

AGENDA  
ESCAMBIA COUNTY BOARD OF ADJUSTMENT  
July 22, 2020–8:30 a.m.  
Escambia County Central Office Complex  
3363 West Park Place, Room 104

1. Call to Order.
2. Swearing in of Staff and acceptance of staff as expert witness
3. Acceptance of the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.
4. Proof of Publication and waive the reading of the legal advertisement.
5. Approval of Resume Minutes.
  - A. Approval of Resume Meeting Minutes from the June 17, 2020, Board of Adjustment Meeting.
6. **Consideration of the following cases:**
  - A. **CASE NO.: AP-2020-01**  
**ADDRESS:** 16477 Perdido Key Drive  
**REQUESTED APPEAL:** The Applicant is requesting an appeal of the Development Review Committee's (DRC) approval of project # 2001116PSP, Perdido Key Beach Access #4 Improvements.  
**REQUESTED BY:** William J. Dunaway, Agent for Seafarer Condominium Association
7. Discussion Items.
8. Old/New Business.
9. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, August 26, 2020, at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.
10. Adjournment.



**Board of Adjustment**

**5. A.**

Meeting Date: 07/22/2020

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Attachments

Draft June 17, 2020 Board of Adjustment Meeting Minutes

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# DRAFT

## RESUMÉ OF THE MEETING OF THE BOARD OF ADJUSTMENT HELD June 17, 2020

CENTRAL OFFICE COMPLEX  
3363 WEST PARK PLACE, BOARD CHAMBERS  
PENSACOLA, FLORIDA  
(8:31 A.M. – 9:31 A.M.)

Present: Auby Smith  
Judy Gund  
Michael Godwin  
Marty Schack

Absent: Basil Kuloba  
Jennifer Rigby  
Willie Kirkland, Jr.

Staff Present: Andrew Holmer, Division Manager, Planning & Zoning  
Horace Jones, Director, Development Services  
Kayla Meador, Administrative Supervisor  
Kristin Hual, Assistant County Attorney

### REGULAR BOA AGENDA

1. Call to Order.
2. Swearing in of Staff and acceptance of staff as expert witness
3. Acceptance of the BOA Meeting Package with the Development Services Staff Findings-of-Fact, into evidence.  
  
Motion by Board Member Judy Gund, Seconded by Vice Chairman Michael Godwin  
  
Motion was made to accept the June 17, 2020, BOA meeting packet.  
**Vote: 4 - 0 Approved**
4. Proof of Publication and waive the reading of the legal advertisement.  
  
Motion by Board Member Judy Gund, Seconded by Vice Chairman Michael Godwin  
  
The Clerk provided proof of publication and motion was made to accept.  
**Vote: 4 - 0 Approved**
5. Approval of Resume Minutes.
- A. Approval of Resume Meeting Minutes from the May 28, 2020, Board of Adjustment Meeting.  
  
Motion by Board Member Judy Gund, Seconded by Vice Chairman Michael Godwin  
  
Motion was made to approve the May 28, 2020 BOA Resume Meeting minutes.  
**Vote: 4 - 0 Approved**
6. **Consideration of the following cases:**
  - A. **Case No.: CU-2020-02**  
Address: 633 Silvershore Dr  
Request: request an accessory structure in front yard of a waterfront lot  
Requested by: Brian and Lynn Waters, Owners  
  
No BOA member acknowledged any ex parte communication regarding this item.  
  
No BOA member acknowledged visiting the site.  
  
No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Board Member Judy Gund, Seconded by Board Member Marty Schack

Motion was made to accept Staff's Findings of Fact and approve the conditional use.

**Vote:** 4 - 0 Approved

**B. Case No.: CU-2020-04**

Address: 8046 Highway 98 West

Request: Conditional Use approval for used autos sales in a Commercial zoning district

Requested by: Aaron Wiese

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Vice Chairman Michael Godwin, Seconded by Board Member Judy Gund

Motion was made to drop the case from the agenda, since the applicant was not present.

**Vote:** 4 - 0 Approved

**C. Case No.: CU-2020-05**

Address: Highway 29 North

Request: Conditional Use approval to construct a kennel on a vacant, HC/LI zoned site

Requested by: Hammond Engineering, Inc., Agent for Cozy Cottage Grooming and Boarding, LLC

No BOA member acknowledged any ex parte communication regarding this item.

No BOA member acknowledged visiting the site.

