



PLANNING BOARD AGENDA REGULAR MEETING

TUESDAY

February 27, 2024 – 5:30 PM

COUNCIL CHAMBERS

4300 S. ATLANTIC AVE., PONCE INLET, FL

SUNSHINE LAW NOTICE FOR BOARD MEMBERS – Notice is hereby provided that one or more members of the Town Council or other Town Boards may attend and speak at this meeting.

A complete copy of the materials for this agenda is available at Town Hall.

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE.
2. ROLL CALL AND DETERMINATION OF QUORUM.
 - A. Oaths of Office
 - B. Election of Chair
 - C. Election of Vice-Chair
3. ADOPTION OF AGENDA.
4. APPROVAL OF MEETING MINUTES:
 - A. April 25, 2023 (*deferred from December 19, 2023 meeting*)
 - B. December 19, 2023
5. REPORT OF STAFF:
 - A. Planning Division Reports
 - B. Other Updates and/or Reports – Mr. Lear, Planning & Development Director
6. CORRESPONDENCE & DISCLOSURE OF EX-PARTE COMMUNICATION – None.
7. HEARING OF CASES (Public hearings & Quasi-Judicial matters): A Quasi-Judicial decision entails the application of already-established criteria and general public rule or policy to a limited number of specific individuals, interests, properties, or activities. Certain standards of basic fairness must be adhered to in order to afford due process. The parties must receive notice of all hearings and be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which a Quasi-Judicial board acts. It shall be the responsibility of the APPLICANT to ensure that the proposal meets all the criteria and standards established in the Land Use and Development Code for the development sought. Procedure for Public Hearings:
 1. Reading of the Item for the Record;
 2. Staff Testimony, including noticing information;
 3. Board Discussion;
 4. Public Discussion, including statement of Applicant(s);
 5. Boardmembers individually complete Quasi-Judicial worksheets (if applicable);
 6. Motion and Second by the Board; followed by Board discussion, and
 7. Roll-call Vote.
 - A. Application/Type: FDP #39-2023, Sailfish Marina
Property Address: 4912 Sailfish Drive
Review of Final Site Plan – Ms. Rippey

8. BUSINESS ITEMS.
 - A. Annual Board Member Training – Town Attorney
9. PUBLIC PARTICIPATION.
10. BOARD DISCUSSION.
11. ADJOURNMENT.

*If a person decides to appeal any decision made by the Planning Board with respect to any matter considered at a meeting or hearing, he/she will need a record of the proceedings and that for such purpose, may need to ensure that a verbatim record of the proceedings is made (at their own expense), which includes testimony and evidence upon which the appeal is to be based. Persons who require an accommodation to attend this meeting should contact the Ponce Inlet Town Hall at 236-2150 **at least 48 hours prior to the meeting**, in order to request such assistance.*



Meeting Date: February 27, 2024

Agenda Item: 2-A

Report to Planning Board

Topic: Oaths of Office

Summary:

The Town Attorney will administer the *Oath of Office* to Michael Revak, Alternate Seat #1 and to Joseph Young, Alternate Seat #2.

Suggested motion: N/A

Requested by:

Ms. Stewart, Assistant Deputy Clerk

Reviewed by:

Mr. Lear, Planning & Development Director

Approved by:

Mr. Disher, Town Manager



Meeting Date: February 27, 2024

Agenda Item: 2-B & C

Report to Planning Board

Topic: Election of Chair and Election of Vice-Chair

Summary:

The Board will elect a member to serve as Chair and another member to serve as Vice-Chair, to serve a period of one year.

Suggested motion:

May be performed by two single motions or combined into one motion.

Requested by:

Ms. Stewart, Assistant Deputy Clerk

Reviewed by:

Mr. Lear, Planning & Development Director

Approved by:

Mr. Disher, Town Manager



Meeting Date: February 27, 2024

Agenda Item: 4 A&B

Report to Planning Board

Topic: Approval of Meeting Minutes

Summary:

Staff has prepared the attached sets of Planning Board meeting minutes and submits for the Board's review and approval.

April 25, 2023 (*deferred from December*)
December 19, 2023

Requested by:

Ms. Stewart, Assistant Deputy Clerk

Reviewed by:

Mr. Lear, Planning & Development Director

Approved by:

Mr. Disher, Town Manager



**Town of Ponce Inlet
Planning Board
Regular Meeting Minutes
April 25, 2023**

1 **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** Pursuant to proper notice,
2 Chairman Cannon called the meeting to order at 10:00 a.m. in the Council Chambers, 4300 S.
3 Atlantic Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.

4
5 **2. ROLL CALL AND DETERMINATION OF QUORUM:**

6
7 Board members present:

8 Mr. Oebbecke, Seat #1
9 Mr. Kaszuba, Seat #2
10 Mr. White, Seat #3; Vice-Chairman
11 Mr. Cannon, Seat #4; Chairman
12 Mr. Carney, Seat #5
13 Dr. Arun, Alternate #1
14 Mr. Burge, Alternate #2

15
16 Staff present:

17 Mr. Disher, Town Manager
18 Ms. Hunt, Deputy Clerk
19 Ms. Stewart, Assistant Deputy Clerk
20 Mr. Mendenhall, Principal Planner
21 Ms. Rippey, Senior Planner
22 Attorney Smith, Town Attorney

23
24 **3. ADOPTION OF AGENDA:** There were no changes.

25
26 Chairman Cannon moved to adopt the agenda as presented; seconded by Mr. Kaszuba. The motion
27 PASSED by consensus, 5-0.

28
29 **4. APPROVAL OF MINUTES:**

30 **A. March 28, 2023**

31
32 Mr. White referred to line 87 and the phrase “The Board also discussed the mean-high water line
33 (MHWL), which was established in 1947 and has moved approximately 20 to 30 feet; and
34 recommended that the Code be corrected for relief to other property owners in this similar
35 situation, due to the 2012 Code change”. He does not want to change the code until he has a better
36 understanding of why it was changed in 2012. It was determined that the discussion was regarding
37 the mean-high water line and reviewing of the code, not to correct it. Mr. Mendenhall stated the
38 word corrected can be changed to reviewed.

39
40 Chairman Cannon moved to approve the March 28, 2023 meeting minutes as amended changing
41 line 87 to read “reviewed”; seconded by Mr. Carney. The motion PASSED by consensus, 5-0.

42 **5. REPORT OF STAFF:**

43

44 **A. Planning Division Reports**– Mr. Mendenhall referred to the coastal management
45 study recently conducted; the Town Council has received the first reading of the vulnerability
46 study and for the Pearl flood and it has been transmitted to the Department of Economic
47 Opportunity (DEO). A letter of receipt has been received by the Volusia Growth Management
48 Committee stating no appeals have been received; the second reading for adoption will be given
49 to the Town Council in May. Once adopted, there is a 30-day grace before it becomes final. The
50 Land Use Development Code (LUDC) can then be updated to the resiliency standards with
51 language that will help manage flooding, help critical facilities, etc. He announced there are no
52 administrative variances to report; a minor re-plat of 4514 S. Peninsula Drive. It is a single-family
53 residence that has a 25-foot-wide adjacent piece of property combined with the single-family
54 residence; it went from approximately 20,000 square feet to approximately 32,000 square feet; a
55 .74-acre lot once the lots were combined.

56

57 **B. Other Reports & Updates** – Mr. Disher announced the Florida Fish and Wildlife
58 Commission has extended the permitting rules relating to building on the beach to past the May 1,
59 2023, sea turtle deadline. They can continue with construction and apply for new permits; however,
60 the sea turtle lighting rules are still in effect. It has been reported that contractors are informing
61 people that permits are not required along the beach which is false; they are required by the town
62 for the building code, Volusia County, or the Department of Environmental Protection (DEP). The
63 only thing that does not require a permit is carpet and paint. Hurricane recovery efforts are on-
64 going; he announced Public Works has begun cleaning out the storm drainage pipes and will
65 provide photos in the next newsletter. Many of the pipes are exfiltration pipes that are perforated
66 which allows the water to soak into the ground. Public Works has cleaned approximately 1,000
67 feet of pipe to date. The resiliency policies Mr. Mendenhall referred to are posted on the town’s
68 website. The fee waivers for hurricane related repairs will expire on June 30, 2023; storm damage
69 documentation is required.

70

71 Chairman Cannon and the Board acknowledged the official promotion of Mr. Disher as Town
72 Manager.

73

74 **6. CORRESPONDENCE/DISCLOSURE OF EX-PARTE COMMUNICATION:** *None*

75

76 **7. HEARING OF CASES:**

77

78 **A.** *None.*

79

80 **8. BUSINESS ITEMS/PUBLIC HEARINGS:**

81

82 **A. Ordinance 2023-02 (proposed), Home-Based Business** – Ms. Rippey stated this
83 proposed ordinance is in response to the 2021 enactment of House Bill (HB) 403, codified as
84 Section 559.955 Florida Statutes relating to home-based businesses; it is a state pre-emption of the
85 regulation. The town’s attorney has recommended updating the code to be more consistent with
86 the state statute. The town has had home-based business regulations since 1992 which govern the
87 number of customers, types of prohibited activities, who may be engaged in home-based
88 businesses, appearance of the premises and sign restrictions. The new state statute permits a greater
89 number of employees, including those not living in the residence; does not impose time

90 restrictions; and adversely affected home-based business owners can challenge local governments
91 for violation of the statute. The home-based business must clearly be a secondary use within the
92 structure and is subject to applicable business taxes. The town is still able to regulate elements of
93 the business such as noise, smells, pollutants, or nuisance elements of the business. She explained
94 the town will be shifting from a proactive permitting to a reactionary code enforcement with this
95 change to the state statute. Mr. White asked what the definition of a home-based business is. Ms.
96 Rippey explained a business operation conducted as an accessory use within a residential dwelling;
97 it does not name a specific type of business. Mr. White asked if this would supersede the current
98 grandfathered-in rental policy; he used the example of a bed-and-breakfast. Mr. Mendenhall
99 explained the town has bed-and-breakfast regulations within the code. He does not believe it would
100 supersede the rental policy but will do further research. Mr. White asked how this ordinance would
101 affect homeowner associations (HOAs) or condominium documents. Ms. Rippey replied there is
102 language included that states it does not supersede any current or future declaration of
103 condominium, cooperative document, or HOA declaration. Dr. Arun referred to Exhibit A, B-7,
104 Safety, and asked if biohazardous waste could be added next to the word “combustible; Ms. Rippey
105 agreed to do so.

106
107 Mr. Carney referred to parking, and noted the language is too vague to be enforceable; it needs to
108 be definable and defensible. Ms. Rippey explained the language was revised to meet the state
109 statute; it must meet the requirements for residential properties in the parking code. Mr.
110 Mendenhall added that they will review adjacent properties and properties of similar size to see
111 how much parking they provide and be restricted to that point. The minimum parking for a single-
112 family home is two parking spaces. The parking code could be reviewed to see if any provisions
113 need to be changed for a maximum number of parking spaces; this provision is what the state
114 requires. Mr. Disher stated the state regulations preempt us from doing certain things; the town the
115 town does not have a maximum parking requirement. It is a site design of how many can fit and
116 still meet the town’s code. Permits used to be issued for this; however, the state is pre-empting that
117 and changes us from a permitting, proactive stance to being reactive. The town’s attorney has
118 advised the best way to address this is to incorporate the state statute into our code. Chairman
119 Cannon asked how home-based businesses were depicted prior to this new statute and if they were
120 an issue or not. Mr. Disher replied it was mostly a non-issue; most home-based businesses in Ponce
121 Inlet are home offices. Mr. Carney reiterated that he would not include language that is not
122 enforceable. Mr. Disher replied he will double check with the attorney on the language.

123
124 Mr. Oebbecke asked if the town could use Volusia County’s regulation that home-based businesses
125 occupy no more than 25% of livable floorspace of the residence. Ms. Rippey replied she could
126 check, however, that may be going outside of the preemption; that was discussed but the language
127 cannot be stricter than what the state is allowing. Chairman Cannon asked if the town was
128 precluded from including similar language; Ms. Rippey explained the attorney would need to be
129 contacted as to how to recommend a percentage. Mr. Burge asked about home-based businesses
130 such as painters that need to store chemicals and asked if language could be added that limits the
131 storage amount and putting undue pressure on essential services including increased garbage
132 production. Ms. Rippey replied there is no guidance regarding that; however, it would regulated
133 be no different than any other resident’s storage. Mr. Kaszuba referred to the House of
134 Representatives final bill analysis, pages 5 and 6, that lists jurisdictions in Florida, including
135 Volusia County, and the regulations they have on home-based businesses and asked if those
136 regulations would go away with this state statute. Ms. Rippey explained why they are preempting
137 local jurisdictions to make it more consistent. Mr. Kaszuba referred to Exhibit A, B-5, Signage,

138 and asked about signage on vehicles that are parked in front of a home-based business and what
139 regulates that. Ms. Rippey explained that is regulated by Section 3.30.6B; no outside advertising
140 is permitted on the premises or elsewhere that it could be construed as advertising. Mr. Mendenhall
141 clarified that the advertising restriction is specific to a home-based business as there are people
142 who drive work vehicles with signage home. Mr. Kaszuba referred to the language from the Senate
143 and House of Representatives final bill analysis; Senate 559.995(c) regarding “may not conduct
144 retail transactions at a structure other than a residential dwelling, however, incidental and short-
145 term business activities may be conducted at the residential property” and asked for clarification
146 as it seems vague. Mr. Mendenhall explained that if any business is to be conducted, it should be
147 inside the residence and not in a garage or other building separate from the home. The business
148 must take up space in the residence and not expand the business to a size that would be
149 incompatible with the property or that would create a nuisance. The home-based business must
150 clearly be an accessory to the primary use of the residence. Mr. White referred to the draft Exhibit
151 A, page 5, line 10, home occupation standards, and asked why it was stricken as well as line 21
152 regarding medical marijuana dispensaries and if there was anything that protects the town from
153 allowing that to happen. Ms. Rippey replied yes; Section 3.33 in the code bans the use of medical
154 marijuana dispensaries in the entire town. Chairman Cannon referred to the bed-and-breakfast
155 question from earlier and asked if the bed-and-breakfast code protects the town from someone
156 wanting to open a bed-and-breakfast outside the specific location area as a home-based business;
157 there is also a sewer requirement among other requirements for a bed-and-breakfast. Mr.
158 Mendenhall replied no; the bill analysis states that the statute does not supersede local laws or
159 ordinances related to public lodging establishments or vacation rentals. Chairman Cannon asked
160 what the next steps are and if this will be brought back with revisions. Mr. Mendenhall explained
161 that it could be recommended to the Town Council with the recommended changes incorporated
162 for a first reading or it can come back before the Planning Board with the recommended changes.

163
164 Chairman Cannon moved to forward Ordinance 2023-02 to the Town Council as amended with a
165 recommendation of approval; seconded by Vice-Chairman White. The motion PASSED 5-0 by with
166 the following vote: Chairman Cannon – yes; Vice-Chairman White – yes; Mr. Carney – yes; Mr.
167 Kaszuba – yes; Mr. Oebbecke – yes.

168
169 **9. PUBLIC PARTICIPATION:** Chairman Cannon opened public participation – hearing
170 none, he closed public participation.

171
172 **10. BOARD DISCUSSION:** None.

173
174 **11. ADJOURNMENT:** The meeting was adjourned at 11:04 a.m.

175
176 Prepared and submitted by,

177
178 Draft

179 Debbie Stewart

180 Assistant Deputy Clerk

181

182 Attachment(s): None



Town of Ponce Inlet Planning Board Regular Meeting Minutes December 19, 2023

1 **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** Pursuant to proper notice,
2 Chair Cannon called the meeting to order at 10:00 a.m. in the Council Chambers, 4300 S. Atlantic
3 Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.

4
5 **2. ROLL CALL AND DETERMINATION OF QUORUM:**

6
7 Board members present:

8 Mr. Oebbecke, Seat #1
9 Mr. Kaszuba, Seat #2 (absent)
10 Mr. Burge, Seat #3
11 Mr. Cannon, Seat #4; Chair
12 Mr. Carney, Seat #5 (absent)

13
14 Staff present:

15 Mr. Disher, Town Manager
16 Mr. Lear, Planning & Development Director
17 Ms. Stewart, Assistant Deputy Clerk
18 Ms. Rippey, Senior Planner
19 Attorney Knight, Town Attorney

20
21 **3. ADOPTION OF AGENDA:** There were no changes.

22
23 Chair Cannon moved to adopt the agenda as presented; seconded by Mr. Oebbecke. The motion
24 PASSED by consensus, 3-0.

25
26 **4. APPROVAL OF MINUTES:**

27 **A. April 25, 2023**

28
29 Deferred to the January 23, 2024 meeting.

30
31 **5. REPORT OF STAFF:**

32
33 **A. Planning Division Reports** – Mr. Lear provided updates on two proposed bills the
34 legislature will be voting on next year; HB 267, a comprehensive building permit bill, and
35 explained the sections that would affect Ponce Inlet: requires the municipality to reduce the permit
36 fee by 75% if an owner retains a private provider; reduces the timeframe which the municipality
37 must produce written notice of receipt and any other additional information required for a properly
38 completed application; reduces the number of times a municipality may ask an applicant for
39 additional information; and allows an application to be deemed approved if the municipality fails
40 to meet any of the timeframes. The second bill, HB 609, would repeal local government’s ability
41 to levy a local business tax receipt. Mr. Lear announced the Town passed a resolution supporting

42 the city of Ormond Beach and the Volusia League of Cities in opposing the proposed construction
43 of the Belvedere fuel farm in the incorporated area of Volusia County at 874 Hull Road. In
44 October, the Council voted by consensus to support the city of DeBary in requesting amendments
45 to the Live Local Act, which he explained. He announced the 2023 Florida Building Code, and the
46 Building Official's Association of Florida's Model Administrative Code (2023) with additions
47 from the Town of Ponce Inlet were approved at last night's Council meeting.
48

49 **B. Other Reports & Updates** – Mr. Disher referred to HB 267 that Mr. Lear reviewed
50 regarding permitting and explained it is concerning to the Town because of the shortened
51 timeframes. He explained that each permit here is different because each home and lot is different.
52 The Live Local Act was passed earlier this year, and the Town has been working with the city of
53 DeBary on amendments to it. He reviewed what would affect Ponce Inlet, such as the inclusion of
54 working waterfronts. Chair Cannon asked if the permitting legislation is making headway or
55 meeting any resistance. Mr. Disher explained the bill is going through the committees; he noted
56 that the Town has engaged the services of a lobbyist who is monitoring the bill's progress. He
57 added that Mayor Paritsky is head of the Advocacy Committee with the Florida League of Cities
58 and will be attending the Legislative Days in January where there will be the opportunity to speak
59 with the legislators about our concerns. Mr. Oebbecke asked if they were considering tiering the
60 cities to size of population. Mr. Disher replied there is one for a population of 30,000 or less. Mr.
61 Burge asked if Ponce Inlet would be forced to build low-income housing. Mr. Disher replied no;
62 staff examined that potential as it would be allowed on our commercial properties zoned B-1.
63

64 **6. CORRESPONDENCE/DISCLOSURE OF EX-PARTE COMMUNICATION:** Chair
65 Cannon disclosed that he met with Mr. Chad MacFie, Marine Science Center, today to review the
66 site, look at what is being proposed, see the layout of the facility, etc. Mr. Oebbecke announced
67 he met with Mr. MacFie, but only as it relates to the timing of this meeting.; they did not discuss
68 what is being presented tonight.
69

70 **7. HEARING OF CASES:**
71

- 72 **A.** Application/Type: #FDP 37-2023; Final Development Plan
73 Address: 100 Lighthouse Drive, Marine Science Center
74 Purpose: To review final site development plan for the Learning Center
75 expansion; per SS 6.6.6 of the LUDC
76

77 Ms. Rippey provided a PowerPoint presentation of the Marine Science Center's Learning Center
78 expansion project and an overview of the project. The expanded learning center will replace a
79 small, indoor classroom to provide an improved educational area. The new quarantine deck will
80 provide an isolated area for sick turtles to prevent disease and infection from spreading to other
81 turtles. She noted that Mr. John Dillard, Zev Cohen & Associates, the engineer of record, is
82 present; he is representing Volusia County, the applicant and lessee. Mr. Chad MacFie, Marine
83 Science Center (MSC), is also present. She reviewed the application process and overview of the
84 property as well as the tree removal plan and the landscape plan. The final development plan meets
85 all the requirements of the Land Use and Development Code (LUDC) and is consistent with the
86 Comprehensive Plan. Staff recommends the Planning Board forward the proposed site plan
87 package for the Marine Science Center (MSC) expansion to the Town Council with a
88 recommendation of approval. Mr. Burge asked where the four trees specifically mentioned were
89 being planted. Ms. Rippey explained four trees must be replaced in the stormwater area. Mr. Burge

90 referred to Board Member Mr. Kaszuba's email comment regarding traffic and noted he does not
91 see anything in the plan for bus parking for the summer programs, etc. Ms. Rippey deferred the
92 question to the applicant. Mr. Burge asked if any gopher tortoises had been found on the initial
93 inspection report. Ms. Rippey concurred that the report provided by the applicant states no gopher
94 tortoises were found; if any are located, the applicant must obtain a permit from Florida Fish &
95 Wildlife to remove them before proceeding with construction. Mr. Lear added a secondary tortoise
96 inspection will be conducted 90 days prior to construction.
97

98 Mr. Oebbecke noted that there is substantial standing water in the vicinity of the quarantine
99 deck; he would like that to be taken into consideration from a construction standpoint. Chair
100 Cannon stated there were items not mentioned in the presentation; a shell road in a parking area;
101 two elevated decks and walkways; and a sidewalk. He spoke with Ms. Rippey yesterday who
102 indicated the sidewalk would run from the end of the new parking lot and connect with the existing
103 sidewalk. The existing sidewalk is approximately 10' long and Attachment 4 depicts it will run all
104 the way to the street; he was first told a new sidewalk would be installed only in the new parking
105 lot; he asked for clarification. Ms. Rippey deferred the question to the applicant. Chair Cannon
106 stated he discussed parking with Ms. Rippey and asked if there was a resolution on what is
107 required. Ms. Rippey explained the parking calculations were re-done when this application was
108 completed and are based on the office space, museum, and exhibit space which is what the code
109 requires. Chair Cannon asked if the Town is comfortable with the requirement of only 28 parking
110 spaces for the facility with the new expansion. Ms. Rippey replied yes; she noted that the applicant
111 has indicated they are not expanding programs. Chair Cannon asked if the calculations are based
112 on square footage. Ms. Rippey replied yes and on the type of use for that space. Chair Cannon
113 asked the applicant to come forward and respond to the Board's questions.
114

115 Mr. Chad MacFie, Director of the Marine Science Center (MSC), addressed the Board's
116 concerns and provided justification for the project. He explained the bus parking process and that
117 they plan to continue with this system. He noted MSC rehabilitates and releases back into the wild
118 approximately 150 gopher tortoises and box turtles each year and they will ensure none are
119 impacted during construction. The quarantine deck will be the fishes quarantine and turtle
120 overflow. He addressed the concern regarding the standing water in that area; the architect
121 calculated the concrete slab underneath to ensure it is above the historic water levels. The walkway
122 will access the life support systems located below the quarantine deck and the shell road will be
123 used to help construct the new education building; then used for parking for the education staff
124 and summer camp program bus off-loading. He explained the education building will be divided
125 into two sections to allow for the MSC programs and a separate wet lab for visiting students. Mr.
126 McFie noted the extension of the sidewalk will provide safety for visitors and staff; the second
127 sidewalk will be an educational trail as well as lead to a separate entrance to the MSC from the
128 raptor exhibit. He deferred the parking calculations to the engineer. Mr. MacFie stated that there
129 have been several discussions over the years regarding an expansion to the Marine Science Center
130 and he feels this plan addresses the Town's and resident's concerns; this plan repurposes areas and
131 constructs as small as possible and still meets their needs. This project will improve staff office
132 space; much of the space will not be open to the public as it is for staff and volunteers. He
133 emphasized the MSC is not expanding its educational programs or the hours. He cannot project
134 future traffic or attendance numbers but can provide historical data. The Board discussed the
135 project, the MSC programs, and attendance.
136

137 Chair Cannon announced that Mr. Kaszuba provided an email comment that will be

138 included as part of the record; he opened public comment. Mr. Skip White, 4885 S. Atlantic
139 Avenue, stated this project falls into the lighthouse overlay district and asked if there is a
140 presentation slide that depicts the proper utilization of materials are being used in the design of the
141 structure. Chair Cannon explained the staff report notes that they reviewed all the criteria of the
142 lighthouse overlay district and the land and development criteria; all were met. Mr. White
143 commented that when the bird hospital was built, a plan was submitted that the Planning Board
144 reviewed and determined did not meet the requirements, so changes were made. His concern is
145 that there is not a rendering of what the structure will look like that the citizens can review. Chair
146 Cannon noted that the only structure will be a wooden walkway; the addition to the existing
147 building will match the paint, roofing requirements, etc. Ms. Rippey added that she will include
148 that information in the presentation to the Town Council and reiterated that the project does meet
149 the lighthouse overlay requirements. Chair Cannon closed public comment. Mr. Oebbecke
150 suggested including the justification for the project to the Town Council; that it is to support both
151 visitors, students, and staff. Mr. Lear replied that will be included in the staff report to Council.
152

153 Chair Cannon moved to forward FDP 37-2023, Final Development Plan for the Marine Science
154 Center Learning Center expansion to the Town Council as presented with a recommendation of
155 approval; seconded by Mr. Oebbecke. The motion PASSED 3-0 by with the following vote:
156 Chairman Cannon – yes; Mr. Oebbecke – yes; Mr. Burge – yes.
157

158 **8. BUSINESS ITEMS/PUBLIC HEARINGS:** *None.*
159

160 **9. PUBLIC PARTICIPATION:** Chairman Cannon opened public participation – hearing
161 none, he closed public participation.
162

163 **10. BOARD DISCUSSION:** *None.*
164

165 **11. ADJOURNMENT:** The meeting was adjourned at 6:57 p.m.
166

167 Prepared and submitted by,
168

169 *Draft*

170 Debbie Stewart

171 Assistant Deputy Clerk
172

173 Attachment(s): Comment from Board Member Kaszbua.



Meeting Date: February 27, 2024

Agenda Item: 7-A

Report to Planning Board

Topic: FDP 39-2023; Final Development Plan
Sailfish Marina
4912 Sailfish Drive

Summary:

The applicant, representing Blue Water Realty Advisors, LLC, owner, requests approval of final site plan for the Sailfish Marina, to include a 34-slip marina, 17-space parking lot, 216 square foot (SF) bathroom building, two stormwater retention areas and a 550-linear foot wooden walkway. The tree preservation and landscape plan was presented to the Cultural Services Board on February 5, 2024 and was recommended for approval.

Suggested motion:

Recommendation of approval of the proposed Sailfish Marina Final Development Plan.

Requested by:

Ms. Rippey, Principal Planner

Reviewed by:

Mr. Lear, Planning & Development Director
Mr. Disher, Town Manager

Approved by:

Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET, PLANNING AND DEVELOPMENT DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Planning Board
From: Patty Rippey, AICP, Principal Planner
Through: Darren Lear, AICP, Planning & Development Director
Date: February 21, 2024
Subject: FDP 39-2023 - Final Development Plan for Sailfish Marina

Location: 4912 Sailfish Drive
Applicant: Mark Karet, AICP, Zev Cohen and Associates, Inc., representative for Blue Water Realty Advisors, LLC, Owner
Staff Recommendation: *Approval*, based on the findings in this memorandum.

MEETING DATE: February 27, 2024

1 INTRODUCTION

2 The applicant, representing Blue Water Realty Advisors, LLC, property owner, requests approval
3 of the final development plan for the proposed Sailfish Marina project.
4

5 AUTHORITY AND PROCESS

6 The application was submitted on June 26, 2023. The Development Review Team (DRT) reviewed
7 the final development plan and provided comments to the applicant. A final revised application
8 was submitted on October 11, 2023, to address technical requirements of the Land Use and
9 Development Code (LUDC). The landscape plan was reviewed and recommended for approval by
10 the Cultural Services Board on February 5, 2024, pursuant to LUDC Section 4.10. The
11 development plan is now being provided to the Planning Board for consideration in accordance
12 with LUDC Section 6.6.6 – Development Plans and Subdivisions. Following the Board’s review
13 and recommendation, the item will be scheduled for final consideration by the Town Council.
14

15 PROPERTY OVERVIEW

16 CURRENT DEVELOPMENT AND ADJACENT LAND USES

17 The subject area is located west of Sailfish Drive, south of Beach Street and Rains Drive (see
18 **Attachment 1**). The parcel is approximately 5.24 acres in size. The subject site is currently vacant
19 property, zoned “B-2” (Business Commercial), which allows marine-related facilities and

20 businesses, such as marinas. The surrounding parcels are zoned for multifamily and single-family
 21 residential uses, as shown in **Figure 1** and **Table 1** below. The property entrance is located at 4912
 22 Sailfish Drive, which is a designated scenic roadway.
 23

24 **Figure 1 – Zoning Districts**
 25



26
 27
 28
 29

Table 1 – Adjacent Land Uses

Direction	Zoning	Future Land Use Designation	Current Use
North	R-3	Medium Density Single Family Residential	Residential
North	MF-2	Medium High Density Multi-Family Residential	Vacant
East	R-1	Low Density Single Family Residential	Residential
South	R-1	Low Density Single Family Residential	Residential
West	C	Conservation	Halifax River

30

31 The future use land for the property is *Riverfront Commercial*. The Riverfront Commercial land
 32 use category includes land and water-oriented uses and activities that reflect and enhance the
 33 unique character of the waterfront, preserve and protect to the maximum extent feasible both
 34 physical and visual access to the waterfront. Recreational and working waterfront uses shall be
 35 given preference in this land use category, especially those uses that are water dependent and
 36 water enhanced. Representative uses within the riverfront commercial designation are wet boat
 37 storage (e.g., marinas, boat basins, etc.), boat sales and services, fishing charter boat dockage,
 38 fishing and boating equipment and supplies, sailing equipment and lessons, bicycle and boat
 39 rentals, chandleries, seafood markets, restaurants, boatels, and boat construction and repairs.

