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ATTORNEYS AND COUNSELORS AT LAW

M E M O R A N D U M

TO: Mayor Schneier and Town Commissioners
CC: Tom Harmer, Town Manager
FROM: Maggie D. Mooney, Esq., Town Attorney
DATE: June 12, 2021
RE: Jewfish Key and Vessel Noise Regulation

I. History and Background.

Since 2015, residents on the north end of Longboat Key have expressed concerns to the Town Commission about the non-motorized noise emanating from vessels anchored between the Longboat Key's main island and Jewfish Key. The primary source of the lodged complaints has to do with the volume of music that emanates from anchored vessels on holidays, weekends and other times of the day when the vessel owners and their guests are "partying" on the water. The music disturbs residents and property owners with homes adjacent to the shoreline.

The issue of the regulation of such vessel noise was brought before the Town Commission following the request of several Land's End residents in March 2016. After reviewing state statutes governing vessel regulations, it was unclear whether non-motorized vessel noise was pre-empted by state law. Specifically, Chapter 327, Florida Statutes, contains certain pre-emptions that restrict local government regulatory authority within Florida's Intracoastal Waterway and also the regulation of certain motorized vessel noise. The statutory language contained within Chapter 327, Florida Statutes, a review of caselaw, and coordination with the Florida Fish and Wildlife Commission ("FWC") (the state agency charged with administering Chapter 327) did not provide the necessary clarification on the issue.

Chapter 327, Florida Statutes, entitled Florida's Vessel Safety law relates to vessel safety considerations, vessel operations, includes water craft requirements, establishes uniform waterway marking requirements, and contains pre-emptions (local government) restrictions on what can and cannot be regulated by local governments.

Specifically, Florida Statutes 327.60, entitled "Local regulations; limitations" contains the following pre-emptions in sections (1) and (2) of the statute:

327.60 Local regulations; limitations.—

(1) The provisions of this chapter and chapter 328 shall govern the operation, equipment, and all other matters relating thereto whenever any vessel shall be operated upon the waters of this state or when any activity regulated hereby shall take place thereon.

(2) This chapter and chapter 328 do not prevent the adoption of any ordinance or local regulation relating to operation of vessels, except that a county or municipality may not enact, continue in effect, or enforce any ordinance or local regulation:

(a) Establishing a vessel or associated equipment performance or other safety standard, imposing a requirement for associated equipment, or regulating the carrying or use of marine safety articles;

(b) Relating to the design, manufacture, or installation of any marine sanitation device on any vessel, except as authorized in subsection (4);

(c) Regulating any vessel upon the Florida Intracoastal Waterway;

(d) Discriminating against personal watercraft;

(e) Discriminating against airboats, for ordinances adopted after July 1, 2006, unless adopted by a two-thirds vote of the governing body enacting such ordinance;

(f) Regulating the anchoring of vessels outside the marked boundaries of mooring fields permitted as provided in s.

327.40, except for:

1. Live-aboard vessels; and

2. Commercial vessels, excluding commercial fishing vessels;

(g) Regulating engine or exhaust noise, except as provided in s. 327.65; or

(h) That conflicts with any provisions of this chapter or any amendments thereto or rules adopted thereunder.

See, Fla. Stat. 327.60 (1), (2).

Additionally, Section 327.65, entitled “Muffling devices” addresses vessel noise. That statute provides the following regulations relative to engine noise and noise pollution:

327.65 Muffling devices.—

(1) The exhaust of every internal combustion engine used on any vessel operated on the waters of this state shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for vessels competing in a regatta or official boat race, and for such vessels while on trial runs.

(2)(a) Any county wishing to impose additional noise pollution and exhaust regulations on vessels may, pursuant to s. 327.60(2), adopt by county ordinance the following regulations:

1. No person shall operate or give permission for the operation of any vessel on the waters of any county or on a specified portion of the waters of any county, including the Florida Intracoastal Waterway, which has adopted the provisions of this section in such a manner as to exceed the following sound levels at a distance of 50 feet from the vessel: for all vessels, a maximum sound level of 90 dB A.