No BOA member refrained from voting on this matter due to any conflict of interest.

Motion by Board Member Judy Gund, Seconded by Vice Chairman Michael Godwin

Motion was made to accept Staff's Findings of Fact and approve the conditional use.

**Vote:** 4 - 0 Approved

**D. CASE NO.: AP-2020-01**

**ADDRESS:** 16477 Perdido Key Drive

**REQUESTED APPEAL:** The Applicant is requesting an appeal of the Development Review Committee's (DRC) approval of project # 2001116PSP, Perdido Key Beach Access #4 Improvements.

**REQUESTED BY:** William J. Dunaway, Agent for Seafarer Condominium Association

Motion by Board Member Judy Gund, Seconded by Vice Chairman Michael Godwin

Motion was made to continue the case per the applicant's request.

**Vote:** 4 - 0 Approved

7. Discussion Items.

8. Old/New Business.

9. Announcement.

The next Board of Adjustment Meeting is scheduled for Wednesday, August 26, 2020, at 8:30 a.m., at the Escambia County Central Office Complex, Room 104, 3363 West Park Place.

10. Adjournment.



## DEVELOPMENT SERVICES ADMINISTRATIVE APPEAL WORKSHEET

**Board of Adjustment**

**6. A.**

**Meeting Date:** 07/22/2020

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### **I. SUBMISSION DATA:**

**APPLICANT:** William J. Dunaway, Agent for Seafarer Condominium Association

**DATE OF ADMINISTRATIVE DECISION:** Feb. 5, 2020

**DATE OF APPEAL APPLICATION:** Feb. 20, 2020

**PROJECT ADDRESS:** 16477 Perdido Key Drive

**PROPERTY REFERENCE NO.:** 06-4S-32-1000-000-030

**ZONING DISTRICT:** HDR-PK

**FUTURE LAND USE:** MU-PK

### **III. REQUESTED APPEAL::**

The Applicant is appealing the issuance of Development Order 2001116PSP for Escambia County's Perdido Key Beach Access #4 Improvements.

### **III. RELEVANT APPEAL AUTHORITY:**

**Land Development Code of Escambia County, Florida (Ordinance 96-3 as amended),  
Section: 2.04.00 & 2.04.01**

Sections 2.04.00, Appeal of Administrative Decisions and 2.04.01, Procedures for the Appeal of Administrative Decisions of the Escambia County Land Development Code (Ordinance No. 96-3 as amended), provide the relevant authority for the BOA's review of administrative decisions.

A. The BOA is authorized to hear and to rule upon any appeal made by those persons aggrieved by administration of this Code. An administrative decision, or staff interpretation, shall not be reversed, altered, or modified by the BOA unless it finds that:

1. A written application for the appeal was submitted within 15 days of the administrative decision or action indicating the section of this Code under which said appeal applies together with a statement of the grounds on which the appeal is based; and

2. That the person filing said appeal has established that the decision or action of the administrative official was arbitrary and capricious; or

3. An aggrieved party who files an appeal of a decision of the DRC approving or approving with conditions a development plan application, must show, by competent substantial evidence that:

(i) The decision of the DRC is not in compliance with the Comprehensive Plan or the Land Development Code;

(ii) Their property will suffer an adverse impact as a result of the development approval decision;

(iii) The adverse impact must be to a specific interest protected or furthered by the Comprehensive Plan or the Land Development Code; and

(iv) It must be greater in degree than any adverse impact shared by the community at large.

4. In the event the owner, developer, or applicant is aggrieved or adversely affected by a denial of a development plan application or the imposition of conditions, the owner, developer or applicant filing the appeal must show, by competent substantial evidence, that the denial of the development plan or the imposition of conditions is neither required nor supported by the Comprehensive Plan or the Land Development Code or the application of technical design standards and specifications adopted by reference in the Code, or Concurrency Management Procedures and is, therefore, arbitrary and capricious.

#### **IV. BACKGROUND INFORMATION**

In October of 2018 the Escambia County Board of County Commissioners directed staff to develop public access on this 4.67± acre site.

At their Nov. 14, 2018 meeting, the Board of Adjustment (BOA) approved a Conditional Use request by the County (CU-2018-18) to construct a public beach access point at the site as required by the HDR-PK zoning designation.

That Conditional Use approval has been appealed and is currently before the Circuit Court.

On Feb. 5, 2020 the Development Review Committee (DRC) approved Development Order (DO) 2001116PSP for Escambia County's Perdido Key Beach Access #4 Improvements.

