

**SPECIAL MEETING  
CITY COMMISSION  
CITY OF APALACHICOLA, FLORIDA  
FRIDAY, JANUARY 11, 2019 - 3:00 - 5:00 PM  
APALACHICOLA COMMUNITY CENTER  
#1 BAY AVENUE  
APALACHICOLA, FLORIDA**

**AGENDA**

You are welcome to speak or comment on any matter under consideration by the Apalachicola Board of City Commissioners 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 five minute time limit.

- I. Call to Order
  - Invocation (Please rise and remain standing)
  - Pledge of Allegiance
- II. Agenda Adoption
- III. Battery Park and Mining Lease Agreement Presentation/Discussion
- VII. 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.

## Memorandum of Understanding

### **Barge Site**

- 1) Grant ingress/egress to allow loading of barges.
- 2) Agree to allow a section of Battery Park (approx. 200x200) to be utilized and off limits to nonessential personnel.
- 3) The City of Apalachicola will be indemnified throughout entire process during operation.
- 4) Agree to negotiated price of \$5,000 a month during the months of operation/utilization.

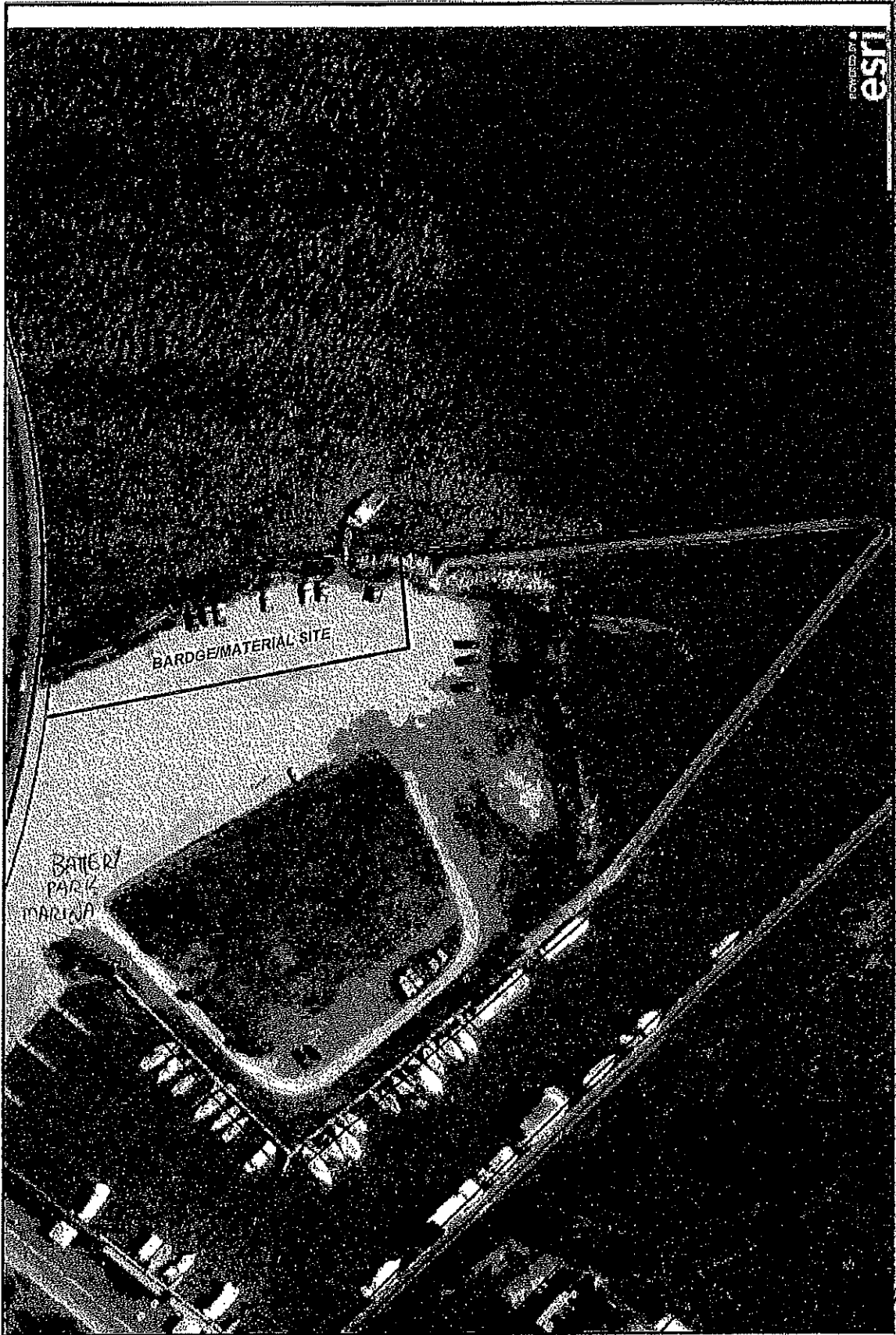
### **Artificial Reef Creation**

- 1) Chris Langston is currently working with Greyson Shepard to obtain permits for artificial reefs located outside Bob Sikes cut. With anticipation of the permits being issued, funding requests are being made to Gulf Triumph for these projects. In order to show regional support, buying the material from Jefferson county and having the **City of Apalachicola** as administrator of funds, shows a united effort which creates a better opportunity for receiving funding of said projects.
- 2) The City of Apalachicola will receive 3% of gross project allocation for administrative fees.
- 3) The city will be indemnified throughout process.
- 4) The cities support for the operation and its efforts is needed for this project and projects in the future.

### **Fossilized Shell (State land lease)**

- 1) Approach the State of Florida and propose lease of state lands for the purposes of mining which includes making and attending appointments with elected officials and necessary government organizations in support of the proposal.
- 2) **Once at the state level**, the City of Apalachicola will negotiate royalty with the state and agree to sublease to Chris Langston of Coastline Environmental Materials. The royalty will be negotiated between the city and Chris Langston to an aggregate total of 10% (example 5% state royalty and 5% city royalty). Coastline will make entire payment of royalty to the City of Apalachicola and the city will forward the states portion to the appropriate recipient.