2. Any person who refuses to submit to a sound level test when requested to do so by a law enforcement officer is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) The following words and phrases, when used in this section, shall have the meanings respectively assigned to them in this subsection.

1. “dB A” means the composite abbreviation for the A-weighted sound level and the unit of sound level, the decibel.

2. “Sound level” means the A-weighted sound pressure level measured with fast response using an instrument complying with the specification for sound level meters of the American National Standards Institute, Inc., or its successor bodies, except that only a weighting and fast dynamic response need be provided.

See, Fla. Stat. 327.65.

In reading the above two statutes at the time the issue was presented, and discussing the matter with the General Counsel for (FWC), there was no instructive case law or advisory opinions on whether non-motorized boat noise on the water could be regulated by a municipal ordinance or whether it was pre-empted by either of the above cited statutes. In 2015, there also was no guidance provided by FWC as to whether the expansive definition of the Florida Intracoastal Waterway (as defined in Section 327.02(15), Florida Statutes) included the entirety of Sarasota Bay or whether the intention was to refer to navigable channel. Accordingly in 2015, Town Commission agreed that the Town would request a Florida Attorney General Opinion to clarify whether the subject of non-motorized noise could be regulated by the Town.

Copies of the May 3, 2016 Attorney General Opinion request from the Town to Attorney General Pam Bondi, and the August 2, 2016 *informal* response from Gerry Hammond (Senior Assistant Attorney General to Pam Bondi) are attached as Exhibits 1 and 2, respectively. Contemporaneously, the Town also explored and pursued the following:

1. In December 2015, the Town explored modifying Chapter 130, Town Code to incorporate objective decibel standards into the Town Code. At that time, the Town's Police Department obtained quotes for an acoustical consulting services to establish ambient sound levels at various locations in the Town to establish appropriate decibel levels for incorporation into the Town Code. Estimated costs for the engagement of a sound consultant, decibel level instrument, and police officer training was a minimum cost of \$23,365.00; and an additional acoustic camera (for measuring distant sound) was estimated to cost approximately \$50,000.00. See, Exhibit 3 December 22, 2015 Memorandum from Deputy Chief Rubino to Dave Bullock, Town Manager and Powerpoint. The Town Commission declined to proceed with the sound proposal presented.
2. The Town was invited to present to the Manasota League of Cities (November 2016) and the Florida League of Cities (FLC) Policy Forum (September 2016) on the issue of the Attorney General Opinion, sound on the waterways, and potential legislation that could be pursued to clarify jurisdictional noise issues. Presentations and suggested legislation was presented at that time at both meetings. See, Exhibit 4, Powerpoint to the Florida League of Cities. Neither body supported the pursuit of legislative amendments to clarify the Intracoastal Waterway definition or municipal authority to regulate non-motorized sound.

Following the Florida Attorney General's August 2016 informal opinion, and the lack of support from FLC to amend sections of Chapter 327, Florida Statutes, the Town has followed the guidance provided within the advisory opinion and refrained from enforcing the Town's noise ordinance against vessels. Recently, residents and property owners on the north end of Longboat Key have submitted numerous complaints to the Town regarding non-motorized/music emanating from anchored vessels. Such complaints have resulted in the Town Commission requesting that the above issues be re-examined.

In re-visiting the issue of noise on water, the Town Commission has various options available to it. While some involve revisiting the legal (jurisdictional) issues created by the 2016 Attorney General Opinion, other options and alternatives include the Town's pursuit of certain vessel restriction/exclusion zones that may create further buffers between anchored vessels and upland land owners, increasing marine patrol, and exploring the removal of the sand shoal/sand bar area. These options, and others, are discussed in greater detail below.