40
41 The property is also in the Riverfront Overlay District (ROD)¹, which encompasses all of the B-2
42 and MF-2 zoning districts lying east of the Halifax River and west of Sailfish Drive (see **Figure**
43 **2**). The purpose of the ROD is to ensure that development within this area promotes the open,
44 water-oriented character of the riverfront, protects environmental resources, and ensures a high
45 quality of design.

46
47 Additionally, the ROD is consistent with the town's comprehensive plan goals, objectives and
48 policies resulting from the town's 2002 visioning process regarding development and
49 redevelopment of the Ponce Inlet riverfront. These goals, objectives and policies were
50 established to create a pedestrian-oriented riverfront environment, to ensure access to the
51 riverfront for both pedestrians and bicyclists, and to preserve the historic setting and unique
52 character of this area, including, the scenic roads of Beach Street and Sailfish Drive².

53
54 **Figure 2: Riverfront Overlay District**
55



56
57
58 **PROPOSED DEVELOPMENT**
59 **SITE LAYOUT**
60 The proposed project includes the construction of a 34-slip boat marina, a parking lot with 16
61 standard parking spaces and 1 handicap parking space, 6 bike-rack parking spaces, a stormwater
62 retention area adjacent to the parking lot, a wooden boardwalk from the parking lot to the boat
63 slips, and a restroom building.

64
65 The wooden boardwalk is approximately 550 feet long and 5 feet in width. The boardwalk will
66 connect the parking lot to the southwest side of the boat slips, travel between the piers and

¹ LUDC Sec. 2.14.

² Designated by Town Resolutions 1999-11 and 2000-09, respectively.

67 reconnect to the bathroom facilities at the northwest boat slip pier. The restroom building is a 216
68 square foot, 18'X12' structure, located just north of the northwest boat slip pier. The upland
69 structures and parking lot account for 6.5% of the total 5.24-acre site as impervious area, while the
70 remaining 93.5% is pervious area. **There is no proposed boat ramp at the marina, therefore,**
71 **there will be no boat trailer traffic accessing the site by land.** Boats will only be able to access
72 the marina boat slips by water from the Halifax River.

73

74 REQUIRED PARKING

75 Pursuant to LUDC Section 4.7.8, Table 4-19, 1 vehicular parking space per 2 boat slips is required
76 for marinas and similar uses. There are no other accessory uses, such as a restaurant or retail shop,
77 that would require additional parking. The applicant proposes to meet this requirement with 17
78 parking spaces.

79

80 In addition, turn-around areas for fire trucks will be provided at the west end of the parking lot.
81 These are required by the Seventh Edition of the Florida Fire Prevention Code (FFPC), under FS
82 633.202, based on the distance of the parking lot from Sailfish Drive. When this distance exceeds
83 150 feet, the fire code requires turn-around areas to be provided, rather than forcing the fire truck
84 to back out. These turnaround areas are intended for emergency purposes only and shall not be
85 used for parking vehicles or trailers of any kind. These areas will need to be marked accordingly
86 with appropriate striping and signage for that purpose.

87

88 TRAFFIC

89 The applicant retained Lassiter Transportation Group (LTG) to conduct a Traffic Impact Analysis. In
90 order to determine the impacts of the proposed development on local roadways, LTG obtained 24-hour
91 segment counts along the following roads.

92

- 93 • Beach Street from Sailfish Drive to Peninsula Drive
- 94 • Rains Drive from Sailfish Drive to Peninsula Drive
- 95 • Ocean Way Drive from Sailfish Drive to Peninsula Drive
- 96 • Sailfish Drive from Ocean Way Drive to Beach Street

97

98 The daily, a.m. and p.m. peak-hour project trip generation for the proposed development was
99 determined using the Institute of Transportation Engineers (ITE), Trip Generation Manual, 11th
100 Edition. The results of the analysis are noted below.

101

- 102 • The proposed development is expected to generate 2 morning peak-hour trips and 7 evening
103 peak-hour trips.
- 104 • Under existing conditions, the study area intersections and roadway segments currently operate
105 within the adopted Level of Service.
- 106 • Under 2025 build-out conditions, the study area intersections and roadway segments will
107 continue to operate within the adopted Level of Service.

108

109 Based on the analyses by LTG, the impact of the proposed development on the local roadways is
110 insignificant.

111

112

113 DRAINAGE AND UTILITIES

114 Existing stormwater runoff flows to Depression Area A (DEP-A) on the undeveloped site and
 115 eventually makes its way to the Halifax River through a series of inlets and pipes. Post
 116 development, stormwater drainage will be accommodated in two dry retention areas, (RA-1 and
 117 RA-2) located on the southeast portion of the property adjacent to the proposed driveway to the
 118 parking lot (see **Attachment 2**). These retention areas will discharge to the Halifax River via a
 119 control structure and pipe network. Adjacent properties and area will not be impacted by
 120 stormwater run-off.

121
 122 The bathroom building will be connected to water and sanitary sewer services that currently serve
 123 the area. Utility connections will be made at Front Street and Sailfish Drive. The bathroom facility
 124 will include a private grinder pump, as required by the City of Port Orange. The proposed structure
 125 will not create any significant demand on the utilities. The facility will not be open to the public
 126 and will only be for the use of the 34 boat slip owners. The City of Port Orange has determined
 127 that the proposed connections to the water and sanitary sewer lines comply with applicable utility
 128 regulations.

129
 130 VEGETATION

131 TREE PROTECTION AND REMOVAL

132 The Tree Protection Plan (see **Attachment 3**) calls for the preservation of 118 trees and removal
 133 of 139 trees 4” DBH or greater. Of the 139 trees proposed for removal, a total of 49 trees are
 134 specimen trees 8” DBH or greater and of those 49 trees, 32 are specimen trees 18” DBH or greater.
 135 The trees are proposed for removal for construction of the driveway, parking lot, restroom
 136 facilities, and a stormwater retention area.

137
 138 Tree mitigation is determined pursuant to LUDC Section 4.10.4.E. Table 4-19 (See **Table 2**). For
 139 non-residential development, replacement stock for specimen trees shall be a minimum of 10
 140 feet in height and 4.5 inches caliper. Specimen trees 8” DBH or greater outside of the Designated
 141 Protection Zone are required to be replaced. The 49 specimen trees proposed for removal must
 142 be mitigated at a 1:1 ratio, as additional trees are being preserved outside of the designated
 143 protection zones on the property.

144
 145 **Table 2 Replacement Tree Requirement**

Size of Tree Removed (DBH)	Number of Replacement Trees Required per Tree Removed	
	If trees preserved in protected zone only	If trees also preserved outside protected zone
4 inches—6 inches	1	1
>6 inches—8 inches	2	1
>8 inches—12 inches	3	1
>12 inches—18 inches	5	1
>18”+	7	1

146
 147
 148 The Tree Protection Plan was submitted to the Cultural Services Board on February 5, 2024, for
 149 review. The Board recommended approval unanimously.

150 LANDSCAPE REQUIREMENTS AND PLAN

151 The landscape plan has been designed to meet the Town’s tree protection and landscaping
152 requirements to the greatest extent possible, balancing the desire for lush landscaping with the
153 need for cleared space for the restroom facilities structure and parking lot. The landscape plans
154 were initially submitted on June 26, 2023. The plans were then reviewed by the Development
155 Review Team (DRT) for completeness and compliance with code provisions. The applicant
156 submitted final revised plans on October 11, 2023. The landscape plan (Page LA-1) was submitted
157 to the Cultural Services Board on February 5, 2024, for review. The Board recommended approval
158 unanimously (See **Attachment 4**).

159
160 Landscape requirements for nonresidential developments are a combination of bufferyard
161 plantings within required setback areas, landscape coverage based on the overall size of the
162 property and required landscape areas, landscaping around vehicular parking areas, and building
163 foundation and accent plantings.

164
165 Four trees and 20 shrubs are required within the buffer for every 100 linear feet along the property
166 boundary. In this case, given the project boundary of 2,210 linear feet, the code requires 88 shade
167 trees and 440 shrubs (LUDC Section 4.10.3.C). Up to 25% of required shade trees may be
168 understory or palm trees, planted at a 2:1 ratio. Existing trees and shrubs meeting the minimum
169 size requirements are credited towards this amount. A total of 118 native Live Oaks, Sabal Palms,
170 and Red Cedars are being preserved on the subject site and will count towards the required
171 minimum landscaping.

172
173 The landscape plan proposes 46 shade trees (Red Maple, Eastern Red Cedar, Southern Magnolia,
174 and Southern Live Oak trees), 13 Sabal Palm trees, 367 shrubs (Pineapple Guava, Dwarf Natal
175 Plum, Wax Myrtle, Dwarf Pittosporum, Coontie, and Shrubby Yew), 100 grasses (Muhly grass
176 and Sand Cord grass), and 95 ground cover plants (Shore Juniper, and Society Garlic). The balance
177 of required trees and shrubs will provided through existing trees (Live Oaks and Cedars) and
178 vegetation (Saw Palmetto and Wax Myrtle). The landscaping will be located around the parking
179 lot, stormwater retention area, and restroom facilities, and adjacent to Sailfish Drive to the east
180 and along south and north residentially zoned property lines. All species are native or Florida-
181 Friendly and will be able to survive with minimal maintenance once established.

182
183 ARCHEOLOGICAL

184 The project site contains the “Ellwood Shell Mound”, Site 8VO7061. The site consists of a shell
185 midden dating to the St. Johns II period of Florida’s prehistoric past and was occupied sometime
186 between 500 B.C. and 1564 A.D. The Phase II Archeological Investigation of Site 8VO7061,
187 completed in June 2004 by Florida Archeological Services, Inc. (FAS), recommended that no
188 ground surface disturbance, such as tree removal, grading, utility work, or any other construction-
189 related activities, take place in the area of the shell mound.

190
191 According to the applicant, “*At some time in the future, the landowner may do a Phase III*
192 *investigation which would allow for more data recovery... Following the data recovery, the*
193 *landowners may not have any more restrictions on the property depending on the results and the*
194 *extent of the excavation.*” The current site plan is for work adjacent to the mound, and as required
195 by the State of Florida, there will be a State-certified archeological monitor onsite during

196 construction in case anything of significance is found. The applicant is responsible for hiring the
197 State-certified archeological monitor.

198
199 At its February 5, 2024 meeting, the Cultural Services Board recommended that the applicant place
200 one or more signs near the mound explaining its historical significance and warning the public to
201 not trespass.

202
203 GOPHER TORTOISE
204 A Gopher Tortoise survey was completed on April 27, 2021, and no Gopher Tortoises were
205 observed on the site. Per State regulations, a follow-up Gopher Tortoise survey will be conducted
206 a maximum of 90 days prior to any work on site. Any Gopher Tortoise burrows found then could
207 necessitate alterations to the proposed landscaping or tree planting in those areas or require
208 removal through a permit from the Florida Fish and Wildlife Conservation Commission.

209
210 ARCHITECTURAL ELEVATIONS
211 The bathroom building has been designed to comply with the Town's architectural requirements
212 of the ROD. The proposed building measures 18 feet wide by 12 feet long. The total height of the
213 building will be 14.5 feet, measured from the finished grade to the peak of the roof. The structure
214 is proposed as a site-built building, as opposed to a prefabricated building.

215
216 LUDC Section 2.14, requires all primary exterior building materials to be of a high-quality finish
217 in harmony with the historic and unique character of the ROD. In addition, the predominant
218 exterior colors shall be complementary and harmonious to the character of the riverfront
219 environment and surrounding development. The architectural design features a fiberglass shingle
220 roof and painted Hardie board siding plus trim. The proposed colors are light green and a darker
221 green to blend in with the surrounding natural vegetation (See **Attachment 5**).

222
223 ROD REVIEW CRITERIA
224 In reviewing the application, the DRT made the following findings of act in terms of compliance
225 with the ROD criteria under LUDC Section 2.14.D.4.

- 226
- 227 1. The proposed development is consistent with the purpose and intent of the ROD, to assure that
228 development in this area promotes the open, water-oriented character of the riverfront, protects
229 environmental resources, and ensures a high quality of design.
 - 230 2. The proposed development is consistent with the Ponce Inlet Comprehensive Plan policies that
231 were established to create a pedestrian-oriented riverfront environment in a manner that
232 contributes to making Ponce Inlet a better residential community. The project ensures access
233 for pedestrians while preserving the historic setting and unique character of the area, including
234 the scenic roads of Beach Street and Sailfish Drive.
 - 235 3. The proposed development meets the concurrency management requirements of the LUDC.
236 Traffic impacts upon the scenic roads of Beach Street and Sailfish Drive will be minimized to
237 the maximum extent possible using the ingress and egress point at Ocean Way Drive and
238 limiting boat access to the site by water only. The Institute of Traffic Engineers Handbook
239 (11th edition) was utilized by the applicant's traffic engineering firm to determine the number
240 of trips projected to be generated by the proposed development (See **Attachment 6**).

- 241 4. The site is physically suitable for the project design as determined by the regulations contained
242 in the LUDC, in particular, to sections 4.8 (Resource Protection), and 4.10 (Tree and Native
243 Vegetation Preservation, Buffers, and Landscape Requirements), and Code of Ordinances,
244 chapter 18, article X (Floodplain Management). The site plan addresses these sections of the
245 LUDC and Code of Ordinances. Resource protection is addressed in the Environmental
246 Assessment report. Tree and native vegetation preservation, buffers, and landscape
247 requirements are addressed in the site plan. The stormwater calculations and drainage site plan
248 identify floodplain management for the subject property. The proposed development will not
249 adversely impact wetlands, and/or plants and animals that are listed as federal and/or state
250 endangered, threatened, or species of special concern. The applicant retained Zev Cohen &
251 Associates, Inc. Environmental Department staff to conduct an Environmental Assessment for
252 Sailfish Marina. The resulting report provided an assessment of soils, land use, vegetation,
253 protected species, wetlands, and surface waters. Criteria used to determine the presence of
254 wetlands and surface waters and delineate their boundaries were in accordance with Chapter
255 62-340 F.A.C. and the 1987 Corps of Engineers Wetlands Delineation Manual. After multiple
256 site inspections, no wetlands were observed onsite. However, the site is bound by the ICW to
257 the southeast with a functioning seawall in place. The gopher tortoise was the only listed
258 species with possible presence on the subject property. A 100% gopher tortoise survey was
259 conducted on April 27, 2021 by FWC Authorized Agent, Mallory Tatum. No gopher tortoises
260 or their burrows were observed within the construction limits (See **Attachment 7**).
- 261 5. The architectural style and building scale of any proposed development reflects the historic
262 setting and the unique character of the ROD area. The bathroom structure style complies with
263 the architectural style and proportions required in the ROD
- 264 6. The site and landscape design of any proposed development within the ROD is consistent and
265 coordinated with the historic setting and the unique character of the environment of the ROD
266 area and does not adversely impact development within and adjacent to the ROD. The design
267 allows for the preservation of historic trees and specimen trees and complies with buffer and
268 landscaping requirements using native and non-invasive vegetation (LUDC Section 4.10).
- 269 7. The proposed development retains or enhances the visual quality of the site as it complies with
270 LUDC Section 4.10. as noted above in item 7.
- 271 8. The open space within the proposed development is coordinated with existing and planned
272 interconnected open space systems. The proposed marina upland area will be 93 percent open
273 space. The area available to the public for pedestrian access will be available by the entrance
274 at Sailfish Drive. Pedestrians may traverse the 550 feet long wooden boardwalk and walk path
275 between the boat piers.
- 276 9. The proposed development is designed to relate to other existing and (if known) planned
277 projects and systems, such as pedestrian ways, open space areas, landscaping patterns, lighting
278 concepts, and traffic circulation. No other projects are planned; however, the proposed
279 development design creates a pedestrian-oriented riverfront environment while preserving the
280 historic setting and unique character of the area, including the scenic roads.
- 281 10. The proposed development is designed to provide physical access to the riverfront and other
282 activities. The site will include a wooden boardwalk and walk path that pedestrians may access
283 to walk along the riverfront.

- 284 11. Buildings and structures abutting or adjacent to Front Street (or any extension to said street)
285 are designed in such a manner as to allow views of the riverfront from Front Street and from
286 adjacent developments or properties. The only structure proposed for construction is a 216 SF,
287 14.5' high, private restroom facility. The structure will not block any view of the riverfront
288 from Front Street.
- 289 12. The proposed development preserves the existing tree canopy in this district, which creates the
290 special ambience of this area . The applicant will preserve 16 historic trees on site, and 116
291 trees in total will be preserved. The site will remain open, green space outside of the parking
292 lot and bathroom building.
- 293 13. The treatment of the river edge shall be visually appealing when viewed from the river and the
294 land. The site will include a wooden boardwalk and walk path that pedestrians may access to
295 walk along the riverfront.

296
297 **FINAL DEVELOPMENT PLAN REVIEW CRITERIA**

298 In addition to the above criteria specific to the ROD, six general criteria applicable to all
299 development plans must be considered.³ These criteria are discussed below.

300
301 **a. Characteristics of the site and surrounding area, including important natural and**
302 **manmade features, the size and accessibility of the site, and surrounding land uses.**
303

304 *Staff's Response:* The proposed marina, bathroom building, wooden walkway, and parking
305 lot will have no negative impact on the characteristics of the site, the surrounding area, or
306 any adjacent land uses. The proposed building is designed to be consistent with the LUDC
307 Section 2.14 ROD (See **Attachment 5**). The existing vegetation and additional planned
308 landscaping will provide significant screening to the project area such that it will not be
309 visible to any adjacent property or land uses. This criterion is met.

310
311 **b. Whether the concurrency requirements of article 5 of this code could be met if the**
312 **development were built.**
313

314 *Staff's Response:* The proposed marina will not create any significant additional traffic or
315 utility concurrency impacts that would exceed the Town's adopted level-of-service
316 standards. The marina and bathroom structure are solely for the use of boat slip owners.
317 Residents will be allowed to access the property to use the wooden boardwalk and walk path.
318 There will not be a boat ramp on the property. Boats will access the marina via the river,
319 therefore there will not be any boat trailer traffic accessing this property. This criterion is
320 met.

321
322 **c. The nature of the proposed development, including land use types and densities; the**
323 **placement of proposed buildings and other improvements on the site; the location, type,**
324 **and method of maintenance of open space and public use areas; the preservation of**
325 **natural features; proposed parking areas; internal traffic circulation system; the**

³ Section 6.6.6.B.5.b

326 **approximate total ground coverage of paved areas and structures; and types of water**
327 **sewage treatment systems.**
328

329 *Staff's Response:* The proposed marina, bathroom structure, parking lot, and stormwater
330 retention area is designed to comply with all development regulations and requirements for
331 improvements as identified within the LUDC. This includes allowable use type, density,
332 location, parking and circulation, and preservation of natural features and open spaces.
333

334 **d. Consistency of the proposed development with the comprehensive plan.**
335

336 *Staff's Response:* The proposed development is consistent with the Ponce Inlet
337 Comprehensive Plan policies that were established to create a pedestrian-oriented riverfront
338 environment in a manner that contributes to making Ponce Inlet a better residential
339 community. The project ensures access to pedestrians while preserving the historic setting
340 and unique character of the area, including the scenic roads of Beach Street and Sailfish
341 Drive. The proposed development does not exceed the 35 feet in height and floor area ratio
342 (FAR) up to 0.35, total floor area of 5,000 square feet in the *Riverfront Commercial* future
343 land use category and will be buffered from adjacent uses with landscaping and screening.
344 The proposed development is consistent with the purpose of this future land use category,
345 which includes "...land and water-oriented uses and activities that enhance the unique
346 character of the waterfront, preserve, and protect to the maximum extent feasible both
347 physical and visual access to the waterfront, and create a water-oriented environment
348 wherein town residents and visitors can mingle in harmony...Recreational and working
349 waterfront uses shall be given preference to this land use category, especially those that are
350 water dependent and water enhanced. Representative uses within the riverfront commercial
351 designation are wet boat storage (e.g. marinas, boat basins, etc.) and dry boat storage, boat
352 sales and services, fishing charter boat dockage, fishing and boating equipment and supplies,
353 sailing equipment and lessons, bicycle and boat rentals, chandleries, seafood markets,
354 restaurants, boatels, and boat construction and repairs." Adequate infrastructure capacity
355 exists to support the development as determined by the Town's level-of-service standards
356 pursuant to DRT comments by Public Works and the City of Port Orange Utilities
357 Department. The development will meet the Town's environmental policies for protected
358 species.
359

360 **e. Conformity of the proposed development with this code and other applicable**
361 **regulations.**
362

363 *Staff's Response:* The proposed plan complies with the requirements of the LUDC, as
364 described in this report.
365

366 **f. Concerns of surrounding landowners and other affected persons, presented as**
367 **competent substantial evidence regarding one or more of the criteria of this subsection.**
368

369 *Staff's Response:* On February 9, 2024, letters were sent by certified mail to owners of
370 property abutting the subject property to notify them of the Planning Board Hearing for the
371 site plan. A public hearing notice was posted on the subject property on February 12, 2024.
372 Notice of the Planning Board meeting has been published in the *News-Journal*. These efforts
373 were made to ensure that the public and nearby property owners are aware of the application

374 and for them to have an opportunity to voice their concerns and desires. At the time of this
375 writing, the following inquiries were made.

- 376
- 377 • A resident living at 33 Ocean Way Drive attended the February 5th CSB meeting.
378 She noted her concern about traffic on Ocean Way that could result from the
379 proposed marina.
 - 380 • Email from the residents living at 125 Rains Drive asking for the development plan
381 to be shared with them.
 - 382 • Resident of 4924 Sailfish Drive visited Town Hall to review the site plans. Concerns
383 noted: setback of T-turn for fire truck, public access, i.e., potential for fishing from
384 site, and question about boat slips, will some of them have lifts?
 - 385 • Email from resident on Ocean Way Drive requesting pertinent details and sketches.
386

387 **RECOMMENDATION**

388 Based on the findings in this report, Staff recommends approval of the proposed Sailfish Marina
389 final development plan, subject to the following conditions:
390

- 391 1. If the floating walkway parallel to shore is to be used to satisfy the pedestrian access
392 requirements of the ROD, it must be un-gated, ADA-compliant, and open to the public.
393 However, if the walkway is not or cannot be open to the public, a finished, ADA-compliant
394 walkway shall be constructed on the adjacent upland to connect the two new wooden
395 walkways, so as to provide continuous pedestrian access along the water.
- 396 2. The parking lot turnaround areas at the west end of the parking lot shall be used for
397 emergency purposes only and shall not be used for parking vehicles or trailers of any kind.
398 The turnaround areas shall be marked accordingly with appropriate striping and signage
399 for that purpose.
- 400 3. The developer shall place one or more signs near the mound explaining its historical
401 significance and warning the public to not trespass on mounds.

402



403
404 Patty Rippey
405 Principal Planner
406

February 21, 2024
Date

407 **Attachments:**

- 408 1. Location map
409 2. Pre-Development Basin and Paving, Grading, and Drainage Plan
410 3. Tree Protection & Removal Plan
411 4. Landscape Plan
412 5. Architectural Elevation in Color
413 6. Traffic Impact Analysis
414 7. Environmental Assessment Sailfish Marina

ATTACHMENT 1 – LOCATION MAP



Case No.: FDP 39-2023

Applicant: Town of Ponce Inlet

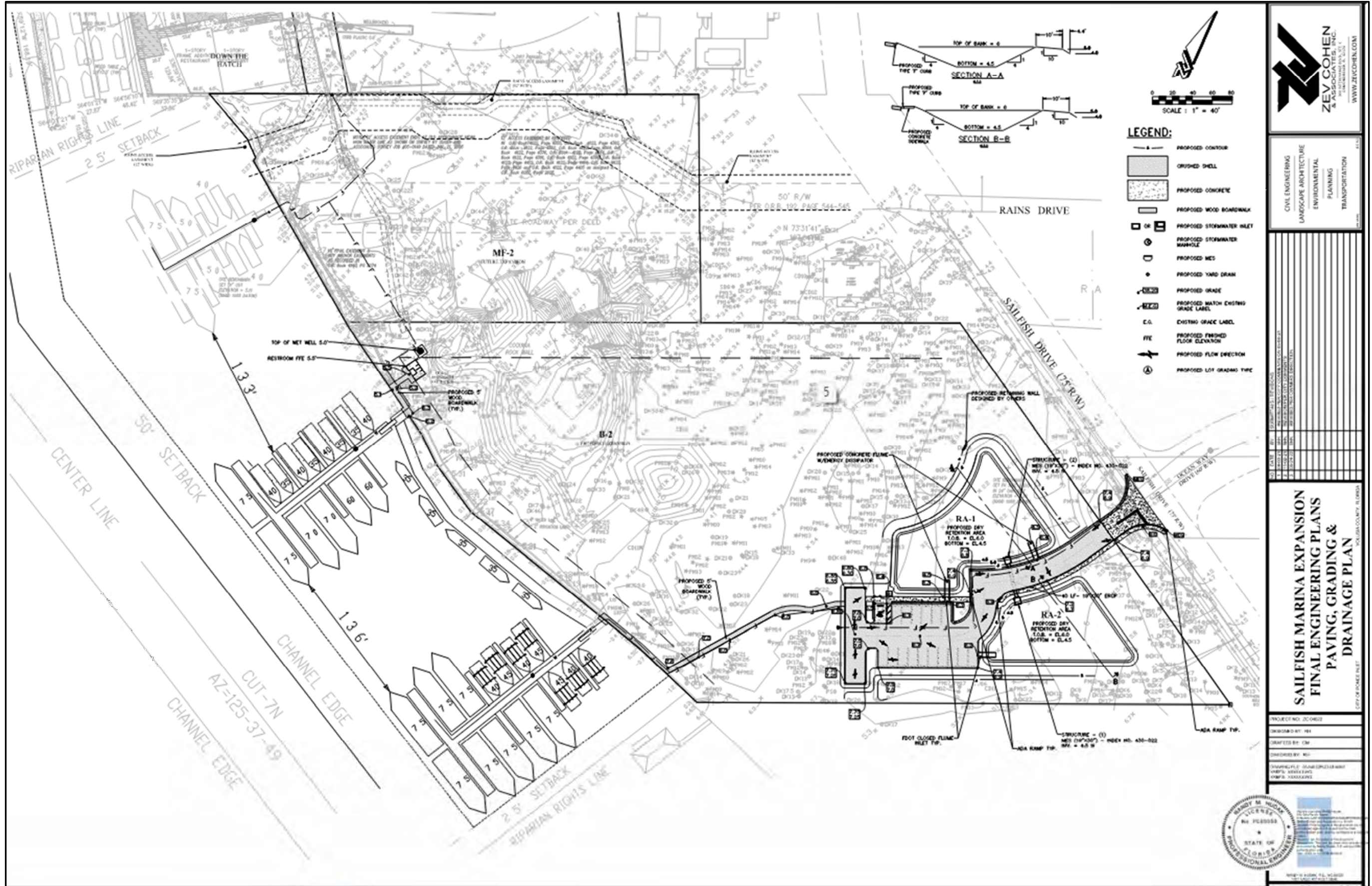
Property Address/Location: 4912 Sailfish Drive

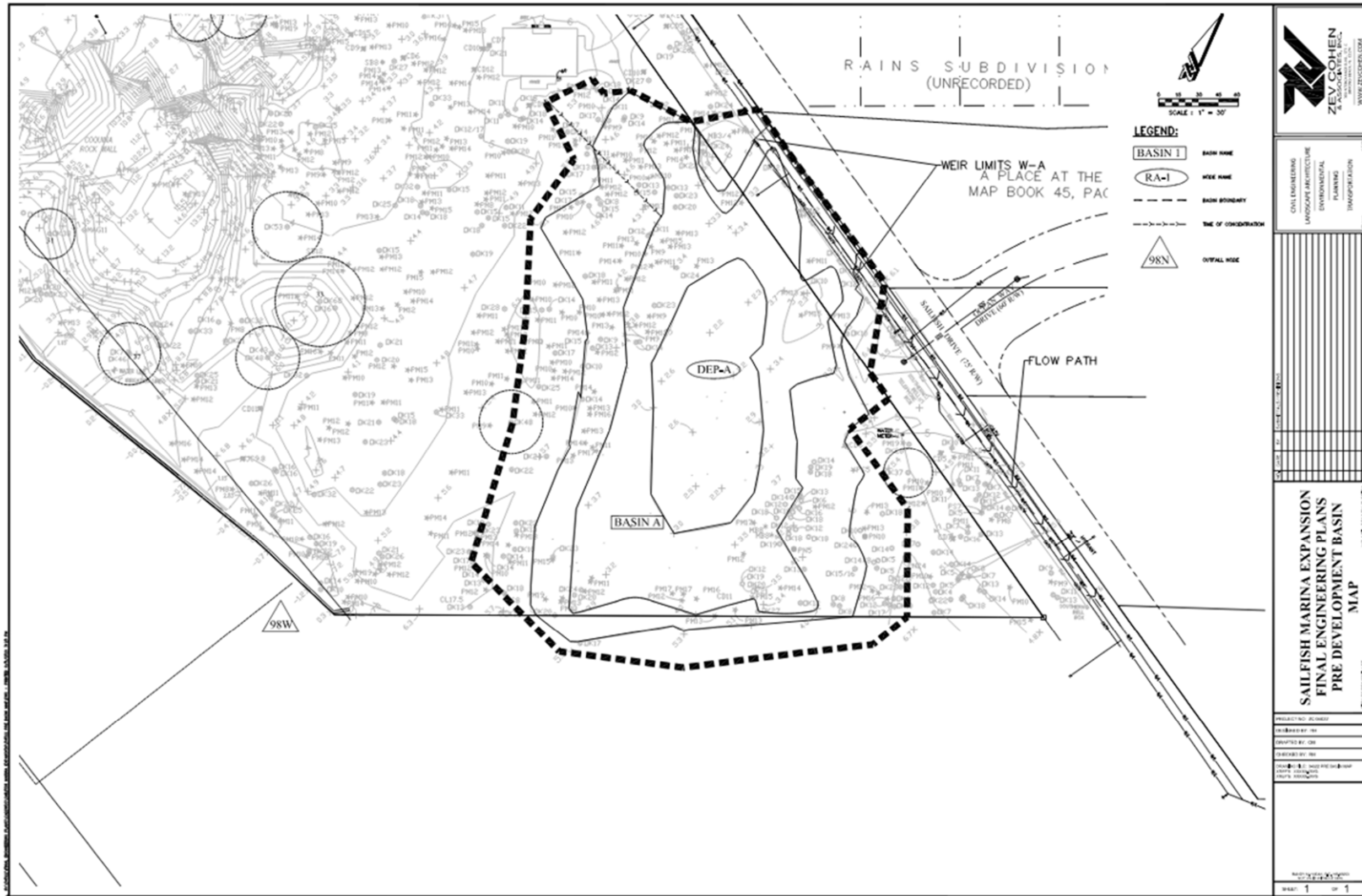
Summary of Request: To approve proposed landscape plan for the proposed Sailfish Marina project.



