

REGULAR MEETING  
APALACHICOLA CITY COMMISSION  
TUESDAY, DECEMBER 6, 2022 – 4:00PM  
BATTERY PARK COMMUNITY CENTER  
1 BAY AVE., APALACHICOLA, FLORIDA 32320

**Agenda**

You are welcome to comment on any matter under consideration by the Apalachicola City Commission when recognized to do so by the Mayor. Once recognized please rise to the podium, state your name for the record and adhere to the three minute time limit for public comment. Comments may also be sent by email to the City Manager or to Commissioners.

**I. Call to Order**

- Invocation
- Pledge of Allegiance

**II. Agenda Adoption**

**III. Presentations:**

1. Lisa Kelley, Dewberry Engineering Consent Order Updates

**IV. Public Comment**

**V. New Business**

1. Apalachicola Riverkeeper, Georgia Ackerman
2. NFAACP – Letter re: Hiring Curator at HCA
3. Library Board Member Approval
4. Tree Committee Members (2) Approval

**VI. Unfinished Business**

1. Engineering Project Awards – Felicity Edwards, Gouras Associates

**VII. Mayor and Commissioner Comments**

**VIII. City Manager Communications**

**IX. Grants Coordinator Communications – Report Attached**

**X. Finance Director Communications – Report Attached**

**XI. Attorney Communications – Report Attached**

**XII. Consent Agenda**

**A. Meeting Minutes Adoption** – November 8, 2022, Regular Meeting Minutes

**B. Planning & Zoning Minutes** – November 14, 2022

**XIII. Department Reports**

**XIV. Adjournment**

Any person who desires to appeal any decision at this meeting will need a record of the proceeding and for this purpose, may need to ensure that a verbatim record of the proceeding is made which includes testimony and evidence upon which the appeal is based. Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office 48 hours in advance of the meeting

**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 6, 2022**

**SUBJECT:** Georgia Ackerman/Riverkeeper Presentation

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:** 1  
**Department:** Admin  
**Contact:** Travis Wade  
**Presenter:** Georgia Ackerman

**BRIEF SUMMARY:** Per a letter from Ms. Ackerman:

Dear Commissioners,

The legal case against the USACE Water Control Manual is headed to appeals court. You may recall conservation partners, including Apalachicola Riverkeeper, legally challenged the Corps' update to the Water Control Manual in 2017. It is slowly moving through the courts. You may also recall, previously the Vermont Law School filed an amicus brief, "friend of the court" report, on behalf of many stakeholders in the region. Thank you for the City's contributions to the brief.

The amicus brief can also be filed with the appeals court (different than the first court). Your permission is needed by the Vermont Law School to file this same brief in appeals court. The River and Bay will see further reduction of water (timing and duration) in the 2017 WCM update, especially in times of drought. Once again, the health of the Apalachicola River and Bay were not fully recognized by the USACE. I believe the City's voice is important and the judge should how the Corps water management decision impacts people and livelihoods.

Can the VLS include the City on the brief again?

Thank you for your continued service and leadership. Please call me if you'd like to discuss more fully

For the River,

Georgia

Apalachicola Riverkeeper

Georgia Ackerman (she/her)

Riverkeeper and Executive Director

850-321-6262

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** Approval to include City in the VLS Brief

**FUNDING SOURCE:** N/A

**ATTACHMENTS:**

**STAFF'S COMMENTS AND RECOMMENDATIONS:** None

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

IN RE ACF BASIN WATER  
LITIGATION

:  
: Case No. 1:18-MI-43-TWT  
:  
:

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MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF  
IN SUPPORT OF PLAINTIFFS

Trip Aukeman, Richard Bickel, Shannon Hartsfield, Lynn C. Martina,  
Kevin Martina, Carmen McLemore, Daniel Taunton, Thomas L. Ward, the City  
of Apalachicola, Franklin County, Liberty County, Calhoun County, Jackson  
County, and the Florida Coastal Conservation Association respectfully move this  
Court for leave to file an *amici curiae* brief in the above-captioned matter in  
support of the Plaintiffs' Motions for Summary Judgment (Dkt. 164, 165).<sup>1</sup>  
Proposed *amici* have substantial interest in the disposition of this case, and their

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<sup>1</sup> "A provision of the Federal Rules of Appellate Procedure governs the filing of  
amicus briefs in cases on appeal. Fed. R.App. P. 29. There, however, exists no  
parallel provision in the Federal Rules of Civil Procedure or this Court's Local  
Rules to regulate the filing of an amicus brief in this District Court. The decision  
whether to allow a non-party to participate as an amicus curiae is solely within the  
broad discretion of the Court." *DeJulio v. Georgia*, 127 F. Supp. 2d 1274, 1284  
(N.D. Ga.), *aff'd in part, rev'd in part*, 276 F.3d 1244 (11th Cir. 2001), *opinion  
withdrawn and superseded on denial of reh'g*, 290 F.3d 1291 (11th Cir. 2002), and  
*aff'd*, 290 F.3d 1291 (11th Cir. 2002).

proposed brief will be of assistance to the Court. A copy of the proposed *amici curiae* brief accompanies this motion.

Counsel for the Plaintiffs consent to the filing of this brief. Counsel for the Defendants have been notified of the intended filing of this brief and take no position on the motion at this time.

**I. IDENTITY OF PROPOSED *AMICI***

Proposed *amici* Trip Aukeman, Richard Bickel, Shannon Hartsfield, Lynn Martina, Kevin Martina, Carmen McLemore, Daniel Taunton, Thomas Ward, the City of Apalachicola, Franklin County, Liberty County, Calhoun County, Jackson County and the Florida Coastal Conservation Association include individuals, communities, and organizations from the Apalachicola Region of Florida who have been harmed by the United States' Army Corps of Engineers' ("Corps") mismanagement of the Apalachicola, Chattahoochee, Flint Watershed ("ACF").

**II. INTEREST OF *AMICI CURIAE***

The environmental harm caused by the Corps' water management practices has resulted in significant economic, social, and cultural harm to the *amici*. Specifically, the interests of the *amici* relate to loss or diminishment of livelihoods tied to the Apalachicola River. Seafood harvesters, processors, and dealers; beekeepers, and loggers have been forced to seek alternative employment because

of changes to the flow of the Apalachicola River. Cities and counties in the Region that rely on businesses fueled by the river have also suffered economic hardship. In many cases, the loss of industry also represents the loss of multi-generational business and ways of life tied to regional culture. The Corps' planned updates to its Water Control Manual will exacerbate these impacts.

### III. ARGUMENT

Courts have wide discretion in deciding whether to grant a third party leave to file an amicus brief. *DeJulio v. Georgia*, 127 F. Supp. 2d at 1284 (citing *Resort Timeshare Resales, Inc. v. Stuart*, 764 F.Supp. 1495, 1500 (S.D.Fla.1991)). Amicus briefs are appropriate where, as here, the “the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.” *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003).

The *amici's* proposed brief will assist the Court and includes arguments not represented by the parties. Communities in the Apalachicola Region rely on businesses fueled by the River, including fishing, seafood harvest, and Tupelo honey production. As a result of low flow down the Apalachicola, these industries have suffered, causing significant economic, cultural, and social impacts. Because these impacts non-environmental are related to the environmental harm caused by

the Corps, the National Environmental Policy Act (“NEPA”) (42 U.S.C.A. § 4321 *et seq*) requires that they be considered: “When an [EIS] is prepared and economic or social and natural or physical environmental effects are interrelated, then the [EIS] *will discuss all of these effects on the human environment.*” 40 C.F.R. § 1508.14 (2019). Further, Executive Order 12,898 requires heightened attention when, as here, disproportionately impacted communities are low income. Exec. Order 12,898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (Feb. 11, 1994), § 1–101 (“EO 12,898”). The Corps failed to meet its obligations under NEPA and EO 12,898.

#### IV. CONCLUSION

For the foregoing reasons, *amici* Trip Aukeman, Richard Bickel, Shannon Hartsfield, Lynn C. Martina, Kevin Martina, Carmen McLemore, Daniel Taunton, Thomas L. Ward, the City of Apalachicola, Franklin County, Liberty County, Calhoun County, Jackson County and the Florida Coastal Conservation Association respectfully request the Court grant leave to file the attached brief.

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Respectfully submitted this 15<sup>th</sup> day of January, 2021.

/s/ Kasey A. Sturm  
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*Counsel for Amici Curiae*



**CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2021, I electronically filed the foregoing Brief of Amici Curiae in Support of Plaintiffs using the Court's CM/ECF system, which will serve notice of the filing to all registered users.

/s/ Kimberly A. Sturm  
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*Counsel for Amici Curiae*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE ACF BASIN WATER  
LITIGATION

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: Case No. 1:18-MI-43-TWT  
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**BRIEF OF *AMICI CURIAE* TRIP AUKEMAN, RICHARD BICKEL,  
ALBERT BRYANT, SHANNON HARTSFIELD, LYNN MARTINA, KEVIN  
MARTINA, CARMEN MCLEMORE, DANIEL TAUNTON, THOMAS  
WARD, THE CITY OF APALACHICOLA, CALHOUN COUNTY,  
FRANKLIN COUNTY, LIBERTY COUNTY, JACKSON COUNTY and the  
FLORIDA COASTAL CONSERVATION ASSOCIATION**

**IN SUPPORT OF PLAINTIFFS**

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Dated January 15, 2021

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## STATEMENT OF INTEREST<sup>1</sup>

*Amici curiae* include individuals, communities, and organizations from the Apalachicola Region of Florida who have been harmed by the United States' Army Corps of Engineers' ("Corps") mismanagement of the Apalachicola, Chattahoochee, Flint Watershed ("ACF"). As described by the *amici* in sworn declarations, low flows down the Apalachicola River have devastated regional economies, ruined generations-old businesses, and altered the region's culture.<sup>2</sup> However, these impacts were not considered in the Corps' 2016 final Environmental Impact Statement ("FEIS").

The individual *amici* live in communities whose ways of life and livelihoods have been tied to the Apalachicola River for generations. They represent ten industries and have deep personal knowledge of recent changes to the Apalachicola River watershed. Their stories are emblematic of communities in crisis.

Several Florida counties through which the Apalachicola River flows are *amici*. Franklin, Liberty, and Calhoun are heavily reliant on industries supported by

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<sup>1</sup> All parties have consented to the filing of this brief. No party's counsel authored any part of this brief. Neither did any party, party's counsel, nor any person other than *amici* and their counsel contribute money to fund this brief.

<sup>2</sup> Evidence supporting this brief includes official sources of which the Court may take judicial notice as well as declarations pursuant to 28 U.S.C. § 1746.

the River. To the north, **Jackson County** also boasts substantial natural resources that draw tourists to the region.

The town of **Apalachicola** sits at the confluence of the Apalachicola River and Bay. Historically producing 10% of the United States' oysters, the city has been known as Florida's oyster capital for generations and a majority of its population once worked in the seafood industry.

The Florida **Coastal Conservation Association** ("CCA") is a non-profit organization comprised of 19,000 recreational anglers dedicated to protecting fisheries from further harm caused by low flow to the Apalachicola River.

The *amici* seek the consideration that the National Environmental Policy Act ("NEPA") guarantees. They ask that their lives and cultures be deemed relevant to the Corps' future water management plans. The *amici* offer this brief in support of Plaintiffs' Summary Judgment Motions (Dkt. 164, 165).

## INTRODUCTION

Apalachicola communities are bound to the River. Their culture sprang from the River and the industries that it nourished. For decades, low flow regimes imposed by the Corps have wreaked havoc on the watershed, leaving communities tied to the River to struggle economically, culturally, and socially:

We've lost the soul of Apalachicola and Eastpoint with the demise of oystering and shrimping fisheries, and the character of the area....The

bottom line is that the Bay provided dignity, food and a livelihood.... Oystermen are a proud people and suddenly they can't provide for their families through no fault of their own. It's terribly difficult.<sup>3</sup>

The Corps' decision to adopt the Proposed Action Alternative ("PAA") ignored the fact that continued low flows will exacerbate these harms. Before the Corps' decision goes into effect, it must, pursuant to the National Environmental Policy Act ("NEPA"), take a hard look at the foreseeable harm the PAA will levy on the communities, including whether those harms disproportionately impact low-income communities in the Apalachicola Region. The Corps' failure to consider these things renders its FEIS inadequate. As a result, the agency's action must be set aside.

### BACKGROUND

The Apalachicola watershed includes the River, a 144,000-acre floodplain forest, and the Apalachicola Bay ("River System").<sup>4</sup> While the watershed experiences natural periods of high and low flow, months of moderate levels have historically filled the System each year.<sup>5</sup> This natural rhythm not only supports the

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<sup>3</sup> Decl. Richard Bickel ¶¶ 16, 17, Dec. 19, 2020 (Mr. Bickel is a photojournalist who has lived in Apalachicola for 25 years and has photographed and interviewed hundreds of families in the seafood industry).

<sup>4</sup> H. Lee Edmiston, *A River Meets the Bay: Apalachicola National Estuarine Research Reserve*, 49 (Dec. 2008), [hereinafter "Edmiston"] [http://www.dep.state.fl.us/coastal/downloads/management\\_plans/A\\_River\\_Meets\\_the\\_Bay.pdf](http://www.dep.state.fl.us/coastal/downloads/management_plans/A_River_Meets_the_Bay.pdf) (last visited Jan. 14, 2021).

<sup>5</sup> Melanie R. Darst & Helen M. Light, U.S. Dep't of the Interior, U.S. Geological Survey, *Drier Forest Composition Associated with Hydrologic Change in the*

health of the River System but also feeds local economies. During high season, the Ogeechee Tupelo tree blooms, providing the only source of nectar used to make Tupelo honey.<sup>6</sup> Water coming from the floodplain also provides the System with nutrients year round, feeding seafood species throughout the Bay and Gulf of Mexico.<sup>7</sup>

Families in the Region have subsisted on the River System for generations,<sup>8</sup> and locals practice beekeeping, fishing, and harvest oysters using the same methods

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*Apalachicola River Floodplain, Florida*, 54 (2008), [hereinafter Darst], <https://pubs.er.usgs.gov/publication/sir20085062> (last visited Jan. 14, 2021).

<sup>6</sup> Anthony Stallins et al., *Biogeomorphic Characterization of Floodplain Forest Change in Response to Reduced Flows Along the Apalachicola River, Florida*, 26 RIVER RESEARCH AND APPLICATIONS 3, 242-260, 256 (2009); Justin T. Maxwell & Paul A. Knapp, *Reconstructed Tupelo Honey Yield in Northwest Florida Inferred from Nyssa Ogeche Tree-Ring Data: 1850-2009*, AGRICULTURE, ECOSYSTEMS & ENV'T 149: 100-108 (2012).

<sup>7</sup> Steven L. Morey et al., *Connectivity of the Apalachicola River Flow Variability and the Physical and Bio-optical Oceanic Properties of the Northern West Florida Shelf*, 29 CONTINENTAL SHELF RESEARCH 9, 1 (May 15, 2009) (“The Apalachicola River is a major nutrient source for the northeastern GoM...This nitrogen input enhances primary productivity in the near-shore waters.”) [hereinafter “Morey”], <https://doi.org/10.1016/j.csr.2009.02.003> (last visited Jan. 15, 2021); Harold C. Mattraw & John F. Elder, *Nutrient and Detritus Transport in the Apalachicola River, Florida* C57 (1984) [hereinafter Mattraw]; Robert J. Livingston, *The Ecology of the Apalachicola Bay System: An Estuarine Profile* 9 (Sept. 1984) [hereinafter “Livingston I”], <http://npshistory.com/publications/usfws/biological-reports/82-05.pdf> (last visited Jan. 14, 2021).

<sup>8</sup> See, e.g., Letter from Kevin Begos, Mayor of the City of Apalachicola, to Judge Trash (Dec. 30, 2020) [hereinafter Ltr. Mayor Begos]; Decl. of Thomas L. Ward, ¶ 3 Dec. 23, 2020; Decl. of Lynn C. Martina ¶ 3 Dec. 5, 2020; Decl. of Daniel Taunton ¶¶ 2, 3 Jan 8, 2021.

as their great grandparents.<sup>9</sup> As Shannon Hartsfield, a fourth-generation oysterman from Eastpoint, explained “[h]ad the Apalachicola Bay oysters survived, my son would have been the fifth generation of Hartsfield oystermen.”<sup>10</sup>

*Amici* communities are disproportionately low-income based on the U.S. Census Bureau’s definition: more than 20% of residents in counties abutting the River lives below the poverty line.<sup>11</sup> In the cities of Apalachicola and Eastpoint—where economies rely on the seafood trade—low income residents make up 36% and 44% of the population, respectively.<sup>12</sup> Compared to the general populations of Florida and the United States—of which 12.7% and 10.5% are below the poverty line, respectively—the Apalachicola Region is disproportionately impoverished.<sup>13</sup> Apalachicola communities are also disproportionately low-income compared to counties in Georgia whose water needs are met by the Corps: 13.5% of Fulton County residents and 5-13.2% of those in counties surrounding Lake Lanier live below the poverty line.<sup>14</sup> Because communities in the Apalachicola Region rely on

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<sup>9</sup> See Decl. of Shannon Hartsfield ¶ 3, 5 Dec. 31, 2020; Decl. Bickel ¶ 12; Kelly Watson, *Alternative Economies of the Forest: Honey Production and Public Land Management in Northwest Florida*, 30(3) SOC & NATUR RESOUR 331, 334-335 (2017) [hereinafter “Watson”].

<sup>10</sup> Decl. Hartsfield ¶ 3; see also Decl. Bickel ¶ 12; Decl. Ward ¶¶ 3, 4.

<sup>11</sup> See Exh. 2, *County & State Poverty Line Statistics: 2014-2018*, Table 1 B1.

<sup>12</sup> *Id.*, *EJ Screens for Apalachicola and Eastpoint*, Tables 3-4 B2.

<sup>13</sup> *Id.* County & State Poverty Line Statistics: 2014-2018, Table 1 B1.

<sup>14</sup> *Id.*

River-based industries, including seafood and logging, many also lack the formal education needed for employment in other fields.<sup>15</sup>

**a. The Corps' mismanagement of the Apalachicola River System began decades ago.**

Because eighty percent of the Apalachicola's water originates from the Chattahoochee and Flint Rivers,<sup>16</sup> the Corps' increasingly restrictive water management is devastating the downstream River System. "Water-level declines have been greatest at low and medium flows, which are the most common flows (occurring about 80 percent of the time)...[and] Flood durations were shorter in all periods subsequent" to 1976.<sup>17</sup> These changes have been attributed in part to the Corps' actions.<sup>18</sup>

Because "[p]eriods of low water levels are now more frequent and longer in duration,"<sup>19</sup> dry conditions exist throughout the entire System. These changes are

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<sup>15</sup> Exh. 2, *EJ Screens for Apalachicola, Eastpoint and Wewahitchka*, Tables 3-5, B2-B3 (16-20% of each community has less than a high school education).

<sup>16</sup> Edmiston, *supra* note 4 at 9.

<sup>17</sup> Helen M. Light et al., U.S. Geological Survey, U.S. Dep't. of the Interior, *Water-Level Decline in the Apalachicola River, Florida, from 1954 to 2004, and Effects on Floodplain Habitats*, 1, 6 (2006); Darst, *supra* note 5 at 4 (finding "[w]ater levels have declined over the past 50 years").

<sup>18</sup> Darst, *supra* note 5 at 7 ("Less flow during the spring and summer in recent decades is likely caused by a combination of changes in rainfall patterns and increased human activities in the ACF basin, including agricultural irrigation, municipal water use, flow regulation, and reservoir evaporation.").

<sup>19</sup> Light, *supra* note 17 at 48.

reflected by the *amici*, who have observed that “the swamp [floodplain] is drying up...: the river basically runs dry in the summer.”<sup>20</sup> The Corps also makes no effort to mimic natural flow patterns. Instead, the System experiences unnatural lows.<sup>21</sup> These findings reflect the experiences of the *amici*, who feel that “[t]he Corps sends too little or too much, so the River swings between flooded and dry and dusty while the Bay is either a flood of fresh or all salt.”<sup>22</sup>

Physical changes to the River System have also made it harder for water to reach the floodplain (otherwise known as a swamp).<sup>23</sup> Until 2001, the Corps dredged sand from the riverbed to make a channel deep and straight enough for large barges.<sup>24</sup> The sand was redistributed on the riverbanks, blocking access to the floodplain.<sup>25</sup> As explained by *amicus* Daniel Taunton, “we used to need about 8 feet of water in the River to fill up the swamp near my house. Now you need 10-12 feet to get water back to the swamps because the sand along the Rivers’ banks is so high in some places.”<sup>26</sup>

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<sup>20</sup> Decl. of Albert Bryant ¶ 14 Dec. 22, 2020; *see also* Decl. Taunton ¶ 15; Decl. L. Martina ¶ 9; Decl. Hartsfield ¶ 11.

<sup>21</sup> Light, *supra* note 14 at 4.

<sup>22</sup> Decl. of Kevin Martina ¶ 14 Dec. 10, 2020.

<sup>23</sup> Darst *supra* note 5 at 1.

<sup>24</sup> Light, *supra* note 14 at 1, 6 (“Dredging in the deepest part of the channel [was] conducted annually from 1956 to 2001.”).

<sup>25</sup> Light, *supra* note 14 at 30; Decl. Taunton Decl. ¶ 9.

<sup>26</sup> Decl. Taunton ¶¶ 12, 13; Decl. Carmen McLemore ¶ 7 Dec. 30, 2020.



Rainfall fluctuation compounds problems: “Decreased spring and summer flows from the upstream watershed during drought conditions have resulted in further declines since 1975 that have lowered water levels throughout the entire river.”<sup>27</sup> As a result, the Apalachicola region’s water needs are not only competing against upstream “agricultural irrigation, municipal water use, flow regulation, and reservoir evaporation,” but also an ever drying climate.<sup>28</sup>

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<sup>27</sup> Darst, *supra* note 5 at 7; Light, *supra* note 14 at 1.

<sup>28</sup> Darst, *supra* note 5 at 7; *see also* Stallins, *supra* note 6 at 244, 246; Maxwell, *supra* note 6 at 100-101.

<sup>28</sup> NOAA Env’t Coop. Si. Ctr., *Apalachicola National Estuarine Research Reserve*, [hereinafter Apalachicola NERR] [ecsc.famu.edu/t-apalachicola-nerr.html](http://ecsc.famu.edu/t-apalachicola-nerr.html) (last visited Jan 14, 2021); FEIS 2-215, 2-216.

<sup>28</sup> FEIS at 2-215.

<sup>28</sup> Decl. T. Ward ¶ 5.

<sup>28</sup> FEIS at 2-215.

<sup>28</sup> Apalachicola NERR, *supra* note 28; Laura E. Petes et al., *Impacts of Upstream Drought and Water Withdrawals on the Health and Survival of Downstream Estuarine Oyster Populations*, 2 *ECOLOGY AND EVOLUTION* 7, 1712-1724, 1712 (2012) [hereinafter Petes].

<sup>28</sup> Decl. Bickel ¶ 14; Decl. Hartsfield ¶ 19.

<sup>28</sup> Visit Florida, *Picking up the Pace: Florida’s Tourism Performance Jumps into a Higher Gear*, 27 (2018) (explaining that Franklin County brought 10k per resident in visitor expenditures in 2018), <https://www.visitflorida.org/media/30679/florida-visitor-economic-large-impact-study.pdf> (last visited Jan. 13, 2021); HOME, <https://www.floridaseafoodfestival.com/> (last visited Jan. 12, 2021).

<sup>28</sup> *See*, Ltr. Mayor Begos.

<sup>28</sup> Decl. Hartsfield ¶ 3; Decl. L.C. Martina ¶ 3; Decl. K. Martina ¶ 2; Decl. Ward ¶¶ 2-4; Decl. Bryant ¶ 3.

<sup>28</sup> *See* Decl. Hartsfield ¶¶ 3, 5; Decl. Ward ¶¶ 2-4; Decl. K. Martina ¶ 2; Decl. L.C. Martina ¶ 3; Ltr. Mayor Begos; Delc. Bickel ¶ 12.

<sup>28</sup> Decl. Taunton ¶ 3; Decl. Bickel ¶ 15; Decl. McLemore ¶ 6; Decl. Hartsfield

**b. The Corps' PAA threatens an already-weakened seafood industry with ruin.**

As one of the most productive estuaries in the United States, the Apalachicola Bay historically supported a prolific seafood industry.<sup>29</sup> The Bay also provided thick freshwater grasses in soft bottomed marshes used as habitat and hatcheries by many species.<sup>30</sup> By all accounts of the *amici*, it was “a little piece of heaven.”<sup>31</sup>

Small towns of Apalachicola and Eastpoint share in the Bay's productivity and rely heavily on the seafood industry.<sup>32</sup> Approximately 80% of *amici* Franklin County's workforce used to be employed by the seafood industry and, until recently, oysters accounted for nearly half of the county's income.<sup>33</sup> These numbers are not confined to those who harvest in the Bay, but include seafood dealers, shuckers, truckers, and those employed by tourism.<sup>34</sup>

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¶ 20.

<sup>28</sup> *Id.*; see also Exh. 2, *Franklin County Commercial Landing Data*, Tables 6-12 B3-B6.

<sup>28</sup> See Petes, *supra* \_\_\_ at 1721.

Apalachicola NERR, *supra* note 28; Final Environmental Impact Statement, *Update of the Water Control Manual for the Apalachicola-Chattahoochee-Flint River Basin in Alabama, Florida, and Georgia and a Water Supply Storage Assessment*, 2-215, 2-216 (Dec. 2016) [hereinafter FEIS].

<sup>30</sup> FEIS 2-215.

<sup>31</sup> Decl. T. Ward ¶ 5.

<sup>32</sup> FEIS 2-215.

<sup>33</sup> Apalachicola NERR, *supra* note 28; Petes, *supra* note 28 at 1712.

<sup>34</sup> Decl. Bickel ¶ 14; Decl. Hartsfield ¶ 19; *Picking up the Pace: Florida's Tourism Performance Jumps into a Higher Gear*, 27 (2018),

The seafood industry is synonymous with family in the Region.<sup>35</sup> Every *amici* working in the industry comes from a multi-generational seafood family,<sup>36</sup> and many were taught their trade by parents and grandparents.<sup>37</sup> The Bay also provides an important food source that sustains low-income communities;<sup>38</sup> Recent seafood declines suggest that may no longer be true.<sup>39</sup>

The Bay has suffered in recent years. Saltier waters caused by low freshwater flows have adversely impacted seafood species and destroyed marsh habitat on which they rely.<sup>40</sup> Increased salinity also invites more saltwater predators into the Bay, which *amicus* and seafood dealer Thomas Ward has observed directly: what “a lot of people don’t understand is that when the salinity level went so

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<https://www.visitflorida.org/media/30679/florida-visitor-economic-large-impact-study.pdf> (last visited Jan. 13, 2021) (explaining that Franklin County brought \$10,000 per resident in visitor expenditures in 2018); HOME, <https://www.floridaseafoodfestival.com/> (last visited Jan. 12, 2021).

