

**POLK COUNTY  
LAND USE HEARING OFFICER  
STAFF REPORT**

<b>DRC Date</b>	<b>August 31, 2023</b>	<b>CASE #:</b>	<b>LDLVAR-2023-43 (Westgate Height Variance)</b>
<b>LUHO Date</b>	<b>April 25, 2024</b>	<b>LDC Section:</b>	<b>Chapter 2, Table 2.2 Chapter 6, Section 642</b>

**Request:** This is a request for a Variance of 14 feet, 6 inches from the maximum 50-foot-high height limitation in the Leisure/Recreation Land Use District. The variance is also necessary to comply with the requirements of Chapter 6, Section 642 (Military Compatibility Zones) of the Land Development Code, which requires any structure taller than 50 feet in Military Compatibility Zone 1 obtain a variance.

**Applicant:** Andrew McCown, AICP, GAI Consultants

**Property Owner:** Westgate Resorts LTD

**Location:** The subject property is located at 3200 River Ranch Boulevard, River Ranch, FL 33867, located south of State Road 60, west of the Kissimmee River, east of River Ranch Boulevard, and east of the Cities of Lake Wales and Frostproof in Section 23, Township 31, Range 31.

**Parcel ID#:** 313123-000000-012010 (NOTE: The Project Area is 4.4 acres within this 187.04 +/- acre parcel)

**Size:** 4.4 acres (Project Area)

**Land Use Designation:** Leisure/Recreation (L/R)

**Development Area:** Rural Development Area (RDA)

**Case Planner:** Mark J. Bennett, AICP, FRA-RA, Senior Planner

**Summary:**

The applicant is requesting a variance of 14 feet, 6 inches from the maximum height requirement of 50 feet in the Leisure/Recreation (L/R) Land Use District. The variance is also necessary to comply with the requirements of Chapter 6, Section 642 (Military Compatibility Zones) of the Land Development Code, which requires any structure taller than 50 feet in Military Compatibility Zone 1.

The reason for the request is to allow the applicant to develop two four-story, mixed-use buildings with non-residential uses (retail, food & beverage, etc.) on the first story and multifamily on the upper stories replacing the existing marina building. Each building would be a maximum of 64

feet - 6 inches in height. The requested variance is to permit the additional height to achieve an architectural style that is consistent with the surrounding ranch-resort.

The primary concerns with this request are regarding the potential impact on aviation activities as a result of taller buildings locating on this site. However, representatives of the Avon Park Air Force Range have reviewed this project, and they do not foresee any issues with this request (Exhibit 9). Additionally, the applicant has obtained documentation from the Federal Aviation Administration (FAA) determining that no hazard to air navigation exists (Exhibit 10).

Another factor to consider is that portion of the building that the variance is sought is not intended for human habitation. The height of the top floor (fourth floor) is 48 feet, with the additional height shown as rooftop (Exhibit 7). Because this area is not intended for human habitation, the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. Staff recommends approval of this application.

### **Development Review Committee**

The Development Review Committee, based on the criteria for granting variances, the submitted application, and a recent site visit, finds that the applicant's request as written **IS CONSISTENT** with Section 931 of the Polk County Land Development Code (LDC) and recommends **APPROVAL of LDLVAR-2023-43**.

### **CONDITIONS OF APPROVAL:**

1. The applicant shall have until January 16, 2027 (The expiration date of the River Ranch Development of Regional Impact (DRI) Development Order) to apply for all necessary building permits and pay all associated fees for the proposed project.
2. Approval of this variance is to allow for an increase in building height of 14 feet, 6 inches to build two four-story, mixed-use buildings. Further additions or structures placed on the property shall be required to meet the requirements of the Polk County Land Development Code or re-apply for another variance approval from the Land Use Hearing Officer.

