

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

Plaintiff,

vs.

CITY OF FLAGLER BEACH, a Florida
municipal corporation

Defendant

**COMPLAINT
FOR DECLARATORY JUDGMENT**

FILED IN THE OFFICE
OF THE CLERK OF COURT
FLAGLER COUNTY, FLA.
2010 FEB 19 PM 2:49
CY

110 Holly Ave. Corporation, a Corporation, Plaintiff herein, files this Complaint for Declaratory Judgment, and alleges:

1. Plaintiff, 110 Holly Ave. Corporation, a Florida Corporation, has a principal place of business 145 Lehigh Ave., Flagler Beach, Flagler County, Florida.
2. At all times material hereto 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").
3. As provided by Section 86.011 of the Florida Statutes, 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.
4. Plaintiff 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. The Property contains a marina which is operated under the trade name

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Dkt: CACORP

“Flagler Bridge Boatworks and Marina, Inc.” It is the only marina operating in Flagler Beach and to Plaintiff’s knowledge is the only property within the municipal boundaries designated by the comprehensive plan of the City of Flagler Beach as a potential site for a marina.

Count 1

Express Preemption

6. Plaintiff realleges and incorporates paragraphs 1-5 as fully set forth above.

7. The docks located at Plaintiff’s property extend into the Florida Intracoastal Waterway. A true and accurate copy of a certified survey of the Property is attached hereto at **Exhibit A**.

8. The City adopted Ordinance 2009-17 (“City’s Ordinance 2009-17”) that is applicable on its face to Plaintiff’s property and attempts to regulate the operation of vessels within the Intracoastal Waterway. A true and accurate copy of the City’s Ordinance 2009-17 is attached hereto as **Exhibit B**.

9. Section 327.60(2), Florida Statutes states:

(2) Nothing in this chapter or Chapter 328 shall be construed to prevent the adoption of any ordinance or local regulation relating to operation of vessels, except that a county or municipality shall not enact, continue in effect, or enforce any ordinance or local regulation:

...

(b) Regulating any vessel upon the Florida Intracoastal Waterway.

10. It appears that the City’s Ordinance 2009-17 intends to amend and create new sections of the City’s Code of Ordinances to regulate vessels docked at the Property which are upon the Intracoastal Waterway.

11. Plaintiff believes any new or amended section of the City’s Code of Ordinances which attempts to regulate any vessel at its marina is expressly preempted by Florida law and should not be enforced.

WHEREFORE Plaintiff prays for the Court to enter a judgment declaring that the Flagler Beach Ordinance 2009-17 is expressly preempted by state law and is unenforceable in whole or in part as applied to Plaintiff's docks which extend into the Intracoastal Waterway 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

Express Preemption and Preemption by Direct Conflict

12. Plaintiff realleges and incorporates paragraphs 1-5 as fully set forth above.
13. Florida Statutes regarding the regulation of vessels allows a local municipality to regulate live-aboard vessels as specifically stated in Chapter 327, to wit:

Section 327.60(2): Nothing in this chapter or Chapter 328 shall be construed to prevent the adoption of any ordinance or local regulation relating to operation of vessels, except that a county or municipality shall not enact, continue in effect, or enforce any ordinance or local regulation:

...

(f) Regulating the anchoring of vessels other than live-aboard vessels outside the marked boundaries of mooring fields permitted as provided in s. 327.40;

14. Chapter 327 of Florida Statutes defines live-aboard vessels as follows:

Section 327.02(17): "Live-aboard vessel" means:

- (a) Any vessel used solely as a residence and not for navigation;
- (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. 222.17.

15. However, the City's Ordinance defines a liveaboard vessel as follows:

Sec. 22-63 Definitions and Section 3 Section 2.02:

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.

16. The City's Ordinance attempts to regulate additional vessels not permitted by the definition of live-aboard contained in state statute. Specifically, Flagler Beach's definition would apply to a wider class of vessels which do not navigate with the regularity proscribed by the City.

17. The City's Ordinance 2009-17 contains amended and new restrictions attempting to regulate the anchoring and mooring of vessels which rely on the City's definition of liveaboard.

18. Plaintiff has been permitted by the appropriate state and federal agencies to allow live-aboard vessels to utilize its marina.

19. The City's Ordinance frustrates the purpose of the state statute which is to limit a local municipality's regulatory authority to specifically defined vessels.

20. The City's Ordinance 2009-17, as applied to Plaintiff's Property, creates a conflict where the two legislative enactments cannot coexist. The City's Ordinance creates a more stringent regulation than the state's legislation and prohibits behavior otherwise allowed by state statute and properly permitted.

21. Plaintiff contends that the City's Ordinance 2009-17 definition of the term liveaboard is in direct conflict and is preempted by Chapter 327 of Florida Statutes and should be rendered invalid.

WHEREFORE Plaintiff prays for the Court to enter a judgment declaring that the Flagler Beach Ordinance 2009-17 is in direct conflict with and expressly preempted by state law and is unenforceable in whole or in part, 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

Nonconforming Use of the Property

22. Plaintiff realleges the allegations contained in paragraphs 1-5 above.

23. The Property has been the site of an operating marina for over fifty years.

24. Plaintiff purchased the Property in February 1997.

25. At the time Plaintiff purchased the Property it was zoned commercial. This zoning category permitted the Property to be used as for a marina, boat assembly, and repair facilities.

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

27. The DEP Permit authorizes the development and operation of 82 wet slips at the marina and other general and specific conditions.

28. Plaintiff also obtained the requisite permit from the United States Army Corps of Engineers which authorized the construction of a marina facility and dredging activities. A true and accurate copy of the United States Army Corps of Engineers permit is attached hereto at **Exhibit D** (the "Army Corps Permit").

29. In 2005, the DEP Permit was modified and authorized Plaintiff the right to build boats, including houseboats and liveaboards at the Property. A true and accurate copy of the modified DEP Permit is attached hereto at Exhibit D (the "Modified DEP Permit"). The Modified DEP Permit specifically allowed 50 boat slips for use by houseboats or liveaboards.

30. Plaintiff has complied with all of the conditions of the Modified DEP Permit and Army Corps Permit. The permits remain in good standing.

31. On October 8, 2009, the City enacted Ordinance 2009-17 which purported to create additional regulations regarding marinas and vessels allowed to dock or moor at marinas.

32. The City's Ordinance 2009-17 was intended "to regulate and restrict placement, and maintenance of vessels and floating structures within Flagler Beach for the health, safety, and welfare of the City."

33. Plaintiff's use of the Property which was allowed prior to October 2009 and property permitted by the DEP Permit and the Army Corps Permit is now impermissible under the Code of Ordinances and Land Development Code as amended by the City's Ordinance 2009-17.

34. Flagler Beach Land Development Code Article II, Section 2.02.08.5(1) states:

Continuation of use – A use, building or structure, lawfully in existence at the effective date of this ordinance, which shall be made nonconforming at the passage of this ordinance or any applicable amendment thereto, may be continued except as otherwise provided in this article. (Emphasis added)

35. Plaintiff requests a determination that the uses of the Property, as allowed by the DEP Permit and Army Corps Permit, were lawful prior to the adoption of the City's Ordinance 2009-17 and such uses are permitted nonconforming uses under the City's Land Development Code and Florida law and may continue as specified in the permits.

WHEREFORE Plaintiff prays for the Court to enter a judgment declaring that Plaintiff's uses of the Property as a marina, in compliance with the applicable permits, were lawful and are now lawful nonconforming uses, 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 4

Temporary Injunction

36. Plaintiff realleges and incorporates the allegations made in Paragraphs 1-36 above.

37. Unless the City is immediately enjoined from enforcing the restrictions contained in the City's Ordinance 2009-17, the City will continue restricting Plaintiff's use and enjoyment of the Property.

38. Unless this Court immediately enjoins the City, Plaintiff will suffer immediate and irreparable injury, and continued loss and damage as Plaintiff will continue to be prevented from the full benefit and enjoyment of the Property.

39. Plaintiff has no adequate remedy at law.

40. Plaintiff has a clear right to relief and a substantial likelihood of success on the merits of the claims stated herein.

41. Plaintiff will continue to be illegally restricted from the permitted use of the Property which injury outweighs any possible harm done to the City.

42. The Court's granting of a temporary injunction will not disserve the public good as Plaintiff's use of the Property must comply with the DEP Permit and the Army Corps. Permit.

43. Plaintiff seeks an injunction to preserve its use of the Property as permitted by state and federal agencies and prevent Defendant from obstructing Plaintiff's permitted use of the Property until a final hearing can be had in this matter.

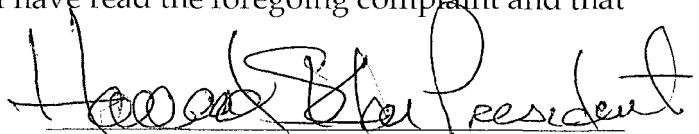
WHEREFORE Plaintiff demands judgment for a temporary injunction restraining the City, its agents, servants, and employees from restricting the Plaintiff's use of the Property, so long as such use is compliant with the DEP Permit and the Army Corps Permit.

LIVINGSTON & WOLVERTON, P.A.