<sup>35</sup> See, Ltr. Mayor Begos.

<sup>36</sup> Decl. Hartsfield ¶ 3; Decl. L.C. Martina ¶ 3; Decl. K. Martina ¶ 2; Decl. Ward ¶¶ 2-4; Decl. Bryant ¶ 3.

<sup>37</sup> See Decl. Hartsfield ¶¶ 3, 5; Decl. Ward ¶¶ 2-4; Decl. K. Martina ¶ 2; Decl. L.C. Martina ¶ 3; Ltr. Mayor Begos; Decl. Bickel ¶ 12.

<sup>38</sup> Decl. Taunton ¶ 3; Decl. Bickel ¶ 15; Decl. McLemore ¶ 6; Decl. Hartsfield ¶ 20.

<sup>39</sup> Exh. 2, Franklin County Commercial Landing Data, Tables 6-12 B3-B6.

<sup>40</sup> See Petes, *supra* note 28 at 1714, 1721; Robert J. Livingston, *Importance of River Flow to the Apalachicola River-Bay System, Report to the Florida Department of Environmental Protection* 7, 12 (Sept. 2008) [hereinafter “Livingston II”], [http://mayorvanjohnson.com/files/Livingston\\_Report.pdf](http://mayorvanjohnson.com/files/Livingston_Report.pdf).

high...predators—Oyster Drills, Southern Conch—annihilated all the oyster beds.”<sup>41</sup>

Low flow has also decreased the nutrients delivered to the Bay from up river.<sup>42</sup> Traditionally, the River supports seafood species in the Bay and Gulf of Mexico when nutrient filled water from the floodplains moves downstream.<sup>43</sup> A steady flow regime into Apalachicola’s floodplains is required to support this effect.<sup>44</sup> As explained by Coastal Conservation Association’s Director of Advocacy, Trip Aukeman, “the river feeds nutrients from Apalachicola all the way to Tampa Bay. If we do not have water flow we lose water quality and then the resources that rely on the water and the nutrients in it.”<sup>45</sup>

The Bay’s oyster population crashed in 2013 and needs more freshwater than allocated in the PPA to recover, even in non-drought years.<sup>46</sup> Landing data paints a

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<sup>41</sup> Decl. Ward , ¶ 13; *see also* Decl. K. Martina ¶¶ 8, 9; Livingston II, *supra* note 40 at 12, 64.

<sup>42</sup> Livingston I, *supra* note 7 at 13.

<sup>43</sup> Morey, *supra* note 7 at 1 (“The Apalachicola River is a major nutrient source for the northeastern GoM...This nitrogen input enhances primary productivity in the near-shore waters.”) [hereinafter “Morey”].

<sup>44</sup> *Id.* at 1-2; Mattraw, *supra* note 34, at C4.

<sup>45</sup> Decl. of Trip Aukeman ¶ 10 Dec. 14, 2020.

<sup>46</sup> *Commerce Secretary Pritzker Declares Fisheries Disaster for Florida Oyster Fishery*, <https://www.noaa.gov/commerce-secretary-pritzker-declares-fisheries-disaster-florida-oyster-fishery> (Aug. 12, 2013); Decl. Ward ¶¶ 11, 21; Decl. Hartsfield ¶¶ 15, 16.

bleak picture of the health of the Bay and the county's seafood industry:<sup>47</sup>

Year	Pounds Harvested	No. Trips Taken	Average Price per Pound (\$)	Estimated Value (\$)
2012	3,037,217	53,921	2.93	8,897,465
2013	1,065,811	25,964	4.61	4,912,392
2014	608,538	18,515	5.55	3,376,427
2015	518,204	18,317	5.81	3,009,159
2016	374,051	16,462	6.94	2,595,146
2017	268,291	14,356	8.04	2,156,942
2018	58,324	2,878	7.80	455,039

The oyster crash was incredibly hard on Franklin County communities. In the early 2000s, 300 boats harvesting oysters filled the Bay daily<sup>48</sup> and over a dozen Eastpoint processing plants employed a dozen shuckers each.<sup>49</sup> During that time, oystermen “could go out in the morning and bring in enough to make \$200 by lunch time.”<sup>50</sup> In the years after the crash “you’d maybe see 4 boats out there bringing in a few bags a day”<sup>51</sup> and only one Eastpoint processing plant remains open.<sup>52</sup> *Amici* Lynn Martina and Thomas Ward lost their oyster processing businesses, while fourth generation oystermen Shannon Hartsfield lost 90% of his income.<sup>53</sup> In the wake of the 2012 crash, some *amici* have adapted by opening new businesses or cobbling

<sup>47</sup> Exh. 2, *Franklin Cnty Com. Landing Data: Oysters*, Table 6, B3.

<sup>48</sup> Decl. Hartsfield ¶ 17; Decl. L. Martina ¶ 7; Decl. Bickel ¶ 11.

<sup>49</sup> Decl. Bickel ¶ 14.

<sup>50</sup> Decl. Martina ¶ 7.

<sup>51</sup> Decl. Hartsfield ¶ 17.

<sup>52</sup> Decl. Hartsfield ¶ 19; Decl. Bickel ¶ 14.

<sup>53</sup> Decl. L.C. Martina ¶ 11; Decl. Ward ¶¶ 14, 16; Decl. Hartsfield ¶ 4.

together part time jobs, but none recouped the living that oysters provided.<sup>54</sup> Every *amici* involved in the trade discussed how thriving was no longer possible: survival is the goal.<sup>55</sup>

In a last-ditch effort to save the industry, the State of Florida made the controversial decision to close the Bay to all wild oyster harvesting for up to 5 years in 2020.<sup>56</sup> While this may save the wild oyster population in the long term, *amici* recognize that it will harm the most vulnerable in the Region.<sup>57</sup> Because the moratorium includes recreational harvesting, the closure also represents the loss of a food source.<sup>58</sup> Assuming the closure helps the oysters rebound, several *amici* still expressed concern that, “[w]ithout more water from the Corps, the oysters will crash again the next time we have a dry year.”<sup>59</sup>

**c. The Corps’ PAA threatens to collapse the Tupelo honey industry.**

The land surrounding the Apalachicola River was once populated by over 144,000 acres of forests full of Tupelo. Found only in South Georgia and North

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<sup>54</sup> Decl. L.C. Martina ¶ 11; Decl. Hartsfield ¶¶ 18, 21; Decl. Ward ¶ 16.

<sup>55</sup> Decl. L.C. Martina ¶ 12; Decl. Hartsfield ¶ 22; Decl. Ward ¶ 16.

<sup>56</sup> Fla. Fish & Wildlife Conservation Comm’n, *Oysters*, <https://myfwc.com/fishing/saltwater/commercial/oysters/> (last visited Jan. 12, 2021).

<sup>57</sup> Decl. K. Martina, ¶ 23; Decl. Bickel ¶ 15; *but see* Decl. Ward ¶ 18.

<sup>58</sup> Decl. Hartsfield ¶ 20; *see also* Decl. Ward ¶ 18; Decl. McLemore ¶ 6.

<sup>59</sup> Decl. Hartsfield ¶ 16; *see also* Decl. Ward ¶ 19; Decl. McLemore ¶ 8.

Florida, Ogeechee Tupelo once supported the Region's \$2.3 million Tupelo honey industry and supports a thriving tourist trade.<sup>60</sup> Ogeechee Tupelo need total inundation nearly year-round to thrive and flowing water to propagate.<sup>61</sup>

Ten years ago, the Ogeechee's two-week blooming season provided a single apiary enough nectar for 100,000 pounds of Tupelo honey.<sup>62</sup> For beekeepers like *amicus* Albert Bryant, two-thirds of a year's income historically came from Tupelo season.<sup>63</sup> The floodplains have supported this level of abundance in the Tupelo honey industry for generations.<sup>64</sup>

The last few decades have decimated the Ogeechee Tupelo and its honey. Between 1976 and 2004, dredging and persistently low flows down the Apalachicola River dramatically decreased flow into the floodplain.<sup>65</sup> As a result, the floodplain is drying out: there were 4.3 million (17%) fewer floodplain trees in 2004 than 1976 and Ogeechee declined by at least 44%.<sup>66</sup> *Amicus* Al Bryant has witnessed these

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<sup>60</sup> Watson, *supra* note 9 at 334-35; Maxwell, *supra* note 6 at 100; HOME, <http://www.tupelohoneyfestival.com> (last visited Jan. 12, 2021); Decl. Bryant ¶ 11.

<sup>61</sup> Darst, *supra* note 5 at 2 ("During floods, floodwaters are contained within floodplains and, when waters subside, floodplain soils retain moisture, ameliorating the effects of both floods and droughts...."); Decl. A. Bryant ¶ 13.

<sup>62</sup> Watson, *supra* note 9 at 334; Decl. Bryant ¶ 12.

<sup>63</sup> Decl. Bryant ¶ 12.

<sup>64</sup> Darst *supra* note 5 at 1, 53; Stallins, *supra* note 6 at 256.

<sup>65</sup> Light, *supra* note 14 at 1-2.

<sup>66</sup> Darst, *supra* note 5 at 1.

declines and says that instead of new growth typical of a floodplain forest, “[n]ow the swamp is just full of old, dry Tupelo.”<sup>67</sup> This trend has devastated the Tupelo Honey industry, resulting in a 30% decrease in production between 1990 and 2009 years and further reductions since then.<sup>68</sup>

The Corps’ actions have brought communities in this area to their knees, and these impacts should have been considered before the PAA was finalized.

**III. The Corps must consider interrelated economic, cultural, social effects, as well as disproportionate impacts on low-income communities.**

NEPA (National Environmental Policy Act of 1969, § 2 *et seq.*, 42 U.S.C.A. § 4321 *et seq.*) requires federal agencies to take a hard look at the *total* impacts of their actions, including non-environmental impacts flowing from a project’s environmental effects.<sup>69</sup> Executive Order 12,898 heightens this obligation when, as

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<sup>67</sup> Decl. Bryant ¶ 14.

<sup>68</sup> Maxwell, *supra* note 6 at 100, 195; *see also* Decl. Bryant ¶ 121; Regan McCarthy, *Decreased water flow in the Apalachicola River could threaten the future of tupelo honey* (October 16, 2020), <https://news.wfsu.org/wfsu-local-news/2020-10-16/decreased-water-flow-in-the-apalachicola-river-could-threaten-the-future-of-tupelo-honey> (last visited Jan. 15, 2021).

<sup>69</sup> 40 C.F.R. § 1502.16 (2020); *American Rivers v. FERC*, 895 F.3d 32, 49 (D.C. Cir. 2018) (NEPA “compel[s] federal agencies to take a hard and honest look at the environmental consequences of their decisions....”); *National Ass’n of Government Emp. v. Rumsfeld*, 418 F. Supp. 1302, 1306 (E.D. Pa. 1976) (“[W]hen a federal action does have a significant environmental impact, social and economic impacts



here, low-income communities may be disproportionately impacted by an agency's action.<sup>70</sup> The Corps' failure to consider the disproportionate impacts of its project on low-income communities and the full scope of impacts required by NEPA is a clear procedural error that renders the agency's action arbitrary and capricious.<sup>71</sup>

Agencies must consider certain non-environmental impacts:<sup>72</sup> "When an [EIS] is prepared and economic or social and natural or physical environmental effects are interrelated, then the [EIS] *will discuss all of these effects on the human environment.*"<sup>73</sup> In this context, "effects" includes foreseeable and interrelated cultural, economic, and social impacts<sup>74</sup> and "human environment" refers not only to the physical world, but also Americans' relationship with it.<sup>75</sup>

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must also be considered...."); *Lands Council v. Powell*, 395 F.3d 1019, 1028 (9th Cir. 2005) (EIS must "catalogue of past, present, and future projects....").

<sup>70</sup> Exec. Order No. 12,898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed. Reg. 7629 (Feb. 11, 1994), § 1-101 [herein after EO 12,898]; CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* 9, 14 (1997) [hereinafter EJ Guidance] <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf> (last visited Jan. 21, 2021).

<sup>71</sup> The Administrative Procedure Act, 5 U.S.C.A. § 706(2)(A) [hereinafter APA]; *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983) (agency action is arbitrary and capricious if it "entirely failed to consider an important aspect of the problem").

<sup>72</sup> 40 C.F.R. § 1502.16 (2020).

<sup>73</sup> 40 C.F.R. § 1508.14 (2019) (emphasis added).

<sup>74</sup> 40 C.F.R. § 1508.1(g)(1) (2020).

<sup>75</sup> *Id.*; see also 40 C.F.R. § 1508.1(m) (2020).

Courts have interpreted the scope of non-environmental impacts broadly, requiring agencies to consider how their projects may impact a community's "quality of life."<sup>76</sup> For example, cultural effects include impacts on culturally significant wildlife<sup>77</sup> and harm to the "character of the community,"<sup>78</sup> economic impacts include job loss<sup>79</sup> and the "probable degenerative effects" of an agency's action on communities;<sup>80</sup> and social harm includes analysis of how lost revenue may detract from a place's vibrancy.<sup>81</sup>

As a threshold matter, non-environmental impacts must be foreseeable and related to a physical environmental impact to be considered.<sup>82</sup> The foreseeability requirement includes consideration of direct and indirect effects, which includes

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<sup>76</sup> *Hanly v. Mitchell*, 460 F.2d 640, 647 (2d Cir. 1972).

<sup>77</sup> See, e.g., *Protect Our Cmty. Found. v. LaCounte*, 939 F.3d 1029, 1040-41 (9th Cir. 2019) (agency recognized the presence of culturally significant wildlife and assessed the threat its actions posed to it).

<sup>78</sup> *Pyramid Co. of Watertown v. Planning Bd. of Town of Watertown*, 24 A.D.3d 1312, 1315 (N.Y. App. Div. 2005) (EIS inadequate for failing to "include supporting data to respond to concerns raised during the public comment phase with respect to cultural, historic or archeological resources," including how project would impact "character of the community.").

<sup>79</sup> 40 C.F.R. § 1508.1(g)(1) (2020) (defining effects)

<sup>80</sup> *Barrie v. Kitsap Cnty*, 613 P.2d at 1148, 1157 (Wash. 1980) (agency must consider "real possibility" of lost jobs and "resultant decline" in city center); *City of Rochester v. U.S. Postal Serv.*, 541 F.2d 967, 973 (2d Cir. 1976) (same).

<sup>81</sup> *Barrie*, 613 P.2d at 1157.

<sup>82</sup> 40 C.F.R. §§ 1502.16 (2019); see *id.* 1508.14 (2019); see *Maiden Creek Associates, L.P. v. United States Department of Transportation*, 123 F.Supp. 3d 638, 654, (E.D. Pa. 2015).

those “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”<sup>83</sup> Discussing “interrelatedness,” courts have concluded that “[w]hether an impact on the ‘human environment’ must be addressed depends on the closeness of the relationship between the change in the environment and the ‘effect’ at issue.”<sup>84</sup> Agencies cannot avoid analysis of these impacts by improperly narrowing the scope of an EIS,<sup>85</sup> failing to substantively respond to comments,<sup>86</sup> claiming lack of authority<sup>87</sup> or providing “mere cursory

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<sup>83</sup> See, e.g., *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992); see also *Izaak Walton League of America v. Marsh*, 655 F.2d 346, 377 (D.C. Cir. 1981) (“Detailed analysis is only required where impacts are likely.”) (citation omitted), *cert. denied*, 454 U.S. 1092 (1981).

<sup>84</sup> *Hammond v. Norton*, 370 F. Supp. 2d 226, 243 (D.D.C. 2005), quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 771–72 (1983) (internal quotations omitted); see also *Rumsfeld*, 418 F. Supp. at 1306.

<sup>85</sup> See, e.g., *Earth Island Institute v. U.S. Forest Serv.*, 351 F.3d 1291 (9th Cir. 2003) (impact on neighboring forest must be considered); see also *State Farm*, 463 U.S. at 43 (agencies cannot ignore large aspects problems created by project).

<sup>86</sup> 40 C.F.R. § 1502.9(c) (2020) (agency shall discuss “responsible opposing view that was not adequately discussed in the draft statement and shall indicate the agency’s response to the issues raised.”); *State of Cal. v. Block*, 690 F.2d 753, 773 (9th Cir. 1982) (internal citations omitted) (“(t)here must be good faith, reasoned analysis in response [to comments]”).

<sup>87</sup> *Sierra Club v. Mainella*, 459 F.Supp.2d 76 (D.D.C.2006) (agencies must consider impacts when “there is a reasonably close causal relationship between such impacts” and the agency actions, even when actions occur outside the project’s area); *Humane Soc. of U.S. v. Johanns*, 520 F. Supp. 2d 8, 26 (D.D.C. 2007) (same); see also CEQ, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18026, 18027 (Mar. 23, 1981) [hereinafter CEQ, Questions] (Alternative that is outside agency’s legal

examination.”<sup>88</sup> As discussed *infra* in Section III, the Corps’ FEIS is inadequate for all of these reasons.

Pursuant to EO 12,898, agencies must also identify and address the impact of its actions on “minority populations and low-income populations.”<sup>89</sup> To comply with this Order, agencies use demographic data to identify low-income or “minority” populations and analyze whether proposed actions may disproportionately impact them.<sup>90</sup> In this context, impacts includes “interrelated cultural, social, occupational, historical, or economic factors that may amplify” the environmental effect of an agency’s action.<sup>91</sup> The presence of these impacts “should heighten agency attention to alternatives (including alternative sites), mitigation strategies, monitoring needs, and preferences expressed by the affected community or population.”<sup>92</sup>

EO 12,898 does not confer an independent basis for judicial review, but courts have held it reviewable under the Administrative Procedure Act when an

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jurisdiction must still be analyzed in the EIS if it is reasonable.); *Natural Res. Def. Council, Inc. v. Morton*, 458 F.2d 827, 853 (D.C. Cir. 1972) (same).

<sup>88</sup> See, e.g., *Pyramid*, 24 A.D.3d at 1315.

<sup>89</sup> See EO 12,898.

<sup>90</sup> EJ Guidance, *supra* note 70 at 9, 14.

<sup>91</sup> *Id.* at 9.

<sup>92</sup> *Id.* at 10; see also *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 440 F. Supp. 3d 1, 9 (D.D.C. 2020) [*Standing Rock 2020*] (finding agency’s EJ analysis too narrow).

agency's NEPA analysis includes environmental justice.<sup>93</sup> These courts recognize why such review is essential: negative impacts of government action often occur in the "poor area of town, not through the area where the politically powerful people live."<sup>94</sup> Further, for a variety of reasons, low-income and "minority" populations are often more susceptible to the types of environmental and socioeconomic impacts agencies must consider and are least able to absorb them unscathed.<sup>95</sup> Therefore, agencies must take care to not only identify the risk of disproportionate impacts on these communities but also address them throughout the FEIS process.<sup>96</sup>

## **II. The Corps failed to consider the PAA's impacts on downstream, low income communities.**

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<sup>93</sup> EO 12,898 at § 6-609; APA, 5 U.S.C. § 706(2) (courts must "hold unlawful and set aside agency action, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law...."); *see, e.g., Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 541 (2003) (reviewing adequacy of environmental justice analysis within the context NEPA); *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 255 F. Supp. 3d 101, 140 (finding the failure of the Army Corps of Engineers to take a hard look at the environmental justice implications of the project arbitrary and capricious) [*Standing Rock 2017*].

<sup>94</sup> *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 87 (4th Cir. 2020) (internal citation omitted) (reviewing similar provisions in Virginia state law); *see also Mid States Coal.*, 345 F.3d at 541.

<sup>95</sup> *See, e.g., Buckingham*, 947 F.3d at 88 (recognizing that "minority" populations are at greater risk of asthma and lung cancer).

<sup>96</sup> *Id.* at 92 ("environmental justice is not merely a box to be checked.").

The Corps failed to take a hard look at the disproportionate impacts of its PAA on low-income communities. The Corps also treated non-environmental impacts of its project with conclusory afterthoughts, silence, or by disclaiming responsibility for them entirely. As a result, the Corps' FEIS is inadequate under NEPA.

The Corps' consideration of impacts on low-income communities is surface level at best: "For Florida, the percentage of low-income persons is higher in the basin (20.9 percent) than in the state as a whole (15.6 percent) and the state rate is higher than the nationwide poverty rate of 12.8 percent."<sup>97</sup> While the FEIS recognizes that higher rates of poverty are more common in rural communities, it does not compare rural Apalachicola communities to more affluent counties in Georgia. The Corps does not assess interrelated economic, cultural, or social impacts that may amplify the environmental effect of an agency's action and gives no heightened consideration to alternatives or mitigation that may lessen these impacts.<sup>98</sup> Such cursory treatment of low-income communities does not satisfy EO 12,898.<sup>99</sup>

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<sup>97</sup> FEIS at 2-253.

<sup>98</sup> EJ Guidance, *supra* note 70 at 9-10.

<sup>99</sup> *Id.*; see also *Standing Rock 2017*, 255 F.Supp.3d at 136-138 (citing E.O. 12,898 and finding the scope of the Corps' assessment too narrow);

The Corps concludes that the PAA would not have an adverse effect on low-income populations along the Apalachicola River and Bay unless it “change[d] conditions in the river and bay to the extent that populations of commercially harvested species would be adversely affected.”<sup>100</sup> However, the FEIS does not determine whether its PAA will adversely affect seafood species because “metrics to quantify potential impacts to eastern oysters, white shrimp, and other species have not been developed to date.”<sup>101</sup> This abbreviated consideration also fails to satisfy EO 12,898.<sup>102</sup>

The Corps also failed to adequately respond to comments about impacts on low-income communities in the Bay.<sup>103</sup> For example, one expressed concern that area residents may go hungry as a result of the Corps’ continuing refusal to increase flow to Florida: “This increasingly low-income, often multi-generational population of resource users also relies on subsistence to supplement their diets. The oystermen are facing suicide, homelessness, drug addiction, and other social

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<sup>100</sup> FEIS at 6-376.

<sup>101</sup> FEIS at 6-325; *see also id.* at 6-313 (illustrating, however, a long-term decrease in spawning habitat in Table 6.4-1).

<sup>102</sup> *See generally* EJ Guidance, *supra* note 70; *Standing Rock 2017*, 255 F.Supp.3d at 136-138 (citing E.O. 12,898 and finding the scope of the Corps’ assessment too narrow).

<sup>103</sup> *See, e.g.*, FEIS, App’x C Vol. 4 Part 2b C-226, 258-259, 400, 729; *id.* at App’x C Vol. 4 Part 2f C-957.

ills related to resource disaster in the Apalachicola Bay.”<sup>104</sup> In response, the Corps directed the commenter to the “environmental justice discussion” summarized above,<sup>105</sup> but that discussion contains nothing more than unsupported and conclusory statements assuming lack of impact.<sup>106</sup>

The non-environmental impacts described herein represent foreseeable consequences of the Corps’ PAA that are interrelated to the environmental harm it will cause.<sup>107</sup> These harms predate the FEIS and are caused by the Corps’ persistent refusal to send more water from upstream sources.<sup>108</sup> Given that the PAA will send even less water to the region,<sup>109</sup> worsening non-environmental impacts

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<sup>104</sup> FEIS at App’x C Vol. 4 Part 2b C-259.

<sup>105</sup> *Id.*

<sup>106</sup> 40 C.F.R. § 1502.9(c) (2020) (FEIS must address comments) 40 C.F.R. § 1502.3.4 (2020) (manner of response); *Center for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1168 (9th Cir. 2003) (Agencies must “disclose and discuss the responsible opposing views in the final impact statement.”) *Block*, 690 F.2d at 773 (“There must be good faith, reasoned analysis in response [to comments]”); *Nat’l Wildlife*, 440 F. Supp. at 1253 (finding mere admission of impacts insufficient).

<sup>107</sup> *See, e.g., Sierra Club*, 976 F.2d at 767 (defining foreseeability to include effects “sufficiently likely to occur”); *Hammond*, 370 F. Supp. 2d 226 (examining “closeness of the relationship between the change in the environment and the ‘effect’ at issue.”).

<sup>108</sup> *Kentucky Riverkeeper, Inc. v. Rowlette*, 714 F.3d 402 (6th Cir. 2013) (past actions must be considered).

<sup>109</sup> *See Conservation Plaintiff’s SJM* at 46.



are “sufficiently likely” such that the Corps should have taken them into account.<sup>110</sup>

The Corps’ FEIS illustrates this point. For example, the agency recognizes the oyster decline,<sup>111</sup> but does not take the rational next step to ask what non-environmental harms may flow from it or assess how “aggregate effects of past actions” may have caused it.<sup>112</sup> The agency also acknowledges that low flow has caused tree loss suffered throughout the floodplain but does not question whether the losses will have economic consequences.<sup>113</sup> The FEIS also fails to adequately consider the impacts its past water management practices have had on the current state of the River System and Apalachicola communities.<sup>114</sup> NEPA regulations require the Corps to ask these questions.<sup>115</sup>

The Corps attempts to avoid the foreseeability requirement by disclaiming responsibility for the harm it has caused. In response to public comment, the Corps

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<sup>110</sup> See, e.g., *Sierra Club*, 976 F.2d at 767.

<sup>111</sup> FEIS at 2-244 (“The National Agricultural Statistical Service reported sales revenue of oysters in Franklin County of \$302,000 in its 2012 survey. This is down from over \$600,000 in its 2007 survey”).

<sup>112</sup> CEQ, *Guidance on the Consideration of Past Actions in Cumulative Impacts Analysis*, 1-2 (2005), available at <http://energy.gov/nepa/downloads/guidance-consideration-past-actions-cumulative-effects-analysis>.

<sup>113</sup> *Rumsfeld*, 418 F. Supp. at 1305.

<sup>114</sup> *League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 549 F.3d 1211, 1218 (9th Cir. 2008) (must consider past projects).

<sup>115</sup> 40 C.F.R. § §1500.2(d) (2019), 1508.7 (2019); *American Rivers*, 895 F.3d at 49.

states that “Apalachicola Bay is not a part of the ACF system and [] the authorized purposes of the ACF system do not include a specific directive to provide freshwater inflows to Apalachicola Bay to sustain the resources of the bay.”<sup>116</sup> The Corps cannot avoid consideration of foreseeable impacts on the Bay by narrowly defining the geographic scope of its responsibility.<sup>117</sup>

These omissions violate NEPA’s requirement that agencies identify the *total* impacts of their actions and deprived the public of a forthright account of potential harms.<sup>118</sup>

## CONCLUSION

The Corps’ failure to adequately identify and analyze the social, cultural and economic harms suffered by the *amici* was arbitrary and capricious and renders its FEIS inadequate. For the foregoing reasons, *amici* respectfully submit this brief in support of the Plaintiffs.

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<sup>116</sup> FEIS at App’x C Vol. 4 Part 2e C-830.

