

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA**

Case No.: 2010 CA 000456

Division: 49

**110 HOLLY AVE. CORPORATION, a
Florida corporation, and FLAGLER
BRIDGE BOATWORKS & MARINA,
INC., a Florida Corporation,**

Plaintiffs,

vs.

**CITY OF FLAGLER BEACH, a Florida
municipal corporation,**

Defendant

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FLAGLER COUNTY, FLA.
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FOURTH AMENDED COMPLAINT

110 HOLLY AVE. CORPORATION, a Florida Corporation, and FLAGLER BRIDGE BOATWORKS & MARINA, INC., a Florida Corporation ("Plaintiffs"), file this Complaint for Declaratory Judgment and Supplemental Relief, and allege:

1. Plaintiff, 110 Holly Hill Ave. Corporation is a Florida Corporation with its principal place of business at 145 Lehigh Ave., Flagler Beach, Flagler County, Florida (referred to herein as "110 Holly").

2. Plaintiff, Flagler Bridge Boatworks & Marina, Inc. is a Florida Corporation with its principal place of business at 145 Lehigh Ave., Flagler Beach, Flagler County, Florida ("Flagler Bridge").

3. Defendant, City of Flagler Beach, was and is a Florida municipal corporation, organized and operating under the laws of the State of Florida, in Flagler County, Florida (referred herein as "Flagler Beach" or the "City").

4. 110 Holly owns the property located at 127-145 Lehigh Avenue, Flagler Beach, Flagler County, Florida that is located within the City's municipal limits (the "Property").

5. Flagler Bridge leases the Property and the improvements thereon for the operation of marina. The marina is the only marina in Flagler Beach and to Plaintiffs' knowledge is the only property in the City designated by the Comprehensive Plan of the City of Flagler Beach as a potential site for a marina (the "Marina").

6. The Property is in the Tourist Commercial T/C zoning district, which during all times relevant to this case allowed marinas as a permitted use.

7. The use of the Property as a marina and for uses accessory to a marina is consistent with both the City's Land Development Code and the Comprehensive Plan.

8. The Marina consists of three long docks containing a total of 82 slips. All improvements, activities, and vessel operation on or over the water at the Marina are within the Intracoastal Right of Way. A true and accurate survey of the Property showing the marina improvements is attached as **Exhibit A**.

9. A marina has been a continuous and existing land use on the Property for at least forty (40) years.

10. Prior to 2001 the City had no laws or regulations that prohibited or otherwise regulated liveaboard vessels.

11. In 2001 the City adopted Ordinance 2001-18, which prohibited living aboard watercraft in the City except at a duly licensed marina. A true and accurate copy of Ordinance 2001-18 is attached as **Exhibit B**.

12. The City did not license or otherwise require a City permit for marinas at the time of adoption of Ordinance 2001-18.

13. In 2005 the City adopted Ordinance 2005-27, which provided, in part, the following:

Marina accessory uses: means uses normally ancillary and subordinate to a marina, including but not limited to: live aboard facilities, if permitted...

A true and accurate copy of Ordinance 2005-27 is attached hereto as **Exhibit C**.

14. The provisions contained in Ordinance 2005-27 represented the first time the City defined the term "marina" in its code of municipal ordinances or Land Development Code.

15. On October 8, 2009 the City adopted Ordinance 2009-17 (the "2009 Ordinance") providing for regulation of vessels, floating structures, and marinas. The Ordinance also amended the Land Development Code regulations pertaining to liveaboards, floating structures, barges and houseboats at marinas. A true and accurate copy of the 2009 Ordinance is attached hereto as **Exhibit D**.

16. After Plaintiffs filed the First Amended Complaint, the City adopted Ordinance 2010-13, which was intended to narrow the issues to be tried in litigation by amending certain provisions of the City's code dealing with vessels (the "2010 Ordinance"). A true and accurate copy of the 2010 Ordinance is attached hereto as **Exhibit E**.

17. On February 18, 1999, the Florida Department of Environmental Protection issued Permit # 18-140599-001-EI (the "DEP Permit"). A true and accurate copy of the permit is attached hereto as **Exhibit F**.

18. The DEP Permit authorizes the development and operating of 82 wet slips at the Marina and other general and specific conditions.

19. Plaintiff also obtained the requisite permit from the United States Army Corps of Engineers ("USACOE"), which authorized construction of a Marina facility and dredging activities (the "Army Corps Permit"). A true and accurate copy of the USACOE permit is attached hereto as **Exhibit G**.

20. In 2005, the DEP Permit was modified and authorized, among other things, Plaintiff the right to maintain and repair boats and vessels on the Property (the "Modified DEP Permit"). A true and accurate copy of the modified permit is attached hereto as **Exhibit H**.

21. The Modified DEP Permit specifically allowed 50 boat slips for use by houseboats or live-aboard vessels.

22. The DEP Permit was duly noticed in the local newspaper of general circulation. A true and accurate copy of the notices is attached hereto as **Exhibit I**.

23. No party, including the City, petitioned the DEP for an administrative hearing challenging the permit as provided in the notices.

24. The Plaintiffs made a substantial change in position when they constructed the Marina on the Property in good faith reliance on existing City regulations, the DEP Permit, the Modified DEP Permit, the USACOE Permit, and the

failure of any party, including the City, to object to the permits or the construction when it commenced.

25. The Plaintiffs incurred extensive obligations constructing the Marina with reasonable investment backed expectations to establish a viable and profitable use of the property.

26. In constructing the Marina, the Plaintiffs intended for motor boats, sailboats, houseboats, live-aboard vessels and other vessels to be docked or moored at the Marina, as allowed by the DEP Permit and the Modified DEP Permit.

27. Due to low numbers of transient boat and vessel traffic stopping and overnighting in this reach of the Intracoastal Waterway, the inadequate local demographics needed to support a large boating community and the geographic remoteness of the Marina to ocean inlets, it was necessary for the Plaintiffs to use the 50 slips permitted for houseboats and live-aboard vessels for long term slip leases to ensure the marina operation would be a financially feasible commercial enterprise.

28. Without income from long term slip leases the Plaintiffs will not be able to cover additional capital costs and basic overhead, including, without limitation, required personnel with excessive workman's compensation expenses, necessary amenities and land based infrastructure, required equipment and machinery, insurance costs, and utility costs required to provide a functional marina facility.

29. The DEP Permit provides at page 10, paragraph 19:

Each designated liveaboard slip will be provided with its own direct, permanent sewage pump-out device. No liveaboard shall be allowed to dock

at a slip without such a direct sewage pump-out device. All sewage pump-out devices shall be connected to an authorized sewage treatment system.

30. The Plaintiffs expended significant sums of money to install the required potable water and sanitary sewer lines to serve the designated slips at the Marina in good faith reliance on the DEP Permit, the Modified DEP Permit and existing City regulations.

31. On June 20, 2001 Plaintiffs sent a letter to the City requesting to connect the boat slips to the City's sanitary sewer system. A copy of this letter is attached as **Exhibit J**.

32. Not receiving a response to the June 20, 2001 letter, Plaintiffs resent the letter to the City on July 18, 2001. A copy of this letter is attached as **Exhibit K**.

33. On January 8, 2002 Plaintiff sent a letter to the City asking why the City had not responded to its letters dated June 20, 2001 and July 18, 2001. A copy of this letter is attached as **Exhibit L**.

34. On January 9, 2002 the City finally responded stating that Roger Stephens, the City's Waste Plant Supervisor, did not recommend the City receive Plaintiffs' "waste sludge" because it is not compatible with the City's sewer system. A copy of this letter is attached as **Exhibit M**.

35. Sewage sludge is a by-product of wastewater treatment facilities and cannot be generated or otherwise created in a vessel holding tank, or any other holding tank designed to hold and contain human waste and wastewater, except at a wastewater treatment facility.

36. Wastewater generated by use on a liveaboard vessel is identical to wastewater generated by normal land based residential uses.

37. On May 23, 2003 Plaintiffs sent a letter to the City advising that the five marinas referenced therein discharge their wastewater directly into central sewer lines. A copy of this letter is attached as **Exhibit N**.

38. On June 2, 2003, Bill Ward, the City's Community Development Director, sent a letter to Plaintiffs directing them to contact Roger Stephens, the City's Waste Plant Supervisor, for further information or authorization to dump waste into the City's sewer system. A copy of this letter is attached as **Exhibit O**.

39. On June 11, 2003 Plaintiffs sent a letter to Roger Stephens responding to his concerns that chemicals in vessel holdings tanks may not be amenable to the City's wastewater facility by asking for Mr. Stephens to specifically identify what chemicals may be harmful. A copy of this letter is attached as **Exhibit P**.

40. On February 25, 2004, Plaintiffs sent a letter to Nancy Ciummo, City Manager, providing estimates of the expected volume of sewage the Marina will generate and requesting permission to proceed with a mobile pump out station. A copy of this letter is attached as **Exhibit Q**.

41. On March 18, 2004, Plaintiffs sent a letter to Nancy Ciummo asking why they had not yet received a response to its February 25, 2004 letter. A copy of this letter is attached as **Exhibit R**.

42. Sometime in 2003, the City retained Mittauer & Associates, Inc. as consulting engineers to provide, in part, professional consulting services related to the City's wastewater system and treatment facilities.

43. On May 4, 2004 Timothy Norman of Mittauer & Associates, Inc. sent a letter to Nancy Ciummo advising that accepting wastewater from vessels at the Marina will not cause problems at the City's wastewater treatment plan, if certain conditions were met, and recommended periodic sampling of the wastewater discharged from the Marina to ensure it was compatible with the City's wastewater treatment operating. A copy of this letter is attached as **Exhibit S**.

44. The requirements set forth in the aforementioned letter did not apply to any other user of the City's sanitary sewer system.

45. On June 7, 2004 the City sent Plaintiff a letter advising that onsite direct discharge into the City's central sewer system is the preferred practice and that the City would conduct all testing of the Marina wastewater and bill the Marina accordingly. A copy of this letter is attached as **Exhibit T**.

46. Notwithstanding the statements regarding testing in the June 7, 2004 letter, the City changed its position and did not take any steps to finding a testing company or otherwise set up testing procedures so Plaintiffs could move forward and connect to the wastewater system.

47. The Plaintiffs then took it upon themselves to find a company qualified to perform the testing required by the City's consulting engineers. A copy of the proposal for services and quote from ELAB is attached as **Exhibit U**.

48. ELAB was the only testing company Plaintiffs were able to find that could meet all of the City's sampling and testing requirements.

49. The testing and sampling requirements were overly burdensome, expensive and virtually impossible to comply with, which placed a unique and undue financial burden solely on the Plaintiff.

50. The Plaintiffs contacted the City to inform it that the testing protocol would place an undue financial burden on them.

51. On September 23, 2004, Plaintiffs sent a letter to Nancy Ciummo asking why they had not yet received a reply regarding their concerns over the sampling protocol. A copy of this letter is attached as **Exhibit V**.

52. On November 24, 2004 Plaintiffs sent a letter to Nancy Ciummo again asking for a response to their concerns over the burden and costs associated with the sampling and testing protocols. A copy of this letter is attached as **Exhibit W**.

53. The Plaintiffs never received a response from the City to their concerns about the costs and logistics involved with ELAB's sampling and testing protocols.

54. Notwithstanding the Plaintiffs efforts to comply with the testing and sampling protocol, the Plaintiffs were still not permitted to connect to the sanitary sewer system.

55. The Plaintiffs continued to request permission to connect to the City's sanitary sewer system but the City failed to respond or otherwise permit the Marina to connect to the sanitary sewer system.

56. During this period, the City never permitted Plaintiffs to connect to the City's wastewater system nor did it advise Plaintiffs of any required applications or other processes required for Plaintiffs to connect the Marina and boat slips to this system.

57. During this period, the City did not render a final decision that could be appealed or otherwise challenged, nor did it provide an administrative remedy for Plaintiffs to pursue regarding their attempts to connect to the water and sewer systems.

58. Finally, on March 3, 2008 the City finally did respond by letter, which provided a list of new requirements that must be met before the City would permit the Marina to connect to the City's sanitary sewer system. A copy of this letter is attached as **Exhibit X**.

59. The City now required Plaintiffs to submit a site utility plan, stamped and sealed by a licensed engineer, to be reviewed by the City before any connections to the City's water and sewer system would be approved.

60. From Plaintiffs first request in 2001 to their receipt of the March 3, 2008 letter, the City had never mentioned or otherwise required a site utility plan.

61. The City advised that to formally process the request to connect to the water and sewer systems, Plaintiffs must submit an "application for connection."

62. At no time from Plaintiffs first request in 2001 to their receipt of the March 3, 2008 letter did the City mention or otherwise require an application for connection to the water and sewer systems.

63. The Plaintiffs complied with all new requirements and submitted the appropriate documentation and information to obtain a permit to connect to the City's sanitary sewer system.

64. On July 1, 2008 Timothy Norman of Mittauer & Associates, Inc. sent a letter to Bob Smith, City Engineer, regarding its review of Plaintiffs' 3rd submittal of the utility site plan, and recommended that the utility plan be approved. A copy of this letter is attached as **Exhibit Y**.

65. On July 2, 2008 the City's Code Enforcement Division issued a notice of City ordinance violation requiring Plaintiffs to obtain proper permits and inspections for the boatslips before any connections can be made to the water and sewer system. A copy of the notice of City ordinance violation is attached as **Exhibit Z**.

66. At no time between 2001 and July 2, 2008 were Plaintiffs informed of permitting and inspection requirements from the boatslips, which were inspected and observed by several City officials and employees during this period.

67. At the time they were constructed the Plaintiffs received all necessary approvals and permits for the construction of the docks and water and sewer infrastructure thereon.

68. Notwithstanding the imposition of these new requirements at this time, the Plaintiffs complied with all requests of the City in order to connect to the water and sewer system without further interference by the City.

69. Finally, on September 16, 2008, which was over seven years from Plaintiffs' initial request, the City issued permits for the Marina and boatslips to connect

to the water and sewer system. A copy of the permit fee sheet is attached as **Exhibit AA**.

70. The Plaintiffs paid all applicable connection and impact fees for the potable water and sewer connections and pay monthly utility charges for the connections, which are current and paid in full.

71. Until the Marina was allowed to connect to the City's potable water and sanitary sewer systems, Plaintiffs were unable to comply with the specific conditions of the DEP Permit and the Modified DEP Permit to utilize 50 of the 82 slips permitted at the Marina, or open the Marina in a reasonable manner.

72. The City's refusal to allow a sanitary sewer connection for 7 years placed the Plaintiffs in a position of economic ruin, not only to the extent of expenditures already incurred, in full reliance on the DEP Permit, Modified DEP Permit, Army Corps Permit, and existing City laws and regulations at the time the request for a sewer connection was made, but also to the extent of being forced to close the Marina and keep it closed due to their inability to satisfy the DEP Permit and Modified DEP Permit conditions requiring sanitary sewer connections on all slips designated for houseboats or liveaboard vessels.

73. The requirements and procedures implemented to allow the Marina and boatslips to be connected to the City's water and sewer systems were unreasonable in their duration, purpose and scope.

74. On May 24, 2007 the City sent Plaintiffs a letter advising that the language in Ordinance 2005-27 stating that marina accessory uses includes "liveaboards, if

permitted" did not permit liveaboard vessels as permitted accessory uses in the Tourist Commercial zoning district and at the Marina. A copy of this letter is attached as **Exhibit AB**.

75. Plaintiffs were advised that additional approval by the City Commission would be required before liveaboard vessels could be docked or moored at the Marina.

76. No other permitted accessory uses allowed in any zoning district in the City requires additional approval by the City Commission before being allowed as an accessory use to a permitted use.

77. Liveaboard vessels were not listed or otherwise defined as special exception or conditional uses that required additional approval by the City after proper notice and public hearing.

78. On May 18, 2008 the City sent Plaintiffs a letter advising that the uses listed in the letter, including liveaboards and houseboats, are considered permitted uses in the Tourist Commercial zoning district. A copy of this letter is attached as **Exhibit AC**.

79. The interpretations of the code provided in the May 24, 2007 letter and the May 18, 2008 letter directly conflict with each other.

80. The City was aware and on notice of Plaintiffs intent to have houseboats and liveaboard vessels at the Marina since the DEP Permit was issued in 1999 and did not object to the proposed use.

81. The City was placed on subsequent notice of the Plaintiffs intentions when the Modified DEP Permit was issued in 2005 and did not object to the proposed use.

82. Prior to the City's adoption of the 2009 Ordinance the Plaintiffs constructed two houseboats on the Property and docked them at the Marina (the "Existing Houseboats").

83. Prior to adoption of the 2009 Ordinance liveaboard vessels were permitted at the Marina as accessory uses by the Land Development Code.

84. Prior to adoption of the 2009 Ordinance nothing in the City's Code of Ordinances or Land Development Regulations prohibited floating structures at the Marina property.

85. On July 8, 2010 the City sent Plaintiffs a Notice of City Code Violation finding Plaintiffs in violation of City code for having two floating structures within the city limits and because the floating structures were constructed without building permits pursuant to the Florida Building Code.

86. The Florida Building Code and its permit requirements applies to floating structures but does not apply to vessels as that term is defined by statute and in the Constitution of the State of Florida.

87. The Existing Houseboats were designed by a licensed naval architect.

88. The Existing Houseboats were issued vessel hull identification numbers by the United States Coast Guard.

89. The Existing Houseboats are registered as vessels with the State of Florida.

90. The Existing Houseboats are capable of movement across the water by either self-propulsion or under tow.

91. The Existing Houseboats are not permanently attached to land nor otherwise rendered incapable of being moved across the water or navigating inland waterways.

92. All of the docks and all 82 permitted slips at the Marina are within the 500' right-of-way easement for the Intracoastal Waterway, which benefits the United States of America.

93. Prior to adoption of the 2009 Ordinance, the City imposed no parking requirements for marina vessel slips.

94. Prior to adoption of the 2009 Ordinance, the City considered transient vessel and boat slips as additional parking spaces and did not consider such transient slips as generators of a need for additional parking spaces.

Count I
Declaratory Judgment and Injunctive Relief
Express Preemption

95. Plaintiffs reallege and incorporate paragraphs 1 - 94 as fully set forth above.

96. This court has subject matter jurisdiction over this action because it is an action for declaratory relief requesting a judicial determination of issues, rights, and liabilities embodied in an actual and present controversy between the parties.

97. Pursuant to Section 327.60, Florida Statutes, the City is expressly prohibited and preempted from regulating any vessel upon the Florida Intracoastal Waterway ("ICW"). The only exception to this express prohibition permits the City to

prohibit or restrict the mooring or anchoring of floating structures and liveaboard vessels within its jurisdictions or to prohibit or restrict the mooring or anchoring of any vessels within the marked boundaries of a mooring field permitted under Section 327.40, Florida Statutes.

98. The City has not established or permitted any mooring fields within its jurisdiction pursuant to Section 327.40, Florida Statutes.

99. The docks and slips at the Marina are wholly within the boundaries of the ICW.

100. The City is preempted from regulating vessels in anyway that use, operate at, navigate to or from, dock or moor at the Marina.

101. To the extent the 2009 Ordinance or the 2010 Ordinance apply to vessels using, operating at, navigating to or from, docking or mooring at the Marina, it is expressly preempted by Section 327.60, Florida Statutes.

102. Specifically, but without limitation, the following provisions of the 2009 Ordinance are expressly preempted by Section 327.60, Florida Statutes, to the extent these provisions apply to vessels upon the ICW, including vessels at the Marina:

a. Page 1 of 18 of the 2009 Ordinance contains a recital that states: "Section 327.60, Florida Statutes, authorizes a municipality to regulate vessels resident in such municipality and to prohibit floating structures and liveaboard vessels to be docked within its jurisdiction." This legislative finding is preempted by State law to the extent it purports to authorize the City to regulate a vessel within its jurisdiction that is upon the ICW.

b. Page 4 of 18 of the 2009 Ordinance, Article III, Sec. 22-59 of the City's Code of Ordinances states: "It shall be unlawful for any person to abandon any vessel or floating structure tied or docked to any land within the city or to tie or dock the same in such a manner as to cause such vessel or floating structure to be or become a menace to navigation or the environment." This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

c. Page 4 of 18 of the 2009 Ordinance, Article III, Section 22-60 of the City's Code of Ordinances states: "No vessel or watercraft of any kind whatsoever shall be permitted to tie up at any place in the public waterways which is of an unsightly appearance, or in badly deteriorated condition, or which is likely to damage the docks, or which might become a menace to navigation. Vessels in such condition are hereby declared to be a public nuisance." This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

d. Page 5 of 18 of the 2009 Ordinance, Article IV, Sec. 22-61(a) of the City's Code of Ordinances states: "It is the intent of the City Commission to regulate and restrict placement, and maintenance of vessels and floating structures within Flagler Beach for the health, safety, and welfare of the City." This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

e. Page 5 of 18 of the 2009 Ordinance, Article IV, Sec. 22-61(b) of the City's Code of Ordinances states: "It is further the intent of the city commission to regulate vessels and to prohibit occupation of those vessels in waters abutting residentially zoned areas of the city in order to promote and protect the health, welfare,

morals, safety and property value of city residents and the public in general.” This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

f. Page 7 of 18 of the 2009 Ordinance, Article IV, Sec. 22-64(a) of the City’s Code of Ordinances states: “Except as otherwise provided by any preemptive state or federal law, it shall be unlawful for any person to construct, place, maintain, permit, let, allow or cause the construction, placement, maintenance or existence of any vessel, except as allowed under Appendix A, the Land Development Regulations.” This section and the application regulations in Appendix A are preempted by State law to the extent they apply to vessels upon the ICW or at the Marina.

g. Page 7 of 18 of the 2009 Ordinance, Article IV, Sec. 22-64(b) of the City’s Code of Ordinances states: “All vessels tied to land, docks, piers or wharves, abutting the public waterways in the city shall observe all the health and sanitary regulations of the city, and all ordinances of the city relating to the conduct of persons and prohibiting acts contrary to public health, morals, safety or public peace, including ordinances prohibiting disorderly conduct and loud and boisterous noises which disturb the peace of the neighborhood.” This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

h. Page 7 of 18 of the 2009 Ordinance, Article IV, Sec. 22-65(a) of the City’s Code of Ordinances states: “Prior to allowing any vessels to be docked or tied, the owner of any marina shall provide to the City Manager or his designee a copy of any master signage plan required by the State. Said master signage plan shall be

maintained by the City for use by emergency response personnel. All slips shall have a unique identifying number consistent with the master signage plan. Identifying numbers shall be located in a visible place and shall be a minimum of three (3) inches high and one (1) inch wide.” This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

i. The foregoing Sec. 22-65(a) also does not apply to the Marina because there is no state requirement for a master signage plan.

j. Page 7 of 18 of the 2009 Ordinance, Article IV, Sec. 22-65(b) of the City’s Code of Ordinances states: “Prior to allowing any vessel to be docked or tied, the owner of any marina shall provide to the City Manager or designee a copy of any hurricane preparedness and evacuation plan required by the State.” This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

k. The foregoing Sec. 22-65(b) also does not apply to the Marina because there is no state requirement for a hurricane preparedness and evacuation plan required by the State.

l. The foregoing Sec. 22-65(b) also is preempted by Section 327.59, Florida Statutes, which provides that “marinas may not adopt, maintain, or enforce policies pertaining to evacuation of vessels which require vessels to be removed from marinas following the issuance of a hurricane watch or warning, in order to ensure that protecting the lives and safety of vessel owners is placed before the interests of protecting property.”

m. Page 8 of 18 of the 2009 Ordinance, Article IV, Sec. 22-65(c) of the City's Code of Ordinances states: "No person shall perform any repair or maintenance of any vessel that would or could result in spill or discharge of any amount of oil, gasoline or other pollutants into the water or allow such repair or maintenance to be performed unless such repair or maintenance is performed in upland areas at least fifty feet from the nearest highwater mark of the adjacent body of water. Any such repair or maintenance shall be performed in a manner to avoid any contamination of the adjacent body of water." This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

n. Page 8 of 18 of the 2009 Ordinance, Article IV, Sec. 22-65(e) of the City's Code of Ordinances states: "No person shall perform any fueling of a vessel in a manner that would or could result in the spill or discharge of gasoline into the water." This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

o. Page 8 of 18 of the 2009 Ordinance, Article IV, Sec. 22-66(a) of the City's Code of Ordinances states: "No person shall dock or tie, or permit to be docked or tied, except in case of emergency, a vessel to land, or carry on a prohibited activity in a manner which shall unreasonably or unnecessarily constitute a navigational hazard or interfere with another vessel or vessels." This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

p. Page 8 of 18 of the 2009 Ordinance, Article IV, Sec. 22-66(b) of the City's Code of Ordinances states: "If the City determines that a vessel is an imminent

risk of the health, safety and welfare of the residents of the City, or is likely to immediately damage private or public property, or is an immediate hazard to navigation, the City may take all steps necessary to immediately remove, or cause to be removed, the vessel without written communication. The owner of a vessel, and, if applicable, the owner of the marina at which the vessel is docked or tied shall be jointly and severally liable to the City for any costs incurred by the City during such removal." This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

q. Page 8 of 18 of the 2009 Ordinance (as amended by the 2010 Ordinance) Article IV Sec. 22-66(c) of the City's Code of Ordinances states: "In the event of an emergency situation, the owner or occupant of the vessel shall immediately contact the appropriate authorities to inform them of the nature of the emergency and the amount of time required to remedy the emergency situation." This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina. In addition, this section is preempted by State law to the extent it requires vessels upon the ICW or at the Marina to receive a City permit prior to mooring or docking upon the ICW or at the Marina.

r. Page 8 of 18 of the 2009 Ordinance, Article IV, Sec. 22-66(d) of the City's Code of Ordinances states: "No vessel shall be docked or tied to land in such a manner that the vessel extends across the property line of contiguous property." This section is preempted by State law to the extent it applies to vessels upon the ICW or at the Marina.

s. Page 8 of 18 of the 2009 Ordinance, Article IV, Sec. 22-66(e) of the City's Code of Ordinances states: "All docked vessels shall be securely tied or fastened in such a manner as to minimize lateral movement and ensure the vessel does not collide or interfere with adjacent vessels, structures or improvements. Mooring lines shall be secured in such a manner to prevent vessels from moving more than twelve (12) inches in any lateral direction." This section is preempted to the extent it applies to vessels upon the ICW or at the Marina.

t. The 2009 Ordinance contains two sections 2.06.08.7.

u. Page 14 - 15 of 18 of the 2009 Ordinance, the first Section 2.06.08.7 of the City's Land Development Regulations provides minimum requirements for a marina permitting vessels used for habitation and prohibits a marina from allowing any vessel which is used for habitation to be tied or docked at such a marina unless the conditions enumerated in the section are met. This section is preempted by State law to the extent it applies to vessels, used for habitation or not, upon the ICW or at the Marina unless a vessel also constitutes a liveaboard vessel as defined in Section 327.02(17), Florida Statutes.

v. Page 15 of 18 of the 2009 Ordinance, the second Section 2.06.08.7 provides: "Except as otherwise provided by federal or State law, houseboats which are not self-propelled (cannot be moved under their own power), floating structures, and barges may not be tied or docked in any zoning district in the City." This section is preempted by State law to the extent it applies to vessels, used for habitation or not,

upon the ICW or at the Marina unless a vessel also constitutes a liveaboard vessel as defined in Section 327.02(17), Florida Statutes.

103. 110 Holly is in doubt about its rights as owner of the Property under the Ordinance and State law.

104. Flagler Bridge is in doubt about its rights as the lessee and operator of the Marina under the Ordinance and State law.

WHEREFORE, Plaintiffs pray for the Court to enter a judgment declaring that the sections of the Ordinance enumerated above to be expressly preempted by state law and unenforceable and void in whole or in part as applied to the ICW and the portion of the Marina that extends into the ICW, and for supplemental relief, including, but not limited to, Plaintiff's costs, and all other relief in law and equity, which it may be entitled.

Count 2
Declaratory Judgment and Injunctive Relief
Existing Vessels

105. Plaintiffs reallege and incorporate the allegations in Paragraph 1 - 94 above.

106. This court has subject matter jurisdiction over this action because it is an action for declaratory relief requesting a judicial determination of issues, rights, and liabilities embodied in an actual and present controversy between the parties.

107. The City believes the Existing Houseboats are floating structures as opposed to vessels as those terms are defined by statute.

108. The Plaintiffs believe the Existing Houseboats are vessels as opposed to floating structures as those terms are defined by statute.

109. If the Existing Houseboats are vessels they are not subject to the Florida Building Code and require no additional permitting.

110. Prior to adoption of the 2009 Ordinance the City did not prohibit or otherwise regulate floating structures, as that term is defined in the Florida Statutes.

111. Plaintiffs are in doubt about their rights with regard to the Existing Houseboats because of uncertainty as to their legal status as vessels or floating structures.

WHEREFORE, Plaintiffs pray for the Court to enter a judgment declaring the Existing Vessels are vessels as opposed to floating structures as those terms are defined by statute, and for supplemental relief, including, but not limited to, Plaintiff's costs, and all other relief in law and equity, which it may be entitled.

Count 3
Declaratory Judgment and Injunctive Relief
Vested Rights and Estoppel

112. Plaintiffs reallege and incorporate the allegations made in Paragraph 1 - 94 above.

113. This court has subject matter jurisdiction over this action because it is an action for declaratory relief requesting a judicial determination of issues, rights, and liabilities embodied in an actual and present controversy between the parties.

114. The 2009 Ordinance requires that a special exception meeting certain conditions must be approved by the City before liveaboard vessels are permitted to be at the Marina.

115. The 2009 Ordinance imposes density limitations for the number of liveaboard vessels permitted to dock or moor at a marina.

116. After the adoption of the 2009 Ordinance the Plaintiffs and the undersigned counsel were advised that no houseboats or liveaboard vessels would be permitted to dock at the Marina until the Plaintiffs applied for and received a special exception allowing such uses.

117. The City refused to recognize or otherwise acknowledge that Plaintiff, 110 Holly, as the owner of the Property, acquired any vested rights from the DEP Permit, USACOE Permit and the Modified DEP Permit.

118. If applicable to the Marina and the Property, the Ordinance's new requirements applicable to the Marina, including, without limitation the new density requirements, interfere with Plaintiffs' vested rights to develop and operate the Marina as permitted in the DEP Permit, USACOE Permit and Modified DEP Permit.

119. If applicable to the Marina and the Property, the Ordinance's requirement that a special exception be approved before liveaboard vessels are permitted at a Marina would interfere with Plaintiffs' vested rights to develop and operate the Marina as permitted in the DEP Permit, USACOE Permit and Modified DEP Permit.

120. It would be highly inequitable to interfere with the rights Plaintiffs acquired under the DEP Permit, USACOE Permit and Modified DEP Permit before the City adopted the Ordinance.

121. The City is estopped from enforcing and applying the 2009 Ordinance and the 2010 Ordinance against the Marina and the Property to the extent it interferes with the Plaintiffs' vested rights under the DEP Permit, USACOE Permit, Modified DEP

Permit and the applicable regulations of the City in existence prior to the adoption of these Ordinances.

WHEREFORE, Plaintiffs pray for the Court to enter a judgment declaring that Plaintiff 110 Holly has vested rights in the DEP Permit, USACOE Permit and Modified DEP Permit and that the doctrine of equitable estoppel prevents the City from enforcing the Ordinance against the Marina or the Property to the extent that it interferes with Plaintiff 110 Holly's vested rights, and for supplemental relief, including, but not limited to Plaintiffs' costs, and all other relief in law and equity which it may be entitled.

Count 4
Declaratory Judgment and Injunctive Relief
Lawful Non-conforming Uses

122. Plaintiffs reallege and incorporate paragraphs 1 through 94 above.

123. This court has subject matter jurisdiction over this action because it is an action for declaratory relief requesting a judicial determination of issues, rights, and liabilities embodied in an actual and present controversy between the parties.

124. Prior to the City's adoption of the 2009 Ordinance and in accordance with the Modified DEP Permit, the Plaintiffs constructed the Existing Houseboats on the Property.

125. The previous ordinance in effect at the time the houseboats were constructed provided for liveaboard facilities as permitted uses.

126. The 2009 Ordinance prohibits floating structures and only allows liveaboard vessels as a special exception use requiring additional approval from the City.

127. Prior to the City's adoption of the 2009 Ordinance, nothing in the City's Code of Ordinances or Land Development Regulations prohibited liveaboard vessels or floating structures at the Marina or the Property.

128. The City's Land Development Regulations, Article II, Section 2.02.08.5(1) states:

- a. Continuation of use - A use, building or structure, lawfully in existence at the effective date of this ordinance or any applicable amendment thereto, may be continued except as otherwise provided in this article.

129. Plaintiffs are uncertain as to their rights in the Existing Houseboats prior to the City's adoption of the Ordinances.

WHEREFORE, Plaintiffs pray for the Court to enter a judgment declaring that the uses in existence on the Property prior to the City's adoption of the Ordinance are lawful nonconforming uses and that those uses do not have to comply with the 2009 Ordinance, and for supplemental relief, including, but not limited to, Plaintiffs' costs, and all other relief in law and equity, which it may be entitled.

Count 5
Declaratory Judgment and Injunctive Relief
Assembly of Vessels

130. Plaintiffs reallege and incorporate paragraphs 1 through 94 above.

131. This court has subject matter jurisdiction over this action because it is an action for declaratory relief requesting a judicial determination of issues, rights, and liabilities embodied in an actual and present controversy between the parties.

