

**REPORT OF THE COMMITTEE OF THE WHOLE WORKSHOP OF
THE ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS**

FEBRUARY 5, 2026

Present: Commissioner Ashlee M. Hofberger, Chair, District 4
Commissioner Steven R. Stroberger, Vice Chair, District 1
Commissioner Steven L. Barry, District 5
Commissioner Michael S. Kohler, District 2
Commissioner Lumon J. May, District 3
Honorable Pam Childers, Clerk of the Circuit Court and Comptroller
Debbie Bowers, Assistant County Administrator
Alison Rogers, County Attorney
DeLana Allen-Busbee, Operations Supervisor, Clerk and Comptroller's Office
Jose Gochez, Operations Manager, County Administrator's Office

Location: Ernie Lee Magaha Government Building, Board Chambers, First Floor
221 Palafox Place, Pensacola, Florida

Report prepared by: DeLana Allen-Busbee

AGENDA ITEMS

1. Call to Order

Commissioner Hofberger, Chair, called the Committee of the Whole (C/W) Workshop to order at 9:07 a.m.

2. Pledge of Allegiance to the Flag

Commissioner May led the Pledge of Allegiance to the Flag.

3. Was the Meeting Properly Advertised?

The Board was advised by DeLana Allen-Busbee, Operations Supervisor, Clerk and Comptroller's Office, that the meeting was advertised in the *Pensacola News Journal* on January 29, 2026, in the Board's weekly meeting schedule.

AGENDA ITEMS – Continued

4. Board Items

I. Discussion Concerning Customary Use

A. Presentation:

Christi Hankins, Assistant County Attorney, and Tim Day, Deputy Director, Natural Resources Management, reviewed a PowerPoint presentation, which is filed with the Workshop documents, titled *Customary Use*, and:

(1) Ms. Hankins:

- Reviewed the previous Statutory requirements (F.S. 163.035) that were in effect from July 1, 2018, through June 23, 2025;
- Advised that effective June 24, 2025, Senate Bill 1622 repealed F.S. 163.035, and that staff analysis of the Bill includes:
 - A return to customary use rights prior to the enactment of F.S. 163.035;
 - A governmental entity may declare the existence of a customary use and adopt a local customary use ordinance without following procedures in the repealed Statute;
 - A lawsuit must be filed by property owners challenging the ordinance with the burden to prove that the public does not enjoy customary use rights over their privately-owned beaches; and
 - Courts, on a case-by-case basis, will apply the common law doctrine of customary use when determining whether the public enjoys customary use rights;
- Reviewed Walton County's case history, which may be viewed as a cautionary tale, briefly discussed a case in Reddington Beach, and reviewed the *City of Daytona Beach v. Tona Roma, Inc.*;
- Advised that defining elements of customary use include that the use is reasonable, ancient, without interruption, and free from dispute;
- Advised that restrictions on customary use include that the use does not create any interest in the land, it cannot be revoked by the landowner, is subject to appropriate regulation, and it may be abandoned by the public;
- Reviewed the procedure and process for establishing customary use by ordinance;

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AGENDA ITEMS – Continued

4. Continued...

I. Continued...

A. Continued...

- (2) Deputy Director Day reviewed relevant definitions and terminology related to customary use and advised that while the County has completed two dune enhancements, beach nourishment has not occurred for the process of creating public lands distinction; and
- (3) Ms. Hankins presented maps depicting the existing 75' Perpetual Easement and current Perdido Key Beach Access areas.

B. Board Discussion:

- (1) The Board requested clarification on the County's funding contribution in relation to dune restoration due to the use of public dollars; discussed current deeds, access, and parking; and acknowledged that the Perdido Key discussion regarding customary use has no impact on Pensacola Beach;
- (2) Commissioner Hofberger requested that dune enhancements be added to the maps for visual assistance and clarified the presence of lifeguards, and the County's obligation to provide them, with County Attorney Rogers;
- (3) Commissioner Stroberger advised that property rights are foundational for him, and that while he also supports public access, he does not believe they have to be in conflict with each other;
- (4) Commissioner Kohler advised that he believes the whole Board would like to see more beach access for the public but would like to find the best way to obtain it; he also mentioned requesting a potential daily rate on Johnson Beach and other possible routes to obtain additional affordable beach access for citizens;
- (5) Prompted by inquiry from Commissioner Barry, the Board and Deputy Director Day discussed how the record of customary use could be established, and that there were a variety of potential ways to enhance access for the public; and
- (6) The Board discussed the process ahead and agreed to take public comment at the February 19th meeting prior to directing staff on how to move forward with this topic.

5. Adjourn

Commissioner Hofberger, Chair, declared the C/W Workshop adjourned at 10:15 a.m.