<sup>117</sup> *Earth Island*, 351 F.3d 1291 (impact on neighboring forest must be considered); *Mainella*, 459 F.Supp.2d 76 (agencies must consider impacts with close relationship to its actions); *see also State Farm*, 463 U.S. at 43 (agencies cannot ignore large aspects problems created by project).

<sup>118</sup> *State Farm*, 463 U.S. at 43 (agency action is arbitrary and capricious if it “entirely failed to consider an important aspect of the problem”); *Standing Rock 2017*, 255 F. Supp. 3d at 113; *Standing Rock 2020*, 440 F. Supp. 3d at 8; *American Rivers*, 895 F.3d at 49.

This 15<sup>th</sup> day of January, 2021.

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of L.R.7.1(D) because it is 25 pages, as determined by Microsoft Word 2020, excluding the parts of the brief exempted by Fed. R. Civ. P. 32(f).

This brief complies with the typeface and style requirements of L.R.5.1(B) because it has been prepared in 14-point Times New Roman with a top margin of 1.5” and left margin of 1”.

Dated: January 15, 2021

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2021, I electronically filed the foregoing Brief of Amici Curiae in Support of Plaintiffs using the Court's CM/ECF system, which will serve notice of the filing to all registered users.

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE ACF BASIN WATER ) CIVIL ACTION NO.  
LITIGATION ) 1:18-MI-043-TWT  
\_\_\_\_\_ )

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

*Amicus curiae* Trip Aukeman, Richard Bickel, Shannon Hartsfield, Lynn C. Martina, Kevin Martina, Carmen McLemore, Daniel Taunton, Thomas L. Ward, the City of Apalachicola, Franklin County, Liberty County, Calhoun County, Jackson County, and the Florida Coastal Conservation Association hereby file this Certificate of Interested Persons and Corporate Disclosure Statement pursuant to Local Rule 3.3, Federal Rule of Civil Procedure 7.1.

(1) The undersigned counsel of record for a party to this action certifies that the following is a full and complete list of all parties in this action, including any parent corporation and any publicly held corporation that owns 10% or more of the stock of a party:

The U.S. Army Corps of Engineers  
The State of Alabama  
The State of Georgia

City of Atlanta, Georgia  
City of Gainesville, Georgia  
Cobb County-Marietta Water Authority  
DeKalk County, Georgia  
Forsyth County, Georgia  
Fulton County, Georgia  
Gwinnet County, Georgia  
Apalachicola Bay and Riverkeeper  
National Wildlife Federation, Inc.  
Florida Wildlife Federation, Inc.

(2) The undersigned further certifies that the following is a full and complete list of all other persons, associations, firms, partnerships, or corporations having either a financial interest in or other interest which could be substantially affected by the outcome of this particular case:

Apalachicola Bay Chamber of Commerce  
Apalachee Audubon Society  
Trip Aukeman  
Benjamin Lanier  
Calhoun County, Florida  
Carmen McClemore  
City of Apalachicola, Florida  
Daniel Taunton  
Florida Coastal Conservation Association  
Florida Conservation Coalition  
Franklin County, Florida  
Franklin County Seafood Dealers Association  
Franklin County Seafood Workers Association  
Hon. Robert Graham  
Hon. Gwendolyn Graham  
Jackson County, Florida  
Kevin Martina

Liberty County, Florida  
Lynn C. Martina  
Ocean Conservancy  
Richard Bickel  
Shannon Hartsfield  
State of Florida  
Thomas L. Ward

(3) The undersigned further certifies that the following is a full and complete list of all persons serving as attorneys for the parties in this proceeding:

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Respectfully submitted this 15th day of January, 2021.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of January 2021 a copy of this Certificate of Interested Persons and Corporate Disclosure Statement was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all counsel of record.

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# Exhibit 1

## Declarations & Letters

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# CITY OF APALACHICOLA

192 Coach Wagoner Boulevard • Apalachicola, Florida 32320 • 850-653-9319 • Fax 850-653-2205

[www.cityofapalachicola.com](http://www.cityofapalachicola.com)

December 30, 2020

**Mayor**

Kevin Begos

The Honorable Thomas W. Thrash, Jr.

Chief United States District Judge

2188 Richard B. Russell Federal Building and United States Courthouse

75 Ted Turner Drive, SW

Atlanta, GA 30303-3309

**Commissioners**

Brenda Ash

Adriane Elliott

Despina George

Anita Grove

Judge Thrash:

**City Manager**

Travis Wade

Working people, businesses, the environment, and local culture have all been seriously harmed by the significant reductions of freshwater from the ACF River systems that flow into our bay.

The collapse of our historic oyster fishery has closed businesses, damaged families, and prevented an entire generation from following the careers and traditions that sustained their ancestors for generations.

**City Clerk**

Deborah Guillotte, CMC

One formerly successful oyster house owner now struggles to make ends meet by cleaning rooms; restaurants that have proudly served our oysters for decades must now, when asked, tell diners that the shellfish on the menu come from Louisiana or Texas.

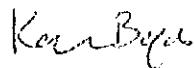
**City Attorney**

Kristy Branch Banks

Our oyster reefs were cornerstones of both the environment and the economy. We knew there could be good years and bad, but never imagined seeing this once-bountiful resource vanish before our eyes.

Florida and our nation are filled with many wonders, but a self-sustaining, hand-harvested wild oyster fishery was a rare and priceless resource that simply cannot recover without historically fair fresh water flows. We believe the Corps of Engineers must manage the river system to take all of our cultural, economic, and environmental issues into account.

Sincerely,



Mayor Kevin Begos

[kbegos@cityofapalachicola.com](mailto:kbegos@cityofapalachicola.com)

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE ACF BASIN :  
WATER LITIGATION : Case No. 1:18-MI-43-TWT  
:

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**Declaration of Trip Aukeman**

I, Trip Aukeman, of the city of Tallahassee, Florida, do solemnly declare and affirm as follows:

1. I am over the age of 18 and have personal knowledge of the following facts.
2. I have been fishing on the Apalachicola River and in the Gulf my entire life. Growing up, my family always had a boat. When I was young I went with my parents and siblings, and now I take my own family. My wife, two sons and I fish most weekends during the summer to catch tripletail fish, red drum, and sea trout.
3. Growing up on the water made me passionate about recreational fishing and protecting Florida's fisheries. In pursuit of that, I joined the Coastal Conservation Association (CCA) in 2000. I applied for an open position with CCA in 2007 and was hired by the organization in 2008. I'm currently the Director of Advocacy for Florida's CCA.
4. The CCA has been in Florida since 1985. The CCA started working with habitat protection and restoration projects in Florida in 2010. We work with like-minded individuals and organizations on conservation projects inshore and offshore to make the future better for our children. The CCA became involved with the Apalachicola River because of the lack of water and how that was beginning to hurt the fisheries in North Florida. The CCA wants


more water flow from the River into Apalachicola Bay in order to get more nutrients to the habitats that desperately need it.

5. The last few decades have brought some changes for recreational fishermen, including me and my family. Overall, I've seen some dips in the types of fish I've historically caught, including redfish, seatrout, and grouper.
6. Identifying the cause of fishery changes is complicated, but low flow from the Apalachicola River is part of the problem. The River is a food source for many Gulf fisheries. Back when the River flow was higher, it would carry water from the swamps full of leaves and dirt out into the Bay and all the way to the Gulf of Mexico. This water was full of nutrients that benefitted everything living in the Bay and large parts of the Gulf. Now there's nothing but mud in the swamps, not water, so the River doesn't bring the Bay nearly as much nutrients and, really, fish food, as it used to.
7. Fish like small grouper would grow up in the Bay and off the shallow reefs in the Gulf. Really, everything living in the Bay—from seagrass to oysters and fish—all benefitted from the River.
8. One reason for decreases in redfish, sea trout, and grouper numbers around Apalachicola may be habitat loss. All of these species use the seagrass for protection when they're small, and in the last six years, I've seen less seagrass in the Apalachicola Bay.
9. I am very worried if we don't continue the flow of water or at the very least try to increase the flow the economy will continue to falter. Already you've seen impacts to the oystermen and shrimpers. You don't see the shrimpers any more. What worries me is that if there is no solution the economy will fail even more in Apalachicola and the surrounding cities and towns. The people there depend on fishing charters for their livelihood. Their economy depends on the tourists coming to fish.

10. CCA is also worried about the lack of water flow. We have two chapters that utilize the area for fishing on a regular basis and it affects many of our members throughout the region. The River feeds nutrients from Apalachicola all the way to Tampa Bay. If we do not have the water flow we lose the water quality and then the resources that rely on the water and the nutrients in it. We have numerous CCA members that are fishing guides and owners of shops and rentals that depend on the water quality for their livelihood. It is essential that the Apalachicola River receives more water flow to ensure all living things prosper in and around the River.

Pursuant to 28 U.S.C. § 1746, I Trip Aukeman, declare under penalty of perjury that the foregoing is true and correct.

Executed on December 14, 2020.

  
\_\_\_\_\_  
(Signature)



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

IN RE ACF BASIN :  
WATER LITIGATION : Case No. 1:18-MI-43-TWT  
:

---

**Declaration of Richard Bickel**

I, Richard Bickel, of the city of Apalachicola, Florida, do solemnly declare and affirm as follows:

1. I am over the age of 18 and have personal knowledge of the following facts.
2. I am a professional photojournalist and owner of the Richard Bickel Photography gallery in Apalachicola, Florida.  
(<https://www.richardbickelphotography.com>) I have worked extensively both in this area as well as in over 80 countries for the U.S. and foreign press.
3. I went to the Apalachicola region for the first time in 1995, when I was sent to do a story about the Florida Panhandle for a magazine called *Travel Holiday*. They assigned me the story because it was a largely unknown stretch of Florida and they felt it would be unique and of great interest to their readers.
4. I drove from Tallahassee to Pensacola looking for material for the magazine piece. When I arrived in Franklin County, I was intrigued: there was almost no development and a very low population. It was a place of wooden boats and hard hand labor. I realized that the story was there, in and around Apalachicola, and especially on the waterfront. I moved to Apalachicola shortly after that assignment with a commitment to document this hidden world, and I have lived and worked here since 1995.

5. During the last 25 years here I have photographed, interviewed and have come to know hundreds of local families. I am intimately familiar with their stories and have worked to communicate those voices to the broader public. Fifteen years ago I opened a storefront gallery in downtown Apalachicola where I display my work and have also published two bestselling books of interviews and photographs of the people of the Bay area. I have also illustrated scores of national and international magazine and newspaper pieces profiling the profoundness of the region including in *The New York Times*, *The Washington Post* and *Die Zeit* (Germany).
6. Water is the center of everyone's life down here. The Creek Indians held these waters sacred, as do those who reside here today. I've had the pleasure of photographing baptisms with a local Blountstown church called the Prayer Chainer's Mission of God. It was an otherworldly experience to stand in the backwaters of Florida at dawn with the parishioners in ghostly white robes. They hold the water holy; they call it their River Jordan.
7. Asking if oystermen like what they do is like asking if a seal gets tired of water. Local oystermen live for the Bay. After long and extremely difficult days harvesting, they would head back to the water to sport fish on weekends. These waters are in their blood.
8. The self-sufficiency of people in this region was compelling for my camera and pen. Oystermen craft oyster boats in their backyards out of plywood and their shrimp boats from Cyprus wood. They often make them without formal plans. That's emblematic of who they are. Oystermen are extremely hard working, resourceful, fiercely-independent people. After a lifetime of working on the Bay, it's a challenge for many of them to function in a structured environment.
9. The city of Apalachicola is a lovely town with vintage architecture and a historic waterfront. It has been the center of Franklin county, economically and politically. Re-identification of the economy and life here in has happened a of numerous times. The town was built on cotton export. Then the lumber trade drove the economy. The lumber ran out so the community turned to fishing, and that became the identity of what Apalachicola is today. Sadly, that is changing again, and many of the seafood families who've been

here for generations suddenly feel like Apalachicola is a place they no longer know as a tourism economy and gentrification take hold.

10. I will never forget my first view of Eastpoint, the small fishing town seven miles across the Bay from Apalachicola which was the center of the oyster trade. At that time, the Bay was productive. On the Eastpoint wharf, an epic scene with men in boats, engine smoke and hubbub unfolded. A dozen-plus oyster houses, where oysters were weighed and shucked, lined the coast in this small town. The smell was pungent; it was the smell of livelihood for men and women. It was the smell of money. Eastpoint doesn't have a storied history, it's a working town through and through. The oysters were landed there and the shucking houses processed them for export. Eastpoint has no town center, there's just a bay with road beside it and scatterings of doublewides and modest homes.
11. I've visited Eastpoint's wharf frequently over the years. It was but a line of low, cinder block shucking houses perched on the water. In the back of the houses were oyster docks. Oystermen would pull in and then weigh their catch and take a paycheck. It used to be that if I visited at dawn, I'd see 100 Eastpoint oystermen over the 1.5 mile of water front. There were probably 300-500 active oyster licenses then.
12. Oystermen in Eastpoint practiced a very old and traditional form of oyster harvesting called tonging. I tried it once, with very little success. Tongs are basically two ten-foot rakes riveted together and work like salad tongs. They are heavy, up to 40 pounds when laden with oysters. It is brutal work, heaving the tongs hour after hour. Because our estuary is murky and you typically can't see the bottom, oystermen have an uncanny ability to understand what their tongs are touching based on feel alone. It's incredibly difficult work that is passed down through the generations. Yet no matter how brutal their working day was, oystermen never complained about the work.
13. After an oystermen's catch got weighed in and cleaned it would go into a house where there was a line of shuckers. Shuckers are paid by how many gallons they shuck through the day, so they move fast. Shucking houses have square portholes to the outside, every 4-5 feet, where the shuckers

discharge empty shells. When oysters were plentiful, empty shells would pour out of these holes day-long, creating small mountains of the bivalves.

14. When I came here 25 years ago there were ten to fifteen working shucking houses on the Eastpoint waterfront, each with about ten shuckers. Because oyster harvesting requires brute strength, local women historically did most of the shucking. In the last ten years there's been a continual decline in oyster harvest, so many women left the industry for clerking in convenience stores or cleaning tourist rental homes on nearby St. George Island. Because Eastpoint shuckers were so adept, some houses also started shucking oysters from Texas and Louisiana to fill the void. Unfortunately, that just wasn't nearly enough to keep all the shucking houses open. There are but two Eastpoint shucking houses left today and they are only half-operating, shucking non-local oysters.

15. People joke that all you need to live off the land here is an oyster boat and a shotgun, and for a long time it was true. The oyster crash and other harms to the Bay doesn't just impact the oyster industry, it takes away free nutrient rich food sources too. The people of Eastpoint have been through hard times. First the oysters went, then there was a big fire in the fishermen's quarters in 2018, the same year as Hurricane Michael wreaked havoc on the town.

16. We've lost the soul of Apalachicola and Eastpoint with the demise of oystering and shrimping fisheries, and with that, much of the character of the area. People come here for the fishing culture and its heritage. They come to eat oysters. The town wharf still has shrimp boats but not nearly as many as we used to. We're evolving into another soulless Florida waterfront story that's reliant on tourism and not much else. When I arrived 25 years ago you couldn't buy a coffee mug or Apalachicola t-shirt. Now the downtown is lined store-by-store clogged with tourist kitsch. People wander into my gallery asking where to go for Apalachicola oysters and I have to tell them there aren't any. Or if they find some likely they're from Texas. Meanwhile, they gaze at my gallery images of the fishermen and oystermen and see, sadly, a people and land that once was what was.

17. In summary, the Bay afforded a generational livelihood and with that, a dignity that livelihood provided. Regardless if you're an out-of-work

accountant or an oystermen things quickly become depressing when one can't work. With the Bay closed for five years now, there's little hope for our fishers. What are they going to do? Most aren't comfortable working at the dollar store or at any pursuit that requires a time clock. Oystermen are a proud people and suddenly they can't provide for their family through no fault of their own. It is wrong and patently obscene that we as a society have allowed this to happen.

Pursuant to 28 U.S.C. § 1746, I, Richard Bickel, declare under penalty of perjury that the foregoing is true and correct.

Executed on (date).

12 / 19 / 2020

(Signature)

A handwritten signature in black ink, appearing to be 'Richard Bickel', written over a horizontal line. The signature is stylized and cursive.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE ACF BASIN :  
WATER LITIGATION : Case No. 1:18-MI-43-TWT  
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**Declaration of Albert Bryant**

I, Albert Bryant, of the city of Bristol, Florida, do solemnly declare and affirm as follows:

1. I am over the age of 18 and have personal knowledge of the following facts.
2. I am 41 years old and have lived in the Apalachicola Region for my whole life. My early childhood was in the city of Eastpoint and moved up river to Liberty County when I was in elementary school. I've lived in Bristol for about 35 years.
3. My family has lived in this region for at least 70 years, and our work has related to the Apalachicola River one way or another for generations. Back when the Bay was full enough of oysters to actually catch anything, my grandparents both worked in seafood. My grandpa, Albert, owned a seafood business and the Seafood Shack, a little restaurant in Apalachicola. He sold seafood to across the Southeast, including to Publix, for decades. My grandma shucked oysters. My dad, Larry, made his living on the Apalachicola Bay until 20 years ago. He fished, oystered and shrimped. Now the Bay is dead for oysters.
4. I am a beekeeper and have been making Tupelo honey for more than 20 years. The Tupelo honey trade is a local industry that has been around for more than 100 years. I have sold Tupelo honey around the country to many people including Savannah Bee Company in Savannah, Georgia. Now most all the Tupelo we are able to make is sold under the brand Bee Wild Raw Honey.

5. I started bee keeping while I was in high school. I was mentored by one of the old time Tupelo bee keepers, Mr. Warren Johnson. There are maybe 12 old timers who know how to make Tupelo the right way. He mentored me and taught me how to make pure Tupelo the right way.
6. Mr. Warren was huge in the Tupelo industry here. He was the bee consultant on Peter Fonda's movie *Ulee's Gold*, which was shot around here and about a Tupelo honey beekeeper. He just passed from COVID-19.
7. After high school I bought some hives from retired beekeepers and, after some time, established Bryant Apiaries in Bristol, Florida. I currently operate between 1,000-1,500 hives. That was about 20 years ago now. It was a good living for a long time, I was not getting rich but could pay our bills and work for myself.
8. Tupelo honey is a very special kind of honey that's made in the swamps in the Apalachicola area and southern Georgia. It's made when bees feed on nectar from White Tupelo trees. Tupelo honey season is short. In a good year, the White Tupelo blossoms stay on the trees for 10-14 days in late April or early May.
9. White Tupelo live in the swamps around the Apalachicola River. They need water on their roots to germinate, and bees help with that too. During the 2 week Tupelo blooming season, I strip out my hives of all other honey and move my bees down to the swamp in Gulf County, where they can drink from the Tupelo trees and not much else. The bees pollinate the blooms and the trees feed the bees. That's how you get pure Tupelo honey: the bees have to only feed on Tupelo. After the blossoms brown, they fall off and the River disperses them to other places, spreading the seed and making young trees. That used to be really common, we'd have young Tupelo sprouting everywhere. Without water, the seeds can't spread. Once they sprout, young Tupelo trees take 5 or 6 years to bloom.
10. Tupelo honey is very valuable, it's the most expensive honey in America. It's got a unique buttery taste and—because it has less sugar than other honey—it is safe for diabetics and it never crystalizes.

11. The local community used to really benefit from the Tupelo trade: the money we made on honey we put back into the economy. Local Recreational teams and youth sports were even sponsored by and named after beekeeping companies. We are famous for our Tupelo honey, especially in Wewahitchka. For decades we've had a Tupelo Honey Festival in Wewahitchka that would bring in 10-100 thousand people and lots of outside money. I also used to sell to local roadside markets and groceries, it was a very fruitful business.
12. About ten years ago I could make 2/3 of a year's salary in two weeks during Tupelo season. I'd make 150 pounds for each hive in three days and about 100,000 pounds during the whole season. Eight to ten hives would make a whole drum of honey.
13. Tupelo honey production has tanked in the last 8 to 10 years. I can't get more than five pounds per hive in the whole Tupelo honey season, less than a drum. We're lucky to make 20,000 pounds in a season, but some years we just don't make any. We had 400-500 hives on it this year and didn't make a single drum. Some years are still OK, if we get a lot of rain, but most years since about 2010 you can't count on making money off Tupelo. Now I contemplate whether it's even worth going to try to make it, because it's a big expense and a lot of labor to move the bees down to the swamp, which is a pretty big undertaking. For the past several years, it hasn't paid off.
14. The change in honey has a lot to do with the health of the Tupelo. Tupelo need water to survive, and certainly to thrive. The swamp is drying up: the River basically runs dry in the summer. The Apalachicola River used to be maybe 6-12 feet most of the time, so the swamps were always wet. Now you only see those levels when there's a flood, and those don't last long enough to get back into the swamp and sit on the Tupelo steadily.
15. Low flow impacts the Tupelo Trees in two ways that matter for honey. First, the trees that are already there have a much shorter blooming season because it's so dry. If the trees bloom at all, it's only a day or two before the blossoms go brown. Once the blossoms are brown they have no nectar left. With fewer blossoms and shorter blooms, an already short honey season gets



even shorter. The low water also means that the Tupelo seeds don't get spread so we have far fewer young Tupelo than we used to. Now the swamp is just full of old, dry Tupelo.

16. These days, there's just not a steady enough flow to keep the Apalachicola River level at a 6 or 8 foot level for any length of time. The River goes from 2 or 3 ft up to 18 or 20 ft quickly. It's either dry or—when they start getting rain around Atlanta—the Corps just turns it all loose at one time and it floods everything out. Instead of just keeping a gradual flow coming down to try and keep the River at a sustainable level, it's all or nothing. I can't remember the last time the River was deep when there wasn't a flood. We need the Corps to be more consistent with the water and not let the water dry up.
17. You don't see these impacts on Tupelo up in Georgia. Apalachicola Region has so many more Tupelo trees than Georgia does, and we used to make much more Tupelo honey than they did. That's not true anymore: Georgia's doing better than we are.
18. My business model has had to adapt as a result of these changes. Back when we had a good crop of Tupelo and could make honey, we could feed our bees locally year round. Because we can't make any money on Tupelo anymore, now we take our bees to California to pollinate almonds. Everyone in my area who used to produce Tupelo honey ship bees to California now. This is a real stress on my bees. Having to ship them around to keep making money probably contributes to an increased pace of bee loss that we've had over the last several years. Before, we didn't have nearly so many losses because our bees never went more than an hour from the house.
19. In spite of updates to my business, the Tupelo crash has also devastated my bottom line. We used to make about \$100,000 worth of tupelo honey every year. Now we are lucky to make \$15- \$20,000. As a result, I've had to take a second job managing a corporate beekeeping company. Long term, I hope to go back to being fully self-employed at Bryant Apiaries.
20. Because the Tupelo trees don't have what they need to germinate and propagate, the industry is dying. The traditional way we make Tupelo honey

is dying too. The older generation were purists, so if you bought Tupelo down here it was guaranteed Tupelo. I'm one of the only ones left who was taught by the old timers, and I take pride in the quality and integrity of the Tupelo honey business. Now that the market is collapsing, you have beekeepers who weren't trained in the traditional trade marketing impure honey as Tupelo because it's all they've got.

Pursuant to 28 U.S.C. § 1746, I, Albert Bryant, declare under penalty of perjury that the foregoing is true and correct.

Executed on December 22, 2020.

A handwritten signature in black ink, appearing to be 'Albert Bryant', written in a cursive style.

Signature:  
Albert Bryant  
Owner, Bryant Apiaries

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE ACF BASIN :  
WATER LITIGATION : Case No. 1:18-MI-43-TWT  
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**Declaration of Shannon Hartsfield**

I, Shannon Hartsfield, of the city of Eastpoint, Florida, do solemnly declare and affirm as follows:

1. I am over the age of 18 and have personal knowledge of the following facts.
2. I am an oysterman by trade and have been working on issues related to the Corps' impact on the Apalachicola River and Bay for over a decade.
3. My family have worked on the Apalachicola River for four generations, it's a part of who we are. My great grandma, grandma and mother were oyster shuckers. At various times, my great-grandad, grandad, father and I have worked as oystermen, fishermen and shrimpers. Had the Apalachicola Bay oysters survived, my son would have been the fifth generation of Hartsfield oystermen.
4. I have enjoyed the Apalachicola River with my family all my life. Growing up we took houseboats on the River and hunted in the swamps. I took my kids to camp on the River too, just like I did when I was young.
5. I have made my living off the River for most of my life. I started helping my grandad oyster and shrimp when I was thirteen, he was old by then and needed my help getting the motor started. He and my dad taught me the trade, just like I taught my son. Up until the mid 1990s, I was also a commercial fishermen. From the mid 1990s to 2007, when we had a bad drought, I made about 90% of my income off oysters. It was a good living. At its peak, I was making \$3,000 a month.

6. My family has lived around the Apalachicola Bay for generations. The cities of Apalachicola and Eastpoint, are fishing towns on the Bay. There is no other industry to speak of here, and most families rely on the River for income. That's definitely true of the oyster trade.
7. I became the president of the Franklin County Seafood Workers Association in 2010. It's a trade association that represented local seafood workers and worked with government and the community to protect the rights of oystermen and all seafood workers.
8. SMARRT, Seafood Management Assistance Recovery and Restoration Team, was formed in 2012 to represent fishermen and seafood dealers in 2012. Its fifteen person board included me and fourteen others from multi-generational fishing families that are intimately involved with the Bay. Most of them had some oystering background, but we also had shrimpers, crabbers, clammers, dealers and fishermen. SMARRT worked with government agencies to try and understand what was being done to help the Bay after the 2012 crash. We were able to help control the process and bring in some grant money to build synthetic oyster beds and attention from press helped us push for bag limits (catch limits) for struggling species and the eventual closure of the Bay for oystering in 2020. However, without sources of funding or income our board has scattered in recent years.
9. I saw changes in the River and Bay starting in the late 1990s, when the Army Corps of Engineers ("Corps") stopped sending enough water down the River for navigation. For a long time, the River was used by barges and the Corps supported navigation by sending down enough water to support big ships passing through and dredging the Riverbed to make it deeper.
10. After navigation officially ended on most of the Apalachicola River in the late 1990s, the Corps quit looking downstream and only sent enough water to take care of the Endangered Species on the River and in the Bay. While the Corps claim that they're sending enough for mussels, I've seen the mussels really struggle too.