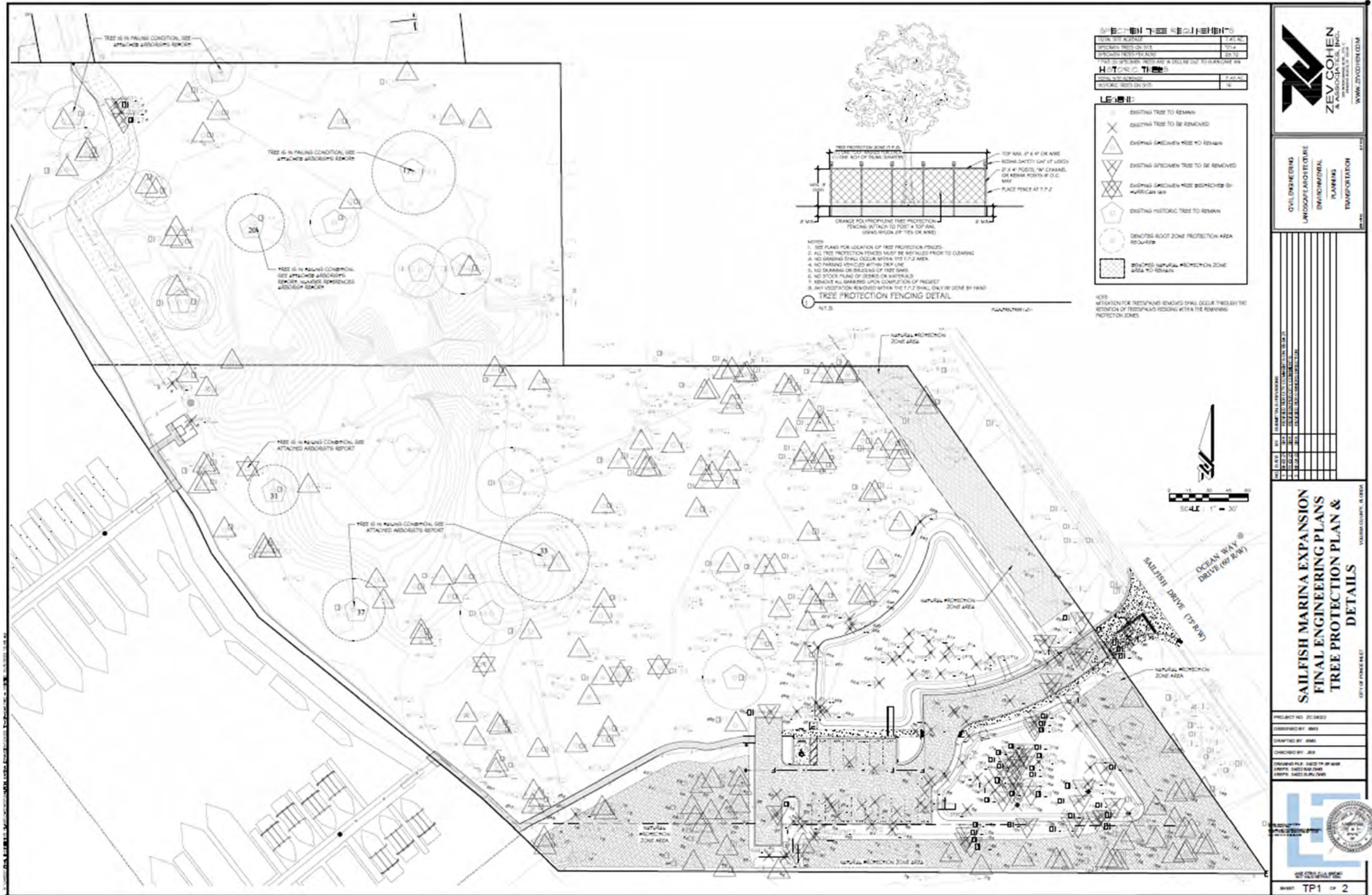
LOCATION MAP
TOWN OF PONCE INLET











Expanded Trees Preserved & Removed List

TREES PRESERVED & REMOVED											
TREE	DBH	COMMON NAME	REMOVE/PRESERVE	TREE	DBH	COMMON NAME	REMOVE/PRESERVE	TREE	DBH	COMMON NAME	REMOVE/PRESERVE
1	21	PALM	REMOVE	99	11	PALM	REMOVE	197	11	OAK	REMOVE
2	25	OAK	REMOVE	100	12	PALM	REMOVE	198	15	PALM	REMOVE
3	21	PALM	REMOVE	101	16	PALM	REMOVE	199	15	PALM	REMOVE
4	17	OAK	REMOVE	102	17	PALM	REMOVE	200	12	PALM	REMOVE
5	11	PALM	PRESERVE	103	8	MULBERRY	REMOVE	201	12	PALM	REMOVE
6	13	PALM	REMOVE	104	8	MULBERRY	REMOVE	202	18	OAK	REMOVE
7	11	OAK	PRESERVE	105	19	OAK	REMOVE	203	9	OAK	REMOVE
8	12	PALM	REMOVE	106	5	FINE	REMOVE	204	15	PALM	REMOVE
9	14	OAK	PRESERVE	107	13	OAK	REMOVE	205	12	PALM	REMOVE
10	10	OAK	PRESERVE	108	15	OAK	REMOVE	206	7	CEDAR	REMOVE
11	10	PALM	PRESERVE	109	16	OAK	REMOVE	207	17	OAK	REMOVE
12	14	PALM	PRESERVE	110	24	OAK	REMOVE	208	9	PALM	PRESERVE
13	10	PALM	PRESERVE	111	14	OAK	REMOVE	209	13	PALM	PRESERVE
14	19	PALM	PRESERVE	112	8	OAK	REMOVE	210	15	PALM	PRESERVE
15	12	PALM	PRESERVE	113	5	OAK	REMOVE	211	13	PALM	PRESERVE
16	12	PALM	PRESERVE	114	5	OAK	REMOVE	212	14	PALM	REMOVE
17	15	PALM	REMOVE	115	14	OAK	REMOVE	213	15	PALM	REMOVE
18	26	OAK	PRESERVE	116	24	FINE	REMOVE	214	12	PALM	REMOVE
19	21	OAK	PRESERVE	117	7	OAK	PRESERVE	215	14	PALM	REMOVE
20	14	PALM	PRESERVE	118	14	PALM	PRESERVE	216	15	PALM	REMOVE
21	11	PALM	PRESERVE	119	12	OAK	PRESERVE	217	11	PALM	PRESERVE
22	19	OAK	PRESERVE	120	8	OAK	PRESERVE	218	15	PALM	REMOVE
23	13	PALM	PRESERVE	121	8	OAK	PRESERVE	219	14	PALM	REMOVE
24	12	PALM	PRESERVE	122	12	PALM	PRESERVE	220	16	PALM	REMOVE
25	23	OAK	PRESERVE	123	12	PALM	PRESERVE	221	15	PALM	REMOVE
26	23	OAK	PRESERVE	124	16	PALM	PRESERVE	222	13	PALM	REMOVE
27	10	PALM	PRESERVE	125	6	OAK	PRESERVE	223	12	PALM	REMOVE
28	14	OAK	PRESERVE	126	10	OAK	PRESERVE	224	13	PALM	REMOVE
29	17	OAK	PRESERVE	127	17	OAK	PRESERVE	225	12	PALM	REMOVE
30	12	PALM	PRESERVE	128	12	OAK	PRESERVE	226	11	PALM	REMOVE
31	14	OAK	PRESERVE	129	23	OAK	PRESERVE	227	16	PALM	REMOVE
32	13	OAK	PRESERVE	130	12	OAK	PRESERVE	228	14	PALM	REMOVE
33	12	PALM	PRESERVE	131	10	PALM	PRESERVE	229	11	PALM	REMOVE
34	18	OAK	PRESERVE	132	12	OAK	PRESERVE	230	14	PALM	REMOVE
35	8	PALM	PRESERVE	133	4	OAK	PRESERVE	231	15	PALM	REMOVE
36	11	PALM	PRESERVE	134	7	OAK	PRESERVE	232	17	PALM	REMOVE
37	14	OAK	PRESERVE	135	22	OAK	PRESERVE	233	13	PALM	REMOVE
38	10	OAK	PRESERVE	136	18	OAK	PRESERVE	234	24	OAK	REMOVE
39	14	PALM	PRESERVE	137	18	OAK	PRESERVE	235	22	OAK	PRESERVE
40	18	PALM	PRESERVE	138	5	OAK	PRESERVE	236	14	OAK	PRESERVE
41	13	OAK	PRESERVE	139	5	OAK	PRESERVE	237	13	PALM	PRESERVE
42	22	OAK	PRESERVE	140	13	OAK	PRESERVE	238	16	PALM	PRESERVE
43	17.5	OAK	PRESERVE	141	14	OAK	PRESERVE	239	13	PALM	REMOVE
44	13	OAK	PRESERVE	142	10	PALM	PRESERVE	240	24	OAK	PRESERVE
45	18	OAK	PRESERVE	143	8	OAK	PRESERVE	241	23	OAK	PRESERVE
46	20	OAK	PRESERVE	144	7	OAK	PRESERVE	242	9	PALM	PRESERVE
47	19	PALM	REMOVE	145	14	OAK	PRESERVE	243	12	PALM	PRESERVE
48	13	PALM	REMOVE	146	14	OAK	PRESERVE	244	14	OAK	PRESERVE
49	13	PALM	REMOVE	147	7	CEDAR	PRESERVE	245	14	OAK	PRESERVE
50	20	OAK	REMOVE	148	16	OAK	PRESERVE	246	10	OAK	PRESERVE
51	24	OAK	PRESERVE	149	13	OAK	PRESERVE	247	13	PALM	PRESERVE
52	12	PALM	PRESERVE	150	7	OAK	PRESERVE	248	14	PALM	PRESERVE
53	11	PALM	REMOVE	151	11	PALM	PRESERVE	249	16	PALM	PRESERVE
54	13	PALM	REMOVE	152	12	PALM	PRESERVE	250	10	PALM	PRESERVE
55	17	PALM	REMOVE	153	11	OAK	PRESERVE	251	22	OAK	PRESERVE
56	17	PALM	REMOVE	154	10	PALM	PRESERVE	252	19	OAK	PRESERVE
57	15	PALM	REMOVE	155	10	PALM	PRESERVE	253	17	PALM	REMOVE
58	23	OAK	REMOVE	156	11	PALM	PRESERVE	254	15	PALM	REMOVE
59	15	PALM	REMOVE	157	37	OAK	PRESERVE	255	8	OAK	PRESERVE
60	17	PALM	REMOVE	158	18	OAK	REMOVE	256	9	OAK	REMOVE
61	17	PALM	REMOVE	159	13	PALM	REMOVE	257	11	PALM	PRESERVE
62	15	PALM	REMOVE	160	13	PALM	REMOVE				
63	12	PALM	REMOVE	161	10	OAK	REMOVE				
64	16	PALM	REMOVE	162	10	FINE	REMOVE				
65	16	PALM	REMOVE	163	18	OAK	REMOVE				
66	19	PALM	REMOVE	164	12	OAK	REMOVE				
67	20	PALM	REMOVE	165	18	OAK	REMOVE				
68	19	PALM	REMOVE	166	12	OAK	REMOVE				
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70	15	PALM	REMOVE	168	18	OAK	REMOVE				
71	20	PALM	REMOVE	169	16	OAK	REMOVE				
72	17	PALM	PRESERVE	170	12	PALM	REMOVE				
73	17	PALM	PRESERVE	171	6	OAK	REMOVE				
74	12	PALM	PRESERVE	172	13	OAK	REMOVE				
75	17	PALM	PRESERVE	173	15	OAK	REMOVE				
76	11	CEDAR	PRESERVE	174	14	OAK	REMOVE				
77	16	PALM	PRESERVE	175	12	OAK	REMOVE				
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79	13	PALM	PRESERVE	177	18	OAK	REMOVE				
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82	21	OAK	REMOVE	180	5	PALM	REMOVE				
83	20	OAK	REMOVE	181	12	PALM	REMOVE				
84	19	OAK	REMOVE	182	6	CEDAR	REMOVE				
85	12	OAK	REMOVE	183	28	OAK	PRESERVE				
86	12	PALM	REMOVE	184	19	PALM	PRESERVE				
87	18	PALM	REMOVE	185	12	PALM	REMOVE				
88	19	PALM	REMOVE	186	27	OAK	REMOVE				
89	15	PALM	REMOVE	187	26	OAK	REMOVE				
90	15	PALM	REMOVE	188	12	OAK	REMOVE				
91	13	PALM	REMOVE	189	9	OAK	REMOVE				
92	14	PALM	REMOVE	190	8	OAK	REMOVE				
93	16	PALM	REMOVE	191	15	PALM	REMOVE				
94	12	PALM	REMOVE	192	12	OAK	REMOVE				
95	18	PALM	REMOVE	193	7	CEDAR	REMOVE				
96	12	PALM	REMOVE	194	15	PALM	REMOVE				
97	15	PALM	REMOVE	195	7	CEDAR	REMOVE				
98	10	PALM	REMOVE	196	15	PALM	REMOVE				

ATTACHMENT 3 – TREE PROTECTION AND REMOVAL PLAN

TREE PROTECTION DETAILS

Specimen Trees Proposed for Removal		
Tree #	DBH	Common Name
186	27	OAK
187	26	OAK
2	25	OAK
110	24	OAK
234	24	OAK
58	23	OAK
82	21	OAK
50	20	OAK
83	20	OAK
84	19	OAK
105	19	OAK
178	19	OAK
158	18	OAK
163	18	OAK
165	18	OAK
167	18	OAK
168	18	OAK
176	18	OAK
177	18	OAK
202	18	OAK
1	21	PALM
3	21	PALM
67	20	PALM
71	20	PALM
47	19	PALM
66	19	PALM
68	19	PALM
69	19	PALM
88	19	PALM
87	18	PALM
95	18	PALM
116	24	PINE

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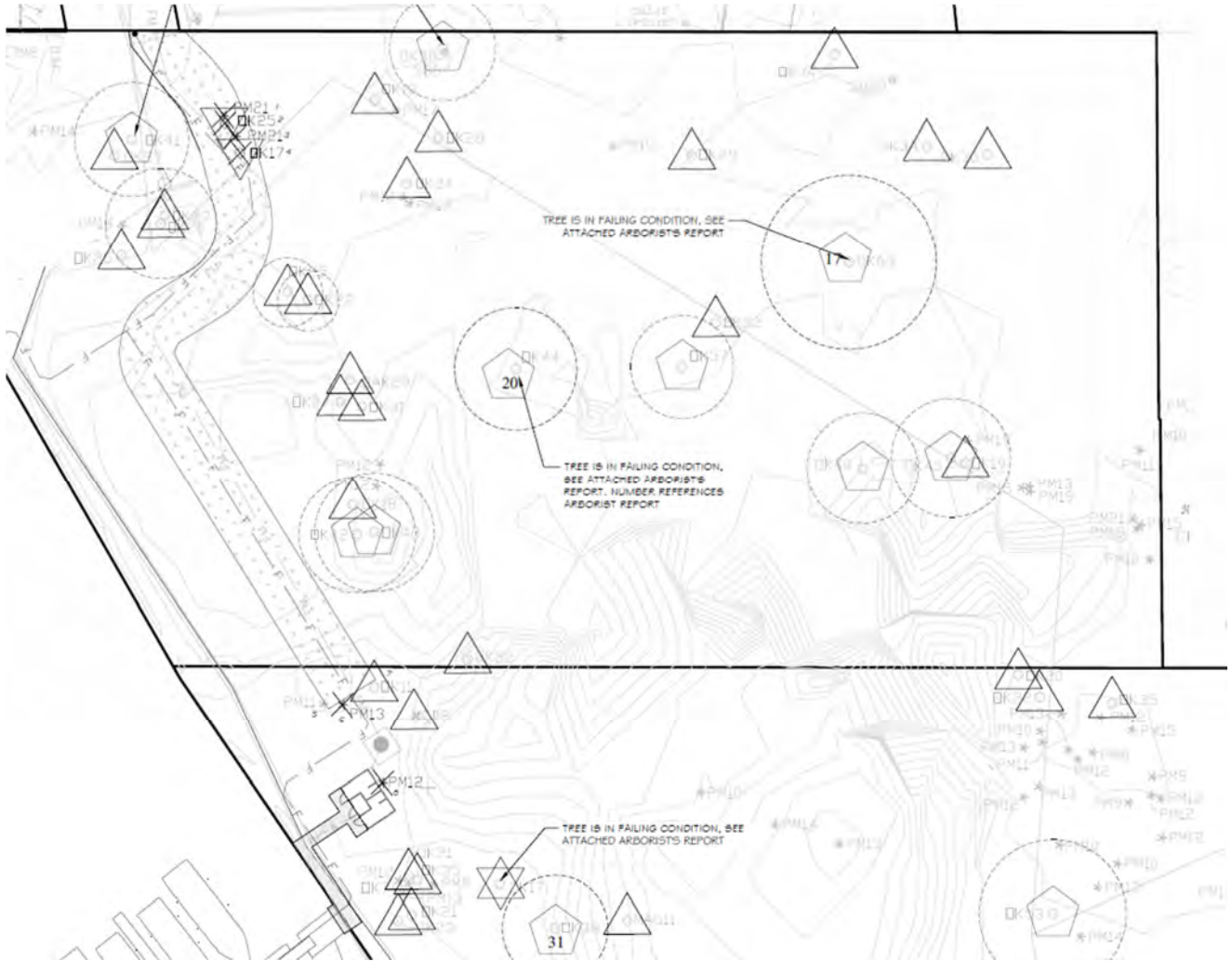
Source: Zev Cohen & Associates Tree Preserved/Removed Sheet TP2 of 2; sorted for trees 18" DBH and greater by common tree name.

ATTACHMENT 3 TREE PROTECTION PLAN

TREE PROTECTION DETAILS

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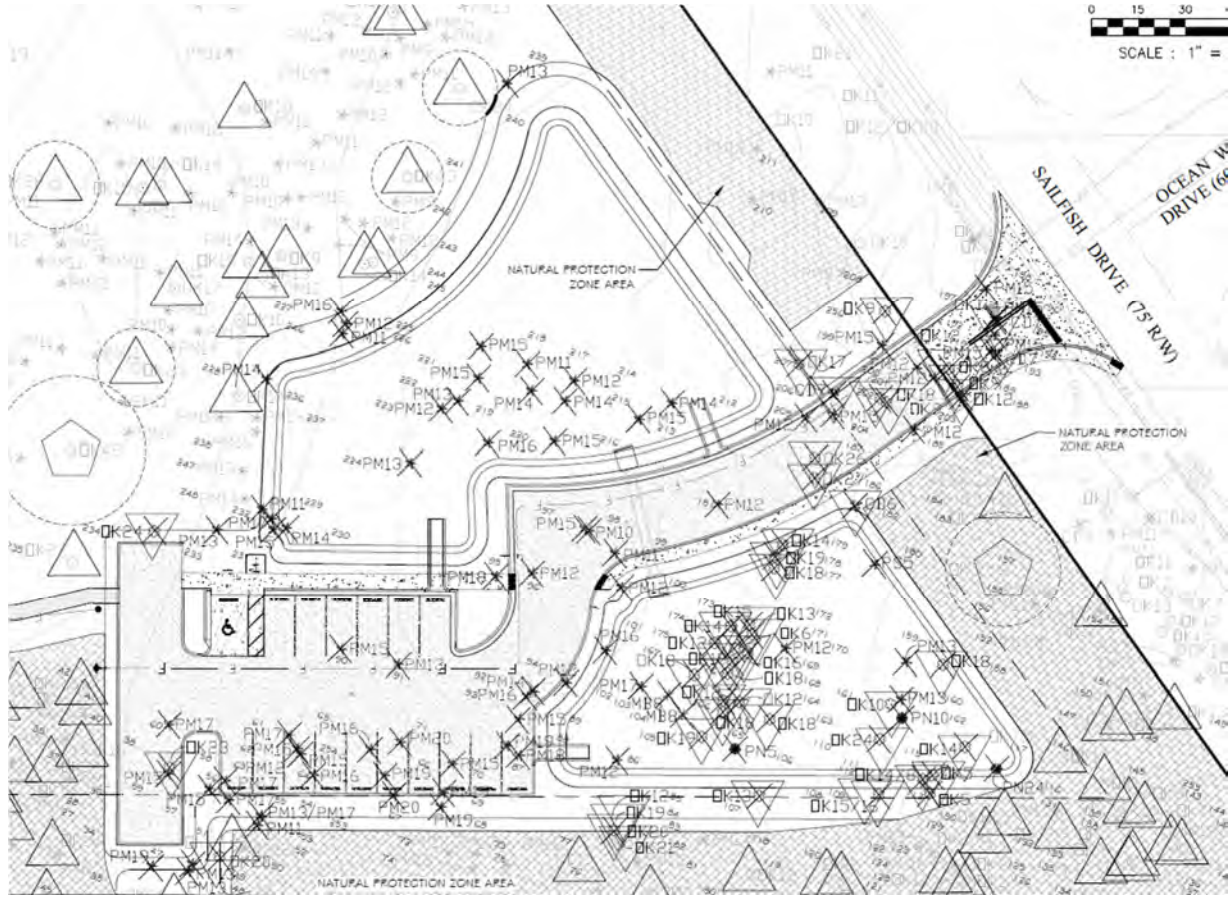
Northwest of subject property – tree removal for fire line required by Town of Ponce Inlet and for restroom facilities.



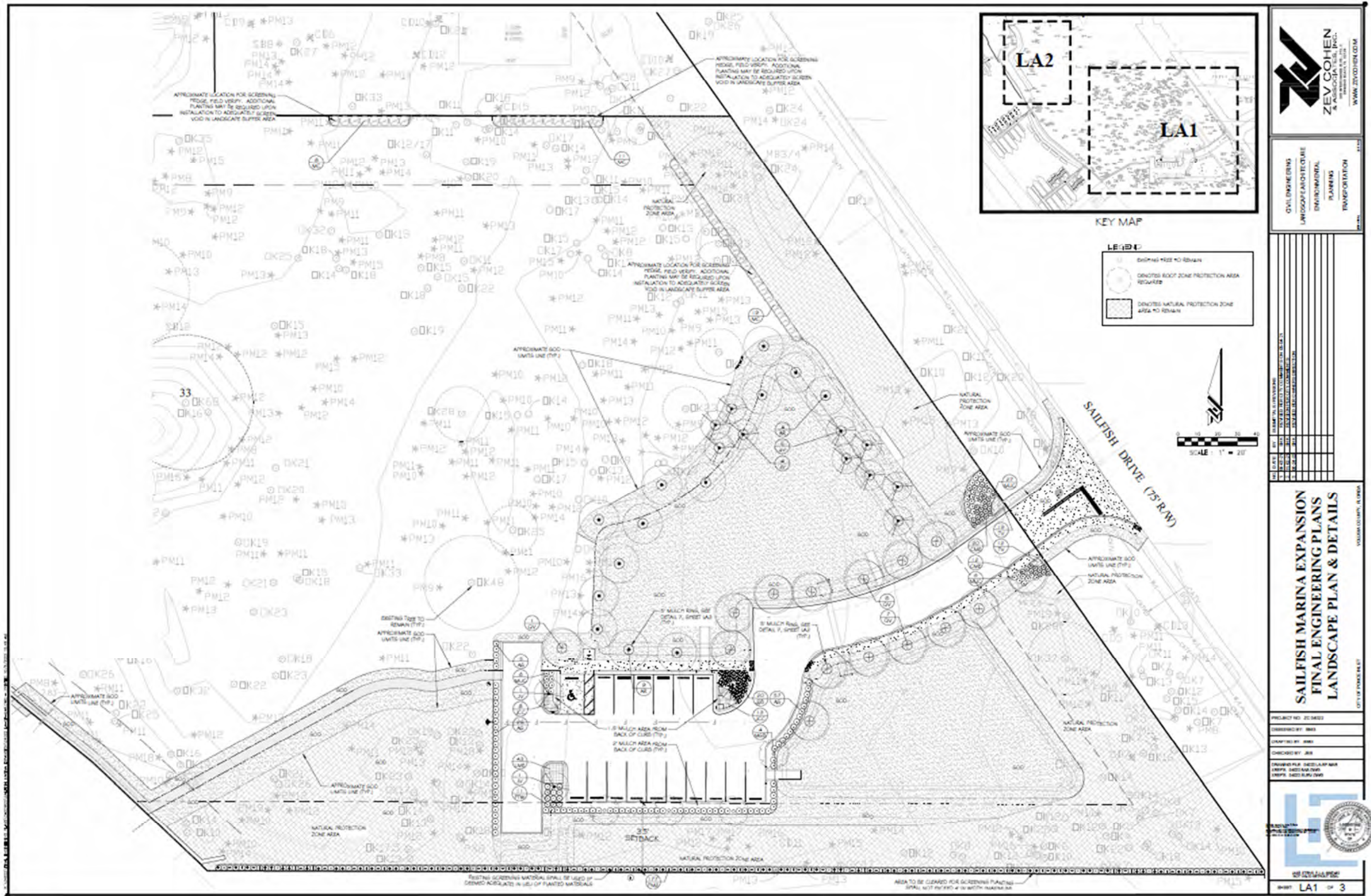
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TREE PROTECTION DETAILS

437
438 Southeast side of subject property – tree removal for driveway, parking lot, & stormwater retention
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CIVIL ENGINEERING
 LANDSCAPE ARCHITECTURE
 ENVIRONMENTAL
 PLANNING
 TRANSPORTATION

NO. DATE BY	REVISION
1	ISSUE FOR PERMITTING
2	ISSUE FOR PERMITTING
3	ISSUE FOR PERMITTING
4	ISSUE FOR PERMITTING
5	ISSUE FOR PERMITTING
6	ISSUE FOR PERMITTING
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9	ISSUE FOR PERMITTING
10	ISSUE FOR PERMITTING

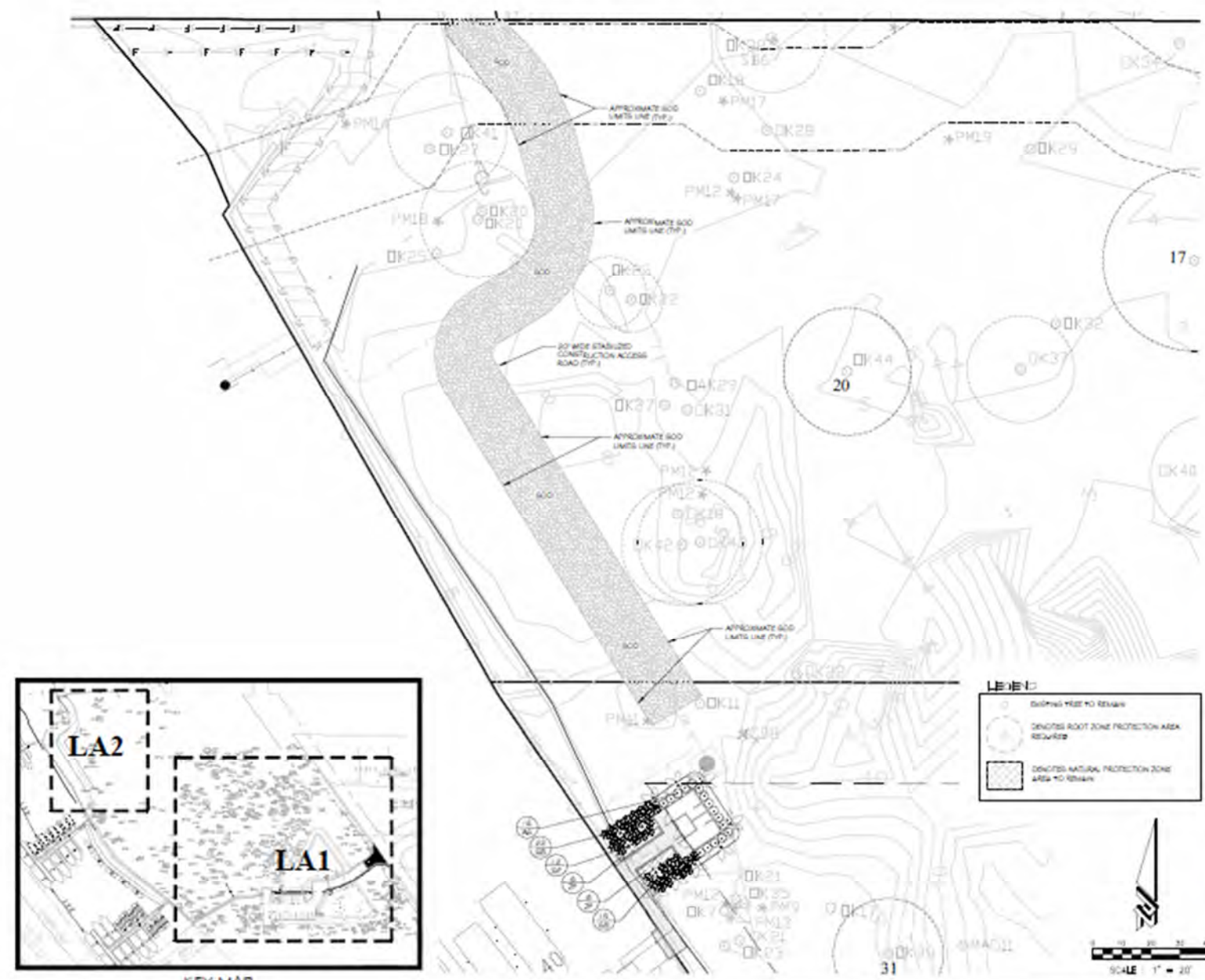
**SAILFISH MARINA EXPANSION
 FINAL ENGINEERING PLANS
 LANDSCAPE PLAN & DETAILS**

PROJECT NO. 200802
 DESIGNED BY: [Name]
 DRAWING BY: [Name]
 CHECKED BY: [Name]
 PROVIDED FOR: [Name]
 PREPARED BY: [Name]
 DATE: [Date]



PLANT SCHEDULE

Plant	Qty	Scientific Name	Common Name	Size	Planting	Notes
AK	10	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKB	4	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKC	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKD	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKF	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKG	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKH	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKI	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKJ	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKK	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKL	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKM	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKN	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKO	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKP	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKQ	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKR	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKS	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKT	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKU	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKV	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKW	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKX	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKY	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.
AKZ	16	ANEMONE VILLOSA	RED TULIP	4" CT. 14" HT. MIN.	3 GAL.	PLANT TO 10' DIA.