II. Revisiting the Town's Jurisdiction and the 2016 Attorney General Opinion.

Florida Attorney General opinions are considered advisory in nature and not binding in a court of law. Nevertheless, they are considered "persuasive authority" that local governments in particular may request to address questions of state law. Informal attorney general opinions (like the one issued to the Town in 2016) are considered of more limited application.

The 2016 Florida Attorney General Opinion ("AGO") stated the Town does not have jurisdiction to regulate vessels within the "Intracoastal Waterway" and rendered a particular determination that the Town was preempted from enforcing its sound ordinance in such waterbody. Recently, resident from the Town's north end have provided supplemental legal arguments (based upon federal law) that the Florida Intracoastal Waterway is the narrowly defined (100 ft. in width) federal nautical channel; and not the entire breadth of Sarasota Bay. While the navigational channel interpretation was explored in 2016, such a construction was not contained in the statutory definition of "Florida Intracoastal Waterway" as set forth in Section 327.02(15), Florida Statutes, the Florida Administrative Code rules, nor in any caselaw or binding authority. Further, the statutory definition of Florida Intracoastal waterway has not changed since 2016.

However, recently this Legislative Session, the Florida Legislature has made reference within one of the bills (SB 1086) that amended a section of Chapter 327 to “the marked channel of the Florida Intracoastal Waterway” further supporting the argument that the “Florida Intracoastal Waterway” was intended to mean the navigable channel. See, SB 1086 (2021 Legislative Session). The combination of the federal law, 1972 legislative history, plus the recent 2021 legislation, lends itself to a colorable argument that the 2016 Attorney General Opinion should be revisited to specify that the location of the sand shoal (outside the navigable channel) is not within the Intracoastal Waterway; and therefore, not an area that the Town is pre-empted from enforcing its ordinance upon.

The Town could revisit this issue presented in the 2016 Attorney General Opinion and re-affirm its authority to enforce local ordinances (including noise regulations) on the vessels that anchor in the sand shoal area adjacent to Jewfish Key. Among the options available to the Town, the Town can:

1. Request that Attorney General Moody’s Office clarify/revisit the 2016 prior opinion. Specifically, the Town could request that the Florida Attorney General revisit the definition of the “Florida Intracoastal Waterway” and its boundaries, and adopt an interpretation that the pre-emption in Florida Statutes 327.60 only applies in the navigational channel. This approach would involve adoption of a Resolution of the Town Commission and the submission of a written request and Memorandum of Law to the Attorney General’s office. Should the Attorney General agree with this analysis, this would be the most conservative approach to ensure that the prior 2016 advisory opinion would be superseded by a new advisory opinion should a dispute ever arise about the Town’s authority to enforce its sound ordinance on vessels within the shoreline surrounding the Town.
2. Ignore the 2016 Attorney General interpretation and rely upon the additional federal research, 1972 legislative history, and recent 2021 legislation in future interpretations of the Town’s regulatory authority. This approach would have the Town disregard the prior Attorney General opinion (within the public realm) and have the Town modify its observance of the opinion over the past 5 years. Such a pivot in position can be done, however, it would place the Town in a defensive position having to explain the Town’s departure/position if there was a challenge to a noise violation/citation. In such a challenge, the 2016 Attorney General Opinion would likely be an issue that would have to be addressed and distinguished.

3. A declaratory relief (lawsuit) could be filed in the 12th Circuit Court on the issue of law relative to the definition of the Florida Intracoastal Waterway. A declaratory relief action requests that the circuit court interpret the applicable law and render a determination. A declaratory relief action is binding precedent/legal authority (as compared to Attorney General Opinions which are considered persuasive authority). The Town could file a suit against a party in interest (meaning a potential violator of the Town's sound ordinance or state agency), or the Town could defend against such a suit for enforcement of the Town's ordinance(s). Depending on whether a state agency is a named party in the action, the case could be heard locally. However, if a state agency is named in a declaratory relief action, then, such cases can be removed to a Tallahassee court.