11. We used to have a steady flow of seven to nine feet in much of the River. Even in the heat of the summer you'd still have six feet. When it dips much lower than that, the water can't get back into the swamps.
12. While how much water the Corps sends obviously impacts the Apalachicola River, its swamps and tributaries and the salinity of the Bay, the pace of release also matters. The Corps also controls the health of the Apalachicola ecosystem with the rhythm of its releases. When it fails to release water in a natural pattern, animals downstream suffer. For example, in the past the water would slowly get here and then slowly leave. Now the Corps cuts water off abruptly in March and the shock kills the oysters. When the water is abruptly cut off it also stops natural flow of dirt and sand into the Bay, which clams and other bottom dwelling seafood needs to survive.
13. In the years since navigation on the River ended, the health of the Bay has depended entirely on the weather. In the early 2000s the Bay was still mostly ok, because we had a lot of rain those years. So even though the River was not nearly as deep as it had been, changes in the Bay weren't so noticeable because our wet seasons were wetter than average. All that changed in 2007, when we had a really bad drought. Water levels where the Bay meets the River dropped down to less than a foot that year.
14. When you have a drought, the salinity of the Bay increases because the balance between fresh water coming from the River and salt water coming from the Gulf of Mexico gets thrown off. You know the water's getting saltier because animals that usually don't come into the Bay start showing up. So, in 2007 I saw a huge increase in sea urchins and scallops deep into the Bay, both of which like much saltier water than oysters do.
15. The Apalachicola Bay oyster population really started to suffer in 2007. For example, 2007 was the last year that we had any oysters on two historical oyster beds: Cap Point and Dry Bar. Things have just gotten worse for the oysters since then. We had another drought between 2010-2012 and that's when the oyster crash was officially recognized Florida State government.

16. The Apalachicola Bay oysters still haven't recovered from the 2012 crash. In fact, a lot of the Bay was just closed to oystermen for the next five years to try and help the oyster population rebuild. When I say rebuild, I think that oyster populations about 60% of 2000 levels would be a success: no more is possible without more water from the Corps. A lot of people are upset about that because the last couple years have looked better, but that's only because of the rain. Unless the weather gods keep sending rain, we have to rely on the Corps. Without more water from the Corps, the oysters will crash again the next time we have a dry year.
17. Before the 2012 crash you'd see 400-500 families making a living off oysters. Right before the closure in the summer of 2020 you'd maybe see four boats out there bringing in a few bags a day.
18. Some recovery might be possible without the Corps' help, but oysters won't support Apalachicola and East Point like it used to. Even if weather stays wet, the Bay closure helps the oysters recover and the government controls fishing levels moving forward, without more water from the Corps I can't see more than 150 boats making a living off Bay oysters moving forward.
19. Oysters provide jobs to more than oystermen, and the crash has hit downstream industries really hard too. For example, in 2000 there were about 40 oyster processing plants in East Point. By 2010 there were only 26 and now we only have one. So all the jobs that go along with those plants—truck drivers, dock workers, shuckers—disappeared too.
20. We were never rich but we were comfortable. It wasn't until the oysters started struggling in 2007 that we realized how good we had it: we had good income and ate well. We ate the seafood we caught all the time. Now we can't afford to go to retail market and buy seafood because the mark-ups are ridiculous.
21. I'm away from home a lot more because I have to go where the oysters are. I've gone to Louisiana to fish and other places in Florida too, just to try and make up the income, but I'm not making nearly what I used to and I've had to pick up odd jobs in construction to keep up. I used to make about \$1,200 a

week on oysters, now I'm lucky if I bring in \$3,000 in a month from all my odd jobs.

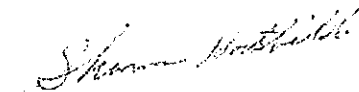
22. Now that the River can't provide much income, my family is struggling with much less money. I'm working in construction as I can find work and my wife is baby-sitting five boys all week, just to make ends meet. Some months we have to choose between food and healthcare.

23. My father, Abraham L. Hartsfield, is 73. Before the oysters crashed in 2012, oystering was all he did. After trying to hold on for a few years after the crash, he finally stopped oystering in 2015. Since he and my mother cannot survive on Social Security alone, he has taken on several part time jobs at the grocery store, as a handyman and painter to get by. He and my mom are struggling.

24. If I could ask the Corps anything, it would be to put us into the equation somewhere. The Corps needs to look south past Lake Seminole to understand that sending so little water down is killing our way of life. It seems that richer people living on Lakes Lanier and Seminole and Atlanta have the Corps' attention, but we deserve it too. It's only fair to take us into consideration and try and find a way to send us a little more.

Pursuant to 28 U.S.C. § 1746, I, Shannon Hartsfield, declare under penalty of perjury that the foregoing is true and correct.

Executed on December 31, 2020.

A handwritten signature in cursive script, appearing to read "Shannon Hartsfield".

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE ACF BASIN :  
WATER LITIGATION : Case No. 1:18-MI-43-TWT  
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**Declaration of Kevin Martina**

I, Kevin Martina, of the city of Apalachicola, Florida, do solemnly declare and affirm as follows:

1. I am over the age of 18 and have personal knowledge of the following facts.
2. I was born and raised in Apalachicola, where my family has lived for three generations. All three generations were Bay shrimpers. My grandad was a shrimper and my father, Bill Martina, is a retired shrimper and crabber. All I've ever done for a living is commercial fishing, too.
3. All we ever did growing up was on the water: we'd fish, go up the Apalachicola River on houseboats and camp. All we have down here is the water, there is no other industry in Franklin County.
4. I graduated from high school in the 1980s and started shrimping right away. In the 1980s and 90s, shrimp was king. I only worked during shrimping season and made enough to sustain me the rest of the year. During that time, I never worked a day from Thanksgiving to the first day of March, then I'd go shrimping until November. Because of changes in the Bay, now I work year round.
5. When I was a young man there was probably more life in the Bay than in town. The Bay supported 200 shrimping boats every year. Now we have a fleet of approximately twelve to fifteen county residents with boats working



in the Bay. That's all that's left. I've seen the Bay has changed tremendously in the last 30 years.

6. In the late 1990s to early 2000s, things started to change. The price of shrimp has been cut in half. We got paid more in the 70s and 80s than we do now. At the same time, gas tripled in cost. I own a 50 foot shrimp boat that I pay \$65 dollars a month to keep at the harbor but I haven't been in it for over three years now. It just isn't feasible to go anymore because there's no profit margin.
7. I transitioned to blue crabbing full time about ten years ago. My dad used to crab also. In the 50s and 60s he started out crabbing with a long line, but then we went to traps. We used to fill ten to fifteen crates in a day but now I'm lucky to fill two or three. It's gone from 1,000 pounds in a day to being lucky if I catch 200 pounds.
8. The changes for crabbing and shrimping really started when the Corps shut off the water around 2000, when they started hoarding it for Atlanta and farming in Georgia. After that, the Bay went from a good mixture of salt and fresh water to 100% salt.
9. One way I know that the Bay's gone salty is that we have tons more salt water predators in the Bay than we used to. These animals feed on shrimp, crab and especially oysters. You used to see some of these animals up in the Bay, but the mix of water wasn't good for them so they wouldn't linger. Now that the Bay is so salty most of the time, they've moved in and eaten everything.
10. I've also seen saltwater species swimming up the River. We've had Kemps Ridley sea turtles and Bull Sharks up-river near the flats, where people ski and swim. It's had an impact on recreation: it's one thing to deal with alligators but Bull Sharks are really dangerous.
11. Saltwater fish are also migrating up the River and we're catching them regularly three to four miles up the River. Sheepsheads and Crocker's have been spotted all the way up at Woodruff Dam and flounders are being caught

up in Bristol and Blountstown. That's 40 to 60 miles north of the Bay. Those fish can't live in fresh water.

12. The direction of the Apalachicola River has also changed. When I was young, you could always paddle home south because there was enough water and the River had a natural southernly flow. Now the River mimics ocean tides and it's hard to paddle south when the tide is coming in.
13. Decreased water flow has impacted the shrimp too, Shrimp need the marshes maintained by the fresh water flow to survive. 1994 was the best shrimp season I've ever seen because we had so much rain that year. I've seen a direct link between fresh water flow and shrimp production for years.
14. The amount of water the Corps sends down is not the only problem, the pace of flow is a real problem too: there's no natural flow. The Corps sends too little or too much, so the River swings between flooded and dry and dusty while the Bay is either a flood of fresh or all salt. I'd much rather have a low to medium flow all year.
15. I've been up in Georgia around Lake Blackshear for deer hunting when they took the lake down seven feet for dock maintenance, which of course flooded Apalachicola. That happens every time there's a flood or hurricane up in Georgia too: the Corps just opens up the dams. It seems like they don't want the people up there with their big houses getting flooded, so they flood us.
16. Animals in the Bay suffer from the pace problems too. It's just like us: how long would it be before we'd get pneumonia if we went from 40 degrees to 90 degrees every 30 minutes? A lot of what's in the Bay needs a mix of fresh and salt water to survive.
17. Apalachicola Bay used to have a soupy, mushy bottom made up of dead leaves, roots and grasses that rotted over time and would then naturally flow down from the swamp. That material is full of nutrients that then fills the Bay. It creates a perfect place for fish, shrimp and crab to lay eggs and for these species to live while they're young. Fresh water grasses would also

naturally grow in that rich area of the Bay, and duck hunting was common there.

18. One of the biggest impacts I see from this unnatural water management is that sand is pushed down out of the River whenever the Corps opens up the dams. The Corps dredged the River for years and years, and so there's a lot of loose sand on the River bed and banks. Whenever the River floods, sand pours out of the Apalachicola River and into the Bay, covering the grasses, shrimp, crab and fish habitat near the mouth of the River. The Corps is washing a whole ecosystem away. Now, the bottom of the Bay is just hard as rock: I can get out of my boat and walk around without sinking into the bottom. Now that there's less habitat for shrimp, crab and fish that grow up in the marsh, they lay eggs on the sand and either predators eat them or the tide washes them away.
19. I've seen these problems create a food chain problem for the fish too. Fish eat shrimp, and there's been a decline of some fish since the shrimp dipped. When I was young we could catch 500-700 pounds of fish in a day. Now there are limits for some species of just a handful of fish per person per day.
20. All of these changes for shrimp and crabs impact the downstream employment: the local economy triples when the Bay produces. Processors, packers, icemen all work when the Bay is healthy, it's a trickle-down effect that impacts the economy of the whole county.
21. I was part of the Seafood Management Assistance Recovery and Restoration Team (SMARRT) Committee for a year. It was made up of representatives from the seafood industry. We were going to work with scientists and biologists to help fix the Bay. It was important for local people to have input. We haven't met since late spring 2019 because of COVID-19.
22. Since the shrimp business stopped supporting me year round, I've had to pick up other jobs. Crabbing was good for a while, but not anymore. Now I also crawfish in the spring up towards Wewahitchka and do woodwork on boats. You can never do one thing year round around here.

23. It's a shame about the Bay closing. I never made much off my living from oysters, but I have some friends over in East Point who were still making some money on oysters, maybe \$90 dollars a day. It's not much money but if you're trying to keep the power on, it's something. And some of these oystermen have no other options because they aren't educated. You can't even join the army anymore if you don't have a high school degree. So, I hated to see the Bay close because there are still a lot of people depending on it.

Pursuant to 28 U.S.C. § 1746, I, Kevin Martina, declare under penalty of perjury that the foregoing is true and correct.

Executed on December 10, 2020

*Kevin Martina*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE ACF BASIN :  
WATER LITIGATION : Case No. 1:18-MI-43-TWT  
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**Declaration of Lynn C. Martina**

I, Lynn C. Martina, of the city of Eastpoint, Florida, do solemnly declare and affirm as follows:

1. I am over the age of 18 and have personal knowledge of the following facts.
2. My family has lived on the Apalachicola Bay for many generations. I've lived in the city of Eastpoint for 56 years, my whole life.
3. We have made a living off Apalachicola Bay for generations. For the last four generations we've run businesses on the same plot of land in Eastpoint, Florida. My grandparents ran a bait and tackle shop until about 1970, when my parents turned it into an oyster processing plant and started a successful wholesale seafood business. I bought my parents out in the late 1990s and renamed the business Lynn's Quality Oysters. My son joined me in my business a few years later.
4. For a little over a decade, business was good. In the late 1990s and early 2000s, we sold about 10,000 60-pound bags of oysters annually. During that time, we paid about twenty-five dollars for a 60-pound bag of oysters.
5. Apalachicola Bay has been famous for its oysters for generations. When I took the business over from my parents, Apalachicola Bay oysters accounted for about 90% of oysters consumed in Florida's oysters and 10% nationally. During the early 2000s, all the oysters we sold were wild and from

Apalachicola Bay. Most of the harvesters that worked for me worked for my parents also.

6. Apalachicola sits on the west coast of the Apalachicola Bay and East Bay is on the eastern side. Both cities are historical fishing villages, there is no industry here apart from seafood. The Bay means everything to the community in Eastpoint - a lot of people used to take their kids out of school early so they could make good money on the water.
7. In the early 2000s, you'd see easily 300 to 500 boats out in the Bay oystering. During that time, the State (FL. Dept. of Ag.) opened part of the Bay for harvesting during the summer and another part in the winter. Even with that limited space for harvesting, the Bay still supported a lot of families around here. Back then, you could go out in the morning and bring in enough to make \$200 by lunch time. The average harvester would bring in around 600-800 pounds of oysters daily.
8. Apalachicola Bay sits between the Apalachicola River and Gulf of Mexico about an hour east of Panama City. The Apalachicola River brings fresh water down to the Bay, and the oysters need a mix of salt and fresh water to thrive. Wet weather helps the mix of water in the Bay, but the oysters need that steady mixture of salt and fresh water all the time. On a good given day, the River should be six to eight feet deep where it meets the Bay. That's what the oysters need for a good mix of salt and fresh water, but that's just not the way it happens anymore. Unfortunately, it is not.
9. The River started getting low fifteen or twenty years ago. Around 2007, the Apalachicola River got really low: it was less than half a foot for years. My understanding of why the River is so low is that the Corps stopped sending fresh water down from Georgia. Now, sometimes we get a lot of water all at once. If Georgia gets flooded out, they open the gates on their dams and we get a monsoon. But that's no good for the oysters, because it's too much fresh water. So, if there's no normal flow we don't get that steady mixture we need for the oysters. My Dad says they need to blow all those dams up and just let the River flow back the way the God intended it to. The River is still so low. My husband and I took a flight over the River in 2018 and we were just amazed at how shallow it is in so many areas.

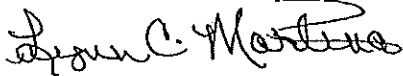
10. Around 2010, there was a perfect storm in the Bay. We'd had less water from the Corps and a couple of really dry years, so we already had fewer oysters than we were used to. The oyster population was already down probably 50%. Then the BP oil spill happened out in the Gulf. Everyone panicked because they thought the oil was going to hit the Bay. The government opened both sides of the Bay for harvesting and said just go get them because the oil is going to kill them anyway. And people did—they just went out and took all the oysters, even the babies. That really hurt our business.
11. After 2010 we couldn't get enough oysters to fill our trucks. I had to sell some of our trucks and we added a retail side to our business where we sell local fish from wholesalers. But oysters weren't the only thing in the Bay suffering: we had fewer fish, crabs and shrimp by then too. So even with the new business, things were really hard. I thought about giving it up, but my son had the idea for making a raw bar. So, in 2013 we stopped the oyster wholesale business and opened up a raw bar.
12. The raw bar has done pretty well, we have loyal customers and a lot of tourists come here. Even though the raw bar has good customers, I'm never going to get rich in this business. The price of wild oysters skyrocketed after 2010, up to 50 dollars a bag for a 60-pound sack of wild oysters. People have also started farming oysters in the Bay using cages, but they're incredibly expensive: I pay 65 cents per oyster now. Of course, these prices have impacted by bottom line. Other mom and pop businesses have closed, but I'm determined to survive.
13. Now we only sell farmed oysters because the government decided to close the Bay to oystering for five years in summer of 2020. Before the Bay was closed, I'd see maybe ten boats at the most, and each boat was limited to two 60-pound bags of oysters. That's not even enough to cover the cost of gas but people still wanted to do it. Oystering is a way of life down here; there's nothing else to do.
14. The oystermen I used to buy from are doing odd jobs now: selling mullet fish and whatever other seafood they can find and doing yard or construction

work. They are just doing whatever they can do to survive while the Bay is closed for oystering.

15.If I could tell the Corps anything, it would be to be fair to us all. By focusing on what Georgia needs, they don't see what they're doing to the economy down here. They are starving the industry out.

Pursuant to 28 U.S.C. § 1746, I, Lynn Martina, declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-05-2020

A handwritten signature in black ink, appearing to read "Lynn C. Martina". The signature is written in a cursive style with a horizontal line above the name.

Lynn C. Martina  
Pres. Lynn's Quality Oysters



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE ACF BASIN :  
WATER LITIGATION : Case No. 1:18-MI-43-TWT  
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**Declaration of Carmen McLemore**

I, Carmen McLemore, of the city of Wewahitchka, Florida, do solemnly declare and affirm as follows:

1. I am over the age of 18 and have personal knowledge of the following facts.
2. The McLemore family has lived in the Apalachicola Region for generations, it is one of the oldest families in the area. I grew up on the Apalachicola River and still live there today, near Wewahitchka. I'm 69 years old.
3. I worked as a Gulf County Commissioner for 16 years, from 1999-2015, and I am very familiar with how much people in my community rely on the whole river system. Now I own a charter and tour company called Cat Daddy Adventures. We work on the Chipola and Apalachicola Rivers, back on the swamp and down in the Bay.
4. In the old days, you could mark your calendar around September-October, when we'd get high water. You could go all the way through the winter months with high water until May. During that time, you could have up to 15 feet of water in the floodplains. Around the first of May the river would drop out and the swamps would empty out for the summers. They were still wet and muddy, but you could walk through most parts.
5. I grew up hard and was raised hard. We always counted on September 15 for high water and it always came. Back then we were loggers. Swamp logging

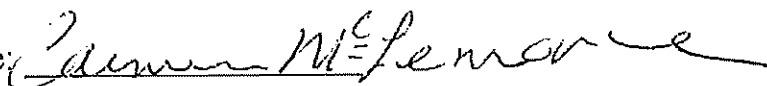
was a very popular way to make a living around here and good money. We'd go back into the swamp during summer months and cut rings around Tupelo ("girdle"). Come September, when the floods came, we'd float logs out of the swamp through the sloughs, all the way out to the river. But in the 1970s the swamps started drying up and now people can't do any swamp logging anymore.

6. My family also relied on the river for food, as many in Gulf County do. I'm a big oyster lover. When he was a kid, September 1 was oyster day. They'd open up the day for harvesting and my family would go down and harvest enough for us all to eat. I was one of 8 kids, so we could get a lot of oysters to feed everyone. That was a big deal for me and local families because we couldn't afford to pay 5 dollars a sack for oysters.
7. The Corps' dredging has ruined the river. They've been moving sand around for most of my life to make way for barges and tugboats. The problem is that they put all the sand right on the edge of the river, so it washed into the swamps and makes it impossible for water to get through. I used to be able to easily cut through sloughs to the river, but now you can only get through during a 15 foot flood. When we have lower water, and that's most of the time, the swamp is nothing but sand. Some of the biggest cuts and creeks through the swamps are totally gone and dry. Even if the Corps sent more water, I worry that it would still have a hard time getting to the swamp unless some of that sand is dug out.
8. The oysters in the Bay are hurting. They don't get enough fresh water, they've been overharvested and predators like conchs have moved into the Bay. But there are some left in some parts of the Bay, so I'm fighting the Bay closure. In Gulf county we have what we call Indian Lagoon. It's technically part of Apalachicola Bay, but it lies to the west of the main Bay and farther from the river. A lot of families in my community harvest there because it's so shallow that commercial harvesters can't get in. But the closure of the bay includes Indian Lagoon and recreational harvesting. I'm trying to get them to open Indian Lagoon for recreational fishing so that families like mine aren't cut off from the oysters. We can't afford to buy the farm raised oysters for a dollar a piece.

9. I'd like to see our river made right. I don't think we'll ever get it back to how it was before the Corps took over, but I wish they'd let nature take its course. Why not blow up the dams and let the whole system right itself.

Pursuant to 28 U.S.C. § 1746, I, Carmen McLemore, declare under penalty of perjury that the foregoing is true and correct.

Executed on December 30, 2020

Signature: 

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE ACF BASIN :  
WATER LITIGATION : Case No. 1:18-MI-43-TWT  
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**Daniel Taunton Declaration**

I, Daniel Taunton, of the city of Wewahitchka, Florida, do solemnly declare and affirm as follows:

1. I am over the age of 18 and have personal knowledge of the following facts.
2. The Taunton family is one of the oldest and largest in Wewahitchka, Florida. I am the 6<sup>th</sup> generation of my family to have lived in the Apalachicola river basin since we arrived among the first settlers in the area. Just like the generations before me, who came here by river, the swamps and lowlands of the Apalachicola have always been, and will always be a central part of my life. I grew up working, hunting, fishing, camping, and at times even living in a primitive shelter in the swamp.
3. The swamp was an integral part of my growing up. We supplemented our dinner table with food hunted and caught in the swamp, including crawfish, catfish, bream, turtles, and bullfrogs. I recently attended the 74<sup>th</sup> annual family camping trip on the river. Due to the pandemic, and bad weather, we had a small turnout of only about 75 this year. Many, like myself, have never missed a year in our entire lives. My late father passed last year the morning we were to leave after a two year battle with diabetes and heart conditions in which he had lost both legs. We had planned to carry him to camp, and in keeping with tradition, had to make the trip without him.
4. Our family has depended on the swamp one way or another for generations. We were arguably the first family to produce and sell Tupelo honey, which can only be produced from the tupelo trees found in the river swamp. We

have also spent generations logging deadhead and standing cypress in the swamps. Our first sawmill was made of wood and used to saw the cypress used to build a dozen or more family dwellings. The swamp around the Apalachicola River is part of who we are.

5. My family is not unusual in its reliance on the swamp, many people I know around here lived on the swamps and looked to the swamps for food and their livelihood. Some of my friends rely entirely on the swamp and live on the water.
6. I owned and operated a small logging company for about 10 years specializing low impact recovery of sinker cypress in environmentally sensitive areas from Wewahitchka to Chattahoochee. I also have expertise in dredging and river management.
7. The Apalachicola River is one of the most diverse and ecologically unique river systems in the country. The highest concentration of reptiles and amphibians anywhere in this hemisphere excepting in the Amazon, along with many indigenous species of plants and animals are found here. With this diversity comes a wealth of resources that people have relied on for their livelihood for generations.
8. Wewahitchka is a traditional a fishing town about 55 miles south Jim Woodruff Dam. The city is famous for Dead Lakes fishing. The "Dead Lakes" Recreation Area is just north of the city. Historically, the lake was made up of about 6,000 acres of flooded cypress swamp close to where the Chipola River connects with the Apalachicola River. The fresh water fishing in the Dead Lakes is a huge tourist draw for the town.
9. The swamp is basically a shallow lake system of sloughs, tributaries that are regularly flooded by the Apalachicola River. The swamp is full of what's called floodplain forests of Cyprus and Tupelo trees that need water on their roots to survive. Growing up it was normal for the water levels in the swamp to go up and down with the seasons, but there was some amount of water in the swamp most of the time.

10. The swamp has undergone a lot of changes since I was a kid. For decades the Army Corps of Engineers ("Corps") operated a dredge on the river to facilitate barge traffic and maintain a 9' deep channel. This practice, along with on site spoilage areas and a practice called mechanical redistribution (they would dredge sand out on low water, and then push it back in on high water) cut many of the tributaries off from the river in periods of low water.
  
11. In the late 1990s, I saw very little industry on the River, but the Corps was still dredging. It just didn't make sense to spend so much money on the river and damage the whole system when hardly any big boats were using it. My late friend Marilyn Blackwell (aka swamp woman to many) and I created Help Save the Apalachicola River Group to challenge the Corps' dredging practices. Thanks to help from friends and family as well as other organizations, including the Riverkeepers, we finally prevailed and the dredge permit was abandoned. But, when the Corps stopped dredging the River, they also stopped sending the water needed for industrial vessels to pass through it.
  
12. Unfortunately, all the sand moved around during years of dredging is still blocking a lot of the waters' routes into the swamps around Wewahitchka. Many tributaries and sloughs have filled up with sand. For example, we used to need about 8 feet of water in the River to fill up the swamp near my house. Now you need 10-12 feet to get water back to the swamps because the sand along the Rivers' banks is so high in some places. When the water hits 14 feet the banks of the swamp flood.
  
13. I grew up on the banks of the Chipola River, a tributary of the Apalachicola about a mile from the main channel, in what used to be one of the largest swamps in the area. 20 years ago, the swamps and sloughs around our house were deep enough to dive into, at least 8 feet and full of fish, frogs, and crawfish. It was usually deep enough to run a motor boat from the house to the river year round. Because of sand blocking the River and the small amounts of water coming down from Georgia, the area around my house is just a big sand flat now, unnavigable most of the year and largely devoid of fish and other wildlife.

14. Further compounding the problems caused by dredging is the unnatural way the Corps manages the little water it does send. There seems to be little, if any consideration for managing the water in a way that mimics the natural seasonal cycles of high and low water. Because Woodruff Dam releases water at unnatural times and in unnatural amounts: we go from no water one minute to a flood the next. This unnatural, and many times unseasonal water fluctuation creates problems in many ways. For example, around my house the banks of the swamp flood at about 14 feet. During hurricane season, we sometimes get huge dumps of waters from Georgia, when the lakes up there get too high. When that happens, the sudden push of water floods around my house and the banks of the swamp so fast that the deer, racoons and other animals are trapped in the swamps and drown. The lack of water during fish spawning in spring often blocks access to the tributaries where eggs are safe from larger fish in the channels. Add to that the years that the water suddenly falls at an untimely and unnatural rate leaving eggs on dry land or the entire years hatchery in puddles where predators make short work of them, and it is no surprise that the populations of fish and the many other animals that rely on them for food have declined dramatically over my lifetime.
15. Without a steady amount of water coming down the River, the Tupelo trees have also suffered. The Tupelo is a true swamp tree, they require water over their roots and rely on some amount of water being in the swamp year round. Which is something that we used to almost always have in the swamps. Now the whole swamp is dry much of the time. When we do get water, it's often a flood and then quickly returns to dry swamp again setting up a feast or famine cycle that continues to contribute to the decline in numbers of Tupelo and effects the already delicate flowering cycle necessary to produce honey.
16. Flooding caused by the Corps' water management also hurts the town of Wewahitchka. It's a low lying town, and has been substantially flooded dozens of times in my life
17. The swamps also provide necessary nutrients and organisms vital to marine life in the river and Apalachicola Bay. Normally, in the spring or late winter we'll get a period of high water from the river that flushes out the swamps. As the water levels fall, the water will become really swift inside the

swamps' banks and carry out the organic material from rotting leaves and trees in the swamp and deposit it in the river channel. Those deposits from the swamp feed species that we rely on—like oysters, shrimp and fish—downstream in the Apalachicola Bay. That's the normal cycle. When the Corps sends too little water down to reach the swamps, the leaves and dirt don't ever reach the River. When the Corps floods the swamps, the water just washes over the swamp onto the banks. Because there's no gradual rising and falling of water through the swamp in the spring anymore, the swamp bed doesn't sit covered in water like it used to. Without time to breakdown and loosen up, all that leaf cover just stays put and doesn't feed the Bay.