LEGEND

- Symbol: Existing Tree to Remain
- Symbol: Denotes Root Zone Protection Area Required
- Symbol: Denotes Natural Protection Zone Area to Remain

SCALE 1" = 20'

ZEV COHEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE

CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL PLANNING
TRANSPORTATION

**SAILFISH MARINA EXPANSION
FINAL ENGINEERING PLANS
LANDSCAPE PLAN & DETAILS**

PROJECT NO. 201602
DESIGNED BY: [Name]
DRAWN BY: [Name]
CHECKED BY: [Name]

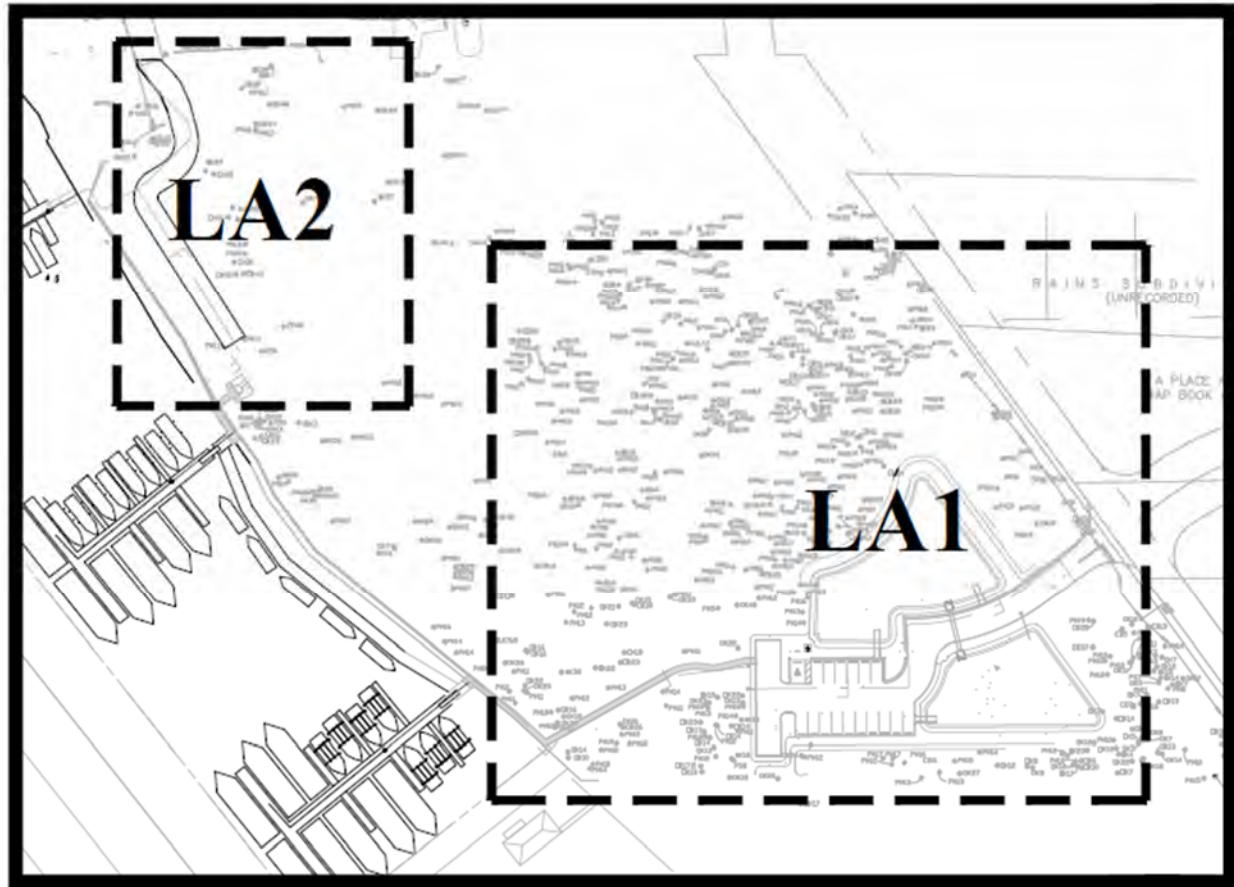
ENGINEER: [Name]
SEAL: [Name]

DATE: [Date]

OF 20 SHEETS
SHEET: LA2 OF 3

LANDSCAPE PLAN - DETAIL

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PLANT SCHEDULE

TREES	QTY	BOTANICAL NAME	COMMON NAME	SIZE	CONTAINER	
AR	13	ACER RUBRUM	RED MAPLE	4.5" CAL., 14' HT MIN.		
JV	13	JUNIPERUS VIRGINIANA	EASTERN RED CEDAR	4.5" CAL., 14' HT MIN.		
MGB	4	MAGNOLIA GRANDIFLORA 'BRACKEN'S BROWN BEAUTY'	BRACKEN'S SOUTHERN MAGNOLIA	4.5" CAL., 14' HT MIN.		
QV	16	QUERCUS VIRGINIANA	SOUTHERN LIVE OAK	4.5" CAL., 14' HT MIN.		
FALMS	QTY	BOTANICAL NAME	COMMON NAME	SIZE	CONTAINER	
SP	12	SABAL PALMETTO	CABBAGE PALMETTO	VARY C.T. HT. 8'-16'		
SHRUBS	QTY	BOTANICAL NAME	COMMON NAME	SIZE	CONTAINER	SPACING
AS	104	ACCA BELLOWIANA	PINEAPPLE GUAVA, PELOEA	36" HT. X 24" SP.	7 GAL.	36" o.o.
CME	32	CARISSA MACROCARPA 'EMERALD BLANKET'	DWARF NATAL PLUM	12-18" HT. X 12-18" SP.	3 GAL.	30" o.o.
MC	42	MYRICA CERIFERA	WAX MYRTLE	4" HT.	15 GAL.	60" o.o.
PTW	11	PITOSPORUM TOBIRA 'WHEELER'S DWARF'	DWARF PITOSPORUM	18-24" HT. X 18-24" SP.	7 GAL.	36" o.o.
FM2	178	PODOCARPUS MACROPHYLLUS MAKI	SHRUBBY YEW	36" -48" O.A	7 GAL.	36" o.o.
GRASSES	QTY	BOTANICAL NAME	COMMON NAME	SIZE	CONTAINER	SPACING
MUC	43	MUHLENBERGIA CAPILLARIS	MUHLY GRASS	12" HT. X 12" SP.	3 GAL.	36" o.o.
SB	57	SPARTINA BAKERI	SAND CORD GRASS	18" HT. X 18" SP.	3 GAL.	36" o.o.
GROUND COVERS	QTY	BOTANICAL NAME	COMMON NAME	SIZE	CONTAINER	SPACING
JCC	21	JUNIPERUS CONFERTA 'COMPACTA'	SHORE JUNIPER	8-10" HT. X 8-10" SP.	3 GAL.	30" o.o.
LME	43	* LIRIOPE MUSCARI 'EMERALD GODDESS'	LIRIOPE	10" HT. X 10" SP.	1 GAL.	18" o.o.
TV	31	TULBAGHIA VIOLACEA	SOCIETY GARLIC	8-10" HT. X 8-10" SP.	1 GAL.	18" o.o.
ZF	16	ZAMIA FLORIDANA	COONTIE PALM	12" HT. X 12" SP.	3 GAL.	30" o.o.
SOD	QTY	BOTANICAL NAME	COMMON NAME	SIZE	CONTAINER	SPACING
FNA	35,023 SF	PASPALUM NOTATUM 'ARGENTINE'	BAHIA GRASS	---		

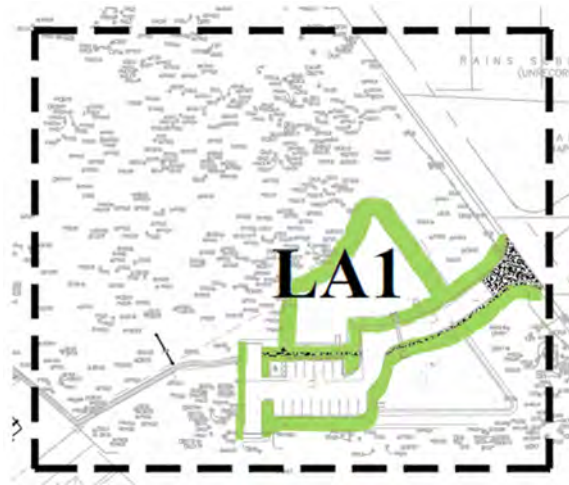
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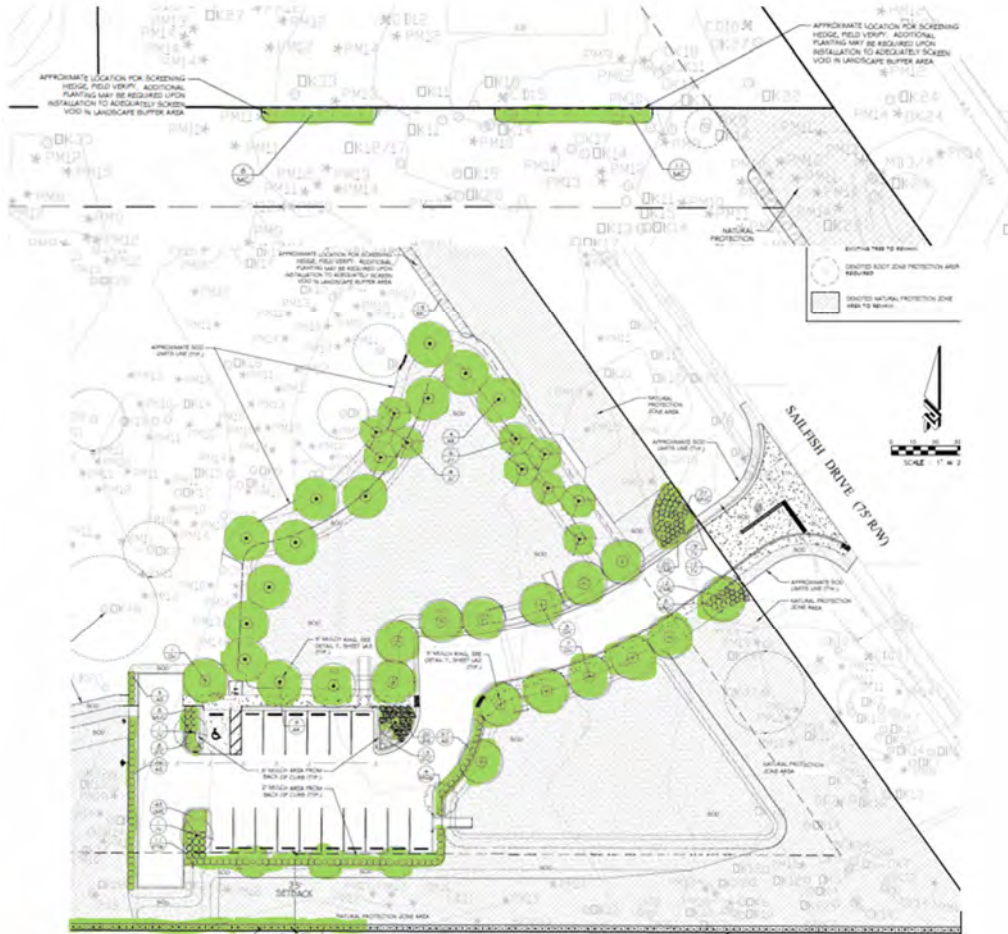
* The applicant notes that Liriope will be replaced with one of the following Florida Native or Florida Friendly plants: Coontie (Zamia pumila), Blanket Flower (Gaillardia pulchella), Dune Sunflower (Helianthus debilis) as Liriope is now considered an invasive plant.

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LANDSCAPE PLAN - DETAIL



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ATTACHMENT 4 - LANDSCAPE PLAN

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LANDSCAPE PLAN - DETAIL



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SAILFISH MARINA EXPANSION
4912 FRONT STREET, PONCE INLET, VOLUSIA COUNTY, FL
BATHROOM ELEVATIONS (WITH COLOR)



ZCH 04022

465
466

Ref: 5559.01

TECHNICAL MEMORANDUM

To: Adam Mendenhall
Planning and Development Director

From: Kady L. Dearing, PE

Subject: Sailfish Marina – Traffic Impact Analysis

Date: January 18, 2023

INTRODUCTION

LTG, Inc. (LTG) has been retained by Blue Water Realty Advisers, LLC to prepare a Traffic Impact Analysis (TIA) for the proposed Sailfish Marina located west of Sailfish Drive and Ocean Way Drive intersection in the Town of Ponce Inlet, Florida. Access to the development will be provided via one proposed full access driveway, which will create the eastbound approach at the intersection of Sailfish Drive at Ocean Way Drive. **Figure 1** graphically depicts the location of the study area within the surrounding network. Build-out is anticipated by year 2025.

The intent of the study is to provide analyses of the proposed project's impacts on the local roadway system and address traffic concerns of the Town's Planning Department. The preliminary site plan is attached as **Exhibit A**.

EXISTING CONDITIONS

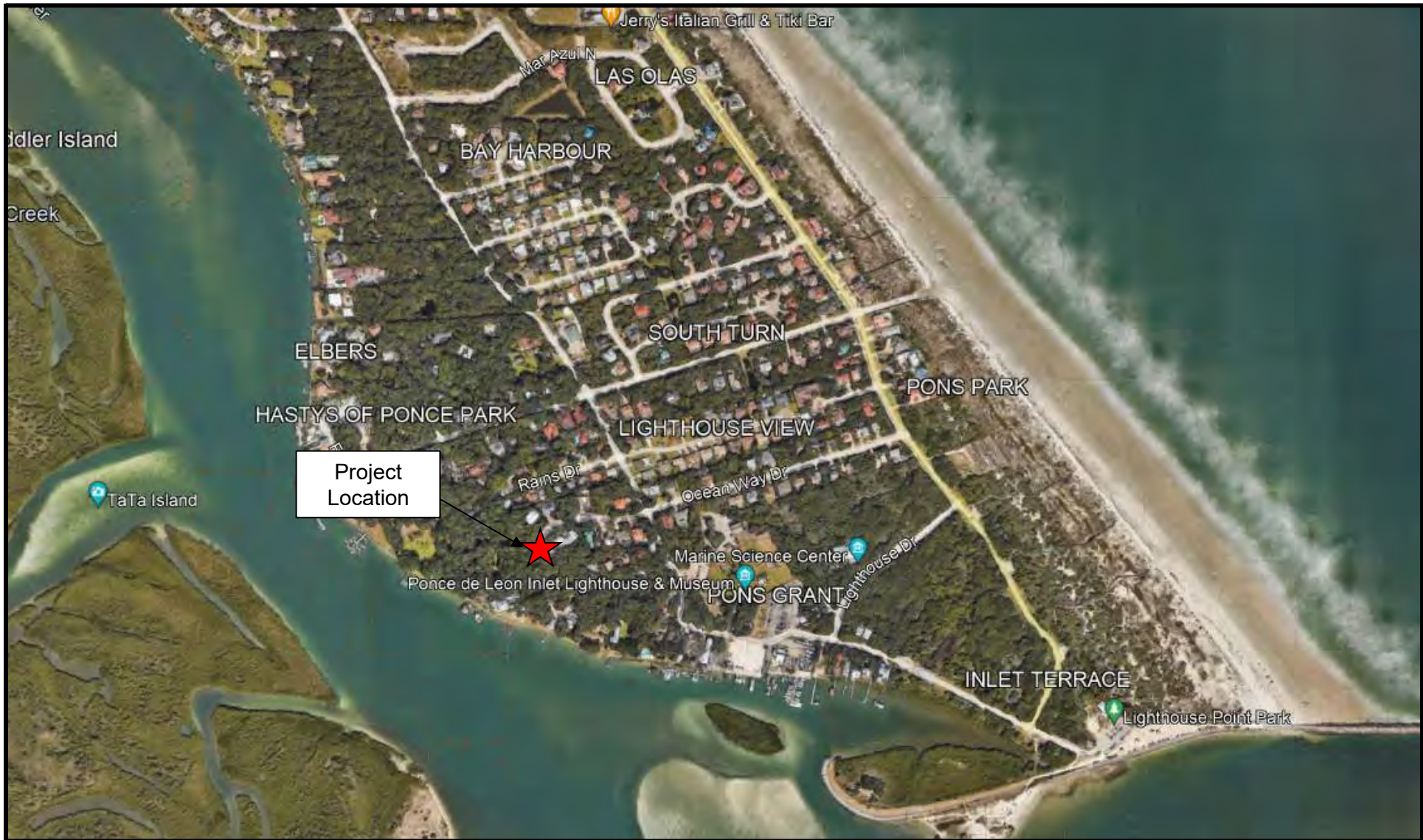
In order to determine the impacts of the proposed development on local roadways, it was necessary to obtain 24-hour segment counts along the following road segments:

- Beach Street from Sailfish Drive to Peninsula Drive
- Rains Drive from Sailfish Drive to Peninsula Drive
- Ocean Way Drive from Sailfish Drive to Peninsula Drive
- Sailfish Drive from Ocean Way Drive to Beach Street

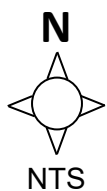
Additionally, in order to assess the impacts of project turns at the adjacent intersections, turning movement counts (TMCs) were conducted during the a.m. and p.m. peak-hours on April 29th, 2021 at the adjacent intersections of Peninsula Drive at Ocean Way Drive and Peninsula Drive at Beach Street. The 2019 FDOT Season Factor (SF) was determined to be 0.98 for the week the TMCs were collected, therefore the SF was not applied for a conservative analysis. The raw count data is attached as **Exhibit B**. The existing a.m. and p.m. peak-hour volumes are presented in **Figures 2**.

EXISTING UNSIGNALIZED INTERSECTION ANALYSIS

The existing operating conditions at the unsignalized intersections were analyzed using the *Highway Capacity Software 7, Version 2022* (HCS). This software utilizes the procedures outlined in Chapter 20 of the *Highway Capacity Manual (6th Edition)* titled, "Two-Way Stop-Controlled Intersections" and Chapter 21 titled "All-Way Stop-Controlled Intersections." **Table 1** shows the existing a.m. and p.m. peak-hour level of service (LOS) at the study area intersections. The HCS summary sheets are attached as **Exhibit C**. As indicated, the unsignalized intersections are currently operating within the adopted LOS.



Sailfish Marina



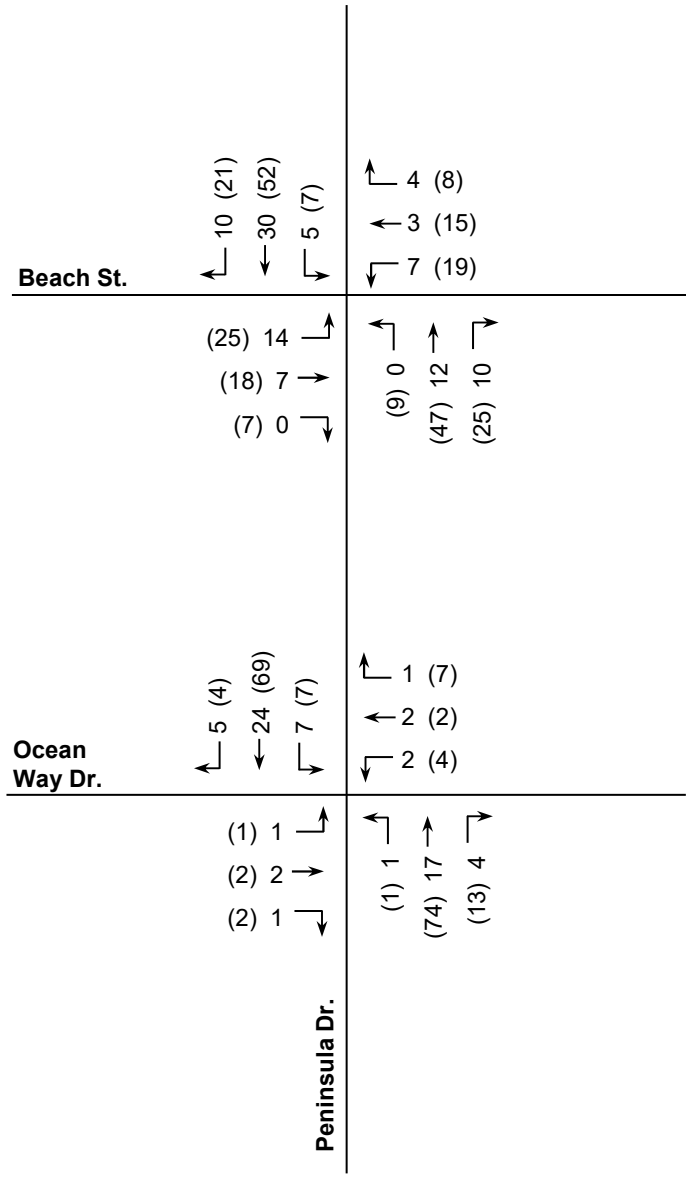
Project Location Map



Project No.: 5559.01

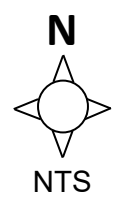
Figure: 1

1450 W. Granada Blvd, Suite 2 – Ormond Beach, Florida 32174
 Telephone: 386.257.2571 Fax: 386.257.6996 EB# 0009227



Legend:
 XX = AM Peak-Hour
 (XX) = PM Peak-Hour

Sailfish Marina



**Existing A.M. & P.M.
 Peak-Hour Volumes**



Project No.: 5559.01

Figure: 2

1450 W. Granada Blvd, Suite 2 – Ormond Beach, Florida 32174
 Telephone: 386.257.2571 Fax: 386.257.6996 EB# 0009227

TECHNICAL MEMORANDUM

Adam Mendenhall
 January 18, 2023
 Page 4

**Table 1
 Existing A.M. and P.M. Peak-Hour Level of Service – Unsignalized Intersections
 Sailfish Marina**

Intersection	Adopted LOS	AM Peak-Hour			PM Peak-Hour		
		Critical Approach	Delay	LOS	Critical Approach	Delay	LOS
Peninsula Drive at Ocean Way Drive	E	EB/WB	9.1	A	EB	9.6	A
Peninsula Drive at Beach Street	E	EB	7.4	A	EB	7.7	A

EXISTING ROADWAY SEGMENT ANALYSIS

Roadway LOS describes the operating condition determined from the number of vehicles passing over a given section of roadway during a specified time period. It is a qualitative measure of several factors which include speed, travel time, traffic interruptions, freedom to maneuver, driver comfort, convenience, safety and vehicle operating costs. Six LOS categories have been established as standards by which to gauge roadway performance, designated by the letters A through F. The LOS categories are defined as follows:

- Level of Service A: Free flow, individual users virtually unaffected by the presence of others*
- Level of Service B: Stable flow with a high degree of freedom to select operating conditions*
- Level of Service C: Flow remains stable, but with significant interactions with others*
- Level of Service D: High-density stable flow in which the freedom to maneuver is severely restricted*
- Level of Service E: This condition represents the capacity level of the road*
- Level of Service F: Forced flow in which the traffic exceeds the amount that can be served*

The p.m. peak-hour two-way volumes were determined using 24-hour tube counts collected along the study area roadway segments. The existing LOS for the study area road segments during the peak-hour are provided in **Table 2**. As indicated, all study area roadway segments currently operate within their adopted LOS during the peak-hour.

**Table 2
 2022 Existing PM Peak-Hour LOS – Roadway Segments
 Sailfish Marina**

Roadway	Segment		No. of Lanes	Adopted LOS	Peak-Hour Two-Way Capacity*	Existing Peak-Hour Two-Way Volume**	V/C Ratio	Existing Volume Exceed Adopted LOS?
Beach Street	Sailfish Drive	Peninsula Drive	2	E	987	128	0.13	No
Rains Drive	Sailfish Drive	Peninsula Drive	2	E	987	5	0.01	No
Ocean Way Drive	Sailfish Drive	Peninsula Drive	2	E	987	3	0.00	No
Sailfish Drive	Ocean Way Drive	Beach Street	2	E	987	1	0.00	No

*Capacities obtained from 2020 FDOT Quality Level of Service Tables

**Existing P.M. Peak-Hour Two-Way Volume determined using 24 hour tube counts collected along the roadway segments

2022 BACKGROUND GROWTH

Traffic in the area is expected to grow due to local government approvals. This section documents the methods used to project future 2025 traffic conditions. Due to a lack of prior historical count data, a minimum annual growth of 2% was used where applicable for a more conservative analysis, as shown in **Table 3**.



TECHNICAL MEMORANDUM

Adam Mendenhall
 January 18, 2023
 Page 5

**Table 3
 Applied Annual Growth Rates
 Sailfish Marina**

Roadway	Segment		Applied Growth Rate
Beach Street	Sailfish Drive	Peninsula Drive	2.00%
Rains Drive	Sailfish Drive	Peninsula Drive	2.00%
Ocean Way Drive	Sailfish Drive	Peninsula Drive	2.00%
Sailfish Drive	Ocean Way Drive	Beach Street	2.00%

PROJECT TRIP GENERATION

The daily, a.m. and p.m. peak-hour project trip generation for the proposed development was determined using the Institute of Transportation Engineers (ITE), *Trip Generation Manual, 11th Edition*. The project trip generation is presented in **Table 4**.

**Table 4
 Project Trip Generation
 Sailfish Marina**

Time Period	Land Use	ITE LUC	Trip Rate Equation	Quantity (X)	Units	Total Trips (T)	Percent Entering	Percent Exiting	Trips Entering	Trips Exiting
Daily	Marina	420	$T = 2.41 (X)$	34	Berths	82	50%	50%	41	41
A.M. Peak-Hour			$T = 0.07 (X)$			2	33%	67%	1	1
P.M. Peak-Hour			$T = 0.21 (X)$			7	60%	40%	4	3

PROJECT TRIP DISTRIBUTION

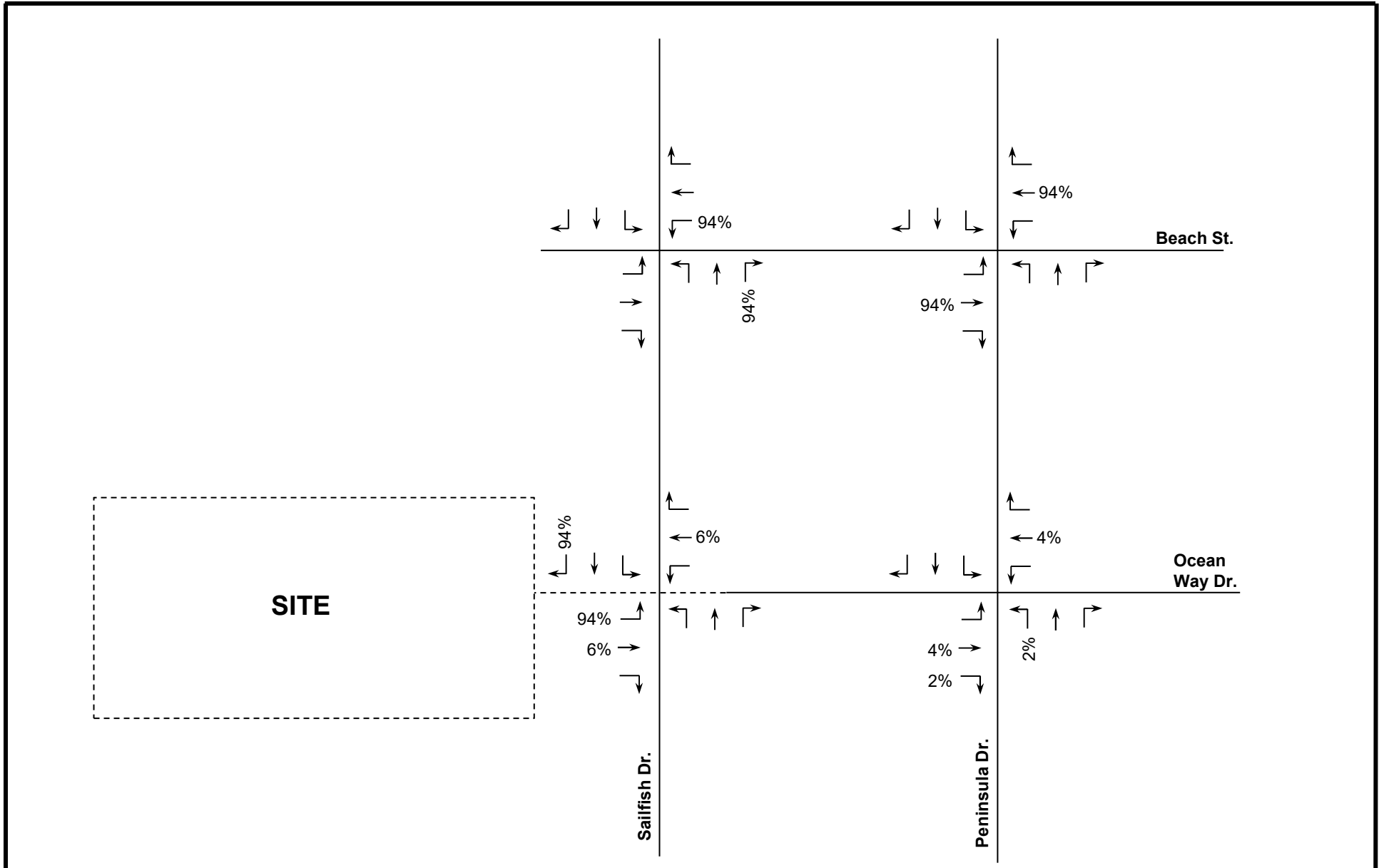
The process of determining the directional flow of traffic associated with a new development is called trip distribution. The existing turning movements counts, and engineering judgement were used to distribute project trips. The project trip distribution is graphically illustrated in **Figure 3**.