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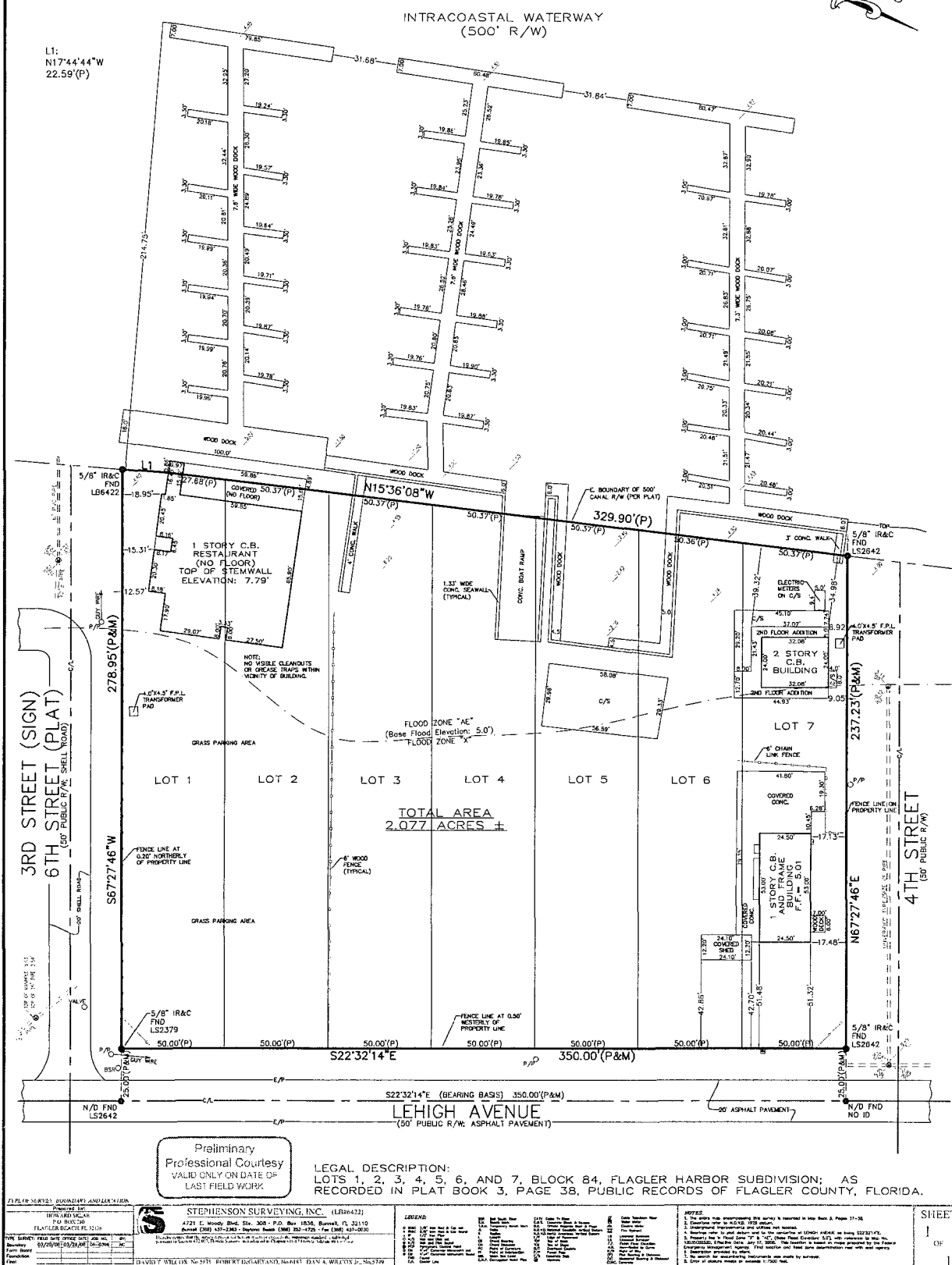
Under penalties of perjury, I declare that I have read the foregoing complaint and that the facts stated in it are true.



Howard Sklar, President
110 Holly Ave. Corporation

NOTE:
MEAN LOW WATER LEVEL ELEVATION IN
SUBJECT AREA IS 0.25' PER COASTAL
ENGINEERING STUDY FOR FLAGLER COUNTY
PERFORMED BY UNIVERSITY OF FLORIDA
COLLEGE OF ENGINEERING.

SCALE: 1"=30'



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 liveaboard vessels, it is reasonable to allow liveaboard 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~~ 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. Unightly 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. 1. Open storage areas the use of which is limited to park management and park residents. 3. 2. Essential services and emergency services. 4. 3. 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.

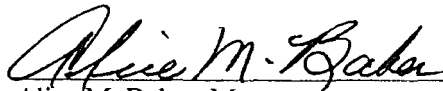
SECTION 9. Severability. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of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

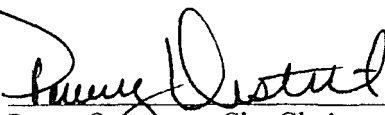
PASSED ON FIRST READING THIS 24TH DAY OF SEPTEMBER, 2009.
PASSED AND ADOPTED THIS 8TH DAY OF OCTOBER, 2009.

CITY OF FLAGLER BEACH, FLORIDA
CITY COMMISSION



Alice M. Baker, Mayor

ATTEST:



Penny Oversstreet, City Clerk



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 Sklar
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) -

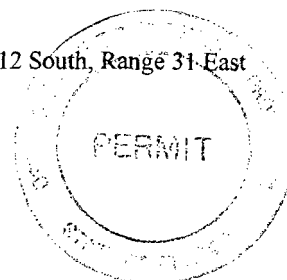
This project is to replace 16 existing wet slips and add 66 new wet slips to a marina facility within Smith Creek (ICW), Flagler County. The structures are to consist of three 8 foot by 185 foot main access piers with 8 foot by 81 foot waterward "T" platforms, (32) 4 foot by 20 foot finger piers, and 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"

Printed on recycled paper.

Exhibit C



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.

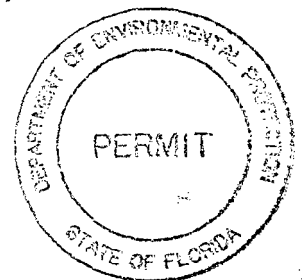
PROPRIETARY REVIEW - NOT ON STATE OWNED SUBMERGED LANDS

Your project does not occur on state-owned submerged lands and will not require authorization from the Department to use these lands for private puposes 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.



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.

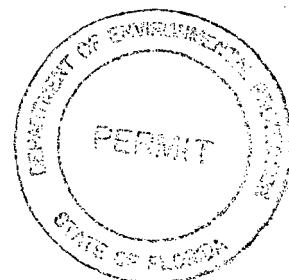
(e) Stabilization measures shall be initiated for erosion and sediment control on disturbed areas as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 7 days after the construction activity in that portion of the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

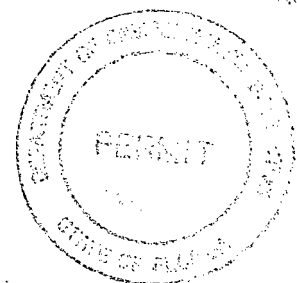
(j) Within 30 days after completion of construction of the permitted system, or independent portion of the system, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing As Built 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 limerock, 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

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

Mr. Howard Sklar

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).

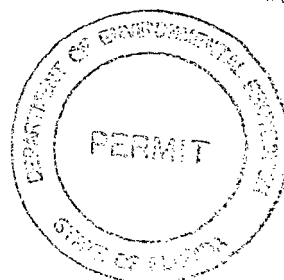
12. All generated spoil material shall be deposited in a self-contained upland disposal site which will prevent the escape of spoil material from the spoil site into surface waters of the State.

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.

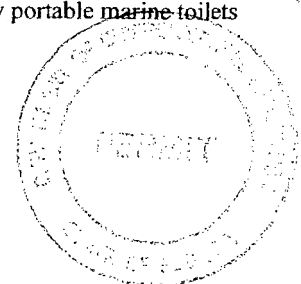


REGULATORY SPECIFIC CONDITIONS

DEP File No.: 18-140599-001-E1

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 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, ²⁰⁰⁷ 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.

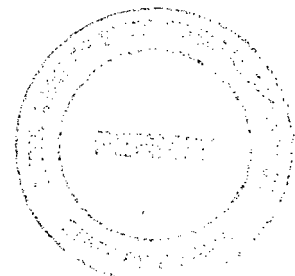
21. No overboard discharges of trash, human or animal waste, or fuel, or other deleterious substances shall occur at the docks.

~~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/joinder 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.

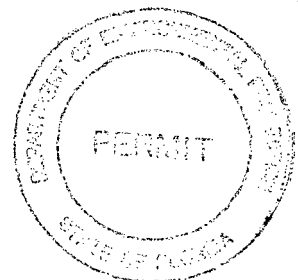
AS BUILT CERTIFICATION PRIVATE RESIDENT -- FORM NED/AS-BUILT

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

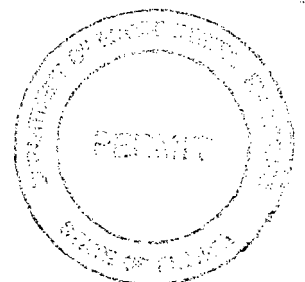
Title and Company

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)

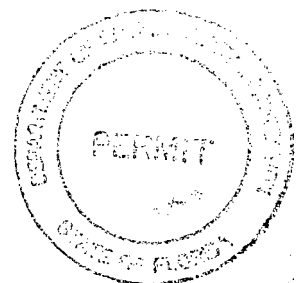
(ZIP Code + 4)

License Number:

Form: #consnote/ned

Form title: As-Built Certification - Private Residence

Date: November 11, 1996





LIMITS OF DREDGING



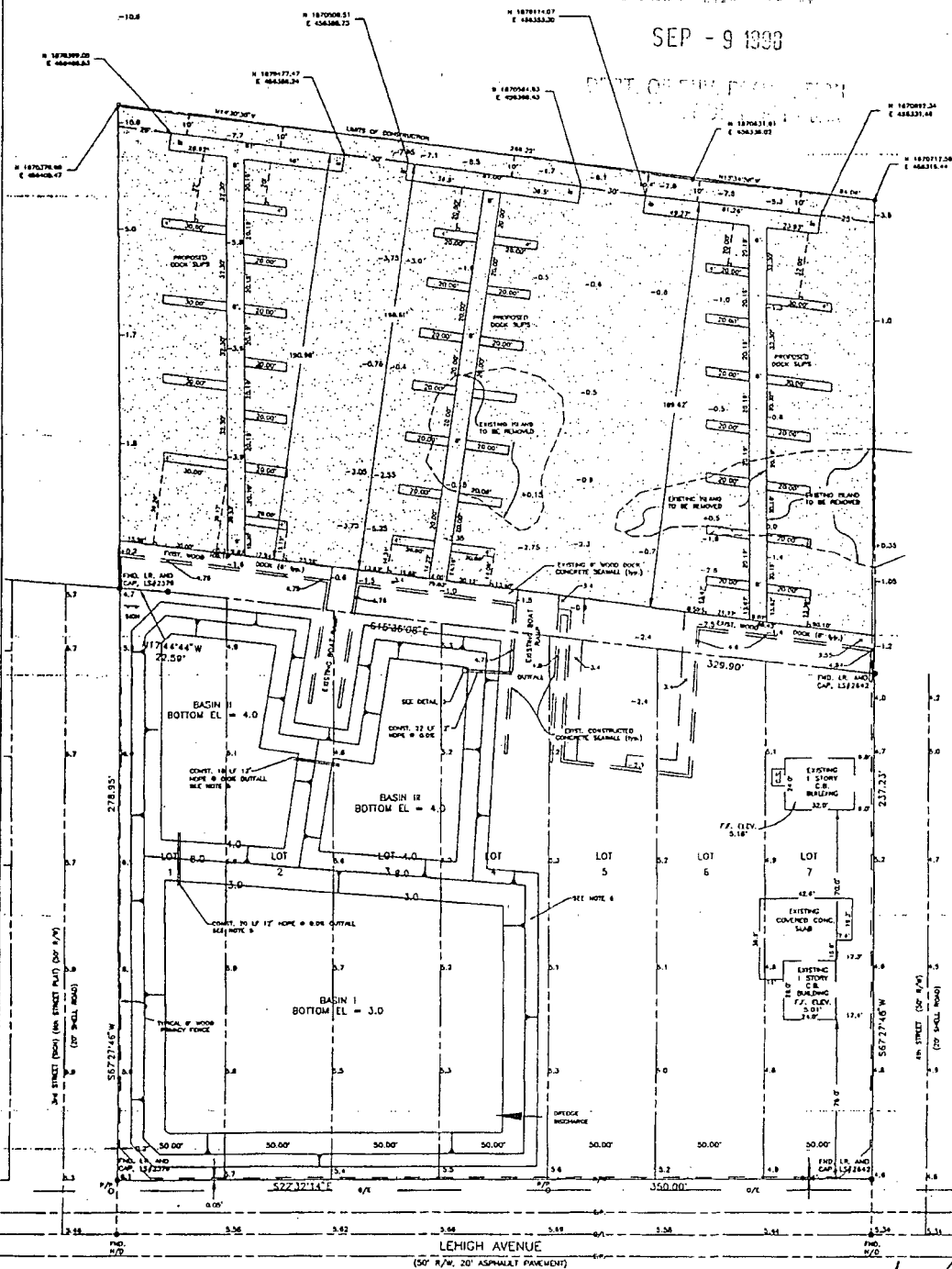
GRAPHIC SCALE



RECEIVED

SEP - 9 1998

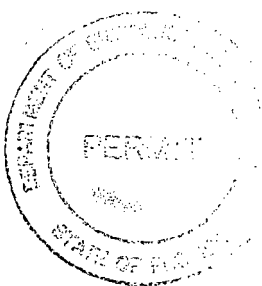
PORT OF ORMOND BEACH

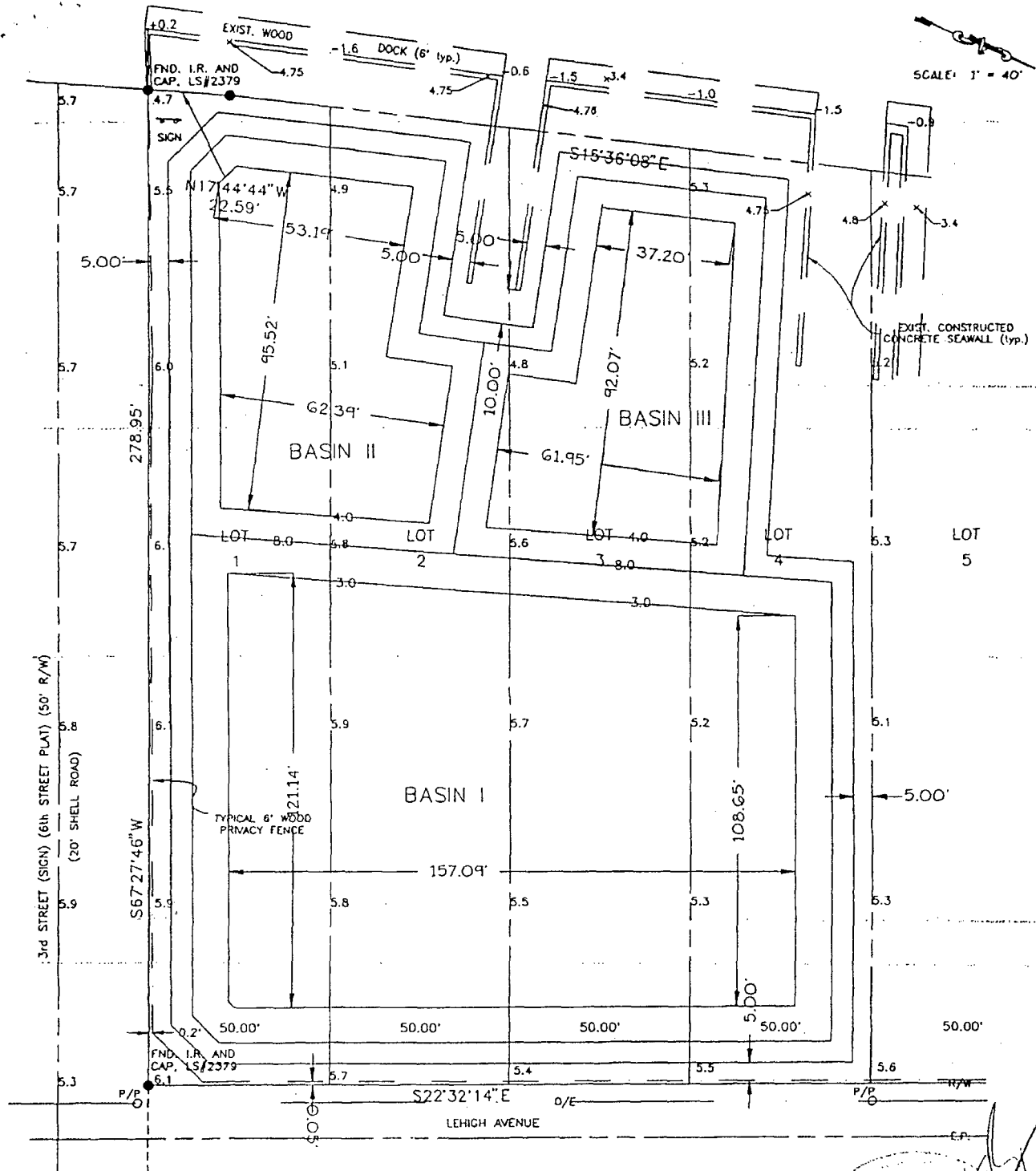


BOUNDARY AND TOPOGRAPHIC SURVEY
WITH PROPOSED DOCKING SLIPS

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





DREDGING BASINS - DIMENSIONING PLAN

Applicant: 110 HOLLY AVENUE CORP.

Water Body: HALIFAX RIVER

County: FLAGLER

Datum: NGVD (1929)

Purpose: DOCKING SLIPS

Original Work ☒ Maintenance ☐

Sheet No.: 9 Of 15

Date: SEPTEMBER 4, 1998

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)

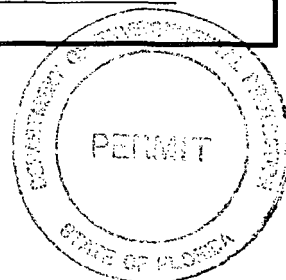
Title: _____

Date: _____

Application

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

Date: October 3, 1995



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 _____

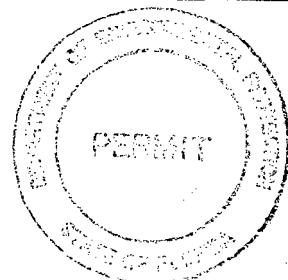
Permittee's or Authorized
Agent's Signature _____

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.

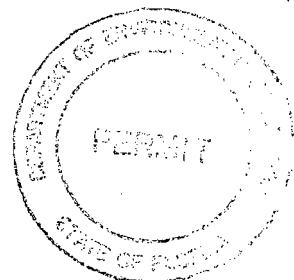
Form: #62-343.900(4), F.A.C.
Form Title: Annual Status Report
Date: October 3, 1995



STANDARD MANATEE CONSTRUCTION CONDITIONS

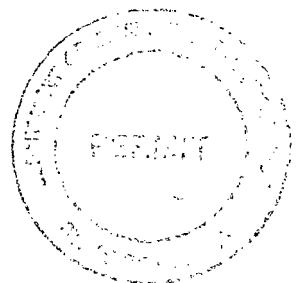
- a. The lessee/grantee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel are responsible for observing water-related activities for the presence of manatee(s).
- b. The lessee/grantee 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:

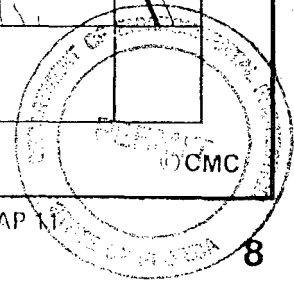
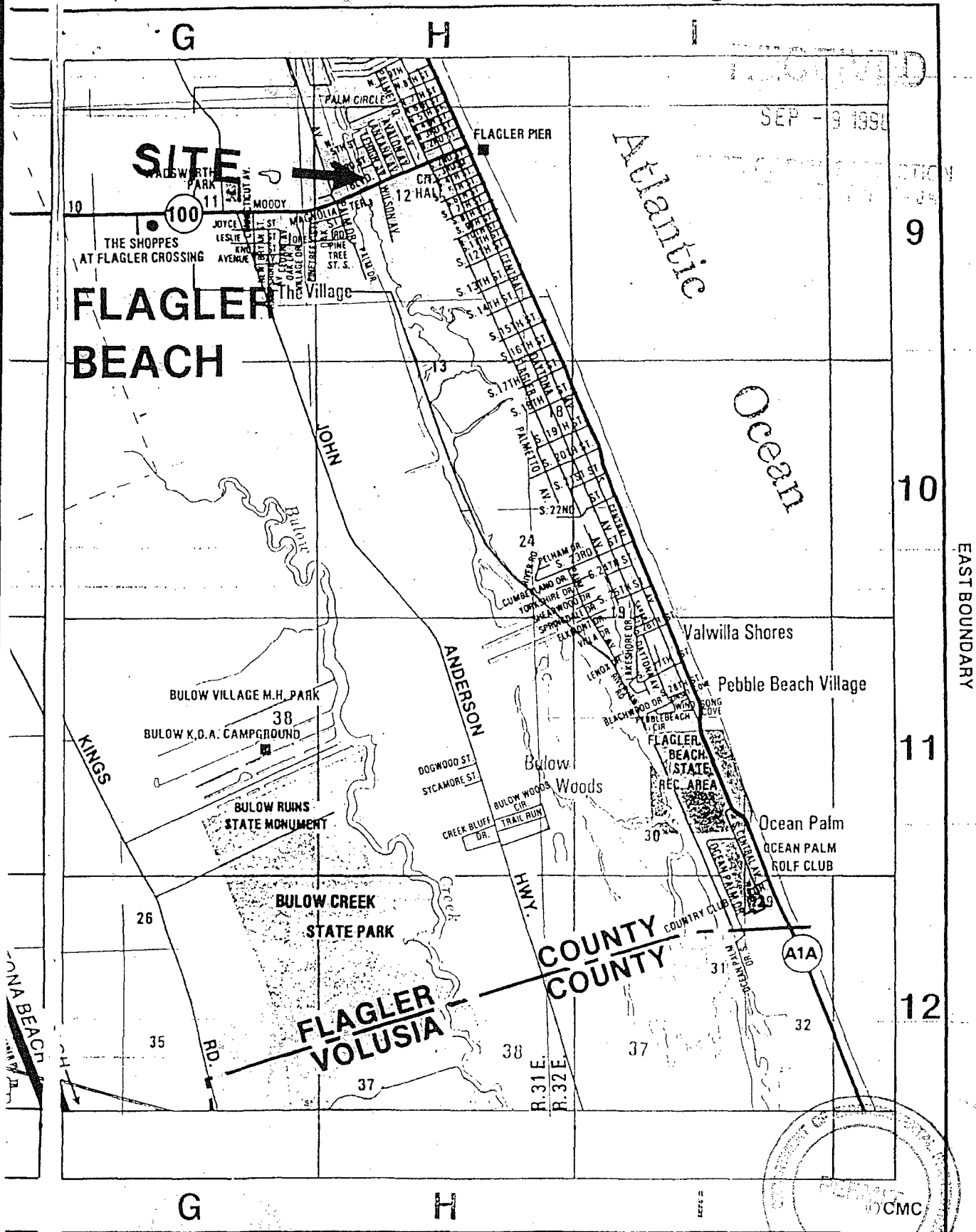
Caution: Manatee Habitat. Idle speed is required if operating a vessel in the construction area. All equipment must be shutdown if a manatee comes within 50 feet of the operation. A collision with and/or injury to a manatee shall be reported immediately to the Florida Marine Patrol at 1-800-DIAL-FMP (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