- 3) **In procurement of said lease**, C.E.M. will indemnify the city during entire process. C.E.M. will pay for all costs associated with process.
- 4) **Once in operation**, during large scale depositions, C.E.M. will donate 500 tons +/- (up to 1500 tons annually) to various locations in Franklin county for shelling programs to assist this areas employment efforts. Any individual that is licensed to harvest oysters could participate. The City of Apalachicola will be responsible for keeping accurate accounting of participation and payment for participation. The City of Apalachicola will also be responsible for obtaining funding to provide payment to the participants of said process.

The City of Apalachicola will have zero liability and zero capitol investment in this entire process. Only time, effort and assistance will be invested by the city. This proposal, if successful, stands to generate a substantial amount of revenue with very little invested on an annual basis.



## **HOLD HARMLESS (INDEMNITY) AGREEMENT**

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This Hold Harmless (Indemnity) Agreement (this "Agreement") is made as of this 03 day of October, 2018 (the "Effective Date") by and between COASTLINE ENVIRONMENTAL MATERIALS, located at 2671 Crawfordville Hwy, Crawfordville, FL 32327 ("Indemnitor"), and CITY OF APALACHICOLA, located at Battery Park, Apalachicola, FL 32320 ("Indemnitee"). Indemnitor and Indemnitee may be referred to individually as "Party" and collectively as "Parties".

**WHEREAS**, Indemnitor desires to use the following property belonging to Indemnitee: Battery Park barge site, Apalachicola, FL 32320 (the "Activity").

**NOW THEREFORE**, for valuable consideration, the receipt of which is hereby acknowledged, Indemnitor and Indemnitee agree as follows:

**1. Indemnification.** To the extent permitted by law, Indemnitor will indemnify, defend and hold harmless Indemnitee from any and all claims, actions, liabilities, suits, injuries, demands, obligations, losses, settlements, judgments, damages, fines, penalties, costs and expenses, including attorney's fees and other expenses, (collectively, a "Claim") arising out of or relating to any act or omission by the Indemnitor in connection with the performance of the Activity resulting in personal injury, loss of life or property damage.