PROJECT TRIP ASSIGNMENT

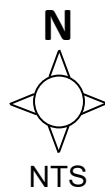
Using the project trip distribution and trip generation, the a.m. and p.m. peak-hour project trips were assigned to the study area roadway network. **Figures 4A and 4B** graphically depict the 2025 background and project trips assigned to the study area intersections.

2025 BUILD-OUT UNSIGNALIZED INTERSECTION ANALYSIS

The study area intersections were analyzed to determine the operational LOS during the a.m. and p.m. peak-hours under 2025 build-out conditions. The results of the build-out conditions analysis are summarized in **Table 5**. The HCS summary sheets are attached as **Exhibit D**.



Sailfish Marina



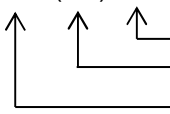
Project Trip Distribution

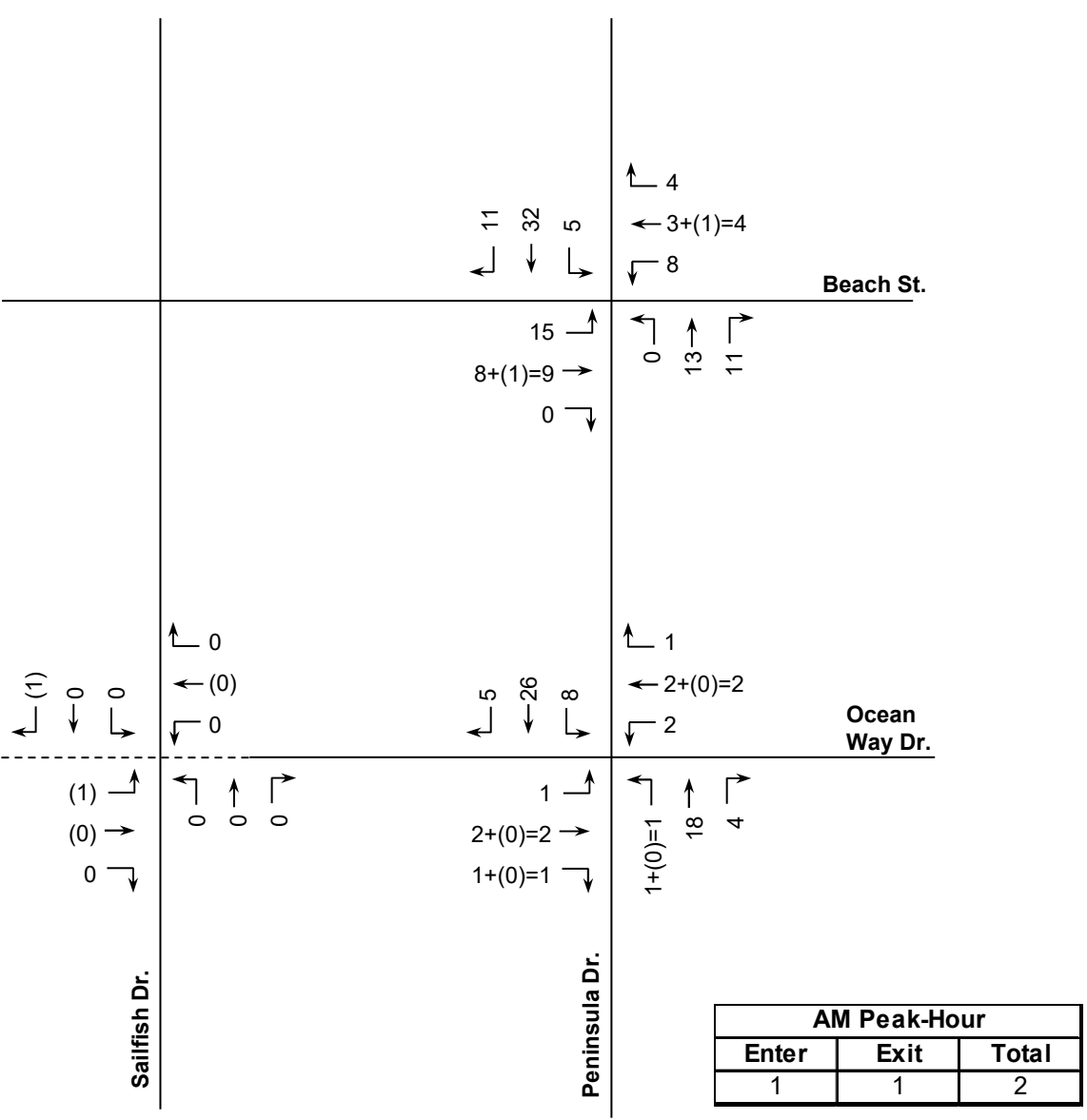
Project No.: 5559.01

Figure: 3



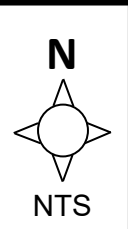
1450 W. Granada Blvd, Suite 2 – Ormond Beach, Florida 32174
 Telephone: 386.257.2571 Fax: 386.257.6996 EB# 0009227

Legend:
 XX + (XX) = XXX

 2025 Total Build-out Traffic
 Project Trips
 2025 Background Traffic



AM Peak-Hour		
Enter	Exit	Total
1	1	2

Sailfish Marina



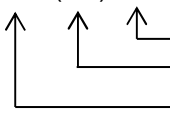
**2025 A.M. Peak-Hour
Build-Out Volumes**

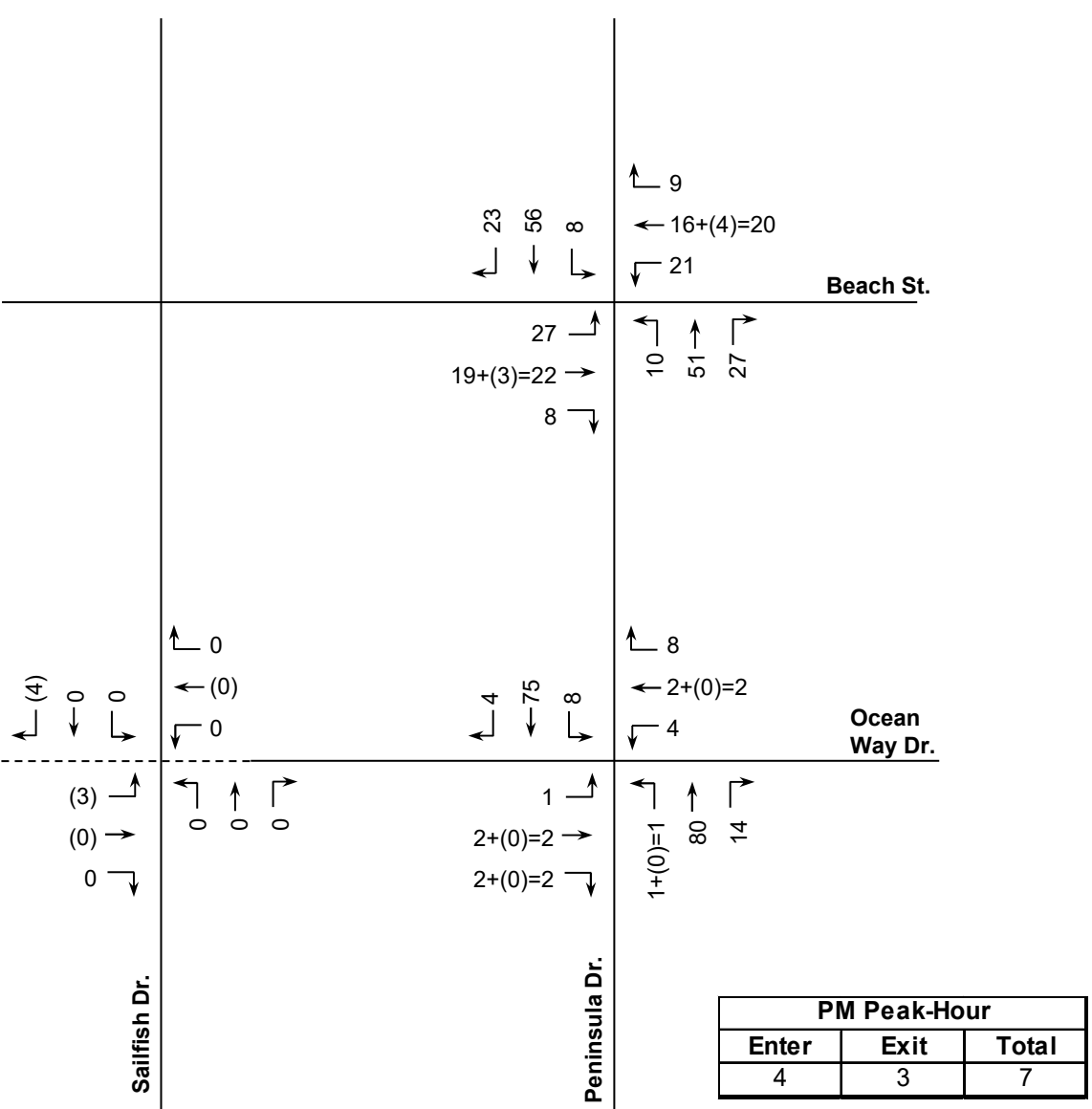
Project No.: 5559.01

Figure: 4A



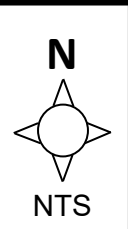
1450 W. Granada Blvd, Suite 2 – Ormond Beach, Florida 32174
 Telephone: 386.257.2571 Fax: 386.257.6996 EB# 0009227

Legend:
 XX + (XX) = XXX

 2025 Total Build-out Traffic
 Project Trips
 2025 Background Traffic



PM Peak-Hour		
Enter	Exit	Total
4	3	7

Sailfish Marina



**2025 P.M. Peak-Hour
Build-Out Volumes**

Project No.: 5559.01 Figure: 4B



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TECHNICAL MEMORANDUM

Adam Mendenhall
 January 18, 2023
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**Table 5
 2025 Build-Out A.M. and P.M. Peak-Hour LOS – Unsignalized Intersections
 Sailfish Marina**

Intersection	Adopted LOS	AM Peak-Hour			PM Peak-Hour		
		Critical Approach	Delay	LOS	Critical Approach	Delay	LOS
Peninsula Drive at Ocean Way Drive	E	EB/WB	9.1	A	EB	9.7	A
Peninsula Drive at Beach Street	E	EB	7.4	A	EB	7.8	A

As indicated in **Table 5**, the study area intersections are anticipated to operate within the adopted LOS under 2025 build-out conditions.

2025 BUILD-OUT ROADWAY SEGMENT ANALYSIS

The study area roadway segments were analyzed under build-out conditions to determine the anticipated LOS and the results are presented in **Table 6**. As indicated, all study area roadway segments are expected to operate within the adopted LOS under 2025 build-out conditions. Trips generated by the development have no significant impacts to segment volumes or capacity.

**Table 6
 2025 Build-Out PM Peak-Hour LOS – Roadway Segments
 Sailfish Marina**

Roadway	Segment		No. of Lanes	Adopted LOS	Peak-Hour Two-Way Capacity	Existing PM Peak-Hour Two-Way Volume	Applied Growth (%)	2025 Background Traffic	Project Distribution	Project Trips	2025 Build-Out Traffic	2025 Build-Out Traffic Exceed Adopted LOS?
Beach Street	Sailfish Drive	Peninsula Drive	2	E	987	128	2.00%	136	94.0%	7	143	No
Rains Drive	Sailfish Drive	Peninsula Drive	2	E	987	5	2.00%	5	0.0%	0	5	No
Ocean Way Drive	Sailfish Drive	Peninsula Drive	2	E	987	3	2.00%	3	6.0%	0	3	No
Sailfish Drive	Ocean Way Drive	Beach Street	2	E	987	1	2.00%	1	94.0%	7	8	No

CONCLUSION

The intent of this traffic assessment is to provide analyses of the proposed project's impacts on the local roadway system and address traffic concerns of the Town's Planning Department. The results of the analysis are summarized below:

- The proposed development will generate 2 a.m. peak-hour trips and 7 p.m. peak-hour trips.
- Under existing conditions, the study area intersections and roadway segments currently operate within the adopted LOS.
- Under 2025 build-out conditions, the study area intersections and roadway segments are expected to operate within the adopted LOS.

It should be noted that, based on R2CTPO TIA threshold criteria, the proposed project does not warrant a traffic impact analysis. Based on these analyses, the impacts of the proposed development on the local roadways are insignificant.



TECHNICAL MEMORANDUM

Adam Mendenhall

January 18, 2023

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Attachments: Exhibit A – Preliminary Site Plan
Exhibit B – Turning Movement Counts & 24-Hour Tube Counts
Exhibit C – Existing Conditions - HCS Summary Sheets
Exhibit D – 2025 Future Conditions - HCS Summary Sheets

I affirm, by affixing my signature and seal below, that the findings contained herein are, to my knowledge, accurate and truthful and were developed using current procedures standard to the practice of professional engineering.

*THIS ITEM HAS BEEN DIGITALLY
SIGNED AND SEALED BY:*

ON THE DATE ADJACENT TO THE SEAL

*PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED
AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY
ELECTRONIC COPIES.*

*LTG, INC.
1450 W. GRANADA BLVD, SUITE 2*

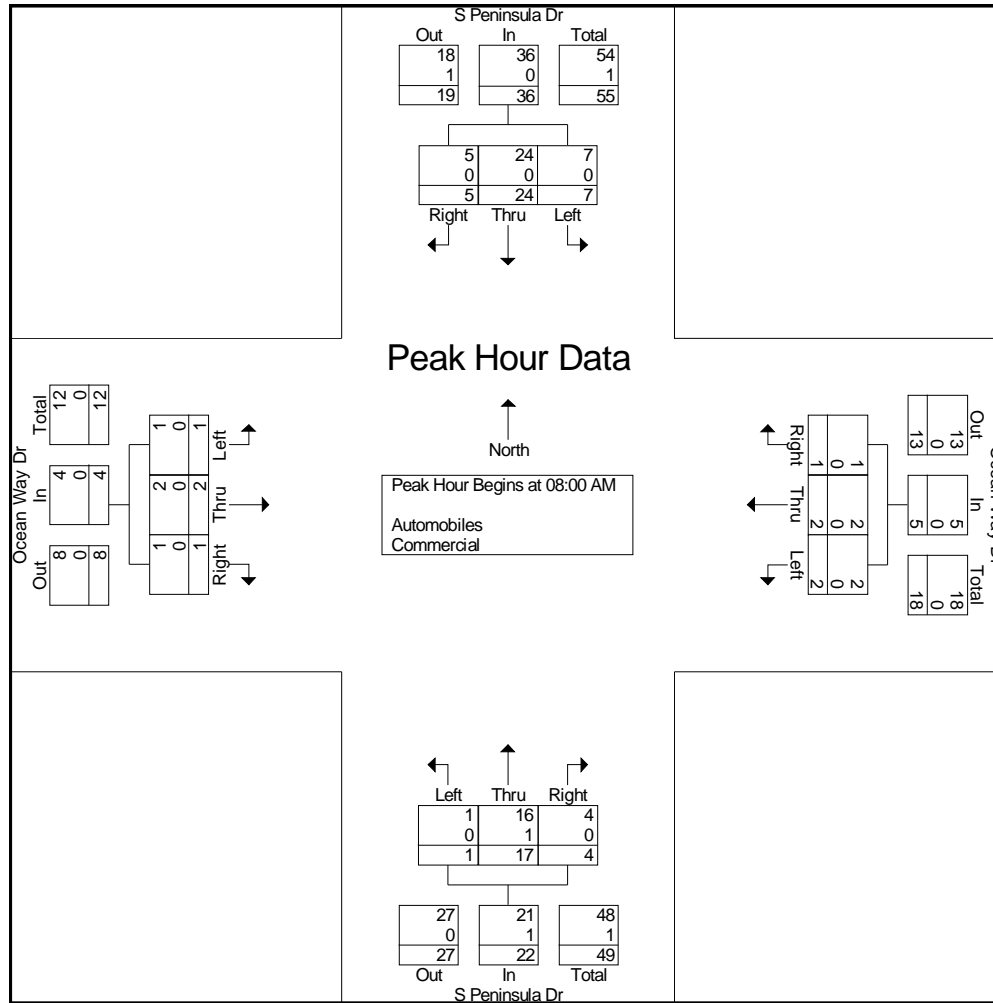


DE TRAFFIC

386-341-4186

S Peninsula Dr at Ocean Way Dr
Volusia County, FL

File Name : peninsula at ocean
Site Code : 00000002
Start Date : 4/29/2021
Page No : 3



DE TRAFFIC

386-341-4186

S Peninsula Dr at Ocean Way Dr
Volusia County, FL

File Name : peninsula at ocean
Site Code : 00000002
Start Date : 4/29/2021
Page No : 4

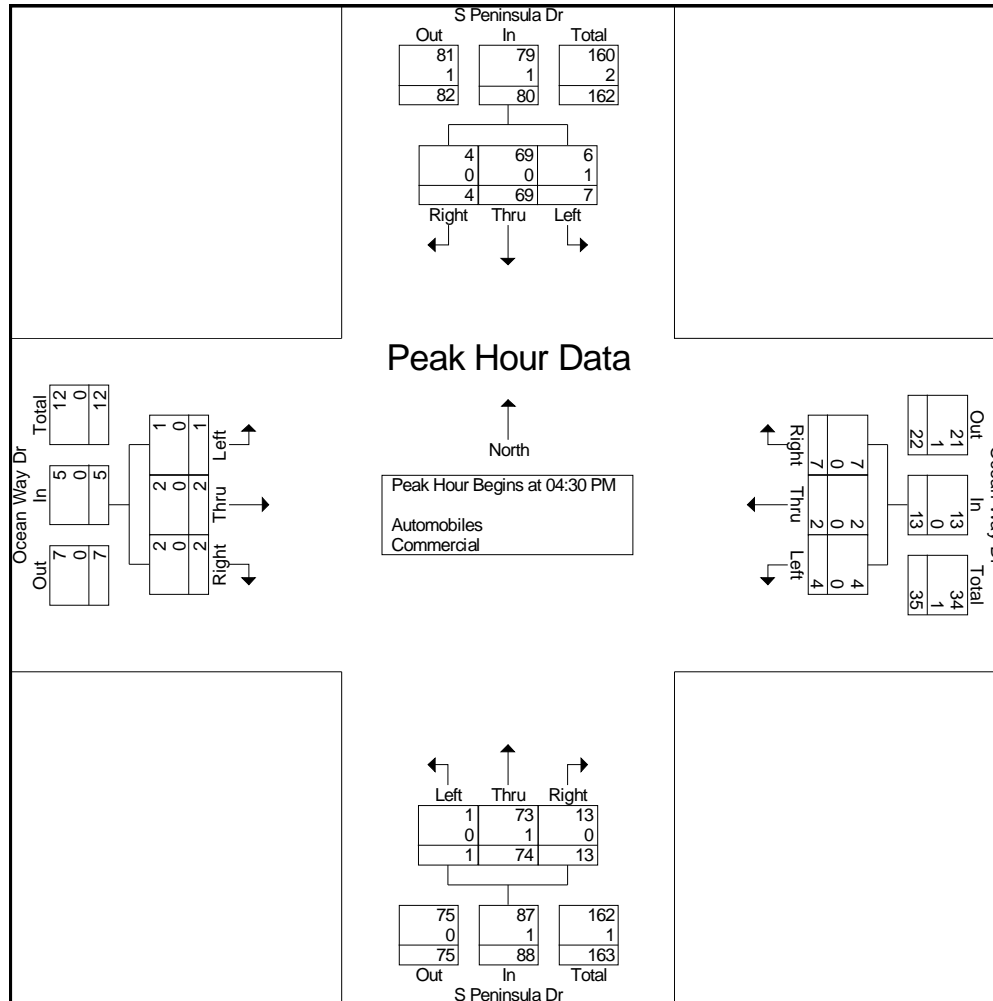
Start Time	S Peninsula Dr Southbound				Ocean Way Dr Westbound				S Peninsula Dr Northbound				Ocean Way Dr Eastbound				Int. Total
	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	
Peak Hour Analysis From 04:00 PM to 05:45 PM - Peak 1 of 1																	
Peak Hour for Entire Intersection Begins at 04:30 PM																	
04:30 PM	0	15	1	16	1	0	2	3	0	18	4	22	1	0	1	2	43
04:45 PM	3	17	1	21	0	1	3	4	1	15	2	18	0	1	0	1	44
05:00 PM	2	19	2	23	2	0	0	2	0	21	3	24	0	1	1	2	51
05:15 PM	2	18	0	20	1	1	2	4	0	20	4	24	0	0	0	0	48
Total Volume	7	69	4	80	4	2	7	13	1	74	13	88	1	2	2	5	186
% App. Total	8.8	86.2	5		30.8	15.4	53.8		1.1	84.1	14.8		20	40	40		
PHF	.583	.908	.500	.870	.500	.500	.583	.813	.250	.881	.813	.917	.250	.500	.500	.625	.912
Automobiles	6	69	4	79	4	2	7	13	1	73	13	87	1	2	2	5	184
% Automobiles	85.7	100	100	98.8	100	100	100	100	100	98.6	100	98.9	100	100	100	100	98.9
Commercial	1	0	0	1	0	0	0	0	0	1	0	1	0	0	0	0	2
% Commercial	14.3	0	0	1.3	0	0	0	0	0	1.4	0	1.1	0	0	0	0	1.1

DE TRAFFIC

386-341-4186

S Peninsula Dr at Ocean Way Dr
Volusia County, FL

File Name : peninsula at ocean
Site Code : 00000002
Start Date : 4/29/2021
Page No : 5

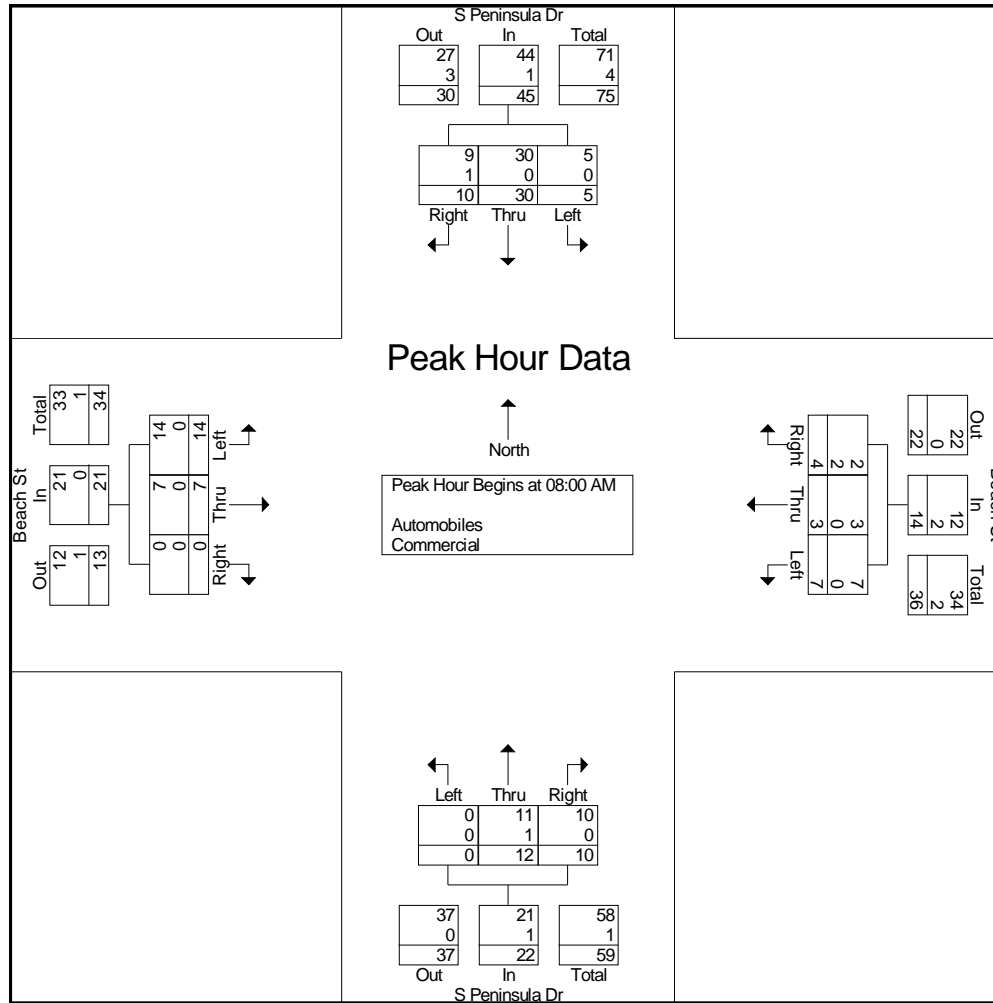


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Volusia County, FL

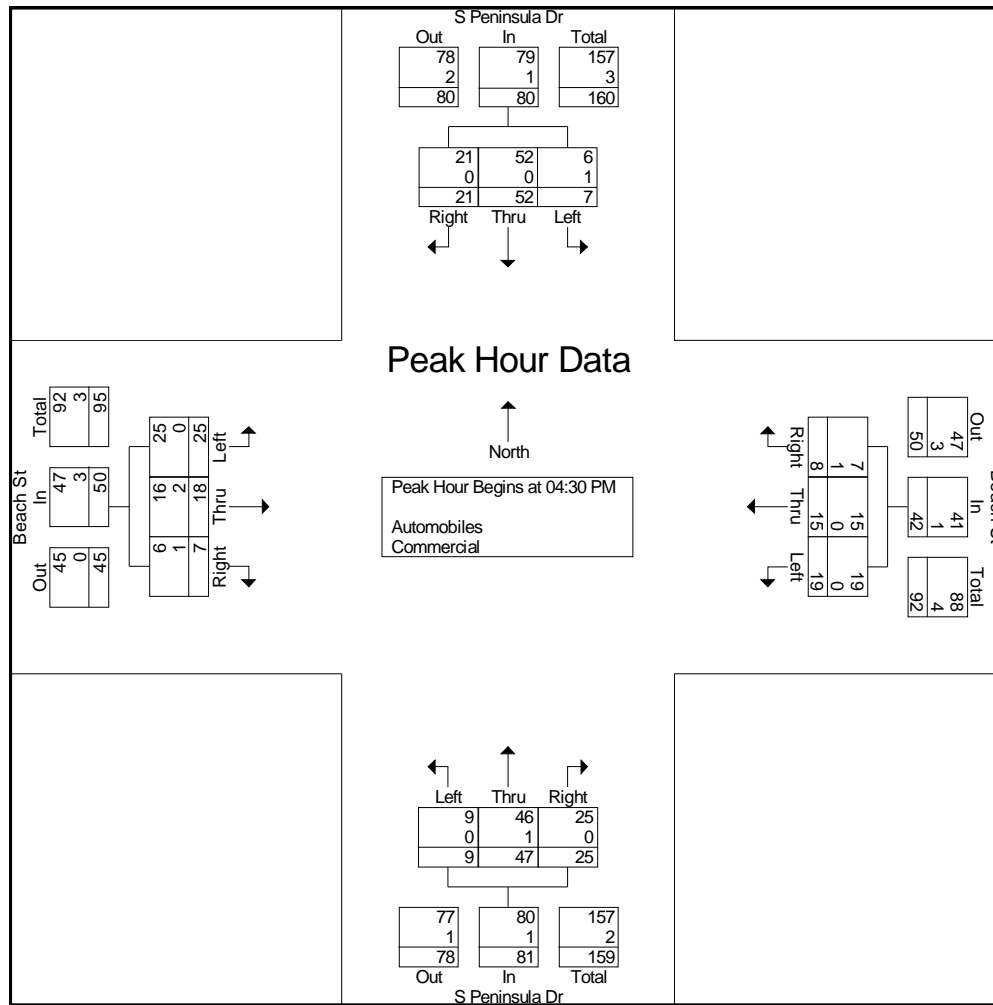
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Site Code : 00000002
Start Date : 4/29/2021
Page No : 3



DE TRAFFIC

386-341-4186
 S Peninsula Dr at Beach St
 Volusia County, FL

File Name : Peninsula at Beach
 Site Code : 00000002
 Start Date : 4/29/2021
 Page No : 5





NB Approach




SB Approach



EB Approach



WB Approach

	South Peninsula Dr at Ocean Way Dr		Volusia County	
	www.de-traffic.com		Project Number: L21-21	Sheet Number: 1
	299 McGregor Rd. DeLand FL. 32720			



NB Approach



SB Approach



EB Approach



WB Approach



South Peninsula Dr
at Beach Street

Volusia County

www.de-traffic.com

299 McGregor Rd. DeLand FL. 32720

Project
Number: L21-21

Sheet
Number: 2

Environmental Assessment

For

Sailfish Marina

ZC 04022

April 28, 2020

Prepared For:

Lyder Johnson
Lincoln Commercial Properties, Inc.
4877 Front Street
Ponce Inlet, FL 32127

Prepared By:

Mallory Tatum
Zev Cohen & Associates, Inc.
300 Interchange Blvd., Suite C
Ormond Beach, FL 32174
(386) 677-2482

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Appendices

Appendix A – Exhibits

- Location Map
- Aerial Map
- USGS Quadrangle Map
- Soils Map
- Habitat Map
- Gopher Tortoise Survey Map

1.0 PROJECT INFORMATION

The project site is located in the City of Ponce Inlet, Volusia County, Florida, in Section 37, Township 16 South, and Range 34 East (**Location Map**). The entire property is 7.9 acres and is bound by single family, low and medium density residential to the north, west, and south, and a commercial area with a restaurant, marina, and boat storage to the northeast (**Aerial Map**). The latitude and longitude coordinates for the approximate center of the project are 29° 4'51.74"N, 80°55'59.66"W (WGS84/NAD83) as determined on the USGS New Smyrna Beach Quad (**USGS Quadrangle Map**).