Of the options listed above, we recommend option 1, as the pursuit of a revised Attorney General Opinion on the same topic would allow the Town to seek clarification on the topic without having to engage or defend the topic in litigation on the subject matter.

III. Town's Noise Ordinance.

The Town's Noise Ordinance laws was modified in 2005 and is found within Section 130.02, Town Code. The Town's Code restricts unreasonable sound that "annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities." Music emanating from sources like radios, cds, dvds, or similar devices, fall within the Town's regulatory authority; however, the current ordinance may be difficult to enforce because it lacks sufficient objective standards and criteria to clearly regulate the unwanted behavior. Noise regulations are subject to First Amendment protections, regulations cannot be "content based" and they cannot be unduly vague. The current ordinance could be challenged on one or more grounds. A more in depth discussion of these standards is provided in a separate Memorandum dated June 13, 2021, attached as Exhibit 5. To the extent the Town anticipates future enforcement actions based upon the Town's noise regulation, it is advisable for the Town to incorporate more objective standards (i.e., decibel and/or distance measurable standards) into the Town's regulatory process. Incorporating such standards within the Town's ordinance will also likely require the acquisition of measurement equipment and training of the Town's officers who will need to enforce such regulations.

IV. Boat Restricted Areas, Vessel Exclusion Zones & Anchoring Limitation Areas.

There are several Florida Statutes that regulate vessel operation, anchoring and speed(s) that can be evaluated to determine whether there are areas along the Town's shorelines that can be further restricted to prevent vessel anchorage and operations in certain designated areas.

Section 327.46, Florida Statutes, grants authority to FWC and local governments (counties and cities) to establish ordinances for "any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion or other navigational hazards, or to protect seagrasses on privately owned submerged lands." Fla. Stat. 327.46(1). In most instances, FWC has to review the locally adopted ordinance and determine by substantial competent evidence that the ordinance is necessary to protect public safety such that some sort of statistical or factual basis is needed to justify the boating restricted area. Additionally the U.S. Coast Guard and Army Corps of Engineers (ACOE) must also be consulted in the establishment of certain vessel restriction/exclusion area.

Pursuant to the Florida Statute 327.46, such municipal ordinances can establish the following areas to further public safety:

A. Idle speed, no wake boating restricted areas:

- When the area is within 500 ft (or 300 ft) of certain public vessel launch areas used by the general public, or marine fueling station or within 300ft of any lock structure. *See*, Fla. Stat. 327.46 (1)(b)(1).
- When the area is within 300 ft. of an area where there are visibility issues. *See*, Fla. Stat. 327.46 (1)(c)(1).

B. Slow speed, minimum wake boating restricted areas:

- When the area is within 300 ft of certain bridge infrastructure or certain linear waterways. *See*, Fla. Stat. 327.46 (1)(b)(2).
- When the area has visibility issues, unsafe levels of vessel traffic congestion, navigational hazards, areas of accidents or significant threats to boating safety. *See*, Fla. Stat. 327.46 (1)(c)(2).

C. Vessel exclusion zones:

- When the area is designated as a public bathing beach or swim area, or within 300 ft of a flood control structure. *See*, Fla. Stat. 327.46 (1)(b)(3).
- When the area is reserved exclusively as a canoe trail or for non-motorized vessels, for a particular activity and user group separation to protect safety of those participating in such activity. *See*, Fla. Stat. 327.46 (1)(c)(3).

- SB 1086 (discussed below) also provides that vessel exclusion zones must be marked with FWC uniform waterway markers.

D. Boating Restricted Area to protect Seagrasses:

- May only be applied for by a private property owner of the state submerged lands. *See*, Fla. Stat. 327.46 (1)(d).
- Privately owned submerged land owners must apply to the FWC for waterway markers to mark the boat restricted zone.

In addition to the above reference provisions available for municipal ordinance adoption, other Florida Statutes specifically restrict vessel anchoring in certain urban areas or near public facilities. These statutes prohibit vessel anchoring in the following areas.