18. With less water coming through in unnatural rhythms, the swamps also don't feed us the way they used to. My Dad's old house is on a huge piece of swampland near Honeyville. There's nothing but swamp around his house, maybe 2 miles wide and five miles long. A few major tributaries came near the house in the spring, and just filled the whole area with water. When the water goes back down, a few beaver dams near the house block enough to form a big lake. Until about 15 years ago, that lake was full of fish every year. You'd have 100 people fishing in that lake regularly and catching enough to feed their families for months. Now, there's less water and so few fish I seldom see anyone fishing.

19. I've seen a drastic decline in wildlife of all kinds throughout the swamp near Wewahitchka. When I was a kid you could run a hundred hook line and catch twenty in a day. Now many days I catch nothing on a hook line. I'd say that fish populations have declined 90-95% in the swamp over the last 20 years and countless other species of animals that once thrived on their abundance have followed. This change has really hit Wewahitchka hard because the fishing has gone from amazing to nothing. It's become a dead in town in the middle of nowhere, because the world famous Dead lake fishing is gone.

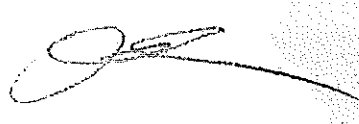
20. The people who live around here rely on the swamps. For fishing, hunting, living, recreation, we all use the swamp for our livelihoods and to enrich our family lives to some extent. The Corps' mismanagement of water down the Apalachicola River is taking away the way of life for all the people who live



in this area, many of which regard it as a part of who they are in a way I can only describe as spiritual. The swamps are drying out and the fishing is almost gone. The impact of the Corps and Georgia's water practices in my lifetime alone are in many ways both incalculable and unnecessary, and in every way both inexcusable and unsustainable.

Pursuant to 28 U.S.C. § 1746, I, Daniel Taunton, declare under penalty of perjury that the foregoing is true and correct.

Executed on January 8, 2021.

A handwritten signature in black ink, appearing to read "Daniel Taunton", is written over a rectangular area of the document that has been shaded with a fine dot pattern.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA**

IN RE ACF BASIN :  
WATER LITIGATION : Case No. 1:18-MI-43-TWT  
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**Thomas L. Ward Declaration**

I, Thomas L. Ward, of the city of Apalachicola, Florida, do solemnly declare and affirm as follows:

1. I am over the age of 18 and have personal knowledge of the following facts.
2. Apart from time away for college, I have lived in Apalachicola my all 59 years of my life. I am a third-generation oyster dealer, but that's not unusual around here: I know fourth and fifth-generation oystermen whose families have been oystering since the Civil War. I've been selling oysters for more than 30 years.
3. My family has lived in and around Apalachicola for more than 80 years and we have relied on Apalachicola Bay oysters as our livelihood for generations. My grandmother shucked oysters and grandfather was a tugboat captain, oysterman and shrimper. My mother's side of the family has owned a local oyster business called 13 Mile Oyster Company since the early 1900s. In 1957, my parents bought it. In the early 1970s my father changed the name to Buddy Ward & Sons Seafood, but it is still commonly known as 13 Mile.
4. We get started in the business young in my family. I started working in the oyster business as a child. Along with my four brothers, I swept the floors, fished, and shucked oysters. After college I moved back home and hauled seafood for my dad. My three children also grew up working in the oyster house, and two of them still work for the business. It makes me proud to see

my kids come back to this community and take pride in this industry and their heritage.

5. Our company is known as 13 Mile because that's how far west it is from Apalachicola, in what used to be a little fishing village full of shot gun houses. Growing up, 40-60 families that lived there and fished and harvested oysters out of the waters around 13 Mile. We were all poor. Those families moved out in the 1970s and 80s. It was a little part of heaven. Unfortunately, the buildings that housed 13 Mile were destroyed by Hurricane Michael in 2018, but we still have our oyster leases and a shrimp house in Apalachicola.
6. We have held 250 acres of oyster leases for about 60 years, which is the largest private lease hold in Apalachicola. No one but oystermen I hire harvest on our leases.
7. We used to employ about 15-20 people, shuckers, drivers and delivery men. We also had about 35 oystermen who harvested on our leases. As the oysters started to die, that number got cut in half, then went down to 4 or 5, then none after the hurricane.
8. I have been involved with the management of our community's oysters for a long time. In addition to running 13 Mile, I used to serve as the President of the Apalachicola Bay Oyster Dealers Association, a local trade association of oyster dealers in and around Franklin County, Florida.
9. Oystering is important to the culture of Apalachicola. We host the yearly Florida Seafood Festival here, which is the oldest maritime event like that in the state. Every year the festival crowns a "King Retsyo," which is oyster spelled backwards. My son T.J. and I have both been nominated, and my daughter Sara was dubbed Miss Florida Seafood in 2008.
10. We used to have the best oysters in the world, and 13 Mile made a good living selling them. Apalachicola oysters are plump and have an exceptional taste, unlike the sweeter, less salty oysters from the Pacific Northwest or anywhere else. I was very proud of that.

11. The oyster population started in decline in 2008 but bottomed out pretty hard in 2013. I attribute the declining oyster population to not enough freshwater coming into the Apalachicola Bay from upstream.
12. I've spent my life on the water in Apalachicola Bay, and I've seen it change over the years. It's obvious just looking at the Bay that it isn't healthy because the water is clear. Oysters like brackish, brown water—that's how you know we're getting enough fresh water from the river. For a long time now, the water's been clear, which means that the Bay's salinity is too high.
13. Salinity either kills the oysters outright or saltwater predators do. What a lot of people don't understand is that when the salinity level went so high in the Bay it was the same as 5 or 10 miles offshore in the Gulf. And then you had predators—Oyster Drills, Southern Conch—annihilate all the oyster beds. I've never seen more conchs in the Bay as we've had for the last ten years or so. They've eaten so many of our oysters that there's nothing left on my leases.
14. Oysters were 99% of 13 Miles' business before the crash, and our oyster business has lost 80-90% of our customer base since then. Before 2013, 70% of our oysters sold outside Franklin county. People would sometimes travel 100 miles for our oysters. From 2013 to 2016 we sold about 10% of our oysters outside the county, but by 2016 we'd stopped selling any outside Apalachicola. There just weren't enough oysters to sell.
15. There were many other oyster dealers like me around the Bay before the 2012 collapse, but most of them have been forced out of business in recent years. There are maybe 10 dealers remaining in all of Franklin county.
16. We still have Buddy Ward & Sons Seafood in Apalachicola; it's just selling shrimp now. In the years since the oysters crashed, I've taken over a shrimp house and 4 shrimp boats in Apalachicola, where we employ about 12 shrimpers and 6 people in the factory. Our shrimp plant is the last large shrimp house left in Franklin County. We've also opened a retail market called 13 Mile Retail, which employs about half a dozen people. My son also has a small oyster farm where we raise oysters in baskets. Even with all

we've done to adapt to the changes in the Bay, I'm not sure Buddy Ward & Sons will survive.

17. We have three types of shrimp in Apalachicola Bay; white, browners and hoppers (pink). The White Shrimp have suffered some declines with low flows from the river because they live and hatch their young in the marshes. In drought years the White Shrimp numbers are really low. Since we don't get much water down from Georgia, the White Shrimp really only do well when we get a lot of rain. Their numbers have been a little better the last 2 years because we've had more rain.
18. Apart from my own business, the community has suffered from the oyster crash. Oystering defines the communities around here and is passed down from generation-to-generation. It's hard work for not a lot of pay, but it's an honest living. Once you've worked on the water, nothing else satisfies. The rest of the local economy has suffered to. When you have 200 oystermen harvesting they buy gas, food, gloves, whatever they need on the water. None of that is happening now.
19. In the years since the crash, the Apalachicola Bay Oyster Dealers Association tried to help. We advocated closings parts of the Bay to oyster harvesting each year so that the oysters could recover.
20. In my opinion, the State should have shut the Bay after the decline really picked up in 2010. Maybe if they'd closed it then it could have recovered. Instead, they left it open. Well, oystermen were desperate for a catch, so every time the Bay would start putting out more oysters they'd get overharvested. I stopped all my community involvement trying to rebuild the oyster population after that.
21. The oysters haven't been able to recover from the 2012 crash, and I'm worried that the industry will be gone for good. Now that the Bay is finally shut, it still needs fresh water to recover. I haven't harvested oysters from my beds in years and have seen no real improvement. If we do not have more freshwater from upstream for the oyster population to recover, we will lose not only our ability to make a living, but we will lose our way of life. Shame what's happened here.

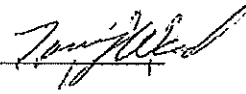
22. All the people from Georgia love to come to Apalachicola and fish and eat oysters. They can't seem to understand why there are no Apalachicola oysters for sale.

23. We need the Corps, Alabama, and Georgia to compromise to save the Bay. We aren't asking for everything, just a compromise somewhere in the middle. If we get a little bit maybe it'll help a whole lot.

24. I've hated to see the Bay fall on my watch. That's a bad thing to pass down to your children.

Pursuant to 28 U.S.C. § 1746, I, Thomas L. Ward, declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-23-20

Signature:  (Thomas L. Ward)

# Exhibit 2

## Publicly Available Data

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**Table 1, County & State Poverty Line Statistics: 2014-2018**

	Persons living below poverty line
<b>Florida</b>	<b>12.7%</b>
Franklin County	22.8%
Gulf County	20.3%
Liberty County	23.8%
Calhoun County	21.3%
Gadsden County	23.6%
Jackson County	23.5%
<i>Georgia</i>	<i>13.3%</i>
<i>Fulton County (Atlanta)</i>	<i>13.5%</i>
<i>Forstyth County (Lake Lanier)</i>	<i>15%</i>
<i>Hall County (Lake Lanier)</i>	<i>13.2%</i>
<i>United States</i>	<i>10.5%</i>

Source: U.S. Census Bureau, *Quick Facts*  
 (<https://www.census.gov/quickfacts/fact/table/US/PST045219>)

**Table 2, County Population Changes: 2000-2019**

County	2000 Population	2010 Population	% Change from 2000-2010	2019 Estimated Population	% Change from 2010-2019
Franklin County	9,829	11,549	17.5%	8,772	4.9%
Gulf County	14,560	15,863	8.9%	13,082	-17.5%
Liberty County	7,021	8,365	19.1%	8,772	4.9%
Calhoun County	13,017	14,625	12.4%	14,067	-3.8%
Gadsden County	45,087	46,389	2.9%	46,277	-0.2%
Jackson County	46,755	49,746	6.4%	46,969	-5.6%
<i>Florida</i>	<i>15,982,827</i>	<i>18,801,332</i>	<i>17.6%</i>	<i>21,208,589</i>	<i>12.8%</i>

Source: Enterprise Florida (<https://www.enterpriseflorida.com/data-center/florida-communities/floridas-counties/>)  
 \*detail relevance, discrepancy

**Table 3, Apalachicola Environmental Justice Screen- 1 mile buffer**

Category	Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
Demographic	Demographic Index	33%	41%	44	38%	50	36%	55
Demographic	Minority Population	31%	45%	39	38%	49	39%	50
Demographic	Low Income Population	36%	36%	53	37%	51	33%	61
Demographic	Linguistically Isolated Population	0%	7%	29	3%	51	4%	45
Demographic	Population with Less Than High School Education	18%	12%	74	13%	70	13%	74
Demographic	Population under Age 5	5%	5%	50	6%	45	6%	43
Demographic	Population over Age 64	22%	19%	71	16%	79	15%	82

Source: EPA EJ Screens: <https://ejscreen.epa.gov/mapper/>**Table 4, East Point Environmental Justice Screen- 1 mile buffer**

Category	Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
Demographic	Demographic Index	27%	41%	31	38%	37	36%	44
Demographic	Minority Population	10%	45%	11	38%	18	39%	21
Demographic	Low Income Population	44%	36%	66	37%	63	33%	71
Demographic	Linguistically Isolated Population	0%	7%	29	3%	51	4%	45
Demographic	Population with Less Than High School Education	20%	12%	78	13%	75	13%	77
Demographic	Population under Age 5	5%	5%	46	6%	41	6%	39
Demographic	Population over Age 64	21%	19%	69	16%	77	15%	80

Source: EPA EJ Screens: <https://ejscreen.epa.gov/mapper/>

**Table 5, Wewahitchka Environmental Justice Screen- 1 mile buffer**

Category	Selected Variables	Value	State Avg.	%ile in State	EPA Region Avg.	%ile in EPA Region	USA Avg.	%ile in USA
Demographic	Demographic Index	35%	41%	47	38%	53	36%	57
Demographic	Minority Population	32%	45%	41	38%	51	39%	52
Demographic	Low Income Population	38%	36%	57	37%	54	33%	64
Demographic	Linguistically Isolated Population	0%	7%	29	3%	51	4%	45
Demographic	Population with Less Than High School Education	16%	12%	71	13%	66	13%	70
Demographic	Population under Age 5	7%	5%	72	6%	68	6%	65
Demographic	Population over Age 64	13%	19%	37	16%	41	15%	45

Source: EPA EJ Screens: <https://ejscreen.epa.gov/mapper/>

**Table 6, Franklin County Commercial Landing Data: Oysters**

Year	Pounds Harvested	No. Trips	Average Price per Pound	Estimated Value
2005	1,261,618	12,671	1.98	2,493,735
2006	2,127,044	22,644	2.26	4,802,291
2007	2,701,362	29,478	2.23	6,018,891
2008	2,262,591	27,703	2.18	4,939,387
2009	2,695,690	39,942	2.43	6,551,027
2010	1,947,199	32,518	2.93	5,698,864
2011	2,812,467	46,503	2.78	7,816,559
2012	3,037,217	53,921	2.93	8,897,465
2013	1,065,811	25,964	4.61	4,912,392
2014	608,538	18,515	5.55	3,376,427
2015	518,204	18,317	5.81	3,009,159
2016	374,051	16,462	6.94	2,595,146
2017	268,291	14,356	8.04	2,156,942
2018	5,8324	2,878	7.80	455,039

Source: Florida Fish and Wildlife Conservation Commission, *Commercial Fisheries Landings Summaries*, <https://public.myfwc.com/FWRI/PFDM/ReportCreator.aspx>

**Table 7, Franklin County Commercial Landing Data: Gag Grouper**

Year	Pounds Harvested	No. Trips	Average Price per Pound	Estimated Value
2005	466,731	855	2.7	1,259,995
2006	205,742	860	2.96	609,661
2007	224,084	946	3.35	751,645
2008	292,196	818	3.41	996,577
2009	134,258	678	3.42	458,681
2010	82,268	390	3.77	310,417
2011	40,567	221	4.11	166,769
2012	75,219	264	4.2	315,901
2013	77,304	195	4.24	327,954
2014	77,209	285	4.25	328,322
2015	83,327	277	4.48	373,276
2016	198,035	336	4.56	902,838
2017	92,041	346	4.65	428,163
2018	113,940	268	5.02	571,714

Source: Florida Fish and Wildlife Conservation Commission, *Commercial Fisheries Landings Summaries*, <https://public.myfwc.com/FWRI/PFDM/ReportCreator.aspx>

**Table 8, Franklin County Commercial Landing Data: Red Grouper**

Year	Pounds Harvested	No. Trips	Average Price	Estimated Value
2005	423,608	835	2.06	873,877
2006	558,666	932	2.4	1,341,402
2007	645,390	1,015	2.52	1,628,517
2008	630,007	854	2.43	1,529,149
2009	489,870	749	2.44	1,196,280
2010	198,425	430	2.69	533,993
2011	409,651	323	2.73	1,117,381
2012	472,452	318	2.74	1,296,832
2013	335,092	273	2.98	999,932
2014	377,383	326	3.35	1,263,912
2015	248,790	338	3.37	839,526
2016	239,429	338	3.54	848,689
2017	162,106	336	3.8	616,236
2018	168,065	275	4.15	696,962

Source: Florida Fish and Wildlife Conservation Commission, *Commercial Fisheries Landings Summaries*, <https://public.myfwc.com/FWRI/PFDM/ReportCreator.aspx>

**Table 9, Franklin County Commercial Landing Data: Pink Shrimp**

Year	Pounds Harvested	No. Traps	Average Price per Pound	Estimated Value
2005	516,236	219	2.05	1,056,423
2006	509,172	181	1.92	977,012
2007	240,358	78	2.06	496,005
2008	133,310	84	2.05	273,355
2009	231,283	73	1.8	416,350
2010	183,315	106	2.11	386,790
2011	147,080	48	2.4	353,125
2012	22,375	10	2.37	53,033
2013	228,146	103	2.59	589,953
2014	216,113	233	3.23	697,694
2015	302,349	181	2.7	817,478
2016	281,246	125	2.22	625,364
2017	254,973	222	2.76	704,354
2018	160,119	122	2.54	406,770

Source: Florida Fish and Wildlife Conservation Commission, *Commercial Fisheries Landings Summaries*, <https://public.myfwc.com/FWRI/PFDM/ReportCreator.aspx>

**Table 10, Franklin County Commercial Landing Data: White Shrimp**

Year	Pounds Harvested	No. Traps	Average Price per Pound	Estimated Value
2005	951,753	974	1.16	1,105,329
2006	315,682	413	1.61	509,403
2007	39,306	84	1.39	54,576
2008	226,874	282	1.05	238,174
2009	273,278	338	0.87	236,514
2010	318,055	397	1.4	444,204
2011	205,496	449	2.52	518,219
2012	99,882	281	2.2	220,082
2013	423,724	442	1.68	713,783
2014	65,146	144	2.73	177,950

2015	460,408	615	1.4	643,206
2016	376,271	766	1.79	672,721
2017	105,984	344	2.7	286,459
2018	177,888	423	1.87	333,166

Source: Florida Fish and Wildlife Conservation Commission, *Commercial Fisheries Landings Summaries*, <https://public.myfwc.com/FWRI/PFDM/ReportCreator.aspx>

**Table 11, 2014-2018 Franklin County Landing Data: Hard Shelled Blue Crabs**

Year	Pounds Harvested	No. Traps	Average Price per Pound	Estimated Value
2014	318934	573	1.12	357513
2015	291971	606	1.12	328011
2016	241205	461	1	242302
2017	226710	586	1.14	258606
2018	153938	496	1.43	220183

Source: Florida Fish and Wildlife Conservation Commission, *Commercial Fisheries Landings Summaries*, <https://public.myfwc.com/FWRI/PFDM/ReportCreator.aspx>

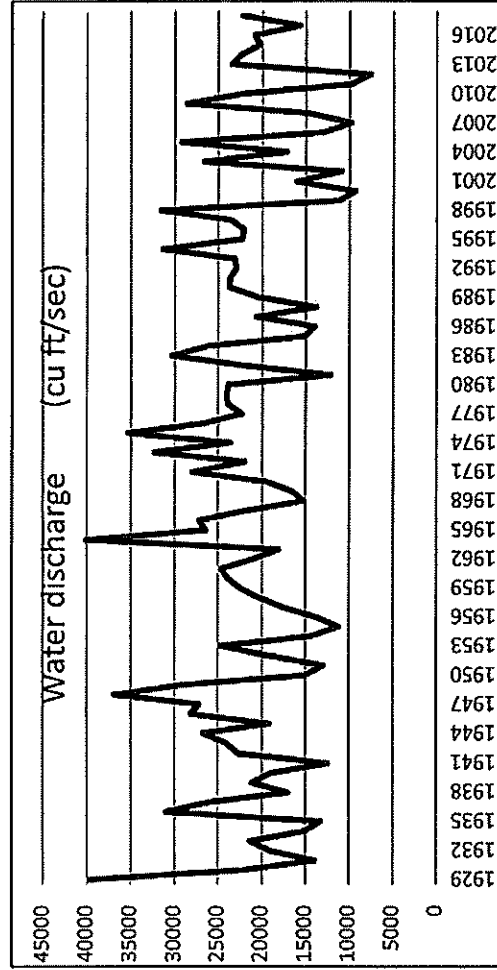
**Table 12, 1995 v. 2018 Franklin County Commercial Landing Data**

Year	Species	Pounds Harvested	No. Traps	Average Price per Pound	Estimated Value
1995	Gag Grouper	231,774	451	2.08	483,062
2018	Gag Grouper	113,940	268	5.02	571,714
1995	Oysters	1,031,043	12731	1.22	1,261,328
2018	Oysters	58,324	2878	7.8	455,039
1995	Red Grouper	357,345	443	1.63	581,445
2018	Red Grouper	168,065	275	4.15	696,962
1995	White Shrimp	811,482	1671	1.9	1,543,415
2018	White Shrimp	177,888	423	1.87	333,166

Source: Florida Fish and Wildlife Conservation Commission, *Commercial Fisheries Landings Summaries*, <https://public.myfwc.com/FWRI/PFDM/ReportCreator.aspx>

Table 13, ACF Water Discharge (cu ft/sec): 1950-2018

1950	15100	21020	1974	23590	1986	13990	1998	31500	2010	22160
1951	12950	18110	1975	35340	1987	20590	1999	11230	2011	9796
1952	19200	40040	1976	26690	1988	13740	2000	9341	2012	7599
1953	24710	26410	1977	22230	1989	20420	2001	16060	2013	23430
1954	14380	27180	1978	23860	1990	23650	2002	10880	2014	22330
1955	11220	21890	1979	23970	1991	23620	2003	26600	2015	20240
1956	13790	15190	1980	23800	1992	22870	2004	17240	2016	20820
1957	17540	16550	1981	12080	1993	23110	2005	29240	2017	15680
1958	20210	19470	1982	22120	1994	31330	2006	13090	2018	22160
1959	22370	27910	1983	30290	1995	22280	2007	9722		
1960	23880	21890	1984	26110	1996	21960	2008	14610		
1961	24640	32260	1985	15110	1997	23570	2009	28630		



Source: [https://waterdata.usgs.gov/nwis/annual?referred\\_module=sw&search\\_site\\_no=02358000&format=sites\\_selection\\_links](https://waterdata.usgs.gov/nwis/annual?referred_module=sw&search_site_no=02358000&format=sites_selection_links)

**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
MEETING DATE: DECEMBER 6, 2022**

**SUBJECT:** North Florida African American Corridor Project's Request for A Letter of Support – National Trust for Historic Preservation

**AGENDA INFORMATION:**

**AGENDA LOCATION:** New Business  
**ITEM NUMBER:** 2  
**DEPARTMENT:** HCA  
**PRESENTER:** Willie Tolliver

**RECOMMENDED MOTION AND REQUESTED ACTIONS:**

NFAAC is requesting that the City Commission grant its approval for the appropriate City official to write a letter stating that the grantee (NFAAC) has permission to undertake the **African American Cultural Heritage Action Fund** grant-funded project in the Center for History, Culture and Arts. This action is required because the City of Apalachicola is the owner of the HCA property.

**FUNDING SOURCE:**

National Trust for Historic Preservation – The African American Cultural Heritage Fund: The range for the grants is \$50,000 to \$150,000. NFAACP is requesting funds to hire a part-time curator for HCA.

**ATTACHMENTS:**

Draft Letter

**STAFF'S AND RECOMMENDATIONS:** Approval



**Mayor**  
Brenda Ash

**Commissioners**  
Anita Grove  
Adriane Elliott  
Despina George  
Donna Duncan



# CITY OF APALACHICOLA

192 Coach Wagoner Boulevard . Apalachicola, Florida 32320 .  
850-653-9319 . Fax 850-653-2205 . [www.cityofapalachicola.com](http://www.cityofapalachicola.com)

**City Manager**  
Travis Wade

**Finance Director**  
Mark Gerspacher

**City Clerk**  
Deborah Guillotte

**City Attorney**  
Dan Hartman

**December 10, 2022**

**National Trust for Historic Preservation  
African American Cultural Heritage Action Fund**

**To Whom It May Concern:**

The City of Apalachicola is the owner the Center for History, Culture, and Arts (HCA) located at 86 Water Street in Apalachicola Fla. Through an action taken by the City Commission of the City of Apalachicola, the HCA has been leased to the North Florida African American Corridor Project (NFAAC) to manage. Their management role includes curating and installing exhibits at HCA.

NFAAC has the City of Apalachicola's permission to implement an African American Cultural Heritage Action Fund grant at HCA if the National Trust were to award such a grant.

**Thank you,**

---

**Brenda Ash, Mayor**

**National Trust for Historic Preservation – Preservation Leadership Forum  
African American Cultural Heritage Action Fund**

Mayor Ash, and Commissioners, the North Florida African American Corridor Project (NFAAC) comes before you this evening asking for a **letter of support** for our application to the National Trust for Historic Preservation for an African American Cultural Heritage Action Fund grant.

The excerpted content below comes directly from the website of the National Trust for Historic [Preservation](#) and offers an explanation of why the National Trust launched the African American Cultural Heritage Action Fund in 2017:

**“Why the Action Fund, and Why Now**

Black history is American history, and it is our responsibility to cultivate spaces to engage with it. We must ensure that everyone has the opportunity to draw inspiration and wisdom from African American historic places.

We must tell stories that reflect our complex and difficult past—and help us shape a better collective future. Though America may be rich in diverse history, our society has often been poor in representing that history and in funding its protection, conservation, and recognition. That’s why the National Trust for Historic Preservation actively invest in and restore cultural assets that hold exceptional cultural value.

The African American Cultural Heritage Action Fund is about making room—within our understanding of history, preservation, and social justice—for a movement that uses preservation as a force for enacting positive social change. In modeling this approach and in partnering with other organizations around the country, we challenge ourselves to realize equity-driven outcomes that benefit all Americans.”

**NFAAC’s “ask” of the City Commission of Apalachicola.**

Now that NFAAC is the management agent for the Apalachicola Center for History, Culture and Arts (HCA), we would like to hire a senior level part-time curator to lead in designing exhibits for HCA that accomplish the goal of “cultivating spaces to tell stories that reflect our country’s complex and difficult past and help us shape a better collective future.”

**African American Cultural Heritage Action Funds** may be used to accomplish the following:

- Hiring new senior/director-level or leadership staff to increase the organization’s preservation stewardship and management capacity (funds can be used to support salaries and benefits for grant-supported staff.) *Applicants can request up to \$150,000 for a two-year period.*

NFAAC is requesting that the City Commission, acting as the property owner of the HCA building, grant us permission to apply for funds to hire a part-time curator

for HCA. This curator/director will provide leadership for NFAAC's management of the building, they will curate exhibits, and they will train HCA staff and volunteers.

Please see below the requirement for grant applicants who do not own the property in which the project is carried out.

- If the project involves a property, the grant recipient must either own the property or have a written agreement with the property owner stating that the grantee has permission to undertake the grant-funded project.