The property owner for this project is:

Lyder Johnson
Lincoln Commercial Properties, Inc.
4877 Front Street
Ponce Inlet, FL 32127

The environmental scientists for this project are:

Bill Lites and Mallory Tatum
Zev Cohen and Associates, Inc.
300 Interchange Boulevard
Ormond Beach, FL 32174

The proposed project includes the construction of a commercial marina with upland support facilities including an office building, restroom facilities, shell parking areas, landscaping, utilities, and stormwater management.

Zev Cohen & Associates, Inc. (ZCA) Environmental Department staff has conducted an Environmental Assessment (EA) of the subject property with associated site visits in April 2021. ZCA reviewed previous environmental reports for the subject property, characterized habitat types, verified the presence and extent of wetlands, assessed wetland impacts and mitigation, and documented the potential of occurrence of federal and state protected species. This EA report includes survey methodology, results, and supplementary materials.

2.0 SOILS

A review of the soil types present was conducted to characterize the existing conditions on the subject property. The soil review used soils surveys conducted by the United States Department of Agriculture (USDA) Natural Resources Conservation Services (NRCS). Data are presented in accordance to Official Soil Series Descriptions (**Soils Map**).

12 – Canaveral Sand, 0 to 5 Percent Slopes: This is a moderately well drained to somewhat poorly drained soil that occurs on low coastal sand dunes. The water table is between depths of 10 and 40 inches during wet periods and during dry seasons below 60

inches and can be tidally influenced. Permeability is very high above the saturated layers and available water capacity is low.

43 – Paola Fine Sand, 8 to 17 Percent Slopes: This is an excessively drained and steep sandy soil that occurs along water banks. The water table is below a depth of 72 inches. The available water capacity and organic matter content are low. The permeability is very rapid.

68 – Turnbull Variant Sand: This is a soil that consists of sand and shell dredged material from the Intracoastal Waterway (ICW) and placed along the sides of the waterway. The water table is at a depth of about 40 inches. The available water capacity is very low and permeability is very rapid.

3.0 LAND USE AND VEGETATIVE COMMUNITY

The subject property is composed of uplands consistent with upland hardwoods (**Habitat Map**). Land use of the subject property was classified according to the Florida Department of Transportation (FDOT) (1999) *Florida Land Use, Cover and Forms Classification System* (FLUCFCS). The land use and vegetative communities observed on the subject property are described in detail below.

420 – Upland Hardwood Forests– The forested uplands onsite are consistent with the temperate hardwood cover type. The canopy is dominated by live oaks (*Quercus virginiana*), cabbage palms (*Sabal palmetto*), red cedars (*Juniperus virginiana*), and slash pine (*Pinus elliottii*) with a few hackberry (*Celtis laevigata*), and black cherry (*Prunus Serontina*). The sub-canopy is mostly cleared and open, though some places are dominated by yaupon holly (*Ilex vomitoria*), saw palmetto (*Serenoa repens*), Hercules Club (*Zanthoxylum clava-herculis*), Mother-in-Law's Tongue (*Sansevieria hyacinthoides*), Golden bamboo (*Phyllostachys aurea*), American beautyberry (*Callicarpa americana*), Bromeliads (*Bromelia* spp.), elephants ear (*Colocasia* spp.) and coral bean (*Erythrina herbacea*). The groundcover is dominated by St. Augustine grass (*Stenotaphrum secundatum*), saltgrass (*distichlis spicata*), coastal sandspur (*Cenchrus incertus*), crows foot grass, (*Dactyloctenium aegyptium*), spiderwort (*Tradescantia ohiensis*), tropical milkweed (*Asclepias curassavica*), lyreleaf sage (*Salvia lyrata*), and muscadine grape (*Vitis rotundifolia*).

4.0 WETLANDS AND OTHER SURFACE WATERS

Criteria used to determine the presence of wetlands and surface waters and delineate their boundaries were in accordance with Chapter 62-340 F.A.C. and the 1987 *Corps of Engineers Wetlands Delineation Manual*. After multiple site inspections, no wetlands were observed onsite. However, the site is bound by the ICW to the southeast with a functioning seawall in place.

5.0 PROTECTED SPECIES

Prior to visiting the site, a background literature search was also conducted to compile a list of state and federally protected animal and plant species that could occur on-site. The three primary sources of literature reviewed include the Florida Fish and Wildlife Conservation Commission's (FWC) *Florida's Endangered Species, Threatened Species, And Species of Special Concern*, the United States Fish and Wildlife Service's (USFWS) Threatened and Endangered Species System (TESS) database, and the Florida Department of Agriculture and Consumer Services (FDACS), Division of Plant Industry's (DPI) *Notes on Florida's Endangered and Threatened Plants*. Additional information was gathered from the Florida Natural Areas Inventory (FNAI) *Field Guides to the Rare Animals/Plants of Florida*, and the Florida Committee on Rare and Endangered Plants and Animals (FCREPA) *Rare and Endangered Biota of Florida Series: Volumes 1-5*, ZCA's *Protected Species Database*, including the *Florida Scrub-Jay Database* (a Zev Cohen proprietary database comprised of data acquired from several agencies, direct observations, and scientific journals), and the FWC's Eagle Nest Locator web site.

5.1 Protected Wildlife Species

The state and federally protected animal species with the potential to occur on the project site are listed in Table 5.1.1, below. The estimated likelihood of occurrence of each species is noted in the table and those species with at least a moderate likelihood of occurrence are discussed following the table.

Figure 5.1.1. Federally and Florida state protected wildlife species with the potential to occur on the subject property, in Volusia County, Florida.

Species Name	Common Name	Agency Listing		Likelihood of Occurrence	Habitat
		FWC/USFWS			
<i>Alligator mississippiensis</i>	American alligator	FT		Low	Lakes, slow moving rivers
<i>Amphelocoma coerulescens</i>	Florida scrub-jay	FT		Low	Scrub, xeric oak
<i>Calidris canutus rufa</i>	Red knot	FT		Low	Sandy tidal flats, coastal areas
<i>Caretta caretta</i>	Loggerhead sea turtle	FT		Low	Nearshore coastal waterways
<i>Charadrius melodus</i>	Piping Plover	FT		Low	Beaches, tidal flats, coastal areas
<i>Chelonia mydas</i>	Green Sea Turtle	FE		Low	Shallow flats, seagrass meadows
<i>Drymarchon corais couperi</i>	Eastern indigo snake	FT		Low	Wide variety of habitats
<i>Egretta caerulea</i>	Little blue heron	ST		Low	Shallow water bodies in FL
<i>Egretta tricolor</i>	Tricolored heron	ST		Low	Coastal ponds, marshes, swamps
<i>Falco sparverius paulus</i>	Southeastern American kestrel	ST		Low	Open habitats with scattered trees
<i>Gopherus polyphemus</i>	Gopher tortoise	ST		Moderate	Sandhills, scrub, flatwoods
<i>Haliaeetus leucocephalus</i>	Bald eagle	BE		Low	Common adjacent to water
<i>Laterallus jamaicensis</i>	Eastern Black Rail	FPT		Low	Salt, brackish, and fresh wetlands
<i>Mycteria americana</i>	Wood stork	FT		Low	Shallow open waters
<i>Nerodia clarkii taeniatata</i>	Atlantic Salt Marsh	FT		Low	Coastal salt marsh, mangrove swamps

	Snake			
<i>Picoides borealis</i>	Red-cockaded woodpecker	FE	Low	Mature pine forests with regular burn
<i>Pituophis melanoleucus</i>	Florida pine snake	ST	Low	Upland areas adjacent to wetlands
<i>Platalea ajaja</i>	Roseate spoonbill	ST	Low	Coastal ponds, marshes, swamps
<i>Trichechus manatus</i>	West Indian Manatee	FT	Low	Marine, estuarine, and fresh waters

FE= Federally Endangered; FT= Federally Threatened; FPT= Federally Proposed Threatened; BE= Bald and Golden Eagle Protection Act; ST= State Threatened; SSC= Species of Special Concern.

Gopher tortoise (*Gopherus Polyphemus*) – The gopher tortoise is a state-designated Threatened Species and is being considered for federal protection due to habitat loss associated with development. Gopher tortoises require uplands that have a high enough elevation to allow for the construction of underground burrows that would not be below the groundwater table. These conditions are present on the subject property. A 100% gopher tortoise survey will be required for the property within 90 days prior to construction to be conducted by an Authorized Gopher Tortoise Agent. Associated gopher tortoise permitting with FWC and relocation will be required, if occupied habitat is proposed for impact.

Bald eagle (*Haliaeetus leucocephalus*) – According to the FWC, Eagle Nest Locator database, the closest bald eagle nest is over 1.0 mile away. Please note that the location provided by this website is provided only to allow the user to view the general location of a nest and to confirm that an appropriate area of interest was targeted by the user’s search. Development adjacent to known bald eagle nests is restricted under the Bald and Golden Eagle Protection Act. Because no nests occur within 660’ of the site, development of the site will not be constrained by permitting for the bald eagle.

5.2 Wildlife Survey

A preliminary site review was conducted to assess the potential presence of protected wildlife species on the subject property. The only federally or state protected species found to occur on the project site was the gopher tortoise. A 100% gopher tortoise survey will be required for the property within 90 days prior to construction to be conducted by an Authorized Gopher Tortoise Agent. A 10 or fewer gopher tortoise or a conservation permit will be required depending upon the amount of burrows located. Any tortoise burrows identified during the survey will require excavation and relocation of tortoises to an Authorized Gopher Tortoise Recipient Site.

A 100% gopher tortoise survey was conducted on April 27, 2021 by FWC Authorized Agent, Mallory Tatum. No gopher tortoises or their burrows were observed within the construction limits (**Gopher Tortoise Survey Map**). However, multiple armadillo burrows were observed, though they will not require any additional permitting.

6.0 SUMMARY

Zev Cohen and Associates, Inc. has conducted a site review on the proposed project site for the purposes of determining the presence or potential presence wetlands and state and federally protected wildlife. No wetlands were observed onsite.

A wildlife survey was conducted to evaluate the potential presence of state and federally protected wildlife species. The gopher tortoise was the only listed species with possible presence on the subject property, however, after a 100% gopher tortoise survey no gopher tortoises or their burrows were observed.

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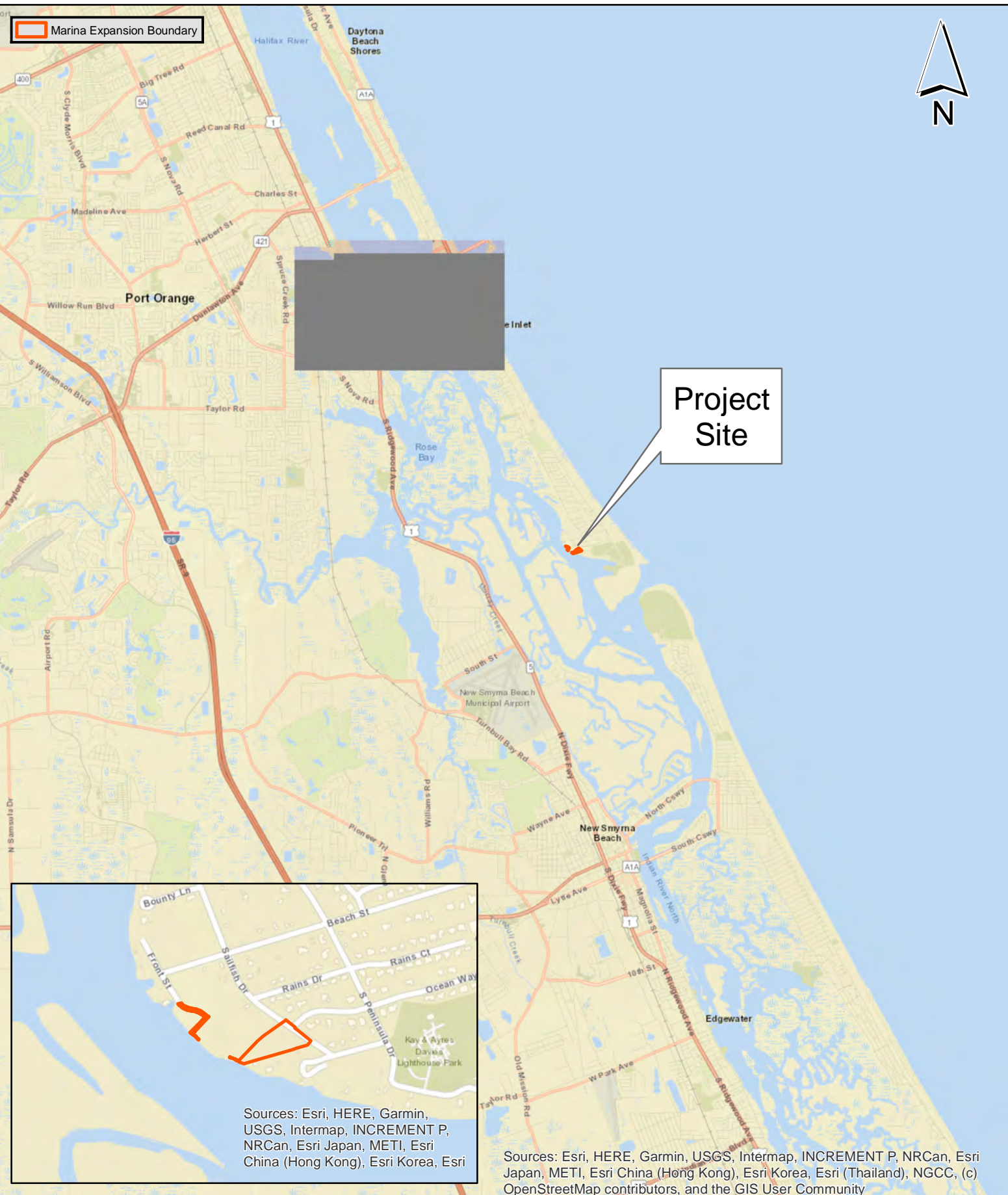
Wunderlin, R. P., and B. F. Hansen. 2004. *Atlas of Florida Vascular Plants* (<http://www.plantatlas.usf.edu/>). [S. M. Landry and K. N. Campbell (application development), Florida Center for Community Design and Research.] Institute for Systematic Botany, University of South Florida, Tampa.

Zev Cohen and Associates, Inc. 2004. *Geographically Referenced Listed Species Database*, including the *Florida Scrub-Jay Database*. Proprietary Geographic Information System Database.

Appendix A

Exhibits

Marina Expansion Boundary



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCAn, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCAn, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

Info:

Date Saved: 4/28/2021 Created by: mtatum
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7,500 3,750 0 7,500 Feet

Location Map Sailfish Property Volusia County, Florida

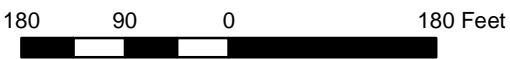
ZEVCOHEN
& ASSOCIATES, INC.
300 Interchange Blvd
Ormond Beach, FL 32174
ph 386-677-2482

Marina Expansion Boundary



Info:

Date Saved: 4/28/2021 Created by: mtatum
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Aerial Map Sailfish Property Ponce Inlet, Florida

 **ZEV COHEN**
& ASSOCIATES INC
300 Interchange Blvd
Ormond Beach, FL 32174
ph 386-677-2482

Marina Expansion Boundary



Copyright © 2013 National Geographic Society, i-cubed

USGS = U.S. Geological Survey

USGS Quadrangle Map Sailfish Property Ponce Inlet, Florida




300 Interchange Blvd
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ph 386-677-2482

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



2,000 1,000 0 2,000 Feet



 Marina Expansion Boundary

VC Soils

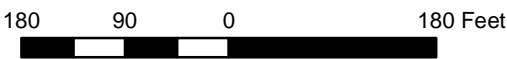
LEGEND

-  12 CANAVERAL SAND; 0 TO 5 PERCENT SLOPES
-  39 PALM BEACH SAND; 2 TO 8 PERCENT SLOPES
-  43 PAOLA FINE SAND; 8 TO 17 PERCENT SLOPES
-  68 TURNBULL VARIANT SAND



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Soils Map

Sailfish Property

Ponce Inlet, Florida

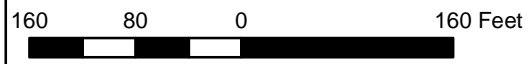


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 ph 386-677-2482

 Marina Expansion Boundary
Habitat Type
 420 - Upland Hardwood Forests



Info:
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 Path: Z:\PROJECTS\2004\04022 - ponce inlet townhomes\Habitat Map.mxd



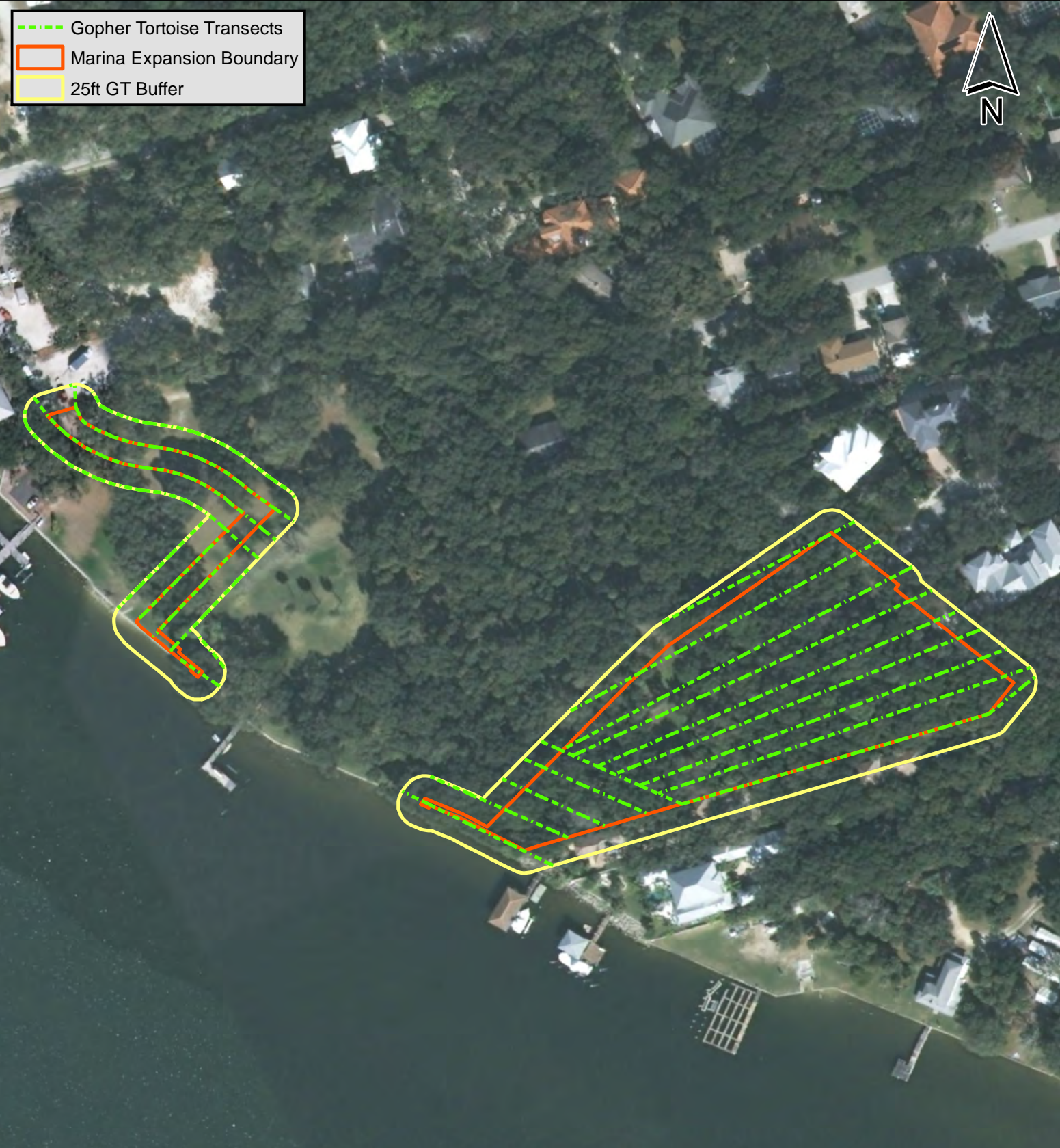
Habitat Map

Sailfish Property

Ponce Inlet, Florida


 300 Interchange Blvd
 Ormond Beach, FL 32174
 ph 386-677-2482

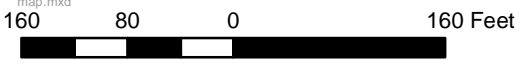
- - - Gopher Tortoise Transects
- Marina Expansion Boundary
- 25ft GT Buffer



A gopher tortoise survey was completed on April 27, 2021 by Authorized Agent Mallory Tatum (GTA-20-00065A). No gopher tortoises or their burrows were observed on the site.

Info:

Date Saved: 4/28/2021 Created by: mtatum
 Path: Z:\PROJECTS\2004\04022 - ponce inlet townhomes\Gopher Tortoise Survey map.mxd



Gopher Tortoise Survey Map

Sailfish Property

Ponce Inlet, Florida


ZEV COHEN
 & ASSOCIATES, INC.
 300 Interchange Blvd
 Ormond Beach, FL 32174
 ph 386-677-2482



Meeting Date: February 27, 2024

Agenda Item: 8-A

Report to Planning Board

Topic: Annual Board Member Training

Summary: The Town Attorney will provide a review of FL Sunshine Law, Quasi-Judicial Procedures, Public Business, and Ethics.

Suggested Motion: N/A

Requested by: Ms. Stewart, Assistant Deputy Clerk

Reviewed by: Mr. Lear, Planning & Development Director

Approved by: Mr. Disher, Town Manager



**Town
of
Ponce Inlet**

**Boardmember
Annual
Training
Packet**



Town of Ponce Inlet

Boardmember Annual Training Packet

TABLE OF CONTENTS

Section	Document Name
I	Florida's Sunshine Law & Public Records
II	Formal Quasi-Judicial Hearings & Proceedings
III	Conducting a Meeting "Cheat Sheet" and Open Meetings
IV	Robert's Rules of Order & Parliamentary Procedure
V	Town Policy for Use of Social Media by Board Members
VI	Standard of Conduct / Ethics - F.S. Chapter 112
VII	Public Business - F.S. Chapter 286 (abridged)
Addendum	FS Chapter 162 - Code Enforcement
Addendum	FS Chapter 163 - Local Planning Agency
Addendum	LUDC, Article 6.2.2 - Planning Board
Addendum	LUDC, Article 6.2.3 - Cultural Services, Historic Preservation, and Tree Advisory Board
Addendum	Code of Ordinances Chapter 2, Article IV, Division 3 Essential Services Advisory Board

Disclaimer:

The information contained herein is provided as a **Guide**; it is not intended to be all-inclusive. Always refer to the appropriate State Statute, Town staff member or the Town Attorney.



Section I

Florida's Sunshine Law & Public Records Law

FLORIDA SUNSHINE, PUBLIC RECORDS, AND CODE OF ETHICS LAWS

This presentation is intended to provide a general overview of Florida Sunshine and Public Records law and the Florida Code of Ethics. For specific guidance or a legal opinion, please contact the Attorney's office.

All boards or commissions of any state, county, municipal corporation or political subdivision have a legal obligation to comply with:

- The Sunshine Law, and
- The Public Records Law, and
- The Florida Code of Ethics.

THE LAWS

■ SUNSHINE LAW [FS §286.011 (“Sunshine Law”) and FL Constitution Art. I, Sec. 24]

Protects the public from “closed door” decision making and provides a right of access to governmental meetings.

■ PUBLIC RECORDS LAW [FS Chap. 119]

Creates a right of access to records made or received in connection with official business of a public body.

■ CODE OF ETHICS [FS 112, Part III, Code of Ethics for Public Officers and Employees and the FL Constitution Art. II, §8]

Protects against conflict of interest and establishes standards for the conduct of elected official and government employees in situations where conflicts may exist.

Committee type determines the applicability of these laws. There are two types of committees:

1. Decision Making Committees
2. Fact Finding/Focus Group Committees

1. Decision Making Committees - become part of the governing body’s decision making process and:

- Choose alternatives and direction; narrow or eliminate options for the governing body’s consideration.
- Make decision by voting.
- Make recommendations to the governing body directly or through staff.
- Create by-laws.

2. Fact Finding/Focus Groups - provide a source of community input and factual resources and:

- Have no characteristics of a Decision Making Committee.
- Do not need by-laws.
- Provide individual input, data and factual findings to staff, as part of staff’s development in its advisement to the governing body.
- Do not take votes.
- Maintain a brainstorming focus.

THE SUNSHINE LAW - gives the public access to meetings of “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision” (“Governing Body”) AND

- Allows the public to observe each preliminary step leading to the final decision.
- Prevents the governing body from creating closed committees that narrow the governing body’s decisions.
- Applies to appointed committees.
- An AG opinion advises it also applies to an individual Board member, appointed to negotiate, narrow decisions, or make decisions for the full board.

MEETINGS SUBJECT TO THE SUNSHINE LAW - include formal or casual discussions about a matter on which the governing body may foreseeably take action, between:

- Two or more members of the governing body, or
- Two or more members of a Decision Making Committee.

Discussions may occur through telephone or e-mail communications, or exchanges during workshops, social events, football games and neighborhood barbeques.

■ **THE SUNSHINE LAW IMPOSES THREE OBLIGATIONS OF OPENNESS**

1. Reasonable notice of meetings subject to the Sunshine Law must be given; requires giving the public reasonable and timely notice so they can decide whether to attend.

What is “reasonable” or “timely” depends on the circumstances. Does not necessarily require a newspaper advertisement (contact the Attorney’s office for guidance).

2. Public must be allowed to attend meetings; however there is no obligation to allow the public to participate.
 - Meetings cannot be held at exclusive or inaccessible facilities.
 - No evasive actions are allowed, such as:
 - a. Circulating written reports to elicit responses or positions on issues.
 - b. Using staff, lobbyists, or other means to seek other members’ positions about issues.
3. Minutes of the meetings are required. Written minutes must be taken and made available promptly.
 - Sound recordings may also be used, in addition to written minutes.
 - Minutes may be a brief summary of meeting’s events.
 - Minutes are public records.
 - Minutes must record the votes.

■ **THE SUNSHINE LAW APPLIES WHEN:**

- Two or more members of a governing body discuss a matter that may foreseeably come before the governing body.
- A governing body moves any part of its decision making process to a committee or group, thereby appointing an “alter ego.”

According to an AG opinion, this may also include an individual Board or Committee member appointed formally or informally to negotiate, narrow or eliminate options or decisions for the full Board or Committee.

- **THE SUNSHINE LAW DOES NOT APPLY TO:**
 1. Committees or groups appointed to engage only in fact-finding activities.
 2. Created focus groups or other such committees that:
 - a. Only provide individual input, data and facts as part of staff's development in its advisement to the governing body.
 - b. Do not narrow options.

The Sunshine Law is *broadly* construed. ~ Exemptions are *narrowly* construed.

- **SUNSHINE LAW:**
Penalties for Noncompliance (also applies to Decision Making Committees)
A violation of the Sunshine Law by the governing body or a Decision Making Committee, can nullify governing body's decisions.
- **Criminal Penalties:**
 1. It is a second degree misdemeanor to knowingly violate the Sunshine Law.
 2. Is Punishable with a fine of up to \$500 and/or up to 60 days imprisonment.
- **Other Penalties Include:**
 1. Removal from position.
 2. Payment of attorney's fees incurred by the challenging party, as well as declaratory and injunctive relief.

SENTENCED TO JAIL FOR SUNSHINE LAW VIOLATIONS:
Suspended Escambia County Commissioner, W.D. Childers, was sentenced to 60 days in jail for discussing redistricting in a telephone conversation while fellow commissioner listened on a speaker phone, and pleaded no contest for talking with two fellow commissioners about county building projects in front of a staffer.

- **PUBLIC RECORDS LAW:**
Public Records Include: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form or means of transmission made or received pursuant to law in connection with transaction of official business by the agency. (Fl. Stat. Chapter 119)

THE PUBLIC RECORDS LAW APPLIES TO:

- Records developed by the governing body, Board Appointed Committees, and employees;
- All types of records including written communications, letters, notes and e-mails. Numerous exemptions are identified in FS 119.07 and other statutes.

Public Records Requests can be made:

- Verbally or in writing,
- By any person.

THE GOVERNING BODY OR APPOINTED COMMITTEE:

- Has a "reasonable" time to respond.
- Can charge for the cost of retrieving records if the amount requested is voluminous.
- Can charge 15 cents/page.

THE PUBLIC RECORDS LAW DOES NOT REQUIRE:

- The retention of records (this is covered under the State's records retention policy).
- The creation of records or the provision of records in the format requested.
- And explanation of the records.

FLORIDA CODE OF ETHICS:

- ADDRESSES:
 - a. Standards of conduct
 - b. Voting Conflicts
 - c. Financial Disclosure
 - d. Prohibits certain action or conducts.
 - e. Requires certain disclosures be made to the public.

Standards of Conduct Prohibit Public Officials from:

- **Soliciting and Accepting Gifts** - May not solicit or accept anything of value that is based on an understanding that their vote, official action, or judgment would be influenced by such a gift.
- **Accepting Unauthorized Compensation** - May not accept any compensation, payment, or thing of value that is given to influence a vote or other official action.
- **Misusing his/her Public Position** - May not corruptly use their official position to obtain a special privilege for themselves or others.
- **Disclosing or Using Certain Information** - May not disclose or use information not available to the public and obtained by reason of their public positions for the personal benefit of themselves or others.
- **Doing business with their agency** - A public official's agency may not do business with a business entity in which the public official, or their spouse or child own more than 5% interest.
- **Engaging in Conflicting Employment or Contractual Relationships** - A public official may not be employed or contract with any business entity regulated by or doing business with his or her public agency.