132. Plaintiffs were assembling small personal watercraft with hand tools from premanufactured components for retail sale on the Property.

133. The City cited the Plaintiffs for improperly manufacturing boats in the Tourists Commercial zoning district, which does not allow manufacturing as a permitted use.

134. The City's code enforcement board agreed with the citation and found that Plaintiffs were in violation.

135. Plaintiffs filed a Petition for Certiorari in Circuit Court of the Seventh Judicial Circuit in and for Flagler County, Florida, Case No. 2009 AP 000003, challenging the decision of the code enforcement board.

136. The Court granted certiorari and found that the assembly of small personal watercraft with hand tools from premanufactured components for retail sale was a permitted use at a marina within the Tourist Commercial zoning district.

137. The Plaintiffs assembled and constructed the Existing Houseboats, including the hulls, cabins and living quarters, on the Property.

138. While Plaintiffs were assembling and constructing the Existing Houseboats they received no complaints, warnings, or notice of code enforcement violations from the City or any other political subdivision.

139. Nothing in the code of ordinances or the Land Development Regulations prohibits the assembly and construction of houseboats substantially similar to the Existing Houseboats.

140. Plaintiffs made specific improvements on the Property, with all appropriate permits, for assembly and construction of the Existing Houseboats on the Property.

141. Notwithstanding, any provision to the contrary in the 2009 Ordinance or the 2010 Ordinance, prior to their adoption, assembly and construction of the Existing Houseboats were lawful and permitted uses.

142. Plaintiffs are uncertain as to their rights to assemble and construct houseboats, or similar vessels, on the Property consistent with the assembly and construction of the Existing Houseboats.

WHEREFORE, Plaintiffs pray for the Court to enter judgment declaring that the Plaintiffs were permitted to assemble and construct the Existing Houseboats when they were assembled and that the assembly and construction of houseboats on the Property is a permitted use or lawful nonconforming use that can continue, Plaintiffs' costs and all other relief in law and equity, which it may be entitled.

Count 6
Substantive Due Process

143. Plaintiff, 110 Holly, realleges and incorporates paragraphs 1, 3 through 8, 11, 13, 15, 17 through 29, 31 through 79, 116, and 117 through 120 above.

144. The Plaintiff has fundamental constitutional rights in its property and to reasonable use of its property pursuant to valid local, state and federal laws and regulations.

145. Prior to the adoption of the 2009 Ordinance, the mooring of liveaboard vessels and houseboats at the Marina as permitted by the DEP Permit and the Modified DEP Permit were lawful permitted uses under the applicable City zoning regulations and municipal ordinances

146. The City's Waste Plant Supervisor recommendation not to allow the Marina to connect to the sanitary sewer system had no reasonable relationship to the public health, safety, morals and general welfare, was arbitrary, discriminatory and unreasonable in that sewage sludge could not be generated in a vessel holding tank as alleged by the City when rendering its denial.

147. The City's continuing interference to Plaintiff's requests to connect the Marina to the sanitary sewer system because of its concerns that the wastewater generated by vessels at the Marina would not be compatible with the City's wastewater treatment plant had no reasonable relationship to the public health, safety, morals and general welfare, was arbitrary, discriminatory and unreasonable.

148. The City's conditional agreement to allow the Marina to connect to the sanitary sewer system if the Plaintiff complied with a testing and sampling protocol had no reasonable relationship to the public health, safety, morals and general welfare, was arbitrary, discriminatory and unreasonable in that no other uses in the City were subject

to this requirement, including other users with substantially similar holding tanks or users more likely to have a negative impact on the water treatment facility.

149. The City's change of position in 2008, in part dropping the testing and sampling protocol without explanation, demonstrates that the City's continuing denials of and interference to the Plaintiff's requests to connect to the City's sanitary sewer system had no relationship to the public health, safety, morals and general welfare, and was arbitrary, discriminatory and unreasonable.

150. The determination by the City that liveaboard vessels were not permitted at the Marina and subsequent reversal of position over one year later demonstrates that the determination in the letter dated May 24, 2007 had no relationship to the public health, safety, morals and general welfare, and was an arbitrary, discriminatory and unreasonable decision.

151. The seven plus years it took for the City to determine if it could accept the Plaintiff's sewage and allow Plaintiff to connect to the City's sanitary sewer system, without providing a means to Plaintiffs for administrative review and appeal, was arbitrary, discriminatory and unreasonable.

152. The City's actions with regard to the potable water and sanitary sewer connections as well as its inconsistent interpretations of the Land Development Regulations were unconstitutional, unlawful, arbitrary, capricious and unreasonable applications of the police power in that such actions precluded the only use to which the Property reasonably may be adapted and used, and such actions do not serve the public health, safety, morals and general welfare.

153. As a result of the DEP Permit and the Modified DEP Permit the fifty (50) slips designated for liveaboard vessels and houseboats at the Marina can only be used if they are equipped with direct connections to the City's water and sewer systems.

154. The arbitrary, capricious and unreasonable actions of the City regarding Plaintiff's attempts to connect the Marina to the City's water and sewer system are examples of the history of wrongful conduct by the City to refuse to allow the Plaintiff lawful use of the Marina as it was permitted.

155. The City's arbitrary, capricious and unreasonable interpretation of the 2005 Ordinance that a special exception was required for liveaboard vessels to moor at the Marina is another example of the history of wrongful conduct of the City to prevent the Plaintiff from mooring liveaboard vessels at the Marina even though the 2005 Ordinance clearly permitted such use.

156. The inconsistent interpretations by City officials in regard to liveaboard vessels as permitted lawful uses or unpermitted uses at the Marina were arbitrary, capricious and unreasonable and are additional examples of the history of wrongful conduct of the City to prevent the Plaintiff to moor liveaboard vessels and houseboats even though the 2005 Ordinance clearly permitted such use.

157. The City's conduct from 2001 to the present demonstrates the City's arbitrary, capricious and unreasonable policy to prevent the Plaintiff from using the Marina as it was permitted and intended to be used even though the applicable zoning regulations and municipal ordinances permitted such uses.

158. After the Plaintiff was allowed to connect to the water and sewer system on September 16, 2008 the City continued its arbitrary, capricious and unreasonable policy by continuing to deny that the Plaintiff was permitted to moor liveaboard vessels and houseboats in the fifty (50) designated slips at the Marina.

159. It was the City's policy that liveaboard vessels were only allowed at the Marina "if permitted" pursuant to the language in the 2005 and further adopted the policy that only the City Commission could ultimately determine what type of liveaboard vessels were permitted. A copy of an excerpt from minutes of the City's Planning and Architectural Review Board July 24, 2008 meeting stating this policy is attached as **Exhibit AD**.

160. Between the adoption of the 2005 Ordinance and the adoption of the 2009 Ordinance, and notwithstanding the Plaintiff's numerous requests, the City Commission never determined what types of liveaboard vessels were permitted pursuant to the City's policy with regard to the 2005 Ordinance.

161. On January 28, 2009 the Plaintiff sent a letter to Jan Hancock, the City's Planning and Zoning Director, asking her to clarify a commissioner's comments that "Liveaboards are not allowed right now" to determine if it was permitted to moor liveaboard vessels at the Marina. A copy of this letter is attached as **Exhibit AE**.

162. The City never responded in writing to the Plaintiff's January 28, 2009 letter but advised that liveaboards were not permitted by the City Commission at the time of the request.

163. On February 18, 2009 the Plaintiff sent another letter to Jan Hancock asking “[a]re boat owners, whether cruisers, sailboats, houseboats or barges, allowed to live aboard their vessels at the marina as of this date and comply with DEP permit condition #19?”. A copy of this letter is attached as **Exhibit AF**.

164. The City never responded in writing to the February 18, 2009 letter but advised the Plaintiff that individuals were not allowed to live aboard their vessels at the Marina at the time of the request.

165. On April 16, 2009 Ed Okie, the President of Carolina Houseboats sent an e-mail to Jan Hancock asking if his company would be permitted to moor their houseboats at the Marina. A copy of the e-mail is attached as **Exhibit AG**.

166. The City never responded in writing to the April 16, 2009 e-mail or otherwise advised Carolina Houseboats that it would be permitted to dock its vessels at the Marina.

167. The City’s determination that liveaboard vessels and houseboats were not permitted uses at the Marina after it was connected to the water and sewer system was unreasonable, arbitrary and capricious and, therefore, violated and deprived the Plaintiff of its substantive due process rights.

168. The City’s review, permitting and appellate procedures available to the Plaintiff with regard to its request to moor liveaboard vessels and houseboats at the Marina were constitutionally deficient and violated and deprived the Plaintiff of its substantive due process rights.

169. The City continued its unreasonable, capricious and unreasonable policy of preventing the Plaintiff from using the Marina as it intended when it enacted the 2009 Ordinance by imposing excessive and unreasonable requirements on the Plaintiff before it would allow it to moor liveaboard vessels and houseboats at the Marina, thereby violating and depriving the Plaintiff of its substantive due process rights.

170. The City's refusal to recognize that the Plaintiff acquired any vested rights in the Marina prior to enactment of the 2009 Ordinance was arbitrary, capricious and unreasonable and violated and deprived the Plaintiff of its substantive due process rights.

171. The City's continuous and ongoing policy and official actions regarding the Property and the Marina:

a. has violated Plaintiff, 110 Holly's constitutionally protected substantive due process rights by continuing interference with and refusal to allow Plaintiff, 110 Holly, to use the property as it was permitted;

b. has caused severe negative economic effect on Plaintiff, 110 Holly, as it could not operate or allow someone else to operate the Marina as it was permitted;

c. has interfered with Plaintiff, 110 Holly's reasonable investment-backed expectations; and

d. were unconstitutional, unlawful, arbitrary, capricious and unreasonable applications of the police power and such actions did not serve the public health, safety, morals and general welfare by refusing to allow Plaintiff, 110 Holly, uses on the Property clearly permitted in the City's Land Development Regulations.

1. 42 U.S.C. 1988(b) provides for reasonable attorney's fees to the prevailing party as part of the costs when enforcing the provisions of 42 U.S.C. 1983.

2. Plaintiff, 110 Holly, has hired the undersigned law firm to provide it legal services for a reasonable fee and are entitled to attorneys fees upon prevailing in this action.

WHEREFORE, Plaintiff 110 Holly request the court enter judgment in its favor and against Defendant based on a violation of the Fifth Amendment of the United States Constitution as incorporated by the Fourteenth Amendment to the United States Constitution, including damages sustained as a result of the City's violation of Plaintiff 110 Holly's substantive due process rights under the United States Constitution, attorneys' fees under 42 U.S.C. 1988, and court costs and expenses and for such other legal and equitable relief as the court may deem just and proper.

Certificate of Service

I certify that on November 13, 2012 a true and correct copy of the foregoing was served by E-mail on the following:

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Shepard, Smith and Cassady, P.A.
2300 Maitland Center Parkway #100
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lsmith@shepardfirm.com

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LIVINGSTON, WOLVERTON & SWORD, P.A.



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ATTORNEY FOR PLAINTIFFS

EXHIBIT A

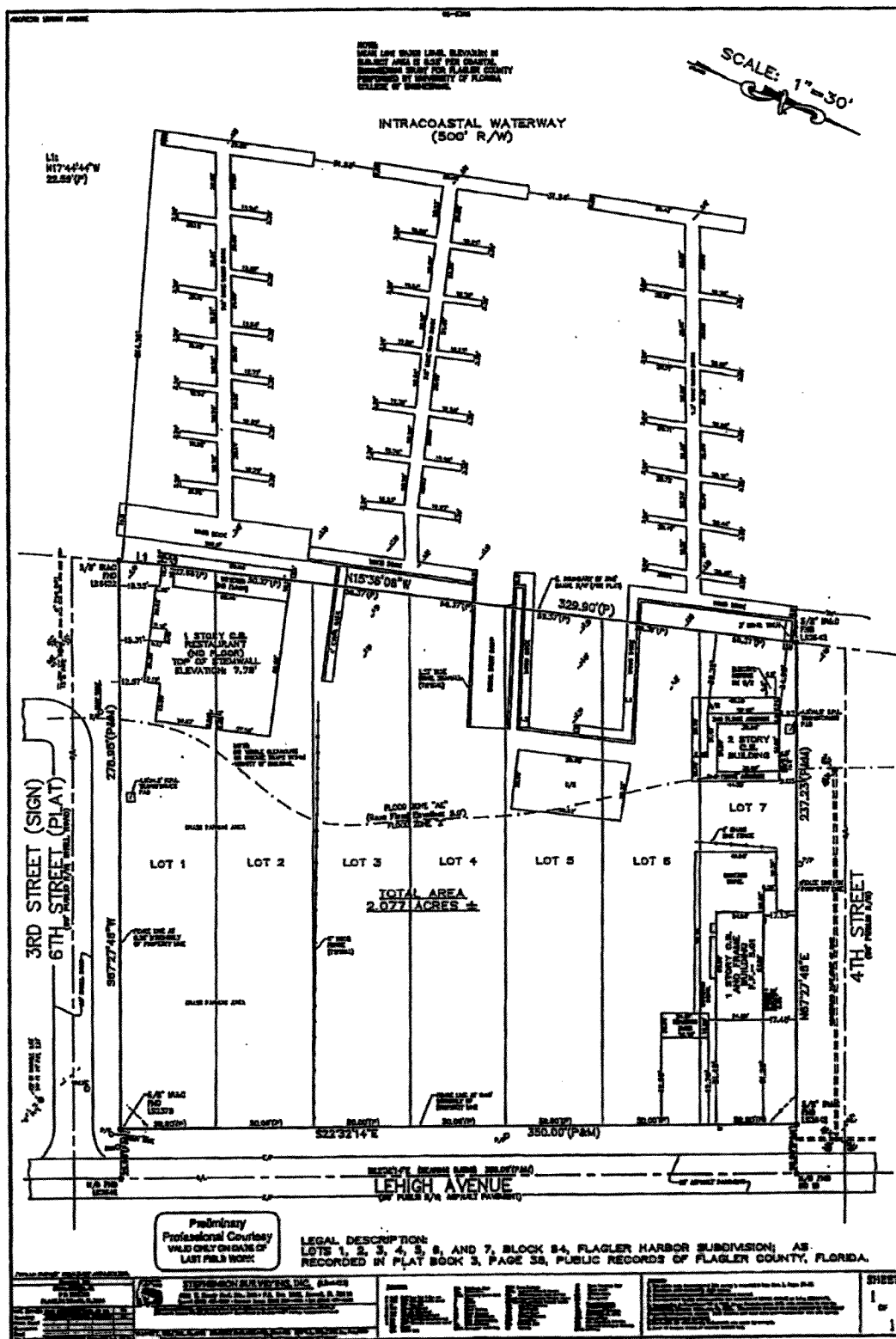


Exhibit A

EXHIBIT B

ORDINANCE 2001 - 18

AN ORDINANCE BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, FLORIDA, AMENDING CHAPTER 22, WATERCRAFT AND WATERWAYS; CREATING A NEW ARTICLE IV; OCUPATION OF BOATS; PROHIBITING LIVING ABOARD WATERCRAFT DOCKED ON DRY LAND OR WATERWAYS WITHIN THE CITY LIMITS OTHER THAN IN LICENSED MARINAS; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR CONFLICT; PROVIDING AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. Chapter 22, Watercraft and Waterways is hereby amended to create a new Article IV, Occupancy of Boats and Watercraft as follows:

Sec. 22-61. Intent

It is the intent of the City Commission to regulate vessels and to prohibit occupation of those vessels in waters abutting residentially zoned areas of the City in order to promote and protect the health, welfare, morals, safety and property value of City residents and the public in general. It is the intent of the City Commission to exercise regulation of liveaboards according to the authority granted to the City by virtue of Chapter 83-20, Laws of Florida, effective October 1, 1983. It is the intent of the City Commission to exercise its police powers and other municipal power to control density of residential areas and to protect the quality of waters abutting the limits of the City.

Sec. 22-62. Definitions.

a. *Boat or other watercraft.* A vessel constructed to provide buoyancy by excluding water or by floating above the water. The term boat or other watercraft shall include a boat, a canoe, a barge, or any other device designed for movement or to be moved across water.

b. *Commercial enterprise:* A commercial enterprise shall include charter fishing, commercial fishing, or any other enterprise conducted in or upon the water of the inter-coastal or the Atlantic Ocean, which are intended or conducted for the purpose of providing income or any other valuable benefit other than recreation to the operator or to the owner of the boat or other watercraft.

c. *Mooring facilities:* A mooring facility shall include a dock, wharf, raft, boathouse and any other device or structure, including seawalls, designed or intended to permit securing of a boat or boats.

d. *Recreational use:* shall include fishing for pleasure, water skiing, pleasure boating and any other activity conducted from or in a boat or other watercraft which is not intended to provide any income or any other benefit to the owner or operator of the boat or other watercraft which is being used for recreational activity.

e. *Residentially zoned area:* shall include any area within the City, zoned residential, for either single or multi-family dwellings.

Sec. 22-63. Restriction on occupancy of boat in residential area; exception.

It shall be unlawful for anyone to occupy any boat or other watercraft within any residentially zoned area of the City of Flagler Beach for any period of time more than twenty-four (24) hours after the boat is moored or anchored within the limits of the City except in the event of hazardous weather conditions which require the operator and passengers of any boat or watercraft in transit to occupy the boat or other watercraft for more than twenty-four (24) hours after the boat is moored or anchored within the limits of the City. Under the exception to this section, occupancy of a boat or other watercraft shall be permitted only as long as hazardous weather conditions continue. A person shall be deemed to be occupying a boat or other watercraft if they utilize the boat for purposes of personal hygiene, preparation of food, sleeping on board or any other activity which would otherwise be conducted by a person occupying a residence.

Any person found in violation of any provision of this section shall be punished by a fine, not to exceed five hundred dollars (\$500.00) or by incarceration for a period not to exceed sixty (60) days, or both. The City may further bring suit to restrain, enjoin or otherwise prevent the violation of this section, and shall be

entitled to reasonable attorney's fees and costs if it prevails in the suit.

SECTION 2. If any Section, Subsection, sentence, clause, phrase, or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 3. It is the intent of the City Commission of Flagler Beach, and is hereby provided that the provisions of this ordinance shall be made a part of the Flagler Beach Code; that the sections of this ordinance may be re-numbered or re-lettered; and that the word "ordinance" may be changed to "section", "article", "chapter", or other appropriate designation to accomplish such intention.

SECTION 4. All ordinances or parts thereof that are in conflict with this ordinance, be and the same are hereby repealed.

SECTION 5. This ordinance shall become effective immediately upon passage as provided by law.

PASSED ON FIRST READING THIS 14th DAY OF June, 2001.

ADOPTED ON SECOND READING THIS 12th DAY OF July, 2001.

ATTEST:

Angela M. Apperson
Angela M. Apperson, City Clerk

APPROVED THIS 12th DAY
OF July, 2001.

Bruce Jones
Bruce Jones, Mayor

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION

Richard T. Price, Chairman

Sharon K. O'Brien
Sharon K. O'Brien, Vice Chairman

Edmund A. Kuhnlein
Edmund A. Kuhnlein, Commissioner

Ronald Vath
Ronald Vath, Commissioner

ABSENT

Mike Evans, Commissioner

EXHIBIT C

ORDINANCE 2005-27

AN ORDINANCE BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, AMENDING THE ADOPTED LAND DEVELOPMENT REGULATIONS ARTICLE II; ZONING; SECTION 2.02.00 DEFINITIONS; ESTABLISHING A DEFINITION FOR MARINA AND SHIP'S STORE; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR CONFLICT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS The City of Flagler Beach Land Development Regulations do not provide a definition for the term, Marina, and

WHEREAS, The City Commission has requested that the Planning Department, in conjunction with the Planning and Architectural review Board, develop a definition for Marina, and

WHEREAS, City staff has recommended that the Land Development Regulations be amended to include the definition provided herein, and

WHEREAS, The City Commission of the City of Flagler Beach finds it to be in the best interests of the citizens of this community to amend Article II of the Land Development Regulations by adopting the definition for Marina,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, AS FOLLOWS:

SECTION 1. Amending Section 2.02.00, Definitions, of the Land Development Regulations, establishing a definition for Marina and Ships Store.

Marina – a waterfront facility providing one or more of the following:

1. Docking and/or wet or dry storage of boats for a fee;
2. Sales of marine supplies, parts and fuel;
3. Boat sales, rental and/or charter;
4. boat service and repair

Marina Accessory uses – means uses normally ancillary and subordinate to a marina, including but not limited to: live aboard facilities, if permitted, restaurants, gift shops, offices, self service laundries, water taxi dockage and other commercial activities such as "ship's store," which shall be designed and situated within the marina facility to serve the boating community.

Ship's Store – means a facility that may provide bait, tackle, nautical supplies, snacks, soft drinks, beer and a variety of sundry items.

SECTION 2. If any Section, Subsection, sentence, clause, phrase, or portion of this ordinance, or application thereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

Ordinance 2005-27 continued

SECTION 3. It is the intent of the City Commission of Flagler Beach, and is hereby provided that the provisions of this ordinance shall be made a part of the Flagler Beach Code; that the sections of this ordinance may be re-numbered or re-lettered; and that the word "ordinance" may be changed to "section", "article", "chapter" or other appropriate designation to accomplish such intention.

SECTION 4. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. This ordinance shall take effect immediately upon passage as provided by law.

PASSED ON FIRST READING THIS 27th DAY OF Oct., 2005.

PASSED AND ADOPTED THIS 1st DAY OF Dec., 2005.

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION


Edmund Kuhnlein, Mayor

ATTEST:

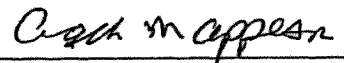

Angela M. Apperson, City Clerk

EXHIBIT D

ORDINANCE NO. 2009-17

AN ORDINANCE OF THE CITY OF FLAGLER BEACH, FLORIDA, AMENDING CHAPTER 22 OF THE CODE OF ORDINANCES PROVIDING FOR REGULATION OF VESSELS, FLOATING STRUCTURES, AND MARINAS ADJACENT TO AND WITHIN THE WATERS OF FLAGLER BEACH; AMENDING THE LAND DEVELOPMENT REGULATIONS TO PROVIDE DEFINITIONS; ELIMINATING MARINAS AS A SPECIAL EXCEPTION IN MOBILE HOME PARK DISTRICTS AND ALLOWING BED AND BREAKFAST INNS AS PRINCIPAL USES IN TOURIST COMMERCIAL DISTRICT; PROVIDING FOR ALLOWANCE OF LIVEABOARD VESSELS AT MARINAS AS A SPECIAL EXCEPTION; PROVIDING ADDITIONAL CRITERIA AND STANDARDS FOR CONSIDERATION OF A SPECIAL EXCEPTION APPLICATION PERTAINING TO ALLOWING LIVEABOARD VESSELS AT MARINAS; PROHIBITING FLOATING STRUCTURES, BARGES, AND CERTAIN HOUSEBOATS IN ANY DISTRICT WITHIN THE CITY; PROVIDING REGULATIONS OF LIVEABOARD VESSELS AND OTHER INHABITED VESSELS IN MARINAS; PROVIDING OFF-STREET PARKING REQUIREMENTS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND CONFLICTS, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2(b) of the *Constitution of the State of Florida*, provides that "[m]unicipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law"; and

WHEREAS, Section 166.021(3), *Florida Statutes*, provides, in pertinent part, that "[t]he Legislature recognizes that pursuant to the grant of power set forth in S. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state legislature may act" except for certain very limited matters; and

WHEREAS, in accordance with the provision of Article VIII of the *Constitution of the State of Florida*, relating to the constitutional powers of municipalities, and the provisions of the "Municipal Home Rule Powers Act", as codified in Chapter 166, *Florida Statutes*, the City of Flagler Beach has the lawful power and duty to regulate vessels and floating structures tied or docked within its municipal limits; and

WHEREAS, Section 327.60, *Florida Statutes*, authorizes a municipality to regulate vessels resident in such municipality and to prohibit floating structures and liveaboard vessels to be docked within its jurisdiction; and

WHEREAS, the City Commission finds and determines that, for health, safety, welfare, and sanitation, vessels which are inhabited must be secured or docked at marinas; and

WHEREAS, the City Commission finds and determines that marinas should be a permitted use in the Tourist Commercial District and that marinas should not be a special exception in any existing Mobile Home Park District; and

WHEREAS, barges are inherently industrial and are incompatible with marinas, with the Tourist Commercial District, and with the City in general, and the City has no industrial district; and

WHEREAS, houseboats and floating structures, which are not self-propelled and are difficult to navigate, are a threat to the public health, safety, and welfare of the citizens when they are tied or docked within the City limits because, during wind events, tropical storms, or hurricanes, houseboats and floating structures which are not self-propelled are left unattended and break free, causing damage to docks and nearby properties; and

WHEREAS, this Ordinance is consistent with all applicable provisions of State law and furthers a valid municipal purpose benefiting the citizens of the City of Flagler Beach and is in the public interest; and

WHEREAS, the City of Flagler Beach must submit to the Department of Community Affairs its Evaluation and Appraisal Report in 2010; and

WHEREAS, Section 163.3178, *Florida Statutes*, requires that comprehensive plans for coastal communities must identify in the coastal management element, public access to shoreline areas; must address the need for water-dependent and water-related facilities, including marinas, along shoreline areas; and must include strategies that will be used to preserve recreational and commercial working waterfronts, as defined in Section 342.07, *Florida Statutes*; and

WHEREAS, the Florida Committee on Community Affairs (Committee), in their Report on Working Waterfronts Number 2005-122 (Report), found that a diversified waterfront industry, both commercial and recreational, is an important component of the economy in the State of Florida; and

WHEREAS, the Committee found an increase in the purchasing of traditional working waterfront property and converting them to private and residential use; and

WHEREAS, the Committee found that this conversion of this traditional working waterfront property to private and residential use serves to both reduce the number of traditional working waterfront properties available for traditional public use as well as increase the value of nearby working waterfront properties; and

WHEREAS, the Committee found that the public has lost access to recreational working waterfronts because of the development for private marina and residential uses; and endorsed a

means of alleviating the economic pressure on the recreational and commercial waterfront properties by creating a "Deferred Property Tax Program," which program was adopted in House Bill 955 (2005); and

WHEREAS, the Florida Legislature finds in Section 342.07(1), *Florida Statutes*, that access to recreational and commercial waterfront properties is vital to maintaining or enhancing the \$14 billion economic impact of boating in the State; and

WHEREAS, in November, 2008, voters in the State of Florida approved an amendment to the *Florida Constitution* which provides tax relief for "working waterfront" businesses by assessing their property according to its current use, rather than by "highest and best", or potential use; and

WHEREAS, permanent residency on liveaboard vessels in marinas in the Tourist Commercial District does not directly advance working waterfronts and is potentially incompatible with that District if large numbers of such liveaboard vessels are allowed to dock at marinas, in that the primary uses in Tourist Commercial are "for commercial uses for lodging, dining establishment(s), and minor retail establishments which primarily serve tourist(s) and other visitors to the City"; and

WHEREAS, liveaboard vessels in marinas is similar to and consistent with medium density residential dwellings; and

WHEREAS, allowing liveaboard vessels in marinas in the Tourist Commercial District is consistent with the City's current land development regulation which allows medium density residential units in the Tourist Commercial District by special exception; and

WHEREAS, in accordance with the Comprehensive Plan, medium density residential shall be five to ten density units per acre, and

WHEREAS, a methodology for calculating density for liveaboard vessels must be comparable to a maximum of ten density units per acre to be logical, fair, equitable, and consistent with the Comprehensive Plan, but reducing the maximum density if liveaboard vessels comprise more than 50% of the total number of wet slips, taking into consideration the need to preserve working waterfronts; and

WHEREAS, the density for liveaboard vessels shall be calculated by multiplying the total number of linear feet of shoreline of the upland property of an applicant by the length of the longest dock on the property, divided by 43,560 (which is the number of square feet in an acre), or fifty percent of the total number of wet slips on the property, whichever is less; and

WHEREAS, the quotient is equivalent to an acre(s) and any portions of an acre(s), and the maximum density shall be no more than 10 density units per acre(s) and any portion thereof; and

WHEREAS, the City Commission finds that such methodology for calculating density of liveaboards in marinas in the Tourist Commercial District is fair, reasonable, equitable, and logical; and

WHEREAS, in recognition of the growing number of citizens who are choosing nontraditional residential methods, including residing on liveboard vessels, it is reasonable to allow liveboard vessels by special exception under certain conditions in marinas in the Tourist Commercial District under certain conditions and that such allowance will not be incompatible with the Tourist Commercial District or working waterfronts; and

WHEREAS, City Commission finds that the regulations set forth herein are consistent with Section 6.01 of the Charter of the City of Flagler Beach.

WHEREAS, the land development regulations set forth herein are consistent with the City's Comprehensive Plan.

NOTE: Underlined words constitute additions to the City of Flagler Beach Code of Ordinances and Land Development Regulations, ~~striketrough~~ constitutes deletions from the original Code of Ordinances and Land Development Regulations, and asterisks (***) indicate an omission from the existing text which is intended to remain unchanged.

NOW, THEREFORE, BE IT ENACTED by the City Commission of the City of Flagler Beach, Florida, as follows:

SECTION 1. Legislative Findings and Intent. The findings set forth in the recitals above are hereby adopted as legislative findings pertaining to this Ordinance.

SECTION 2. Existing Sections of Chapter 22 of the Code of Ordinances are amended, and new sections are created, to read:

ARTICLE III. ABANDONED AND NUISANCE VESSELS WATERCRAFT

Sec. 22-59. Abandonment of vessels or floating structures boats; ~~mooring~~ securing so as to menace navigation.

It shall be unlawful for any person to abandon any vessel or floating structure ~~boat or watercraft~~ or tied or docked to any land in the public waterways within the city or to ~~moor~~ tie or dock the same in such manner as to cause such ~~watercraft~~ vessel or floating structure to be or become a menace to navigation or the environment.

Sec. 22-60. Unsightly and badly deteriorated vessels ~~boats~~ declared nuisances.

No vessel or watercraft of any kind whatsoever shall be permitted to ~~moor or~~ tie up at any place in the public waterways which is of an unsightly appearance, or in badly deteriorated condition, or which is likely to damage the docks, or which might become a menace to navigation. ~~Vessels or watercraft~~ in such condition are hereby declared to be a public nuisance.

ARTICLE IV. ~~OCCUPANCY OF~~ MARINAS AND VESSELS BOATS, AND WATERCRAFT

Sec. 22-61. Intent.

(a) It is the intent of the City Commission to regulate and restrict placement, and maintenance of vessels and floating structures within Flagler Beach for the health, safety, and welfare of the City.

(b) It is further the intent of the city commission to regulate vessels and to prohibit occupation of those vessels in waters abutting residentially zoned areas of the city in order to promote and protect the health, welfare, morals, safety and property value of city residents and the public in general. It is the intent of the City Commission to exercise regulation of liveaboard vessels according to the authority granted to the city by virtue of Chapter 83-20, and Chapter 2009-86, Laws of Florida, effective October 1, 1983. It is the intent of the city commission to exercise its police powers and other municipal power to control density of residential areas and to protect the quality of waters abutting the limits of the city.

Sec. 22-62. Definitions.

[As used in this article, the following words and terms shall have the meaning ascribed thereto:]

Barge is a large flat-bottomed vessel designed to carry cargo either pushed or pulled by a tugboat with or without self-propulsion.

Boat or other watercraft. ~~A~~ is a vessel constructed to provide buoyancy by excluding water or by floating above the water. The term boat or other watercraft shall include a boat, a canoe, a barge, or any other device designed for movement or to be moved across water.

Boat slip is an accessory structure designed solely for the parking or storage of vessels and liveaboard vessels.

Commercial enterprise. ~~A commercial enterprise shall include charter fishing, commercial fishing, or any other enterprise conducted in or upon the water of the inter-coastal or the Atlantic Ocean, which is intended or conducted for the purpose of providing income or any other valuable benefit other than recreation to the operator or to the owner of the boat or other watercraft.~~

Floating structure is a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term "floating structure" includes, but is not limited to, each entity used as a residence, place of business or office with public access, hotel or motel, restaurant or lounge, clubhouse, meeting facility, storage or parking facility, mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term "vessel." Incidental movement upon water or resting partially or entirely on the bottom shall not, in and of itself, preclude an entity from classification as a floating structure.

Habitation aboard a vessel means overnight occupation of it by one (1) or more persons, while the vessel is docked or tied to any land within the city. The term is synonymous with inhabited vessel.

Liveaboard vessel is:

- a) any vessel used solely as a residence and not primarily for navigation for a minimum of 21 days during any 30-day period; or
- b) any vessel represented as a place of business or a professional or other commercial enterprise; or
- c) any vessel for which a declaration of domicile has been filed pursuant to s. 227.17, Fla. Stat.

Mooring facilities. ~~A mooring facility shall include a dock, wharf, raft, boathouse and any other device or structure, including seawalls, designed or intended to permit securing of a boat or boats.~~

Owner shall include a duly authorized agent, a purchaser, devisee, fiduciary, property holder or any other person, firm or corporation having a vested or contingent interest, or in case of leased premises, the legal holder of the lease contract, or the holder's legal representative, assign or successor.