**2. Exceptions.** Indemnitor's obligation to indemnify, defend and hold harmless Indemnitee shall not extend to any Claim arising from the sole negligence or willful misconduct of Indemnitee. Indemnitor is not obligated to indemnify Indemnitee against any Claim to the extent the Indemnitee has been reimbursed for such Claim under an Insurance policy. In no event shall any individual Claim or combined cumulative total of all Claims exceed \$1,000,000.00 USD.

**3. Notice of Claim.** Indemnitee must provide Indemnitor notice of any Claim within three (3) business days after obtaining knowledge of such Claim. Such notice will set forth in detail the Claim and the basis for indemnification under this Agreement.

**4. Duty to Defend.** In the event any Claim is brought against Indemnitee within the scope of this Agreement, Indemnitor reserves the right to assume the defense of the Claim. If Indemnitor elects not to assume the defense of the Claim, Indemnitee may pursue its own defense of the Claim and seek reimbursement from the Indemnitor. If Indemnitor assumes the defense of the Claim, Indemnitor shall not settle any Claim without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld. If Indemnitee pursues its own defense of the Claim, Indemnitee shall not settle any Claim without the prior written consent of Indemnitor, which consent shall not be unreasonably withheld.

**5. Mutual Representations.** The Parties represent and warrant that they are duly authorized and have the power and authority to execute and deliver this Agreement, and this Agreement constitutes a legally, valid and binding obligation on the Parties.

**6. Amendments.** This Agreement may be amended or modified only by written agreement signed by all Parties.

**SIGNATURES**

_____	Coastline Environmental Materials
<b>Indemnitor Signature</b>	<b>Indemnitor Full Name</b>

_____	City of Apalachicola
<b>Indemnitee Signature</b>	<b>Indemnitee Full Name</b>

## **Memorandum of Understanding**

This Memorandum of Understanding (the "Memorandum") is made on December 04, 2018, by and between Coastline Environmental Materials, of 2671 Crawfordville Hwy., Crawfordville, Florida 32327 (hereinafter referred to as "C.E.M.") and City of Apalachicola, of 1 Ave. E, Apalachicola, Florida 32320 (hereinafter referred to as "Ron Nalley") for the purpose of achieving the various aims and objectives relating to the Mining Lease (the "Project").

WHEREAS C.E.M. and Ron Nalley desire to enter into an agreement in which C.E.M. and Ron Nalley will work together to complete the Project;

AND WHEREAS C.E.M. and Ron Nalley are desirous to enter into a Memorandum of Understanding between them, setting out the working arrangements that each of the partners agree are necessary to complete the Project;

### **Purpose**

The purpose of this Memorandum is to provide the framework for any future binding contract regarding the Mining Lease between C.E.M. and Ron Nalley.

### **Obligations of the Partners**

The Partners acknowledge that no contractual relationship is created between them by this Memorandum, but agree to work together in the true spirit of partnership to ensure that there is a united visible and responsive leadership of the Project and to demonstrate financial, administrative and managerial commitment to the Project by means of the following individual services.

### **Cooperation**

The activities and services for the Project shall include, but not limited to:

a. Services to be rendered by C.E.M. include:

CEM will indemnify the City of Apalachicola. CEM will pay all costs associated with said project.

b. Services to be rendered by Ron Nalley include:

Be aggressive and proactive in assisting with the various state agencies including Governor and Cabinet to obtain lease agreement with the state for the purposes of mining fossilized shell for oyster habitat restoration

### **Resources**

The Partners will endeavor to have final approval and secure any financing necessary to fulfill their individual financial contributions at the start of the planning for the development of the Project.

a. C.E.M. agrees to provide the following financial, material and labor resources in respect of



the Project:

CEM assumes 100% of liability and 100% of the cost associated with said process.

- b. Ron Nalley hereby agrees to provide the following financial, material and labor resources in respect of the Project:

Provide assistance in making appointments. proactively participate in appointments made.