### **GENERAL NOTES**

*NOTE: This staff report was prepared without the benefit of testimony and evidence submitted by the public and other interested parties at a public hearing.*

*NOTE: All conditions of approval, unless otherwise specified, shall be met prior to the effectiveness and validity of the variance approval.*

*NOTE: All written commitments made in the application and subsequent submissions of information made during the application review process, which are on file with the Land Development Division, shall be considered to be binding upon the applicant, provided such commitments are not at variance with the Comprehensive Plan, LDC or other development regulations in effect at the time of development.*

*NOTE: Issuance of a development permit by the county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.*

**DEMONSTRATIONS OF THE CRITERIA FOR GRANTING VARIANCES SUMMARIZED BELOW:**

1. *Whether granting the variance will be in accordance with the general intent and purpose of this Code, and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.*

In the variance narrative, the applicant states that “The proposed variance of a 64’ – 6” maximum structure height will not cause injurious effects to the surrounding area or endanger the public welfare in any way. The project site is internal to the existing resort and no permanent/full-time residents live within the resort, or directly adjacent to the resort. The proposed variance will not be detrimental to the public welfare, rather will expand upon the cohesion of the resort’s architectural style and as well as the short-term rental options.” Staff concurs with this assessment.

The primary concerns with this request are regarding the potential impact on aviation activities because of taller buildings locating on this site. However, representatives of the Avon Park Air Force Range have reviewed this project, and they do not foresee any issues with this request (Exhibit 9). The applicant has also obtained documentation from the Federal Aviation Administration (FAA) determining that no hazard to air navigation exists (Exhibit 10). Therefore, this request will not be injurious to the area involved or otherwise detrimental to the public welfare, based on the determination by other regulatory agencies.

Another factor to consider is that portion of the building that the variance is sought is not intended for human habitation. The height of the top floor (fourth floor) is 48 feet, with the additional height shown as rooftop (Exhibit 7). Because this area is not intended for human habitation, the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

2. *Whether special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the applicable land use district;*

The property is located in a Leisure/Recreation (L/R) land use district. Leisure/Recreation (L/R) areas are grounds and facilities oriented primarily toward providing recreational-related services for residents and short-term visitors to Polk County. These include, but are not limited to: fish camps, lodges and retreats, recreational-vehicle (RV) parks, retirement mobile home parks, golf courses, and accessory minor commercial uses necessary to support these facilities, such as bait shops and convenience stores.

The site is also located within the River Ranch Development of Regional Impact (DRI). Per the River Ranch DRI Map H (Land Use Master Plan), the site is currently designated

as office/retail/amenities/ancillary. However, the applicant has submitted a concurrent request to change Map H to a new category called mixed-use.

This change is necessary to allow for the placement of two, four-story mixed-use buildings. The new buildings will contain retail/flex space, office space, and a food and beverage operation, and 58 one-and two-bedroom multi-family units (short term rentals) on the second thru fourth floors. This request received a recommendation of approval from the Planning Commission on March 6, 2024. The County Commission will consider the requested DRI amendment on April 16, 2024.

In their supporting documentation, the applicant stated that “This request is unique in that the PD did not establish its own height maximums due to its early establishment prior to the Polk County Comprehensive Plan. Westgate River Ranch resort is inherently a unique establishment that will require specific architectural style to remain consistent with its surrounding amenities. The property has more than 2,000 “Resort Residential” units permitted under the River Ranch DRI.”

3. *Whether provided the special conditions and circumstances present in the request do not result from the actions of the applicant;*

The property was purchased by the current owner, Westgate Resorts LTD DBA River Ranch America Resorts, Inc., on November 27, 2001, but existed prior. The proposed structure is not yet built. While the applicant is requesting the variance to construct a new building, the additional height of the building will not be injurious to the area involved or otherwise detrimental to the public welfare.

4. *Whether granting the requested variance will not confer on the applicant any special privilege that is denied by the provisions of this Code and will constitute unnecessary and undue hardship on the applicant;*

A variance is not an entitlement, but any property owner may be considered for a variance if the owner can demonstrate they meet the required criteria. Because any property owner may apply for a variance, and because this request will not be injurious to the area involved or otherwise detrimental to the public welfare, approval of this variance will not confer on the applicant any special privilege. Allowing for the variance will allow the applicant additional flexibility in the architectural design of the structure, thereby allowing for a consistent architectural design theme of the property.