Recreational use. ~~The term "recreational use"~~ shall include fishing for pleasure, water skiing, pleasure boating and any other activity conducted from or in a boat or other watercraft which is not intended to provide any income or any other benefit to the owner or operator of the boat or other watercraft which is being used for recreational activity.

Residentially zoned area. ~~The term "residentially zoned area"~~ shall include any area within the city, zoned residential, for either single-family or multifamily dwellings.

Vessel is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water. Floating structures as defined herein are expressly excluded from the definition of a vessel.

Sec. 22-63. Restrictions on inhabiting a vessel ~~occupancy of boat~~ in residential areas; exception.

(a) It shall be unlawful for anyone to inhabit a vessel ~~occupy any boat or other watercraft~~ within any residentially zoned area of the city for any period of time more than twenty-four (24) hours after the boat is ~~moored or anchored~~ tied to or docked on residential property within the limits of the city except in an emergency or the event of hazardous weather conditions which require the operator and passengers of any vessel boat or watercraft in transit to occupy the vessel boat or other watercraft for more than twenty-four (24) hours after the boat is tied to or docked on such property ~~moored and anchored~~ within the limits of the city. Under the exception

to this section, occupancy of a vessel ~~boat or other watercraft~~ shall be permitted only as long as hazardous weather conditions continue. A person shall be deemed to be occupying a vessel ~~boat or other watercraft~~ if they utilize the same ~~boat~~ for purposes of personal hygiene, preparation of food, sleeping on board or any other activity which would otherwise be conducted by a person occupying a residence.

(b) In the event of an emergency situation, the owner or occupant inhabiting a vessel shall immediately contact the appropriate authorities and inform them of the nature of the emergency and the amount of time required to remedy the emergency situation.

(c) Tying or docking a vessel inhabited by the owner or occupant for more than twenty-four (24) hours is permitted only at a marina and appropriate for vessels with berthing and toilet facilities.

Section 22-64. Restriction on vessels.

(a) Except as otherwise provided by any preemptive state or federal law, it shall be unlawful for any person to construct, place, maintain, permit, let, allow, suffer or cause the construction, placement, maintenance or existence of any vessel, except as allowed under Appendix A, the Land Development Regulations.

(b) All vessels tied to land, docks, piers or wharves, abutting the public waterways in the city shall observe all the health and sanitary regulations of the city, and all ordinances of the city relating to the conduct of persons and prohibiting acts contrary to public health, morals, safety or public peace, including ordinances prohibiting disorderly conduct and loud and boisterous noises which disturb the peace of the neighborhood.

(c) It is unlawful for any person to discharge or permit or allow any other person to discharge any raw or improperly treated sewage, garbage, trash, litter or other waste or waste material into the waters of the city.

22-65. Marina facilities.

(a) Prior to allowing any vessel to be docked or tied, the owner of a marina shall provide to the City Manager or his designee a copy of any master signage plan required by the State. Said master signage plan shall be maintained by the City for use by emergency response personnel. All slips shall have a unique identifying number consistent with the master signage plan. Identifying numbers shall be located in a visible place and shall be a minimum of three (3) inches high and one (1) inch wide.

(b) Prior to allowing any vessel to be docked or tied, the owner of any marina shall provide to the City Manager or designee a copy of any hurricane preparedness and evacuation plan required by the State.

(c) No person shall perform any repair or maintenance of any vessel that would or could result in the spill or discharge of any amount of oil, gasoline or other pollutants into the water or

allow any such repair or maintenance to be performed unless such repair or maintenance is performed in upland areas at least fifty feet from the nearest highwater mark of the adjacent body of water. Any such repair or maintenance shall be performed in a manner to avoid any contamination of the adjacent body of water.

(d) For protection of the health and safety of persons, and to avoid navigation obstructions, no vessel or liveaboard vessel docked or tied in a boat slip shall extend beyond the length of the boat slip.

(e) No person shall perform any fueling of a vessel in a manner that would or could result in the spill or discharge of gasoline into the water.

(f) All structural components of a marina facility to which vessels are secured shall be conform to all applicable building and safety codes.

(g) Any marina existing on the date this section is enacted shall come into compliance within twelve (12) months from the date of enactment of this Ordinance.

Sec. 22-66. Interference with navigation: safety hazard.

(a) No person shall dock or tie, or permit to be docked or tied, except in case of emergency, a vessel to land, or carry on any prohibited activity in a manner which shall unreasonably or unnecessarily constitute a navigational hazard or interfere with another vessel or vessels.

(b) If the City determines that a vessel is an imminent risk to the health, safety and welfare of the residents of the City, or is likely to immediately damage private or public property, or is an immediate hazard to navigation, the City may take all steps necessary to immediately remove, or cause to be removed, the vessel without written communication. The owner of the vessel, and, if applicable, the owner of the marina at which the vessel is docked or tied shall be jointly and severally liable to the City for any costs incurred by the City during such removal.

(c) In the event of an emergency situation, the owner or occupant of the vessel shall immediately contact the appropriate authorities and inform them of the nature of the emergency and the amount of time required to remedy the emergency situation. Upon abatement of the emergency, the vessel may be docked or tied under appropriate permit in a marina.

(d) No vessel shall be docked or tied to land in such a manner that the vessel extends across the property line of contiguous property.

(e) All docked vessels shall be securely tied or fastened in such a manner as to minimize lateral movement and ensure the vessel does not collide or interfere with adjacent vessels, structures or improvements. Mooring lines shall be secured in such a manner to prevent vessels from moving more than twelve (12) inches in any lateral direction.

(f) All regulatory markers, signs, notices or warning signs in, on or over the waters of the City placed without a permit from the City or State shall be prohibited.

Section 23-67 Exceptions.

This chapter shall be operative to the extent that it is not in conflict with F.S. ch. 327, or any other federal or State regulation.

SECTION 3. Section 2.02, "Definitions," of the Land Development Regulations shall be amended to read:

Barge is a large flat-bottomed vessel designed to carry cargo either pushed or pulled by a tugboat with or without self-propulsion.

Bed and breakfast inn means a lodging facility which provides overnight accommodations and morning meals to overnight guests for compensation.

Boat or other watercraft is a vessel constructed to provide buoyancy by excluding water or by floating above the water. The term boat or other watercraft shall include a boat, a canoe, or any other device designed for movement or to be moved across water.

Boat slip is an accessory structure designed solely for the parking or storage of watercraft vessels and liveaboard vessels. Such slip can be no smaller than eight (8) feet by twenty (20) feet. When using boat slips for parking exemptions, such boat slips must be transient in nature and cannot have electrical or water hookups.

Charter boat means a vessel used for fishing, scuba diving, or sightseeing, holding itself out to the public for rent or charter for a specified fee, with an authorized operator on board at all times, and ready to leave the dock with the charter party. A liveaboard vessel is not a charter boat. A charter boat must equip itself to be suitable for the purpose for which it is chartered, and must be primarily used for charter or rent. A boat shall not be classified as a charter boat, unless it is engaged in good faith in the business of charter or rental.

Dwelling --A building or portion thereof designed or used exclusively for residential occupancy but not including campers, hotels, motels, motor lodges, boarding and lodging houses, tents, tourist courts, tourist homes dormitory, fraternity or sorority houses, hospitals or nursing homes. For purposes of calculating density, liveaboard vessels shall be considered dwellings.

Floating structure means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term "floating structure" includes, but is not limited to, each entity used as a residence, place of business or office with public access, hotel or motel, restaurant or lounge, clubhouse, meeting facility, storage or parking facility, mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term

"vessel." Incidental movement upon water or resting partially or entirely on the bottom shall not, in and of itself, preclude an entity from classification as a floating structure.

Habitation aboard a vessel means overnight occupation of it by one (1) or more persons, while the vessel is docked or tied to any property lying within the city. The term is synonymous with inhabited vessel.

Incineration device is a facility approved by the United States Coast Guard located on a vessel which is capable of reducing waste from any vessel to clean ash. No smoke or residue or harmful discharges shall be emitted from this device.

Liveaboard vessel is:

- a) any vessel used solely as a residence and not primarily for navigation for a minimum of 21 days during any 30-day period; or
- b) any vessel represented as a place of business or a professional or other commercial enterprise; or
- c) any vessel for which a declaration of domicile has been filed pursuant to s. 227.17, Fla. Stat.

Marina means a waterfront facility providing one or more of the following: docking of boats, wet and/or dry storage of boats; sales of marine supplies and parts; and boat sales, rental, or charter; boat fueling, service and repair. The following water-enhanced uses are permitted to be conducted at a Marina: restaurants, gift shops, ice cream shops, self-service laundries, water-taxi dockage, offices, bookstores, and other uses which are permitted in the tourist commercial district. A Marina may contain one residential dwelling for a marina caretaker or owner.

- 1. Docking and/or wet or dry storage of boats for a fee;
- 2. Sales of marine supplies, and parts; and fuel;
- 3. Boat sales, rental and/or charter;
- 4. Boat service and repair;

Marina Accessory Uses mean those uses normally ancillary and subordinate to a marina, including but not limited to: liveaboard facilities, if permitted, restaurants, gift shops, offices, self service laundries, water taxi dockage and other commercial activities such as "ship's store," which shall be designed and situated within the marina facility to serve the boating community.

On-shore restroom facility is an operating toilet located within an enclosed structure available for use at all times by persons who are using the adjacent property to dock or tie their vessel.

Owner shall include a duly authorized agent, a purchaser, devisee, fiduciary, property holder or any other person, firm or corporation having a vested or contingent interest, or in case of leased premises, the legal holder of the lease contract, or the holder's legal representative, assign or successor.

Vessel is synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water.

used or capable of being used as a means of transportation on water. Floating structures as defined herein are expressly excluded from the definition of a vessel.

SECTION 4. Appendix A, Article II, Schedule One of the Land Development Regulations, Section 2.04.02, "Application of Regulations," shall be amended to read:

TABLE INSET:

SCHEDULE ONE ZONING SCHEDULE OF USE CONTROLS CITY OF FLAGLER BEACH			
CATEGORY OF USE	USES PERMITTED		
	UNRESTRICTED USES		SPECIAL EXCEPTION USES
	PRINCIPAL	ACCESSORY	
MHP – MOBILE HOME PARK The provisions of this district are intended to apply to areas which consist exclusively of mobile/manufactured homes occupied as single-family dwelling units in an environment of residential character. Site plan approval is required for the development of new mobile home parks and for the expansion or modification of existing facilities. Mobile home parks may be developed under the planned unit development zoning district.	<ol style="list-style-type: none"> 1. Mobile/manufactured homes. 2. Mobile homes occupied as residences used for group housing or day-care centers. 3. Park recreational facilities, including community center, courts for games, and play areas. 4. Park offices and maintenance facilities. 5. Enclosed storage structures including garage facilities with use limited to park management and park residents 	<p>Accessory uses and structures are permitted if they are customarily accessory uses to permitted uses and structures; are located on the same lot or parcel as the mobile home park; are not likely to attract visitors in large numbers (greater than 10 percent of the park population); and involve operations or structures consistent with the character of a mobile home park, including:</p> <ol style="list-style-type: none"> 1. Laundry facilities and sales of sundries subject to the following: <ol style="list-style-type: none"> a. Such establishments shall be for the exclusive use of park residents. b. The commercial nature of such establishments shall not be visible from any 	<ol style="list-style-type: none"> 1. Marina. 2. <u>1.</u> Open storage areas the use of which is limited to park management and park residents. 3-2. Essential services and emergency services. 4. <u>3.</u> Churches, synagogues or other houses of worship.

		street outside of the park. 2. Additions to the basic mobile/manufactured home including cabanas, carports and storage units. 3. Monopole communication towers and communication antennas which do not exceed the established height limitations.	
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TABLE INSET:

SCHEDULE ONE ZONING SCHEDULE OF USE CONTROLS CITY OF FLAGLER BEACH			
CATEGORY OF USE	USES PERMITTED		
	UNRESTRICTED USES		SPECIAL EXCEPTION USES
	PRINCIPAL	ACCESSORY	
TC – TOURIST COMMERCIAL The provisions of this district are to provide for uses to serve tourist needs in the community. The primary uses are intended for commercial uses for lodging, dining establishment(s), and minor retail establishments which primarily serve tourist(s) and other visitors to the city. NOTE: Section 2.06.05 provides for special requirements of Tourist Commercial in several areas of the city.	1. Motels and hotels. 2. Boarding houses. <u>Bed and breakfast inns</u> 3. Restaurants. 4. Gift shops. 5. Convenience commercial uses such as: a. Beauty or barber shops. b. Laundromat, laundry and dry cleaning pick-up stations. c. Newsstands or bookstores.	1. Automobile parking structures. 2. Cocktail lounges and bars which are accessory to and within a motel, hotel or restaurant. 3. Monopole communication towers and communication antennas which do not exceed the established height limitations.	1. Temporary structures including carnivals, circuses and other temporary commercial amusement activities and religious gatherings for special events of a temporary nature with the city commission establishing the period for which such events shall begin and end. 2. All principal uses permitted in MDR District. 3. Professional Offices. 4. Combined use buildings outside of

	6. Off-street parking and loading. 7. Commercial recreational entertainment facilities. 8. Boat and marine supply sales. 9. Marinas. 10. Private Clubs		the defined boundary excluding properties adjacent to A-1-A. 5. Convenience commercial uses such as: food, grocery, drug, or convenience stores. <u>6. Marinas allowing liveaboard vessels for residential use.</u> NOTE: All special exception uses are subject to Section 2.03.00, Section 2.06.01 and additional specific requirements as noted. (Ord. No. 2005-02, § 2, 3-24-05; Ord. No. 2005-24, § 2, 9-22-05; Ord. No. 2007-30, § 2, 9-27-07)
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Note 1. Marinas allowing liveaboard vessels for non-residential use are not allowed in any zoning district.

Note 2. Once granted a special exception for residential liveaboard vessels, a marina shall not expand the number of liveaboard vessels granted unless application for a special exception for the expansion is granted by the City.

SECTION 5. Appendix A, Article II, Sections 2.06.08.6 and 2.06.08.7 of Section 2.06.08, "Miscellaneous Uses," are hereby added to the Land Development Regulations as follows:

Section 2.06.08.6 Liveaboard Vessels in Marinas.

(a) Liveaboard vessels are permitted only in marinas which have received a special exception for liveaboard vessel use pursuant to Section 2.06.01 and this Section.

(b) In addition to the criteria for grant of a special exception provided in Section 2.06.01, an applicant has the burden of satisfying all of the following minimum criteria by competent substantial evidence:

- 1) The owner of the marina has the ability to, and shall, come into compliance with all of the requirements set forth in subsection (e) herein.
- 2) The number of liveaboard vessels requested is no more than the equivalent of ten density units per acre, calculated by the following formula: provided, however, that

no more than fifty percent (50%) of the wet boat slips shall be designated for liveaboard vessels.

Formula for calculating maximum density for liveaboard vessels:

Number of linear feet of shoreline of the upland property multiplied by the length of the longest dock on upland property, divided by 43,560 (number of square feet in an acre). The quotient is equivalent to acreage. No more than ten liveaboard vessels per equivalent acre shall be granted.

Example: 1,000 linear feet of shoreline X 150-foot dock = 150,000

150,000 divided by 43,560 = 3.4 equivalent acres.

Maximum number of liveaboard vessels allowed: 34*

*Provided, however, that, if 34 is more than 50% of the wet slips, the maximum liveaboard vessels shall be 50% of the total number of wet slips.

- 3) Local infrastructure has adequate capacity to support the proposed number of liveaboard vessels.
- 4) Parking for the proposed number of liveaboard vessels shall be calculated in the same way as parking for medium density residential, and the adjacent upland property owned by the applicant must have adequate parking capacity for such liveaboard vessels, in addition to having parking capacity for other uses of the marina.
- 5) Applicant must have a permit from the State for the number of liveaboard vessels for which a special exception is sought.

(c) Once the applicant has met this burden, the burden shifts to any opposing party to demonstrate by competent, substantial evidence that the special exception does not meet the minimum criteria or is adverse to the public interest. After consideration of a special exception application for liveaboard vessels at a marina, the city commission may approve, approve with modifications, approve with conditions, or deny the application based on the consideration contained in Section 2.06.01 and herein.

(d) A special exception granted pursuant this section may be subject to review at any time and may be revoked after notice to the owner and any lessee at a public hearing by the City Commission. The City Commission may revoke the special exception permit upon a finding that there have been material violations of any of the criteria set forth in this section or material violations of any conditions of approval, or that the conduct of the owner and any lessee constitutes a public nuisance. The City may institute legal or equitable proceedings to revoke the special exception permit. No applicant who has had a special exception permit revoked shall be allowed to apply for another special exception permit for two (2) years after the revocation date.

Section 2.06.08.7 Minimum requirements for marinas permitting vessels used for habitation.

The owner of any marina shall not permit any vessel which is used for habitation to be tied or docked at such marina unless all of the following conditions are met:

1. The requirements of all applicable laws, codes, and regulations, such as those governing parking, public health, public safety, sanitation, including marine sanitation, and the environment are met.

2. Marinas at which vessels used for habitation are docked shall provide an American National Standards Institute approved flammables cabinet of sufficient size for the storage of flammable materials.

3. Any marina which allows vessels used for habitation to dock at the facility and which exist on the date this section is enacted shall come into compliance with this subsection (e) within twelve (12) months from the date of enactment of this Ordinance.

4. On shore restroom facilities are available at the marina, which facilities shall comply with all applicable zoning and code regulations. If compliance with this regulation would require the relocation of an existing exterior wall of a principal building, it shall be waived by the city only if the property owner can demonstrate that the proposed restroom facility is no larger than necessary to meet Florida Building Code requirements and the requirements of this section and complies with the zoning regulations to the greatest extent possible as determined by the city.

Section 2.06.08.7. Floating Structures

Except as otherwise provided by federal or State law, houseboats which are not self-propelled (cannot be moved under their own power), floating structures, and barges may not be tied or docked in any zoning district in the City.

SECTION 7. Appendix A, Article II, Section 2.06.02.01, Off-street Parking is hereby amended as follows:

SCHEDULE OF OFF-STREET PARKING REQUIREMENTS*

TABLE INSET:

1.	Single and two-family dwellings and townhouses	Two per dwelling unit
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2.	Multi-family dwellings	Two per dwelling unit
3.	Churches or other places of worship	One per six permanent seats in the main auditorium
4.	Private clubs	One per three hundred sq. ft. of total floor area or portion thereof
5.	General business, commercial and personal service	One per three hundred fifty sq. ft. of establishments or office buildings total [floor] area or portion thereof
6.	Hotels, motels and motor inns	One per bedroom or sleeping unit plus one per each five units or portion thereof
7.	Libraries and museums	One per five hundred sq. ft.
8.	Medical or dental offices or clinics	Eight for each doctor or dentist
9.	Restaurants, nightclubs or other eating places	One per one hundred fifty sq. ft. total floor area or one per three fixed seats or as established by the standards of the Florida Building Code whichever is greater. Where the restaurant abuts the Intracoastal Waterway, boat slips may be counted for seating. One boat slip per three seats. <u>When counting boat slips for seating as provided herein, such boat slips must be transient in nature and cannot have electrical or water hookups.</u> Boat slips can only represent an additional 25% of land parking.
10.	Theatres, auditoriums	One per each four seats
11.	Schools (public or	

	private)	
	Grades 1—6	One per fourteen students
	Grades 7—9	One per nine students
	Grades 10--12	One per three students
12.	Industrial	One per six hundred sq. ft. of total floor space or portion thereof
13.	Hospitals	1.5 per bed
14.	Tennis, hand-ball, and racquetball facilities	Two spaces/court plus required parking for additional uses on the site
15.	Health Club	One space/one hundred fifty square feet of gross floor area
16.	Driving Range (Golf)	One space/tee plus required parking for any other uses on the site
17.	Golf Course (regulation)	Six spaces/hole plus required parking for any other uses on the site

18. Boat slips One space per boat slip, except charter boats.

19. Charter boats* One space per six permanent seats on the boat, plus one
space for the captain/skipper

*Note 1. Charter boats are permitted in marinas. Prior to the date when a charter boat begins operation, the owner shall submit a parking plan to the City.

SECTION 8. Codification. It is the intent of the City Commission of the City of Flagler Beach that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal authority in codifying the provision of this Ordinance.

SECTION 9. Severability. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

SECTION 10. Conflicts. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance of this City, the provisions of this Ordinance shall prevail.

SECTION 11. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

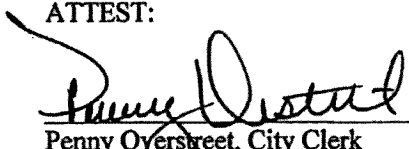
PASSED ON FIRST READING THIS 24TH DAY OF SEPTEMBER, 2009.
PASSED AND ADOPTED THIS 8TH DAY OF OCTOBER, 2009.

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION



Alice M. Baker, Mayor

ATTEST:



Penny Overstreet, City Clerk

The News-Journal

Published Daily and Sunday
Daytona Beach, Volusia County, Florida

State of Florida,
County of Volusia:

Before the undersigned authority personally appeared

Stacy W. Montoya

who, on oath says that she is
Classified Advertising Manager
of The News-Journal, a daily and Sunday newspaper,
published at Daytona Beach in Volusia County, Florida,
the attached copy of advertisement, being a

NOTICE OF CHANGE TO PERMITTED USES

In the matter of L830576
in the Court
was published in said newspaper in the issues
OCTOBER 3, 2009

Affiant further says that The News-Journal is a newspaper published at Daytona Beach, in said Volusia County, Florida, and that the said newspaper has heretofore been continuously published in said Volusia County, Florida, each day and Sunday and has been entered as second-class mail matter at the post office in Daytona Beach, in said Volusia County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me

this 28TH day of DECEMBER
A.D. 2009

Rachael R. Golub



RACHAEL GOLUB
Notary Public, State of Florida
My Comm. Expires Oct. 7, 2012
Commission No. DD 829134

Notice of Change to Permitted Uses

AN ORDINANCE OF THE CITY OF DAYTONA BEACH, FLORIDA, AMENDING CHAPTER 209 OF THE CITY CODE, ENTITLED "ZONING AND LAND DEVELOPMENT REGULATIONS", TO PROVIDE DEFINITIONS, ELIMINATING MARINAS AS A SPECIAL EXCEPTION IN MOBILE HOME PARK DISTRICTS AND ALLOWING BED AND BREAKFAST INNS AS PRINCIPAL USES IN TOURIST COMMERCIAL DISTRICT; PROVIDING FOR ALLOWANCE OF LIVEABOARD VESSELS AT MARINAS AS A SPECIAL EXCEPTION; PROVIDING ADDITIONAL CRITERIA AND STANDARDS FOR CONSIDERATION OF A SPECIAL EXCEPTION APPLICATION PERTAINING TO ALLOWING LIVEABOARD VESSELS AT MARINAS; PROHIBITING FLOATING STRUCTURES, BARGES, AND CERTAIN HOUSEBOATS IN ANY DISTRICT WITHIN THE CITY; PROVIDING REGULATIONS OF LIVEABOARD VESSELS AND OTHER INHABITED VESSELS IN MARINAS; PROVIDING OFF-STREET PARKING REQUIREMENTS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND CONFLICTS, AND ESTABLISHING AN EFFECTIVE DATE

A PUBLIC HEARING AND FINAL READING WILL BE HELD ON OCTOBER 8, 2009 AT 6:30 P.M., OR AS SOON THEREAFTER AS POSSIBLE, IN THE CITY COMMISSION CHAMBERS, 105 S. 2nd ST., FLAGLER BEACH, FL. THIS PUBLIC HEARING MAY BE CONTINUED TO A FUTURE DATE OR DATES. THE TIMES AND DATES OF ANY CONTINUANCES OF A PUBLIC HEARING SHALL BE ANNOUNCED DURING THE PUBLIC HEARING WITHOUT ANY FURTHER PUBLISHED NOTICE. THE ORDINANCE MAY BE VIEWED AT THE ABOVE LOCATION. INTERESTED PARTIES MAY APPEAR AT THE MEETING AND BE HEARD WITH RESPECT TO THE PROPOSED ORDINANCE.

RECORD REQUIRED TO APPEAL: In accordance with Florida Statute 286.0105 if you should decide to appeal any decision the Commission makes about any matter at this meeting, you will need a record of the proceedings. You are responsible for providing this record. You may hire a court reporter to make a verbatim transcript, or you may buy a CD of the meeting for \$100 at the City Clerk's office. Copies of CDs are only made upon request. The City is not responsible for any mechanical failure of the recording equipment.

In accordance with the Americans with Disabilities Act, persons with disabilities who are unable to attend the meeting in person may request to participate in the meeting by telephone. To request this accommodation, please contact the City Clerk's office at least 72 hours before the meeting.

EXHIBIT E

ORDINANCE 2010-13

AN ORDINANCE OF THE CITY OF FLAGLER BEACH, FLORIDA, AMENDING CHAPTER 22 OF THE CODE OF ORDINANCES; PROVIDING FOR LIMITATIONS TO REGULATION OF VESSELS UPON THE FLORIDA INTRACOASTAL WATERWAY; AMENDING THE DEFINITION OF "LIVEABOARD VESSEL" TO MATCH THE DEFINITION FOR SAME PROVIDED IN FLORIDA STATUTES; PROVIDING FOR CODIFICATION, SEVERABILITY, AND CONFLICTS, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on October 8, 2009, the City Adopted Ordinance 2009-17 which provided for regulation of vessels, floating structures and marinas adjacent to and within the waters of Flagler Beach; and

WHEREAS, said Ordinance specifically provided that its provisions were limited to the extent they were not preempted by State Law; and

WHEREAS, litigation has ensued which litigation, in part, challenges portions of Ordinance 2009-17 as being preempted by State Law; and

WHEREAS, in an effort to narrow the issues to be tried in litigation; the City Commission has determined that is in the best interest of the City of Flagler Beach to Amend certain portions of its Code dealing with vessels; and

NOTE: Underlined words constitute additions to the City of Flagler Beach Code of Ordinances and Land Development Regulations, ~~striketrough~~ constitutes deletions from the original Code of Ordinances and Land Development Regulations, and asterisks (***) indicate an omission from the existing text which is intended to remain unchanged.

NOW, THEREFORE, BE IT ENACTED by the City Commission of the City of Flagler Beach, Florida, as follows:

SECTION 1. Legislative Findings and Intent. The findings set forth in the recitals above are hereby adopted as legislative findings pertaining to this Ordinance.

SECTION 2. Chapter 22 of the Code of Ordinances is amended as follows:

ARTICLE III. ABANDONED AND NUISANCE VESSELS

Sec. 22-59. Abandonment of vessels or floating structures; securing so as to menace navigation.

It shall be unlawful for any person to abandon any vessel or floating structure tied or docked to any land within the city or to tie or dock the same in such manner as to cause such watercraft

vessel or floating structure to be or become a menace to navigation or the environment. So long as Chapter 327, Florida Statutes, provides that a county or municipality shall not enact, continue in effect, or enforce any ordinance or local regulation regulating any vessel upon the Florida Intracoastal Waterway, this Section shall not be enforced as to any vessel, other than liveaboard vessels as defined herein, located solely upon the Florida Intracoastal Waterway.

Sec. 22-60. Unsightly and badly deteriorated vessels declared nuisances.

No vessel or watercraft of any kind whatsoever shall be permitted to tie up at any place in the public waterways which is of an unsightly appearance, or in badly deteriorated condition, or which is likely to damage the docks, or which might become a menace to navigation. Vessels in such condition are hereby declared to be a public nuisance. So long as Chapter 327, Florida Statutes, provides that a county or municipality shall not enact, continue in effect, or enforce any ordinance or local regulation regulating any vessel upon the Florida Intracoastal Waterway, this Section shall not be enforced as to any vessel, other than liveaboard vessels as defined herein, located solely upon the Florida Intracoastal Waterway.

Sec. 22-62. Definitions.

[As used in this article, the following words and terms shall have the meaning ascribed thereto:]

* * *

Liveaboard vessel is:

- a) any vessel used solely as a residence and not ~~primarily~~ for navigation ~~for a minimum of 21 days during any 30 day period~~; or
- b) any vessel represented as a place of business or a professional or other commercial enterprise; or
- c) any vessel for which a declaration of domicile has been filed pursuant to s. 227.17, Fla. Stat.

22-65. Marina facilities.

(a) Prior to allowing any vessel to be docked or tied, the owner of a marina shall provide to the City Manager or his designee a copy of any master signage plan required by the State. Said master signage plan shall be maintained by the City for use by emergency response personnel. All slips shall have a unique identifying number ~~consistent with the master signage plan~~. Identifying numbers shall be located in a visible place and shall be a minimum of three (3) inches high and one (1) inch wide.

~~(d) For protection of the health and safety of persons, and to avoid navigation obstructions, no vessel or liveaboard vessel docked or tied in a boat slip shall extend beyond the length of the boat slip.~~

Sec. 22-66. Interference with navigation; safety hazard.

(a) No person shall dock or tie, or permit to be docked or tied, except in case of emergency, a vessel to land, or carry on any prohibited activity in a manner which shall unreasonably or unnecessarily constitute a navigational hazard or interfere with another vessel or vessels. So long as Chapter 327, Florida Statutes, provides that a county or municipality shall not enact, continue in effect, or enforce any ordinance or local regulation regulating any vessel upon the Florida Intracoastal Waterway, this paragraph shall not be enforced as to any vessel, other than liveaboard vessels as defined herein, located solely upon the Florida Intracoastal Waterway.

(b) If the City determines that a vessel is an imminent risk to the health, safety and welfare of the residents of the City, or is likely to immediately damage private or public property, or is an immediate hazard to navigation, the City may take all steps necessary to immediately remove, or cause to be removed, the vessel without written communication. The owner of the vessel, and, if applicable, the owner of the marina at which the vessel is docked or tied shall be jointly and severally liable to the City for any costs incurred by the City during such removal.

(c) In the event of an emergency situation, the owner or occupant of the vessel shall immediately contact the appropriate authorities and inform them of the nature of the emergency and the amount of time required to remedy the emergency situation. ~~Upon abatement of the emergency, the vessel may be docked or tied under appropriate permit in a marina.~~

(d) No vessel shall be docked or tied to land in such a manner that the vessel extends across the property line of contiguous property. So long as Chapter 327, Florida Statutes, provides that a county or municipality shall not enact, continue in effect, or enforce any ordinance or local regulation regulating any vessel upon the Florida Intracoastal Waterway, this paragraph shall not be enforced as to any vessel, other than liveaboard vessels as defined herein, located solely upon the Florida Intracoastal Waterway.

(e) All docked vessels shall be securely tied or fastened in such a manner as to minimize lateral movement and ensure the vessel does not collide or interfere with adjacent vessels, structures or improvements. Mooring lines shall be secured in such a manner to prevent vessels from moving more than twelve (12) inches in any lateral direction. So long as Chapter 327, Florida Statutes, provides that a county or municipality shall not enact, continue in effect, or enforce any ordinance or local regulation regulating any vessel upon the Florida Intracoastal Waterway, this paragraph shall not be enforced as to any vessel, other than liveaboard vessels as defined herein, located solely upon the Florida Intracoastal Waterway.

SECTION 3. Section 2.02, "Definitions," of the Land Development Regulations shall be amended to read:

Liveaboard vessel is:

- a) any vessel used solely as a residence and not ~~primarily~~ for navigation ~~for a minimum of 21 days during any 30 day period~~; or
- b) any vessel represented as a place of business or a professional or other commercial enterprise; or
- c) any vessel for which a declaration of domicile has been filed pursuant to s. 227.17, Fla. Stat.

SECTION 4. Codification. It is the intent of the City Commission of the City of Flagler Beach that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal authority in codifying the provision of this Ordinance.

SECTION 5. Severability. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

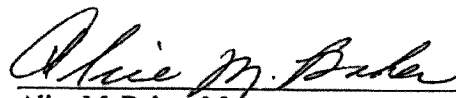
SECTION 6. Conflicts. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance of this City, the provisions of this Ordinance shall prevail.

SECTION 7. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption as provided by law.

PASSED ON FIRST READING THIS 26TH DAY OF AUGUST, 2010.

PASSED AND ADOPTED THIS 16TH DAY OF SEPTEMBER, 2010.