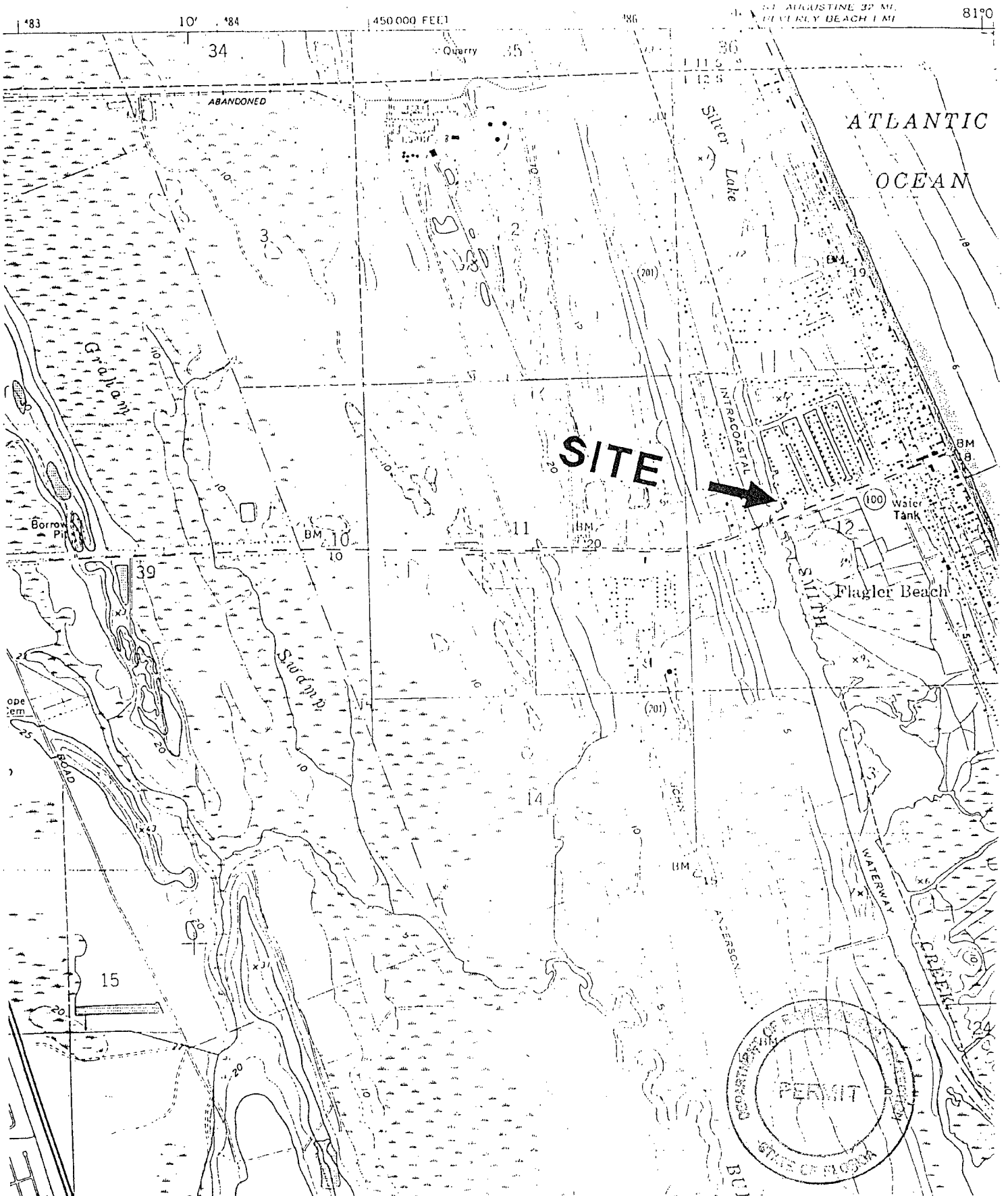
YOUR PROJECT DID NOT QUALIFY FOR THE STATE AND FEDERAL COMBINED STATE PROGRAMMATIC GENERAL PERMIT (SPGP) PROGRAM. THE ATTACHED AUTHORIZATION(S) DOES NOT INCLUDE THE REQUIRED FEDERAL AUTHORIZATION FOR YOU TO CONSTRUCT YOUR PROJECT. A COPY OF YOUR APPLICATION HAS BEEN SENT TO THE US ARMY CORPS OF ENGINEERS (USACOE) FOR PROCESSING. THE FEDERAL AUTHORIZATION FOR YOUR PROJECT WILL BE SENT TO YOU SEPARATELY BY THE USACOE. YOU CAN NOT CONSTRUCT YOUR PROJECT WITHOUT THE APPROPRIATE FEDERAL AUTHORIZATION. THE USACOE CAN BE CONTACTED IN JACKSONVILLE AT 904-232-1679.

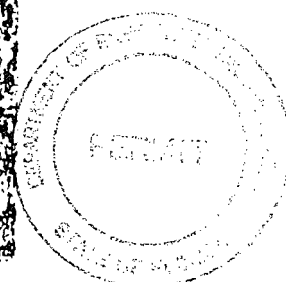
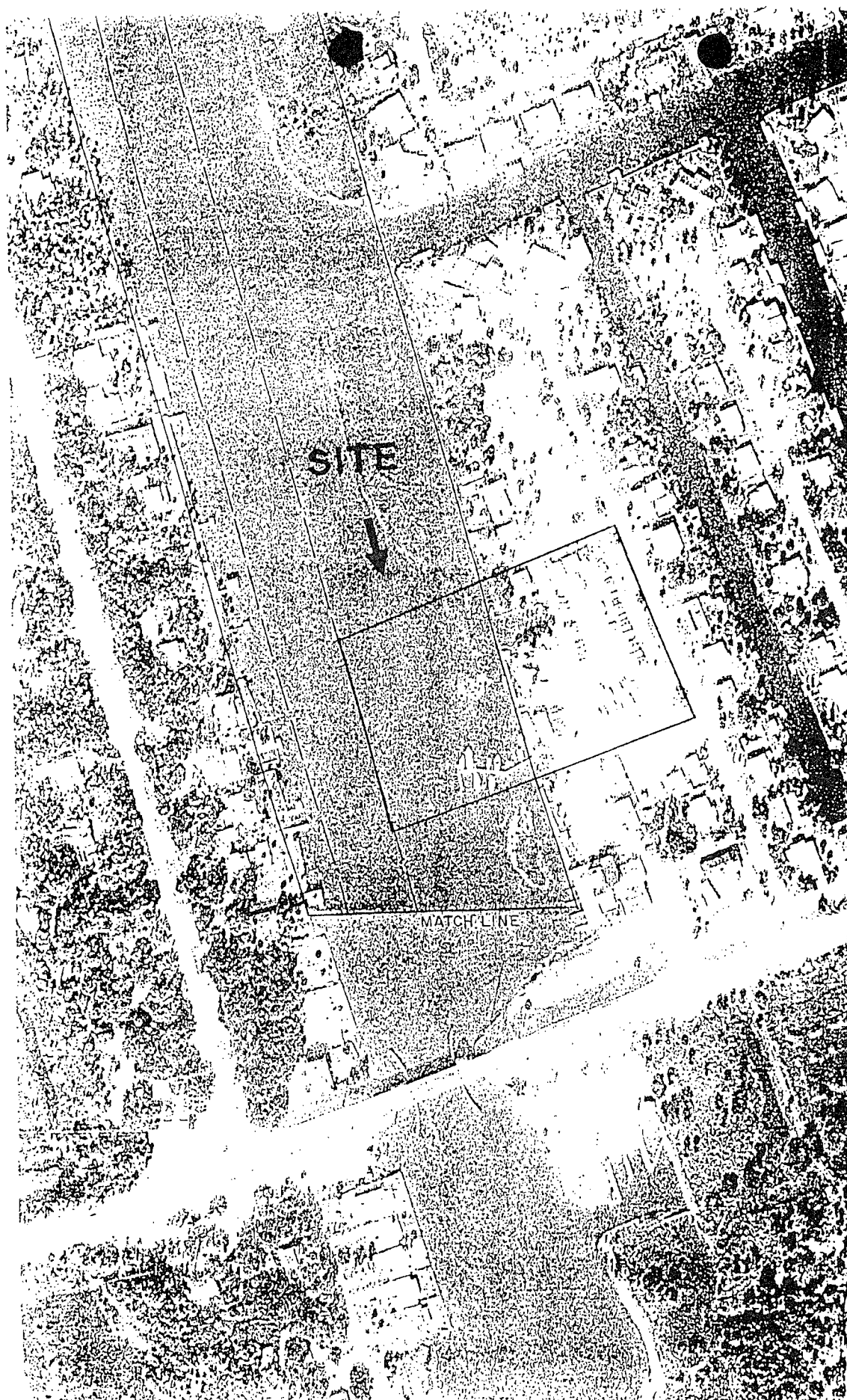


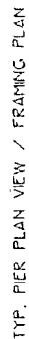


FLAGLER BEACH WEST QUADRANGLE
FLORIDA
7.5 MINUTE SERIES (TOPOGRAPHIC)