On Feb. 20, 2020 this appeal was filed, meeting the deadline requirement.

This case was originally scheduled to be heard before the BOA on March 18th, but due to COVID19, the March BOA meeting was canceled and it had to be rescheduled.

*The Applicant requested a continuance and a special BOA meeting was scheduled for July 22, 2020.*

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**Attachments**

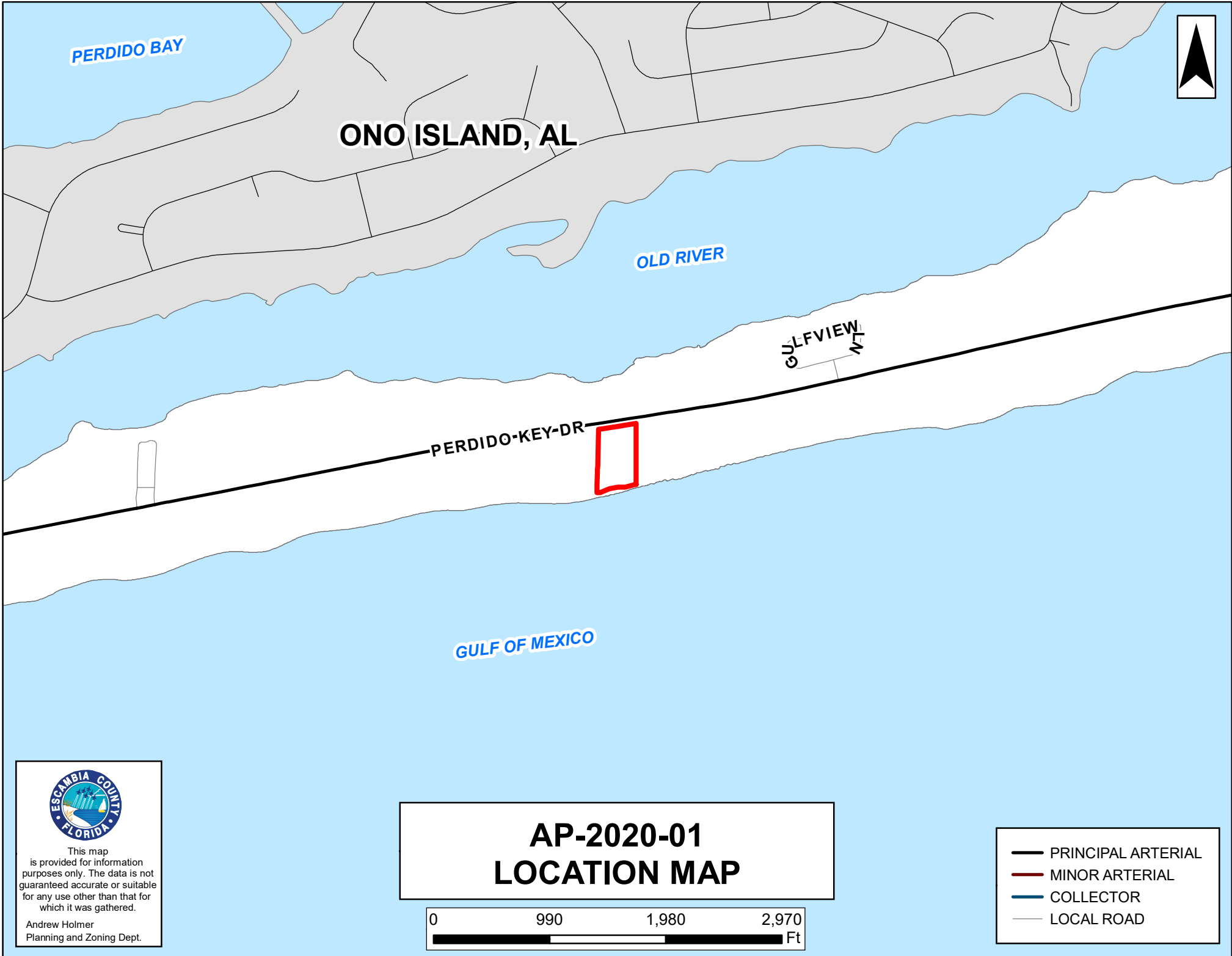
Working Case File

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**AP-2020-01**



PERDIDO BAY

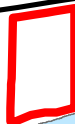

ONO ISLAND, AL

OLD RIVER

GULFVIEW LN

PERDIDO-KEY-DR

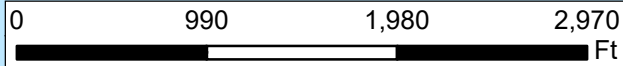
GULF OF MEXICO








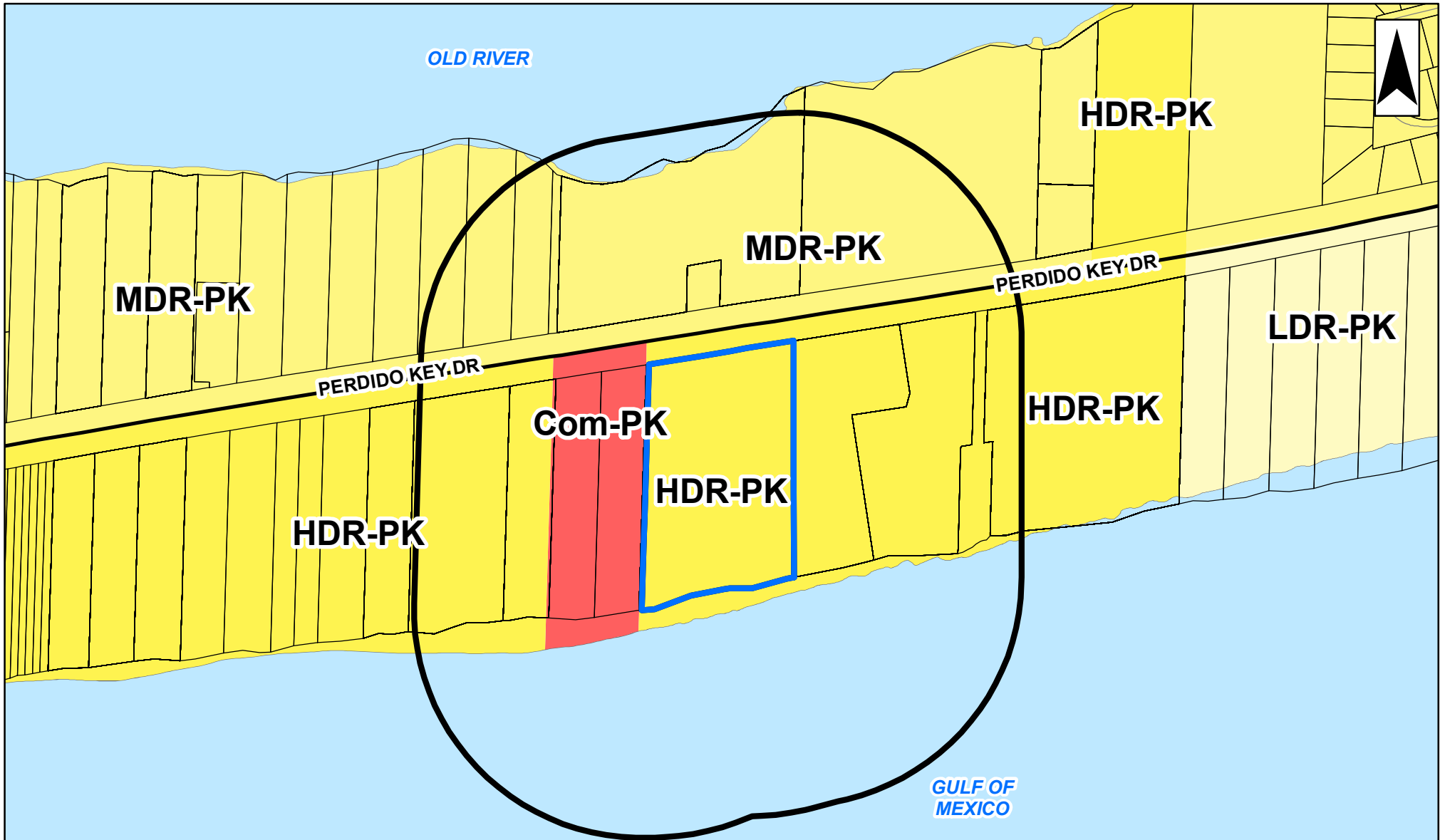

This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.