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION



Alice M. Baker, Mayor

ATTEST:



Penny Overstreet, City Clerk

The News-Journal

Published Daily and Sunday
Daytona Beach, Volusia County, Florida

State of Florida,
County of Volusia:

Before the undersigned authority personally appeared

Leslie Phillips

who, on oath says that she is
LEGAL COORDINATOR
of The News-Journal, a daily and Sunday newspaper,
published at Daytona Beach in Volusia County, Florida,
the attached copy of advertisement, being a

CITY OF FLAGLER BEACH
ORDINANCE 2010-13

In the matter of L891907
in the Court
was published in said newspaper in the issues
SEPTEMBER 2, 2010

Affiant further says that The News-Journal is a newspaper published at Daytona Beach, in said Volusia County, Florida, and that the said newspaper has heretofore been continuously published in said Volusia County, Florida, each day and Sunday and has been entered as second-class mail matter at the post office in Daytona Beach, in said Volusia County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Leslie Phillips

Sworn to and subscribed before me

this 2ND day of SEPTEMBER
A.D. 2010

Kelley Jean Meehan



KELLEY JEAN MEEHAN
Notary Public, State of Florida
My Comm. Expires April 7, 2012
Commission No. DD 776318

ORDINANCE 2010-13
AN ORDINANCE OF THE CITY
OF FLAGLER BEACH, FLORIDA,
AMENDING CHAPTER 22 OF
THE CODE OF ORDINANCES,
PROVIDING FOR LIMITATIONS
TO REGULATION OF VESSELS
UPON THE FLORIDA
INTRACOASTAL WATERWAY;
AMENDING THE DEFINITION
OF "LIVEABOARD VESSEL" TO
MATCH THE DEFINITION FOR
SAME PROVIDED IN FLORIDA
STATUTES; PROVIDING FOR
CODIFICATION, SEVERABILITY,
AND CONFLICTS, AND ESTAB-
LISHING AN EFFECTIVE DATE.
A PUBLIC HEARING AND FINAL
READING WILL BE HELD ON
SEPTEMBER 16, 2010 AT 6:30
P.M. OR AS SOON THERE-
AFTER AS POSSIBLE, IN THE
CITY COMMISSION CHAM-
BERS, 105 S. 2ND ST., FLAGLER
BEACH, FL. THIS PUBLIC
HEARING MAY BE CONTINUED
TO A FUTURE DATE OR DATES.
THE TIMES AND DATES OF
ANY CONTINUANCES OF A
PUBLIC HEARING SHALL BE
ANNOUNCED DURING THE
PUBLIC HEARING WITHOUT
ANY FURTHER PUBLISHED NO-
TICE. THE ORDINANCE MAY BE
VIEWED AT THE ABOVE LOCA-
TION. INTERESTED PARTIES
MAY APPEAR AT THE MEETING
AND BE HEARD WITH RE-
SPECT TO THE PROPOSED OR-
DINANCE.
L891907, September 2, 2010 JL

EXHIBIT F



Jeb Bush
 Governor

Department of Environmental Protection

Northeast District
 7825 Baymeadows Way, Suite B200
 Jacksonville, Florida 32256-7590

David B. Struhs
 Secretary

Voice 904-448-4340 FAX 904-448-4366

ENVIRONMENTAL RESOURCE PERMIT AND SOVEREIGN SUBMERGED LANDS AUTHORIZATION

PERMITTEE/AUTHORIZED ENTITY:

Mr. Howard Siklar
 110 Holly Ave. Corp.
 3400 John Anderson Drive
 Ormond Beach, Florida 32176

AGENT:

Kimberly A. Buck, P.E.
 Alann Engineering Corp.
 232 S. Yonge Street
 Ormond Beach, Florida 32174

PERMIT INFORMATION:

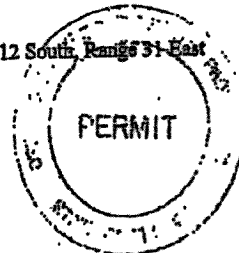
Permit Number: 18-140599-001-EI
 Date of Issue: February 18, 1999
 Expiration Date of Construction Phase:
 February 18, 2004
 County: Flagler
 Project: Construct an 82 slip marina and
 perform navigational dredging

This environmental resource permit is issued under the authority of Part IV of Chapter 373, F.S., and Title 62, Florida Administrative Code (F.A.C.) for the regulatory authority to construct, alter, abandon, remove, maintenance, and operate the system [project activity and/or structure(s)] as described in the below Description of Project Activity and/or structure(s). The appropriate proprietary authorization for the use of state-owned submerged lands is granted in accordance with Chapter 253 and Chapter 258, F.S., and Chapter 18-20, F.A.C., and Chapter 18-21, F.A.C., if located in an aquatic preserve. The activity is not exempt from the requirement to obtain an environmental resource permit nor is the activity exempt from the requirement to obtain proprietary authorization. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity. In addition, the project has been reviewed under a Coordination Agreement Between the US Army Corps of Engineers, Jacksonville District, and the Department for a State Programmatic General Permit in accordance with Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act and may contain Federal authorization to construct and operate the facility as described.

DESCRIPTION OF PROJECT ACTIVITY AND/OR STRUCTURE(S) -

This project is to replace 16 existing wet slips and add 66 new wet slips to a marina facility within Smith Creek (ICW), Flagler County. The structures are to consist of three 8 foot by 185 foot main access piers with 8 foot by 81 foot waterward "T" platforms, (32) 4 foot by 20 foot finger piers, and six 4 foot by 30 foot finger piers. Approximately 14,000 cubic yards of material is also to be hydraulically dredged from 1.46 acre of submerged lands in order to create a marina basin having a depth varying from -5.25 feet NGVD to -9.75 feet NGVD. Spoil material is to be deposited in an enclosed upland dewatering site. In order to mitigate for the loss of approximately 0.16 acre of dredged emergent wetlands on two offshore islands, a conservation easement is to be placed over portions of an adjacent island as depicted in the accompanying permit drawing Exhibit "A".

This project is located on Smith Creek (ICW), a class III waterbody in Section 12, Township 12 South, Range 31 East at Latitude 29.28.42, Longitude 81.08.11.



"Protect, Conserve and Manage Florida's Environment and Natural Resources"

Exhibit D

Mr. Howard Sklar
18-140599-001-EI

REGULATORY AUTHORIZATION

This permit constitutes the authority sought under the provisions of Part IV of Chapter 373, F.S., and Title 62, Florida Administrative Code (F.A.C.) to construct and operate the system described above and show on the attached drawing(s), survey, and/or documents.

This activity requires regulatory authorization under the provisions of Part IV, Chapter 373, Florida Statutes (FS). The above named permittee has affirmatively demonstrated that the project as described above is in compliance with the criteria set forth in section 373.414, FS.

The duration of the construction phase shall be for a period of five (5) years from the date of issuance of this permit, in accordance with section 62-343.110, subsection (1), paragraph (c), F.A.C. The operation and maintenance phase shall be perpetual in accordance with section 62-343.110, subsection (1), paragraph (d), F.A.C.

WATER QUALITY CERTIFICATION

This permit constitutes certification of compliance with water quality standards under Section 404 of the Clean Water Act, 33 U.S.C. 1341.

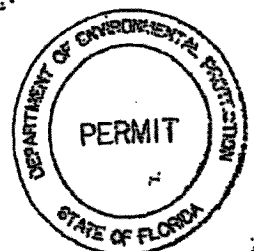
PROPRIETARY REVIEW - NOT ON STATE OWNED SUBMERGED LANDS

Your project does not occur on state-owned submerged lands and will not require authorization from the Department to use these lands for private purposes in accordance with section 253.77, Florida Statutes. This determination is based solely on the information provided the Department and the statutes and rules in effect when the application was submitted and is effective only for the specified activity.

SPGP - REVIEW - AUTHORIZATION NOT GRANTED

Your project has been reviewed for compliance with a State Programmatic General Permit (SPGP). Your proposed activity as outlined on the attached drawings does NOT meet the criteria for compliance with the U.S. Army Corps of Engineers (Corps) State Programmatic General Permit (SPGP). A copy of your notice has been sent to the U. S. Army Corps of Engineers (USACOE) for review. The USACOE may require a separate permit. Failure to obtain this authorization prior to construction could subject you to enforcement action by that agency. For further information, you should contact the USACOE at 904-232-1661.

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



Mr. Howard Sklar
18-140599-001-EI

PERMIT CONDITIONS -

The above named permittee, Mr. Howard Sklar, is hereby authorized to construct the work shown on the application and approved drawing(s), plans, and other documents attached hereto or on file with the Department and made a part hereof. This permit and authorization to use sovereign submerged lands is subject to the limits, conditions, and locations of work shown in the attached drawings, and is also subject to the attached General Conditions and Specific Conditions which are a binding part of this permit and authorization. You are advised to read and understand these drawings and conditions prior to commencing the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings. If you are utilizing a contractor, the contractor also should read and understand these drawings and conditions prior to commencing the authorized activities. Failure to comply with all drawings and conditions shall constitute grounds for revocation of the permit and appropriate enforcement action.

Operation of the facility is not authorized except when determined to be in conformance with all applicable rules and with the general and specific conditions of this permit/certification/authorization, as specifically described above and attached hereto.

Executed in Jacksonville, Florida.

Issued this 18th day of February, 1999.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

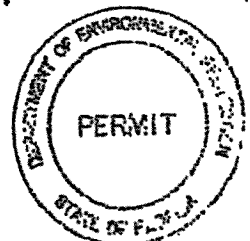
Jeremy Tyler
Jeremy Tyler
Environmental Administrator

Enclosed Regulatory General Conditions
 Regulatory Specific Conditions
 Proprietary General Consent Conditions
 Proprietary Specific Conditions as applicable
 SPGP General Conditions
 SPGP Specific Conditions as applicable
Copy to USACOB, Regulatory Section, Jacksonville
 DEP Permitting Attorney, Tallahassee

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this NOTICE OF PERMIT, Department File Number 18-140599-001-EI and all copies were mailed before the close of business on 2/18/99 to the listed persons.

FILING AND ACKNOWLEDGEMENT
FILED, on this date, pursuant to S120.52, Florida
Statutes, with the designated Department Clerk,
of which is hereby acknowledged.
Truda Blanton 2/18/99
Clerk Date



REGULATORY GENERAL CONDITIONS
DEP File No.: 18-140599-001-EI
Mr. Howard Sklar

(a) All activities shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit.

(b) This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications, shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.

(c) Activities approved by this permit shall be conducted in a manner which do not cause violations of state water quality standards.

(d) Prior to and during construction, the permittee shall implement and maintain all erosion and sediment control measures (best management practices) required to retain sediment on-site and to prevent violations of state water quality standards. All practices must be in accordance with the guidelines and specifications in chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988), which are incorporated by reference, unless a project specific erosion and sediment control plan is approved as part of the permit, in which case the practices must be in accordance with the plan. If site specific conditions require additional measures during any phase of construction or operation to prevent erosion or control sediment, beyond those specified in the erosion and sediment control plan, the permittee shall implement additional best management practices as necessary, in accordance with the specifications in chapter 6 of the Florida Land Development Manual: A Guide to Sound Land and Water Management (Florida Department of Environmental Regulation 1988). The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.

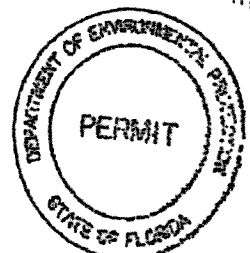
(e) Stabilization measures shall be initiated for erosion and sediment control on disturbed areas as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 7 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(f) At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District a Construction Commencement Notice Form No. 40C-4.900(3) indicating the actual start date and the expected completion date.

(g) When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an Annual Status Report Form No. 40C-4.900(4). These forms shall be submitted during June of each year.

(h) For those systems which will be operated or maintained by an entity which will require an easement or deed restriction in order to provide that entity with the authority necessary to operate or maintain the system, such easement or deed restriction, together with any other final operation or maintenance documents as are required by subsections 7.1.1 through 7.1.4 of the Applicant's Handbook: Management and Storage of Surface Waters, must be submitted to the District for approval. Documents meeting the requirements set forth in these subsections of the Applicant's Handbook will be approved. Deed restrictions, easements and other operation and maintenance documents which require recordation either with the Secretary of State or the Clerk of the Circuit Court must be so recorded prior to lot or unit sales within the project served by the system, or upon completion of construction of the system, whichever occurs first. For those systems which are proposed to be maintained by county or municipal entities, final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local governmental entity. Failure to submit the appropriate final documents referenced in this paragraph will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system.

(i) Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of that phase or portion of the system to a local government or other responsible entity.



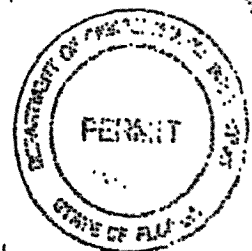
REGULATORY GENERAL CONDITIONS
DEP File No.: 18-140599-001-EI
Mr. Howard Sklar

(j) Within 30 days after completion of construction of the permitted system, or independent portion of the system, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing As Built Certification Form 40C-1.181(13) or 40C-1.181(14) supplied with this permit. When the completed system differs substantially from the permitted plans, any substantial deviations shall be noted and explained and two copies of as-built drawings submitted to the District. Submittal of the completed form shall serve to notify the District that the system is ready for inspection. The statement of completion and certification shall be based on on-site observation of construction (conducted by the registered professional engineer, or other appropriate individual as authorized by law, or under his or her direct supervision) or review of as-built drawings for the purpose of determining if the work was completed in compliance with approved plans and specifications. As-built drawings shall be the permitted drawings revised to reflect any changes made during construction. Both the original and any revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawing. All surveyed dimensions and elevations shall be certified by a registered surveyor. The following information, at a minimum, shall be verified on the as-built drawings:

1. Dimensions and elevations of all discharge structures including all weirs, slots, gates, pumps, pipes, and oil and grease skimmers;
 2. Locations, dimensions, and elevations of all filter, exfiltration, or underdrain systems including cleanouts, pipes, connections to control structures, and points of discharge to the receiving waters;
 3. Dimensions, elevations, contours, or cross-sections of all treatment storage areas sufficient to determine stage-storage relationships of the storage area and the permanent pool depth and volume below the control elevation for normally wet systems, when appropriate;
 4. Dimensions, elevations, contours, final grades, or cross-sections of the system to determine flow directions and conveyance of runoff to the treatment system;
 5. Dimensions, elevations, contours, final grades, or cross-sections of all conveyance systems utilized to convey off-site runoff around the system;
 6. Existing water elevation(s) and the date determined; and
 7. Elevation and location of benchmark(s) for the survey.
- (k) The operation phase of this permit shall not become effective until the permittee has complied with the requirements of the condition in paragraph (i) above, the District determines the system to be in compliance with the permitted plans, and the entity approved by the District in accordance with subsections 7.1.1 through 7.1.4 of the Applicant's Handbook: Management and Storage of Surface Waters, accepts responsibility for operation and maintenance of the system. The permit may not be transferred to such an approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall request transfer of the permit to the responsible approved operation and maintenance entity, if different from the permittee. Until the permit is transferred pursuant to section 7.1 of the Applicant's Handbook: Management and Storage of Surface Waters, the permittee shall be liable for compliance with the terms of the permit.

(l) Should any other regulatory agency require changes to the permitted system, the permittee shall provide written notification to the District of the changes prior to implementation so that a determination can be made whether a permit modification is required.

(m) This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and chapter 40C-4 or chapter 40C-40, F.A.C.



REGULATORY GENERAL CONDITIONS
DEP File No.: 18-140599-001-EI
Mr. Howard Sklar

(n) The permittee is hereby advised that section 253.77, F.S., states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.

(o) The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the activities authorized by the permit or any use of the permitted system.

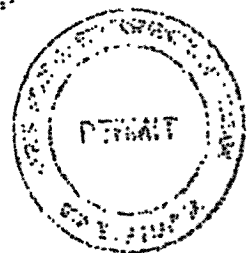
(p) Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this permit or a formal determination under section 373.421(2), F.S., provides otherwise.

(q) The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of the permitted system or the real property at which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of section 40C-1.612, F.A.C. The permittee transferring the permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to such sale, conveyance or other transfer.

(r) Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.

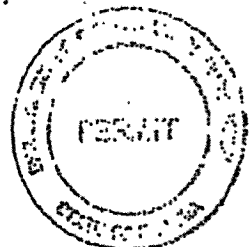
(s) If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the District.

(t) The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.



REGULATORY SPECIFIC CONDITIONS
DEP File No.: 18-140599-001-EI
Mr. Howard Sklar

1. If historical or archaeological artifacts, such as, but not limited to, Indian canoes, arrow heads, pottery or physical remains, are discovered at any time within the project site the permittee shall immediately stop all activities which disturb the soil and contact the Northeast District Office of the Department of Environmental Protection and the Bureau of Historic Preservation, Division of Historical Resources, R.A. Gray Building, 500 South Bronough, Tallahassee, Florida, 32399-0250. Any activity which causes the disturbance of the soil may not resume without the written authorization from the Division of Historic Resources.
2. Prior to commencement of work authorized by this permit, the permittee shall provide written notification of the date of the commencement and proposed schedule of construction to Robert Dunne, Department of Environmental Protection, Northeast District, 7825 Baymeadows Way, Suite B-200, Jacksonville, Florida 32256-7590.
3. The project shall comply with applicable State Water Quality Standards, namely:
 - a) Surface Waters, Minimum Criteria, General Criteria - 62-302.500,
 - b) Class III Waters - Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife. - 62-302.400
4. The structures authorized by this permit shall not be located on any property other than that owned by the permittee without the prior written approval of that property owner.
5. This permit does not authorize the construction of any impervious parking area (compacted limestone, asphalt, concrete, etc.), storage facilities, or other upland structures nor does it constitute authorization for the construction and/or operation of a stormwater management system. Authorization of these structures or activities will require a separate stormwater management permit from the Department.
6. There shall be no storage or stockpiling of tools, equipment, or materials (i.e., lumber, pilings, debris.) within wetlands, along the shoreline within the littoral zone, or elsewhere within waters of the state unless specifically approved in the permit. All cleared vegetation, excess lumber, scrap wood, trash, garbage and any other type of debris shall be removed from wetlands/waters of the state within 14 days of completion of the work authorized in this permit.
7. All wetland areas or water bodies which are outside the specific limits of construction authorized by this permit shall be protected from erosion, siltation, scouring, excess turbidity, or dewatering. Turbidity curtains, hay bales, and other such erosion/turbidity control devices shall be installed prior to the commencement of dredging, filling, or construction activity, shall remain functional at all times, and shall be maintained on a regular basis. Turbidity and/or sedimentation resulting from any activities associated with the project shall not be allowed to enter waters of the State.
8. Floating turbidity curtains (FDOT Type II or equivalent) shall be used to surround in-water work areas and shall remain in place until such time as turbidity levels within the work area have reduced sufficiently so as not to exceed the state water quality standard.
9. The dredging operation shall be continuously monitored visually, for turbidity, by an observer who is familiar with that State water quality standard. If, at any time, it is suspected that any turbidity generated may exceed the state water quality standard at a location 50 feet in a downcurrent direction from the turbidity screens enclosing the work area, a water sample shall be collected, the turbidity measured and recorded in an official monitoring report. The dredging operation shall be halted if the turbidity standard is exceeded. Dredging may be resumed once measures are taken to reduce the turbidity generated to below state water quality standards.



REGULATORY SPECIFIC CONDITIONS
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10. Prior to the commencement of any dredging activity, the dredging contractor shall submit a dredged material handling plan to the Department which describes the type of equipment to be utilized, the method of containing and conveying dredged material from the dredge site to disposal site, details of dredged material dewatering, methods of turbidity control during dredging, methods of sediment control in return water or pumped discharge during dewatering, the fate of excess dredged material, and other relevant information. The Department may require modification of the submitted plan or additional permit specific conditions in order to provide reasonable assurances that State water standards will not be violated by the activity.

11. Turbidity/sediment in any piped or pumped discharge from the dewatering area shall be less than 29 NTU above the ambient turbidity of Smith Creek (ICW).

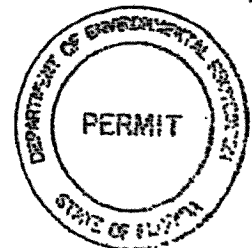
12. All generated spoil material shall be deposited in a self-contained upland disposal site which will prevent the escape of spoil material from the spoil site into surface waters of the State.

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

14. Boat mooring areas shall be located in waters sufficiently deep to prevent bottom scour by boat propellers.

15. For all in-water activities associated with the project, the permittee/grantee/lessee and/or his designated contractor(s) shall insure that:

- a) The contractor instructs all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s), and shall implement appropriate precautions to ensure protection of the manatee(s).
- b) All construction personnel are advised that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act. The permittee and/or contractor may be held responsible for any manatee harmed, harassed, or killed as a result of construction activities.
- c) Prior to commencement of construction, the prime contractor involved in the construction activities shall construct and display at least two temporary signs (placards) concerning manatees. For all vessels, a temporary sign (at least 8-1/2" x 11") reading, "Manatee Habitat/Idle Speed in Construction Area" will be placed in a prominent location visible to employees operating the vessels. In the absence of a vessel, a temporary sign (at least 2' x 2') reading, "Warning: Manatee Habitat" will be posted in a location prominently visible to land based, water-related construction crews.
- d) A second temporary sign (at least 8-1/2" by 11") reading, "Warning, Manatee Habitat: Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Any collision with and/or injury to a manatee shall be reported immediately to the Florida Marine Patrol at 1-800-DIAL-FMP" will be located prominently adjacent to the displayed issued construction permit. Temporary notices are to be removed by the permittee upon completion of construction.
- e) Siltation barriers are properly secured so that manatees cannot become entangled, and are monitored at least daily to avoid manatee entrapment. Barriers must not block manatee entry to or exit from essential habitat.

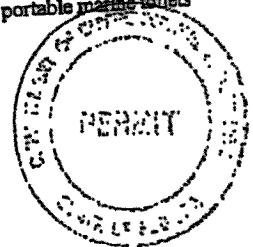


REGULATORY SPECIFIC CONDITIONS

DEP File No.: 18-140599-001-EI

Mr. Howard Sklar

- f) All vessels associated with the project operate at "idle speed/no wake" at all times while in the construction area and while in waters 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.
 - g) If manatees are seen within 100 yards of the active daily construction/dredging operation all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operation of all moving equipment no closer than 50 feet of a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment.
 - h) Any collision with and/or injury to a manatee shall be reported immediately to the Florida Marine Patrol (1-800-DIAL-FMP) and to the Florida Department of Environmental Protection Office of Protected Species Management (904) 922-4330.
 - i) The contractor maintains a log detailing sightings, collisions, or injuries to manatees should they occur during the contract period. A report summarizing incidents and sightings shall be submitted to the Florida Department of Environmental Protection, Office of Protected Species Management, Mail Station 245, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399 and to the U.S. Fish and Wildlife Service Office, 3100 University Boulevard, Jacksonville, Florida 32216. This report must be submitted annually or following the completion of the project if the contract period is less than a year.
16. Prior to the commencement of operation of the permitted facility, the permittee shall ensure that:
- a.) Permanent manatee informational and/or awareness signs will be installed to increase the awareness of boaters using docking facilities to the presence of manatees and of the need to minimize the threat of boats to these animals. A manatee education display/kiosk also shall be installed at a prominent location as recommended by the Bureau of Protected Species.
 - b.) Manatee education information and brochures available from the Bureau of Protected Species Management will be provided to all patrons of the facility from the Harbormaster's office.
 - c.) Prior to the facility opening and beginning operations, the permittee will forward a project site plan and a chart indicating the location of the facility (in relationship to waterways and county location) to the Department of Environmental Protection, Division of Marine Resources, Office of Protected Species Management, 3900 Commonwealth Boulevard, Mail Station 245, Tallahassee, Florida 32399. The Office of Protected Species Management will then review and indicate on the site plan the type and number of sign(s) required and the permanent locations for sign(s). After review and designation of sign locations by the Office of Protected Species Management, the site plan will be returned to the lessee along with a list of sign suppliers. All signs must be installed facing land.
 - d.) A notarized verification letter shall be forwarded, to the above address, as soon as signs are installed. This verification letter must contain a statement that permanent signs were installed at the designated locations, with the latitude and longitude designations for each sign included in the letter. All signs and pilings remain the responsibility of the owner(s) and are to be maintained for the life of the facility in a manner acceptable to FDEP.
17. The permittee shall provide adequate restroom and shower facilities for use by the marina's patrons and shall provide an adequate, accessible, sanitary dump station capable of properly disposing of waste generated by portable marine toilets (porta-pottis, etc.). Sewage disposal methods shall comply with all State and local requirements.



REGULATORY SPECIFIC CONDITIONS

DEP File No.: 18-140599-001-EI

Mr. Howard Sklar

18. An approved on-site sewage pump-out facility shall be in place and functional prior to allowing liveaboards to utilize the marina slips. A liveaboard shall be defined as a boat inhabited by a person or persons for any five consecutive days or a total of ten days within a 30-day period. Sewage disposal methods shall comply with all State and local requirements. The permittee shall ensure that marina personnel have been trained to operate the sewage pump-out facilities and are available to assist boaters in operating the facilities during standard business hours (at a minimum) for the life of the facility. The sewage pump-out facility shall be maintained in accordance with the requirements of this condition for the life of the facility.

19. Each designated liveaboard slip shall be provided with its own direct, permanent sewage pump-out device. No liveaboard shall be allowed to dock at a slip without such a direct sewage pump-out device. All sewage pump-out devices shall be connected to an authorized sewage treatment system. Marina personnel shall be trained in how to use the devices. Each user/lessee/owner of a liveaboard slip shall be given a demonstration by these trained personnel on how to use the sewage pump-out device, shall be given a written instructions on how to use the device, and shall be informed that the sewage pump-out device must be used whenever the user/lessee/owner wishes to empty the boat's head while moored at the slip. In addition, each user/lessee/owner shall sign a statement (which may be included in the use/rental agreement for the slip) which states that the user/lessee/owner: 1) agrees to use the sewage pump-out device to empty the boat's head whenever moored at the marina; 2) has received a demonstration on how to use the sewage pump-out device; and 3) has been given written instructions on how to use the sewage pump-out device. The requirements in this paragraph shall be met within 4 days of each liveaboard slip becoming occupied by a new user/lessee/owner.

20. There shall be no fish cleaning stations or boat repair facilities on any structure that is over the water.

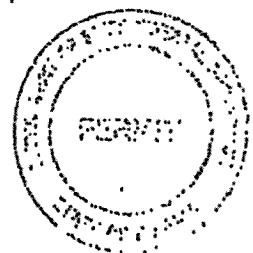
21. No overboard discharges of trash, human or animal waste, or fuel, or other deleterious substances shall occur at the docks.

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

23. Twenty-four (24) of the 82 permitted wet slips shall be utilized by sailboats only.

24. The number of boats stored on trailers or storage racks on the adjacent uplands shall be limited to 72.

25. No slips shall be occupied until such time as regulatory speed limits (no wake zone) within the project area are posted pursuant to Rule 62N-24.118 and an agreement between the Department and the City of Flagler Beach.



REGULATORY SPECIFIC CONDITIONS
DEP File No.: 18-140599-001-EI
Mr. Howard Sklar

26. This permit does not authorize the installation of any fueling facilities. Prior to the installation of any fueling facilities, the permittee shall obtain all required State and/or local permits, and a fuel spill contingency plan governing the procedures to be followed in the event of a spill shall be implemented. A copy of the executed contingency agreement shall be forwarded to Robert Dunne, Department of Environmental Protection, Northeast District, 7825 Baymeadows Way, Suite B-200, Jacksonville, Florida 32256-7590, prior to the commencement of fueling operations. The fuel spill contingency plan shall include: 1) the type and storage location of all absorbent booms, and other equipment used to contain an accidental spill, 2) the training program for spill response provided to marina personnel; and 3) the name, address, and telephone number of the company contracted to provide clean-up services once the spill has been controlled and contained. The Department shall be notified whenever the clean up company changes and shall be provided with the name, address and telephone number of the new company within 14 days of the change being made. The recommended fuel spill response equipment shall be stored at the site throughout the life of the facility. The fuel spill response equipment shall be maintained in working condition and replaced as necessary for the life of the facility. The dockmaster shall be trained in the use and deployment of the equipment and shall be responsible for marina staff receiving training in the use and deployment of all fuel spill equipment. The fuel spill contingency plan and requirements for its implementation shall be adhered for the life of the facility.

27. Prior to the commencement of any dredging or other construction authorized by this permit, the permittee must record a conservation easement on those portions of an emergent island and open water lying immediately west of Lot 5, Block 83, Amended Plat of Venice Park, Flagler Beach, Flagler County, depicted as Conservation Easement Area on the attached Exhibit "A", pursuant to Section 704.06, Florida Statutes (F.S.), prohibiting all construction including clearing, dredging or filling, except that which is authorized by this permit within the conservation preservation area. The conservation easement shall be in accordance with the language contained in the attached Conservation Easement Deed. Prior to recording, the permittee shall submit the easement to the Department for review and approval. Following Department approval, the easement shall be recorded and a certified copy of the recorded easement showing the date recorded and the official records book and page number shall be submitted to the Department.

28. The conservation easement submitted to the Department for review and approval prior to recording shall include the following information:

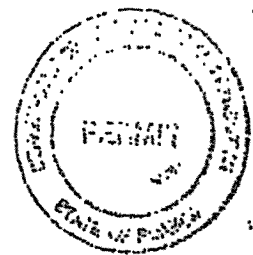
I. TITLE INFORMATION

1. Proof of ownership as a deed or updated title certificate.
2. Affidavit of lien status.
3. If liens on the property exist, subordination/release/joiner agreement.

II. BOUNDARY INFORMATION

1. Legal description of the proposed conservation easement.
2. A survey sketch of the proposed conservation easement.

(NOTE: Both documents need to be certified by a registered land surveyor and should reference each other if on separate pages.)



NOTICES SUBMITTED TO THE DEPARTMENT

Your permit DEP File No.: 18-140599-001-EI requires you to submit the attached Notices to the Department at the times indicated. Failure to submit these notices will constitute noncompliance with the conditions of your permit and an enforcement action may be brought against you. If you are using a contractor you are responsible for insuring these notices are submitted to the Department.

PLEASE NOTE - References to stormwater management systems in the attached forms refers to the activity or activities authorized in your permit.

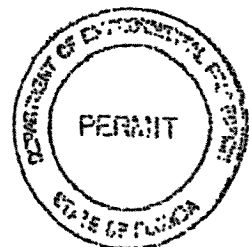
CONSTRUCTION COMMENCEMENT NOTICE -- FORM 62-343.900(3)
To be submitted 48 hours PRIOR to the commencement of the activity

ANNUAL STATUS REPORT - Form 62-343.900(4)
To be submitted annually each JUNE whenever the construction period exceeds one year after the construction commencement date.

AS BUILT CERTIFICATION PRIVATE RESIDENT -- FORM NED/AS-BUILT
In some cases, such as a single family resident constructing a structure on their own property for their own use, certification by a registered professional is not required. However, written notice to the Department within 30 days of completion of construction of the date the structure was completed is required. If you are a private single family resident property owner please use the As Built Certification - Private Resident form.

APPLICATION FOR TRANSFER OF PERMIT -- Form 62-343.900(8)
To be submitted within 30 days of any sale, conveyance, or other transfer of ownership or control of the permitted system or real property at which the system is located. **IN ADDITION - DEPARTMENT OF THE ARMY PERMIT TRANSFER REQUEST STATE PROGRAMMATIC GENERAL PERMIT MUST BE SUBMITTED**

SUBMIT ALL NOTICES TO: Department of Environmental Protection
Submerged Lands and Environmental Resources Program
7825 Baymeadows Way, Suite B-200
Jacksonville, Florida 32256-7590



ENVIRONMENTAL RESOURCE PERMIT
CONSTRUCTION COMMENCEMENT NOTICE

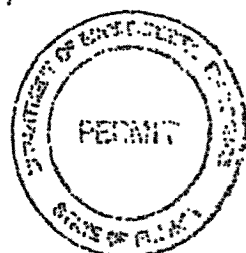
PROJECT: _____ PHASE: one (1)

I hereby notify the Department of Environmental Protection that the construction of the surface water management system authorized by Environmental Resource Permit No.: 18-140599-001-EI has / is expected to commence on _____ 199____, and will require a duration of approximately _____ months _____ weeks _____ days to complete. It is understood that should the construction term extend beyond one year, I am obligated to submit the Annual Status Report for Surface Water Management System Construction.

PLEASE NOTE: If the actual commencement date is not known, Department staff should be notified in writing in order to satisfy permit conditions.

_____	_____	_____
Permittee or Authorized Agent	Title and Company	Date
_____	_____	_____
Phone	Address	

Form #62-343.900(3), F.A.C.
Form Title: Construction
Commencement Notice
Date: October 3, 1995



ENVIRONMENTAL RESPONSE PERMIT
AS-BUILT CERTIFICATION - PRIVATE RESIDENCE

PERMIT NUMBER: 18-140599-001-EI

NAME: Mr. Howard Sklar

I hereby certify that the activities authorized by the above permit have been completed in accordance with the drawings, documents and the general and specific conditions as specified in permit No.: 18-140599-001-EI. I also certify that the entity (company, cooperation, individual doing business as -d/b/a) listed below, if other than myself, completed the work authorized by the permit on the date indicated.