**City Commission's Action is Requested:**

NFAAC is requesting that the City Commission grant its approval for the appropriate City official to write a letter stating that the grantee (NFAAC) has permission to undertake the **African American Cultural Heritage Action Fund** grant-funded project in the Center for History, Culture and Arts. This action is required because the City of Apalachicola is the owner of the HCA property.

**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: Dec. 6, 2022**

**SUBJECT:** Apalachicola Margaret Key Library Advisory Board Appointment

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:** 3  
**Department:** Apalachicola Margaret Key Library  
**Presenter:** Rachel Chesnut, Philaco President

**BRIEF SUMMARY:** Recommendation for appointment as alternate to the Apalachicola Margaret Key Library (AMKL) Advisory Board will be presented by Philaco according to City Resolution 2017-11

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** Board action is requested to appoint Dolores Croom as the alternate to the AMKL Advisory Board.

**FUNDING SOURCE:** N/A

**ATTACHMENTS:** City Application

**STAFF'S COMMENTS AND RECOMMENDATIONS:** Approval

BOARD/COMMITTEE CANDIDATE QUESTIONNAIRE

REQUESTED BOARD/COMMITTEE APPOINTMENT

Library Board

APPLICATION DATE

8/15/22

DATE APPOINTED \_\_\_\_\_

NAME:

Dolores Hayward-Croom

MAILING ADDRESS:

P.O. Box 105

PHYSICAL ADDRESS:

233 12th Street

CELL#:

850.653.5943

HOME#:

- N/A -

EMAIL:

dolorescroom64@gmail.com

PLACE OF EMPLOYMENT:

Retired

WORK#:

N/A

1. HOW LONG HAVE YOU BEEN A RESIDENT OF THE CITY OF APALACHICOLA?

54 years

2. WHY ARE YOU INTERESTED IN SERVING ON THIS BOARD/COMMITTEE?

I was Media Specialist at the Franklin County School before retiring. I have a great love for reading, interacting with the community, and I love our local library.

3. WHAT DO YOU FEEL YOU CAN CONTRIBUTE BY SERVING ON BOARD/COMMITTEE?

I believe I can share some insight from my experience from working as the Media Specialist at Franklin County School as well as simply being an advocate in the community for our Wonder Library.

4. DO YOU HAVE ANY EXPERIENCE BY PREVIOUSLY SERVING ON ANY CITY, COUNTY, OR OTHER GOVERNMENTAL BOARDS? IF SO, WHICH BOARDS AND HOW LONG?

I currently serve on the Parks and Recreation Board. Yes I enjoy it and believe we are making a difference in our community.

5. HAVE YOU ATTENDED ANY CITY MEETINGS? IF SO, WHICH ONES?

Yes I've attend city Commission meetings. I can't list each meeting that I've attended. Never knew I'd have to remember them, however since the pandemic I've been attending via Zoom.

6. WILL YOU BE ABLE TO CONTRIBUTE THE NECESSARY TIME TO PROPERLY RESEARCH ISSUES AND BE AVAILABLE TO ATTEND SCHEDULED MEETINGS?

*Yes*

7. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S LAND DEVELOPMENT CODE?

*No*

8. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S COMPREHENSIVE PLAN?

*Yes*

9. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S HISTORIC GUIDELINES?

*No*

10. DO YOU HAVE ANY EXPERIENCE IN CONSTRUCTION, PLANNING, LAND USE, OR ARCHITECTURE? IF SO, HOW LONG?

*No. I do not.*

11. IF APPOINTED, YOU WILL BE REQUIRED BY LAW TO FOLLOW THE SUNSHINE LAW. HAVE YOU READ AND/OR FAMILIAR WITH THE SUNSHINE LAW?

*I am familiar with the Sunshine Law.*



SIGNATURE

*Dolores Hayward-Croom*

PRINTED NAME

**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 6, 2022**

**SUBJECT:** Tree Committee Appointment

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:** 4  
**Department:** Administration  
**Presenter:** Travis Wade, City Manager

**BRIEF SUMMARY:** The Tree Committee would like to fill two vacant member positions to the board.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To appoint two vacant Tree Committee members to the current board.

**FUNDING SOURCE:** None.

**ATTACHMENTS:** List of current Tree Committee Board Members and Candidate Questionnaires

**STAFF'S COMMENTS AND RECOMMENDATIONS:** Staff recommends Josh Fitzhugh and Samuel Berkheiser

**TREE COMMITTEE**  
**UPDATED 8/19/22**

**Dennis Winterringer - Chair**

117 8<sup>th</sup> Street

Apalachicola, FL 32320

Home: 850-370-5086

[dwinterringer@mediacombb.net](mailto:dwinterringer@mediacombb.net)

Pamela Richardson – 11/2017

P. O. Box 906, 203 9<sup>th</sup> Street

Apalachicola, FL 32320

Cell: 413-657-3621

[stoneoak@2003@yahoo.com](mailto:stoneoak@2003@yahoo.com)

Scott Davis – 2/2022

244 Prado

Apalachicola, FL 32320

Cell: 954-292-3099

[Torreyatrekker@gmail.com](mailto:Torreyatrekker@gmail.com)

Anita Grove – City Liaison



BOARD/COMMITTEE CANDIDATE QUESTIONNAIRE

REQUESTED BOARD/COMMITTEE APPOINTMENT Tree Board

APPLICATION DATE 3/16/22

DATE APPOINTED \_\_\_\_\_

NAME: John "Josh" Fitzhugh  
MAILING ADDRESS: 165 Dr Frederick Humphries St Apalachicola  
PHYSICAL ADDRESS: same  
CELL#: 802 522 3740 HOME#: —  
EMAIL: josh@fitzhugh.com

PLACE OF EMPLOYMENT: Retired  
WORK#: \_\_\_\_\_

1. HOW LONG HAVE YOU BEEN A RESIDENT OF THE CITY OF APALACHICOLA?

3 years - we are here Nov-May

2. WHY ARE YOU INTERESTED IN SERVING ON THIS BOARD/COMMITTEE?

can contribute I think

3. WHAT DO YOU FEEL YOU CAN CONTRIBUTE BY SERVING ON BOARD/COMMITTEE?

respect + knowledge of trees

4. DO YOU HAVE ANY EXPERIENCE BY PREVIOUSLY SERVING ON ANY CITY, COUNTY, OR OTHER GOVERNMENTAL BOARDS? IF SO, WHICH BOARDS AND HOW LONG?

ad in Vermont, zoning board - 5 years  
tax appeals board - 10 years

5. HAVE YOU ATTENDED ANY CITY MEETINGS? IF SO, WHICH ONES?

Council meeting  
zoning "

6. WILL YOU BE ABLE TO CONTRIBUTE THE NECESSARY TIME TO PROPERLY RESEARCH ISSUES AND BE AVAILABLE TO ATTEND SCHEDULED MEETINGS?

yes I think so

7. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S LAND DEVELOPMENT CODE?

yes

8. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S COMPREHENSIVE PLAN?

Not yet but will

9. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S HISTORIC GUIDELINES?

yes

10. DO YOU HAVE ANY EXPERIENCE IN CONSTRUCTION, PLANNING, LAND USE, OR ARCHITECTURE? IF SO, HOW LONG?

Built 2 houses, 5 sheds in VT

11. IF APPOINTED, YOU WILL BE REQUIRED BY LAW TO FOLLOW THE SUNSHINE LAW. HAVE YOU READ AND/OR FAMILIAR WITH THE SUNSHINE LAW?

Not yet

John H. Fitzhugh

SIGNATURE

John H. Fitzhugh

PRINTED NAME

BOARD/COMMITTEE CANDIDATE QUESTIONNAIRE

REQUESTED BOARD/COMMITTEE APPOINTMENT TREE COMMITTEE

APPLICATION DATE 11-15-2022

DATE APPOINTED \_\_\_\_\_

NAME: SAMUEL W. BERKHELSER III  
MAILING ADDRESS: 170 5th  
PHYSICAL ADDRESS: 170 5th  
CELL#: 917-399-9271 HOME#: \_\_\_\_\_  
EMAIL: \* SAM@WELOVELAND.STUDIO

PLACE OF EMPLOYMENT: SELF  
WORK#: 850-370-0215

1. HOW LONG HAVE YOU BEEN A RESIDENT OF THE CITY OF APALACHICOLA?  
2.3 YEARS (EXTRA JULY, 2020)

2. WHY ARE YOU INTERESTED IN SERVING ON THIS BOARD/COMMITTEE?  
TO HELP IN ANY COMPACTLY POSSIBLE TO PLANT, PROCURE, AND MANAGE THE TREES OF APALACHICOLA

3. WHAT DO YOU FEEL YOU CAN CONTRIBUTE BY SERVING ON BOARD/COMMITTEE?  
PROFESSIONAL PLANTING, SOURCING + PROCUREMENT OF QUALITY PLANT MATERIAL

4. DO YOU HAVE ANY EXPERIENCE BY PREVIOUSLY SERVING ON ANY CITY, COUNTY, OR OTHER GOVERNMENTAL BOARDS? IF SO, WHICH BOARDS AND HOW LONG?  
NO

5. HAVE YOU ATTENDED ANY CITY MEETINGS? IF SO, WHICH ONES?  
PLANNING + ZONING, MULTIPLE MEETINGS 2021-2022

6. WILL YOU BE ABLE TO CONTRIBUTE THE NECESSARY TIME TO PROPERLY RESEARCH ISSUES AND BE AVAILABLE TO ATTEND SCHEDULED MEETINGS?

YES

7. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S LAND DEVELOPMENT CODE?

YES

8. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S COMPREHENSIVE PLAN?

YES

9. HAVE YOU READ AND/OR FAMILIAR WITH THE CITY'S HISTORIC GUIDELINES?

YES

10. DO YOU HAVE ANY EXPERIENCE IN CONSTRUCTION, PLANNING, LAND USE, OR ARCHITECTURE? IF SO, HOW LONG?

YES. LANDSCAPE ARCHITECTURE, APPROXIMATELY 12 YRS. INCLUDING BUT NOT LIMITED TO, CONSTRUCTION, PLANNING, LAND USE, ARCHITECTURE, CIVIL + GEOTECHNICAL ENGINEERING

11. IF APPOINTED, YOU WILL BE REQUIRED BY LAW TO FOLLOW THE SUNSHINE LAW. HAVE YOU READ AND/OR FAMILIAR WITH THE SUNSHINE LAW?

YES



SIGNATURE

SAMUEL W. BERKHISER III

PRINTED NAME

**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: 12/06/22**

**SUBJECT:** RFQ 2022-02 Request for Qualifications for Engineering Services

**AGENDA INFORMATION:**

**Agenda Location:** Unfinished Business  
**Item Number:** 1  
**Department:** Grants  
**Presenter:** Gouras & Associates, LLC

**BRIEF SUMMARY:**

On November 8, 2022, the Board authorized contract negotiations with Halff, CDG, and Dewberry Engineering for professional services solicited under RFQ 2022-02. The Board Action Form identified CDBG-DR as the funding source; this action clarifies that contracts executed through RFQ 2022-22 may perform services for CDBG-DR funded projects, as well as other federally or state funded projects that the City may implement. The City has entered into Contract Negotiations with Halff, CDG, and Dewberry and received authority to enter into contracts with those firms upon successful negotiation. Upon successful contract negotiation, the City expects to issue project-specific task orders as identified below. This assignment of projects is based on the City's review of proposals submitted, in consideration of each firm's proposal, and is contingent upon successful contract negotiation and funding agency review (if required).

Hill Community Revitalization (CDBG-DR / DEO) – CDG Engineering

Riverfront Revitalization (CDBG-DR / DEO) – Halff Engineering

Wastewater Plant Repairs (SLFRF, Resilient Florida / DEP) – Dewberry Engineers, Inc.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:**

- Motion to authorize City staff to execute contracts upon successful negotiation by City staff and funding agency review/acceptance (if required).
- Motion to authorize City staff to award task orders for professional services solicited under RFQ 2022-02.

**FUNDING SOURCE:** CDBG-DR, SLFRF/Resilient Florida, Other Federal or State Grant Awards

**ATTACHMENTS:** None – Contracts are in negotiation

**STAFF'S COMMENTS AND RECOMMENDATIONS:** Motion to authorize execution of contracts upon successful contract negotiation and funding agency review (if required). Motion to authorize execution of task orders for projects listed.

# Grant Updates – Bree Robinson

City Commission Meeting – Tuesday, December 6th, 2022

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**1. Firehouse Subs Public Safety Foundation – Hurst Rescue Tools “Jaws of Life”**

An application requesting \$34,065.00 for Jaws of Life rescue tools for the Apalachicola Volunteer Fire Department was submitted online 4/7/22. These tools were a request from the VPD and will aid them in their efforts. If funded – the grant program will handle ordering, etc. No match required. **DENIED & REAPPLIED 7/7** in the amount of \$36,795.00, as cost of materials went up. - **Waiting for updates**, have been advised that most projects are funded by Firehouse Subs after 3 complete applications. We have filed 3 so far.

- **APPLIED again on 10/6! We will hear back on this late January.**

**2. DEP Resilient Florida Grant application – Implementation**

City submitted a grant request in the amount of \$2,039,500 to complete identified drainage projects in the city that have been documented, but have not been funded by other sources. If funded, the funds will repair known nuisance flooding drainage issues in more than 29 locations throughout the City. **Grant submitted 9-1-2022. Waiting for updates.**

**3. DEP Resilient Florida Grant application – Planning**

City submitted a grant request in the amount of \$300,000.00 to analyze existing vulnerable critical asset infrastructure in the City's commercial district and design a plan to mitigate street flooding through the retrofit of existing impervious parking and the design of pervious parking pockets on City-owned property, Avenue H specifically. **Grant submitted 8-31-2022. Waiting for updates.**

**4. FWC Florida Boating Improvement Program – Battery Park Boarding Docks**

In 2020, the City was awarded \$10,875.00 from the FWC Florida Boating Improvement Program for the Battery Park Boarding Docks replacement project. In 2021, the City spent \$23,066.85 on the new Battery Park Boarding Docks Project and the work was performed by Poloronis Construction. (The work has been inspected and approved by FWC.) The City was under the impression that we would not be reimbursed the \$10,875.00 due to improper procurement of services, but FWC has come back and offered reimbursement for the award due to the small amount! To be reimbursed we have to file a Site Dedication with Franklin County for the Battery Park Boat Ramp and FWC and put up a sign at the site. **The requirements have been met, sign has been**

**installed, and the site dedication was filed with Franklin County. Reimbursement should be received any day now with this project closeout.**

**5. *Florida Department of Transportation – SCOP Grant Application – Leslie Street***

City Commission passed Resolution 2022-01 on 2/23/22 for the City of Apalachicola to apply for funding for Leslie Street. Application was submitted electronically on 3/4/22. The City requested \$610,169.30 to remedy the underground issues, resurfacing the entire street length, and for new road signs based off engineer's estimate and recommendations.

**AWARDED! – City was awarded the full amount for Leslie Street! This funding window begins July 1, 2023, and ends June 30, 2024. We will take steps to make sure this work can be completed ASAP. Waiting for agreement from FDOT.**

**6. *DEO Rural Infrastructure Fund – Drainage Basin Analysis Phase II + Camera Work of Stormwater Lines***

An application requesting \$300,000 with no local match from the DEO Rural Infrastructure Fund was submitted on 8/31/22. The application was for the Phase II of a Drainage Basin Analysis that began in 2018. This \$300,000 grant proposal would fund an analysis of the drainage basins that border Apalachicola River and Bay. The proposal also includes funding to begin camera-work of the stormwater lines in the phase I, as recommended in that report. (We have to survey the damage before we can move forward on repairs.) The grant asks for \$110,000 for the analysis and mapping (per engineer estimate), \$5,000 for public education (grantors like to see we are promoting our message/work), \$24,000 in admin, and \$161,000 in camera-work for the phase I drainage basin area. This is a total of \$300,000 and there is no required local match.

Basins 11 and 3 were covered by the 2018 grant. This grant application would address the following basins: 1, 2, 4, 5, 6, 7, 8, 9, 10, 12-19. – **APPLIED, WAITING FOR UPDATES.**

**7. *Water Treatment Plant Improvements - Rural Infrastructure Fund – DEO FY 21/22***

**FUNDED!** Application submitted electronically on 5/26/22 to the RIF program through DEO for fiscal year 21/22. City applied for \$150,000 for engineering services that are going to be needed as we navigate the Potable Water Consent Order and will set us up to apply for more funding down the line. City was FUNDED for \$147k.

Funded:

- Evaluation of Existing Conditions
- Enhanced Sampling Plan, Hydraulic Modeling, and Treatability Studies
- Alternatives Analysis
- Facilities Plan Report

***Still pending staff scoring of firms and award recommendation. Coming soon!***

**8. City of Apalachicola Old City Hall Structural Repair – Special Categories DOS**

Application submitted electronically 5/31/22 for structural repairs for the Old City Hall building. (Middlebrook Building) Amount requested was \$395,000 with an in-kind match of \$98,750 for a total project budget of \$493,750. The goal of this application is to secure funding to complete the Old City Hall Renovation and support the ongoing repairs funded through the NPS grant. The purpose is to stabilize the building, by proposing to install an interior rigid steel frame to provide the structural integrity of the building exterior masonry and support the historic second floor wood frame. – **Applied - The Florida Historical Commission reviewed and scored eligible FY2024 Special Category grant applications on November 16, 2022. The Special Category Final Ranking Lists the City Hall project Year 2 (\$395,000) as recommended for funding. Official notification of grant award is pending Secretary of State approval and budget appropriation. We should receive official notification of funding on about July 1 of 2023. This is great news!**

**9. CPTA Community Planning Technical Assistance Grant Program – DEO**

Application submitted 4/1/22 for updates to our local comprehensive plan as well as complete Phase 2 of the Apalachicola Areas of Critical State Concern Work Plan. If granted, grantee shall analyze the City of Apalachicola’s current local comprehensive plan and present required and recommended update to the City Commission considering resiliency. These ideas will be vetted through community engagement and based on feedback received from the community and City Commission, final amendments to the local comprehensive plan will be prepared for public hearing and subsequent transmission to DEO. The City will also undertake Phase 2 of the Areas of Critical State Concern Work Plan by updating the infrastructure project list and conducting project scoping and economic analysis for priority projects in preparation for the funding available through the Bipartisan Infrastructure Act as well as other state and federal grant opportunities. – **AWARDED!** Agreement received and signed in October.

- **RFP IS LIVE!**

**10. Department of Historical Resources African American Cultural and Historical Grants – Apalachicola African-American History Museum**

Awarded \$1million with a \$250k match from the City for a new construction museum next to Holy Family.

- Due to rising construction costs, the project scope has been changed from a 2-level, 2,500SQF footprint building to a 1-level 2,000SQF building with elevated ceilings. Priorities include:



- High Security
- Storage Room
- Office Space
- Breezeway to Holy Family
- Greeting Station/Small Gift Shop Area
- ADA Accessible Bathrooms
- Controlled Lighting for Exhibits
- Building with Room for Add-On at later date
- **FUNDED!** Have submitted the project work plan and budget for the agreement draft from DOS. 8/25
- **Question from DOS answered 9/26.** Should hear back soon and have agreement in hand.
- **11/3** – Still waiting for agreement.
- **12/1** – Have draft agreement in hand for staff review.

#### ***11. HMGP – Backup Generator for Vacuum Station (108 Avenue F)***

Grant application was submitted for \$170,000 for a new backup generator. (Current in use is too small for need.) Had to apply for a portable generator instead of stationary, as they will not fund for a stationary one in a flood zone. Multiple RFIs (requests for information) were received and answered. **Waiting on delivery dates and costs for generators. The delays are at least 55 weeks with a cost increase of 4 times the original figures. Once we determine those issues, we will let an RFQ. In addition, an amendment will need to be done with the state to address the time and cost.**

#### ***12. National Park Service Hurricane Michael Repair/Mitigation - Grants for Repair and Restoration of the Montgomery Cotton Warehouse (Old City Hall) and the Harrison-Raney Cotton Warehouse (HCA)***

##### **Old City Hall & HCA**

RFPs to select a contractor to complete the repair/restoration on both projects has been advertised and the scope of work for each is on the City website. The period to respond to the RFP for both City Hall and the HCA building was October 20. The City has submitted requests for payment for the first set of deliverables for each project. **The request for payment on HCA has been received; the payment for the City Hall is pending NPS approval of the contract modification. We have resubmitted the payment request for City**

**Hall (payment request #1 \$99,979) because the grant portal shows the grant amendment has been approved.**

**UPDATE 12/1 – As per DHR, the City has re-advertised both the HCA and City Hall construction projects in accordance with State procurement requirements. New bids are due by January 10, 2023.**

***13. Grants Update -***

- a. **FDOT City Landscaping** – City was reimbursed for \$193k landscaping costs after FDOT inspection and reimbursement package sent in. Landscaping and maintenance have been “completed.”
  - i. There were issues with the grass drying out during the maintenance period, Gaskin to extend maintenance and re-plant as necessary per our contract and their warranty. **Re-plant pushed to March to avoid frost during establishment – Dan is in contact.**
  - ii. Filed for last bit of reimbursement in November. (6k)
- b. **CDBG-DR Infrastructure** – Avenues Stormwater Repair Project is moving forward. Engineer Procurement and design will need to be secured and created along with environmental review and clearance. ALL policies needed have been completed!
  - i. **ENGINEERING PROCUREMENT IN PROGRESS!** The contracted engineer, once selected, will put together a project schedule based on design time needed and anticipated construction duration. Environmental review will run concurrently with design and permitting.
  - ii. **Engineering Scoring of Bids has been completed. - City authorized to enter into contract negotiations with Halff, CDG, and Dewberry on 11.8.2022. Draft contracts have been submitted and are currently under review with counsel. Recommendation to execute contracts and award task orders is on the agenda for 12.6.2022, subject to DEO review/approval.**
- c. **CDBG-DR Hometown Revitalization** –Riverfront Revitalization and Hill Community Revitalization projects: City has received environmental exemption for administrative and engineering services. ALL policies needed have been completed! **ENGINEERING PROCUREMENT IN PROGRESS!** The contracted engineer, once selected, will put together a project schedule based on design time needed and anticipated construction duration. Environmental review will run concurrently with design and permitting. **City authorized to enter into contract negotiations with Halff, CDG, and Dewberry on 11.8.2022. Draft contracts**

**have been submitted and are currently under review with counsel. Recommendation to execute contracts and award task orders is on the agenda for 12.6.2022, subject to DEO review/approval.**

- Hill Community (M0033): CENST approval memo was issued by DEO on July 14, 2022. The city is currently working on the RFQ for engineering procurement. Once an engineer is on board, we'll be able to confirm scope of work and begin environmental review.
  - Riverfront (M0034): CENST approval memo was issued by DEO on July 14, 2022. The city is currently working on the RFQ for engineering procurement. Once an engineer is on board, we'll be able to confirm scope of work and begin environmental review.
- d. **HMGP Emergency Generators** – Received and signed Release of Funds forms for CDBG-DR DEO match – HMGP has funded the generators and agreement signed. HMGP admin bidding was advertised and has closed. Advertised in The Democrat per MSA paper standards from DEO and awarded to TME 9/27. TME is working on RFP for a contractor for the generators and installation. **Waiting on delivery dates and costs for generators. The delays are at least 55 weeks with a cost increase of 4 times the original figures. Once we determine those issues, we will let an RFQ. In addition, an amendment will need to be done with the state to address the time and cost.**
- e. **HMGP Market Street Vacuum Station** - Received and signed Release of Funds forms for CDBG-DR match – HMGP has funded the generators and agreement signed. HMGP admin was advertised and has closed. Advertised in The Democrat per MSA paper standards from DEO and awarded to TME 9/27. **RFQ is advertised with a due date of 12/22 and an award date of 1/3/23.**
- f. **Michael FEMA Projects Updates**
- i. **Bodiford** - BODIFORD PLANS COMPLETE! Waiting for exemption for permits from FEMA to be reviewed. - Received exemption ... waiting on FEMA to re-establish the costs in the project. Still waiting on FEMA 12/1.
  - ii. **Scipio** – Designs from Dewberry draft complete – waiting for full. Waiting for scope verification from FEMA to bid out. Still waiting on FEMA 12/1.
  - iii. **Alleyway Repairs** – Alleyway: 3, 7, 9, 8, 10, 11, 6, 2, 5, 12, 4 Crushed Shells to be replaced. Extensions requested for all FEMA projects – extension granted.
  - iv. **Old City Hall and HCA Contents loss** – Ordering replacement items from loss. (Funding already received – just needs to be ordered and receipts turned in.) Partially ordered – postponing ordering of remaining items until back room flooring of City Hall complete to place items in.

- v. **Lafayette Park** – Boardwalk work and lighting donation have been COMPLETED! It appears that we were supposed to be exempt from permits for this work per engineer opinion, since there was no in-water repairs, but we are waiting for USACE and DEP to confirm this with FEMA before this project can close out and Bodiford and Scipio can begin. - Received the USACE and FDEP permits! Still waiting on FEMA 12/1.
- vi. **Hurricane Sally** – Almost all Sally projects are completed and finalized. TME is uploading receipts to finish. This will be completed by first part of January once all docs are received to upload.
- g. **Department of Historical Resources 2023 Small Matching Grant – Black History Trail. FUNDED!** Docs for agreement in progress, scope slightly changing as some work has been completed. (signage) Question has come up as to who will manage the historian work for signage. HCOLA possibility? Will explore options.
  - i. **Will detail scope in New Year.**

**14. DEP Applications – Resilient Florida + Water Restoration Assistance - WWTP & Vulnerability Study**

**WWTP-**

Grant #2 is an application for the WWTP totaling \$14 million - the City of Apalachicola was approved for the full \$14 million for new equipment and relocation. DEP contacted us and let us know we had 2 duplicated grant efforts both submitted to them. Both are for the WWTP – and combined could cover the entire WWTP Project costs, headworks and all. DEP has agreed, with some preliminary efforts to ensure the scope and pricing are as they should be. **Total project costs are approximately \$19M, which will be fully funded through two separate DEP awards (Award #1 = \$13.4M, Award #2 = \$5.6M). See cost breakdown below.**

- Scope of works for both efforts are in progress! Cost breakdown below:
- DEP requested several documents to send out agreements – documents supplied. Still ongoing. **DEP Award #1 & #2 have both been executed!**
- **A Kickoff Webinar for Award #1 was held with DEP and the City on 11/1/2022.**
- **While continuing services agreements can be generally be used for DEP funding, the expected cost of the construction contract exceeds thresholds for use of continuing services agreements. As previously reported, Engineering services for this project will utilize a firm selected from the Engineering RFQ that is being used for CDBG-DR efforts. City authorized to enter into contract negotiations with Halff, CDG, and Dewberry on 11.8.2022. Draft contracts have been submitted and are**

**currently under review with counsel. Recommendation to execute contracts and award task orders is on the agenda for 12.6.2022.**

**COST:** The Total Estimated Cost of this Project is \$18,927,391. The anticipated funding breakdown is for **FDEP** to fund approximately **\$5,551,875**, and **FDEP-SRF** to fund **\$13,375,516**.