5. *Whether the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;*

The applicant stated that “The minimum height variance is being requested to accommodate the roof detailed as designed.”

6. *Whether that in no case shall a variance be granted which will result in a change of land use that would not be permitted in the applicable land use designation;*

Granting this variance will not result in a change of land use.

7. *Whether that in no case shall a variance be granted which would result in creation of any residual lot or parcel which does not meet the requirements of this Code; and*

Granting this request will not create a lot or parcel that does not meet the requirements of the Code.

8. *Whether that the granting of the variance does not circumvent a condition, or the intent of a condition placed on a development by the Planning Commission or the BoCC.*

No evidence was found suggesting that the proposed request will circumvent the intent of a condition placed on a development by the Planning Commission or the Board of County Commissioners. A review of the Conditions of Approval in the Development Order for the River Ranch Development of Regional Impact (DRI) did not find any conditions that could be circumvented as a result of this variance.

**Surrounding Future Land Use Designations and Existing Land Use Activity:**

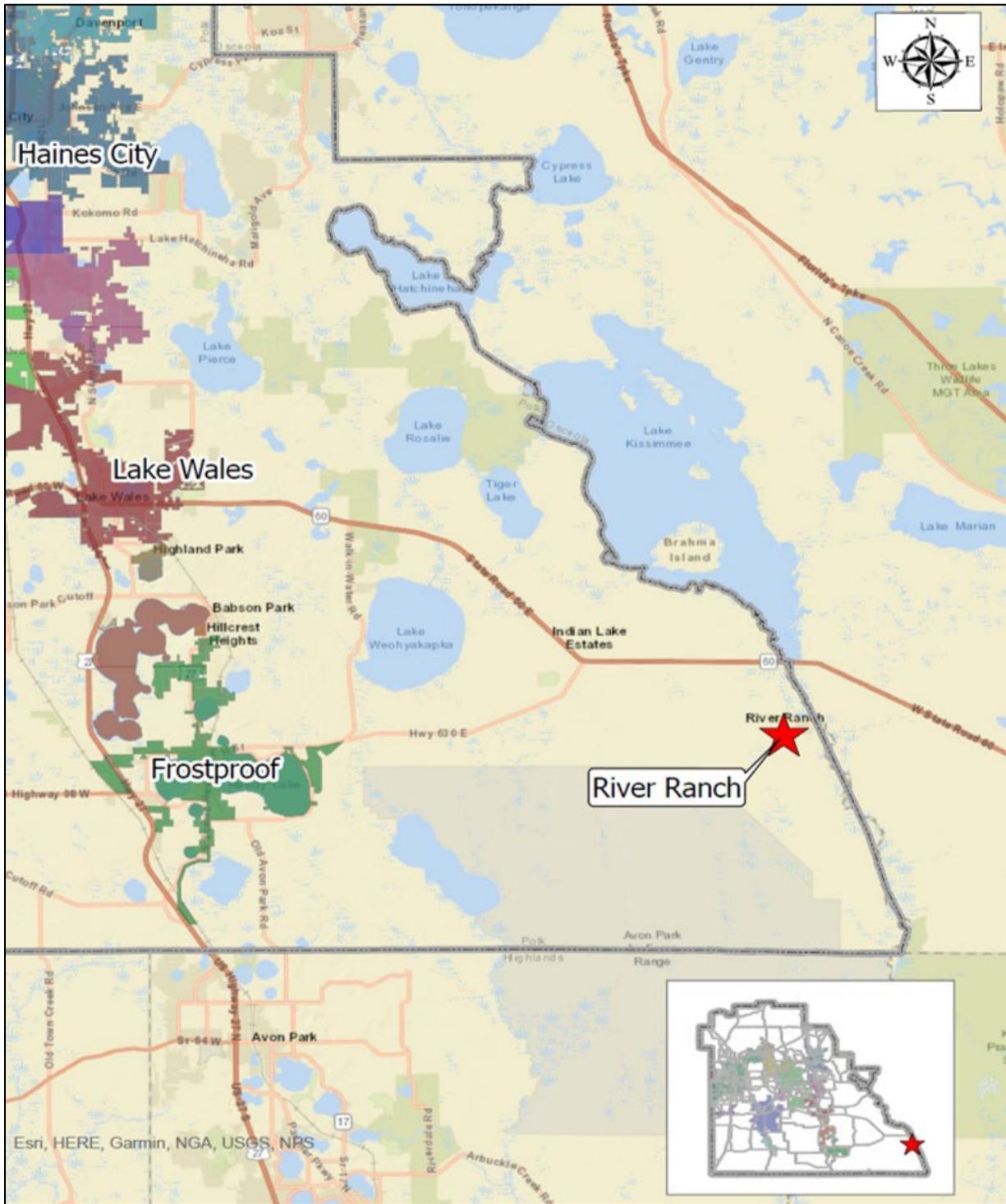
<b>Northwest:</b> L/R Vacant, Open space	<b>North:</b> L/R, ROS Vehicle Storage, Open space	<b>Northeast:</b> L/R, ROS Vehicle Storage, Open space
<b>West:</b> L/R Vacant, Open space	<b>Subject Property:</b> L/R Marina building, retail, restaurant	<b>East:</b> L/R, ROS Marina, Open space
<b>Southwest:</b> L/R Village Shops, meeting facilities	<b>South:</b> L/R Resort Residential	<b>Southeast:</b> L/R Resort Residential