Mr. Howard Sklar
First Name, Last Name (please type or print clearly)

Signature of Permittee

Date work completed

Work done by:

(Company, cooperation, individual doing business as -d/b/a)

(Address)

(Address)

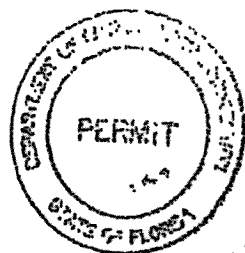
(City)

(State)

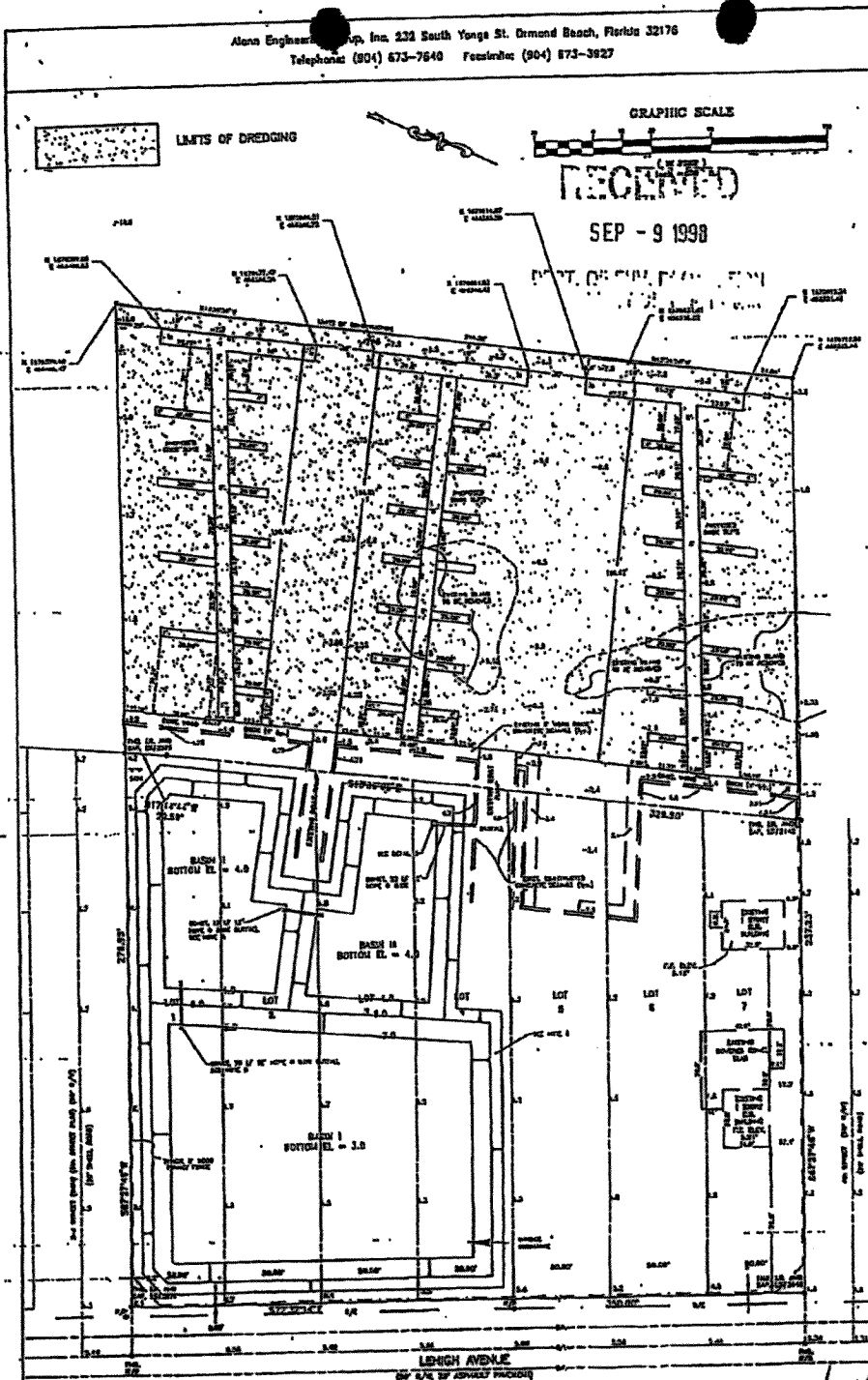
(ZIP Code + 4)

License Number:

Form: #consnote/hed
Form title: As-Built Certification - Private Residence
Date: November 11, 1996



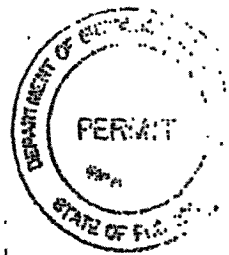
Alma Engineering Corp., Inc. 232 South Yonge St. Ormond Beach, Florida 32176
 Telephone (904) 673-7640 Facsimile (904) 673-3927

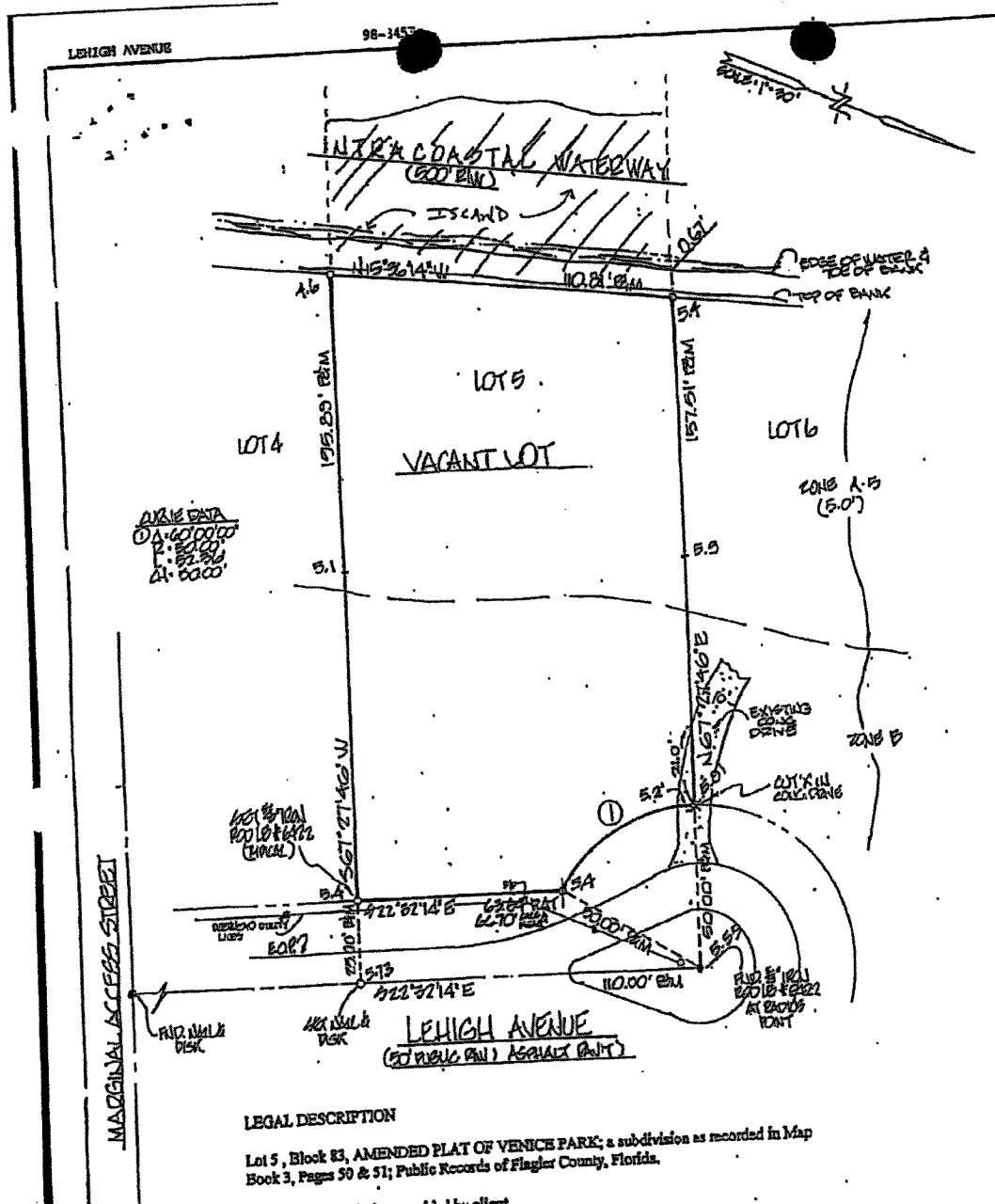


BOUNDARY AND TOPOGRAPHIC SURVEY
 WITH PROPOSED DOCKING SLIPS

Applicant: 110 HOLLY AVE. CORPORATION
 Water Body: HALIFAX RIVER
 County: FLAGLER
 Datum: NGVD(1929)

Purpose: DOCKING SLIPS
 Original Work ☒ Maintenance ☐
 Sheet No.: 1 Of 15
 Date: R 9/4/98





LEGAL DESCRIPTION

Lot 5, Block 83, AMENDED PLAT OF VENICE PARK; a subdivision as recorded in Map Book 3, Pages 50 & 51; Public Records of Flagler County, Florida.

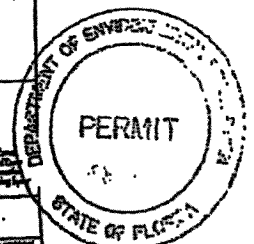
- NOTES: 1. Description provided by client.
 2. Bearings refer to plat data and to the center line of Lehigh Avenue as being S.22°32'14"E.
 3. Property lies in Flood Zones "B" & "A-5" (Base Flood Elevation 5.0'), as shown on Flood Insurance Rate Map (FIRM), Community Panel Number 120087 0001 B, Effective Date: February 3, 1985.
 4. Elevations refer to NGVD (1929 Datum) and referenced to Coastal Construction Control Line Monumentation.


EXHIBIT "A" PROPOSED CONSERVATION AREA

SERVICED FOR
 HOWARD SHLAG
 3400 JOHN ANDERSON DRIVE
 CROMWELL BEACH, FL 32176

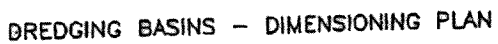
TITLE SURVEY
 Surveyed 07/31/98 98-3457
 Prepared by
 Fred

RECORDS
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SCALE 1" = 40'



Applicant: <u>110 HOLLY AVENUE CORP.</u>	Purpose: <u>DOCKING</u> <u>5 IPS</u>
Water Body: <u>HALIFAX RIVER</u>	Original Work <input checked="" type="checkbox"/> Maintenance
County: <u>FLAGLER</u>	Sheet No.: <u>9</u> of <u>15</u>
Datum: <u>NGVD (1929)</u>	Date: <u>SEPTEMBER 4, 1998</u>

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
APPLICATION FOR TRANSFER OF AN ERP PERMIT

Permit No.: 18-140599-001-EI

Date Issued _____ Date Construction Phase Expires _____

NOTIFICATION OF SALE OR OF LEGAL TRANSFER (to be completed by the current permittee)

Project Name: _____ County: _____

Project Location: _____ City: _____

Permittee Name (existing): Mr. Howard Sklar

Permittee's Title: NOT APPLICABLE

Mailing Address: _____

The undersigned hereby notifies the Department of the sale or legal transfer of the property [] or the permit [] (please check one of the spaces). The permittee further agrees to assign the rights as permittee to the transferee in the event the Department agrees to the transfer of the permit.

REQUEST FOR TRANSFER OF PERMIT

Project Name: _____ County: _____

Project Location: _____ City: _____

Proposed Transferee's Name: _____

Transferee's Title (if applicable): _____

Mailing Address: _____

Telephone: () _____

Proposed Project Engineer (name): Not Applicable

Engineer's Mailing Address: Not Applicable

Engineer's Telephone: () Not Applicable

The undersigned hereby notifies the Department of [] having acquired title to the property subject to this permit, or, [] having entered into an agreement with the Permittee to accept transfer (please check one). The applicant further states that he or she has examined the application and documents submitted by the current permittee the basis of which the permit was issued by the Department, and states they accurately and completely describe the permitted activity or project. The applicant further states he or she is familiar with the permit, agrees to comply with its terms and conditions, and agree to assume the rights and liabilities contained therein. The applicant also agrees to promptly notify the Department of any future changes in ownership of, or responsibility for, the permitted activity or project.

Signature of Applicant: _____
(please attach a letter of authorization if other than the owner or a cooperative officer)

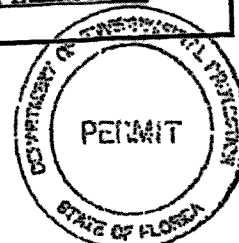
Title: _____

Date: _____

Application

Form #62-343.900(8) F.A.C.
Form Title: Application for Transfer of ERP

Date: October 3, 1992



**ENVIRONMENTAL RESOURCE PERMIT
ANNUAL STATUS REPORT FORM**

Error! Reference source not found.

Permit No.: 18-140599-001-EI

County: _____

Project Name: Mr. Howard Sklar

Phase: ONE (1)

the following activity has occurred at the above referenced project during the past year, between
June 1, 19____ and May 30, 19____.

Permit Condition Activity	% of Completion	Date of anticipated Completion	Date of Completion
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(Use additional Sheets As Necessary)

Benchmark Description (one per major control structure):

Not Applicable

Print Name _____

Phone _____

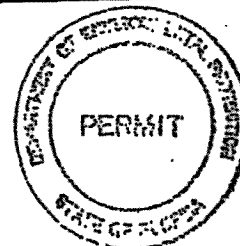
Permittee's or Authorized
Agent's Signature _____

Title and Company _____

Date _____

This form shall be submitted to the above referenced Department Office During June of each year for activities whose duration of construction exceeds one year.

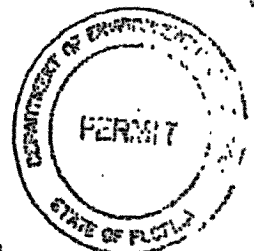
Form: #62-343,900(4), F.A.C.
Form Title: Annual Status Report
Date: October 3, 1995



STANDARD MANATEE CONSTRUCTION CONDITIONS

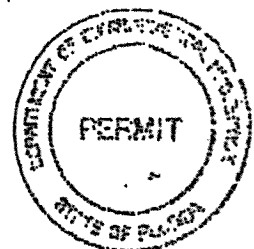
- a. The lessee/grantee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s).
- b. The lessee/grantee 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 of 1972, The Endangered Species Act of 1973 and the Florida Manatee Sanctuary Act.
- c. Siltation barriers shall be made of material in which manatees cannot become entangled, are properly secured and are regularly monitored to avoid manatee entrapment. Barriers must not block manatee entry to or exits from essential habitat.
- 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 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.
- e. If manatee(s) are seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure protection of the manatee. These precautions shall include the operation of all moving equipment no closer than 50 feet of a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities will not resume until the manatee(s) has departed the project area of its own volition.
- f. A collision with and/or injury to a manatee shall be reported immediately to the Florida Marine Patrol at 1-800-DIAL-FMP (1-800-342-5367). Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-232-2580) for North Florida or Vero Beach (1-407-562-3909) in South Florida.
- g. Temporary signs concerning manatees shall be posted prior to and during all construction/dredging activities. All signs are to be removed by the lessee/grantee upon completion of the project. A sign measuring at least 3 feet by 4 feet which reads Caution: Manatee Area will be posted in a location prominently visible to water related construction crews. A second sign should be posted if vessels are associated with the construction, and should be placed visible to the vessel operator. The second sign should be at least 8 1/2 inches by 11 inches which reads:

Caution: Manatee Habitat. Idle speed is required if operating a vessel in the construction area. All equipment must be shutdown if a manatee comes within 50 feet of the operation. A collision with and/or injury to a manatee shall be reported immediately to the Florida Marine Patrol at 1-800-DIAL-FMP (1-800-343-5367) and the U.S. Fish and Wildlife Service at (1-904-232-2580) for North Florida or (1-407-562-3909) for South Florida.

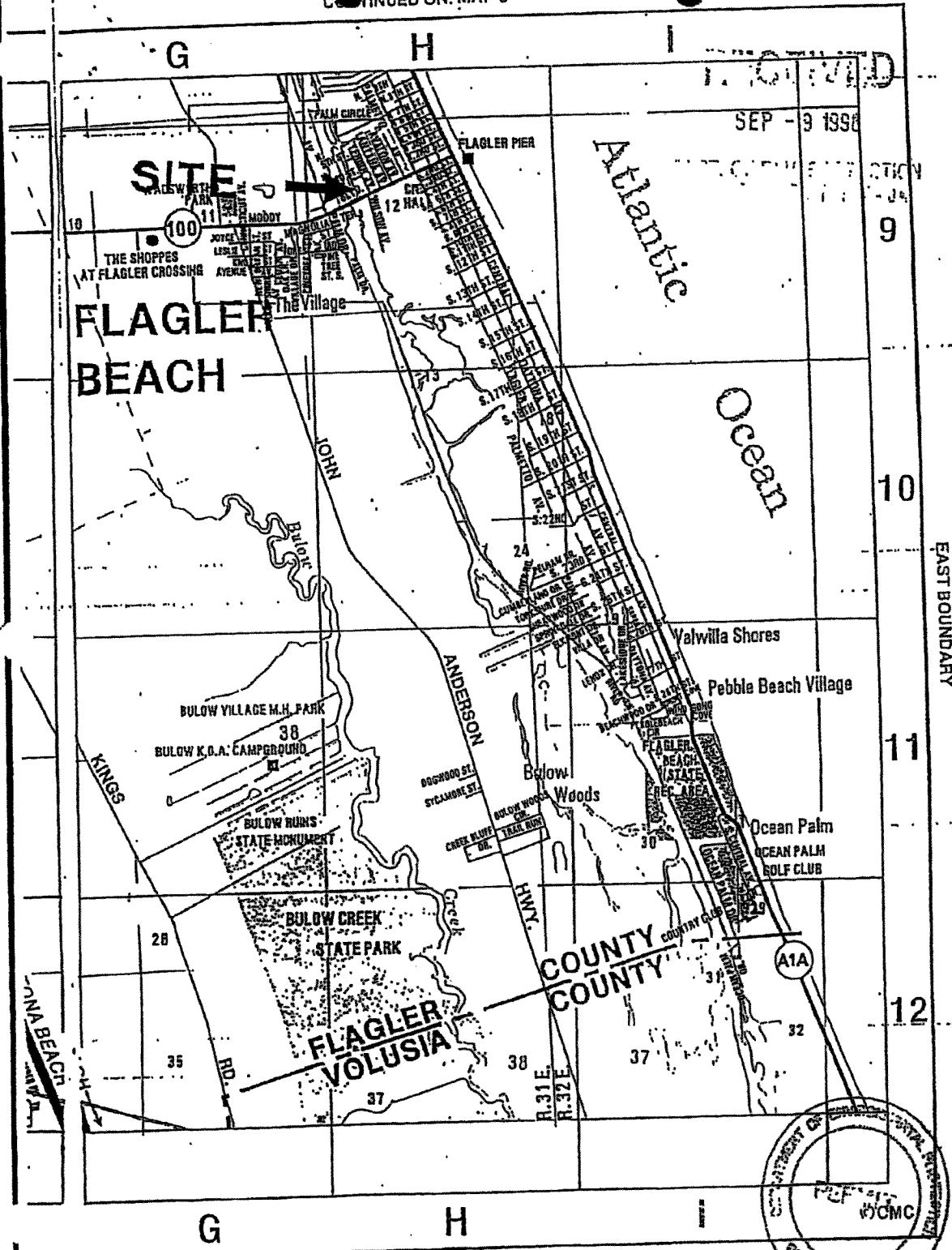


NOTICE

YOUR PROJECT DID NOT QUALIFY FOR THE STATE AND FEDERAL
COMBINED STATE PROGRAMMATIC GENERAL PERMIT (SEGP) PROGRAM.
THE ATTACHED AUTHORIZATION(S) DOES NOT INCLUDE THE REQUIRED
FEDERAL AUTHORIZATION FOR YOU TO CONSTRUCT YOUR PROJECT.
A COPY OF YOUR APPLICATION HAS BEEN SENT TO THE US ARMY CORPS
OF ENGINEERS (USACE) FOR PROCESSING. THE FEDERAL
AUTHORIZATION FOR YOUR PROJECT WILL BE SENT TO YOU
SEPARATELY BY THE USACE. YOU CANNOT CONSTRUCT YOUR
PROJECT WITHOUT THE APPROPRIATE FEDERAL AUTHORIZATION. THE
USACE CAN BE CONTACTED IN JACKSONVILLE AT 904-251-1679.



CONTINUED ON: MAP 5



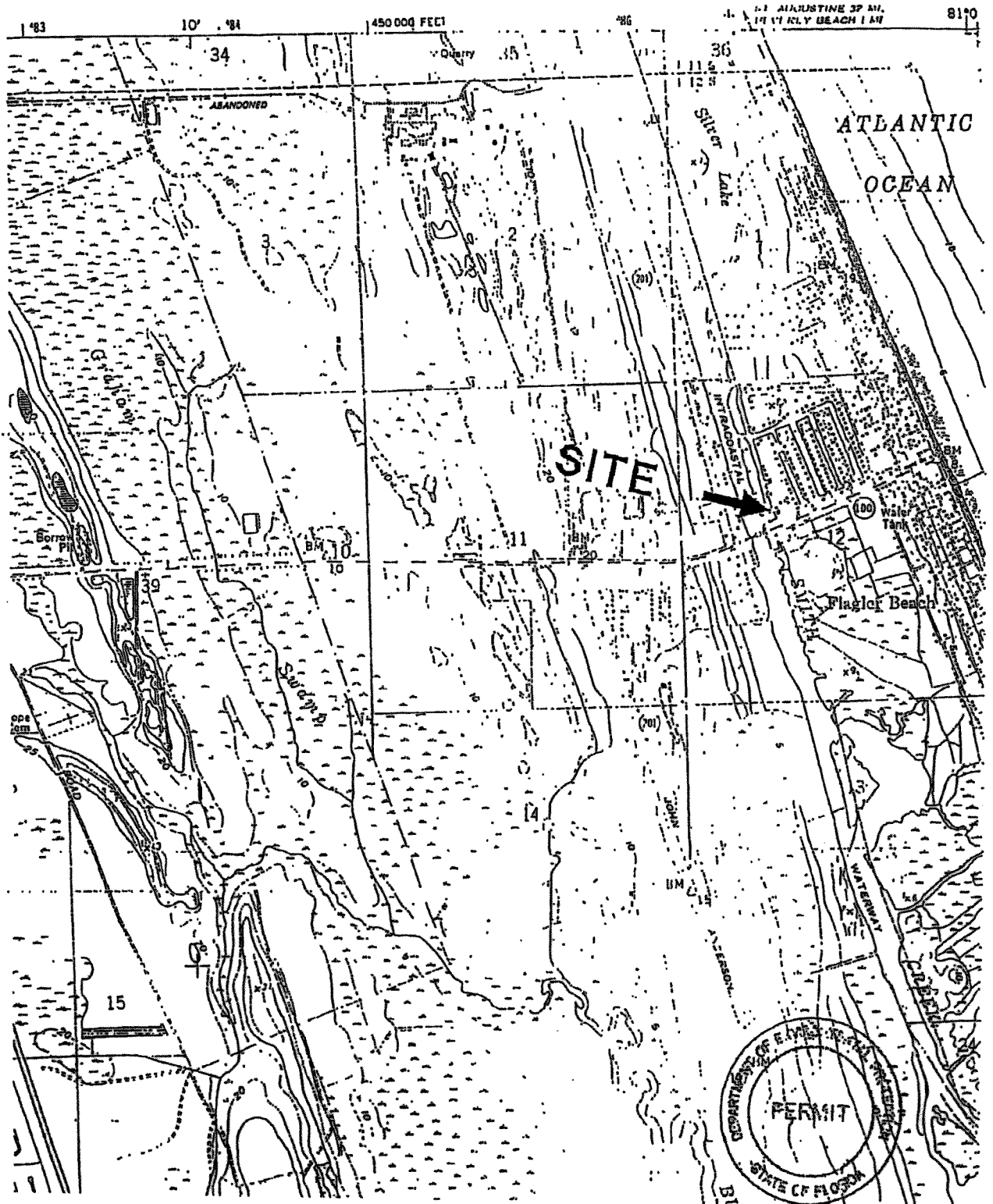
CONTINUED ON: MAP 10

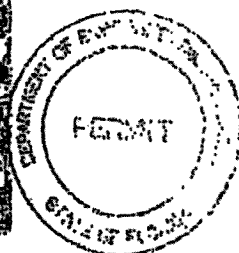
CONTINUED ON: MAP

8

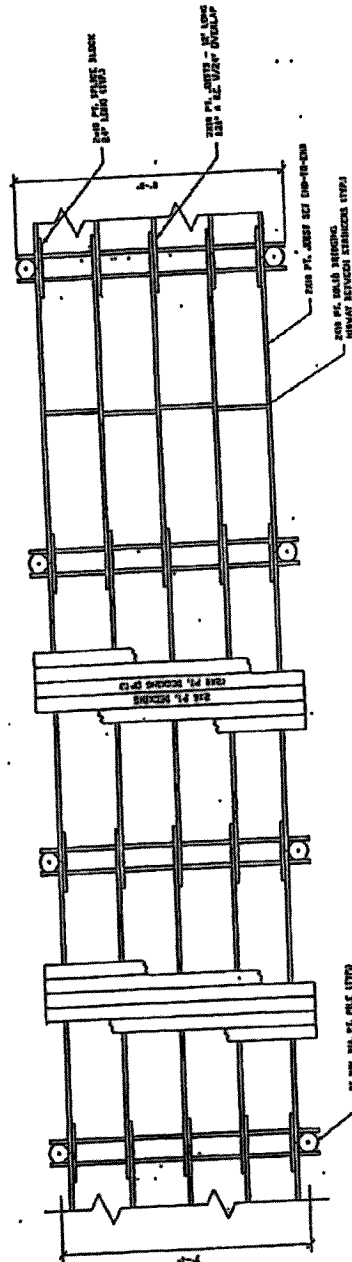
FLAGLER BEACH WEST QUADRANGLE
FLORIDA
7.5 MINUTE SERIES (TOPOGRAPHIC)

SECTION 12, TOWNSHIP 12 S, RANGE 31 E





Mann Engineering, Inc. 232 South Yonge St. Ormond Beach, Florida 32176
 Telephone: (904) 573-7640 Fax: (904) 573-3527

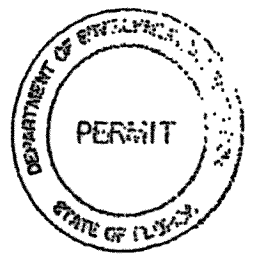


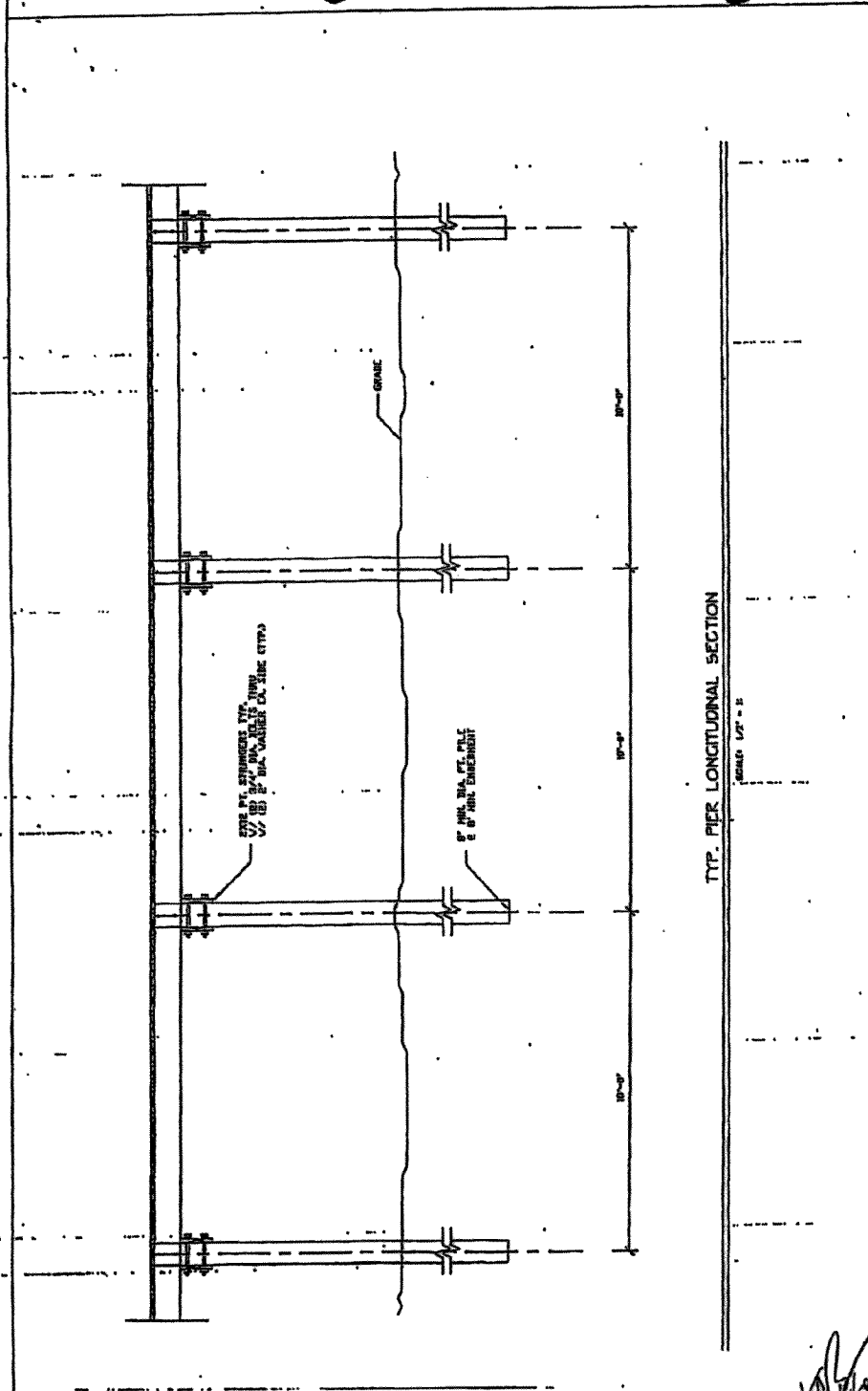
TYP. PICE PLAN VIEW / FRAMING PLAN

SCALE: 1/8\"/>

Applicant: 110 HOLLY AVE. CORPORATION
 Water Body: HALIFAX RIVER
 County: FLAGLER
 Datum: NGVD(1929)

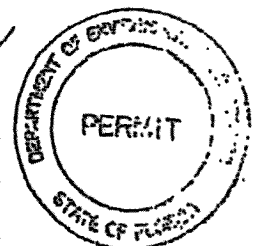
Purpose: DOCKING SLIPS
 Original Work ☒ Maintenance ☐
 Sheet No.: 2 of 15
 Date: 5/11/98

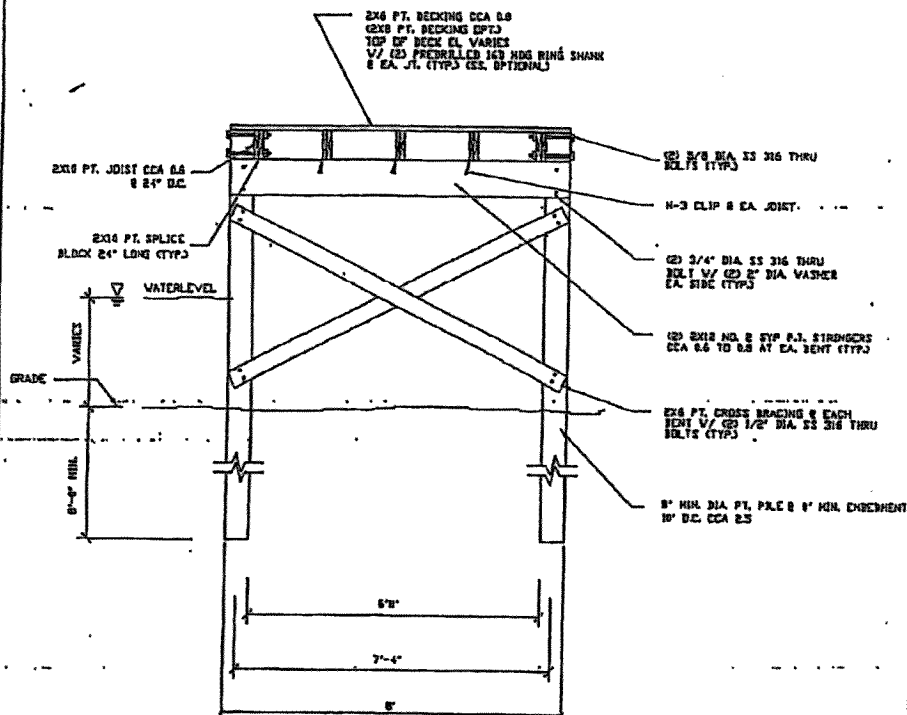




Applicant: 110 HOLLY AVE. CORPORATION
 Water Body: HALIFAX RIVER
 County: FLAGLER
 Datum: NGVD(1929)

Purpose: DOCKING SLIPS
 Original Work ☒ Maintenance ☒
 Sheet No.: 3 of 15
 Date: 5/11/98