SECTION 12, TOWNSHIP 12 S, RANGE 31 E

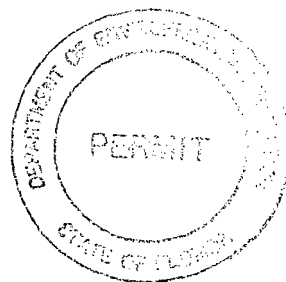


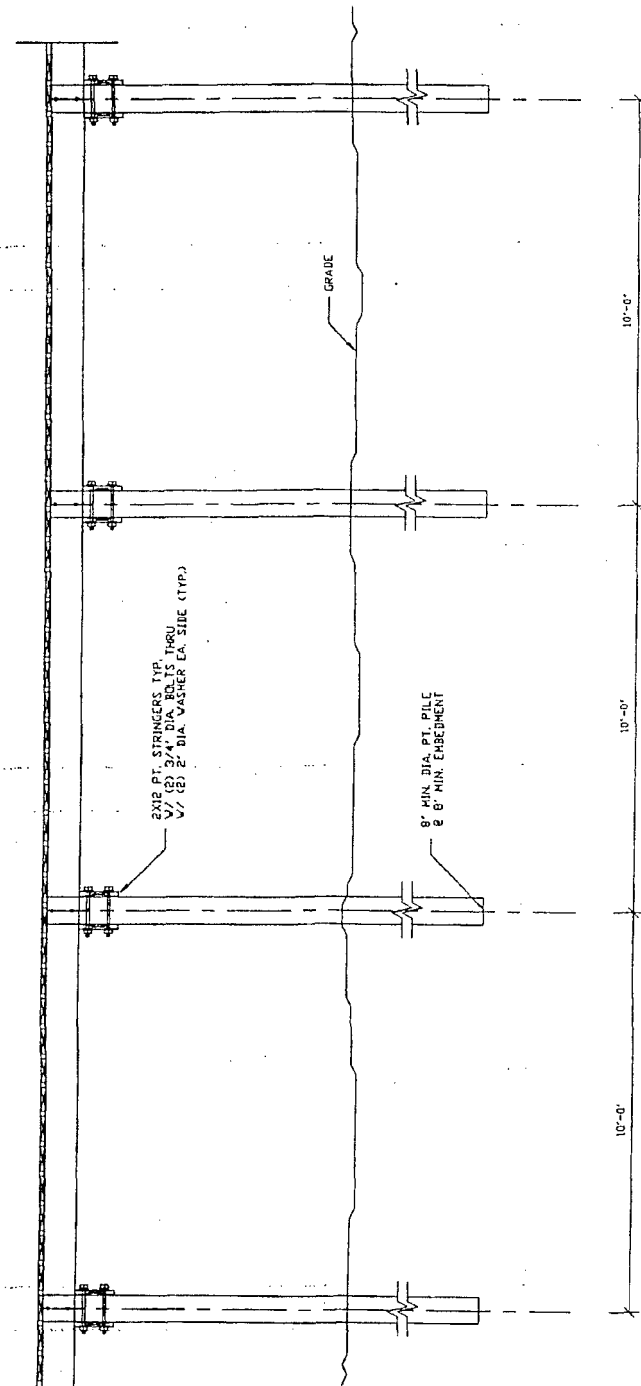




10.24 1285

Date: 5/11/98





TYP. PIER LONGITUDINAL SECTION

SCALE: 1/2" = 1'

Applicant: 110 HOLLY AVE. CORPORATION

Water Body: HALIFAX RIVER

County: FLAGLER

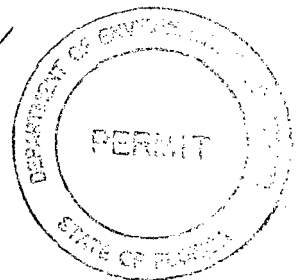
Datum: NGVD(1929)

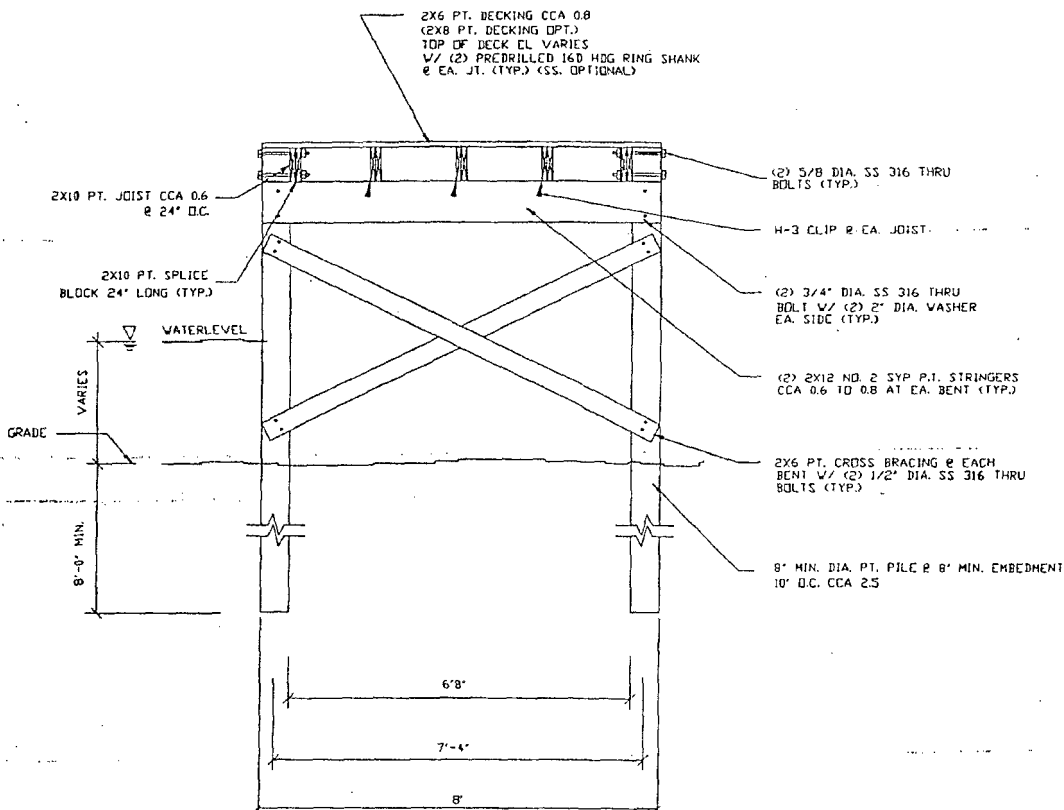
Purpose: DOCKING SLIPS

Original Work ☒ Maintenance ☐

Sheet No.: 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

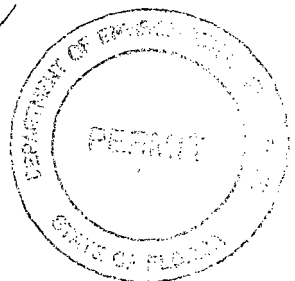
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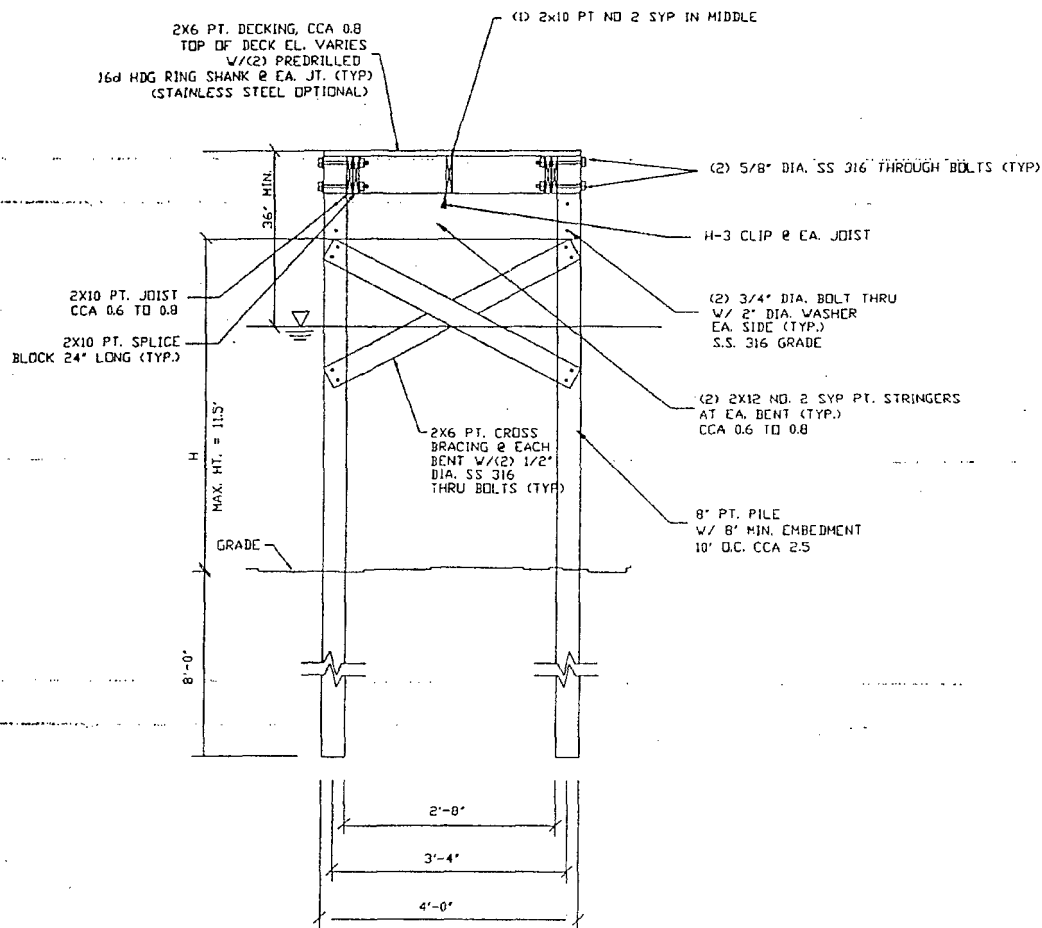
Purpose: DOCKING SLIPS

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

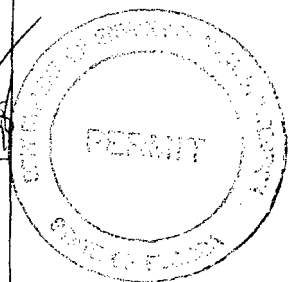
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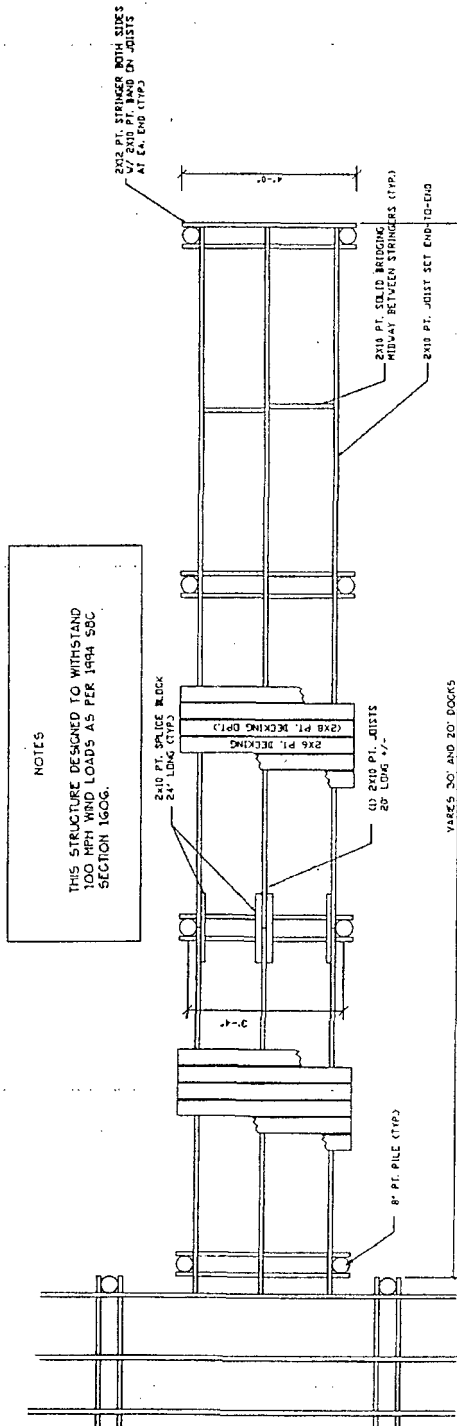
Purpose: DOCKING SLIPS

Original Work ☒ Maintenance ☐

Sheet No.: 5 Of 15

Date: 5/11/98





NOTES

THIS STRUCTURE DESIGNED TO WITHSTAND 100 MPH WIND LOADS AS PER 1994 SBC SECTION 1606.