The 4.4-acre project area is currently developed with a one-story, 7,558 square foot marina building, which is used for retail and a restaurant. If the mixed-use designation on the DRI Map H is approved, it will allow for the existing structure to be replaced with two, four-story mixed-use buildings. As previously stated, the new mixed-use buildings will have retail/flex space, office space, and a food and beverage operation. The second to fourth floors will include one- and two-bedroom multifamily units (short term rentals).

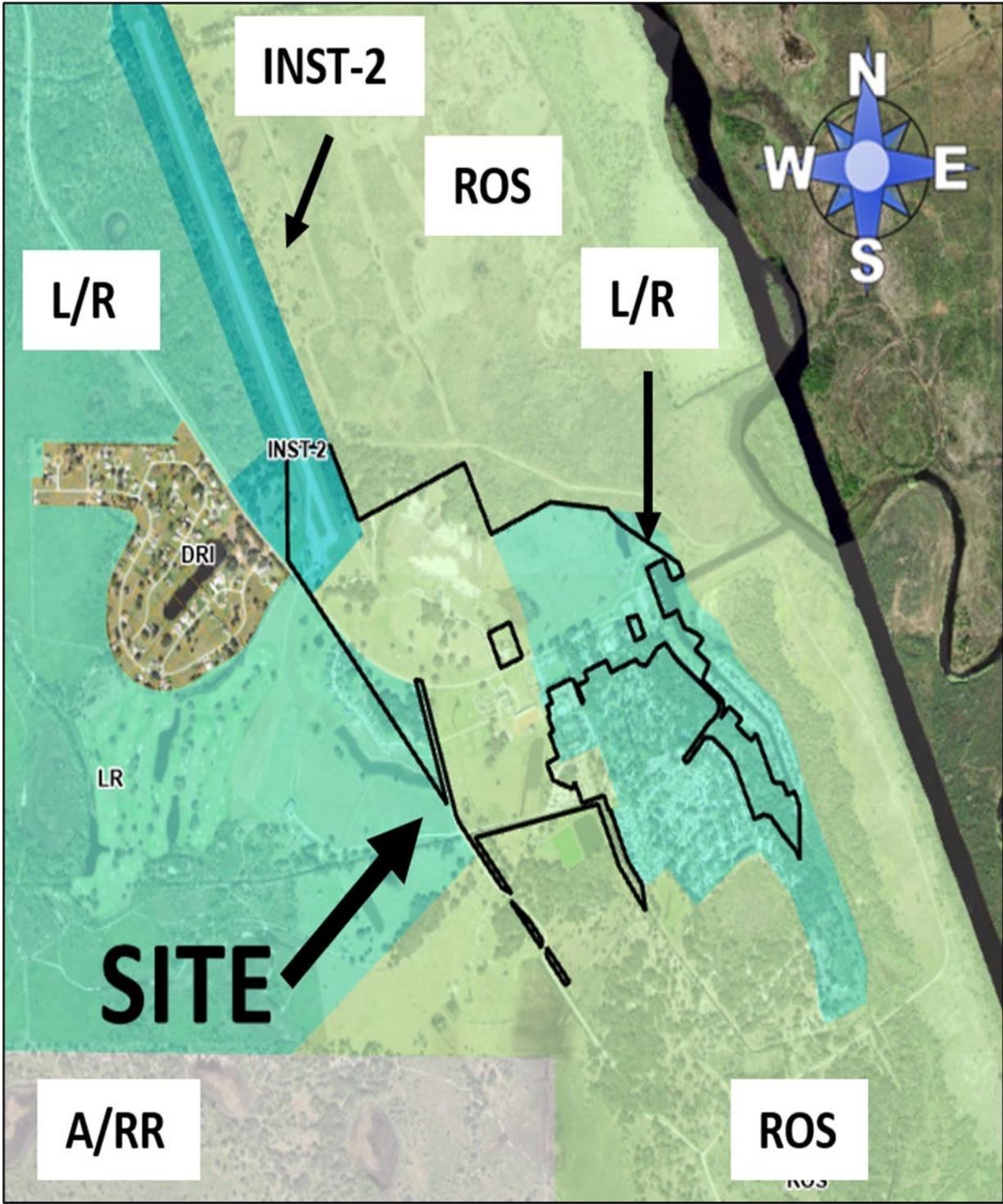
**Exhibits:**

- Exhibit 1 – Location Map
- Exhibit 2 – Future Land Use
- Exhibit 3 – Aerial Context
- Exhibit 4 – Aerial Close-up
- Exhibit 5 – Site Plan
- Exhibit 6 – Preliminary Conceptual Renderings
- Exhibit 7 – Midrise Building Elevations
- Exhibit 8 – Applicant’s Justification
- Exhibit 9 – Correspondence from the Avon Park Air Force Range
- Exhibit 10 – FAA Determination of No Hazard to Air Navigation





Location Map



Future Land Use



2023 Aerial Context



# Aerial Close-Up



Source: Variance Application Narrative

## Site Plan



Source: Variance Application Narrative

## Preliminary Conceptual Renderings



Source: Variance Application Narrative

## Midrise Building Elevations

### 3.1 Criteria For Granting Variance

1. *Will the variance be injurious to the area involved or detrimental to the public welfare?*

The proposed variance of a 64' – 6" maximum structure height will not cause injurious effects to the surrounding area or endanger the public welfare in any way. The project site is internal to the existing resort and no permanent/full-time residents live within the resort, or directly adjacent to the resort. The proposed variance will not be detrimental to the public welfare, rather will expand upon the cohesion of the resort's architectural style and as well as the short-term rental options.