# AP-2020-01 LOCATION MAP



-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD

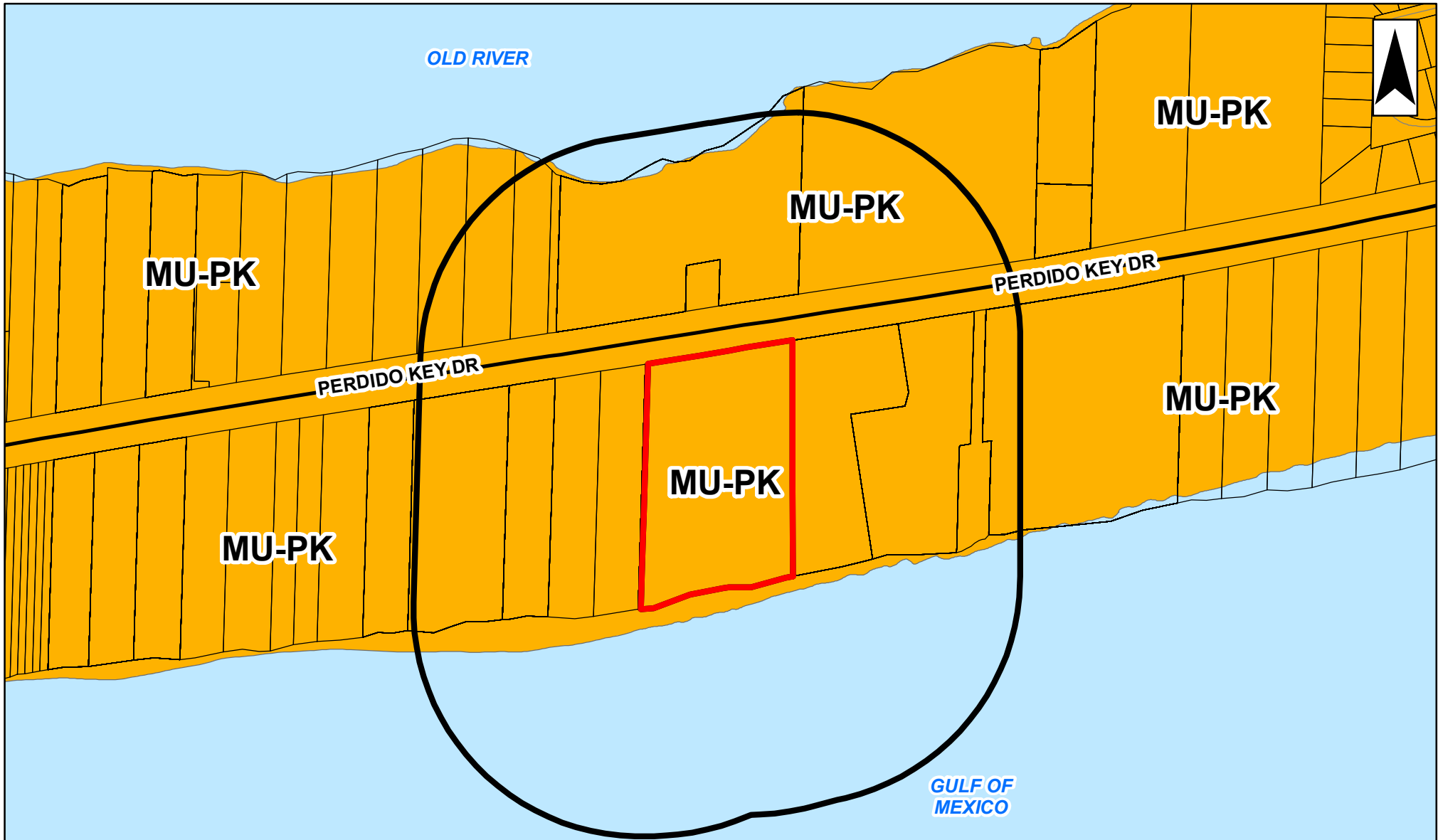
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Andrew Holmer  
Planning and Zoning Dept.

**AP-2020-01**  
**500' RADIUS ZONING**



-  PARCELS
-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD



OLD RIVER

MU-PK

MU-PK

MU-PK

PERDIDO KEY DR


PERDIDO KEY DR

MU-PK

MU-PK

MU-PK

GULF OF MEXICO








This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.

**AP-2020-01  
FUTURE LAND USE**



-  PARCELS
-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD

PERDIDO KEY DR



# AP-2020-01 AERIAL MAP



-  PARCELS
-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD



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Andrew Holmer  
Planning and Zoning Dept.