(City will have only the investment of time and travel if needed)

### **Communication Strategy**

Marketing of the vision and any media or other public relations contact should always be consistent with the aims of the Project and only undertaken with the express agreement of both parties. Where it does not breach any confidentiality protocols, a spirit of open and transparent communication should be adhered to. Coordinated communications should be made with external organizations to elicit their support and further the aims of the Project.

### **Liability**

No liability will arise or be assumed between the Partners as a result of this Memorandum.

### **Dispute Resolution**

In the event of a dispute between the Partners in the negotiation of the final binding contract relating to this Project, a dispute resolution group will convene consisting of the Chief Executives of each of the Partners together with one other person independent of the Partners appointed by the Chief Executives. The dispute resolution group may receive for consideration any information it thinks fit concerning the dispute. The Partners agree that a decision of the dispute resolution group will be final. In the event the dispute resolution group is unable to make a compromise and reach a final decision, it is understood that neither party is obligated to enter into any binding contract to complete the Project.

### **Term**

The arrangements made by the Partners by this Memorandum shall remain in place from December 04, 2018 until December 04, 2028. The term can be extended only by agreement of all of the Partners.

### **Notice**

Any notice or communication required or permitted under this Memorandum shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

### **Governing Law**

This Memorandum shall be construed in accordance with the laws of the State of Florida.

**Assignment**

Neither party may assign or transfer the responsibilities or agreement made herein without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

**Amendment**

This Memorandum may be amended or supplemented in writing, if the writing is signed by the party obligated under this Memorandum.

**Severability**

If any provision of this Memorandum is found to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Memorandum is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

**Prior Memorandum Superseded**

This Memorandum constitutes the entire Memorandum between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and Memorandums, whether written or oral.

**Understanding**

It is mutually agreed upon and understood by and among the Partners of this Memorandum that:

- a. Each Partner will work together in a coordinated fashion for the fulfillment of the Project.
- b. In no way does this agreement restrict involved Partners from participating in similar agreements with other public or private agencies, organizations, and individuals.
- c. To the extent possible, each Partner will participate in the development of the Project.
- d. Nothing in this memorandum shall obligate any Partner to the transfer of funds. Any endeavor involving reimbursement or contribution of funds between the Partners of this Memorandum will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Partners involved and shall be independently authorized by appropriate statutory authority. This Memorandum does not provide such authority.
- e. This Memorandum is not intended to and does not create any right, benefit, or trust responsibility.
- f. This Memorandum will be effective upon the signature of both Partners.
- g. Any Partner may terminate its participation in this Memorandum by providing written notice to other Partner.

The following Partners support the goals and objectives of the Mining Lease:

**Signatories**

This Agreement shall be signed on behalf of Coastline Environmental Materials by Chris Langston, Partner, and on behalf of City of Apalachicola by Ron Nalley, its City Manager. This Agreement shall be effective as of the date first written above.

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Coastline Environmental Materials  
By Chris Langston, its Partner

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City of Apalachicola  
By Ron Nalley, its City Manager

## **Memorandum of Understanding**

This Memorandum of Understanding (the "Memorandum") is made on December 04, 2018, by and between Coastline Environmental Materials, of 2671 Crawfordville Hwy., Crawfordville, Florida 32327 (hereinafter referred to as "Chris Langston") and City of Apalachicola, of 1 Ave. E, Apalachicola, Florida 32320 (hereinafter referred to as "Ron Nalley") for the purpose of achieving the various aims and objectives relating to the Battery Park (the "Project").

WHEREAS Chris Langston and Ron Nalley desire to enter into an agreement in which Chris Langston and Ron Nalley will work together to complete the Project;

AND WHEREAS Chris Langston and Ron Nalley are desirous to enter into a Memorandum of Understanding between them, setting out the working arrangements that each of the partners agree are necessary to complete the Project;

### **Purpose**

The purpose of this Memorandum is to provide the framework for any future binding contract regarding the Battery Park between Chris Langston and Ron Nalley.

### **Obligations of the Partners**

The Partners acknowledge that no contractual relationship is created between them by this Memorandum, but agree to work together in the true spirit of partnership to ensure that there is a united visible and responsive leadership of the Project and to demonstrate financial, administrative and managerial commitment to the Project by means of the following individual services.