2. *What special conditions exist that are peculiar to the land, structure, or building involved?*

This request is unique in that the PD did not establish its own height maximums due to its early establishment prior to the Polk County Comprehensive Plan. Westgate River Ranch resort is inherently a unique establishment that will require specific architectural style to remain consistent with its surrounding amenities. The property has more than 2,000 "Resort Residential" units permitted under the River Ranch DRI.

3. *When did you buy the property and when was the structure built? Permit Number?*

The property was purchased by the current owner, Westgate Resorts LTD DBA River Ranch America Resorts, Inc., on November 27, 2001, but existed prior. The proposed structure is not yet built.

4. *What is the hardship if the variance is not approved?*

If this variance is not approved, the building design will have to be altered such as removing the roof detail and/or lowering the number of stories/units per building. The architectural style may not be as cohesive with the surrounding buildings and amenities.

The proposed location of the new mixed-use buildings represents the most logical location since it is in the heart of the campus, is located adjacent to existing roads, parking, and amenities, and has available utility capacity. To relocate the units elsewhere at lower densities would require more land, additional roads, and extensions to utilities.

5. *Is this the minimum variance required for the reasonable use of the land?*

The minimum height variance is being requested to accommodate the roof detailed as designed.

6. *Do you have Homeowners Association approval for this request?*

Not applicable.