PERDIDO KEY-DR



# AP-2020-01 CRITICAL HABITAT



-  PARCELS
-  PRINCIPAL ARTERIAL
-  MINOR ARTERIAL
-  COLLECTOR
-  LOCAL ROAD



This map is provided for information purposes only. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

Andrew Holmer  
Planning and Zoning Dept.



Public Hearing Sign



Looking West





Looking Southwest



Looking South



Looking East



William J. Dunaway  
Direct (850) 208-7020  
wdunaway@clarkpartington.com  
Licensed to Practice in Florida and Mississippi

February 20, 2020

**VIA HAND DELIVERY**

Chairman and Members  
Escambia County Board of Adjustment  
3363 W. Park Place, Room 104  
Pensacola, Florida 32505-5250

RE: Case No.: DRC #2001116PSP; 16477 Perdido Key Drive

Dear Chairman and Board Members:

I represent Seafarer Condominium Association, the adjacent landowner, who opposed the granting of the subject Development Review Committee (DRC) Final Determination and now appeals that determination per Land Development Code Section 2-6.10. The County, as applicant, has failed to comply with the grant requirements for this parcel and has failed to show compliance with the requirements of the Land Development Code for use of this parcel as a public recreation facility and habitat conservation site.

Specifically the applicant has failed to complete its required technical assistance with the U.S. Fish and Wildlife Service regarding this federal grant-funded parcel as well as failing to comply with LDC Section 3-4.4(c) conditional use for a park and public recreation facility. The project approved by the DRC consists of constructing a new parking lot for public recreational use as a beach access. The Conditional Use (#CU-2018-18) that purports to authorize such a use in the HDR-PK district remains unresolved at the Circuit Court and no final habitat management plan is in place for the management of the parcel as required by the grant. Furthermore, the request to construct a new parking facility for public beach access is a public recreation use that requires a conditional use separately from a park (Specifically, LDC Section 3-4.4(c)(3)(c)).

**Appeal per LDC Section 2-6.10**

The Board of Adjustment (BOA) evaluates appeals from the DRC through quasi-judicial public hearings. The decision being appealed is attached as **Exhibit A** which was rendered on February 5, 2020. This is a timely appeal since it is being submitted within 15 days after the decision being appealed. The required information for an appeal is as follows:

- a. Decision being appealed is the Site Plan Development Order (#2001116PSP)

b. The applicant has failed to comply with LDC Section 3-4.4(c) and the requirements of the federal grant.

c. The DRC approved the proposed development knowing that the applicant (in this case – itself) had not complied with the provisions of the LDC or the grant requirements.

d. The Site Plan (Exhibit A) is the documentation showing that the conditions of the LDC and the grant have not been met. The stated conditional use approval and the Special Project Conditions document the non-compliance.

e. The remedy requested is for the BOA to find the DRC decision to have been in error and to deny the site plan.

f. Other information. Conditional uses are controlled by the Escambia County Land Development Code at Section 2-6.4. LDC Section 2-6.4(b)(4) states that “if more than one conditional use is proposed, the conditions shall be addressed for each use.” LDC Section 3-4.4 (HDR-PK) sets forth six separate conditional uses available through the conditional use approval process proscribed in Chapter 2. Two of those separate and distinct uses are “Parks, public” (LDC 3-4.4(c)(3)(b)) AND “Recreation facilities, public” (LDC 3-4.4(c)(3)(c)). There are specific criteria that the applicant must prove before a conditional use can be granted. The conditional use that the County sought (and which is under review by the Circuit Court) was for a public park. The County has not sought (and does not have approval for) a conditional use for a public recreation facility.

The project plans for the DRC approved site plan call for construction of 35 parking spaces plus 4 handicap parking spaces, a constructed beach access way as well as sanitary sewer from ECUA and an area for a future public restroom. These are public recreation facilities for which no conditional use approval exists. Furthermore, the County has a requirement to preserve this parcel as part of the U.S. Fish and Wildlife grant. This parcel was purchased with federal grant monies for federally protected habitat conservation. In making application for the conditional use request for a public park, the County failed to take into consideration the required habitat plan (because there was no plan) and in approving the existing site plan, the DRC was aware that the applicant (the County) has not implemented the required Management Plan.