THE GOVERNING BODY MAY WAIVE THE LAST TWO PROHIBITIONS, AS THEY RELATE TO APPOINTED COMMITTEES.

Voting Conflicts of Interest

- Requires no County, municipal, or other Local Public officer (including members of the appointed committees) shall vote in an official capacity upon any measure which would inure to the special private gain or loss of themselves, any principal or entity by whom they are retained, other than an agency as defined in the Fl. Stat. 112.312(2), or to any relative or business associate.
- Requires that public officers, including members of decision making committees:
 1. Must announce the nature of the conflict before the vote; abstain from voting; and file a memorandum of voting conflict
 2. May not participate in the discussion without first disclosing the nature of their interest in the matter (either in writing prior to the meeting, or orally as soon as they become aware that a conflict exists).

BECOMES AN ISSUE WHEN STAKEHOLDERS ARE APPOINTED TO DECISION-MAKING COMMITTEES

- FINANCIAL DISCLOSURES

Appointed committee members with land-planning, zoning or natural resources responsibilities must file an annual financial statement.

Which Laws Apply to Which Committees?

	Focus Group	Decision-making Committee
Florida Laws		
Sunshine law		X
Public Records Law	X	X
Code of Ethics		
Standards of Conduct	X	X
Voting Conflict		X
Financial Disclosure		X

*Includes discussions about a matter which may foreseeably come before the Committee;; between one or more Committee member(s), or involving subcommittees or an individual Committee member who has been formally or informally authorized to exercise any decision-making authority or to reduce options for the Committee’s consideration.

**Committees with land-planning, zoning, or natural resources responsibilities.

OPEN GOVERNMENT OVERVIEW:

Sunshine Law and Public Records Law



Patricia R. Gleason
Special Counsel for Open Government
Attorney General Pam Bondi

SUNSHINE LAW

- Florida's Government in the Sunshine Law provides a right of access to governmental proceedings at both the state and local levels. In the absence of statutory exemption, it applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.

Scope of the Sunshine Law

- Board members may not engage in private discussions with each other about board business, either in person or by telephoning, emailing, texting or any other type of electronic communication (i.e. Facebook, blogs).

Scope of the Sunshine Law

- While an individual board member is not prohibited from discussing board business with staff or a nonboard member, these individuals may not be used as a liaison to communicate information between board members. For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

SCOPE OF THE SUNSHINE LAW

There are three basic requirements:

- 1) Meetings of public boards or commissions must be open to the public
- 2) Reasonable notice of such meetings must be provided;and
- 3) Minutes of the meetings must be prepared promptly and open to public inspection.

SCOPE OF THE SUNSHINE LAW

- The Sunshine Law applies to advisory boards created pursuant to law or ordinance or otherwise established by public agencies or officials.

Scope of the Sunshine Law

- Staff meetings are not normally subject to the Sunshine Law.
- However, staff committees may be subject to the Sunshine Law if they are deemed to be part of the “decision making process” as opposed to traditional staff functions like factfinding or information gathering.

Scope of the Sunshine Law

- Only the Legislature may create an exemption from the Sunshine Law (by a two-thirds vote).
- An exemption from the Public Records Law does not allow a board to close a meeting. Instead, a specific exemption from the Sunshine Law is required.

Board meetings

- While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine law does not allow boards to ban nondisruptive videotaping, tape recording, or photography at public meetings.

Board meetings

- Section 286.0114, F.S., provides, subject to listed exceptions, that boards must allow an opportunity for the public to be heard before the board takes official action on a proposition. The statute does not prohibit boards from “maintaining orderly conduct or proper decorum in a public meeting.”

Penalties

- Civil action
 - Action taken in violation of the Sunshine Law may be invalidated.
- Criminal penalties
- Suspension or removal from office

PUBLIC RECORDS LAW

- Florida's Public Records Act, Chapter 119, Florida Statutes, provides a right of access to records of state and local governments as well as to private entities acting on their behalf.
- If material falls within the definition of "public record" it must be disclosed to the public unless there is a statutory exemption.

The term “public records” means:

- a) All “documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, regardless of the physical form, characteristics, or means of transmission” **(includes electronic communications like text messages, emails).**
- b) Made or received pursuant to law or ordinance or in connection with the transaction of official business
- c) By any agency [including a private entity acting ‘on behalf of’ a public agency]
- d) Which are used to perpetuate, communicate, or formalize knowledge

PROVIDING PUBLIC RECORDS

- a) Public records cannot be withheld at the request of the sender
- b) A requestor is not required to show a “legitimate” or “noncommercial interest” as a condition of access
- c) A request cannot be denied because it is “overbroad”
- d) Unless authorized by another statute, an agency may not require that public records requests be in writing or require the requestor to identify himself or herself

PROVIDING PUBLIC RECORDS

- The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days).
- The Florida Supreme Court has stated that the only delay in producing records permitted under the statute is the reasonable time allowed the custodian to retrieve the record and redact those portions of the record the custodian asserts are exempt.

PROVIDING PUBLIC RECORDS

- An agency is not required to comply with a “standing” request for records that may be created in the future.
- An agency is not required to answer questions about the public records (other than information on how to obtain them, like the cost)
- An agency is not required to create a new record

PROVIDING PUBLIC RECORDS

- Chapter 119 authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 1/2 inches or less. An additional 5 cents may be charged for two-sided copies. For other copies, the charge is the actual cost of duplication of the record. Actual cost of duplication means the cost of the material and supplies used to duplicate the record but does not include labor or overhead cost.

Fees

- In addition to the actual cost of duplication, an agency may impose a reasonable service charge for the actual cost of extensive labor and information technology required due to the large volume of a request.

Retention

All public records must be retained in accordance with retention schedules approved by the Department of State

Even exempt records must be retained.


Penalties for noncompliance

- a) Criminal penalties
- b) Civil action
- c) Attorney's fees

In the Sunshine

Florida Sunshine Law Public Records Ch.119 F.S.

Presented by Clifford B. Shepard
Materials by John G. Hubbard & Clifford B. Shepard



1

In the Sunshine

Public Records Law

Perpetuate

Communicate

Formalize



2

Florida Constitution Article I, section 24

- (a) **Every person** has the right to **inspect or copy** any public record made or received in connection with the **official business** of any public body, officer, or employee of the state, **or persons acting on their behalf**, except with respect to records **exempted** pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

“or persons acting on their behalf”



3

119.01 General State Policy on Public Records

- (1) It is the policy of this state that all state, county, and **municipal** records are open for **personal inspection and copying by any person**. Providing **access** to public records is a **duty** of each agency.

THE DUTY IS ALSO YOURS, IF YOU HAVE CUSTODY



4

119.07 General State Policy on Public Records

(1)(a) Every **person** who has **custody** of a public record shall permit the record to be **inspected and copied** by any person desiring to do so, at any **reasonable time**, under **reasonable conditions**, and **under supervision by the custodian** of the public records.

**DO YOU HAVE CUSTODY?
TRANSFER CUSTODY TO CITY CLERK**



5

119.07 General State Policy on Public Records

(c) A **custodian** of public records and his or her designee must **acknowledge** requests to inspect or copy records **promptly** and **respond to such requests in good faith**. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

DUTY: ACKNOWLEDGE PROMPTLY



6

119.07 General State Policy on Public Records

- (d) A person who has **custody** of a public record who **asserts that an exemption applies** to a part of such record shall **redact** that portion of the record to which an exemption has been asserted and validly applies, and such person **shall produce the remainder** of such record for inspection and copying.

DUTY: IF PORTIONS ARE EXEMPT, REDACT AND PRODUCE
ISSUES: IS THE RECORD EXEMPT, CONFIDENTIAL
OR BOTH?



7

119.07 General State Policy on Public Records

- (e) If the person who has **custody** of a public record **contends** that all or part of the record is **exempt** from inspection and copying, he or she shall **state the basis** of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.
- (f) **If requested** by the **person seeking** to inspect or copy the record, the **custodian** of public records shall **state in writing** and with particularity the **reasons** for the conclusion that the record is exempt or confidential.

DUTY: STATE STATUTORY BASIS FOR
EXEMPTION – IN WRITING



8

119.07 General State Policy on Public Records

- (4) **The custodian of public records shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law.** If a fee is not prescribed by law, the following fees are authorized:

DUTY: FURNISH COPY

ADVICE: COLLECT IN ADVANCE FOR COPY FEES



9

119.07 General State Policy on Public Records

- (d) If the **nature or volume** of public records requested to be inspected or copied pursuant to this subsection is such as to require **extensive use of information technology** resources or **extensive clerical or supervisory assistance** by personnel of the agency involved, or both, **the agency may charge**, in addition to the actual cost of duplication, **a special service charge**, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

DUTY: GATHER DOCUMENTS FOR INSPECTION

ADVICE: COLLECT SPECIAL SERVICE FEE IN ADVANCE



10

Definition of Public Records

Statutory

Public records means **all** documents, papers, letters, mps, books, tapes, photographs, films, sound recordings, data processing software, or other material, **regardless of the physical form**, characteristics, or means of transmission, **made or received pursuant** to law or ordinance or **in connection with the transaction of official business** by any agency.



11

Definition of Public Records

Case Law

Any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.

Perpetuate

Communicate


Formalize



12

Clearwater Case

STATUTORY TEST: TRANSACTION OF OFFICIAL BUSINESS




A cartoon illustration of two laptops with human-like faces on their screens, appearing to be in conversation. They are positioned on a desk in front of a sign that reads "COMPUTERS". The scene is set against a warm, orange-to-yellow gradient background.

13

13

Life Lesson

Merlot and email do not mix




A silhouette of a person's head and hand holding a wine glass, drinking wine. The background is a sunset or sunrise with a bright sun low on the horizon.

14

Meeting Notes
Draft documents

Perpetuate
Communicate
Formalize




15

Retention of Records

The custodian has an obligation to retain public records (this might be you.)

Department of State, Division of Library Services

Deposit with City Clerk



16

Schwab Case

Totality of factors case
 “persons acting on their behalf”



17

119.10 Violation of chapter; penalties.

- (1) Any public officer who:
- (a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.
 - (b) **Knowingly** violates the provisions of s. [119.07\(1\)](#) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#). (2) Any person who **willfully and knowingly** violates:
 - (a) Any of the provisions of this chapter commits a **misdemeanor** of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).
 - (b) Section [119.105](#) F.S. commits a **felony** of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).



18

Yes, you can go to jail for this too.

Martin County's Sarah Heard Indicted and Booked for Public Records Violations

By [BARBARA CLOWDIS](#) (SOURCE: [BARBARA CLOWDIS](#))
January 5, 2018 - 8:15am



The story of Florida public records law violations in Martin County moved further into the public light Thursday for County Commissioner Sarah Heard and former commissioner Anne Scott.

Heard was indicted and booked on two criminal counts of violating public records laws, according to the Martin County Sheriff's Office. She was released on her own recognizance after her fingerprints and mug shot were taken.

Her charges are criminal misdemeanors that could lead to a fine and/or jail time if she's found guilty. She also could be removed from office by the governor.

Thursday's charges were in addition to a previous non-criminal infraction filed by the prosecutor Nov. 27 for not responding to a public records request in January 2013, to which she pleaded not guilty.

A hearing date was set for Feb. 19. The state prosecutor informed Heard's attorney, Barbara Kibbey Wagner, during a December court hearing that five days needed to be set aside for the hearing due to the case's complexity.

Officials close to the case, however, anticipate the additional misdemeanor charges will result in a request for a hearing continuance. Heard also may now ask for a jury trial, if she pleads not guilty.

Heard is up for re-election in August for the District 4 County Commission seat; however, she has not yet filed, according to Martin County Elections Office records.

Former commissioner Scott, of Jupiter Island, also was charged Thursday with two additional criminal misdemeanor counts of violating public records laws. She, too, was booked and released on her own recognizance, according to the Martin County Sheriff's Office.



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Lawsuits are no bargain.

Lawsuit alleges Sarasota city manager broke public records law

Source: [Herald Tribune](#)
By: [Nicole Rodriguez](#) - Staff Writer

The suit asks a judge to grant an accelerated hearing in the case, and declare that Barwin and the city violated state record retention rules and the Sunshine Law

SARASOTA — A lawsuit filed Thursday against Sarasota City Manager Tom Barwin and the city alleges that the top administrator's frequent failure to produce city-related discussions from his private Gmail account as part of numerous public records requests broke state open records law and eroded public trust in local government.

The suit, filed by Michael Borfield, a paralegal consultant and president of the Florida American Civil Liberties Union, asks a judge to grant an accelerated hearing in the case, and declare that Barwin and the city violated state record retention rules and the Sunshine Law, which is intended to guarantee that citizens have access to public records and the decision-making of governmental officials. The 23-page suit requests a judge to order Barwin and the city to follow the law, make records on Barwin's personal electronic devices available for inspection, pay Borfield's legal fees and award any other relief the court deems appropriate.



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Perpetuate
Communicate
Formalize



21

21

Thank You!

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Section II

Formal Quasi-Judicial Hearings & Proceedings

Quasi-Judicial Hearings - A Guide

For the purposes of this document, “Petitioner” and “Applicant” or variations thereof, shall have the same meaning.

1. Introduction(s) - the Chairperson reads the case type and nature of the issue
2. Affected Party determination
3. Ex-parte communication - the Board members disclose any ex-parte communications that may have occurred. The Petitioner (applicant) and any affected party may ask questions of each Board member about these communications (directed through the Chairperson).
4. Swearing-in of the parties - the Petitioner (applicant), staff, and all witnesses shall be collectively sworn.
5. Staff presentation - Town staff shall present any staff, board, or other report on the matter. These reports any all other documentary evidence shall become part of the record. Evidence will be presented through oral testimony of witnesses and documentary evidence.
6. Petitioner (applicant) presents its case - the Petitioner or applicant may include a description and nature of the application if there is additional information that has not been previously provided by the Town staff. The Petitioner may introduce any documentary evidence and elicit testimony through witnesses.
7. Affected Party *for* the Petitioner (Applicant) - any affected person will present its case clearly indicating if they are in support of the Petition. The affected person may introduce documentary evidence and elicit testimony through witnesses.
8. Affect Party *against* the Petitioner (Application) - any affected person will present its case clearly indicating if they are opposed to the Petition. The affected person may introduce documentary evidence and elicit testimony through witnesses.
9. Any rebuttal by Petitioner (Applicant).
10. Any rebuttal by Staff.
11. Close of presentation by petitioner, staff, and affected parties.
12. Public Hearing.
13. Close Public Hearing; deliberations and vote of the Board.

General rules as to Witnesses:

After each witness testifies, any member of the Board, the Petitioner, or any affected party is permitted to question the witness, unless the Chairperson deems the question to be irrelevant or immaterial. The Chairperson may defer to the Town Attorney to determine the scope of questioning. The questioning party is not permitted to make statements - only to ask questions which are directly related to the testimony presented.

The Board may, in its discretion and at any time during the hearing, continue the hearing, and may request further information from any party.

Instructions:

Consideration of the Evidence - In Board deliberations, Board members must *only* consider the evidence - that is, the testimony of witnesses and the exhibits and all evidence admitted into the record.

The Board is not bound by strict rules of evidence or limited to consideration of the evidence which would be admissible in a court of law, but as you consider the evidence, both direct and circumstantial, you may make deductions and reach conclusions which reason and common sense lead you to make. The Board shall weigh all the competent, material, and/or relevant evidence presented, giving each piece of evidence the weight he or she sees fit.

The Board may exclude evidence or testimony which is not relevant, material or competent, or testimony which is unduly repetitious.

The Board will determine the relevancy of evidence, and the Board may ask the Attorney for opinions on the relevancy of evidence. However, the **attorney's opinion is not evidence** in the case - it is your own recollection and interpretation of the evidence that controls.

The public may provide input to the Board. The Board must not act merely because there is public sentiment for or against the petitioner. The Board must base its decision on the facts and competent evidence presented at the hearing.

Credibility of Witness(es) - You should decide whether you believe what each witness states and how important the testimony was. In making that decision, you may believe or disbelieve any witness; in whole or in part. Also, the number of witnesses testifying concerning any particular matter is not controlling. You may decide that the testimony of a smaller number of witnesses is more believable than the testimony of a larger number of witnesses to the contrary.

You should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or whether there was evidence that at some other time, the witness said or did something or failed to say or do, which was different from the testimony he or she gave before you during the hearing.

Expert Witness(es) - When knowledge of a technical subject matter might be helpful, a person having special training or experience in that technical field (an expert witness) is permitted to state his or her opinion concerning those technical matters. Merely because an expert witness has expressed an opinion however, does not mean that you must accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.

Information obtained from: <https://floridaldrs.com/tag/quasi-judicial-hearings/>



Section III

Conducting a Meeting

“Cheat Sheet”



BOARD MEETING “CHEAT SHEET” - A GUIDE

Note: you must be recognized by the Chair prior to speaking, by stating “*Chairman, I have a question*” or “*Chairman, may I make a comment*”. This procedure prevents members from speaking over each other and avoids confusion when preparing minutes.

Meeting Procedures: Meetings generally run in the following order (according to an approved agenda format):

1. Call to Order and Pledge of Allegiance
2. Roll Call / Determination of Quorum
3. Adoption of Agenda
4. Approval of Minutes (of prior meetings)
5. Report of Staff
6. Correspondence and Disclosure of Ex-parte Communication
7. Hearing of Cases
8. Business Items
9. Public Comment
10. Board Discussion
11. Adjournment

1. Call to Order and Pledge of Allegiance – the Chair will call the meeting to Order, noting the date, Board name, and time. The Chair leads attendees in the Pledge of Allegiance.

2. Roll Call and Determination of Quorum - the Board Secretary will perform the roll call to determine a quorum and document member’s attendance/absence.

3. Adoption of the Agenda – the Chair will ask if there are any changes to the Agenda; a motion and second to “adopt agenda as presented” - or - “adopt the agenda as amended” is required. A vote by consensus is acceptable (all in favor/opposed).

4. Approval of the Minutes – the Chair will ask if there are any changes to the Minutes; a motion and second to “approve the minutes as presented -or - as amended” is required. A vote by consensus is acceptable (all in favor/opposed).

5. Report of Staff - Staff will provide an update to projects currently under review.

6. Correspondence and Disclosure of Ex-parte Communication - the Chair will ask if any correspondence has been received regarding any of the items on the agenda; the Chair asks members to disclose ex-parte communication.

7. Hearing of Cases (Quasi-Judicial) – the Chair should refer to the procedure designated in the “Formal Quasi-Judicial Hearings” guide or consult the Board Attorney. All matters decided during hearings must be by **roll-call vote**, indicating which members voted for or against the issue as a matter of clarity for the record.

8. Business Items (Non-Quasi-Judicial) – staff introduces the item, providing relevant information and making a recommendation. Once finished, the Chair will ask for public comments. After the public has had the opportunity to comment, the Chair will bring the item back to the Board for discussion and deliberation. Board members discuss their viewpoints on the item. If action is required, the Chair will ask for a motion and second. A **roll-call vote** is taken indicating which members voted for and against the issue as a matter of clarity for the record.

9. Public Comment – the Chair asks if any members of the public wish to speak about an item not listed on the agenda.

10. Board Discussion – the Chair asks if any member of the Board wishes to discuss a topic not listed on the agenda. *Note: it is common to add discussion items in advance during Adoption of the Agenda section.*

11. Adjournment – the Chair may ask for a Motion to Adjourn, followed by a second, and vote to adjourn by consensus; or the Chair may simply adjourn the meeting and state the time.

Motions and Voting:

The Town follows a simplified version of Robert’s Rules of Order. Nearly everything can be accomplished in a meeting by a **Main Motion** and/or by **Amending a Main Motion**.

How a Main Motion is brought: used when a member wants to propose action by the Board.

- A member states: “I move that” (or ‘to’) ...
- Another member seconds the motion
- The Chair requests public comment
- The Chair requests Board comment
- The Chair requests a vote
- If a majority votes in favor of the motion, then the motion **PASSES**. If a majority votes in opposition to the motion, or if the vote is a tie, then the motion **FAILS**. The Board Secretary will state the results.

Amending a Main Motion: A member may make a motion to amend a main motion. The Chair will then ask for a member to second the amended motion. If seconded, then the Chair may deem the motion amended; if not seconded, the amendment dies and the original motion stands.

Other motions: A *Motion to Rescind* or *Motion to Consider* may also be made, but these types of motions are rarely utilized and can be explained by the Attorney if needed.

Voting: All members present must vote on the agenda item unless a conflict is declared. In those instances, a Form 8B will be provided to the member, who must complete and return the form to the Board Secretary for filing with the meeting minutes.



Section IV

Robert's Rules of Order & Parliamentary Procedure

Robert's Rules of Order & Parliamentary Procedure

- I. What is Parliamentary Procedure?
It is a set of rules for conduct at meetings that allows everyone to be heard and to make decisions without confusion.
- II. Why is Parliamentary Procedure important?
Because it is a time-tested method used for conducting business at meetings and it can be adapted to fit the needs of any organization. Robert's Rules of Order is the basic handbook of operation for most organizations – so it is important to know the basic rules.
- III. Organizations using Parliamentary Procedure usually follow a fixed order of business called an Agenda.
- IV. The method used by members to express themselves is in the form of “motions”. A motion is a proposal that the entire membership take action or a stand on an issue.
Individual members can:
 1. Call to Order
 2. Second motions
 3. Debate motions
 4. Vote on motions
- V. How are Motions presented?
 1. Obtaining the floor:
 - a. Wait until the last speaker has finished
 - b. Raise your hand and address the Chairman by saying, “Mr./Madam Chairman”
 - c. Wait until the Chairman recognizes you before speaking
 2. Make your motion:
 - a. Speak in a clear and concise manner
 - b. Always state a motion in the positive (for example, say, “I move that we ...” rather than, “I move that we do not ...”)
 - c. Avoid personality conflicts and stay on topic
 3. Wait for someone to second your motion: another member will state second, or the Chairman will call for a second. If there is no second to the motion, the motion dies.
 4. The Chairman re-states the motion:
 - a. The Chairman states, “it has been moved and seconded that we ...”. Thus placing your motion before the members for consideration and action.
 - b. The membership then either debates your motion or may move directly to a vote.
 - c. Once your motion is presented to the membership by the Chairman, it cannot be changed by you without the consent of the members.
 6. Expanding on Your Motion:

- a. Now is the time for you to speak in favor of your motion – not when you first make the motion.
 - b. The **mover** is always allowed to speak first.
 - c. All comments and debate must be directed to the Chairman.
 - d. The mover may speak again **only** after all other speakers are finished (unless called upon by the Chairman).
7. Putting the Question (Motion) to the Membership:
- a. The Chairman asks, “Are you ready to vote on the motion?”
 - b. If there is no more discussion, a vote is taken.
 - c. The Board Secretary will state the results for the record.
- VI. Voting on a Motion: The method of vote on any motion depends on the situation and the By-laws of the Board. These are typical methods:
- 1. By **Voice** – the Chairman asks those in favor to say, “aye”, those opposed to say “no”. Any member may move for an exact count.
 - 2. By **Roll Call** – the member answers “yes” or “no” as his/her name is called. This method is used when a record of each person’s vote is required or desired.
 - 3. By **General Consent** – when a motion is not likely to be opposed, the Chairman says, “if there is no objection ... “ The membership shows agreement by their silence, however if one member says, “I object,” the item must be put to a vote.
 - 4. By **Ballot** – members write their vote on a slip of paper; the Clerk calculates and announces the results to the Chairman.

These are two other motions that are commonly used:

- 1. **Motion to Table** – this motion is often used to provide an extended, indefinite period of time to resolve concerns before a final vote is taken. Tabled items are removed from subsequent meeting agendas until brought back by a vote of the Board. The option is always present, to “take off the table” for reconsideration by the membership.
- 2. **Motion to Continue to a Date Certain** – this motion is used to allow a limited period of time to obtain additional information, resolve outstanding issues, or reschedule an item that has been previously advertised and noticed. No further public notice is required as long as the date and time of the future meeting are announced. The discussion on that particular item “continues” to the future date.

Robert’s Rules of Order and Parliamentary Procedure provides a standard of orderly framework for getting work done. Your meetings will be successful and productive by following these tips:

- 1. Allow motions that are in order;
- 2. Have members obtain the floor properly;
- 3. Speak clearly and concisely;
- 4. Obey the rules of debate; and most importantly ...
- 5. Be courteous.



Section V

Town's Policy for Use of Social Media by Board Members

Per Resolution 2020-17

Town of Ponce Inlet Policy for Use of Social Media by Board Members

3.0 Informational Policy

3.1 Policy

The Town understands that social media can be a beneficial and rewarding way for individuals to share information about themselves and interact with others and the public at large. However, when it comes to members of the Town Council, as well as other Town boards and committees, use of social media can violate Sunshine and Public Records laws when discussing public business, resulting in potential litigation and even criminal charges. In addition, using a Social Media Channel for official statements can transform the Channel into a “public forum” subject to First Amendment considerations. The following is a policy for use of social media to be used as guidance to avoid creating actual or perceived violations of the First Amendment, as well as Sunshine and Public Records laws.

3.2 Definitions

For purposes of this Policy:

Board Member means a member of the Town Council, or any Town Board or Committee which is subject to Section 286.011, *Florida Statutes*.

Social media content or content means and includes any materials, documents, photographs, graphics, or other information that is created, posted, distributed, or transmitted on a Social Media Channel.

Posts or Postings mean information, articles, pictures, videos of any other form of communication posted on a Social Media Channel.

Social Media Account means the legal arrangement with a social media provider to authorize use of a social media tool. For example, a Facebook account authorizes use of Facebook.

Social Media Tool means an online utility that provides for mass communication, such as message boards, web sites, and blogs. Specific examples include Facebook, Twitter, LinkedIn, YouTube, Pinterest, and Instagram. Social media tools may provide for one-way or two-way communication.

Social Media Channel means a specific social media platform available through a Social Media Account. For example, each Facebook Page opened through the establishment of a Facebook account is a Social Media Channel.

Personal Social Media Channel means a specific social media platform available through a Social Media Account managed by an Employee which is not associated with the Town, such as an Employee’s personal Facebook page.

3.3 Guidance

- A. Any Board Member who uses a Social Media Channel to make statements relating to public business should not prevent any other user from interacting with any post on that Social Media Channel. Board Members may not take any action to make any individual's comments or replies to posts on the Social Media Channel less visible to others. If available, Board Members may instead choose to turn off replies and comments entirely on any given post.
- B. Board Members should not interact with other members of their same board through Social Media Tools on any matter which could be perceived as relating to public business. "Interacting" includes both substantive and non-substantive interactions, such as commenting on one another's posts, tagging one another on statements, liking one another's posts, or making any statement explicitly or implicitly referring to a member of the same board.
- C. Board Members should not use a Social Media Channel to state an opinion on a matter which may come before their board in a quasi-judicial capacity. Board Members should avoid engaging in *ex parte* communications regarding quasi-judicial matters through Social Media Tools. If a Board Member does communicate regarding a quasi-judicial matter using a Social Media Tool, the Board Member shall disclose such *ex parte* communications at the relevant hearing on the matter.
- D. Board Members should avoid making any statements regarding public business through posts which are not publicly available. For the purposes of this policy, "publicly available" shall mean accessible by hyperlink without any required sign-in or other credential. If a Social Media Tool does not provide for the creation of publicly available posts, Board Members should refrain from utilizing that Social Media Tool.
- E. Whenever a Board Member makes any statement regarding public business using a Social Media Tool, including a reply to another user's post, the Board Member should immediately create a copy of the statement and provide the copy to the Town Clerk. The copy may either be physical form or a computer file, such as a PDF. Board Members who desire technical guidance in creating a copies of social media posts should contact the Town Clerk.
- F. Board Members may not delete any posts which relate to public business.
- G. The Town reserves the right to change, modify, or amend all or part of this policy at any time.



Town of Ponce Inlet
Boardmember
Annual Training Packet

Section VI

Code of Ethics

FL Statute Chapter 112

Title X
PUBLIC OFFICERS, EMPLOYEES, AND
RECORDS

Chapter 112
PUBLIC OFFICERS AND EMPLOYEES: GENERAL
PROVISIONS

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(1) DEFINITION.—As used in this section, unless the context otherwise requires, the term “public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(2) SOLICITATION OR ACCEPTANCE OF GIFTS.—No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

(3) DOING BUSINESS WITH ONE’S AGENCY.—No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer’s or employee’s spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer’s or employee’s spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer’s or employee’s own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator’s place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall not affect or be construed to prohibit contracts entered into prior to:

- (a) October 1, 1975.
- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment.

(4) UNAUTHORIZED COMPENSATION.—No public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

(5) SALARY AND EXPENSES.—No public officer shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a public officer, as provided by law. No local government attorney shall be prevented from considering any matter affecting his or her salary, expenses, or other compensation as the local government attorney, as provided by law.

(6) MISUSE OF PUBLIC POSITION.—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. [104.31](#).

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.—A current or former public officer,

employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.—

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. [110.402](#) or any person holding a position in the Selected Exempt Service as defined in s. [110.602](#) or any person having authority over policy or procurement employed by the Department of the Lottery.

(II) The Auditor General, the director of the Office of Program Policy Analysis and Government Accountability, the Sergeant at Arms and Secretary of the Senate, and the Sergeant at Arms and Clerk of the House of Representatives.

(III) The executive director and deputy executive director of the Commission on Ethics.

(IV) An executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, analyst, or attorney of the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, Senate Minority Party Office, House Majority Party Office, or House Minority Party Office; or any person, hired on a contractual basis, having the power normally conferred upon such persons, by whatever title.

(V) The Chancellor and Vice Chancellors of the State University System; the general counsel to the Board of Governors of the State University System; and the president, provost, vice presidents, and deans of each state university.

(VI) Any person, including an other-personal-services employee, having the power normally conferred upon the positions referenced in this sub-subparagraph.

b. "Appointed state officer" means any member of an appointive board, commission, committee, council, or authority of the executive or legislative branch of state government whose powers, jurisdiction, and authority are not solely advisory and include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.

c. "State agency" means an entity of the legislative, executive, or judicial branch of state

2020 Florida Statutes

government over which the Legislature exercises plenary budgetary and statutory control.