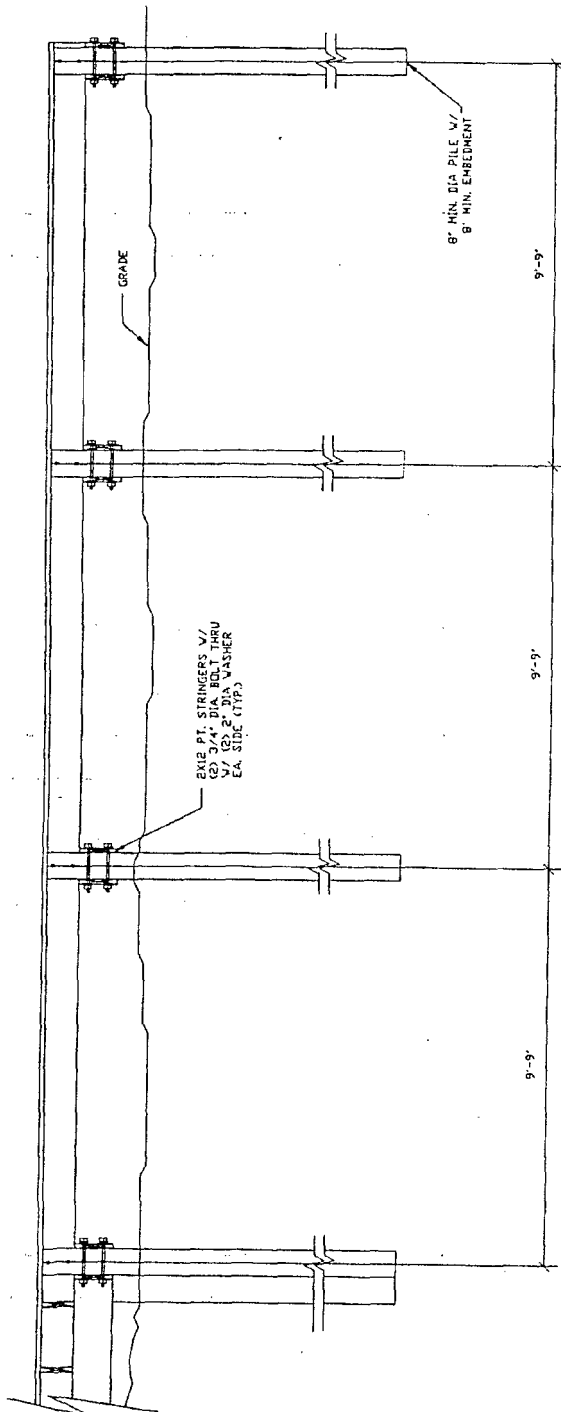
TYP. DOCK. PLAN VIEW / FRAMING PLAN

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.: 6 Of 15
 Date: 5/11/98





TYP. DOCK LONGITUDINAL ELEVATION

Applicant: 110 HOLLY AVE. CORPORATION

Water Body: HALIFAX RIVER

County: FLAGLER

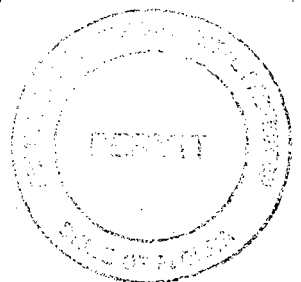
Datum: NGVD(1929)

Purpose: DOCKING SLIPS

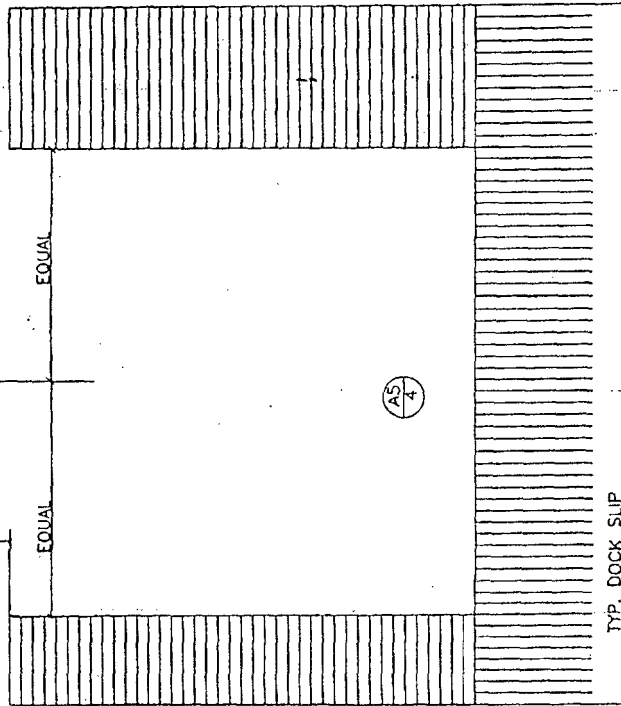
Original Work ☒ Maintenance ☐

Sheet No.: 7 OF 15

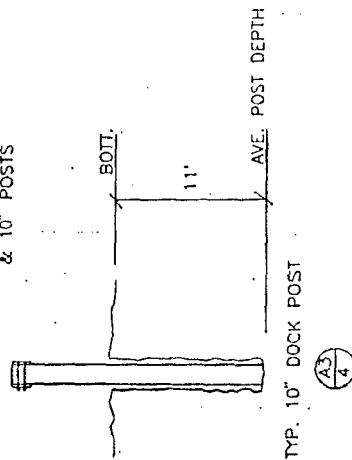
Date: 5/11/98



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)

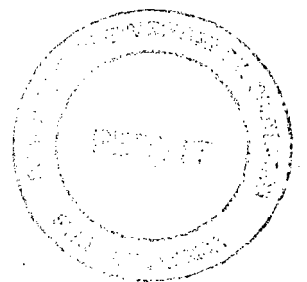
Purpose: DOCKING SLIPS

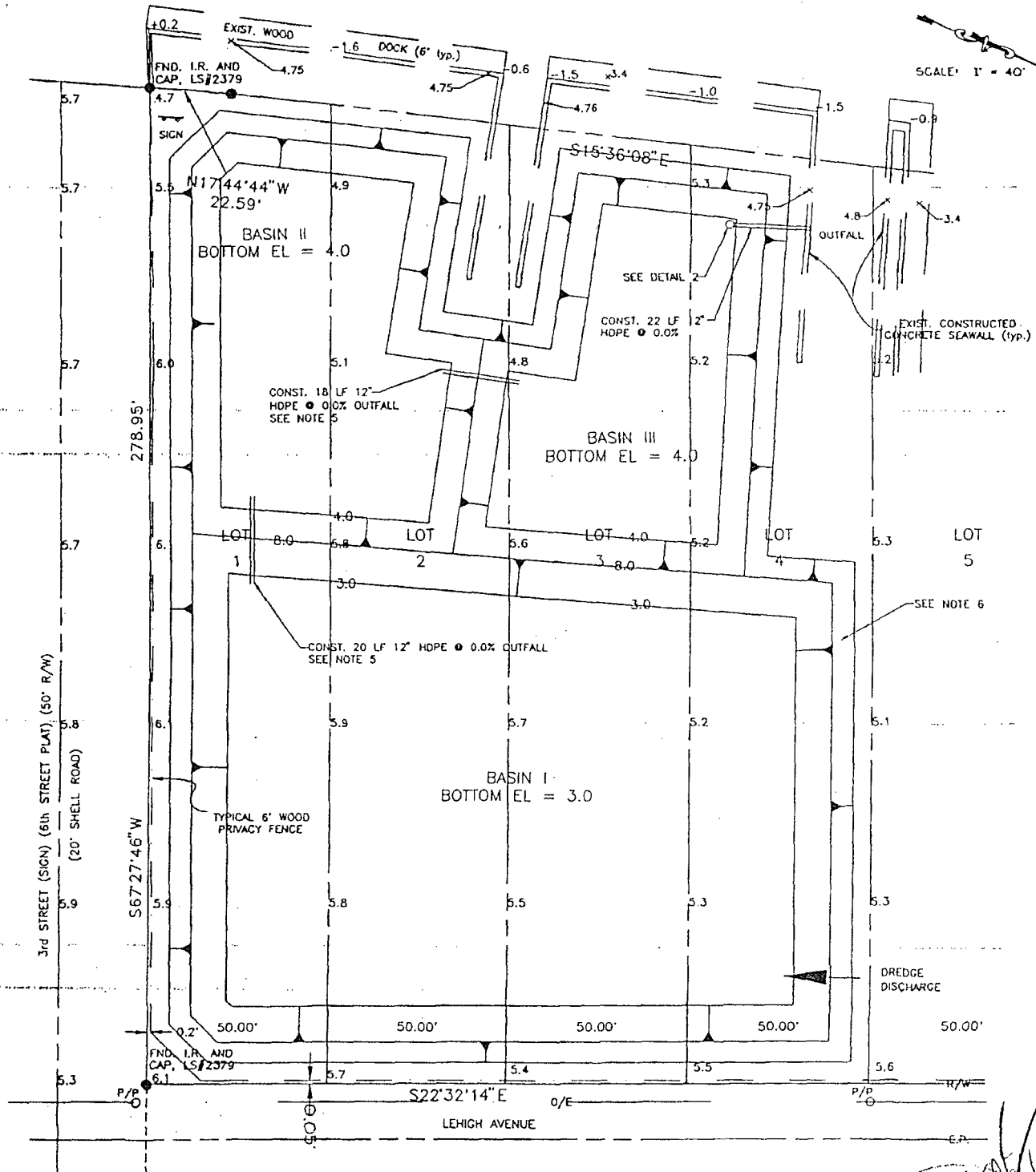
Original Work ☒

Maintenance ☐

Sheet No.: 8a Of 15

Date: 5/11/98





DREDGING BASINS - DRAINAGE PLAN

Applicant: 110 HOLLY AVENUE CORP.