The applicant (the County) stated in its conditional use application for a public park that because this parcel is proposed as a passive recreation site, the intensity of use and effects on surrounding properties will be limited. This ignores the very certain fact that building a new surface parking lot on critical PKBM habitat is not a passive use; it is instead a very active recreation use that will invite the public to bring their vehicles and increase the use of this habitat conservation parcel inconsistent with its purpose. No evidence beyond a simple assertion was presented at the DRC to demonstrate compliance.

In the County's application for a conditional use for a public park, in response to criterion (i) Use requirements, the County stated that "[a]dditional requirements regarding access on site and environmental issues may be imposed during the site plan review process."

That response is worth stating again. "Additional requirements regarding access on site **and environmental issues** may be imposed during the site plan review process." (emphasis added). You approved the conditional use for a public park perhaps believing that the County would be returning with what it promised. However, that is NOT the case. No additional use requirements for environmental issues were presented to the DRC despite the fact that this parcel was purchased as a critical habitat conservation area. Again I ask you to see the red flaps waiving and telling you to STOP and examine these facts. The County did not have the environmental factors in place when it requested a conditional use for a public park, but told you they would be in the site plan. Now we have a site plan that was approved without the promised environmental use requirements. These additional requirements are not waiting to possibly be imposed later, they are already imposed by the Master Plan, the federal grant, and the Habitat Conservation Plan. This applicant is well aware of the extent of these requirements. They simply have not complied.

### Standard of Review

This Board is well aware of the standard of review to be applied during a quasi-judicial hearing of a site plan appeal. The controlling court decision is *Irvine v. Duval County Planning Commission*, 495 So. 2d 167 (Fla. 1986), *approving and adopting* Judge Zehmer's dissent in *Irvine v. Duval County Planning Commission*, 466 So. 2d 352 (Fla. 1st DCA 1985). The Supreme Court decision is short. Here is what the court said:

On the facts and circumstances of the case, we agree with Judge Zehmer (dissenting) that once the petitioner met the initial burden of showing that his application met the statutory criteria for granting such exceptions, "the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [special] exception requested by petitioner did not meet such standards and was, in fact, adverse to the public interest." *Irvine*, 466 So. 2d at 364.

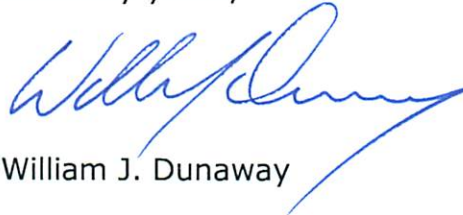
The terms "special exceptions" and "conditional uses" are interchangeable in Florida, with each jurisdiction determining which term to use. Escambia County uses the term conditional use. The decision of the DRC was arbitrary because it knows the LDC requirements were not met, but approved the site plan anyway.

### Conclusion

The burden does not shift to the party opposing the applicant if and until the applicant meets its burden to prove compliance. As discussed above, the County will be unable to prove compliance because the site plan is for a use that has no conditional use approval and the County has not complied with the federal grant used to purchase the property. This Board should find the DRC approval in error and deny the request for site plan approval.

With kind regards, I remain

Sincerely yours,



William J. Dunaway

WJD/bfs  
Encls



**SITE PLAN DEVELOPMENT ORDER  
with Concurrency Certification**

**Project:** Perdido Key Beach Access #4 Improvements

**Location:** 16477 Perdido Key Dr

**Development Review #:** 2001116PSP

**Property Reference #:** 06-4S-32-1000-000-030

**Future Land Use:** MU-PK

**Zoning District:** HDR-PK

**Flood Zone:** VE 16, AE 12

**CRA:** N/A

**PROJECT DESCRIPTION**

The project consists of constructing a new parking lot for beach access. Old existing impervious area will be removed, and new pervious concrete will be constructed for the parking lot, along with an ADA compliant beach access on an 4.67± acre parcel. Required landscaping, and buffering will be utilized. Access will be utilized from Perdido Key Drive.

The Board of Adjustments (BOA) approved Conditional Use # CU-2018-18 to allow a public park in HDR-PK zoning, on November 14, 2018.