3.a. No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

b. For a period of 2 years following vacation of office, a former member of the Legislature may not act as a lobbyist for compensation before an executive branch agency, agency official, or employee. The terms used in this sub-subparagraph have the same meanings as provided in [s. 112.3215](#).

4. An agency employee, including an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida, may not personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

5. Any person violating this paragraph shall be subject to the penalties provided in [s. 112.317](#) and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

6. This paragraph is not applicable to:

- a. A person employed by the Legislature or other agency prior to July 1, 1989;
- b. A person who was employed by the Legislature or other agency on July 1, 1989, whether or not the person was a defined employee on July 1, 1989;
- c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;
- d. A person who has reached normal retirement age as defined in [s. 121.021\(29\)](#), and who has retired under the provisions of chapter 121 by July 1, 1991; or
- e. Any appointed state officer whose term of office began before January 1, 1995, unless reappointed to that office on or after January 1, 1995.

(b) In addition to the provisions of this part which are applicable to legislators and legislative employees by virtue of their being public officers or employees, the conduct of members of the Legislature and legislative employees shall be governed by the ethical standards provided in the respective rules of the Senate or House of Representatives which are not in conflict herewith.

(10) EMPLOYEES HOLDING OFFICE.—

(a) No employee of a state agency or of a county, municipality, special taxing district, or other political subdivision of the state shall hold office as a member of the governing board, council,

commission, or authority, by whatever name known, which is his or her employer while, at the same time, continuing as an employee of such employer.

(b) The provisions of this subsection shall not apply to any person holding office in violation of such provisions on the effective date of this act. However, such a person shall surrender his or her conflicting employment prior to seeking reelection or accepting reappointment to office.

(11) PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS.—No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a state examining or licensing board for the profession or occupation.

(12) EXEMPTION.—The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person shall be held in violation of subsection (3) or subsection (7) if:

(a) Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.

(b) The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:

1. The official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder;

2. The official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and

3. The official, prior to or at the time of the submission of the bid, has filed a statement with the Commission on Ethics, if the official is a state officer or employee, or with the supervisor of elections of the county in which the agency has its principal office, if the official is an officer or employee of a political subdivision, disclosing the official's interest, or the interest of the official's spouse or child, and the nature of the intended business.

(c) The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.

(d) An emergency purchase or contract which would otherwise violate a provision of subsection (3) or subsection (7) must be made in order to protect the health, safety, or welfare of the citizens

of the state or any political subdivision thereof.

(e) The business entity involved is the only source of supply within the political subdivision of the officer or employee and there is full disclosure by the officer or employee of his or her interest in the business entity to the governing body of the political subdivision prior to the purchase, rental, sale, leasing, or other business being transacted.

(f) The total amount of the transactions in the aggregate between the business entity and the agency does not exceed \$500 per calendar year.

(g) The fact that a county or municipal officer or member of a public board or body, including a district school officer or an officer of any district within a county, is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of any such public board or body, provided it appears in the records of the agency that the governing body of the agency has determined that such officer or member of a public board or body has not favored such bank over other qualified banks.

(h) The transaction is made pursuant to s. [1004.22](#) or s. [1004.23](#) and is specifically approved by the president and the chair of the university board of trustees. The chair of the university board of trustees shall submit to the Governor and the Legislature by March 1 of each year a report of the transactions approved pursuant to this paragraph during the preceding year.

(i) The public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.

(j) The public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his or her agency and:

1. The price and terms of the transaction are available to similarly situated members of the general public; and
2. The officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

(13) COUNTY AND MUNICIPAL ORDINANCES AND SPECIAL DISTRICT AND SCHOOL DISTRICT RESOLUTIONS REGULATING FORMER OFFICERS OR EMPLOYEES.—The governing body of any county or municipality may adopt an ordinance and the governing body of any special district or school district may adopt a resolution providing that an appointed county, municipal, special district, or school district officer or a county, municipal, special district, or school district employee may not personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or employee for a period of 2 years following vacation of office or termination of employment, except for the purposes of collective bargaining. Nothing in this section may be construed to prohibit such ordinance or resolution.

(14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.—A person who has been elected to

any county, municipal, special district, or school district office or appointed superintendent of a school district may not personally represent another person or entity for compensation before the government body or agency of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection:

(a) The “government body or agency” of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.

(b) The “government body or agency” of any other county elected officer is the office or department headed by that officer, including all subordinate employees.

(c) The “government body or agency” of an elected municipal officer consists of the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.

(d) The “government body or agency” of an elected special district officer is the special district.

(e) The “government body or agency” of an elected school district officer is the school district.

(15) ADDITIONAL EXEMPTION.—No elected public officer shall be held in violation of subsection (7) if the officer maintains an employment relationship with an entity which is currently a tax-exempt organization under s. 501(c) of the Internal Revenue Code and which contracts with or otherwise enters into a business relationship with the officer’s agency and:

(a) The officer’s employment is not directly or indirectly compensated as a result of such contract or business relationship;

(b) The officer has in no way participated in the agency’s decision to contract or to enter into the business relationship with his or her employer, whether by participating in discussion at the meeting, by communicating with officers or employees of the agency, or otherwise; and

(c) The officer abstains from voting on any matter which may come before the agency involving the officer’s employer, publicly states to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining, and files a written memorandum as provided in s.112.3143.

(16) LOCAL GOVERNMENT ATTORNEYS.—

(a) For the purposes of this section, “local government attorney” means any individual who routinely serves as the attorney for a unit of local government. The term shall not include any person who renders legal services to a unit of local government pursuant to contract limited to a specific issue or subject, to specific litigation, or to a specific administrative proceeding. For the purposes of this section, “unit of local government” includes, but is not limited to, municipalities, counties, and special districts.

(b) It shall not constitute a violation of subsection (3) or subsection (7) for a unit of local

government to contract with a law firm, operating as either a partnership or a professional association, or in any combination thereof, or with a local government attorney who is a member of or is otherwise associated with the law firm, to provide any or all legal services to the unit of local government, so long as the local government attorney is not a full-time employee or member of the governing body of the unit of local government. However, the standards of conduct as provided in subsections (2), (4), (5), (6), and (8) shall apply to any person who serves as a local government attorney.

(c) No local government attorney or law firm in which the local government attorney is a member, partner, or employee shall represent a private individual or entity before the unit of local government to which the local government attorney provides legal services. A local government attorney whose contract with the unit of local government does not include provisions that authorize or mandate the use of the law firm of the local government attorney to complete legal services for the unit of local government shall not recommend or otherwise refer legal work to that attorney's law firm to be completed for the unit of local government.

(17) BOARD OF GOVERNORS AND BOARDS OF TRUSTEES.—No citizen member of the Board of Governors of the State University System, nor any citizen member of a board of trustees of a local constituent university, shall have or hold any employment or contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to s. [11.045](#).

History.—s. 3, ch. 67-469; s. 2, ch. 69-335; ss. 10, 35, ch. 69-106; s. 3, ch. 74-177; ss. 4, 11, ch. 75-208; s. 1, ch. 77-174; s. 1, ch. 77-349; s. 4, ch. 82-98; s. 2, ch. 83-26; s. 6, ch. 83-282; s. 14, ch. 85-80; s. 12, ch. 86-145; s. 1, ch. 88-358; s. 1, ch. 88-408; s. 3, ch. 90-502; s. 3, ch. 91-85; s. 4, ch. 91-292; s. 1, ch. 92-35; s. 1, ch. 94-277; s. 1406, ch. 95-147; s. 3, ch. 96-311; s. 34, ch. 96-318; s. 41, ch. 99-2; s. 29, ch. 2001-266; s. 20, ch. 2002-1; s. 894, ch. 2002-387; s. 2, ch. 2005-285; s. 2, ch. 2006-275; s. 10, ch. 2007-217; s. 16, ch. 2011-34; s. 3, ch. 2013-36; s. 2, ch. 2018-5.



Town of Ponce Inlet
Boardmember
Annual Training Packet

Section VII

Public Business

FL Statute Chapter 286
(*Abridged*)

2018 Florida Statutes

Title XIX PUBLIC BUSINESS (Abridged)

Chapter 286

PUBLIC BUSINESS: MISCELLANEOUS PROVISIONS

- 286.0105 Notices of meetings and hearings must advise that a record is required to appeal.
- 286.011 Public meetings and records; public inspection; criminal and civil penalties.
- 286.0113 General exemptions from public meetings.
- 286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.
- 286.0115 Access to local public officials; quasi-judicial proceedings on local government land use matters.
- 286.012 Voting requirement at meetings of governmental bodies.
- 286.26 Accessibility of public meetings to the physically handicapped.

286.0105 Notices of meetings and hearings must advise that a record is required to appeal. —

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).

History.—s. 1, ch. 80-150; s. 14, ch. 88-216; s. 209, ch. 95-148.

286.011 Public meetings and records; public inspection; criminal and civil penalties. —

- (1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.
- (2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this

state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

(3)(a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency, and may assess a reasonable attorney's fee against the individual filing such an action if the court finds it was filed in bad faith or was frivolous. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission. However, this subsection shall not apply to a state attorney or his or her duly authorized assistants or any officer charged with enforcing the provisions of this section.

(5) Whenever any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision appeals any court order which has found said board, commission, agency, or authority to have violated this section, and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such board, commission, agency, or authority. Any fees so assessed may be assessed against the individual member or members of such board or commission; provided, that in any case where the board or commission seeks the advice of its attorney and such advice is followed, no such fees shall be assessed against the individual member or members of the board or commission.

(6) All persons subject to subsection (1) are prohibited from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in such a manner as to unreasonably restrict public access to such a facility.

(7) Whenever any member of any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision is charged with a

violation of this section and is subsequently acquitted, the board or commission is authorized to reimburse said member for any portion of his or her reasonable attorney's fees.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation.

History.—s. 1, ch. 67-356; s. 159, ch. 71-136; s. 1, ch. 78-365; s. 6, ch. 85-301; s. 33, ch. 91-224; s. 1, ch. 93-232; s. 210, ch. 95-148; s. 1, ch. 95-353; s. 2, ch. 2012-25.

286.0113 General exemptions from public meetings. —

(1) That portion of a meeting that would reveal a security or fire safety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

(2)(a) For purposes of this subsection:

1. "Competitive solicitation" means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.

2. “Team” means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

(b) 1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c) 1. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.

3. If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

History.—s. 2, ch. 2001-361; s. 44, ch. 2005-251; s. 2, ch. 2006-158; s. 2, ch. 2006-284; s. 13, ch. 2010-151; s. 2, ch. 2011-140; s. 2, ch. 2016-49; s. 3, ch. 2018-146.

286.0114 Public meetings; reasonable opportunity to be heard; attorney fees.—

(1) For purposes of this section, “board or commission” means a board or commission of any state agency or authority or of any agency or authority of a county, municipal corporation, or political subdivision.

(2) Members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action. This section does not prohibit a board or commission from maintaining orderly conduct or proper decorum in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission, as provided in subsection (4).

(3) The requirements in subsection (2) do not apply to:

(a) An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;

(b) An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;

(c) A meeting that is exempt from s. 286.011; or

(d) A meeting during which the board or commission is acting in a quasi-judicial capacity. This paragraph does not affect the right of a person to be heard as otherwise provided by law.

(4) Rules or policies of a board or commission which govern the opportunity to be heard are limited to those that:

(a) Provide guidelines regarding the amount of time an individual has to address the board or commission;

(b) Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;

(c) Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or

(d) Designate a specified period of time for public comment.

(5) If a board or commission adopts rules or policies in compliance with this section and follows such rules or policies when providing an opportunity for members of the public to be heard, the board or commission is deemed to be acting in compliance with this section.

(6) A circuit court has jurisdiction to issue an injunction for the purpose of enforcing this section upon the filing of an application for such injunction by a citizen of this state.

(7) (a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

(8) An action taken by a board or commission which is found to be in violation of this section is not void as a result of that violation.

History.—s. 1, ch. 2013-227.

286.0115 Access to local public officials; quasi-judicial proceedings on local government land use matters. —

(1) (a) A county or municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials pursuant to this subsection or by adopting an alternative process for such disclosure. However, this subsection does not require a county or municipality to adopt any ordinance or resolution establishing a disclosure process.

(b) As used in this subsection, the term “local public official” means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.

(c) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member. If adopted by county or municipal ordinance or resolution, adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with local public officials.

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject local public officials to part III of chapter 112 for not complying with this paragraph.

(2) (a) Notwithstanding the provisions of subsection (1), a county or municipality may adopt an ordinance or resolution establishing the procedures and provisions of this subsection for quasi-judicial proceedings on local government land use matters. The ordinance or resolution shall provide procedures and provisions identical to this subsection. However, this subsection does not require a county or municipality to adopt such an ordinance or resolution.

(b) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decision-making body who is not a party or party-intervenor shall be allowed to testify before the decision-making body, subject to control by the decision-making body, and may be requested to respond to questions from the decision-making body, but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness. The decision-making body shall assign weight and credibility to such testimony as it deems appropriate. A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-intervenors, and shall be required to be qualified as an expert witness, as appropriate.

(c) In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the decision-making body by application of ex parte communication prohibitions. Disclosure of such communications by a member of the decision-making body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decision-making body. All decisions of the decision-making body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications.

(3) This section does not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials.

History.—s. 1, ch. 95-352; s. 31, ch. 96-324.

286.012 Voting requirement at meetings of governmental bodies. — A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is, or appears to be, a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s. 112.3143. If the only conflict or possible conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s.

112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

History.—s. 1, ch. 72-311; s. 9, ch. 75-208; s. 2, ch. 84-357; s. 13, ch. 94-277; s. 19, ch. 2013-36; s. 7, ch. 2014-183.

286.26 Accessibility of public meetings to the physically handicapped. —

(1) Whenever any board or commission of any state agency or authority, or of any agency or authority of any county, municipal corporation, or other political subdivision, which has scheduled a meeting at which official acts are to be taken receives, at least 48 hours prior to the meeting, a written request by a physically handicapped person to attend the meeting, directed to the chairperson or director of such board, commission, agency, or authority, such chairperson or director shall provide a manner by which such person may attend the meeting at its scheduled site or reschedule the meeting to a site which would be accessible to such person.

(2) If an affected handicapped person objects in the written request, nothing contained in the provisions of this section shall be construed or interpreted to permit the use of human physical assistance to the physically handicapped in lieu of the construction or use of ramps or other mechanical devices in order to comply with the provisions of this section.

History.—s. 1, ch. 77-277; s. 1, ch. 79-170; s. 116, ch. 79-400; s. 1, ch. 81-268.

“LET THE SUNSHINE IN” Public Meetings Law Chapter 286 F.S.

Clifford B. Shepard

Materials by John G.
Hubbard, Esq. & Clifford
B. Shepard



1

Florida Constitution Article I, section 24 (b)

(b) All **meetings** of any **collegial public body** of the executive branch of state government or of any collegial public body of a county, **municipality**, school district, or special district, at which **official acts are to be taken** or at which **public business** of such body is to be **transacted or discussed**, shall be **open and noticed** to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

2

2

Florida Statute 286.011

- (1) All **meetings** of any board or commission of any state agency or authority or of any **agency or authority** of any county, **municipal** corporation, or political subdivision, except as otherwise provided in the Constitution, at which **official acts are to be taken** are declared to be public meetings **open to the public at all times**, and **no resolution, rule, or formal action** shall be considered **binding** except as taken or made at such meeting. The board or commission must provide **reasonable notice** of all such meetings.

3

3

Florida Statute 286.011

- 2) The **minutes** of a meeting of any such board or commission of any such state agency or authority shall be **promptly recorded**, and such records shall be **open to public inspection**. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

4

4

Notice

Reasonable

Location

Restaurant ❌

Private club ❌

Identification required ❌

In city limits ⚡

No “CHILLING” effect

Minutes

Summary v. verbatim

Draft is a public record

Must be approved timely




5

Florida Statute 286.011 = MEETING LOCATION

(6) All **persons** subject to subsection (1) are **prohibited from holding** meetings at any facility or **location** which **discriminates on the basis of sex, age, race, creed, color, origin, or economic status** or which **operates** in such a manner as to **unreasonably restrict public access** to such a facility.

- **Public meetings must be accessible to the physically handicapped Chapter 286.26 FS**

6

Florida Statute 286.011

- **Knowingly attending a meeting in violation of the statute is a misdemeanor of the second degree**
- **Conduct outside the State is a misdemeanor of the second degree**
- **A court may assess an attorney's fee against you for enforcement of this statute unless you have sought and followed the advice of the city's attorney**

7

7

What is a public meeting?

Florida Constitution

Meeting of a collegial public body at which official acts taken or business discussed

Florida Statutes

Meeting at which official acts taken

Case Law

All meetings where there are discussions of matters which may foreseeably come before a board or commission

"All meetings" include staff, committees, temporary groups or even a single person.

8

Yes, Prosecutions Still Happen

Grand Jury To Review Century Town Operations; Council Members Charged With Sunshine Law Violations

January 4, 2019



A grand jury will investigate operations of the Town of Century, and three council members have been charged with violating the Sunshine Law.

"A number of issues have been brought to the attention of the State Attorney's Office regarding the manner in which the town has operated, and these are the issues that may brought before the grand jury." Assistant State

9

9

What's going on here?



The fact that we don't know IS the point.

10

10

W.D. Childers goes to jail



11

Florida Statute 286.011

- The statute is “broadly construed to effect it’s remedial and protective purposes.”
- Applicable to elected and appointed bodies
- Substantial delegation affecting a decision...single individual
- Recommendations limit choices; part of decision process
- Fact finding only IS AN EXCEPTION: **EXCEPT FOR ELECTED BODIES!**

12

12

Major Exceptions – ALL STATUTORY

- Pending litigation...settlement negotiations or strategy sessions related to litigations expenditures...limited attendees
- Labor negotiations-bargaining team – exemption as to public meetings and public records Chap 447 F.S.
- Risk management committee
- Security system meeting
- Negotiation with a vendor

13

13

Exchange of written memorandums

- First bite at the apple
- No response



14

14

Outside Contact

- You can socialize with other board members
- You can attend the same meeting....**BUT...**



15

You Can Cure a Violation

- No rubber stamp meeting
- Ultimate decision safeguarded
- Multiple cases describing proper procedure

Cure...
Don't Ignore



16

Notice

Location

Minutes

17

17

New Challenges

E-mail...twitter...texting...Facebook...websites



18

18

Thank You

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19



Addendum

FS Chapter 162

County or Municipal Code Enforcement

Entire Statute

PART I
LOCAL GOVERNMENT CODE
ENFORCEMENT BOARDS

- 162.01 Short title.
- 162.02 Intent.
- 162.03 Applicability.
- 162.04 Definitions.
- 162.05 Local government code enforcement boards; organization.
- 162.06 Enforcement procedure.
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162.01 Short title.—Sections 162.01-162.13 may be cited as the “Local Government Code Enforcement Boards Act.”

History.—s. 1, ch. 80-300; s. 72, ch. 81-259; s. 1, ch. 82-37.

Note.—Former s. 166.051.

162.02 Intent.—It is the intent of this part to promote, protect, and improve the health, safety, and welfare of the citizens of the counties and municipalities of this state by authorizing the creation of administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist.

History.—s. 1, ch. 80-300; s. 2, ch. 82-37; s. 1, ch. 85-150; s. 1, ch. 86-201; s. 1, ch. 89-268.

Note.—Former s. 166.052.

162.03 Applicability.—

(1) Each county or municipality may, at its option, create or abolish by ordinance local government code enforcement boards as provided herein.

(2) A charter county, a non-charter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have

the same status as an enforcement board under this chapter. References in this chapter to an enforcement board, except in s. 162.05, shall include a special magistrate if the context permits.

History.—ss. 1, 2, ch. 80-300; s. 3, ch. 82-37; s. 2, ch. 86-201; s. 1, ch. 87-129; s. 2, ch. 89-268; s. 2, ch. 99-360; s. 63, ch. 2004-11.

Note.—Former s. 166.053.

162.04 Definitions.—As used in ss. 162.01-162.13, the term:

- (1) “Local governing body” means the governing body of the county or municipality, however designated.
- (2) “Code inspector” means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.
- (3) “Local governing body attorney” means the legal counselor for the county or municipality.
- (4) “Enforcement board” means a local government code enforcement board.
- (5) “Repeat violation” means a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations.

History.—s. 1, ch. 80-300; s. 4, ch. 82-37; s. 10, ch. 83-216; s. 3, ch. 86-201; s. 3, ch. 89-268; s. 3, ch. 99-360; s. 22, ch. 2001-60.

Note.—Former s. 166.054.

162.05 Local government code enforcement boards; organization.—

(1) The local governing body may appoint one or more code enforcement boards and legal counsel for the enforcement boards. The local governing body of a county or a municipality that has a population of less than 5,000 persons may appoint five-member or seven-member code enforcement boards. The local governing body of a county or a municipality that has a population equal to or greater than 5,000 persons must appoint seven-member code enforcement boards. The local governing body may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

(2) Members of the enforcement boards shall be residents of the municipality, in the case of municipal enforcement boards, or residents of the county, in the case of county enforcement boards. Appointments shall be made in accordance with applicable law and ordinances on the basis of experience or interest in the subject matter jurisdiction of the respective code enforcement board, in the sole discretion of the local governing body. The membership of each enforcement board shall, whenever possible, include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor.

(3)(a) The initial appointments to a seven-member code enforcement board shall be as follows:

1. Two members appointed for a term of 1 year each.

2. Three members appointed for a term of 2 years each.
 3. Two members appointed for a term of 3 years each.
- (b) The initial appointments to a five-member code enforcement board shall be as follows:
1. One member appointed for a term of 1 year.
 2. Two members appointed for a term of 2 years each.
 3. Two members appointed for a term of 3 years each.

Thereafter, any appointment shall be made for a term of 3 years.

(c) The local governing body of a county or a municipality that has a population of less than 5,000 persons may reduce a seven-member code enforcement board to five members upon the simultaneous expiration of the terms of office of two members of the board.

(d) A member may be reappointed upon approval of the local governing body.

(e) An appointment to fill any vacancy on an enforcement board shall be for the remainder of the unexpired term of office. If any member fails to attend two of three successive meetings without cause and without prior approval of the chair, the enforcement board shall declare the member's office vacant, and the local governing body shall promptly fill such vacancy.

(f) The members shall serve in accordance with ordinances of the local governing body and may be suspended and removed for cause as provided in such ordinances for removal of members of boards.

(4) The members of an enforcement board shall elect a chair, who shall be a voting member, from among the members of the board. The presence of four or more members shall constitute a quorum of any seven-member enforcement board, and the presence of three or more members shall constitute a quorum of any five-member enforcement board. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the local governing body or as are otherwise provided by law.

(5) The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board, but in no case shall the local governing body attorney serve in both capacities.

History.—s. 1, ch. 80-300; s. 5, ch. 82-37; s. 4, ch. 86-201; s. 2, ch. 87-129; s. 4, ch. 89-268; s. 1, ch. 94-291; s. 1441, ch. 95-147.

Note.—Former s. 166.055.

162.06 Enforcement procedure.—

(1) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.

(2) Except as provided in subsections (3) and (4), if a violation of the codes is found, the code inspector shall notify the violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify an

enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in s. 162.12 to said violator. At the option of the code enforcement board, notice may additionally be served by publication or posting as provided in s. 162.12. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the enforcement board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(3) If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify an enforcement board and request a hearing. The code enforcement board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to s. 162.12. The case may be presented to the enforcement board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state. If the repeat violation has been corrected, the code enforcement board retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the code enforcement board.

(4) If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing.

(5) If the owner of property that is subject to an enforcement proceeding before an enforcement board, special magistrate, or court transfers ownership of such property between the time the initial pleading was served and the time of the hearing, such owner shall:

(a) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(b) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(c) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(d) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosures described in paragraphs (a), (b), and (c) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall

not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

History.—s. 1, ch. 80-300; s. 5, ch. 86-201; s. 1, ch. 87-391; s. 5, ch. 89-268; s. 2, ch. 94-291; s. 1442, ch. 95-147; s. 2, ch. 96-385; s. 4, ch. 99-360; s. 64, ch. 2004-11.

Note.—Former s. 166.056.

162.07 Conduct of hearing.—

(1) Upon request of the code inspector, or at such other times as may be necessary, the chair of an enforcement board may call a hearing of an enforcement board; a hearing also may be called by written notice signed by at least three members of a seven-member enforcement board or signed by at least two members of a five-member enforcement board. Minutes shall be kept of all hearings by each enforcement board, and all hearings and proceedings shall be open to the public. The local governing body shall provide clerical and administrative personnel as may be reasonably required by each enforcement board for the proper performance of its duties.

(2) Each case before an enforcement board shall be presented by the local governing body attorney or by a member of the administrative staff of the local governing body. If the local governing body prevails in prosecuting a case before the enforcement board, it shall be entitled to recover all costs incurred in prosecuting the case before the board and such costs may be included in the lien authorized under s. 162.09(3).

(3) An enforcement board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The enforcement board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(4) At the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those members present and voting, except that at least four members of a seven-member enforcement board, or three members of a five-member enforcement board, must vote in order for the action to be official. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in s. 162.09(1), the cost of repairs may be included along with the fine if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the

enforcement board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

History.—s. 1, ch. 80-300; s. 6, ch. 82-37; s. 44, ch. 83-217; s. 6, ch. 86-201; s. 6, ch. 89-268; s. 3, ch. 94-291; s. 1443, ch. 95-147; s. 2, ch. 95-297.

Note.—Former s. 166.057.

162.08 Powers of enforcement boards.—Each enforcement board shall have the power to:

- (1) Adopt rules for the conduct of its hearings.
- (2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the sheriff of the county or police department of the municipality.
- (3) Subpoena evidence to its hearings.
- (4) Take testimony under oath.
- (5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

History.—s. 1, ch. 80-300; s. 7, ch. 82-37; s. 7, ch. 86-201; s. 7, ch. 89-268.

Note.—Former s. 166.058.

162.09 Administrative fines; costs of repair; liens.—

(1) An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation described in s. 162.06(4), the enforcement board shall notify the local governing body, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section. Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith. If a finding of a violation or a repeat violation has been made as provided in this part, a hearing shall not be necessary for issuance of the order imposing the fine. If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine as specified in paragraph (2)(a).

(2)(a) A fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (1). However, if a code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation.

(b) In determining the amount of the fine, if any, the enforcement board shall consider the following factors:

1. The gravity of the violation;
2. Any actions taken by the violator to correct the violation; and
3. Any previous violations committed by the violator.

(c) An enforcement board may reduce a fine imposed pursuant to this section.

(d) A county or a municipality having a population equal to or greater than 50,000 may adopt, by a vote of at least a majority plus one of the entire governing body of the county or municipality, an ordinance that gives code enforcement boards or special magistrates, or both, authority to impose fines in excess of the limits set forth in paragraph (a). Such fines shall not exceed \$1,000 per day per violation for a first violation, \$5,000 per day per violation for a repeat violation, and up to \$15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs pursuant to subsection (1). Any ordinance imposing such fines shall include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines, including, but not limited to, those factors set forth in paragraph (b).

(3) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section. After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created pursuant to the provisions of this part may be foreclosed on real property which is a homestead under s. 4, Art. X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property which is covered under s. 4(a), Art. X of the State Constitution.

History.—s. 1, ch. 80-300; s. 8, ch. 82-37; s. 2, ch. 85-150; s. 8, ch. 86-201; s. 2, ch. 87-391; s. 8, ch. 89-268; s. 4, ch. 94-291; s. 1, ch. 95-297; s. 5, ch. 99-360; s. 1, ch. 2000-125; s. 65, ch. 2004-11.

Note.—Former s. 166.059.

162.10 Duration of lien.—No lien provided under the Local Government Code Enforcement Boards Act shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to s. 162.09(3) in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. The local governing body shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

History.—s. 9, ch. 82-37; s. 9, ch. 86-201; s. 9, ch. 89-268; s. 5, ch. 94-291; s. 2, ch. 2000-125.

162.11 Appeals.—An aggrieved party, including the local governing body, may appeal a final administrative order of an enforcement board to the circuit court. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board. An appeal shall be filed within 30 days of the execution of the order to be appealed.

History.—s. 1, ch. 80-300; s. 10, ch. 82-37; s. 3, ch. 85-150; s. 10, ch. 86-201.

Note.—Former s. 166.061.

162.12 Notices.—

(1) All notices required by this part must be provided to the alleged violator by:

(a) Certified mail, and at the option of the local government return receipt requested, to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The local government may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (2)(b)1. and 2.;

(b) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the local governing body;

(c) Leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(d) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(2) In addition to providing notice as set forth in subsection (1), at the option of the code enforcement board or the local government, notice may be served by publication or posting, as follows:

(a)1. Such notice shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the code

enforcement board is located. The newspaper shall meet such requirements as are prescribed under chapter 50 for legal and official advertisements.

2. Proof of publication shall be made as provided in ss. 50.041 and 50.051.

(b)1. In lieu of publication as described in paragraph (a), such notice may be posted at least 10 days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the primary municipal government office, and in the case of counties, at the front door of the courthouse or the main county governmental center in said county.

2. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(c) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (1).

(3) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (1), together with proof of publication or posting as provided in subsection (2), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

History.—s. 1, ch. 80-300; s. 11, ch. 86-201; s. 3, ch. 87-391; s. 10, ch. 89-268; s. 6, ch. 94-291; s. 6, ch. 99-360; s. 3, ch. 2000-125; s. 1, ch. 2012-13; s. 2, ch. 2013-193; s. 1, ch. 2014-154.

Note.—Former s. 166.062.

162.125 Actions for money judgments under this chapter; limitation.—Actions for money judgments under this chapter may be pursued only on fines levied after October 1, 2000.

History.—s. 4, ch. 2000-125.

162.13 Provisions of act supplemental.—It is the legislative intent of ss. 162.01-162.12 to provide an additional or supplemental means of obtaining compliance with local codes. Nothing contained in ss. 162.01-162.12 shall prohibit a local governing body from enforcing its codes by any other means.

History.—s. 11, ch. 82-37.