Water Body: HALIFAX RIVER

County: FLAGLER

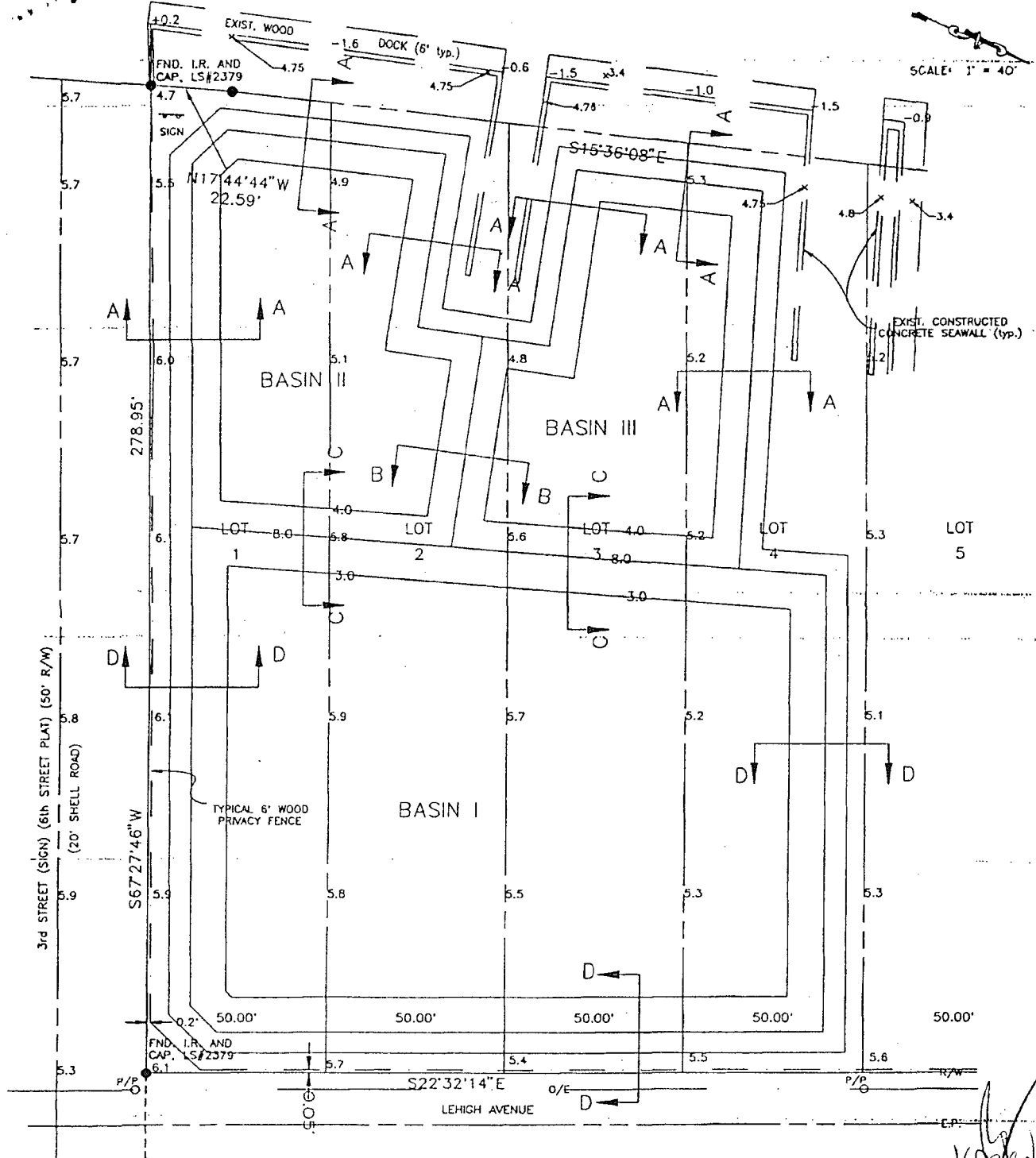
Datum: NGVD (1929)

Purpose: DOCKING SLIPS

Original Work ☒ Maintenance ☐

Sheet No.: 10 Of 15

Date: SEPTEMBER 4, 1998



DREDGING BASINS - SECTIONS LOCATION PLAN

Applicant: 110 HOLLY AVENUE CORP.

Water Body: HALIFAX RIVER

County: FLAGLER

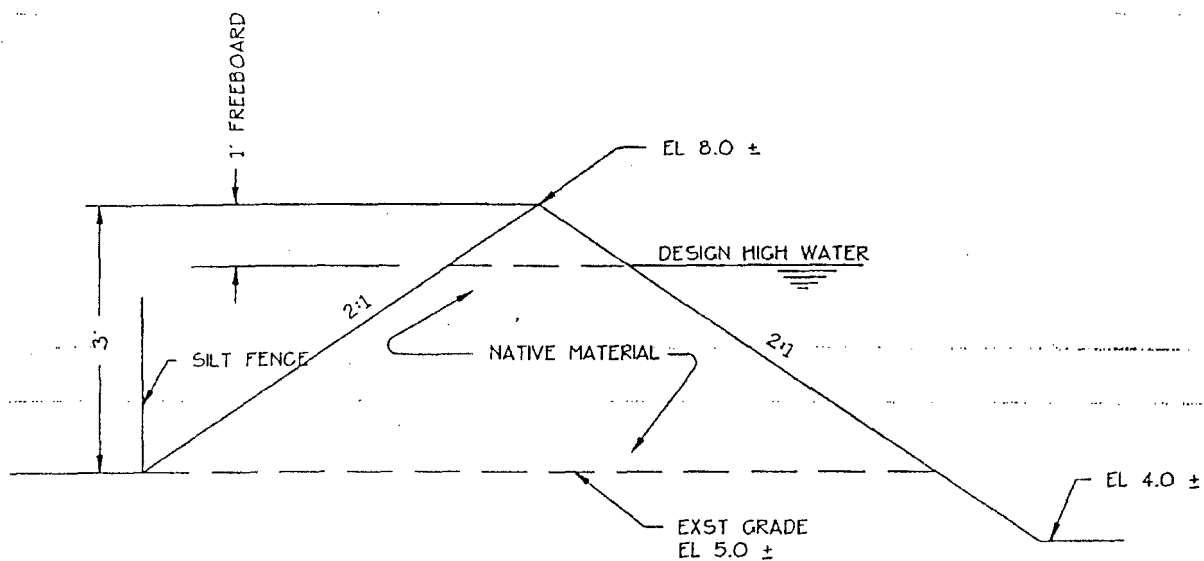
Datum: NGVD (1929)

Purpose: DOCKING SLIPS

Original Work ☒ Maintenance ☐

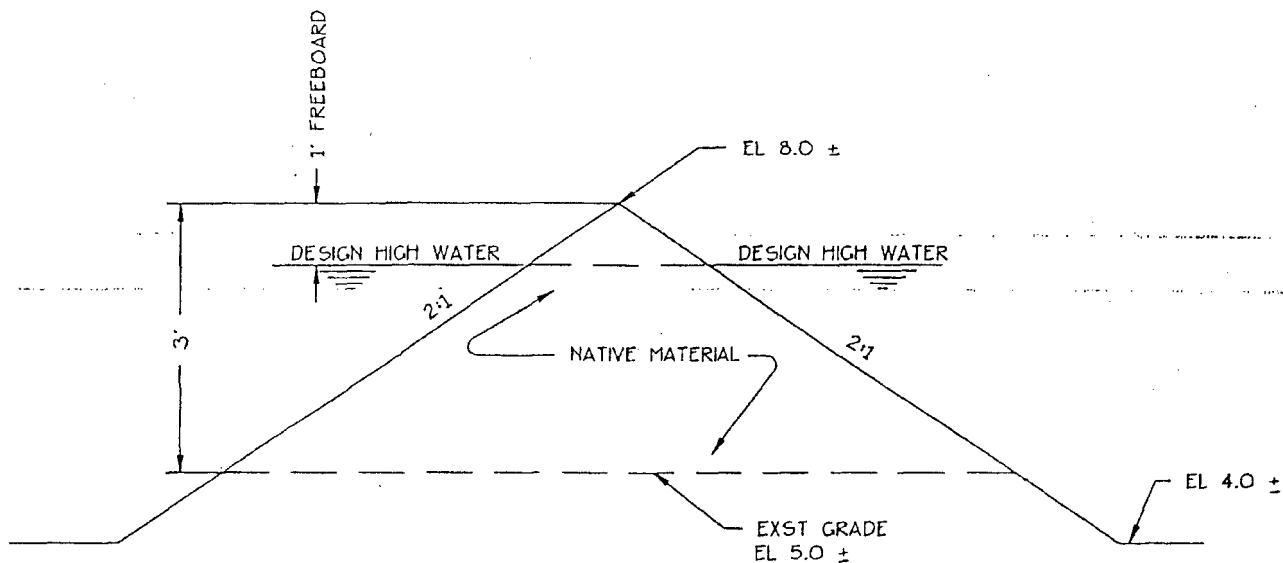
Sheet No.: 11 Of 15

Date: SEPTEMBER 4, 1998



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 of 15

Date: SEPTEMBER 4, 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:

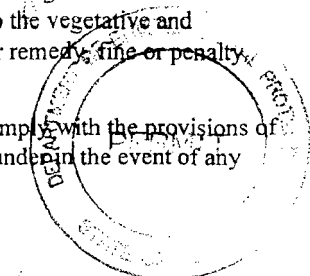
1. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground, however, one (1) passive recreational structure elevated a minimum of three (3) feet above grade and having a maximum walkway width of five (5) feet, may be authorized 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.