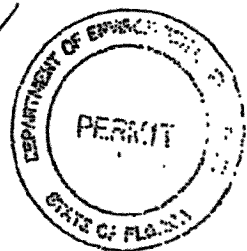


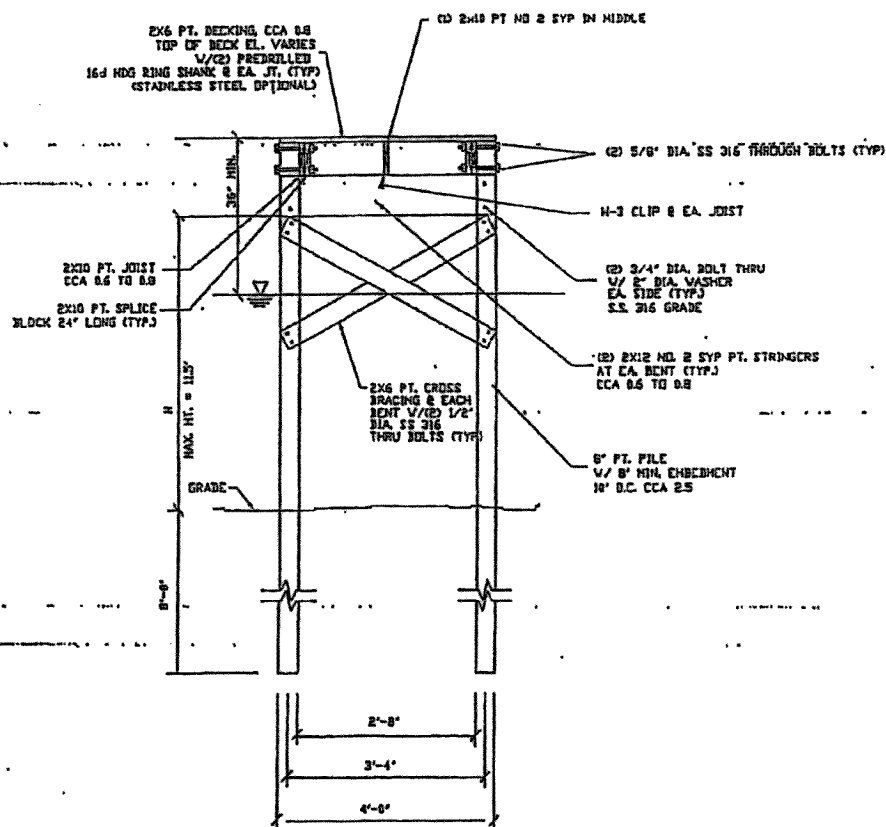
TYP. PIER CROSS
 SECTION DETAIL

SCALE: 1/2" = 1'

Applicant: 110 HOLLY AVE. CORPORATION
 Water Body: HALIFAX RIVER
 County: FLAGLER
 Datum: NGVD(1929)

Purpose: DOCKING SLIPS
 Original Work ☒ Maintenance ☐
 Sheet No.: 4 of 15
 Date: 5/11/98



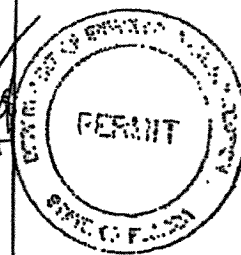


TYP. DOCK CROSS
 SECTION DETAIL

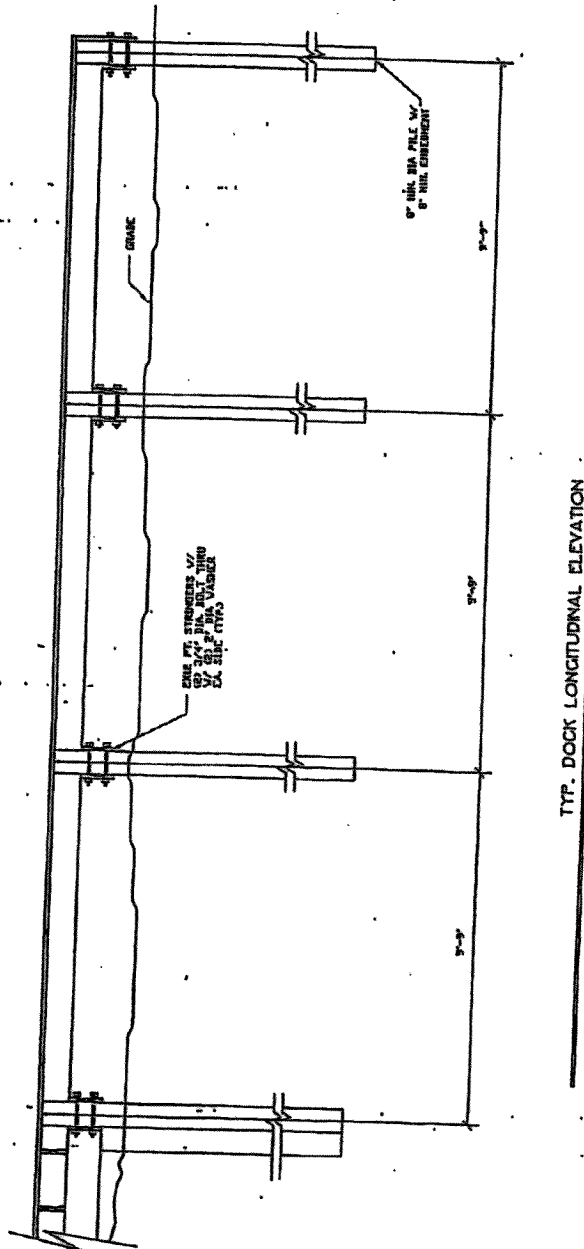
SCALE: 1/2" = 1'

Applicant: 110 HOLLY AVE. CORPORATION
 Water Body: HALIFAX RIVER
 County: FLAGLER
 Datum: NGVD(1929)

Purpose: DOCKING SLIPS
 Original Work ☒ Maintenance ☐
 Sheet No.: 5 Of 15
 Date: 5/11/98



Alann Engineering, Inc. 232 South Yonge St. Ormond Beach, Florida 32176
Telephone: (407) 673-7640 Facsimile: (407) 673-3027



TYP. DOCK LONGITUDINAL ELEVATION

Applicant: 110 HOLLY AVE. CORPORATION

Water Body: HALIFAX RIVER

County: FLAGLER

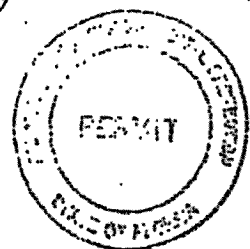
Datum: NGVD(1929)

Purpose: DOCKING SLIPS

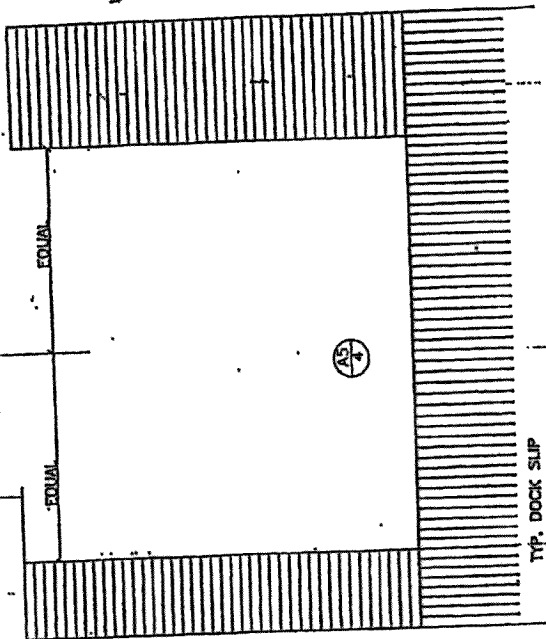
Original Work ☒ Maintenance ☐

Sheet No.: 7 of 15

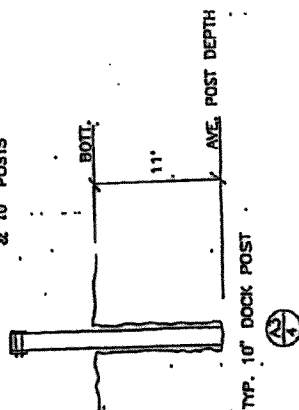
Date: 5/11/98



DETAIL SHOWING LOCATION OF MOORING POST, SET OUT 5' FROM FACE OF DOCK
 CENTERED IN BETWEEN SLIPS AS NOTED

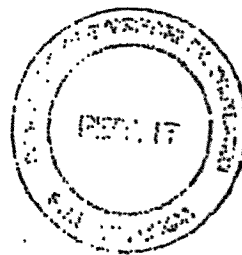


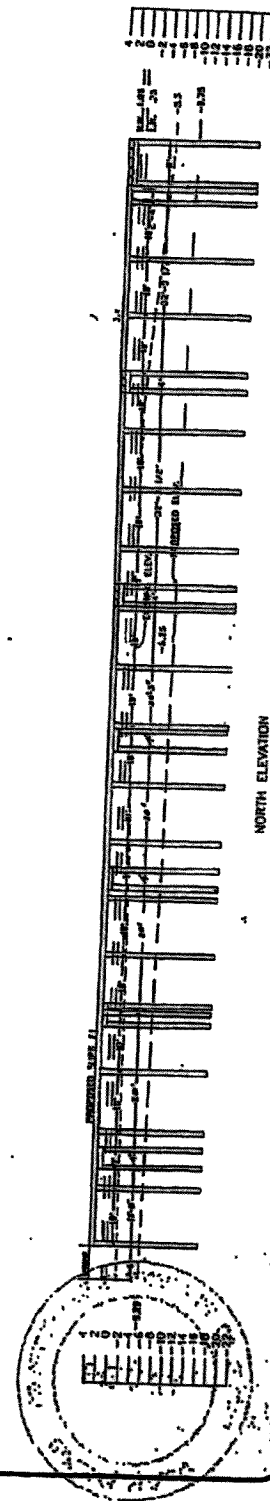
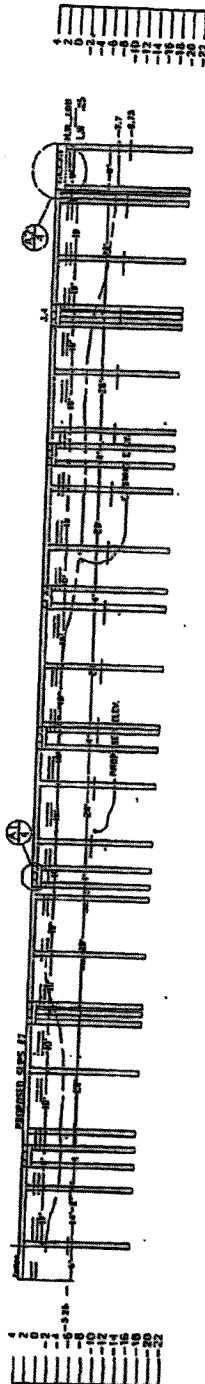
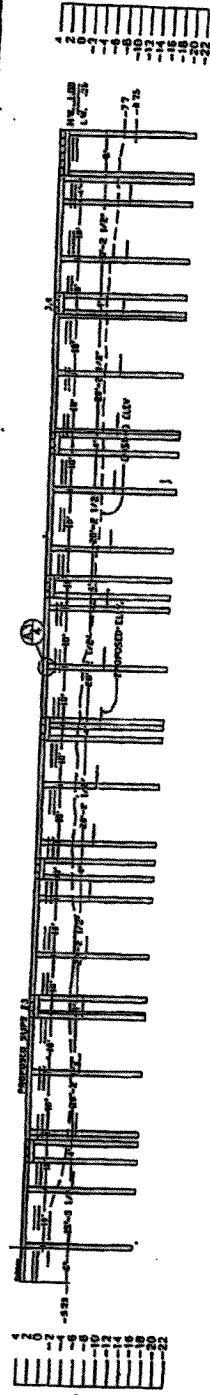
2-3/8" S.S. BOLTS THRU 2X10"
 & 10" POSTS



Applicant: 110 HOLLY AVE. CORPORATION
 Water Body: HALIFAX RIVER
 County: FLAGLER
 Datum: NGVD(1929)

Purpose: DOCKING SLIPS
 Original Work ☒ Maintenance ☐
 Sheet No.: 8a of 15
 Date: 5/11/98



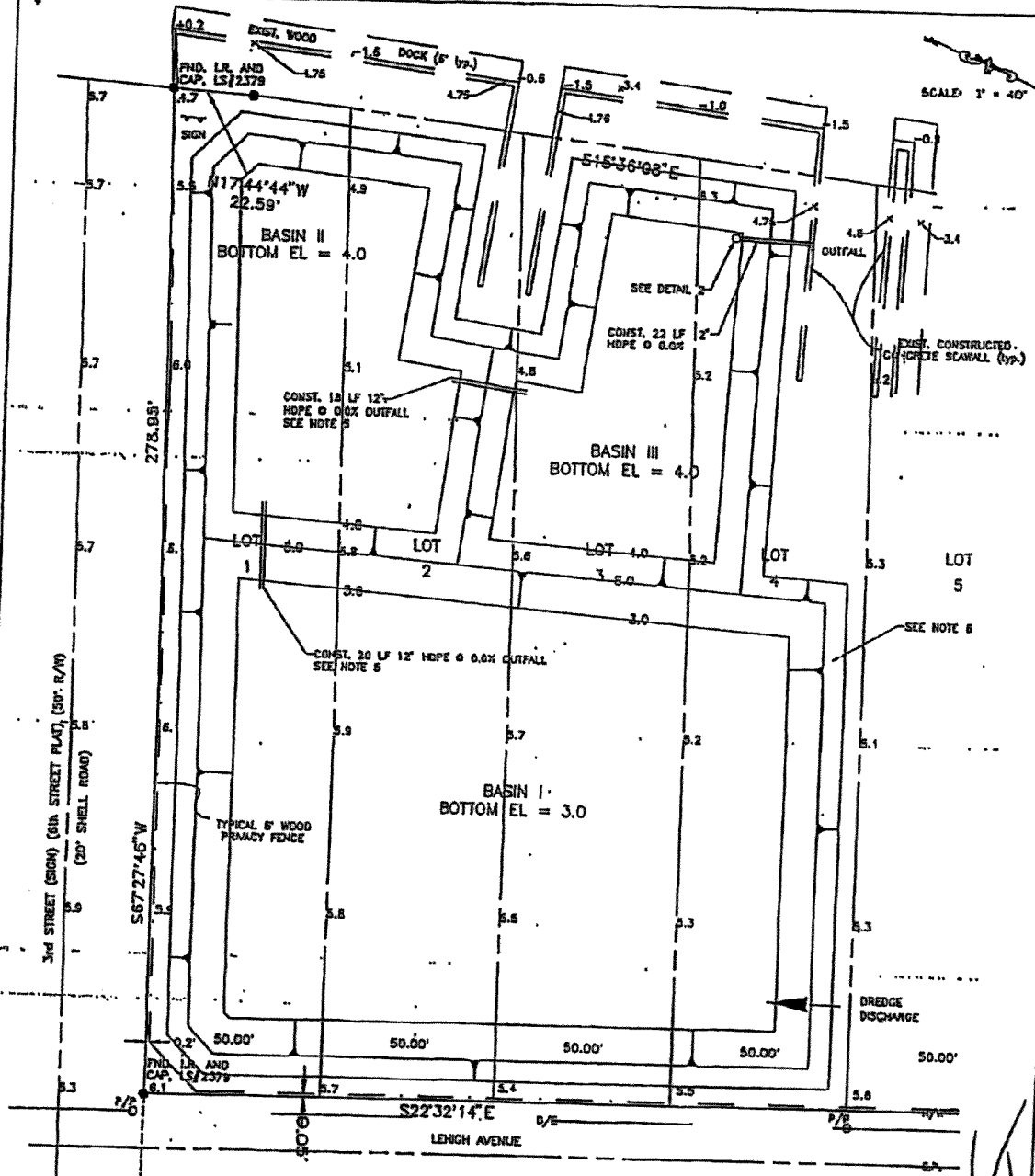


NORTH ELEVATION
 FLAGLER BEACH MARINA
 131 LENOX AVENUE
 FLAGLER, FLORIDA

SCALE 1/8" = 1'-0"

ELEVATION NORTH

Alann Engineering Group, Inc. 232 South Yonge St. Ormond Beach, Florida 32176
 Telephone: (904) 673-7640 Facsimile: (904) 673-3927



DREDGING BASINS - DRAINAGE PLAN

Applicant: 110 HOLLY AVENUE CORP.

Water Body: HALIFAX RIVER

County: FLAGLER

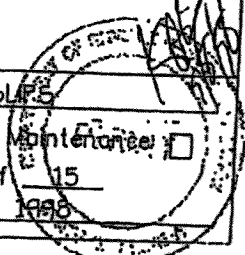
Datum: NGVD (1929)

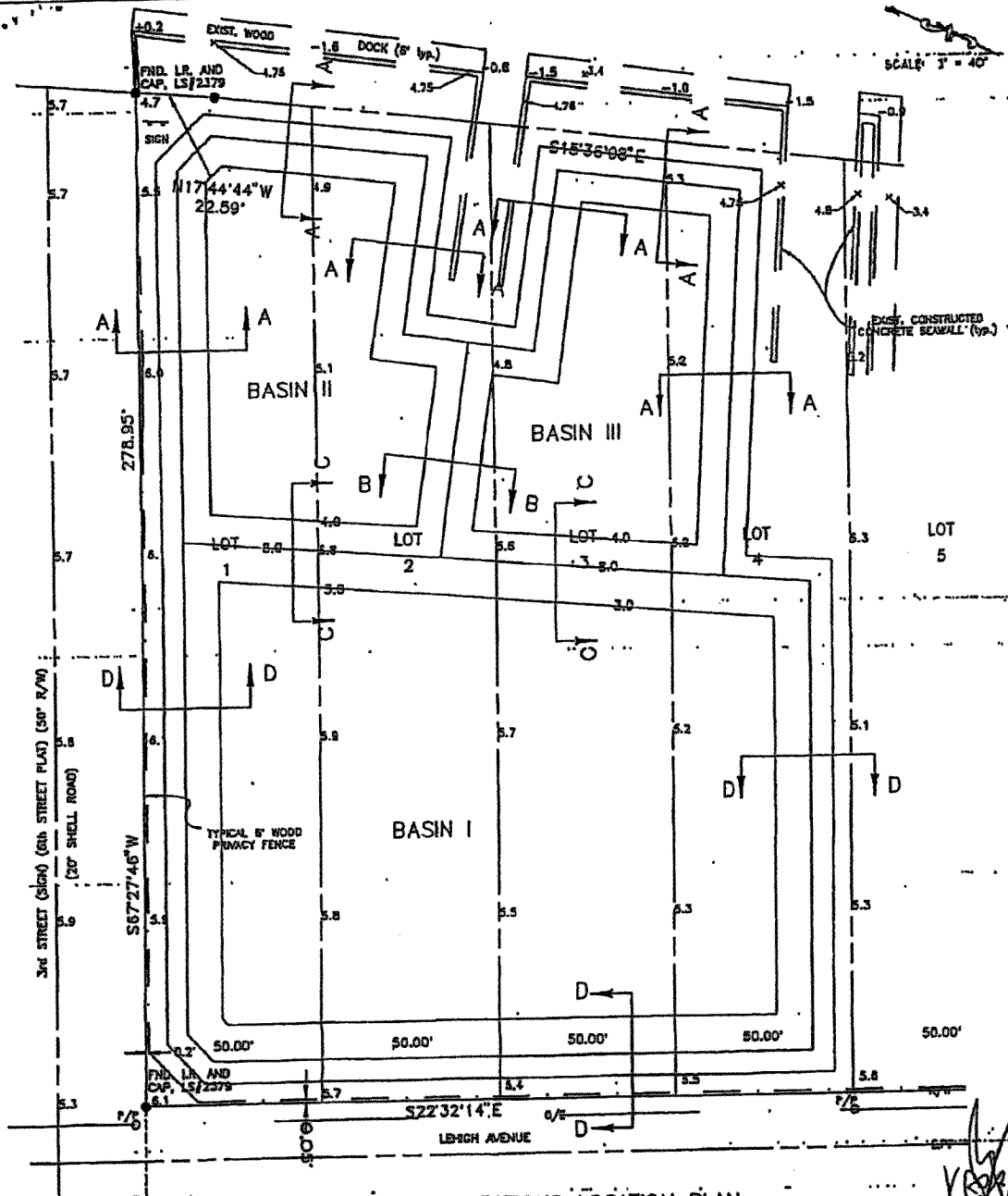
Purpose: DOCKING SLIPS

Original Work ☒ Maintenance ☐

Sheet No.: 10 of 15

Date: SEPTEMBER 4, 1988

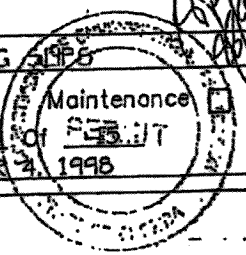




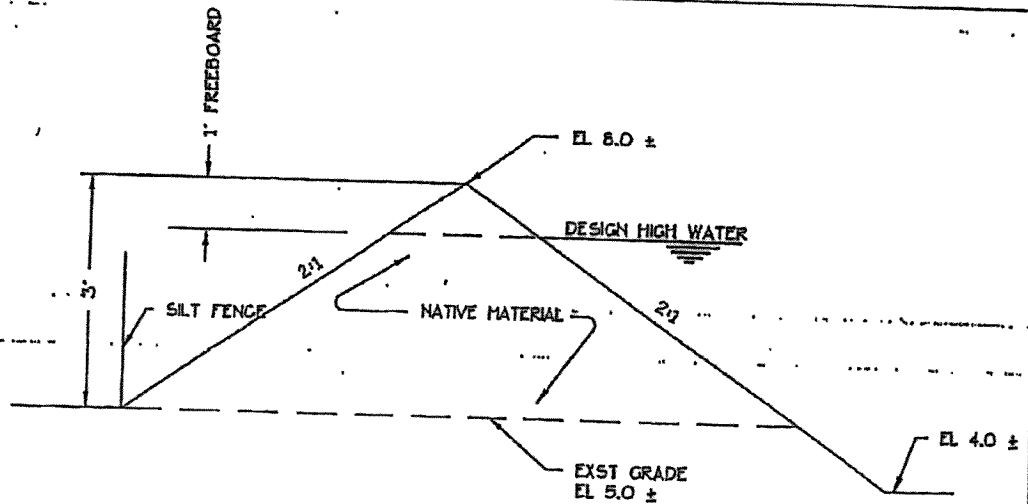
DREDGING BASINS - SECTIONS LOCATION PLAN

Applicant: 110 HOLLY AVENUE CORP.
 Water Body: HALIFAX RIVER
 County: FLAGLER
 Datum: NGVD (1929)

Purpose: DOCKING
 Original Work ☒ Maintenance ☐
 Sheet No.: 11 of 15
 Date: SEPTEMBER 4, 1998

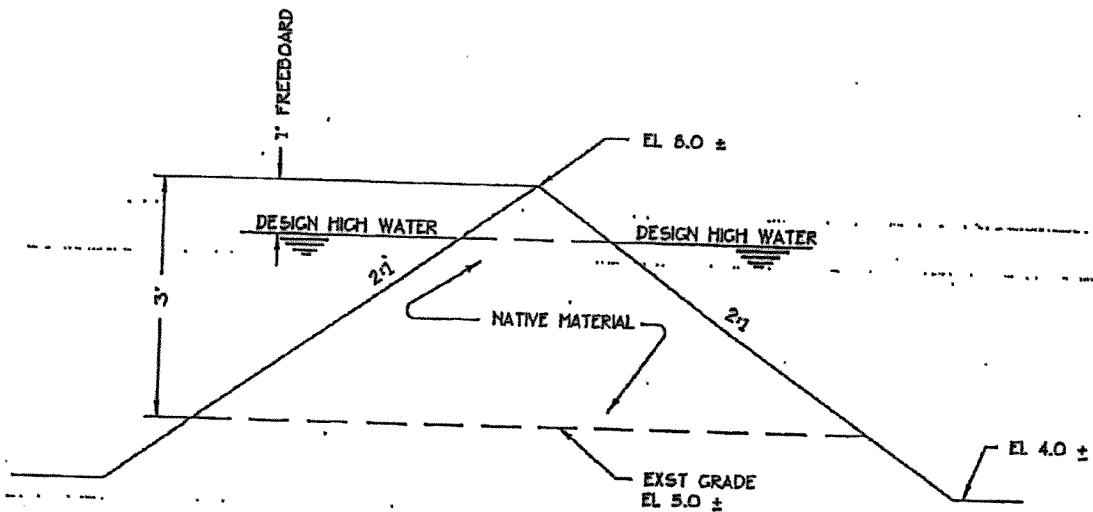


Alam Engineering Group, Inc. 232 South Yonge St. Ormond Beach, Florida 32176
 Telephone: (904) 673-7640 Facsimile: (904) 673-8927



TYPICAL BERM SECTION A-A

N.T.S.



TYPICAL BERM SECTION B-B

N.T.S.

Applicant: 110 HOLLY AVENUE CORP.

Water Body: HALIFAX RIVER

County: FLAGLER

Datum: NGVD (1929)

Purpose: DOCKING SLIPS

Original Work ☒

Maintenance ☐

Sheet No.: 12

Date: SEPTEMBER

F15
1998

STATE OF FLORIDA

COUNTY OF _____

KNOW ALL PERSONS BY THESE PRESENTS THAT in consideration for the issuance of Florida Department of Environmental Protection permit number 18-140599-001-EI issued pursuant to the requirements of Chapter 373 (formerly Section 403.918), Florida Statutes, and Sections 62-330 and 62-343, Florida Administrative Code, to _____ on _____, 199____, (Grantor) has granted to the state of Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida (Grantee), a conservation easement in accordance with Section 704.06, Florida Statutes, in and over the real property in _____ County, Florida, as set forth in the legal description attached hereto as Exhibit A.

As used herein, the term Grantor shall include any successor or assignee of the Grantor, and the term Grantee shall include any successor or assignee of the Grantee.

It is the purpose and intent of this Conservation Easement to assure that the subject lands (with the exception of included wetlands which are to be enhanced or created as specified in the aforementioned permit) will be retained and maintained forever predominantly in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement. The included wetlands which are to be enhanced or created shall be maintained forever in the enhanced or created conditions required by the aforementioned permit.

Except for such specific activities as authorized pursuant to Florida Department of Environmental Protection permit no. _____, including but not limited to creation, enhancement and maintenance of wetlands as specified mitigation in said permit, the following activities are prohibited on the property subject to this Conservation Easement:

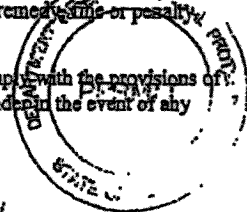
1. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground, however, one (1) passive recreational structure elevated a minimum of three (3) feet above grade and having a maximum walkway width of five (5) feet, may be authorized by the Department;
2. Dumping or placing of soil or other substances or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs, or other vegetation; with the exception of nuisance and exotic plant species as may be required by Grantee;
4. Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface;
5. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
7. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas, and
8. Acts or uses detrimental to the preservation of any features or aspects of the property having historical, archaeological or cultural significance.

It is understood that the granting of this Conservation Easement entitles the Grantee or its authorized representatives to enter the above-described land in a reasonable manner and at reasonable times to assure compliance.

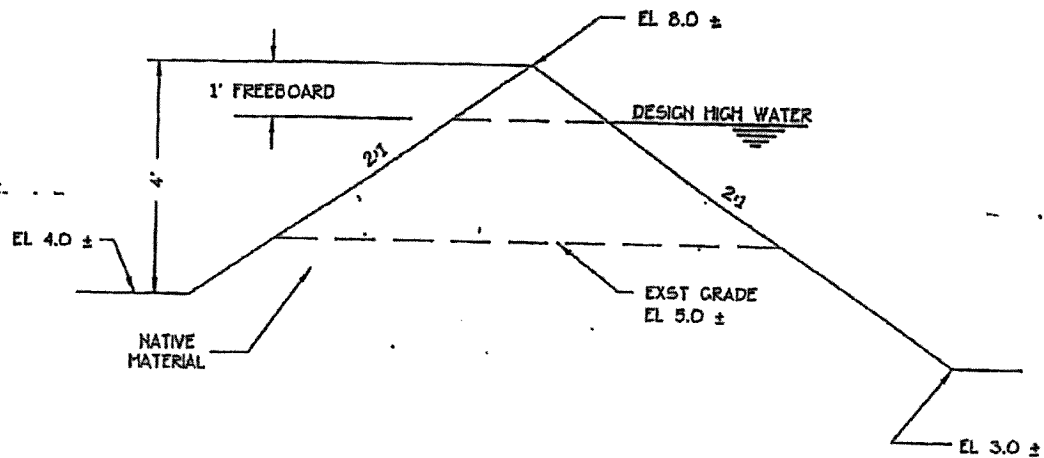
The Grantor on behalf of itself and its successors or assigns hereby agrees to bear all costs and liability relating to the operation and maintenance of the lands subject to this Conservation Easement in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement, including the maintenance of enhanced or created wetlands in the vegetative and hydrologic condition required by the aforementioned permit, and Grantor does hereby indemnify and hold harmless the Grantee from same. The Conservation Easement hereby granted and the obligation to retain and maintain the land forever predominately in the vegetative and hydrologic condition as herein specified shall run with land and shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of the Grantee and its successors and assigns.

The terms and conditions of this Conservation Easement may be enforced by the Grantee by injunctive relief and other appropriate available remedies, and Grantor consents that venue for such enforcement actions shall lie exclusively in the circuit court of the Second Judicial Circuit, in Leon county, Florida. In any enforcement action in which the Grantee prevail, grantee shall be entitled to recover reasonable attorneys' fees and costs in the trial and appellate courts, in addition to the cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement or to the vegetative and hydrologic condition required by the aforementioned permit. These remedies are in addition to any other remedy or penalty which may be applicable under Chapter 403 and 373, Florida Statutes.

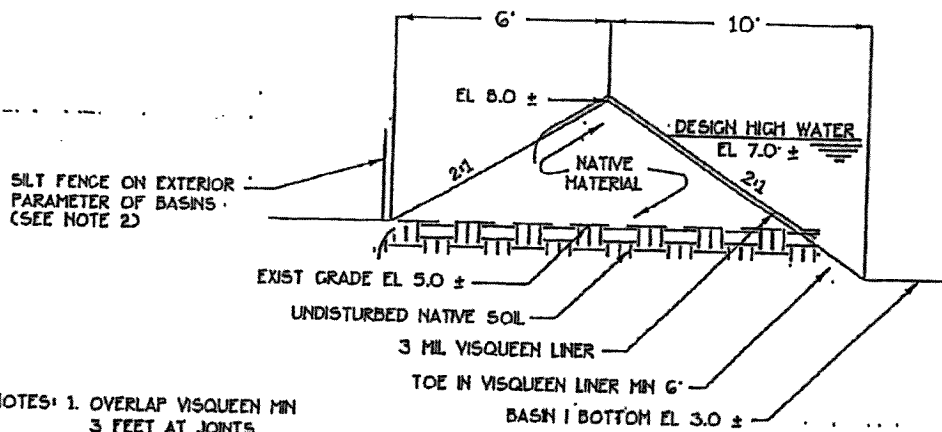
Any forbearance on behalf of the Grantee to exercise its rights in the event of the failure of Grantor to comply with the provisions of this Conservation Easement shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent failure of the Grantor to comply.



Alonso Engineering Group, Inc. 232 South Yonge St. Ormond Beach, Florida 32176
 Telephone: (904) 673-7840 Facsimile: (904) 673-6927



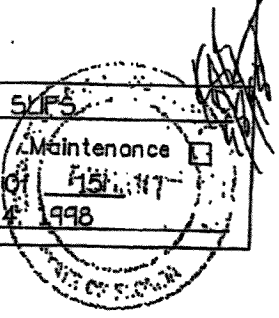
TYPICAL BERM SECTION C-C
 N.T.S.



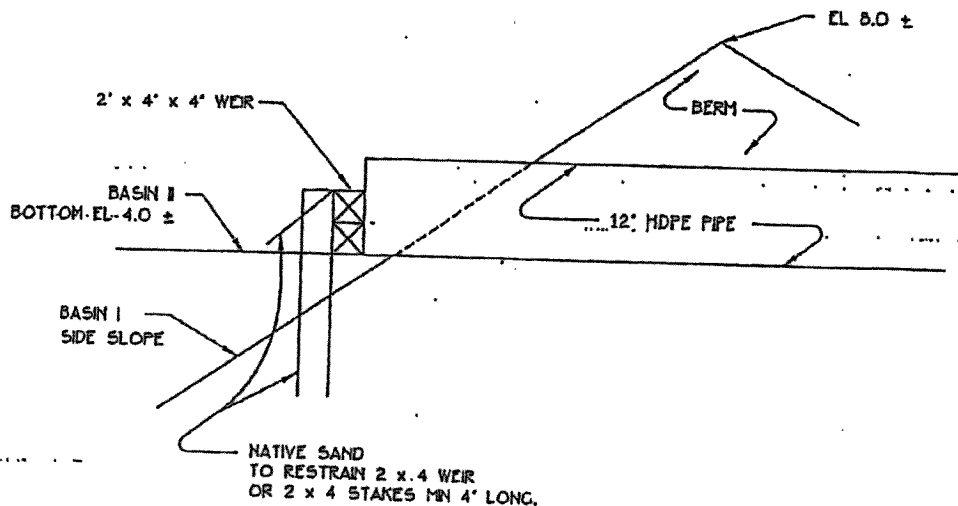
- NOTES: 1. OVERLAP VISQUEEN MIN 3 FEET AT JOINTS
 2. OMIT SILT FENCE WHERE ADJACENT AREA IS BASIN 1 OR BASIN 2.

TYPICAL BERM SECTION D-D
 N.T.S.

