



# FLORIDA DEPARTMENT OF Environmental Protection

Northwest District  
160 W. Government Street, Suite 308  
Pensacola, Florida 32502-5794

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

January 24, 2023

City of Destin  
c/o Lisa Firth  
4200 Indian Bayou Trail  
Destin, FL 32541  
[lfirth@cityofdestin.com](mailto:lfirth@cityofdestin.com)

File No. 0351277-002-EE/46, Okaloosa County

Dear Ms. Firth:

On August 12, 2020, we received your request for verification of exemption to perform the following activities:

To install approximately 108 linear feet of swim rope via concrete anchors and floating buoys within Choctawhatchee Bay, a Class II Florida Waterbody, Prohibited Shellfish Harvesting. This project is located at 101 Calhoun Avenue, Destin, Section 00, Township 2 South, Range 22 West, Okaloosa County.

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

Your project did not qualify for the federal review portion of this verification request.

**Additional authorization must be obtained prior to commencement of the proposed activity.** This letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity. Please refer to the specific section(s) dealing with that portion of the review below for advice on how to proceed.

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

If you have any questions regarding this matter, please contact Emily Hotinger at the letterhead address or at 850-595-0651 and [Emily.Hotinger@FloridaDEP.gov](mailto:Emily.Hotinger@FloridaDEP.gov).

### **1. Regulatory Review –Verified**

Based on the information submitted, the Department has determined that the installation of approximately 108 linear feet of swim rope via concrete anchors and floating buoys is exempt, under Section 373.406(6) of the Florida Statutes, from the need to obtain a regulatory permit under Part IV of Chapter 373 of the Florida Statutes. This determination is made because the activity, in consideration of its type, size, nature, location, use, and operation, is expected to have only minimal or insignificant individual or cumulative adverse impacts on the water resources.

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

### **2. Proprietary Review- Granted**

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

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

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

### **Special Consent Conditions**

1. The applicant agrees to indemnify, defend and hold harmless the Board of Trustees and the State of Florida from all claims, actions, lawsuits and demands in any form arising out of the authorization to use sovereignty submerged lands or the applicant's use and construction of structures on sovereignty submerged lands. This duty to indemnify and hold harmless will include any and all liabilities that are associated with the structure or

activity including special assessments or taxes that are now or in the future assessed against the structure or activity during the period of the authorization.

2. Failure by the Board of Trustees to enforce any violation of a provision of the authorization or waiver by the Board of Trustees of any provision of the authorization will not invalidate the provision not enforced or waived, nor will the failure to enforce or a waiver prevent the Board of Trustees from enforcing the unenforced or waived provision in the event of a violation of that provision.
3. Applicant binds itself and its successors and assigns to abide by the provisions and conditions set forth in the authorization. If the applicant or its successors or assigns fails or refuses to comply with the provisions and conditions of the authorization, the authorization may be terminated by the Board of Trustees after written notice to the applicant or its successors or assigns. Upon receipt of such notice, the applicant or its successors or assigns will have thirty (30) days in which to correct the violations. Failure to correct the violations within this period will result in the automatic revocation of this authorization.
4. All costs incurred by the Board of Trustees in enforcing the terms and conditions of the authorization will be paid by the applicant. Any notice required by law will be made by certified mail at the address shown on page one of the authorization. The applicant will notify the Board of Trustees in writing of any change of address at least ten days before the change becomes effective.
5. This authorization does not allow any activity prohibited in a conservation easement or restrictive covenant that prohibits the activity.

#### **General Conditions for Authorizations for Activities**

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

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

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

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

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

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

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

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

(h) Activities shall not interfere with the public easement for traditional uses of the sandy beaches provided in section 161.141, F.S.

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

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

### **3. Federal Review - SPGP Not Approved**

Your proposed activity as outlined in your application and attached drawings **does not qualify** for Federal authorization pursuant to the State Programmatic General Permit VI-R1.