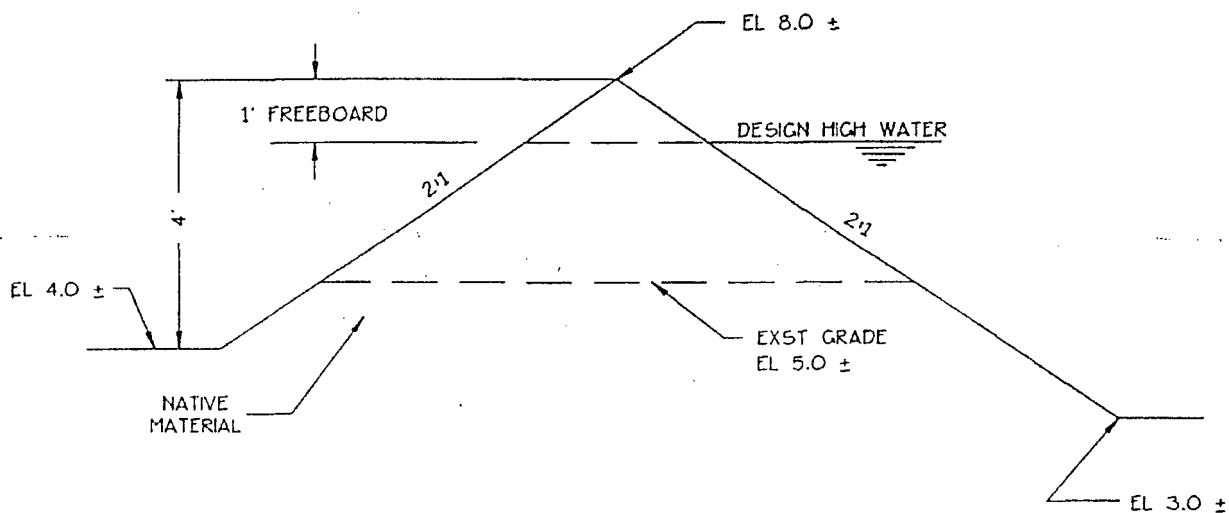
It is understood that the granting of this Conservation Easement entitles the Grantee or its authorized representatives to enter the above-described land in a reasonable manner and at reasonable times to assure compliance.

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, fine or penalty, which may be applicable under Chapter 403 and 373, Florida Statutes.

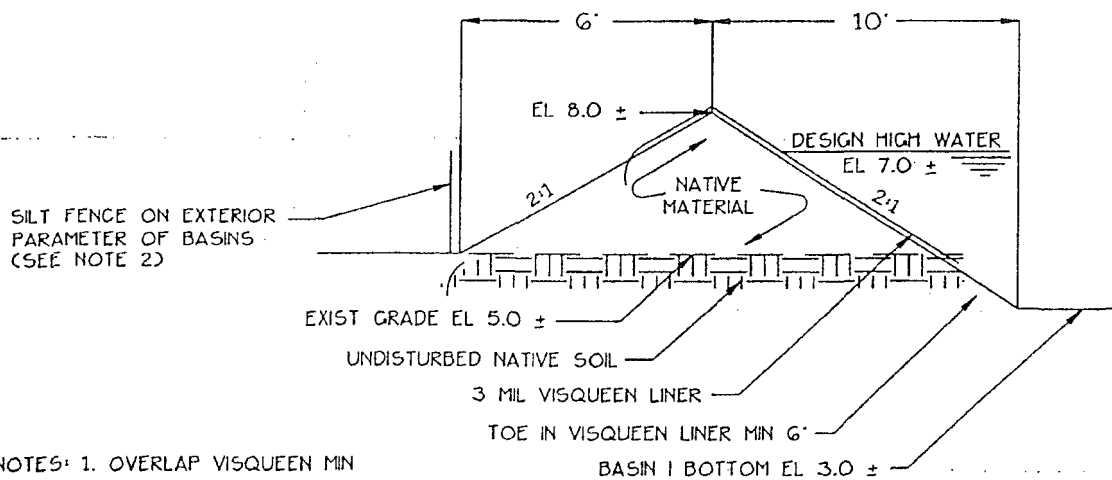
Any forbearance on behalf of the Grantee to exercise its rights in the event of the failure of Grantor to comply with the provisions of this Conservation Easement shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent failure of the Grantor to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





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 I OR BASIN II.

TYPICAL BERM SECTION D-D

N.T.S.

Applicant: 110 HOLLY AVENUE CORP.

Water Body: HALIFAX RIVER

County: FLAGLER

Datum: NGVD (1929)

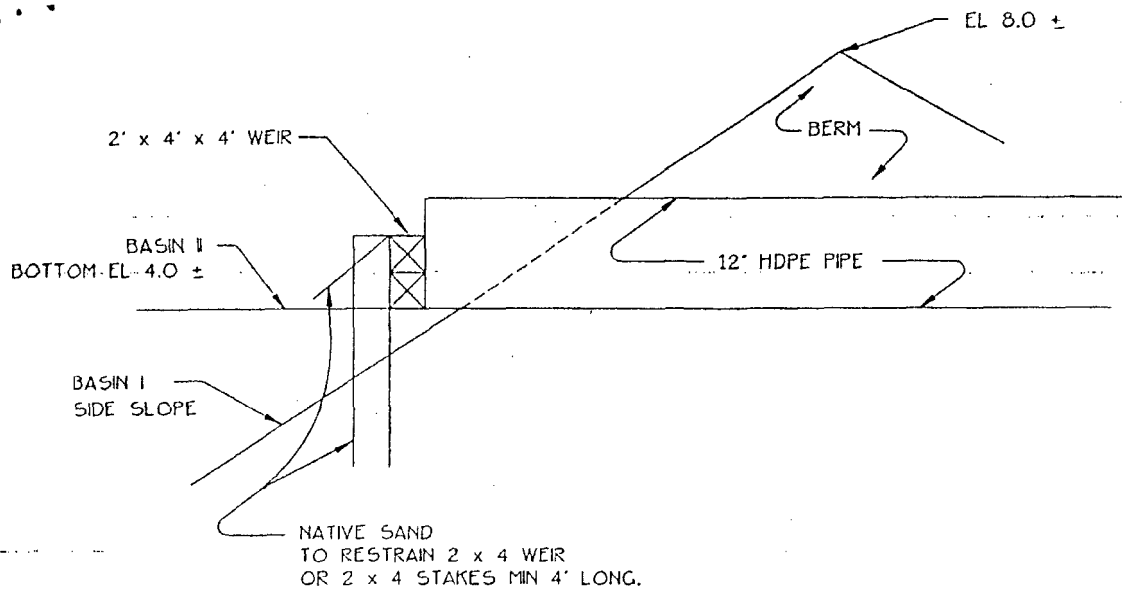
Purpose: DOCKING SLIPS

Original Work ☒

Maintenance ☐

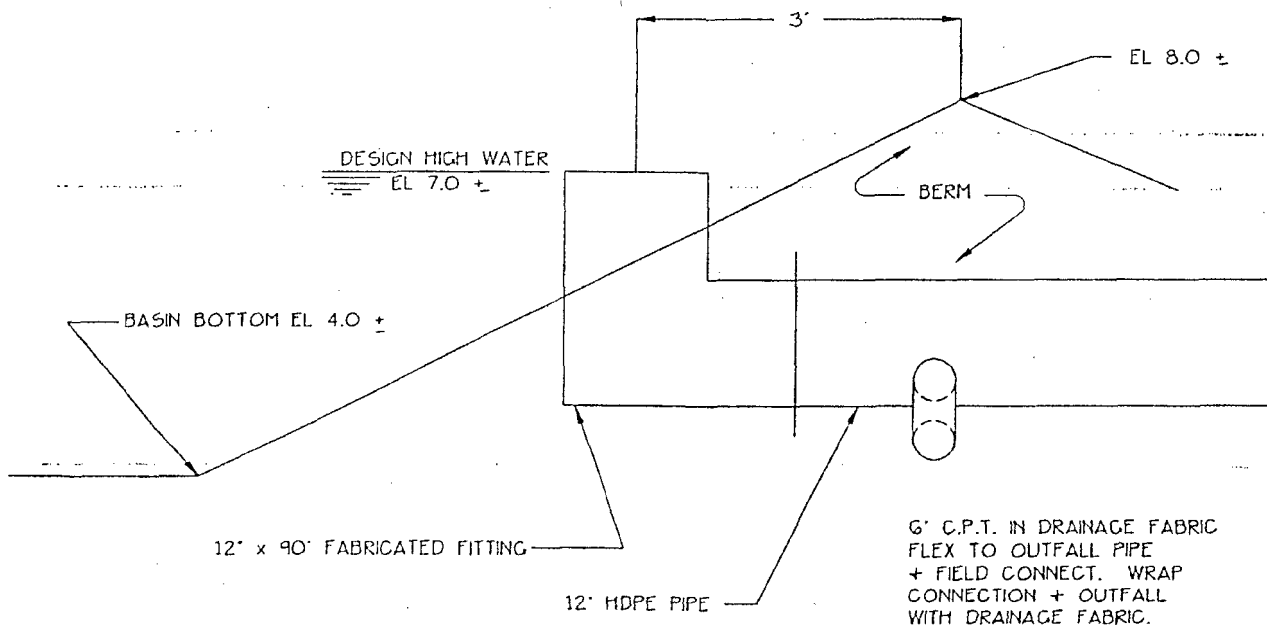
Sheet No.: 13 of 15

Date: SEPTEMBER 4, 1998



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

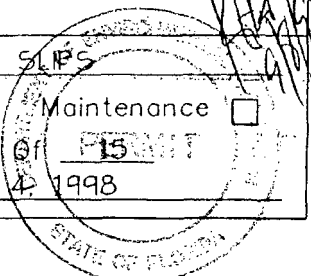
Original Work ☒

Maintenance ☐

Sheet No.: 14

OF 15 SHEETS

Date: SEPTEMBER 4, 1998



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.

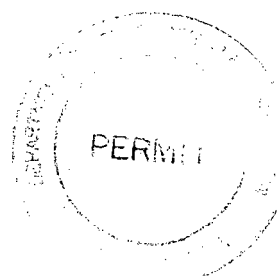
(SEAL)

SIGNATURE

PRINT NAME

TITLE

SERIAL NUMBER





Jeb Bush
Governor

Department of Environmental Protection

Northeast District
7825 Baymeadows Way, Suite 8200
Jacksonville, Florida 32256-7590

Colleen M. Caselle
Secretary

Voice 904-807-3300 FAX 904-448-4366

SUBMERGED LANDS AND ENVIRONMENTAL RESOURCES PROGRAM

October 31, 2005

Mr. Howard Sklar
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. Sklar:

Your request to modify the above permit has been reviewed by Department staff in accordance with Section 62-343.100, 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

3. 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)(a)(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:

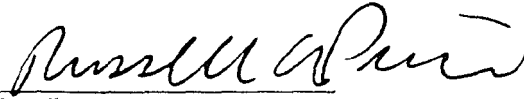
- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes 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 petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; 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

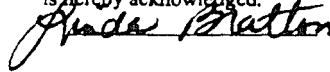

Russell A. Price
Environmental Manager

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

DEPARTMENT OF THE ARMY PERMIT

Permittee: MR. HOWARD SKLAR
110 Holly Avenue Corporation
3400 John Anderson Drive
Ormond Beach, Florida 32176

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.

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