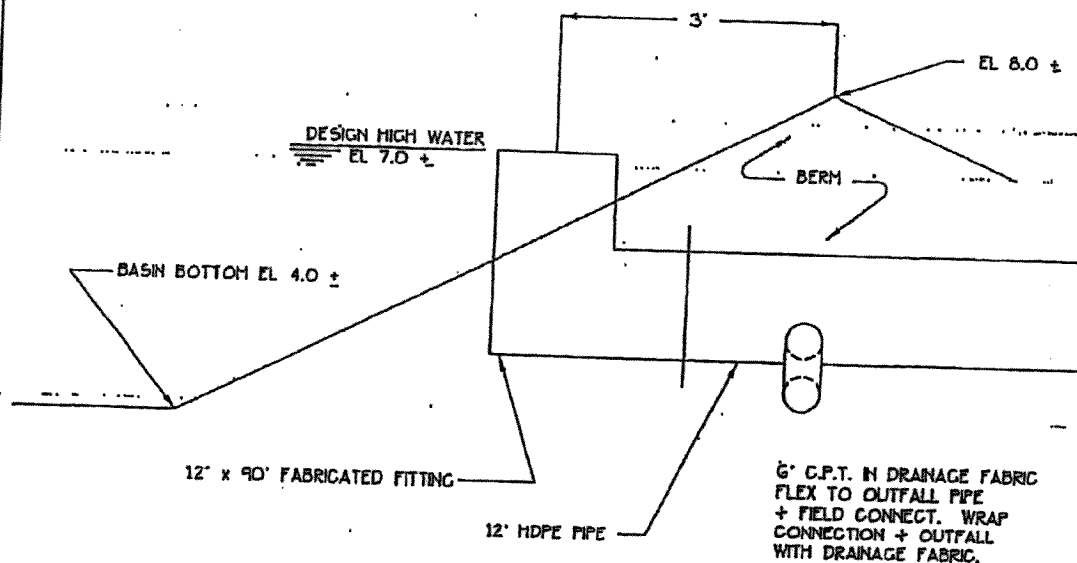
Applicant: <u>110 HOLLY AVENUE CORP.</u>	Purpose: <u>DOCKING SLIPS</u>
Water Body: <u>HALIFAX RIVER</u>	Original Work <input checked="" type="checkbox"/> Maintenance <input type="checkbox"/>
County: <u>FLAGLER</u>	Sheet No.: <u>13</u> of <u>15</u>
Datum: <u>NGVD (1929)</u>	Date: <u>SEPTEMBER 4, 1998</u>



Alonso Engineering Group, Inc. 232 South Yonge St. Ormond Beach, Florida 32178
 Telephone: (904) 673-7840 Facsimile: (904) 673-8927



DETAIL 1 - BASIN I & II OUTFALL
 N.T.S.



DETAIL 2 - BASIN III OUTFALL
 N.T.S.

Applicant: 110 HOLLY AVENUE CORP.

Water Body: HALIFAX RIVER

County: FLAGLER

Datum: NGVD (1929)

Purpose: DOCKING SLIPS

Original Work ☒

Sheet No.: 14

Date: SEPTEMBER

Maintenance ☐

PERMIT

1998

STATE OF FLORIDA

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand
and seal on this ____ day of _____, 199__.

Signed, sealed, and
delivered in our presence of:

WITNESS GRANTOR

WITNESS GRANTOR

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before this

(date) by _____
(name of person acknowledging), who is personally known to me or
who has produced _____ (type of identification) as
identification and who did (did not) take an oath.

(SEAL)

SIGNATURE

PRINT NAME

TITLE

SERIAL NUMBER

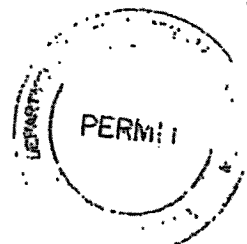


EXHIBIT G

DEPARTMENT OF THE ARMY PERMIT

Permittee: MR. HOWARD SKLAR
110 Holly Avenue Corporation
3400 John Anderson Drive
Ormond Beach, Florida 32178

Permit No: 1997-01994(IP-JG)

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

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

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

Project Description: You are authorized to remove 16 existing boat slips and construct a commercial marina facility with a total of 82 boat slips. The marina will consist of three main access piers, each 8 feet wide and approximately 190 feet long with an 8-foot-wide by 81-foot-long "T" platform at the waterwardmost end. Multiple finger piers will be located on each main pier as shown on the attached drawings. Sewage pump-out facilities will be provided but no fueling facilities. You are also authorized to hydraulically dredge an area of 1.62 acres to create a marina basin with depths varying from -5.25 feet NGVD to -9.75 feet NGVD. The spoil material is to be placed in three separate spoil basin areas for dewatering. The work described above is to be completed in accordance with the 12 pages of drawings affixed at the end of this permit instrument.

Project Location: The project is located in the Intracoastal Waterway (IWW) at 131 Lehigh Avenue (Flagler Bridge Marina), in Section 12, Township 12 South, Range 31 East, Flagler Beach, Flagler County, Florida.

Latitude & Longitude: Latitude.....29°28'45.7" North
Longitude...81°08'13.6" West

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on November 1, 2004. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

☒ → ORIGINAL PERMITTEE COPY
→ ORIGINAL CORPS OF ENGINEERS COPY
→ UNOFFICIAL COPY - FOR RECORDS ONLY

EXHIBIT H



Jon Bush
Governor

Department of Environmental Protection

Northeast District
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256-7590

Voice 904-887-3300 FAX 904-448-4366

Callean M. Castillo
Secretary

SUBMERGED LANDS AND ENVIRONMENTAL RESOURCES PROGRAM

October 31, 2005

Mr. Howard Sldar
c/o 110 Holly Avenue Corporation
P.O. Box 280
Flagler Beach, FL 32136

RE: Modification of Permit No.: 18-140599-001-EI
by Modification No.: 18-140599-004-EM

Dear Mr. Sldar:

Your request to modify the above permit has been reviewed by Department staff in accordance with Section 62-143.100, Florida Administrative Code (F.A.C.). Your permit was issued under the authority of Part IV of Chapter 373, Florida Statutes (S.F.), and Title 62, F.A.C., Chapter 253 and Chapter 258, F.S., and Chapter 18-20, F.A.C., if located within an Aquatic Preserve, and Chapter 18-21, and section 62-343.075, F.A.C., and the policies of the Board of Trustees and in accordance to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., and a Coordination Agreement Between the US Army Corps of Engineers, Jacksonville District, and the Department for a State Programmatic General Permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 401 of the Clean Water Act. This permit contains a regulatory authorization for the construction and operation of the system, a proprietary authorization for the use of sovereignty submerged lands for private purposes, if applicable, and the Federal State Programmatic General Permit (SPGP) for activities in Wetlands and/or Waters of the United States, if applicable.

The requested modifications are:

1. Remove Regulatory Specific Condition No.: 22. This condition states:

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

By copy of this letter, Regulatory Specific Condition No. 22 is deleted.

2. Revise Regulatory Specific Condition No.: 23. This condition states:

"Twenty-four (24) of the 82 permitted wet slips shall be utilized by sailboats only."

By copy of this letter, and in lieu of the above deletion, Regulatory Specific Condition No. 23 shall be replaced as follows and incorporated into the above referenced permit:

- 23 Fifty (50) of the 82 permitted wet slips are to be utilized by houseboats and thirty-two (32) of the 82 permitted wet slips are to be transient slips, with no power boats occupying slips on a long term basis.

Printed on recycled paper

Mr. Howard Sklar
Permit No.: 18-140599-001-EI
Modification No.: 18-140599-004-EM
October 31, 2005

1. Revise Regulatory Specific Condition No.: 24. This condition states:

"The number of boats stored on trailers or storage racks on the adjacent uplands shall be limited to 72."

By copy of this letter, and in lieu of the above deletion, Regulatory Specific Condition No. 24 shall be replaced as follows and incorporated into the above referenced permit:

23. The number of boats stored on trailers or storage racks on the adjacent uplands shall be limited to 36.

4. To include Regulatory Specific Condition No.: 24.

By copy of this letter, and in lieu of the above conditions, the following Regulatory Specific Condition shall be incorporated into the above referenced permit:

24. Since the facility currently has an onsite marina manatee educational program, thirty days before the requested changes take place, the permittee shall provide FWC's Imperiled Species Management Section with a site plan or drawing that shows the location of manatee signs and/or kiosks, a list of manatee education materials currently being made available at the facility, and photographs of the signs currently installed so that it can be determined that they contain up-to-date information, are in good condition and are appropriately placed at the facility. Contact information: Ms. Jessica Oglesby, Florida Fish and Wildlife Conservation Commission, Imperiled Species Management Section at 620 South Meridian Street, 6A, Tallahassee, Florida 32399-1600 (telephone 850/922-4330).

REGULATORY AUTHORIZATION FOR CONSTRUCTION AND OPERATION

The above changes are not expected to adversely affect water quality and will not be contrary to public interest and not expected to result in any adverse environmental impact or water quality degradation. The authority sought under the provisions of Part IV of Chapter 373, F.S., and Title 62, F.A.C. to construct and operate the system is modified as described above.

PROPRIETARY AUTHORIZATION

Your project does not occur on state-owned submerged lands and will not require authorization from the Department to use these lands for private purposes in accordance with section 253.77, Florida statutes.

SPGP - STATE PROGRAMMATIC GENERAL PERMIT AUTHORIZATION

The requested modification to the activity as described herein or on the attached drawing(s) or documents(s), remains in non-compliance with the US Army Corps of Engineers (Corps) State Programmatic General Permit (SPGP) in accordance with Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Federal authorization for your project can not be given in conjunction with this permit.

By copy of this letter and the accompanying drawings and/or documents, we are notifying all necessary parties of the modification.

This letter of approval does not alter the original expiration date, those remaining conditions not specifically addressed herein, or monitoring requirements of the permit. This letter, accompanying drawings and/or documents must be attached to the original permit.

RIGHTS OF AFFECTED PARTIES

This permit and consent to use sovereign submerged lands is hereby granted. This action is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. Because an administrative hearing may result in the reversal or substantial modification of this action, the applicant is advised not to commence construction or other activities until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time have expired.

Mediation is not available.

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 of the Florida Statutes. The petition must contain the information set forth below and 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.

Under rule 62-110.106(4) of the Florida Administrative Code, 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, before the applicable deadline. 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. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

In accordance with rules 28-106.111(2) and 62-110.106(3)(x)(4), petitions for an administrative hearing by the applicant 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) of the Florida Statutes must be filed within 14 days of receipt of the written notice.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing 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 of the Florida Statutes.

A petition that disputes the material facts on which the Department's action is based 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, and telephone number of the petitioner; 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 are or 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 petitioner 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; 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.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301.

Under sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

Executed in Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

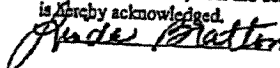

Russell A. Price
Environmental Manager

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this MODIFICATION and all copies were mailed by certified mail before the close of business on 10/21/05 to the listed persons.

FILING AND ACKNOWLEDGEMENT

FILED, on this date, under section 120.52(7), Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



Copies furnished to:

U.S. Army Corps of Engineers, Jacksonville

EXHIBIT I

Wiley

6-2-98

The News Journal
Volusia-Flagler Counties

STATE OF FLORIDA
DEPARTMENT OF
ENVIRONMENTAL PROTECTION
NOTICE OF APPLICATION
The Department of Environmental
Protection gives notice of receipt of
an application (File No.
18-140589-001-E1) from Mr. Howard
Sklar, d.b.a. Flagler Bridge Marina,
181 Lehigh Avenue, Flagler Beach,
Florida, 32118, to construct a 90 slip
marina and provide navigational

The project site is located on Shingle
Creek, a portion of the Intracoastal
Waterway (ICW) in Section 12, Town-
ship 12 South, Range 31 East, Flagler
Beach, Flagler County.
This application is being processed
and is available for public inspection
during normal business hours, 8:00
a.m. to 5:00 p.m., Monday through
Friday, except legal holidays, at the
Department of Environmental Protec-

tion, 601 Highway 1 South, Suite 100,
Bunnell, Florida 32110. Comments or
objections should be filed in
writing with the Department at this
address. Comments or objections
should be submitted as soon as possi-
ble to insure that there is adequate
time for them to be considered in the
Department's decision on the applica-
tion.
Legal L32905, June 2, 1998, it.

Howard Sklar

RECEIVED

JUN - 3 1998

DEPT. OF ENV. PROTECTION
NORTHEAST DISTRICT - JAX

RECEIVED

FEB - 5 1999

The News-Journal

Published Daily and Sunday
Daytona Beach, Volusia County, Florida

DEPT. OF ENV. PM.
NORTHERN DISTRICT

State of Florida,
County of Volusia:

Before the undersigned authority personally appeared
Celeste Hart

who, on oath says that he is.....
Classified Sales Manager

of The News-Journal, a daily and Sunday newspaper, published
at Daytona Beach in Volusia County, Florida; that the
attached copy of advertisement, being a.....

Notice of Intent to Issue Permit

For Construction of an
in the matter of.....
82 Slip Docking Facility

in the Court, was published

in said newspaper in the issues.....

February 3, 1999

Affiant further says that The News-Journal is a newspaper
published at Daytona Beach, in said Volusia County, Florida,
and that the said newspaper has heretofore been continuously
published in said Volusia County, Florida, each day and
Sunday and has been entered as second-class mail matter at the
post office in Daytona Beach, in said Volusia County, Florida,
for a period of one year next preceding the first publication of
the attached copy of advertisement; and affiant further says
that he has neither paid nor promised any person, firm or
corporation any discount, rebate, commission or refund for the
purpose of securing this advertisement for publication in the
said newspaper.

CL Hart

Sworn to and subscribed before me

this 3rd day of February

A.D. 1999



Notary Public, State of Florida
My Comm. Exp. Apr. 13, 1999
Comm. No. CC 457714

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION NOTICE OF INTENT TO ISSUE PERMIT

The Department of Environmental Protection gives notice of its intent to issue a permit (File No. 12-140559-001-21) to Howard Sklar, d.b.a. Flagler Bridge Marina, to construct an 82-slip docking facility.

The activity is located on Smith Creek (OCW), a Class III waterbody of Flagler County, in Section 12, Township 12S, Range 11E.

The Department will issue the permit with the attached conditions unless a timely petition for an administrative hearing is filed under sections 120.553 and 120.57 of the Florida Statutes, or all parties reach a written agreement on mediation as an alternative remedy under section 120.573 before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing. Mediation does not result in a decision. The procedures for requesting mediation are set forth below, followed by the procedures for requesting mediation.

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative hearing in accordance with sections 120.553 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 99 Commonwealth Boulevard, Mail Stop 25, Tallahassee, Florida 32399-8000. Petitions filed by the permit applicant or any of the parties listed below must be filed within fourteen days of receipt of this notice of intent. Petitions filed by any other person must be filed within fourteen days of publication of the public notice or within fourteen days of receipt of this notice of intent, whichever occurs first. A petitioner must mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition (or a request for mediation, as discussed below) within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.553 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 22-5.207 of the Florida Rules of Civil Procedure.

EXHIBIT J

FLAGLER BRIDGE BOATWORKS AND MARINA INC.

June 20, 2001

To: Acting City Manager
City of Flagler Beach
Sandy Bolser

I would like to discharge our facilities future pump out waste directly into the cities sewer system starting within the next six (6) month period.

Enclosed are two (2) surveys that I received from Jan R. Delaney Florida Department of Environmental Protection, Division of Law Enforcement, Bureau of Operation Support and Planning Manager. The first is from the state of Maryland, the second from the state of Oregon. I would like a reply within a reasonable amount of time, so that I can purchase the acceptable equipment. If you have any questions, you can call at 904-439-0081, or Mr. Delaney at 1-850-5757 Ext. 178.

Sincerely Yours,

Howard Sklar

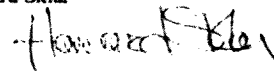


EXHIBIT K

FLAGLER BRIDGE BOATWORKS AND MARINA INC.

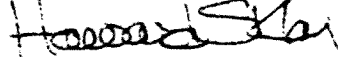
July 18, 2001

City Clerk
City Of Flagler Beach
P.O. Box 70
Flagler Beach Fl. 32136

To whom it may concern:

On June 20, 2001 we wrote a letter to the Acting City Managers office regarding a pump out facility to be built on our property with surveys included. We have yet to hear back from anyone at the city regarding this and would like to know the criteria for compliance on this project. We are asking if there any perimeters that are set for a project of this kind. Please inform us as soon as possible on this matter

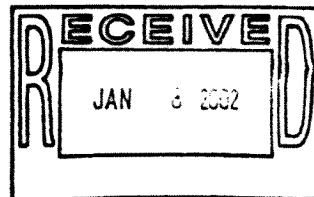
Thank You,



Howard Sklar

EXHIBIT L

Flagler Bridge Boatworks and Marina, Inc.
P.O. Box 280
Flagler Beach, Florida 32136



January 8, 2002

Flagler Beach City Hall
Mr. Bill Ward
Building & Zoning Director
116 South 3rd Street
Flagler Beach, Florida 32136

Re: Waste Pump

Dear Mr. Ward:

I sent two letters dated June 20th and July 18, 2001 regarding pumping waste into the city sewer system with the enclosure of two surveys.

I have not heard from you on this matter and would like to have a response in order to purchase the acceptable equipment.

Thank you.

Sincerely,

Howard Sklar
President

EXHIBIT M



City of Flagler Beach

P.O. Box 70 • 105 South 2nd Street
Flagler Beach, Florida 32136

Phone (904) 517-2000 • Fax (904) 517-2008
Suncom 370-2000 • Suncom Fax 370-2008

January 9, 2002

Howard Sklar
Flagler Bridge Boatworks and Marina, Inc.
P.O. Box 280
Flagler Beach, FL 32136

Dear Mr. Sklar:

In your letter dated January 8, 2002, you indicated that you sent two letters on June 20 and July 18, 2001 regarding pumping sludge from your boatyard to the city sewer. As I advised you then, this is handled by Roger Stephens, Waste Plant Supervisor. However, I will try to assist you in this matter. I spoke with Mr. Stephens today, who advised me that he does not recommend that the City receive your waste sludge, as it is not compatible with the sewer system. He did suggest that you store your waste in a holding area and have a sewer cleanout company pump it down. This is typical of this type of disposal.

In your second letter of January 8, you asked for procedures for installing a fuel facility at your marina. The Department of Agriculture's permitting procedures must be met, prior to obtaining a permit from the City. Your request for gas pumps is a normal boat accessory use for marinas in this district. The City Attorney concurs with this interpretation. Please have your contractor submit plans, specifications and any required state permits with your application to this department for review.

Additionally, the addition to your restaurant was built without proper permits or inspections. As requested, your engineer submitted an acceptable solution for verification and certification of the unpermitted new construction. When you have followed the guidelines of your engineer, and received his certification, you may call me for an inspection. Under no circumstances are you to continue construction until a building permit has been issued. There will be a fine assessed to the building permit fees.

Sincerely,

Bill Ward
Building & Zoning Director

c. Sandra Bolser, Acting City Manager
Daniel Johns, P.E.

EXHIBIT N

110 Holly Avenue Corporation

P. O. Box 280
Flagler Beach, Florida 32136

Phone (386) 439-0081
Fax (386) 439-6800

May 23, 2003

Mr. Bill Ward
Building & Zoning Director
City of Flagler Beach
P. O. Box 70
Flagler Beach, Florida 32136

Dear Mr. Ward:

We are referencing paragraph 1 of your response letter dated January 9, 2002, copy attached, in which you state that Mr. Roger Stephens advised that boatyard waste sludge is not compatible with the City of Flagler Beach sewer system and that the typical type of disposal is to store the boatyard waste in a holding area and have a sewer cleanout company pump it down.

We have contacted the following marinas that have advised us that all of their boatyard waste is fed directly to the sewer line:

City of Daytona Beach	(386) 671-8525
City of Palm Coast	(386) 447-4255
City of St. Augustine	(904) 825-1040
Conch House Marina	(904) 829-5963
Camachee Cove Marina	(904) 829-5676

These findings further substantiate the legitimacy of our request to pump directly into the sewer line. Please let us have your comments concerning the above.

Yours very truly,

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or to the front if space permits.	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>L. Kania</i></p> <p>B. Received by (Printed Name) <input type="checkbox"/> C. Date of Delivery</p> <p><i>L. Kania</i> <i>5/23/03</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below</p> <p>E. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>F. Restricted Delivery (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>1. Addressee's Name</p> <p><i>Mr. Bill Ward</i></p> <p>2. Addressee's Address</p> <p><i>Building & Zoning Director</i></p> <p><i>City of Flagler Beach</i></p> <p><i>P.O. Box 70</i></p> <p><i>Flagler Beach, Florida 32136</i></p>	<p>3. Addressee's Phone Number</p> <p><i>(386) 439-0081</i></p>
<p>4. Addressee's E-mail Address</p> <p><i>wardb@flaglerbeach.com</i></p>	
<p>5. Addressee's Business Title</p> <p><i>Building & Zoning Director</i></p>	
<p>6. Addressee's Business Address</p> <p><i>110 Holly Avenue</i></p> <p><i>Daytona Beach, Florida 32117</i></p>	
<p>7. Addressee's Business Phone Number</p> <p><i>(386) 439-0081</i></p>	
<p>8. Addressee's Business Fax Number</p> <p><i>(386) 439-6800</i></p>	
<p>9. Addressee's Business E-mail Address</p> <p><i>wardb@flaglerbeach.com</i></p>	
<p>10. Addressee's Business Website</p> <p><i>www.flaglerbeach.com</i></p>	
<p>11. Addressee's Business Hours</p> <p><i>9:00 AM - 5:00 PM</i></p>	
<p>12. Addressee's Business Description</p> <p><i>Building & Zoning Department</i></p>	
<p>13. Addressee's Business Type</p> <p><i>City of Flagler Beach</i></p>	
<p>14. Addressee's Business Address</p> <p><i>110 Holly Avenue</i></p> <p><i>Daytona Beach, Florida 32117</i></p>	
<p>15. Addressee's Business Phone Number</p> <p><i>(386) 439-0081</i></p>	
<p>16. Addressee's Business Fax Number</p> <p><i>(386) 439-6800</i></p>	
<p>17. Addressee's Business E-mail Address</p> <p><i>wardb@flaglerbeach.com</i></p>	
<p>18. Addressee's Business Website</p> <p><i>www.flaglerbeach.com</i></p>	
<p>19. Addressee's Business Hours</p> <p><i>9:00 AM - 5:00 PM</i></p>	
<p>20. Addressee's Business Description</p> <p><i>Building & Zoning Department</i></p>	
<p>21. Addressee's Business Type</p> <p><i>City of Flagler Beach</i></p>	

PS Form 3811, August 2001

EXHIBIT O



City of Flagler Beach

P.O. Box 70 • 105 South 2nd Street
Flagler Beach, Florida 32136

Phone (386) 517-2000 • Fax (386) 517-2008
Suncom 370-2000 • Suncom Fax 370-2008

June 2, 2003

Howard Sklar
P.O. Box 280
Flagler Beach, FL 32136

Dear Mr. Sklar:

I received your letter dated May 28, 2003 concerning the pumping of boatyard waste sludge into the City sewer system. In my letter of January 9, 2002, I advised that Roger Stephens recommended against this as he felt the material was not compatible. Please contact him for further information or authorization to dump waste into the City sewer system. All issues concerning the City's wastewater plant should be addressed to Mr. Stephens.

Sincerely,

Bill Ward
Community Development Director

C: City Manager
Wastewater Plant Supervisor

EXHIBIT P

110 Holly Avenue Coporation

P. O. Box 280
Flagler Beach, Florida 32136

Phone (386) 439-0081
Fax (386) 439-6800

June 11, 2003

Mr. Roger Stephens
Wastewater Treatment Plant Supervisor
P. O. Box 70
Flagler Beach, Florida 32136

Re: Sewage Hook-up at Marina

Dear Mr. Stephens:

Thank you for your letter restating your concerns that chemicals in holding tanks may not be amenable to the sewer treatment process. Please be more specific as to what chemicals may be harmful.

When did The City retain Mr. Tim Norman as its consulting engineer and what are his qualifications in the field of wastewater treatment.

Yours very truly,

Howard Sklar
President

HS/am

EXHIBIT Q

110 Holly Avenue Corporation

Phone (386) 439-0081
Fax (386) 439-6800

P. O. Box 280
Flagler Beach, Florida 32136

February 25, 2004

City of Flagler Beach
P. O. Box 70
Flagler Beach, Florida 32136

Attention: Ms. Nancy Ciummo
City Manager

Gentlemen:

On February 23, we spoke with Mr. ^{Boyer} Frank Stephens concerning the possibility of a pumpout facility at Flagler Beach Boatworks & Marina. We explained the expected volume entering the sewer system would be no more than 600 gallons of liquid sewage per week or pumping out 7.5 80-gallon tanks per week.

We are in the process of securing a mobile pumpout station, which will be brought to each boat as needed. We wish to be given permission to proceed with the above project.

Yours very truly,

Howard Sklar
President

HS/am

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only. No Insurance Coverage Provided)

FLAGLER BEACH FL 32136

\$0.37
\$2.30
\$1.75
\$0.00
\$4.42

7002 0510 0004 4823 0401

FLAGLER BEACH FL
FEB 25 2004
PS - 32136

Handwritten: *City of Flagler Beach*
P.O. Box 70
Flagler Beach, FL 32136

EXHIBIT R

110 Holly Avenue Corporation

P. O. Box 280
Flagler Beach, Florida 32136

Phone (386) 439-0081
Fax (386) 439-0800

March 18, 2004

City of Flagler Beach
P. O. Box 70
Flagler Beach, Florida 32136

Attention: Ms. Nancy Ciummo
City Manager

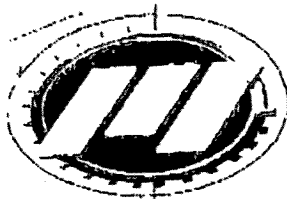
Gentlemen:

On February 25, 2004 we requested permission to proceed with the pumpout facility at Flagler Beach Boatworks & Marina. We are attaching a copy of this letter to which we have received no reply.

As we wish to proceed immediately with this project, please let us hear from you as soon as possible granting the requested approval.

U.S. Postal Service CERTIFIED MAIL RECEIPT <small>(Domestic Use Only; No Insurance Coverage Provided)</small>	First-Class Mail Postage & Fees Paid USPS Permit No. G-10
ZIP+4 in this box •	
37 -	
175	
230	
441	
MAR 18 2004	
USPS-32136	
22136	
P.O. Box 70	
Flagler Beach, FL 32136	

EXHIBIT S



MITTAUER
& ASSOCIATES, INC.
CONSULTING ENGINEERS

4511-4 U.S. HIGHWAY 17
ORANGE PARK, FL 32069
PHONE: (904) 278-0030
FAX: (904) 270-0840

May 4, 2004

VIA FAX
Project File
Chron

Nancy Ciummo, City Manager
City of Flagler Beach
P.O. Box 70
Flagler Beach, FL 32136

RE: Acceptance of Sewage from Marina
Miscellaneous Projects
City of Flagler Beach, Florida
Mittauer & Associates Project No. 0301-09-1

Dear Ms. Ciummo:

We have evaluated the potential discharge of sewage from boats moored at the marina on the City's wastewater treatment plant (WWTP) as requested. It is our opinion that this discharge will not cause problems at the WWTP provided the following conditions are adhered to:

1. Sewage discharge from the marina will be less than 1,500 gpd.
2. Only non-formaldehyde, biodegradable toilet chemicals are allowed to be utilized in the boats moored at the marina.
3. A means to meter the sewage discharged from the marina is provided.
4. Periodic sampling of the wastewater from the marina is performed quarterly until it is demonstrated that the wastewater has no adverse effect on the WWTP. Parameters to be sampled for should include CBOD₅, COD, TSS, formaldehyde and ethylene glycol.

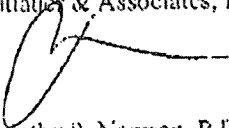
The City should reserve the right to require pretreatment of the marina wastewater or discontinue acceptance into the City's collection system if it causes operational problems at the WWTP.

Discussions with FDEP did not identify any known problems with WWTP's accepting marina sewage. A review of three other coastal communities in the State showed that all allow the discharge of marina sewage into their collection system. Based on current flows, the marina's sewage discharge would constitute 0.25% of the total WWTP flow which should not cause any problems. However, the discharge should be closely monitored initially and discontinued if problems arise.

Ms. Nancy Ciummo, City Manager
May 4, 2004
Page 2

Contact me if you have any questions.

Sincerely yours,
Mittauer & Associates, Inc.

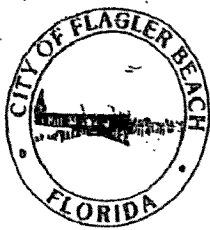


Timothy P. Norman, P.E.
Director of Environmental Services

TPN/bb

cc: Roger Stephens, City of Flagler Beach

EXHIBIT T



City of Flagler Beach

Building, Planning and Zoning Department
P.O. Box 70 • 116 South 3rd Street
Flagler Beach, FL 32136

Phone (386) 517-2000 • Fax (386) 517-2016
Suncom 370-2000 • Suncom Fax 370-2016

11/6

June 7, 2004

Mr. Howard Sklar
110 Holly Avenue Corporation
P.O. Box 280
Flagler Beach, Florida, 32136

Re: Marina Opening; Boat Pump-out Requirements

Dear Mr. Sklar:

As you will recall, on Tuesday, May 25, 2004, at a meeting requested by you and attended by Commissioner Bob Mish, we discussed the above referenced subject. Your primary objective was to obtain direction and requirements to enable you to open the marina as a functional enterprise. Please find below a summary of findings that I have obtained regarding discharge of marina boat pump out materials from your facility into the City of Flagler Beach central wastewater system. My efforts were directed to assure the integrity of public health and welfare as well as the environmental and qualitative impact to the wastewater treatment facility.

I contacted three (3) agencies and explained the circumstances to each representative. In summary, your proposed method of removing boat pumpout waste (holding tank pumpout cart) and direct discharge into the City's wastewater is an accepted practice. However, it is recommended the amount of discharge be metered in some fashion in addition to periodic sampling of marina wastewater discharge to ascertain potential adverse effect on the wastewater treatment plant. It is recommended that the City conduct all testing and bill the marina accordingly. The cost of these services would be attached to the marina water bill. Agreement of an acceptable means of measuring the volume of waste pumped from boats to the sewer system is advocated as well.

On site direct discharge into the central sewer system as opposed to on site holding tank and subsequent removal is a preferred practice. It is my understanding that your site maintains such capability. I presume you would contact all parties associated with initiating such a program for specific administrative procedures.

AGENCY CONTACTED: DISCUSSION SUMMARY

City of Flagler Beach; Wastewater Treatment Plant – Roger Stephens

Impact to plant considered negligible.
Prefers City conduct periodic testing, bill marina accordingly.
Distance of waste material input to treatment plant should more than adequately dilute pumped waste.

Mittauer & Associates, Consulting Engineers - Tim Norman

Expressed opinion that discharge will not cause problems at the treatment plant.
Suggest following conditions:

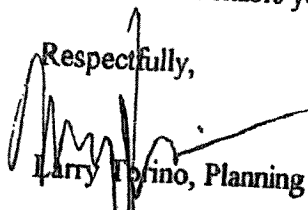
1. Sewage discharge from the marina be less than 1,500 gpd.
2. Boats moored at marina use only non-formaldehyde, biodegradable toilet chemicals.
3. Employ accurate means to measure volume of waste pumped from boats to sewer system.
4. Institute periodic sampling of the wastewater from marina.
5. City reserve right to require pretreatment of marina wastewater or discontinue acceptance into collection system if operational problems are realized at the wastewater treatment plant.

Department of Environmental Protection – Jan Delaney; Bureau of Operation Support and Planning Manager

Prefers direct discharge to City wastewater system.
No objection to mobile portable pumpout cart.
Suggests large pneumatic tires for cart/ facilitate handling at dock.
Investigate Clean Vessel Act for sewer line extension grant (clean out only) if applicable.
Point of Contact for applicant; Jeremy Tyler, DEP, 1-904-807-3208.

As indicated to you, these matters are not a responsibility of my department. As such, other than the above information provided, I suggest you co-ordinate your proceeding thru the parties noted above to work out specific details. Hopefully the information provided will enable you to move forward with your project.

Respectfully,


Larry Torino, Planning and Zoning Director

cc. Nancy Ciummo, City Manager
Bob Mish, City Commissioner
Roger Stephens, WWTP Supervisor
Tim Norman, Director of Environmental Service, Mittauer & Associates

EXHIBIT U

FAX TRANSMISSION

Waste
Burdem

Number of pages,
including cover sheet: 5

COMPANY: Fagler Beach Boatworks and Marina FROM: Jeff Baylor
ATTENTION: Mr. Howard Skar DATE: 5/12/2004
FAX NO: 386-439-6800
SUBJECT: quote

Comments:

Please find attached the quote you requested for the analysis of parameters on a wastewater sample. The quote is based on one sample per quarter 'or one year. Please note that the holding time for CBOD analysis is only 48 hours so once your company collects the sample, I would recommend that you have the samples driven to our lab that same day to ensure that the holding time can be met. I have found a sub-contract laboratory, TestAmerica in Nashville Tennessee, to do the Ethylene glycol and Formaldehyde since ELAB is not certified by the State of Florida to test for these two compounds. TestAmerica does have the proper certification to run these two compounds and ELAB has the certification to run the rest of the analyses. Please call me if you have any questions or need to set up an account with us.
Thank you

Attention: This facsimile transmission contains privileged and confidential information which is intended only for the use of the individual or entity named above. If you have received this facsimile in error, please notify ELAB, Inc. immediately by telephone at (386) 672-5668. Thank you.

g:\cma\generation\as.xls

93

PAGE 44/45

Page 1 of 4

PROPOSAL NO. 04-1189

PROPOSAL DATE: May 12, 2004

Turnaround Time: 15 working days (unless noted)

Sample Arrival Date:

Schedule: Firm: Tentative

Fax No. 386-439-6800

Project Name/Description:	Wastewater analysis for one sample quarterly for one year
---------------------------	---

(94)

A East Tower Circle
Orlando Beach, FL 32174
Phone: 407-572-5668
Fax: 385-673-4001

12111 Eon Blvd, Suite 100
Tampa, FL 33619
phone. 813 837-8706
fax 813-827-7382

B-40, 4100as esp. Chile Sal. Forest Hills
Bayamon, Puerto Rico
Phone 787-787 0868
Fax 787 778-5138

Date:

ELAB, Inc.