E. Anchoring limitation areas:

- Florida Statutes 327.4108 specifies certain delineated waterways in “densely populated urban areas” (mostly in the South Florida region) that have been deemed anchoring limitation areas where vessels cannot anchor during certain times of day.
- New legislation SB 1946 and SB 1086 (both passed during 2021 Legislative Session), amends Florida Statutes 327.4108¹ and includes authority for counties to designate areas within their jurisdiction as anchoring limitation areas.
- SB 1946, allows counties to establish “anchoring limitation areas” adjacent to urban areas that have residential docking facilities and significant recreational boating traffic.
- Counties are only authorized to designate 10% of a particular county’s navigable waterways as an anchoring limitation area.
- Designated areas must be less than 100 acres in size and cannot include any portion of the marked Intracoastal Waterway channel.
- Requires signage within the area, buoy installation and maintenance by the county.
- Limits anchoring for more than 45 consecutive days in a 6 month period.
- A County must provide notice to the FCW 30 days before introducing such an ordinance.
- FWC’s role in this process is limited to publication requirements (no real oversight over this process).

¹ As of the date of this Memorandum, neither SB 1946 nor SB 1086 have been acted upon by the Governor. Unless specifically vetoed by the Governor, SB 1946 legislation will take effect “upon becoming a law” which means that it can become law with the Governor’s signature or through inaction by the Governor. SB 1086 provides for an effective date of July 1, 2021.

See, Fla. Stat. 327.46 and SB 1086.

F. Other Anchoring or Mooring Restrictions

- Florida Statutes 327.4109 currently prohibits anchoring or mooring within 150 feet of any marina, boat ramp, boat yard, or other vessel launching area, or 500 ft. of a superyacht repair facility.
- SB 1086 amended the existing anchoring restriction to further clarify that the 150 ft. prohibition on anchoring is a restriction measured from any “public” vessel launching or loading facility.
- This legislation clarifies that any publicly used vessel launch (including but not limited to a kayak launch) could create a prohibited anchoring restriction area, where vessels cannot anchor.

There may be existing areas in the Town that qualify for one or more of the above listed vessel restrictions, exclusion zones or anchoring restrictions that could prevent vessels from anchoring in or around areas on the north end of Longboat Key. These vessel and anchoring restrictions, if implemented, could have secondary effects of creating vessel buffer areas that limit vessels from anchoring immediately adjacent to the waterfront properties. As the applicability of these restrictions depends upon the presence of public and/or private resources, the infrastructure at the north end of the island would need to be evaluated to determine whether there are any qualifying areas where speed, anchoring restrictions or exclusion zones could be applied.

V. Marine Patrol Response

While the Town Commission have received emails from waterfront residents regarding their perspective on vessel nuisance behavior, the Town Commission may want to hear from the Police Department on their perspective as well. Specifically, the Town Commission may want to discuss with the Town’s Police Department their assessment of the noise issue(s) and the Department’s available resources. Such a discussion should include the following topics:

- A. Noise complaints received by the Police Department.
 1. Frequency of complaints.
 2. Is there compliance when a complaint is received?
 3. Do additional patrols mitigate negative behavior?
 4. Staffing/Equipment issues.
 5. Interagency/government cooperation.

To the extent that the Marine Patrol continues responding to nuisance behavior on the shorelines of Longboat Key, the Town’s marine patrol may

also want to consider other enforcement tools (besides local noise ordinance violations) that potentially could also be violated by the vessel owner/operators during unrestrained “parties” on the water. Specifically, Florida Statutes provide various other vessel safety requirements that can be evaluated by marine patrol officers (in some instances without probable cause). Some of the vessel safety requirements (provided for by Florida Statutes) that can be evaluated by the on duty marine patrol officer, and the commensurate fines for violations, include (but are not limited to) the following:

Boating safety identification card - \$50 civil fine;

1. Operating in excess of speed - \$50 civil fine;
2. Carry safety equipment/personal floating devices;
3. Interference with navigation - \$50 civil fine;
4. Marine sanitation devices - \$50 civil fine; and
5. DUI/Testing – Driving/actual operation. Violations can result in suspension of license and \$500 civil fine.