### **Cooperation**

The activities and services for the Project shall include, but not limited to:

a. Services to be rendered by Chris Langston include:

CEM will indemnify the City of Apalachicola during utilization of Battery Park for the purposes of loading barges.

b. Services to be rendered by Ron Nalley include:

The City Of Apalachicola will provide CEM the right of ingress and egress and the use of approximately 200'x200' +/- portion of Battery Park at the water's edge of the Apalachicola River for \$5000.00 a month for the month's of utilization.

### **Resources**

The Partners will endeavor to have final approval and secure any financing necessary to fulfill their individual financial contributions at the start of the planning for the development of the Project.

a. Chris Langston agrees to provide the following financial, material and labor resources in

respect of the Project:

CEM will provide 100% of all material, labor, and financial responsibilities associated with the activities CEM is involved in during the use of Battery Park.

- b. Ron Nalley hereby agrees to provide the following financial, material and labor resources in respect of the Project:

The City of Apalachicola will provide a letter of support and acknowledgement for CEM.

### **Communication Strategy**

Marketing of the vision and any media or other public relations contact should always be consistent with the aims of the Project and only undertaken with the express agreement of both parties. Where it does not breach any confidentiality protocols, a spirit of open and transparent communication should be adhered to. Coordinated communications should be made with external organizations to elicit their support and further the aims of the Project.

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**Understanding**

It is mutually agreed upon and understood by and among the Partners of this Memorandum that:

- a. Each Partner will work together in a coordinated fashion for the fulfillment of the Project.
- b. In no way does this agreement restrict involved Partners from participating in similar agreements with other public or private agencies, organizations, and individuals.
- c. To the extent possible, each Partner will participate in the development of the Project.
- d. Nothing in this memorandum shall obligate any Partner to the transfer of funds. Any endeavor involving reimbursement or contribution of funds between the Partners of this Memorandum will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Partners involved and shall be independently authorized by appropriate statutory authority. This Memorandum does not provide such authority.
- e. This Memorandum is not intended to and does not create any right, benefit, or trust responsibility.
- f. This Memorandum will be effective upon the signature of both Partners.
- g. Any Partner may terminate its participation in this Memorandum by providing written notice to other Partner.

The following Partners support the goals and objectives of the Battery Park:

**Signatories**

This Agreement shall be signed on behalf of Coastline Environmental Materials by Chris Langston,

Partner, and on behalf of City of Apalachicola by Ron Nalley, its City Manager. This Agreement shall be effective as of the date first written above.

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Coastline Environmental Materials  
By Chris Langston, its Partner

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City of Apalachicola  
By Ron Nalley, its City Manager

Ms. Wilson would like to get approval from the Commission to continue to apply for the Florida Trust Grant around \$350,000 and requests the Raney House be taken off the City's commercial properties to be sold since state funding is being sought for restoration purposes.

Mayor Johnson reiterated to Ms. Wilson that there are major issues with the Randy House including the windows, doors and foundation. Mayor Johnson stated if the Historical Society removes the financial burden from the City then he feels it can be removed from the sale list.

Commissioner Ash inquired when the grant is due and Ms. Wilson told her it is due in April 2018.

Mayor Johnson inquired when the Raney House expense can be deleted from the current budget.

Ms. Wilson stated she has met with Ms. Mathes and at the current time she is paying what City has agreed upon.

Attorney Floyd stated that is the condition previously voted on.

Chris Langston -- Barge Proposal Battery Park

Chris Langston reviewed a proposal to lease a space at Battery Park point approximately 300' long and 200' wide, with option to expand if need arises, for the purpose of loading shell onto barges. Monthly rental fee would be \$5,000/month with no rent paid for months site is not utilized. Area will be used for stockpiling and loading of fossilized shell material onto hopper barges for oyster habitat restoration locally and out of state. Mr. Langston stated he will carry a \$2million umbrella insurance policy and sign a hold harmless agreement with the City for the duration of this project. Mr. Langston stated they will install barricades, fencing and other precautionary steps to implement the safety of the citizens of Apalachicola. This project will not block the public's access to the public boat ramp, trailer parking nor access to the public pier and walkway. This project will be for approximately 24 months, which will only be actively working 8 to 9 months out of each year. Mr. Langston stated he would like to move the informational monument to the inside of the pier, but will get the City Commission a layout of the whole site and what we plan to do. Mr. Langston is asking that during the site prep work period that no rent be charged.