**SEPARATE permit(s)** or authorization **will be required** from the U.S. Army Corps of Engineers.

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

### **Additional Information**

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

## **NOTICE OF RIGHTS**

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

### Petition for Administrative Hearing

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

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

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

### Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. You cannot justifiably rely on the finality of this decision unless notice of this decision and the right of substantially affected persons to challenge this decision has been

duly published or otherwise provided to all persons substantially affected by the decision. While you are not required to publish notice of this action, you may elect to do so pursuant Rule 62-110.106(10)(a).

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

#### Extension of Time

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

#### Mediation

Mediation is not available in this proceeding.

#### FLAWAC Review

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

#### Judicial Review

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

**EXECUTION AND CLERKING**

Executed in Pensacola, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



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Emily Hotinger  
Environmental Specialist

Enclosures:

1. Section 373.406(6), F.S., 1 page
2. Project Drawing, 3 pages

**CERTIFICATE OF SERVICE**

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

Russell Sullivan, FDEP, [Russell.Sullivan@FloridaDEP.gov](mailto:Russell.Sullivan@FloridaDEP.gov)  
Blake Chapman, FDEP, [Blake.A.Chapman@FloridaDEP.gov](mailto:Blake.A.Chapman@FloridaDEP.gov)  
Emily Hotinger, FDEP, [Emily.Hotinger@FloridaDEP.gov](mailto:Emily.Hotinger@FloridaDEP.gov)  
Lisa Firth, Applicant, [lfirth@cityofdestin.com](mailto:lfirth@cityofdestin.com)  
Michael Burgess, [mburgess@cityofdestin.com](mailto:mburgess@cityofdestin.com)  
Okaloosa County: [mmartinez@co.okaloosa.fl.us](mailto:mmartinez@co.okaloosa.fl.us), [jautrey@co.okaloosa.fl.us](mailto:jautrey@co.okaloosa.fl.us),  
[sbitterman@co.okaloosa.fl.us](mailto:sbitterman@co.okaloosa.fl.us), [propertyappraiser@okaloosapa.com](mailto:propertyappraiser@okaloosapa.com), [planning@cityofdestin.com](mailto:planning@cityofdestin.com)

**FILING AND ACKNOWLEDGMENT**

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

*Trayshia Kenon*  
Clerk

Date 01/24/2023

**373.406 Exemptions.—The following exemptions shall apply:**

(1) Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any natural person to capture, discharge, and use water for purposes permitted by law.

(6) Any district or the department may exempt from regulation under this part those activities that the district or department determines will have only minimal or insignificant individual or cumulative adverse impacts on the water resources of the district. The district and the department are authorized to determine, on a case-by-case basis, whether a specific activity comes within this exemption. Requests to qualify for this exemption shall be submitted in writing to the district or department, and such activities shall not be commenced without a written determination from the district or department confirming that the activity qualifies for the exemption.