**Vulnerability Study-**

Grant #1 Vulnerability Study – **FUNDED! Contract signed with Bay Media and research, data collection has begun. Public Workshop Scheduled for December 6.**

**15. USDA Water Street Sidewalk and Lighting –**

**Construction by CWR Contracting, Inc. is in progress! Have made first payment and are filing for reimbursement.**

**16. Coronavirus State and Local Fiscal Recovery Funds (SLFRF) – American Rescue Plan**

The City formerly made application to the SLFRF program and received an award of \$1,179,010.00. The City has received half of this allocated amount and will receive the second half after spending the first deposit. City has elected to receive "standard allowance" for government services.

Dates:

- » Funds must be obligated by December 31, 2024
- » All expenditures must be complete by December 31, 2026

American Rescue Plan Info:

- Electing the "standard allowance" to spend on government services
  - Government Services generally include any service traditionally provided by government unless Treasury has stated otherwise. Here are some examples:
    - Construction of schools and hospitals
    - Road building and maintenance and other infrastructure
    - Health Services
    - General Government administration, staff, and admin facilities
    - Environmental remediation
    - Provision of police, fire, and other public safety services, including purchase of vehicles

- **However, these funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (uses of funds that undermine COVID-19 mitigation practices in line with CDC guidance and recommendations)**
- All projects MUST follow 2CFR procurement.
- No construction of the following:
  - New correctional facilities as a response to an increase in rate of crime. New congregate facilities to decrease the spread of COVID 19 in the facility. Convention centers, stadiums or other large capital projects intended for general economic development or to aid impacted industries.
- Funds cannot be used for payments for debt services or replenishing rainy day funds.

**All information included in this report is accurate as of December 1<sup>st</sup>, 2022 at 12:00pm. After that time, information is subject to change. If you have any questions, please send them to [brobinson@cityofapalachicola.com](mailto:brobinson@cityofapalachicola.com)!**

# Finance Director – Mark Gerspacher

## City Commission Meeting –December 6, 2022 – 4:00pm

**1. 2020 – 2021 Audit**

We ran into a couple more delays with the audit due to some things that were posted incorrectly in the 2020-2021 fiscal year. We should have a draft report this week and have a special meeting to approve the audit.

**2. Banyan**

We ran into more technical issues with our computers that have again delayed the implementation of Banyan. The latest one is resolved so we are moving forward

**3. RFP for Elevated Tank Coating**

This RFP went out and we will receive responses by December 15.

**4. FY2021 - 2022 Budget Amendment**

We are past due to complete a budget amendment for the 2021 – 2022 fiscal year because we are waiting on our latest audit report. In order for the amendment to be accurate, we need good numbers going into the fiscal year. I anticipate having a budget amendment ready for the January Commission meeting. Because the amendment will need to be done by ordinance we will either need a special meeting in January or will need to approve at the February meeting. In speaking with attorney Hartman, the only consequence of being late with this is that we will have a finding on our audit.

**5. Current Year Budget reports**

I anticipate being able to present year to date budget reports at the January commission meeting that will summarize the first quarter of the fiscal year.

# **ATTORNEY REPORT**

**TO:** City Commission, City of Apalachicola  
**FROM:** Daniel W. Hartman, Esq.  
**DATE:** December 2022  
**SUBJ:** City Attorney Report for Commission Meeting

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1. **Height Ordinance**

The Height ordinance has been placed in form for first reading in accordance with the direction of the Commission at the November 2022 City Commission meeting. However, certain additional steps must be taken before first reading in order to ensure compliance with State requirements applicable to amendment of the City Land Use Code.

2. **Change in Date of Elections**

At the November 2022 Commission meeting I was asked to provide information as to the authority and process by which the City could change its date of election to coincide with the County, State and National election cycles. i.e. November of even numbered years. I have included with this report a Memorandum for review and consideration on the subject.



## MEMORANDUM

To: City Commission, Manager and Clerk

From: Daniel W. Hartman, City Attorney

Date: December 1, 2022

Re: Moving Date of City Elections; Effect on Commissioner Terms in Office

At the City Commission meeting on November 8, 2022 the Apalachicola City Commission requested information regarding moving the date of City elections to coincide with the County, State and National election cycles. The purpose of such a change in the election cycle would be to increase voter participation and achieve financial savings to the City. The City will realize a significant cost saving by moving the dates of City elections to correspond with County, State and National elections if County elections officials would agree to handle the many functions associated with municipal elections which are currently handled and paid for by the City. Typically these can be performed by the County Supervisor at a reduced cost to that currently imposed on the City. This would need to be discussed with the County Supervisor to determine her willingness to assist the City with elections. The Supervisor has taken on this role in the County's other municipality.

The date of elections is established in Code of Ordinances, Part II, Section 16-1. Currently the City has a biannual regular election of Commissioners for the City held on the third Tuesday after the third Monday in September of each odd-numbered year. See Section 16-1 Further the City is responsible to provide notice of general elections, for poll administration, vote counting and certification. See Code of Ordinances, Part II, Chapter 16.

The City of Apalachicola is not the first city to contemplate moving it elections to coincide with County, State and National elections for the reasons set forth above. Prior to 1995 the process to accomplish this change was a bit more difficult and required a ballot referendum along with an Ordinance in cases such as the City of Apalachicola where the City Charter was adopted before July 1, 1973.

During the 1995 State legislative session, legislation was introduced to amend section 166.021(4), F. S. and to create section 100.3605, F. S. The legislative history associated with this legislation indicates an intent that municipalities are authorized to amend their charters, whether those charters were adopted before or after July 1, 1973, to change the election date and qualifying periods for candidates, including any changes in terms of office necessitated by such amendment, by Ordinance and without referendum. See, A.G.O. 2000-61 and 2003-52. The provisions of Florida Statutes governing such charter amendments are found at Section(s) 166.021, 166.031 and 100.3605, Florida statutes. The City recognized the changes to State law in applicable City Charter sections dealing with elections. The Charter states in pertinent part “The provisions of Code of Ordinances, part I, Art. XVII. section 140 have either assumed ordinance status by virtue of the Municipal Home Rule Powers Act (F.S. ch. 166) and their inclusion in the Apalachicola Code (see Code sections 9-4 et seq., or are superseded by F.S. §§ 97.041, 98.091(3), 100.011, 100.342, 101.031, 101.041, 101.21, 101.635, 101.75, and 166.032.” In short, the City moved the applicable election Charter provisions out of the Charter (Part I) and into the Code of Ordinances Part II. This further solidifies that the election date can be changed by Ordinance.

### **Can the City Commission Move the Election Dates?**

Specifically can the City move the City election scheduled for September 2023 or September 2025 to coincide with the regular November 2024 or 2026 election cycle?

**Answer:** Based on the plain language of Section 100.3605 and 166.021(4), F.S. the City Commission of Apalachicola may move the election dates set forth in the City Code to November of an even numbered year – November 2024 or 2026. This amendment to Code of Ordinances Part II, Section 16-1 can be accomplished by Ordinance and does not have to be accompanied by a ballot referendum.

### **Can the City Commission Extend or Reduce the Terms of Sitting Commissioner?**

Another issue to be addressed during the decision is the impact on the terms of sitting Commissioners and of those qualifying for office in a future election. i.e. by moving the election date the City Commission must decide whether to lengthen or shorten a standard term of office for one cycle. This change in the term of office could be over one (1) year. In the prior AGOs cited

above the extension of terms was up to approximately 7 months or less. By contrast, in order to accomplish:

- i. the moving of the City elections to coincide with the dates of upcoming County, State and National elections in the 2024 or 2026 election cycles;
- ii. achieve the resulting cost savings; and
- ii. increased voter participation.

The Commission faces a decision as to which election cycle to make the transition and then identify the effect on then sitting and to be elected Commissioners. It should be noted that the extension of the terms of sitting commissioners would be for the singular purpose of making an orderly transition to coincide with the County, State and National elections in November of the chosen transition year and not as a permanent change to elected official's terms of office.<sup>1</sup>

In 2013 the city of Arcadia confronted almost exactly the issue we face. The charter amendments sought by Arcadia would have the effect of extending the terms of sitting municipal officers by more than one year. The city was aware of the prior Atty. Gen. opinions cited above but had a particular concern that the length of the extended terms necessitated by moving the election dates. i.e. in excess of one (1) year.

The Atty. Gen. determined that nothing in the applicable statutes or in the legislative history related to their enactment placed a restriction on the authority granted by the statute to increase the term of a sitting Commissioner required for the "orderly transition of office" affected by the ordinance. Accordingly, the Atty. Gen. determined that the length of the extension of the terms of the sitting commissioners which appears to be identical to the instant case can be accomplished through Ordinance and without voter approval by referendum. See, AGO 2013-05.

**Answer:** The City of Apalachicola can authorize by Ordinance and without referendum the extension of the terms of current sitting Commissioners by the over one (1) year necessary to make City elections coincide with County elections in 2020 and 2022.

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<sup>1</sup> A permanent change to the terms of office would still require a ballot referendum. See, AGO 2001-81.

Similarly, an ordinance could shorten the terms in order to bring them into sync. However, this may best be accomplished by qualifying Commissioners during an upcoming regular election cycle for a clearly delineated shortened term of office.

MINUTES OF THE REGULAR MEETING OF THE APALACHICOLA CITY COMMISSION HELD TUESDAY,  
NOVEMBER 8, 2022, 4:00 PM AT THE APALACHICOLA COMMUNITY CENTER.

PRESENT: Mayor Brenda Ash  
Commissioner Anita Grove  
Commissioner Adrian Elliott  
Commissioner Donna Duncan  
Commissioner Despina George

Travis Wade, City Manager  
Deborah Guillotte, City Clerk  
Dan Hartman, Attorney

**CALL TO ORDER**

Mayor Brenda Ash called the meeting to order and gave the invocation, followed by the Pledge of Allegiance.

**AGENDA ADOPTION**

Commissioner Anita Grove made a motion to adopt the agenda with the following deletions and additions: 1) removing Presentation – Item 2 – Southern Group – Kate DeLoach; 2) removing New Business – Item 1 – National Park Service Grant construction award re: HCA building; and 3) Adding – New Business – Item 4 – Approval of Boat Travel Lift Repair estimate for expenditure. Commissioner Adriane Elliott seconded, and the motion carried 5-0.

**PRESENTATION - 1. FLORIDA HOUSING COALITION – GLADYS COOK**

Gladys Cook gave a partial presentation on the Florida Housing Coalition on affordable housing and how to proceed but was discontinued due to technical difficulties.

**PRESENTATION - 2. SOUTHERN GROUP – KATE DELOACH**

This presentation was rescheduled to be held at the December meeting.

**PUBLIC COMMENT**

Public comments consisted of the following: 1) Disapproval of the Palmer Pointe Final Plat Approval. The concerned citizens had specific requests and suggestions before approval of the final project by the Commission and asked that it be postponed.

**UNFINISHED BUSINESS – 1. PALMER POINTE FINAL PLAT APPROVAL**

(Quasi-Judicial Hearing)

Attorney Dan Hartman gave a review of the order of presentation of the Palmer Pointe Project, as requested by Mayor Ash.

The Palmer Pointe Representatives presented their project and requested approval of the final Plat with contingencies. Warranties and bonding discussed. Items that would not be completed before approval, sign off, and recording of the final plat were discussed, stating the entire amount for the upsized culvert and second lift of asphalt will be escrowed, plus 25% of what it costs to do this. Bree Robinson reviewed the three contingencies: 1) labeling errors noted on the final plat review from CDG the city's engineer, have been met in the corrected final plat; 2) the final fourteen foot utility drainage easement for stormwater dedicated to the city on the Eastern side of the property, have been met; and 3) installation of a upsized culvert at the chokepoint the end of Acola Street, southeastern corner of the development between the two easements between this property and the Bay Colony easement, have not been met, but is being coordinated at this time. In response to a question by Attorney Hartman, Bree Robinson stated that staff's (Planner and Engineer) opinion of the application of Palmer Pointe met with the City's code requirements and when contingencies are met, that Plat should be approved.

The concerned citizens discussed and showed a video of the stormwater and easement issues. Discussion and questions held with the Commission, Attorney, Representatives of Palmer Pointe and concerned citizens. Commissioner Grove had concerns of the parking of boats, trailers, and extra vehicles. In response to a question by Mayor Ash, Attorney Hartman stated that all legal matters (code requirements) have been met by the Palmer Pointe Project.

Commissioner Elliott made a motion to approve the Palmer Pointe final plat subject to the unsatisfied conditions that have been outlined by Planning and Zoning, and satisfaction of the escrow funds plus the 25% for the upsized culvert and the second lift of asphalt. Commissioner Duncan seconded, and the motion carried 5-0.

**UNFINISHED BUSINESS – 2. HEIGHT RESTRICTION ORDINANCE DRAFT**

Attorney Hartman reviewed past workshop discussions and how to enhance changing the height restrictions, and suggested we move forward with the 3 + 1 vote, to stop height increase over 35 feet.

Commissioner Elliott made a motion to move forward with the first reading of the proposed Height Ordinance 2022-02 at the December meeting. Commissioner George seconded and the motion carried 5-0.

**NEW BUSINESS 1. NATIONAL PARK SERVICE GRANT CONSTRUCTION  
AWARD RE: HCA BUILDING**

Removed from Agenda.

**NEW BUSINESS - 2. ENGINEERING AWARD – CDBG-DR**

Commissioner Grove made a motion to authorize city staff to enter into contract negotiations with Half, CDG, and Dewberry (the three highest ranked firms) for professional services solicited under RFQ 2022-02. Commissioner George seconded and the motion carried 5-0.

Commissioner Grove made a motion to award contracts for the services described in RFQ 2022-02 upon successful contract negotiation. Commissioner Elliott seconded and the motion carried 5-0.

**NEW BUSINESS - 3. SMALL BUSINESS SATURDAY PROCLAMATION**

Commissioner Grove made a motion to approve the Small Business Saturday Proclamation for Saturday, November 26, 2022. Commissioner Elliott seconded the motion carried 5-0.

**NEW BUSINESS – 4. APPROVAL FOR BOAT LIFT REPAIR**

Manager Travis Wade stated that the City’s boat lift is broken and requested expenditure in the amount of \$25,937.64 to repair the boat lift. In a response to a question by Commissioner George, Finance Director Mark Gerspacher stated it would come from the facilities reserve fund.

Commissioner George made a motion to approve subject to payment being contingent on receiving the invoice directly from Travel Lift and verified by our finance department. Commissioner Grove seconded and the motion carried 5-0.

**MAYOR AND COMMISSIONER COMMENTS**

Commission comments consisted of the following: 1) volunteer fire communications equipment issues in the process of being updated; 2) old library moving forward with repairs for future commission meetings; 3) encroachment workshop to be scheduled in January; 4) election change to general election with the County – Attorney Hartman will move forward with details; 5) Attorney Hartman a list of outstanding projects; 6) Holy Family repairs and renewing ECCC agreement; 7) Apalachicola Bay Initiative Systems Committee update; 8) requested monthly drinking water system and expenditure updates; 9) moving forward with the revolving loan for Mount Zion Church for roof repair; 10) Lafayette Park events issues and not allowing receptions and music at the park; 11) update on the local technology planning team (LTPT) and expanding broadband access; 12) the commission should tour WWTP and spray fields.

**CITY MANAGER COMMUNICATIONS – Travis Wade - SEE ATTACHMENT “A”**

**GRANTS COORDINATOR COMMUNICATIONS – Bree Robinson - SEE ATTACHMENT "B"**

**FINANCE DIRECTOR COMMUNICATIONS – Mark Gerspacher - SEE ATTACHMENT "C"**

**ATTORNEY COMMUNICATIONS – Dan Hartman - SEE ATTACHMENT "D"**

**CONSENT AGENDA**

1. Meeting Minutes Adoption – October 4, 2022, Regular Meeting and October 11, 2022, Special Meeting Minutes
2. P&Z Minutes – October 10, 2022

Commissioner Elliott made a motion to approve the Consent Agenda. Commissioner George seconded and the motion carried 5-0.

**DEPARTMENT REPORTS**

**ADJOURNMENT**

Commissioner Elliott made a motion to adjourn the meeting. Commissioner Grove seconded and the motion carried 5-0.

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Brenda Ash, Mayor

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Deborah Guillotte, City Clerk



## City Manager Updates

### FDEP Compliance Updates:

Drinking Water - On Sept 19, we (viaoam Mayor, myself, Rep Shoaf's office, and Dewberry) participated a face to face meeting with DEP here in our offices to discuss remaining action needed for DEP to be able to declare the water system has returned to compliance. The Department is willing to minimize items in Consent Order to only those items that remain open when they present the draft order. DEP also shared their willingness to consider waving penalties if we conduct the remain work on-time.

We left that meeting with two action items. 1) all backflow devices in the City must up to date with the required testing and 2) the maintenance of the elevated water storage tank on 5<sup>th</sup> Street must be completed.

For item #1, It's important to know that currently the testing of the backflow devices is the responsibility of the customer and the devices are required to protect our water distribution system. We take backflow devices very seriously and we must know that all devices are working properly. Staff routinely notifies all customers with backflow devices that testing must be completed and then we follow-up with delinquent notices. Because the safety of our system is of utmost importance, and because it is challenging for customers to conduct the testing on-time, I will be proposing a policy by which the City would secure a contractor to test all backflow devices and the testing fee be added to customers' water bill. This would ensure that testing is completed as required by rule, that our distribution system is protected, and would resolve testing compliance concerns with DEP.

For item #2, The RFP for the elevated tank rehabilitation has been drafted and will be published this week. Not only will the tank have a fresh exterior, but the interior will also be cleaned and recoated.

We remain under an active drinking water consent order for TTHMs. Our monthly testing continues, and we report quarterly results to DEP. The averages are greatly improving; however, it takes time for the running annual average to drop below the regulatory limit. We expect future results will continue to be favorable and soon the annual average will be in-compliance. We look forward to DEP being able to close out the TTHM consent order, perhaps even at the end of this year or early next year.

WWTP - The wastewater final order requires the total replacement of the headworks and Sequencing Batch Reactor (SBR) which will only occur when the new plant is constructed. The final order will remain open until the construction of the new plant is complete.

**Positions:**

Advertisements for Grants Coordinator, Code Enforcement, Library Assistant, WW/DW Field Crew, and WW Operator positions are currently advertised.

Code Enforcement Officer Glen Jenkins turned in his notice and will be leaving on December 30. Melissa Hand resigned to take a position with the State of Florida in Tallahassee. Sheneidra Cummings has been reassigned to Melissa's position and is currently training to replace Janelle Paul in utilities billing upon her retirement next year.

**Gibson Preconstruction Meeting:**

A preconstruction meeting was held with City staff and Gibson employees/contractors on October 20 to discuss construction of the new addition to the Gibson properties. This will be located at the corner of Highway 98 and Avenue D (the former site of Oyster Bones). During the conversation I offered to facilitate a "town hall" meeting at the Community Center on November 16 for the construction team to take questions from the public. The team was very receptive to the idea and agreed to notify property owners by mail of the meeting. However, I was notified that some members of the team have a scheduling conflict and will be unable to attend the meeting that day but wish to reschedule it to another day. I will post the date to the City's Facebook page and website, and will notify the Commissioners by email, as soon as a date is agreed upon.

**Duke Energy New Tower:**

I met with a representative of Duke Energy to find a location for a new tower to replace the tower located on Commerce Street between Avenues G and I. I have suggested that the City could possibly trade part of the Avenue H right-of-way between Market Street and Commerce Street for 5 acres owned by Duke Energy located outside of the City limits but contiguous to the City limits and the City's 95 acre parcel on Pal Rivers Road. The 5 acre parcel owned by Duke Energy would be an ideal location for a workforce housing project. Duke Energy is agreeable to the swap if their environmental study finds the property to be feasible, and with City Commission approval. Additionally, Duke Energy has agreed to donate the old tower to the City after its removal and I have contacted members of the group working with the new Buddy Ward Memorial Reef to coordinate a donation of the tower materials for reef structure by the City.

**Leslie Street:**

The FDOT SCOP Grants award confirmation has been received, but we are still awaiting an agreement.

**Downtown Signs:**

Downtown business directional signs were installed by Public Works last week directing pedestrians to shops on Commerce Street and Water Street in the Bowery District. The signs are located on Ave E at Water Street and Ave E at Commerce Street.

# Grant Updates – Bree Robinson

## City Commission Meeting – Tuesday, November 8, 2022

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**1. Firehouse Subs Public Safety Foundation – Hurst Rescue Tools “Jaws of Life”**

An application requesting \$34,065.00 for Jaws of Life rescue tools for the Apalachicola Volunteer Fire Department was submitted online 4/7/22. These tools were a request from the VPD and will aid them in their efforts. If funded – the grant program will handle ordering, etc. No match required. **DENIED & REAPPLIED 7/7** in the amount of \$36,795.00, as cost of materials went up. - **Waiting for updates**, have been advised that most projects are funded by Firehouse Subs after 3 complete applications. We have filed 3 so far.

- **APPLIED again on 10/6! We will hear back on this late January.**

**2. DEP Resilient Florida Grant application – Implementation**

City submitted a grant request in the amount of \$2,039,500 to complete identified drainage projects in the city that have been documented, but have not been funded by other sources. If funded, the funds will repair known nuisance flooding drainage issues in more than 29 locations throughout the City. **Grant submitted 9-1-2022. Waiting for updates.**

**3. DEP Resilient Florida Grant application – Planning**

City submitted a grant request in the amount of \$300,000.00 to analyze existing vulnerable critical asset infrastructure in the City's commercial district and design a plan to mitigate street flooding through the retrofit of existing impervious parking and the design of pervious parking pockets on City-owned property, Avenue H specifically. **Grant submitted 8-31-2022. Waiting for updates.**

**4. FWC Florida Boating Improvement Program – Battery Park Boarding Docks**

In 2020, the City was awarded \$10,875.00 from the FWC Florida Boating Improvement Program for the Battery Park Boarding Docks replacement project. In 2021, the City spent \$23,066.85 on the new Battery Park Boarding Docks Project and the work was performed by Poloronis Construction. (The work has been inspected and approved by FWC.) The City was under the impression that we would not be reimbursed the \$10,875.00 due to improper procurement of services, but FWC has come back and offered reimbursement for the award due to the small amount! To be reimbursed we have to file a Site Dedication with Franklin County for the Battery Park Boat Ramp and FWC and put up a sign at the site. **The requirements have been met, sign has been**

**installed, and the site dedication was filed with Franklin County. Reimbursement should be received any day now with this project closeout.**

**5. Florida Department of Transportation – SCOP Grant Application – Leslie Street**

City Commission passed Resolution 2022-01 on 2/23/22 for the City of Apalachicola to apply for funding for Leslie Street. Application was submitted electronically on 3/4/22. The City requested \$610,169.30 to remedy the underground issues, resurfacing the entire street length, and for new road signs based off engineer's estimate and recommendations.

**AWARDED! – City was awarded the full amount for Leslie Street! This funding window begins July 1, 2023, and ends June 30, 2024. We will take steps to make sure this work can be completed ASAP. Waiting for agreement from FDOT.**

**6. DEO Rural Infrastructure Fund – Drainage Basin Analysis Phase II + Camera Work of Stormwater Lines**

An application requesting \$300,000 with no local match from the DEO Rural Infrastructure Fund was submitted on 8/31/22. The application was for the Phase II of a Drainage Basin Analysis that began in 2018. This \$300,000 grant proposal would fund an analysis of the drainage basins that border Apalachicola River and Bay. The proposal also includes funding to begin camera-work of the stormwater lines in the phase I, as recommended in that report. (We have to survey the damage before we can move forward on repairs.) The grant asks for \$110,000 for the analysis and mapping (per engineer estimate), \$5,000 for public education (grantors like to see we are promoting our message/work), \$24,000 in admin, and \$161,000 in camera-work for the phase I drainage basin area. This is a total of \$300,000 and there is no required local match.

Basins 11 and 3 were covered by the 2018 grant. This grant application would address the following basins: 1, 2, 4, 5, 6, 7, 8, 9, 10, 12-19. – **APPLIED, WAITING FOR UPDATES.**

**7. Water Treatment Plant Improvements - Rural Infrastructure Fund – DEO FY 21/22**

**FUNDED!** Application submitted electronically on 5/26/22 to the RIF program through DEO for fiscal year 21/22. City applied for \$150,000 for engineering services that are going to be needed as we navigate the Potable Water Consent Order and will set us up to apply for more funding down the line. City was FUNDED for \$147k.

Funded:

- Evaluation of Existing Conditions
- Enhanced Sampling Plan, Hydraulic Modeling, and Treatability Studies
- Alternatives Analysis
- Facilities Plan Report

**Still pending staff scoring of firms and award recommendation. Coming soon!**

**8. City of Apalachicola Old City Hall Structural Repair – Special Categories DOS**

Application submitted electronically 5/31/22 for structural repairs for the Old City Hall building. (Middlebrook Building) Amount requested was \$395,000 with an in-kind match of \$98,750 for a total project budget of \$493,750. The goal of this application is to secure funding to complete the Old City Hall Renovation and support the ongoing repairs funded through the NPS grant. The purpose is to stabilize the building, by proposing to install an interior rigid steel frame to provide the structural integrity of the building exterior masonry and support the historic second floor wood frame. – **Applied - Special Category grant request for additional funds for City Hall will be considered soon. The original DHR grant review meeting date of September 28 was postponed to November 16 due to the hurricane. We should know within a couple of weeks if this project has received the requested funding.**

**9. CPTA Community Planning Technical Assistance Grant Program – DEO**

Application submitted 4/1/22 for updates to our local comprehensive plan as well as complete Phase 2 of the Apalachicola Areas of Critical State Concern Work Plan. If granted, grantee shall analyze the City of Apalachicola's current local comprehensive plan and present required and recommended update to the City Commission considering resiliency. These ideas will be vetted through community engagement and based on feedback received from the community and City Commission, final amendments to the local comprehensive plan will be prepared for public hearing and subsequent transmission to DEO. The City will also undertake Phase 2 of the Areas of Critical State Concern Work Plan by updating the infrastructure project list and conducting project scoping and economic analysis for priority projects in preparation for the funding available through the Bipartisan Infrastructure Act as well as other state and federal grant opportunities. – **AWARDED!** Agreement received and signed in October.

- **RFP COMING SOON**

**10. Department of Historical Resources African American Cultural and Historical Grants – Apalachicola African-American History Museum**

Awarded \$1million with a \$250k match from the City for a new construction museum next to Holy Family.