Commissioner Ash inquired if this is the same kind of operation that the City had leased to barges in the past.

Mayor Johnson stated yes.

Mr. Langston distributed informational material on what the fossilized shell material would look like.

Commissioner Grove inquired what kind of work the site prep would entail.

Mr. Langston stated this would include moving the monument and prepping and leveling the property where the conveyor belt will be, to make it safe for the City and look nice.

Commissioner Ash inquired how Mr. Langston will protect the Bay of the run-off from the fossilized shell.

Mr. Langston stated they would put up a silk fence with a bale of hay against the fence for the run-off.

Discussion held and citizen comments received regarding noise of the operation and dump trucks damaging roads.

Attorney Floyd inquired if Mr. Langston has done this type of operation before where he leased and loaded shell before.

Mr. Langston stated he had in Carrabelle off Timber Island.

Attorney Floyd stated that Mr. Langston would need to get up a drawing/site plan of the complete operation.



Mr. Langston distributed a short view of this to the board.

Attorney Floyd stated the Commission needs to know what kind of site work will be done, what type trucks, weight of loaded trucks, routes, type of equipment to be used like the conveyor belt, etc.

Commissioner Ash inquired if Mr. Langston is asking for a letter of intent at this time.

Mr. Langston stated a letter of intent with City supporting the project would be sufficient.

Attorney Floyd stated the City needs a copy of the County's support letter. Attorney Floyd suggests letter stating the City of Apalachicola has been approached about Leasing Battery Park Area for offloading fossilized shell onto barges and the City Commission is reviewing this and getting together the terms of the lease.

Mr. Langston stated the main goal tonight is approval that the capability is here to be able to load barges at Battery Park and the City is in approval of this.

Commissioner Grove stated she would like to see agreements between Mr. Langston and other parties. Also there has to be a storm plan in place for the barges.

Attorney Floyd read letter of intent: The City of Apalachicola has been presented with a request by Chris Langston of Coastline Environmental Materials for the lease of a parcel of city property along the Apalachicola River in Battery Park for stockpiling and loading fossilized shell for oyster-bed replanting. This will serve as confirmation from the City that we are interested in working with Mr. Langston and his company to determine the terms and enter into a lease for this purpose.

Motion to approve letter of intent as outlined by Attorney Floyd made by Commissioner Elliott, second by Commissioner Ash.

Motion carried: 4 to 0

Voting Aye: Grove, Ash, Elliott, Mayor Johnson

Voting Nay: None

#### Restore Act Update – Bill McCartney

Bill McCartney gave update of Restore Act and stated Alan Pierce recommended to the County Commissioners they postpone indefinitely the RESTORE process until such time as the TRIUMPH process has moved forward. Mr. McCartney stated Cori Henderson and Rick Harper have requested a meeting with the City on February 9<sup>th</sup> at 1:30 to discuss the City's applications and answer any questions because we have been approved to submit full applications on all 5 TRIUMPH projects. Also, in the TRIUMPH application there is a question asking if this project was submitted and approved by the County Commissioners. It is not mandatory this happen but strongly suggested this happens and I suggest we submit them individually to the County Commissioners and the TRIUMPH board will help us make this decision.

Attorney Floyd asked Mr. McCartney if the application submitted to the County was already the same five as submitted to the TRIUMPH board.

Mr. McCartney stated the application submitted to the RESTORE program was exactly duplicated in the application prepared for the TRIUMPH fund. The other four applications Cindy Clark coordinated and you would have to talk with her.

Attorney Floyd asked Mr. McCartney the applications he is talking with the County, have they already been approved by the County

Mr. McCartney stated they haven't even been addressed yet.