slope away from Mr. Richmond's property was standard practice and should not have any erosion issues if properly stabilized.

Apparently, Ms. Northup notified Mr. Richmond of our meeting last Wednesday prior to the meeting and he has been calling me to ask why he wasn't invited. We will reach out and advise him of our intent to get clarification. I may send an engineer to the site to confirm what was discussed with Mr. Grzelka and the D.R. Horton representatives.

Lisa A. Wichser, P.E., CFM
County Engineer
Public Works Department
Martin County Board of County Commissioners
772-223-7945 (office)

From: townclerk@townofoceanbreeze.org <townclerk@townofoceanbreeze.org>
Sent: Friday, August 16, 2019 12:58 PM
To: Lisa Wichser <lwichser@martin.fl.us>
Cc: twoneil@aol.com
Subject: FW: Meeting with Engineers

Hi Lisa:

Thank you for taking the time to meet with D. R. Horton regarding the potential issue at 1592 NE South Street. The Town will be meeting with the Engineers on Wednesday, August 28, 2019 to evaluate the situation within the Town.

Please confirm that the attached email is accurately representing your position. We appreciate your assistance!

Have a great weekend!

Pam Orr
Town Clerk



Town of Ocean Breeze
P. O. 1025
Jensen Beach, FL 34958
772-334-6826 Office
772-334-6823 Fax
townclerk@townofoceanbreeze.org
Please make note of our new email address

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From: Kristen L Northup <KLNorthup@drhorton.com>
Sent: Thursday, August 15, 2019 3:44 PM
To: townclerk@townofoceanbreeze.org
Cc: Karl K Albertson <kkalbertson@drhorton.com>; Shawn S Spyker <SSSpyker@drhorton.com>
Subject: RE: Meeting with Engineers

Good afternoon Pam,

Per your request, please find below a brief summation of our meeting with the Martin County Engineering department, on Wednesday, Aug. 14th, 2019 at 12:00pm, to discuss potential erosion issues of neighboring Martin County properties.

We met with Lisa Wichser & Michael Uhazie from Martin County Engineering, as well as Mike Grzelka of Grzelka Engineering, Shawn Spyker of D. R. Horton, and myself.

The purpose of the meeting was to discuss the potential erosion issues behind Mr. Tony Richmond's home, located at 1592 NE South Street, Jensen Beach, which is the rear adjoining home to our Seawalk Lots 3 & 4.

Mr. Richmond stated publicly, at the Town of Ocean Breeze hearing, on Monday, Aug. 12, that he insists Martin County come and take a look at the rear of his home, and the erosion that has taken place, since D. R. Horton has begun our earthwork. He also stated that the FPL pole in the rear of his property is now leaning, due to our work. See attached photos...

D. R. Horton has not begun any clearing or earth work in that particular part of the project yet, evidenced also by the mature/existing vegetation in the attached photo, as it is part of Phase 4 of our development, so any issues would have been previously existing. The utility pole, which we've determined belongs to AT&T with FPL lines on it, is in an area that has not yet been disturbed. All utility customers are welcome and encouraged to report leaning poles or problems to utility companies, so this is something Mr. Richmond could be working on as well.

In any event, we will work with the homeowner and our local reps from each utility company, to see if we can assist him in getting the pole straightened, as Martin County stated they have no jurisdiction over the matter.

I do not want to paraphrase or quote Ms. Wichser, but her sentiment was not one of much concern. Mr. Grzelka presented his engineering plans to Ms. Wichser, and explained how our "cutting" into the sand dune would be past his property line by many feet, and would then be sloped to a 4:1 grade, and immediately stabilized with sod. Ms. Wichser found this to be adequate and was not sharing the erosion concern. The topography of that area actually shows our side of the property as being a bit higher in elevation in spots, compared to his lot, so the gradient slope would be "away" from his property, not towards it. Both Grzelka and the County agreed there is no need for a retaining wall, and the County has no interest in our fence locations.

I again don't want to speak for Ms. Wichser, but she did not seem too interested in visiting the property. She said perhaps she would send a staff member, but didn't see what necessarily they would be going there to look at. She is confident in the proposed design and didn't feel it was her jurisdiction to be involved in, as the construction is on Ocean Breeze side.

I believe the next step is to meet at Mr. Richmond's home and explain the engineer's findings. We are tentatively looking at Wednesday, Aug. 28th around 11am? Kindly let us know if that is finalized. Thanks very much again and please let us know if there's anything additional you need from us in regards to this.

Have a wonderful day!



Kristen L. Northup
Entitlements Analyst

Southeast Florida Division
6123 Lyons Road, Coconut Creek, Florida 33073
o: 954.949.3000 x 4261

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From: townclerk@townofoceanbreeze.org <townclerk@townofoceanbreeze.org>

Sent: Wednesday, August 14, 2019 11:24 AM

To: Karl K Albertson <kkalbertson@drhorton.com>

Cc: Kristen L Northup <KLNNorthup@drhorton.com>

Subject: Meeting with Engineers

Hi Karl:

Have you been in touch with the Engineers to set a time to meet at Seawalk to look at lot behind Mr. Richmond's house? I will be out-of-town next week. We were considering Tuesday, August 27th if that date works on your end. Please let me know.

Talk to you soon.

Pam Orr
Town Clerk



Town of Ocean Breeze
P. O. 1025

Jensen Beach, FL 34958

772-334-6826 Office

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townclerk@townofoceanbreeze.org

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