## Applicant's Justification

RE: River Ranch Variance Request



Bennett, Mark

To: Bennett, Chanda; MACLAUGHLIN, CHARLES E CIV USAF ACC 598 RANS/RMD  
Cc: Jennifer Codo-Salisbury; Little, Amy

Retention Policy: Polk 5 Year Mailbox (5 years)

Expires: 2/5/2029

Reply, Reply All, Forward, and other email action icons.

Wed 2/7/2024 8:28 AM

From: MACLAUGHLIN, CHARLES E CIV USAF ACC 598 RANS/RMD <charles.maclaughlin.1@us.af.mil>  
Sent: Friday, January 26, 2024 10:16 AM  
To: Bennett, Mark <markbennett@polk-county.net>  
Cc: Bennett, Chanda <ChandaBennett@polk-county.net>; Jennifer Codo-Salisbury <jcodosalisbury@cfrcp.org>; Little, Amy <AmyLittle@polk-county.net>  
Subject: [EXTERNAL]: RE: River Ranch Variance Request

You don't often get email from charles.maclaughlin.1@us.af.mil. Learn why this is important

Thanks Mark!

You did but I really appreciate the follow-up. Apologize if I did not confirm receipt!

I have a couple recommendations below but overall, do not have serious concerns with approval and would suggest this is an opportunity to showcase/celebrate this process as an effective method of ensuring military compatibility.

Through your efforts, I have been in contact with Mr. Eric Bain for several months and have discussed the proposed development with him.

We do not have any serious concerns with the proposed development and again, see this as an outstanding example of how the variance process can be applied.

To tack on to the FAA approvals, the attached screen shot illustrates how River Ranch sits in the "elbow" if you will, of APAFR's Special Use Airspace. As such, we do not have any concerns with applying a building height variance and for what it's worth, recommend doing so.

The concerns that I did discuss with Mr. Bain were lighting and noise. In my opinion, Polk County's MCZ lighting standards addresses the lighting concern very well so I think that is covered. For noise, I suggested they consider noise reduction/sound proofing building techniques and asked if they would consider posting signs and putting information in the registration paperwork informing guests of the military activity nearby. He indicated he would discuss those suggestions with the owners.

My request, if the County and applicant are agreeable, is for the approval paperwork to somehow document the recommendation for sound reduction building techniques and to add the signage as a condition for approval. The Range would be responsible for the cost of purchasing/maintaining the sign/signs and possibly the installation. Wording would be pre-coordinated and agreed to by the owner.

That said, I don't view my recommendations as show-stoppers. If the County or applicant do not concur, I do not have any concerns with a recommendation for approval.

V/r,

Buck

# CORRESPONDENCE FROM THE AVON PARK AIR FORCE RANGE



Mail Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Group  
10101 Hillwood Parkway  
Fort Worth, TX 76177

Aeronautical Study No.  
2023-ASO-30635-OE

Issued Date: 01/16/2024

Bryon Smith  
Westgate Resorts LTD  
5601 Windhover Dr  
Orlando, FL 32819

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Multi-purpose Building River Ranch Marina Mixed Use Building
Location:	River Ranch, FL
Latitude:	27-46-16.27N NAD 83
Longitude:	81-11-24.49W
Heights:	60 feet site elevation (SE) 62 feet above ground level (AGL) 122 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)  
 Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 M.

This determination expires on 07/16/2025 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

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## FAA DETERMINATION OF NO HAZARD TO AIR NAVIGATION (Page 1 of 3)

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

If we can be of further assistance, please contact our office at (404) 305-6504, or [dale.kimmel@faa.gov](mailto:dale.kimmel@faa.gov). On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2023-ASO-30635-OE.

**Signature Control No: 604156864-609628386**

( DNE )

Dale Kimmel  
Specialist

Attachment(s)  
Map(s)

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## FAA DETERMINATION OF NO HAZARD TO AIR NAVIGATION (Page 2 of 3)

Sectional Map for ASN 2023-ASO-30635-OE



## FAA DETERMINATION OF NO HAZARD TO AIR NAVIGATION (Page 3 of 3)