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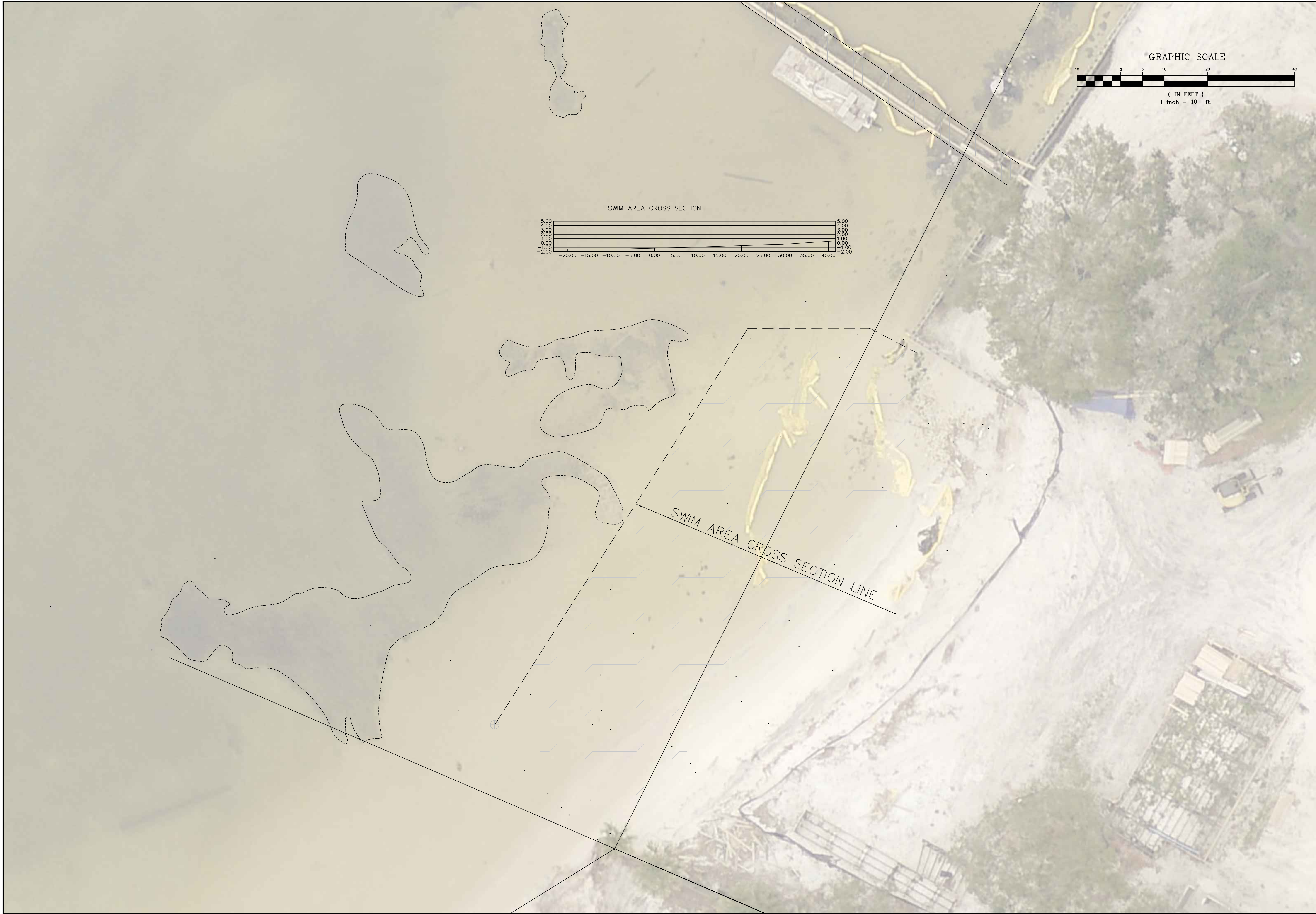
**CAPTAIN LEONARD DESTIN PARK  
SWIM AREA LOCATION  
101 CALHOUN AVE.  
DESTIN, FLORIDA**

**CITY OF DESTIN**  
ENGINEERING DEPARTMENT  
TEL: (904) 887-4624 4630 WYO PETERS ROAD DESTIN, FLORIDA 32841  
FAX: (904) 887-3887  
TEL: (850) 837-6684

DATE:	5/27/21
SCALE:	1"=40'
SHEET NO.:	1
OF	1

DESIGNED BY:	CJ
DRAWN BY:	CJ
CHECKED BY:	

FILE NO.:	
REVISIONS DATE:	11/20/22



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CAPTAIN LEONARD DESTIN PARK  
 SWIM AREA LOCATION  
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CITY OF DESTIN  
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 TEL: (850) 837-4242 4200 TWO TREES ROAD DESTIN, FLORIDA 32541  
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REVISIONS/DATE:
1/10/23
DATE: 1/10/23
SCALE: 1" = 10'
SHEET NO. 2
OF 2

FILE NO. P:\PROJECTS\CITY\LAND DESTIN\SWIM  
 DESIGNED BY: JANNY KUSHION  
 DRAWN BY: CECIL JACOBSON  
 CHECKED BY: LISA FIRTH