Total Parking Spaces: 35

Handicap Parking Spaces: 4

Potable Water: ECUA

Sanitary Sewer/Septic: ECUA Sewer

Protected Trees to be removed: 0

Mitigation Trees: 0

**STANDARD PROJECT CONDITIONS**

1. This Development Order with concurrency certification shall be effective for a period of 18 months from the date of approval. Site plan approval and concurrency shall expire and become null and void if a permit for the approved development has not been obtained from the Building Inspections Department (BID) within the effective period and no extension has been applied for. After issuance of such permit, site plan approval and concurrency shall only terminate upon permit expiration or revocation by the BID. The Board of Adjustment may grant one extension for a maximum of 12 months to the original effective period of the Development Order, but application for such extension must be submitted before termination of the initial 18-month period. If the Development Order expires or is revoked, allocated capacity will be withdrawn and made available to other applicants. If the applicant chooses to proceed with development of the project site, a new site plan application must be submitted for review, approval, and capacity allocations subject to Code provisions and Level of Service conditions at the time of the new application.
2. This Development Order alone does not authorize site development to commence. A valid Escambia County Building Permit must be obtained prior to any building construction. Site development as described on the approved site plan, including protected tree removal and





grading, may occur under the authorization of the Building Permit. However, commencement of such activity prior to issuance of a Building Permit will require a separate **Pre-construction Site Work Permit**, or if no Building Permit is applicable will require a separate **Parking Lot Permit**, obtained from the Building Inspections Department, with erosion control, tree protection, and all other provisions of the approved site plan fully applicable and enforced.

3. All specifications and requirements, expressed or implied by note or drawing, in the site development plans approved with this Development Order must be fulfilled.
4. No development activities may commence in areas regulated by state or federal agencies unless all required state and federal permits, or proof of exemption, have been obtained and a copy provided to the County.
5. Proof of application from the Emerald Coast Utilities Authority (ECUA) for connection to the sewage system, or from the Escambia County Health Department for an Onsite Sewage Treatment and Disposal System (OSTD), must be obtained prior to issuance of an Escambia County Building Permit.
6. Site development plan approval is not a permit to construct any structure that is regulated by the Florida Building Code. If all the applicable regulations concerning the proposed project for a major or minor development are met, a Development Order shall be issued, with or without conditions, by the approving authority which shall be a continuing obligation to comply with the specifications of the plan and the terms and conditions of that approval {Section 2-1.4 (c) (1) of the current Land Development Code}

After the issuance of Development Order, it is unlawful to modify, amend, or otherwise deviate from an approval without first obtaining written authorization from approving authority. Unless specifically established in the LDC or provided through successful appeal, modification of an approval including its terms and conditions requires a new application for review. Approved uses or activities modified without authorization are subject to the penalties and increased fees specified by the Board of County Commissioners (BCC). No certificates of occupancy or similar acceptance of site conditions by the County shall be issued for any unauthorized land use or development activity. Modifications to approvals may be requested by the applicant as prescribed within the applicable provisions of the Land Development Code, but engineering designs shall only be accepted from the Engineer of Record and required approval by the county engineer. {See Section 2-1.4 (c) (5) of the current Land Development Code}.

7. A copy of this Development Order and the approved site development plans must be maintained and readily available on site once any construction activity has begun, including clearing and grading. The approved building construction plans must also be on site once any building construction has begun.

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### **Special Project Condition**

1. **The applicant understands that this case is still under review by the Escambia County Circuit Court. Therefore, the County is allowing this project to proceed at the applicant's own risk.**

2. **This site was acquired, in part, with financial assistance from the U.S. Fish and Wildlife Service (Service), and Florida Fish and Wildlife Conservation Commission (FWC) through FWC contract #12485 to Escambia County. Through this contract, the Service and FWC agreed to provide technical assistance to Escambia County to prepare and implement a Management Plan for the site. No development activities shall be initiated until technical assistance has been received from the Service and FWC and the Management Plan finalized by Escambia County.**

**Development Review Committee (DRC) Final Determination**

Having completed development review of the **Perdido Key Beach Access #4 Improvements, 16477 Perdido Key Drive**, plan application referenced herein, in accordance with requirements of applicable Escambia County regulations and ordinances, the DRC makes the following final determination:

Approve      The development plan is approved. The applicant may proceed with the development subject to the project description and project conditions noted herein. Use other than that described, or conditions not satisfied, constitute a violation of this Development Order and render it void. Further, this approval does not constitute approval by any other agency.

Deny      The development plan is denied for the reasons noted below. The applicant may appeal the decision within 15 days from the date below to the Board of Adjustment (BOA) under the provisions of Section 2.04.00 of the Escambia County Land Development Code, and/or submit a new or revised site plan application for review.

 2-5-2020  
Director, Development Services Department      Date