Page 2 of 4

ELAB, Inc.
Proposal Notes
Proposal No. 04-1189

General Notes.

- Standard turnaround time (TAT) for results is ten (10) working days starting from when samples are received. Should there be the need for rush services, ELAB will require notification before the samples are sent. ELAB will perform analyses with a shorter TAT with rush service charges providing that: (1) the shorter TAT has been pre-approved by ELAB's Project Manager; (2) the fast TAT is feasible for the requested analyses; and, (3) ELAB's liability is limited to the waiver of the rush charges if the promised TAT is not met.

TAT AGREED	RUSH CHARGES (% of quoted price)
8-9 working days	10%
6-7 working days	20%
4-5 working days	30%
3 working days	50%
2 working days	75%
1 working day	100%

- Standard TAT for any subcontracted analysis, if required, will be fifteen (15) working days.
- Reports will reflect ELAB's standard reporting format. Should the client require a customized report or specific reporting requirements (such as detection limits, etc.) ELAB requires notification prior to sampling. If notification is made after start of services, ELAB reserves the right to charge an additional 10% of the total cost of services.
- This proposal will be valid for 90 days.
- Payment Terms: Net due within 30 days, a late fee of 1.5% per month will be assessed on balances owed beyond 30 days. New clients are required to complete a New Account Application. Payment Terms will be prepay until the credit application has been approved.
- ELAB's liability is limited to the actual cost of re-sampling and re-analysis or \$5,000.00, whichever is less.
- For those samples containing hazardous wastes, ELAB reserves the option to either return the samples to the client or charge a disposal fee.
- ELAB will provide and ship sample kits (which include cooler and sample bottles) at no charge to the client provided that the kits are ordered at least four (4) working days prior to the requested delivery date of the kits. If notice is less than four (4) working days, ELAB has the right to bill the client for any additional shipping costs.
- Receipt of samples quoted in this Proposal acknowledge acceptance of all terms stated above.

ELAB, Inc.

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ELAB, INC.
TERMS & CONDITIONS

1. SCOPE. ELAB, Inc. (EL) agrees to perform the services (the "Services") requested by Client. Said Services may be described in a fee schedule, proposal, agreement, or other document which shall be incorporated herein by reference and referred to as the "Proposal." Unless modified in writing by the parties hereto, the duties of EL shall not be construed to exceed those services specifically set forth in the Proposal. Nothing herein shall prevent EL from employing independent contractors or subcontractors in assisting with performance of the Services. Initiation of the Services shall constitute agreement and acceptance of the Proposal and these Terms and Conditions.

2. COMPENSATION. In consideration for the performance of the Services, Client agrees to pay for the Services in accordance with compensation provisions set forth by the Proposal and these Terms and Conditions. If not otherwise specified in the Proposal, compensation for laboratory analyses will be based on EL's then current published analytical fee schedule. Fees for Rush Analyses, Suspension, Termination, and additional storage or return of samples are discussed under Article III, VI X, and XI herein.

Payment to EL shall be made within thirty (30) days after the date of billing. If Client objects to any portion of an invoice, it shall notify EL in writing within fifteen (15) days after receipt of said invoice and shall timely pay that portion of the invoice not in dispute. Past due invoices and any sums improperly withheld by Client shall accrue interest thereon at a rate of 1.5 percent per month or the maximum interest rate permitted by law, whichever is less. Such interest is due and payable when the overdue payment is made. Payments shall be applied first to any accrued interest.

In the event EL, as a nonparty, is required to respond to any subpoena, provide testimony or otherwise assist with litigation related to the Services, Client agrees to reimburse EL on a time-and-expenses basis, wherein time-related charges will be billed at employee's salary rate times an overhead factor of 1.5. Overhead expenses will be billed at cost plus a 10 percent service charge.

III. RUSH ANALYSES AND HOLDING TIMES. A surcharge is normally added to the analytical cost if rush analysis is requested. This surcharge will depend upon the analysis to be performed. Rush analysis must be requested in writing and is offered contingent upon availability and arrangements with EL's testing coordinator/project manager.

Client understands samples may become unusable if applicable holding times are exceeded and agrees EL shall not be responsible for expenses related to resampling or disposition of unusable samples, given EL was not negligent in processing said holding times.

IV. HAZARD COMMUNICATION. The Client shall inform EL of any hazardous characteristics known or suspected about any sample provided to EL by Client, its agent, employee, contractor or other representative prior to performance of the Services.

V. DELIVERY OF SAMPLES. Upon timely delivery of samples, EL will use reasonable efforts consistent with standard industry practice in meeting mutually agreed upon turnaround times. The Client shall be responsible for the proper shipment, delivery, preservation and chain-of-custody documents (including specifying analytical method of any samples provided to EL).

The Client represents and warrants that any sample to be delivered to EL and known or suspected to contain any hazardous substance shall be labeled, packaged, manifested, transported, and delivered to EL in accordance with the then current state and federal regulations.

VI. SAMPLE DISPOSITION. All samples and portions thereof shall remain the property of Client at all times. Unless otherwise requested of EL in writing by the Client, EL will properly dispose of samples thirty (30) days after EL's analytical report is issued or other termination of the Services. If requested in writing by the Client prior to submission of the analytical report, EL can retain said samples longer than 30 days for an additional monthly storage charge based upon EL's then current fee schedule.

If Client requests in writing prior to submission of the analytical report, EL will retain said samples or portions thereof for return to Client. EL, at its sole discretion, reserves the right to retain samples or portions thereof to the Client if found or suspected to be hazardous according to state or federal guidelines, to charge the Client a disposal fee. If said samples contain hazardous substances, Client shall provide the method and means of transportation and execute transport documents. Client agrees to pay for any and all costs associated with returning samples or portions thereof and further agrees to indemnify, defend and hold harmless EL for any litigation that EL is a defendant, plaintiff, counterparty, or successor of said substances or samples.

ELAB, INC. TERMS & CONDITIONS

VII. WARRANTY AND LIABILITY. Recognizing that the nature of many samples is unknown and that some may contain potentially hazardous components, EL warrants only that it will perform testing services, obtain findings, and prepare reports in accordance with generally acceptable analytical laboratory practices and procedures. In recognition of the relative risks, rewards and benefits of the Services to both the Client and EL, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, that EL's aggregate liability to the Client for any and all injuries, claims, losses, expenses, damages or costs (including reasonable attorneys' fees) arising out of the Services from any cause or causes, shall not exceed \$5,000. Such causes may include, but are not limited to, EL's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

The parties herunder agree they shall not be liable to each other for special, incidental, exemplary, punitive or consequences damages.

The exclusive remedy of any breach of this warranty will be, at EL's discretion, a return of the sample or a similar sample or a refund of the analysis fee for the implicated sample(s). This warranty is in lieu of all other warranties expressed or implied.

VIII. DISPUTE RESOLUTION. Any claims or disputes between the EL and the Client made either before, during or after the Services, shall be submitted to non-binding mediation within a reasonable time. Client and EL agree to require a similar mediation agreement of all contractors, subcontractors, consultants, suppliers, and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

IX. INSURANCE. EL will maintain in force during the performance of Services, Workers' Compensation and Employer's Liability insurance (in accordance with the laws of the states having jurisdiction over our employees who are engaged in the performance of the Services), Comprehensive General and Liability (limit of \$1,000,000 per occurrence), Comprehensive Automobile Liability, owned and hired, (limit of \$1,000,000 for bodily injury and Professional Liability insurance (limit of \$1,000,000 per occurrence).

X. DELAYS AND SUSPENSION. Client may suspend all or a portion of the Services with 24 hours verbal notice to be confirmed in writing with proof of delivery. EL may suspend the Services by notifying Client of circumstances that are interfering with the normal progress of Services. EL may suspend the Services in the event the Client does not pay invoices when due. In the event of suspension, Client shall pay for costs incurred to the date of suspension in accordance with Article II.

XI. TERMINATION. Either party may terminate the Services in the event the other party fails to perform in accordance with the Proposal or these Terms and Conditions. Termination of the Services is accomplished by immediate verbal notice and 48 hours prior written notice from the party initiating termination to the other, with proof of delivery.

In the event of termination, EL shall be compensated for Services actually performed prior to the effective date of termination plus any costs incurred by EL for the orderly termination of the Services.

XII. APPLICABLE LAW. The Services, Proposal and these Terms and Conditions shall be governed by and construed according to the laws of the State of Florida. Venue for any legal action hereunder shall be in the county where EL is located.

XIII. INVALIDITY. In the event a provision herein shall for any reason be held invalid, illegal or unenforceable in any respect, such finding shall not affect the enforceability of any other provision herein.

XIV. NONWAIVER AND COUNTERPARTS. Failure or delay in exercising any right, power, or remedy herein shall not impair any right, power or remedy which any party hereto may have, nor shall any such failure or delay be construed to be a waiver of any such right, power or remedy or an acquiescence in any breach or default hereunder absent an express, written waiver or acquiescence, nor shall any waiver of any breach or default be deemed a waiver of any default or breach subsequently occurring. All documents related to the Services (including change orders) may be executed via facsimile or by transmitting originals; any number of executed counterparts constitute one and the same instrument.

XV. ENTIRE AGREEMENT. These Terms and Conditions and the Proposal (as defined hereunder) represent the entire understanding of Client and EL as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein.

XVI. AMENDMENTS. The Proposal "ELAB, INC. ANALYTICAL SERVICE COST PROPOSAL" or "ELAB, INC. Terms and Conditions" herein may not be modified except in writing signed by both parties.

EXHIBIT V

110 Holly Avenue Corporation

P. O. Box 280
Flagler Beach, Florida 32136

Phone (386) 439-0081
Fax (386) 439-6800

September 23, 2004

City of Flagler Beach
P. O. Box 70
Flagler Beach, Florida 32136

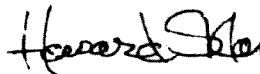
Attention: Ms. Nancy Ciummo
City Manager

Gentlemen:

On May 12, 2004, we received a quotation from ELAB, Inc. We discussed this quotation and the financial burden and time-frame burden that this would put on our operation. As of this date, we have received no reply. *

We wish to proceed with our project and hope to hear from as soon as possible.

Yours very truly,



Howard Sklar
President

HS/am
Enclosure

EXHIBIT W

110 Holly Avenue Corporation

Phone (386) 439-0081
Fax (386) 439-6800

P. O. Box 280
Flagler Beach, Florida 32136

November 24, 2004

City of Flagler Beach
P. O. Box 70
Flagler Beach, Florida 32136

Attention: Ms. Nancy Ciummo
City Manager

Gentlemen:

As of this date, we have not received any response to our letter of September 23, 2004 and we would like to know if your opinion of the undue financial burden that we believe is being placed on us by ELAB's fees should be borne solely by our company.

Please respond as soon as possible.

Yours very truly,



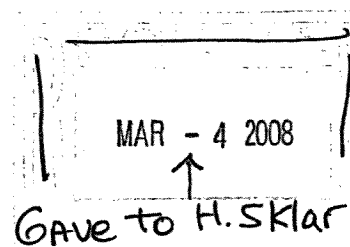
Howard Sklar
President

HS:am

EXHIBIT X

City of Flagler Beach

P.O. Box 70 • 105 S. 2nd Street • Flagler Beach, FL 32136
Phone (386) 517-2000 Fax (386) 517-2008



Mr. Howard Sklar
P.O. Box 280
Flagler Beach, FL 32136

March 3, 2008

Dear Mr. Sklar,

I am in receipt of your letter dated February 15, 2008. Please accept this as a follow up to your request for information regarding connection to the city sewer and water system.

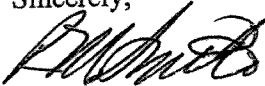
I have personally visited the docks and have seen that several slips are outfitted with the capability to provide utilities. I will need you to provide the following information on a site utility plan, including previously installed systems, and stamped and sealed by your engineer:

1. A schematic diagram listing equipment specifications, pipe sizes, fittings, valves, etc. for your permanent wastewater and potable water system.
2. The number of marina slips fitted with this equipment.
3. Calculations of maximum consumption of potable water and maximum wastewater flow rates.
4. Pump out equipment to remove contents of holding tanks on the transient vessels, including pump ratings, pump motor type and line sizes.
5. Include in the schematics of equipment the relative elevations above mean low water of the equipment, dock elevation, pump elevation, discharge point elevation and high point in discharge line.
6. Is the connection to the receiving facility capable of being locked in place when pump-out facility is in operation?
7. What provisions have been made to prevent leakage of wastewater or discharge of wastewater to the water course and dock area?
8. List on-shore sanitary facilities with number of fixtures and flow rates, restaurants with flow rates and any other out buildings using utilities.
9. Refer to previous correspondence from the City regarding marina pump-out requirements, written by Larry Torino, dated June 7, 2004, addressing equipment, metering and testing.

I understand you are interested in connecting 40 units at this time. In order to formally process this request an official application for connection must be made including the above information.

This letter does not approve or deny residential use nor does it address any Zoning or Building Codes. If you have any additional questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Smith", written over the printed name.

Robert M. Smith
Public Works Director

Cc: Elected Officials
Bernie Murphy, City Manager
Charles Cino, City Attorney
Jan Hancock, Planning and Zoning Director

Attachment: COFB Permit Application

EXHIBIT Y

Other Recommendations of PAR Board and Consensus

07/01/2008 14:44 9842788848

MITTAUER

PAGE 01/01



cc: City Planner
City Manager

580-1 WELLS ROAD
ORANGE PARK, FL 32073
PHONE: (904) 578-0000
FAX: (904) 578-0040
WWW.MITTAUER.COM

July 1, 2008

VIA FAX

Mr. Bob Smith, City Engineer
City of Flagler Beach
105 South Second Street
Flagler Beach, FL 32136

RE: 3rd Review of Flagler Bridge Marina Sewage Pumpout System
Site Plan Reviews
City of Flagler Beach
Mittauer & Associates, Inc. Project No. 0301-20-1

Dear Mr. Smith:

On June 27, 2008 we received the following from the City of Flagler Beach:

- Letter from Kimberly Buck, P.E. of Alann Engineering Group, Inc. dated June 25, 2008 to you.
- Plans for the "Flagler Bridge Marina" consisting of two (2) sheets dated June 25, 2008.
- Response Form from Alann Engineering Group, Inc. dated June 25, 2008

Based on our review of the proposed water and wastewater facilities to serve the proposed development, recommend plan approval.

Contact me if you have any questions.

Sincerely yours,
Mittauer & Associates, Inc.


Timothy P. Norman, P.E.
Vice President of Environmental Services

TPN/pj

EXHIBIT Z

08-00247

STOP

CITY ORDINANCE VIOLATION

ALL WORK MUST CEASE IMMEDIATELY UNTIL THE
FOLLOWING REQUIREMENTS ARE CORRECTED:

Violation(s): DISCONNECT ALL WATER &
POWER. OBTAIN PROPER PERMITS
& INSPECTIONS BEFORE YOU
RECONNECT. (BOAT SLIPS)
131 LEHIGH AVE.

Date: 7/2/08 Time: 1:10pm E. A. J. J. J.
CODE ENFORCEMENT OFFICER

Note: DO NOT REMOVE UNDER PENALTY OF LAW.

Any person violating any of the provisions of this ordinance, or who shall fail to abide by and obey all orders and ordinances promulgated as herein provided, shall be guilty of a misdemeanor in the second degree. Each day that the violation continues shall constitute a separate violation.

**CONTACT FLAGLER BEACH
CODE ENFORCEMENT DIVISION:
(386) 517-2000 EXT 241**

EXHIBIT AA

KEHLE PLUMBING
WATER CONNECTION
386-447-4249

Permit Fee Sheet

ADDRESS: 127 LEHIGH AVENUE
PERMIT: 2008080009

Item	G/L Code	Fee
Fees from County (097)	001-0000-208011	127.20
County Transportation Impact Fee (301)	001-0000-208001	-----
County Recreation Impact Fee (396)	001-0000-208005	-----
County Education Impact Fee (509)	001-0000-208012	-----
Radon Gas (300)	001-0000-208004	-----
Building Code Admin Fund (300)	001-0000-208004	-----
City Sidewalk Permit Fee (328)	001-3200-329100	-----
City Permit Fee (322)	001-3200-321101	-----
Land Clearing/Tree Removal Permit Fee (328)	001-3200-329100	-----
Work without a permit fee (City issued) (328)	001-3200-329100	-----

One check for General Account

(TOTAL) \$127.20

Utility Fund Items	G/L Code	Fee
Water Impact Fee (402)	401-3600-363204	*5236.23
Water Connection Fee** (405)	401-3400-343303	*1885.00
Water Meter Maintenance Fee (401)	401-3400-343305	15.00
Sewer Impact Fee (403)	401-3600-363206	***6432.60
Sewer Inspection (404)	401-3400-343503	-----
Sewer Connection ** (406)	401-3400-343502	-----

Water Impact fee *\$1745.41 x 3 ELU (36 fixture units)

**2" Water meter to be installed per plans

Sewer Impact fee ***\$2144.20 x 3 ELU (36 additional fixture units) Sewage to be discharged into existing line for 131 Lehigh Ave. via Portable vacuum pump out

One check for Utility Account

(TOTAL) \$13,568.83

Customer Deposit Account	G/L Code	Fee
Water Meter Deposit (400)	401-0000-220006	125.00

One check for Water Deposit Account

(TOTAL) \$125.00

Contractor Notified by: Mary on: 09-16-08 (date) that the permit is ready for pickup.

Paid for/ picked up on:

EXHIBIT AB



City of Flagler Beach

P.O. Box 70 • 105 South 2nd Street
Flagler Beach, Florida 32136

Phone (904) 517-2000 • Fax (904)
Suncom 370-2000 • Suncom Fax

May 24, 2007

Howard Sklar
P.O. Box 280
Flagler Beach, Florida 32136

LAST YEAR

Elaine
Please visit stop
work order for #2. below.
Thank you.
Don

CASE # 07-DD138 +
07-DD102

Dear Mr. Sklar

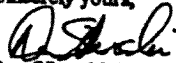
You requested that I provide a response to the stop work order issued for construction of floating residential structures without a permit. I shall respond to it and other City Land Development Regulation (LDR) related violations that I have determined are occurring at your marina facility.

1. The stop work order was issued for a violation of the Florida Building Code Chapter One, Section 102.2 that states in part that the provisions of the Florida Building Code shall apply to floating residential structures. Therefore, the stop work order will remain in effect until you come into compliance with the applicable provisions of the Florida Building Code and also the City's LDR.
2. The marina facility is located in the City's TC-Tourist Commercial zoning district. Marinas are a permitted principle use in the TC-Tourist Commercial zoning district, however the definition of a marina only permits repairs and service of watercraft. Additionally, the construction of floating residential structures is not a permitted principle use in the TC-Tourist Commercial zoning district, therefore it is prohibited and a stop work order will be issued for this violation. In order to come into compliance, a floating residential structure construction facility must not only be located in the City's LI-Light Industrial zoning district but it must also be enclosed. If said facility is not enclosed then it will require special exception approval.
3. The City's LDR defines marina accessory uses as those uses that are normally ancillary and subordinate to a marina. One of the marina accessory uses listed in its definition is "live aboard facilities, if permitted". I have reviewed the City's

LDR and determined that live aboards are not permitted by the LDR. Therefore, mooring live aboards at the marina will require City Commission approval.

Based on the forgoing you need to cease the construction of floating residential structures in the TC-Tourist Commercial zoning district. If you decide to construct said structures at another location that is compliant with the City's LDR and Building Code then you must apply to the City Commission for approval to moor floating residential structures at the marina. The Commission meeting would also be the appropriate forum to address other possible LDR issues. These include but are not necessarily limited to site plan approval for any future development as referenced in Mr. Larry Torino's April 19, 2004 letter that was addressed to you, off-street parking, landscaping and stormwater management. I trust that this will answer your concerns and provide guidance in complying with City regulations.

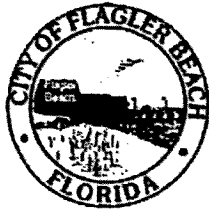
Sincerely yours,



Don Sikorski, Interim Planning and Zoning Director

CC: Charles Cino
Elaine Cowart

EXHIBIT AC



City of Flagler Beach

Building & Zoning Department

PO Box 70

116 South 3rd Street

Flagler Beach, Florida 32136

Phone (386) 517-2000. Fax (386) 517-2016

Suncom 370-2000. Suncom Fax 370-2008

www.cityofflaglerbeach.com

City Mgr.

<input checked="" type="checkbox"/>	Elected Officials
<input checked="" type="checkbox"/>	City Manager
<input checked="" type="checkbox"/>	City Attorney
<input checked="" type="checkbox"/>	City Clerk
<input type="checkbox"/>	All Departments
<input type="checkbox"/>	Building Department
<input type="checkbox"/>	Finance Department

Mr. Howard Sklar
P.O. Box 280
Flagler Beach, Florida 32136

March 18, 2008

Dear Mr. Sklar:

Thank you for taking time on Tuesday, March 4, 2008 to meet with Charles Cino, City Attorney, and Ron Vath, Chairman, Flagler Beach City Commission, and me to discuss your marina. As stated at the meeting, there are 82 existing boat slips of which 40 have been outfitted for electrical service, and transmission lines to supply water and sewer to serve live-aboards.

You identified a list of uses that have occurred on the marina property (127 Lehigh) in the past and those uses that you plan for the future. Below is the list of uses that you shared with us at the meeting:

Live-aboards
Houseboats
Repairs
Wet and Dry Storage
Assembly
Maintenance
Docks
Supplies
Restaurant
Bar

As you are aware, the City Commission directed the Planning & Architectural Review Board to develop definitions for consideration for incorporation to the Land Development Regulations including live-aboards and houseboats. The meeting is scheduled for April 1, 2008 at 5:30 p.m. and those definitions will require not only consideration by the City Commission, but also formal public hearings to be adopted.

With the exception of assembly, all of the other uses bulleted on page one are considered permitted uses. Assembly or manufacturing is not a permitted use in the Commercial Land Use Classification according to the Flagler Beach Comprehensive Plan.

As the Planning & Zoning Director, it is my interpretation that repairs, wet and dry storage, maintenance, docks, supplies, restaurants and bars are consistent with the provisions of the Zoning Code: specifically, the Tourist Commercial Zoning District Classification. However, the site plan for the restaurant has since expired and therefore all associated stipulations for approval have expired. If you propose to construct a restaurant with a bar as an accessory use or complete construction of the existing shell, then a new site plan must be submitted to the City.

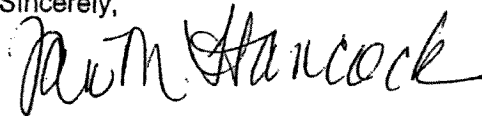
In addition, marina is defined by Appendix A-Land Development Regulations, Section 2.02.00 as:

Marina --a waterfront facility providing one (1) or more of the following:

1. Docking and/or wet or dry storage of boats for a fee;
2. Sales of marine supplies, parts and fuel;
3. Boat sales, rental and/or charter;
4. Boat service and repair.

Marina accessory uses --means uses normally ancillary and subordinate to a marina, including but not limited to: live aboard facilities, if permitted, restaurants, gift shops, offices, self service laundries, water taxi dockage and other commercial activities such as "ship's store," which shall be designed and situated within the marina facility to serve the boating community.

Sincerely,



Jan M. Hancock
Planning & Zoning Director

C: Bernie Murphy, Interim City Manager
Charles Cino, City Attorney
Ron Vath, City Commissioner

EXHIBIT AD

know which concepts are more likely to be acceptable. The Board members agreed they prefer the "Old Florida" look as opposed to the "South Beach" look. They would prefer the buildings be torn down and new buildings erected providing the buildings did not have any historical value. Board Members also mentioned varying heights, different roof elevations and that the Key West/Old Florida styles would fit more with the Downtown Charrette Plan.

J. Consider permitting live-a-board facilities in a marina.

City Attorney Charles Cino asked for disclosure of exparte communication. Roseanne Stocker and Lea Stokes stated they had spoken with Howard Sklar about his marina. Ms. Stokes also said she has spoken to Charles Faulkner regarding this subject. Stacy Zwenger stated she had spoken with Mr. Sklar briefly. Mr. Cino stated he had spoken with Mr. Sklar.

Mr. Cino summarized a history saying in 2005 the PAR Board addressed the definition of marina and the accessory uses. It was determined that marinas could have live-a-boards if permitted but it was not determined what constituted the "if permitted" at that time. Howard Sklar has live-a-boards or would like to have live-a-boards at his marina and he went to the City Commission to determine the definition of live-a-boards. The City Commission referred the matter back to the PAR Board to assist in determining a definition of live-a-board facilities and if they are permitted at Mr. Sklar's marina. Chairman Deal read Ordinance 2001-18 and asked Mr. Cino if this permitted live-a-boards in a marina. Mr. Cino stated that Ordinance 2001-18 pertained to Residential Zoning Districts and it neither permitted nor denied live-a-boards in a marina. Interim Planning and Zoning Director Don Sikorski answered questions from Chairman Deal that included discussion of the Department of Environmental (DEP) permit issued to Mr. Sklar and the primary and accessory permitted uses in Tourist Commercial Zoning Districts. Howard Sklar was present and stated he would only address questions regarding live-a-boards and if his marina is allowed to have live-a-boards. Mr. Sklar asked if his marina is considered a licensed marina. Chairman Deal deferred the question to Don Sikorski and Charles Cino. Mr. Sikorski stated that Mr. Sklar's property is located in Tourist Commercial (TC) Zoning District and marinas are a permitted use in TC. Mr. Sikorski also acknowledged that Mr. Sklar's marina has a DEP permit for the marina. Mr. Cino verified the DEP permit is considered a license for the marina. Discussion ensued regarding the different types of live-a-boards, the differences between houseboats versus floating residential structures and transient live-a-boards versus permanent berth structures. The Board members continued to converse about existing floating residential communities in other areas of the country and how they are regulated.

MOTION made by Roseanne Stocker requesting City staff to research data to present to the PAR Board so that a potential definition of a live-a-board can be created. The definition would also include the distinction in how to regulate floating residential structures versus transient boats on which people live. **MOTION** seconded by Stacy Zwenger. Lea Stokes suggested beginning with the DEP to see how they define houseboats. Other members' comments included attempting to find information within the state of Florida or in states that are also affected by hurricanes. Chairman Deal clarified that the City Ordinance 2005-27 Marina Accessory Uses stating live-a-boards if permitted remains in effect. The City Commission would ultimately determine what live-a-boards are permitted. It would not be determined solely by a DEP permit. **MOTION** carried unanimously.

K. Public Hearing

JUL 2 4 2008

Large Scale Comprehensive Plan #CP-07-02 Administrative amendment to the City of Flagler Beach Comprehensive Plan for the purpose of improving the coordination of water supply and land use planning as required by Chapter 163, F. S. and revising the Public

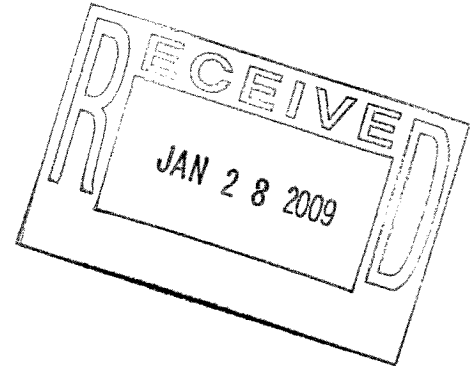
EXHIBIT AE

Howard Sklar

P. O. Box 280
Flagler Beach, Florida 32136

Phone (386) 439-0081
Fax (386) 439-6800

January 28, 2009



To: Jan Hancock, Director
Planning & Zoning

From: Howard Sklar

Please confirm if the following statements made at the January 22, 2009 Commission meeting are true or false.

1. A boat or vessel can stay one night at residential docks with liveaboards.
2. Commissioner Vath says: "There are still some people living on a canal. I know of a couple. I don't go around enforcing the codes. What can I say?"
3. Mr. Miklos tells the Commission: "None of them want this ordinance with few exceptions. Restrict it as far as Florida statutes allow it."
4. Commission Fiend says: "Right now they are not in our ordinance so they are not a permitted use." What was the Commissioner referring to?
5. It is true that if something is not in your ordinance it is not a permitted use in any zoning area?
6. Again, Mr. Fiend says: "If we want them then we have to do the ordinance. If we don't want them we do not have to do anything. The ordinance does not permit them." What is not permitted now?
7. Mr. Vath stated: "If permitted." Again, I ask as I have been for the past five years: "If permitted by whom?"
8. In staff reports, Commission McGrew stated: "Liveaboards are not allowed right now." Please explain this comment.

Howard Sklar

EXHIBIT AF

110 Holly Avenue Corporation

P. O. Box 280
Flagler Beach, Florida 32136

Phone (386) 439-0081
Fax (386) 439-6800

February 18, 2009

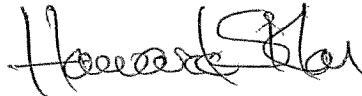
Ms. Jan Hancock
Planning & Zoning Director
City of Flagler Beach
P. O. Box 70
Flagler Beach, Florida 32136

Dear Ms. Hancock:

Are boat owners, whether cruisers, sailboats, houseboats, or barges, allowed to live aboard their vessels at our marina as of this date and comply with our DEP permit condition #19?

Please respond immediately.

Yours very truly,



Howard Sklar

HS/am

Cc: Mr. Bernie Murphy
Interim City Manager
City of Flagler Beach
P. O. Box 70
Flagler Beach, Florida 32136

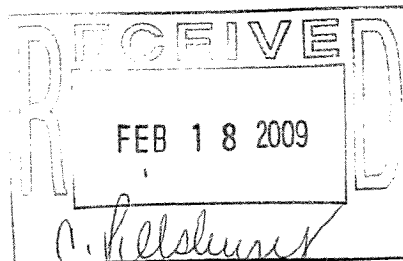


EXHIBIT AG

Bernie Murphy

From: Bernie Murphy
Sent: Wednesday, April 22, 2009 8:21 AM
To: Jan Hancock
Subject: RE: 04-16-09 CAROLINA HOUSEBOATS - PLACEMENT OF BOATS IN MARINA WITHIN CITY LIMITS

Keep me posted and advise Drew b

From: Jan Hancock
Sent: Wednesday, April 22, 2009 6:34 AM
To: Bernie Murphy
Subject: FW: 04-16-09 CAROLINA HOUSEBOATS - PLACEMENT OF BOATS IN MARINA WITHIN CITY LIMITS

FYI

From: EAOKIE@CHB [mailto:eaokie@carolinahouseboats.com]
Sent: Thu 4/16/2009 3:04 PM
To: Jan Hancock
Cc: jokie@nc.rr.com
Subject: 04-16-09 CAROLINA HOUSEBOATS - PLACEMENT OF BOATS IN MARINA WITHIN CITY LIMITS

Jan Hancock
Planning and Zoning Director
City of Flagler Beach
P.O. Box 70
105 S. Second Street
Flagler Beach, FL 32136
p 386-517-2000 ext 230
f 386-517-2008
email: jhancock@cityofflaglerbeach.com
website: www.cityofflaglerbeach.com

I wish to continue my phone communication with you of 04-09-09 at 2:58 PM on the topic of recreational and touring houseboats in the city limits of Flagler Beach, Florida which had to be cut short due to your schedule.

Let me start at the beginning, CAROLINA HOUSEBOATS manufacturers recreational and touring houseboats that at current time are manufactured in Wilmington, NC. These boats meet all USCG (United States Coast Guard) regulations and requirements as a recreational and pleasure vessel. Also, these boats are equipped with marine propulsion systems which enable the boat owner to travel anywhere up and down the East Coast Intracoastal Waterway of our United States, as well as any other navigable calm water areas.

We, CAROLINA HOUSEBOATS, as a service to serious and qualified prospective boat purchasers provides mooring and dockage locations assistance. Relevant to your city area we have

4/28/2009

received several recent inquiries as to mooring and / or docking at a marina within your city limits which is the Flagler Bridge Marina, Flagler Beach, Florida. We are asking via this email communication to be advised as to any city ordinance or codes that would not permit our boat to moor or dock at this specific marina or any other marina within your city limits.

I will be attempting to connect with you on this topic by phone early this coming week of April 20th.

Thanks,

Ed Okie, PE
Principal & President
Edmund A. Okie, P.E.
3009 Imperial Oaks Drive
Raleigh, NC 27164
p 919-562-8162
c 919-673-0319
e-mail: okie@nc.rr.com

Ed Okie, PE
President
Carolina Houseboats, dba
Okie Professional Building, Inc.
3009 Imperial Oaks Drive
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e-mail: eaokie@carolinahouseboats.com
web site: www.carolinahouseboats.com

4/28/2009