While some vessel safety laws can only be enforced while vessels are in operation, other safety standards (like safety equipment and vessel registration) can be enforced by any marine officer without probable cause. More enforcement efforts relating to existing statutory vessel safety standards, may curtail nuisance behavior and/or alleviate some of the unruly, “partying” abuse that is being reported by residents as occurring.

VI. Pursue Legislative fix.

The adoption of SB 1086 (relating to operation and safety of vessels) during the 2021 Legislative Session provided recommended clarification that FWC sought for several years. According to FWC officials, SB 1946 (relating to anchoring limitations) was not advanced by the state agency. Often when large pieces of legislation are adopted, there are opportunities in the following Legislative Sessions to clarify issues that were not addressed. These subsequent pieces of legislation are called “glitch bills.” A glitch bill clarifying or supplementing the changes advanced in SB 1086 or SB 1976 could be pursued. Proposed legislative changes to Chapter 327, Florida Statutes could include legislation that:

1. Clarifies that the Intracoastal Waterway is the navigational channel, which would make definition consistent with recent references (from SB 1086) that refer to the Intracoastal Waterway as a “channel”.

2. Recognizes local government authority to regulate non-motorized noise on water.

Typically, changes to general laws (Florida Statutes) are pursued in conjunction with state lobbying organizations like the Florida League of Cities (FLC), Florida Association of Counties (FAC) or the Manasota League of Cities. Additionally, since the Florida Fish and Wildlife Conservation Commission (FWC) is charged with administering the vessel and anchorage regulations for the state, there should be coordination with this state agency as well, and legislative requests can also be considered by the FWC's Commission. Recent conversations with FWC officials have indicated that at the present time, the agency does not anticipate advancing any legislation in 2022. If this approach is desired, the Town should begin discussions with the Town's state lobbyist to determine whether opportunities for legislation during the 2022 Legislative Session are available, and what coordinated efforts should be initiated.

VII. Revisit the Removal of Sand from the Jewfish Key sand bar area.

Whether or not the sand shoal area at the northwest side of Jewfish Key could be dredged and used as beach renourishment sand is a question that has been posed for discussion. In response to that question, the Town reached out to various environmental consultants (legal and engineers) to determine whether this is feasible. Attorney Deborah Getzoff (environmental counsel) advised that at a minimum various state and federal permits would need to be obtained to dredge the shoal/sand bar for use as beach fill.

A. Federal approvals:

1. The U.S. Army Corps of Engineers would need to issue a permit pursuant to Section 10 of the Rivers and Harbors Act and the Clean Water Act for the dredge area and for any fill below high water. Since this appears to be an inlet flood shoal, any proposed dredge areas would probably require a modeling study to determine possible dredge locations, hydro graphics, and effects on the inlet and navigation channels. For any beach placement, a sand study would need to be done to determine compatibility of the material.
2. The Corps may need to do a Feasibility Study, which would take a substantial period of time.
3. The Army Corps permit review process would include coordination with the National Marine Fisheries Service and the U.S. Fish and

Wildlife Service relating to any listed species or habitat areas. This could be a lengthy process.