- Due to rising construction costs, the project scope has been changed from a 2-level, 2,500SQF footprint building to a 1-level 2,000SQF building with elevated ceilings. Priorities include:
  - High Security
  - Storage Room
  - Office Space

- Breezeway to Holy Family
- Greeting Station/Small Gift Shop Area
- ADA Accessible Bathrooms
- Controlled Lighting for Exhibits
- Building with Room for Add-On at later date
- **FUNDED!** Have submitted the project work plan and budget for the agreement draft from DOS. 8/25
- **Question from DOS answered 9/26.** Should hear back soon and have agreement in hand.
- **11/3** – Still waiting for agreement.

### ***11. HMGP – Backup Generator for Vacuum Station (108 Avenue F)***

Grant application was submitted for \$170,000 for a new backup generator. (Current in use is too small for need.) Had to apply for a portable generator instead of stationary, as they will not fund for a stationary one in a flood zone. Multiple RFIs (requests for information) were received and answered. **Still waiting for updates.**

### ***12. National Park Service Hurricane Michael Repair/Mitigation - Grants for Repair and Restoration of the Montgomery Cotton Warehouse (Old City Hall) and the Harrison-Raney Cotton Warehouse (HCA)***

#### **Old City Hall & HCA**

RFPs to select a contractor to complete the repair/restoration on both projects has been advertised and the scope of work for each is on the City website. The period to respond to the RFP for both City Hall and the HCA building was October 20. The City has submitted requests for payment for the first set of deliverables for each project. **The request for payment on HCA has been received; the payment for the City Hall is pending NPS approval of the contract modification. We have resubmitted the payment request for City Hall (payment request #1 \$99,979) because the grant portal shows the grant amendment has been approved.**

**UPDATE 11/3 – the bids received and ranked were over-budget for Old City Hall, we are holding off on this award until we receive guidance from NPS on how to proceed! HCA Award in on the agenda 11/8.**

### ***13. Grants Update -***

- a. **FDOT City Landscaping** – City was reimbursed for \$193k landscaping costs after FDOT inspection and reimbursement package sent in. Landscaping and maintenance have been “completed.”
  - i. There were issues with the grass drying out during the maintenance period, Gaskin to extend maintenance and re-plant as necessary per our contract and their warranty. **Re-plant pushed to March to avoid frost during establishment – Dan is in contact.**
- b. **CDBG-DR Infrastructure** – Avenues Stormwater Repair Project is moving forward. Engineer Procurement and design will need to be secured and created along with environmental review and clearance. ALL policies needed have been completed!
  - i. **ENGINEERING PROCUREMENT IN PROGRESS!** The contracted engineer, once selected, will put together a project schedule based on design time needed and anticipated construction duration. Environmental review will run concurrently with design and permitting.
  - ii. **Engineering Scoring of Bids has been completed. - Recommendation to enter contract negotiations is on the agenda for 11.8.2022.**
- c. **CDBG-DR Hometown Revitalization** –Riverfront Revitalization and Hill Community Revitalization projects: City has received environmental exemption for administrative and engineering services. ALL policies needed have been completed! **ENGINEERING PROCUREMENT IN PROGRESS!** The contracted engineer, once selected, will put together a project schedule based on design time needed and anticipated construction duration. Environmental review will run concurrently with design and permitting. **Recommendation to enter into engineering contract negotiations is on the agenda for 11.8.2022.**
  - Hill Community (M0033): CENST approval memo was issued by DEO on July 14, 2022. The city is currently working on the RFQ for engineering procurement. Once an engineer is on board, we'll be able to confirm scope of work and begin environmental review.
  - Riverfront (M0034): CENST approval memo was issued by DEO on July 14, 2022. The city is currently working on the RFQ for engineering procurement. Once an engineer is on board, we'll be able to confirm scope of work and begin environmental review.
- d. **HMGP Emergency Generators** – Received and signed Release of Funds forms for CDBG-DR DEO match – HMGP has funded the generators and agreement signed. HMGP admin bidding was advertised and has closed. Advertised in The Democrat per MSA paper standards from DEO and awarded to TME 9/27. TME is working on RFP for a contractor for the generators and installation.
- e. **HMGP Market Street Vacuum Station** - Received and signed Release of Funds forms for CDBG-DR match – HMGP has funded the generators and agreement



signed. HMGP admin was advertised and has closed. Advertised in The Democrat per MSA paper standards from DEO and awarded to TME 9/27. TME is working on RFQ for Engineers to start the design.

**f. Michael FEMA Projects Updates**

- i. **Bodiford** - BODIFORD PLANS COMPLETE! Waiting for exemption for permits from FEMA to be reviewed. - Received exemption ... waiting on FEMA to re-establish the costs in the project.
- ii. **Scipio** - Designs from Dewberry draft complete - waiting for full. Waiting for scope verification from FEMA to bid out.
- iii. **Alleyway Repairs** - Alleyway: 3, 7, 9, 8, 10, 11, 6, 2, 5, 12, 4 Crushed Shells to be replaced. Extensions requested for all FEMA projects - extension granted.
- iv. **Old City Hall and HCA Contents loss** - Ordering replacement items from loss. (Funding already received - just needs to be ordered and receipts turned in.) Partially ordered - postponing ordering of remaining items until back room flooring of City Hall complete to place items in.
- v. **Lafayette Park** - Boardwalk work and lighting donation have been COMPLETED! It appears that we were supposed to be exempt from permits for this work per engineer opinion, since there was no in-water repairs, but we are waiting for USACE and DEP to confirm this with FEMA before this project can close out and Bodiford and Scipio can begin. - Received the USACE and FDEP permits!
- vi. **Hurricane Sally** - Almost all Sally projects are completed and finalized. TME is uploading receipts to finish.
- g. **DEP - WWTP Tank Cleaning** - WORK COMPLETED! Filed for reimbursement of funds, \$116k, on 7/24/22. **FUNDS RECEIVED!** Project closed.
- h. **Department of Historical Resources 2023 Small Matching Grant - Black History Trail. FUNDED!** Docs for agreement in progress, scope slightly changing as some work has been completed. (signage) Question has come up as to who will manage the historian work for signage. HCOLA possibility? Will explore options.

**14. DEP Applications - Resilient Florida + Water Restoration Assistance - WWTP & Vulnerability Study**

**WWTP-**

Grant #2 is an application for the WWTP totaling \$14 million - the City of Apalachicola was approved for the full \$14 million for new equipment and relocation. DEP contacted us and let us know we had 2 duplicated grant efforts both submitted to them. Both are for the WWTP - and combined could cover the entire WWTP Project costs, headworks and all. DEP has agreed, with some preliminary efforts to ensure the scope and pricing are as they should be. **Total project costs are**

**approximately \$19M, which will be fully funded through two separate DEP awards (Award #1 = \$13.4M, Award #2 = \$5.6M). See cost breakdown below.**

- Scope of works for both efforts are in progress! Cost breakdown below:
- DEP requested several documents to send out agreements – documents supplied. Still ongoing. **DEP Award #1 & #2 have both been executed!**
- **A Kickoff Webinar for Award #1 was held with DEP and the City on 11/1/2022.**
- **While continuing services agreements can be generally be used for DEP funding, the expected cost of the construction contract exceeds thresholds for use of continuing services agreements. Engineering services for this project will utilize a firm selected from the Engineering RFQ that is currently public and also being used for CDBG-DR efforts. -Recommendation to enter contract negotiations is on the agenda for 11.8.2022.**

**COST:** The Total Estimated Cost of this Project is \$18,927,391. The anticipated funding breakdown is for **FDEP** to fund approximately **\$5,551,875**, and **FDEP-SRF** to fund **\$13,375,516**.

#### **Vulnerability Study-**

Grant #1 Vulnerability Study – **FUNDED! Contract signed with Bay Media and research, data collection has begun. Need to schedule a public workshop or at least an item on the city commission agenda (next month?) to update board on work accomplished during first analysis and update on what will occur with this update of the study. That is the first deliverable of the grant – to hold a public meeting about the update.**

#### **15. USDA Water Street Sidewalk and Lighting –**

**Construction by CWR Contracting, Inc. is in progress! Have made first payment and are filing for reimbursement.**

#### **16. Coronavirus State and Local Fiscal Recovery Funds (SLFRF) – American Rescue Plan**

The City formerly made application to the SLFRF program and received an award of \$1,179,010.00. The City has received half of this allocated amount and will receive the second half after spending the first deposit. City has elected to receive "standard allowance" for government services.

#### Dates:

» Funds must be obligated by December 31, 2024

» All expenditures must be complete by December 31, 2026

American Rescue Plan Info:

- Electing the "standard allowance" to spend on government services
  - Government Services generally include any service traditionally provided by government unless Treasury has stated otherwise. Here are some examples:
    - Construction of schools and hospitals
    - Road building and maintenance and other infrastructure
    - Health Services
    - General Government administration, staff, and admin facilities
    - Environmental remediation
    - Provision of police, fire, and other public safety services, including purchase of vehicles
  - **However, these funds may not be used for a project that conflicts with or contravenes the purpose of the American Rescue Plan Act statute (uses of funds that undermine COVID-19 mitigation practices in line with CDC guidance and recommendations)**
  - All projects MUST follow 2CFR procurement.
  - No construction of the following:
    - New correctional facilities as a response to an increase in rate of crime. New congregate facilities to decrease the spread of COVID 19 in the facility. Convention centers, stadiums or other large capital projects intended for general economic development or to aid impacted industries.
- Funds cannot be used for payments for debt services or replenishing rainy day funds.

**All information included in this report is accurate as of November 3rd, 2022 at 12:00pm. After that time, information is subject to change. If you have any questions, please send them to [brobinson@cityofapalachicola.com](mailto:brobinson@cityofapalachicola.com)!**

## Finance Director – Mark Gerspacher

### City Commission Meeting –November 8, 2022 – 4:00pm

**1. 2020 – 2021 Audit**

The audit for Fiscal Year 2020 – 2021 should be complete in the next two weeks with a draft report. A final report will be ready for approval at the next commission meeting. Once complete, we will go straight into the 2021 – 2022 audit which will put us back on schedule.

**2. Banyan**

The technical issues with Banyan have been worked out and we can now move into the implementation phase. We will be working on the chart of accounts in the next week and then move into conversion and training. Anticipated implementation date is January 1.

**3. RFP for Elevated Tank Coating**

We will be sending out an RFP for the coating of the elevated tank next week.

# **ATTORNEY REPORT**

**TO:** City Commission, City of Apalachicola  
**FROM:** Daniel W. Hartman, Esq.  
**DATE:** November 2022  
**SUBJ:** City Attorney Report for Commission Meeting

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**1. Supplement to Procurement Policy**

This is still ongoing and is anticipated to be ready for review during the December 2022 Commission Meeting.

**2. Litigation – Butler, Cameron, Hall - Resolved**

The City was sued in three related cases - two wrongful death and one personal injury cases. Case No.(s): 2014 CA 298 – Estate of Cameron; 2015 CA 15 - Estate of Hall and 2016 CA 246 - Butler. The Commission approved the settlement amount in return for settlement/release and dismissal of the cases at the September 6, 2022 meeting. The settlement/release has been executed and is attached to this report. The City's approved contribution towards the settlement amount is \$75,000.00, the balance being provided by our insurer. I will advise when the dismissals have been filed.

**BUILDING DEPARTMENT**

**November 2022**

- 25 Building Permits Issued
- 7 Building Permits in Process
- 40 Building Inspections
- 23 Certificates of Completion Issued
- 4 Certificates of Occupancy
- Daily Phone Inquiries & Emails Answered
- Several On-Site Meetings
- Daily Office Meetings
- Records Requests
- 6 Planning & Zoning Applications -Support
- Nov. Building Dept. Fees brought in: \$5,625
- Building Dept. Fees ytd: \$127,787



# CITY OF APALACHICOLA CODE ENFORCEMENT

192 Coach Wagoner Blvd \* Apalachicola, Florida 32320 \* 850-653-8222

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November 30, 2022

## CODE ENFORCEMENT OFFICE

November

7 Tree Permits (photos and site visits). One of these was a city permit.

3 Fence Permits (with site visits)

1 Sidewalk Permits

2 Dumping sites visited

2 Meetings regarding debris/blight on personal and city property

2 Ordinance violations posted

2 Stop Work Orders

9 Citations issued

8 Fines issued

1 Warning Citation

1 Camper trailer warnings

Case follow-up for tree fine at 270 Acola (phone meeting with Dan Hartman)

Daily Office Meetings

Daily phone inquiries & emails answered

Set up files for each client

Multiple visits to 245 12<sup>th</sup> Street. (non-compliance and additional citations issued)

Ongoing investigation regarding 123 6<sup>th</sup> Street. Second certified letter plus fines to Glen Coxwell to remove the illegal and unpermitted fill.

Continued preliminary work on new short-term private transient rental ordinance.

Monitor 270 Prado development including phone calls with Frazier Collins regarding future fill fees.

Continuous monitoring of violation properties.

**Fees Collected**

Tree Permits            \$485 (\$250 City/ \$235 Tree Reforestation)

Fence Permits         \$150

Sidewalk Permits     \$200





CITY OF APALACHICOLA  
ADMINISTRATION DEPARTMENT  
November 2022

- Updated meeting calendar on website
- Payroll
- Finance Clerk posted revenues, expenses, pay accounts receivables, balance check accounts, purchase orders and tracking, research on all vendor accounts, and order city employee cell phones
- Assist staff with tree applications, utility bill issues
- Staff assisted with Cemetery, utility bills, garbage, permitting issues, city property rentals and other miscellaneous duties
- Completed tasks as assigned by the City Manager/Commission
- Public Records Request
- Annual golf cart sticker renewals
- Business License Renewal Notices and processing by City staff
- Boat launch stickers processed

City of Apalachicola  
**Utility Billing Clerk - November 2022**  
**Payment Reconciliation**  
 11/01/2022 through 11/30/2022

Category	Type	Payment Method	Count	Amount
Deposit Payments	Manual	NOT SPECIFIED	10	-1500.00
	Total - Manual		10	-1500.00
Total - Deposit Payments			10	-1500.00
Payments		CASH	210	-20346.18
		CHECK	1029	-151360.02
		CREDIT CARD	351	-31152.20
	Total - Manual		1590	-202858.40
	Payment Redistribution		332	0.00
	Total - Payment Redistribution		332	0.00
	Recurring	Bank Draft	563	-82321.96
	Total - Recurring		563	-82321.96
	Returned Check	CHECK	4	522.21
	Total - Returned Check		4	522.21
Total - Payments			2489	-284658.15
	GRAND TOTAL		2499	-286158.15

Payments processed for October bills, mailed on 11/3/22 - 2,005  
 Payments processed for November bills, mailed on 11/30/22 - 1,994  
 Work Orders Issued - 54                      Work Orders Completed - 51  
 Cut List - 115

*Janelle C. Paul 12/1/22*

# APALACHICOLA POLICE DEPARTMENT

November 2022

The end of October, and then November has been busy! The A.P.D participated in the Seahawk homecoming parade, we gave out Halloween treats. We were on additional duty during the Seafood Festival and also on extra patrol for the large amount of crowds during the annual light up night. Chief also attended a Veterans Day program coordinated by Ms. Delores Croom. The police department began closer monitoring and patrol at Battery Park and writing warnings, for users of the boat ramp not paying the fees. Extra Patrol will be implemented during day shifts to monitor activity at the Gun Range as well.

## November 2022 Totals

Traffic Stops/ Warnings/ citations	35	
Arrests/ Warrant Requests	5	
Traffic Accidents	4	
Burglary/Theft calls	4	
Assist Citizens/ Complaints/investigations		835
Trespass Warnings/agreements	4	
Business alarm calls/building checks/welfare checks		440
assist county call/other agencies	20	
Assist Animal control	1	
Domestic cases involving violence/disturbance calls		1
Drugs	0	
Total calls from dispatch	1620	

APALACHICOLA VOLUNTEER  
FIRE/RESCUE  
October 2022 – 18 Calls

Monthly Report

1. Accidents	<u>      </u>	8. Life Flights	<u>   4   </u>
2. Life Assist EMS	<u>   9   </u>	9. Search/Rescue	<u>      </u>
3. Bi-Mo. Meetings	<u>   2   </u>	10. Training	<u>   1   </u>
4. Brush Fires	<u>   1   </u>	11. Transformer Fires	<u>      </u>
5. House Fires	<u>      </u>	12. Cars	<u>      </u>
6. Vehicle	<u>      </u>	13. 1 <sup>st</sup> Responder Calls	<u>  20  </u>
7. Gas Leaks	<u>      </u>	14. Vessels	<u>      </u>
		15. Outreach	<u>   1   </u>

FIREFIGHTER ATTENDANCE

1. George Watkins	<u>   6   </u>	11.	<u>      </u>
2. Fonda Davis	<u>   5   </u>	12. Avery Scott	<u>   3   </u>
3. Ginger Creamer	<u>  15  </u>	13. Troy Morrison	<u>   4   </u>
4. Albert Floyd	<u>   6   </u>	14.	<u>      </u>
5. Rhett Butler	<u>   3   </u>	15. Anthony Croom	<u>   6   </u>
6.	<u>      </u>	16. Scott Brackett	<u>      </u>
7. Palmer Philyaw	<u>      </u>	17. Ricky Linton	<u>   4   </u>
8. Troy Morrison	<u>   3   </u>	18. Shannon Segree	<u>   3   </u>
9. Troy Segree	<u>  10  </u>	19. Adam Joseph	<u>  10  </u>
10. Rick Hernandez	<u>   0   </u>	20. Craig Gibson	<u>   7   </u>

**Additional Notes:**

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Recorded by: \_\_\_\_\_

Date: \_\_\_\_\_

## City of Apalachicola public works monthly report

november 2022

The public works department, services all city vehicles and replaces all the tires on city vehicles, services all the mowers and weed eaters, cuts all city parks, cut all city properties, clean all city buildings, empty all garbage cans down town and city parks, clean city right of ways, cut city right of ways, and patch holes on city roads as needed.

- empty trash cans from down town and public parks three times a week.
- cut our routine main roads parks and cemeteries.
- completed 6 work orders.
- cut back on rex buzzett st. and cut storm ditch.
- cut storm ditch on 17th st.
- removed debris from public works.
- replaced stop sign on 20th st. and 11st.
- replaced radiator on work squad truck.
- repaired work squad trailer.
- fixed sink hole 16th st.
- cut back and cleaned ditch on fred myers.
- fixed broke tables at holy family.
- put Christmas lights and Christmas tree up at river front park.
- 

Signed. Robert osburn

## Monthly Report for the Apalachicola Margaret Key Public Library November 2022

### Statistics:

- 1,420 patrons visited our library
- 639 books/movies/audiobooks circulated
- 19 new accounts opened
- 160 patrons used our computers
- \$261.75 collected as library revenue
- 324 items donated to the library
- 95 hours donated by our wonderful volunteers
- 9,496 people reached with 35 Facebook posts
- 50 accounts reached with 27 Instagram posts

November is a time to be thankful and we are incredibly thankful for our patrons, volunteers, Bring Me A Book Franklin, Project Impact, and our P.A.L.S. (Patrons of the Apalachicola Library Society). We have volunteers who help us every afternoon-- maintaining order within our shelves, hosting programs, creating flyers, and assisting at our events. We are so, so grateful!

The Writers Group, Chess Club, and Book Club are all volunteer led. Thank you to Jerry Hurley (Writers Group 2<sup>nd</sup> & 4<sup>th</sup> Mondays @ 4) Richard Lenhart (Chess Club 1<sup>st</sup> & 3<sup>rd</sup> Mondays @ 3) and Carol Barfield (Book Club 3<sup>rd</sup> Wednesday @ 6) for all their work creating needed and welcoming programs to the public.

This month, Book Club discussed The Next Ship Home by Heather Webb. December's book will be Our Souls at Night, by Kent Haruf. The group will meet December 14<sup>th</sup> and plan to hold a small party to celebrate the season. Lego Club and Homeschool Hangout continue to bloom with new families and participants. Making Lego turkeys was a fun challenge! Books for Babies, hosted by Bring Me A Book Franklin's Karen Kessel, is abuzz with children every Tuesday at 10:30am. Kids come for free crafts, music, and a read-aloud. Thank you, Karen Kessel for always leading an engaging and fun program! Kids were also treated this month to two pop-up crafts lead by PALS volunteer, Connie Justice. Kids made their own 'autumn trees' to celebrate the changing colors of the season and created woven wooden baskets. Younger children enjoyed decorating handprint turkeys. Thank you, Connie!  
Our STEAM session with Project Impact this month had kids create and race 'balloon turkeys' down a clothesline. PALS volunteer Richard Lenhart instructed the kids on building the turkeys and then lead the races. Richard, thank you! PALS members also hosted a classic Movie Night with the original "Pink Panther" and free popcorn this month.

Our December calendar is packed with activities for all ages. Special kids' calendars, created this month by PALS volunteer Liz Perkins are being delivered to our local ABC and Baptist School, as well as the Franklin School, Davis DayCare and the HeadStart Preschool. Calendars for any age can also be found at [apalachicolalibrary.com/events](http://apalachicolalibrary.com/events). We look forward to hosting Santa from 3-5 on December 15<sup>th</sup> and enjoying a special reading of The Night Before Christmas on December 16<sup>th</sup> at 5:30. The week before Christmas, our illustrious Mayor, Brenda Ash, kicks off our daily read-alouds on December 19<sup>th</sup>. Our read-alouds will run Monday-Thursday at 3pm. Families are invited for cocoa, snacks, and caroling to follow. Tuesday, Dec. 20<sup>th</sup> Apalachicola Times Editor David Adlerstein offers a Hanukkah lesson and dreidel game. Wednesday, Dec 21<sup>st</sup> we celebrate Christmas en Español, and Thursday, Dec. 22<sup>nd</sup> we enjoy classic Christmas fun. While visiting the library, grab our seasonal newsletter, too!

Library hours are 10am to 6pm Monday-Friday and Sundays from 12-4pm. We help with reading, writing, and learning; and offer a suite of print/copy/scan/fax/and notary services. We loan books, movies, puzzles, and items from our Library of Things. Our coffee and tea are free. Stop in, we'd love to see you.

**Happy Holidays!**

**Lucy Carter, Library Director & Isel Sánchez-Whiteley, Library Assistant**

**CITY OF APALACHICOLA**  
PLANNING & ZONING BOARD  
REGULAR MEETING  
MONDAY, November 14th, 2022  
Community Center -1 Bay Avenue  
Minutes

**Regular Meeting: 6:00 pm**

**Attendance: Al Ingle, Bobby Miller, Jim Bachrach, Joe Taylor, Lee McLemore**

1. Approval of October 10<sup>th</sup>, 2022 regular meeting minutes.
  - **Motion to approve by Jim Bachrach; 2<sup>nd</sup> by Joe Taylor. All in favor – motion carried.**
  
2. Review, Discussion and Decision for Pool, Pool Decking, & Covered Porch. **(R-2) @ 250 Prado Street.** Block 2, Lots 7, 8, & 9. For D. & T. Robertson -Owner; Contractor: Forgotten Coast Pools & Self
  - **Motion to approve by Bobby Miller; 2<sup>nd</sup> by Jim Bachrach. All in favor – motion carried.**
  
3. Review, Discussion and Decision for Deck Addition. **(Historic District) (O/R) @ 71 15<sup>th</sup> Street,** Block 95, Lot 7. For W. Avery -Owner; Contractor: Earl Duggar
  - **Motion to approve by Bobby Miller; 2<sup>nd</sup> by Joe Taylor. All in favor – motion carried.**
  
4. Review, Discussion and Decision for Sign. **(Historic District) (R-2) @ 205 17<sup>th</sup> Street.** For Denton Cove Ltd.–Owner; Contractor: RBK3, LLC.
  - **Discussion on whether the approved site plan for Denton Cove included the 24sqft of lot coverage from the sign structure in their calculations. Also discussed the sign ordinance and whether the structure around the letters is included in the sign – Sec 113-3. – Computations states:**
    - ***(1)Computation of sign area. The area of a sign shall be computed by means of the smallest rectilinear figure (but which shall have a continuous perimeter of not more than eight straight lines) which encompasses all lettering, wording, frame, design or symbols, together with any background and any illuminated part of the sign on which the sign is located, if such background or such illuminated part of the sign***

**CITY OF APALACHICOLA**  
PLANNING & ZONING BOARD  
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*is designed as an integral part of and related to the sign. Support and bracing which are not intended as part of the sign and which contain no message, shall be excluded. In the case of a multi-faced sign, the area of the sign shall be considered to include all faces visible from one direction, and the area shall be considered to include all lettering, wording and accompanying designs or symbols together with any background of different color than the natural color of the building.*

- **Motion to table until applicant provides an accurate site plan with the lot coverage breakdown shown and legal can give insight into if the sign dimensions include the large surrounding structure by Bobby Miller; 2<sup>nd</sup> by Jim Bachrach. All in favor – motion carried.**
5. **Review, Discussion and Decision for Pavers & Pond Removal. (R-2) @ 270 Acola/135 Bay Colony, Block 5, Lots 7 & 8 + BC Lot 20. For D.& J. Lawrence -Owner; Contractor: Self**
- **Motion to approve the proposed pavers contingent upon legal providing agreement for the shared lot coverage from BC Lot 20 and it being signed by the applicant and provided to staff by Lee McLemore; 2<sup>nd</sup> by Bobby Miller. All in favor – motion carried.**
  - **Motion to table the removal of the retention pond until a stormwater analysis can be completed and show that the pond is not necessary by Jim Bachrach; 2<sup>nd</sup> by Joe Taylor. All in favor – motion carried.**
6. **Review, Discussion and Decision for Demolition & New Construction. (R-3) @ 189 25<sup>th</sup> Avenue. Block 239 Lots 25-30. For Donna Crum – Owner; Contractor: Paul Judson**
- **Motion to approve contingent upon an updated site plan showing where the parcel has been split and provided for staff review of setbacks by Bobby Miller; 2<sup>nd</sup> by Jim Bachrach. All in favor – motion carried.**



**CITY OF APALACHICOLA**  
PLANNING & ZONING BOARD  
REGULAR MEETING  
MONDAY, November 14th, 2022  
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Minutes

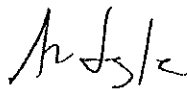
7. Review, Discussion and Decision for Porch/Deck Addition. **(Historic District) (C-2) @ 111 Avenue E.** Block 32 Lot 9. For C. & H. Brocato/Apalachicola Wellness LLC – Owner;  
Contractor: Matthew Godwin
- **Applicant brought in additional site plan to clarify the lot coverage and conjoined parcels.**
  - **Motion to approve by Bobby Miller; 2<sup>nd</sup> by Lee McLemore. All in favor – motion carried.**

Other/New Business: N/A

Outstanding/Unresolved Issues: **Jim Bachrach brought up the point that the Historic Guidelines cannot be currently enforced and asks that Al Ingle, Chairman, speak to the City at the next regular city commission meeting about this.**

**Motion to adjourn by Jim Bachrach; 2<sup>nd</sup> by Lee McLemore. All in favor – meeting adjourned.**

Minutes Approved:



Date: 15 November 2022