4. Approval may also be needed from the U.S. Coast Guard for the dredging.

B. State Approvals:

1. The Florida Department of Environmental Protection will require an Environmental Resource Permit (ERP) for both dredging and filling below the line of mean high water pursuant to Chapter 373, Florida Statutes. This would be a Joint Coastal Permit pursuant to s. 373.427, Florida Statutes, which would combine the ERP with the permit needed for beach fill from the FDEP Coastal section and with the approvals from the Board of Trustees of the Internal Improvement Trust Fund for material removal and placement of any beach fill seaward of the Erosion Control Line or the line of mean high water pursuant to Chapter 253 Florida Statutes.
2. Part of the s. 373.427 Joint Coastal Permit for any beach fill activities seaward of the Erosion Control Line or the line of mean high water would be issued pursuant to s. 161.041, Florida Statutes. A coastal construction control line permit pursuant to s. 161.053, Florida Statutes may be required for beach fill above the Erosion Control Line or line of mean high water.
3. The shoal location appears to be within the Sarasota Bay Outstanding Florida Water pursuant to Rule 62-302.700 (9)(i), Florida Administrative Code. This designation requires the applicant to provide reasonable assurances that the proposed activity is clearly in the public interest pursuant to s. 373.414, Florida Statutes.
4. There may be a drafted Inlet Management Plan for Longboat Pass that includes consideration of this location that may have been filed with FDEP. If one exists, it may have draft provisions related to dredging in this location that would require consideration by Manatee County for any permitting process. If the Plan has not been adopted, it would not necessarily determine FDEP permit action, but it may raise issues to be considered by the Department in the review process.
5. State permitting would include coordination with the Florida Fish and Wildlife Conservation Commission relating to listed species at the state level.
6. There may also be approvals required by the West Coast Inland Navigation District.

A copy of Deborah Getzoff's email relating to the above permitting requirements is attached as Exhibit 6.

Dr. Al Browder concurred with the permitting assessment from Ms. Getzoff. Dr. Browder also provided Town Staff with a projection of anticipated costs for such permitting and indicated:

This includes significant geotechnical investigation (perhaps as much as \$50,000) and costly numerical morphodynamical inlet modeling with sediment budget analysis for the Longboat Pass system (perhaps \$300,000 to \$500,000, depending on the level of new field data collection and calibration required). In addition to these costs, the permitting process will require a cultural resource assessment, environmental assessments, possible seagrass mitigation requirements, and the development of a proposed Inlet Management Plan for FDEP (derived from the studies described herein).

Further, Dr. Browder indicated that the above study would not guarantee that FDEP would issue a permit to dredge all or a portion of the shoal area. He opined that the sand will be the best quality during the first dredge and would fill with progressively finer material so it may not be the best renewable sand source. A summary of Dr. Browder's opinion is attached as Exhibit 7.

If the Town Commission would like to explore the pros and cons of dredging the sand shoal area and the potential expense and time necessary to accomplish such an objective, then it would be advisable to have the Town's consultants present to the Town Commission on this topic.

VIII. Conclusion

Conversations with FWC representatives have indicated that the vessel noise issue(s) that the Town's waterfront residents are experiencing are the similar to other waterfront property complaints throughout the state. Further, FWC has also indicated that there is not a single "fix" to the vessel noise problems.

Accordingly, the options and topics discussed above are provided for the Town Commission's consideration and discussion because there may need to be a multi-option approach developed to effectively address non-motorized vessel noise on the waters surrounding Longboat Key. The Town Commission is requested to review the options outlined in this Memorandum (and supporting exhibits) and provide direction to the Town Manager and Town Attorney on the next steps the Commission would like to pursue.

EXHIBITS:

1. May 3, 2016 Attorney General Opinion Request from the Town Attorney to Attorney General Bondi.
2. August 2, 2016 Information Attorney General Opinion response from Gerry Hammond, Senior Assistant Attorney General.
3. December 22, 2015, Memorandum and Powerpoint presented by Deputy Chief Frank Rubino to the Town Commission.
4. September 2016 Powerpoint to the Florida League of Cities relating to the Attorney General Opinion issued to the Town.
5. Memorandum on Noise Ordinance Enforcement and Recommendation, dated June 14, 2021 from the Town Attorney's Office to the Town Commission.
6. June 8, 2021, Email from Deborah Getzoff relating to sand removal around Jewfish Key.
7. June 13, 2021, Email from I. Brownman summarizing conversation with Dr. Al Browder.

End of Agenda Item