



Fort Myers Beach Local Planning Agency

DiamondHead Beach Resort
2000 Estero Blvd
Fort Myers Beach, FL 33931

Agenda

Tuesday, February 14, 2023

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER
- II. INVOCATION
- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF MINUTES
 - A. Draft minutes January 18, 2023
- V. PUBLIC HEARINGS
 - A. SEZ-20220120; 6875 Estero Blvd; Recommendation of approval of Special Exception for Work/ Live use
SEZ-20220120; 6875 Estero Blvd; Recommendation of approval of Special Exception for Work/ Live use
 - B. SEZ 20220104 Texas Hol'em and Squeeze Me Inn Dune Walkover and Boardwalk
Approve/Approve with conditions/Deny SEZ 20220104 Texas Hold'em and Squeeze Me Inn Dune Walkover and Boardwalk based on the findings and conclusions with LDC Sec 34-88 Special Exceptions and Sec 34-87 Variances.
- VI. ADMINISTRATIVE AGENDA
 - A. Public Hearing Process Options
Options to reduce time requirements in the public hearing process.
- VII. LPA MEMBERS ITEMS/REPORTS
- VIII. LPA ATTORNEY ITEMS/REPORTS
- IX. COMMUNITY DEVELOPMENT ITEMS/REPORTS
- X. ITEMS FOR NEXT MONTHS AGENDA
- XI. PUBLIC COMMENT

XII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.



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**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2023-923**

1. **Requested Motion:**

Meeting Date: February 14, 2023

Approval of Draft minutes January 18, 2023

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

APPROVAL OF MINUTES

3. **Requirement/Purpose:**

5. **Background:**

Attachments:

1. Draft minutes January 2023
2. Carousel Conflict Form

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**



Fort Myers Beach Local Planning Agency

Diamond Head Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931

Minutes

Wednesday, January 18,
2023

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members present: Chair Cereceda, LPA Member Bowen, LPA Member Eckmann, LPA Member Sudduth (via phone), LPA Member Plummer, LPA Member Safford and LPA Member Vanasse.

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES

A. December 21, 2022 minutes

LPA Member Plummer moved to approve the minutes; second by LPA Member **Eckmann**.

Motion carried unanimously.

V. PUBLIC COMMENT

Doug Young, resident, discussed a handout he distributed regarding side setbacks. He included language that could alleviate the side setbacks. He commented on the proposal concerning mechanical equipment extending four feet into the setback if it was elevated.

Carolyn Caney from Woodland Custom Homes agreed with relaxing the setback rules. She felt that corner lots should have a 25-foot setback and a 15-foot setback, regardless of the size of the lot. She commented that relaxing the AC setbacks should apply to lots 75 feet or larger.

Sue Patten, resident, referred to page 388 of the agenda packet regarding civic and open space. She stated that Bay Beach Lane wanted to develop their property as a bird reserve and was concerned that the town could build a school

on the portion of the map that was crossed off.

Dewitt Willis, resident, noted that he was rebuilding and asked who he should contact to determine what he could do with his lot before spending a lot of money.

? Mayer, resident, stated that he lost his house and referred to a document he had distributed. He was told that he may or may not get a variance to rebuild. He provided pictures and a survey that showed how his previous house fit on his lot. He requested that the LPA adjust the code to accommodate building homes on smaller lots.

Dan Dodrill, contractor, commented on the current ordinance that required a 10-foot setback on Matanzas Street and Matanzas Court. He noted he submitted a permit application but was denied because of the 10-foot setback. He requested that it go back to the 7.5-foot setback.

Ken Pariser, resident, described his house before the hurricane. He indicated his lot was approximately 40 x 50 and asked the LPA to be flexible so residents could rebuild.

Randy Crow, resident, was left with a pool and seawall after the hurricane. He spoke on behalf of other Matanzas Court residents and asked that the LPA return to the 7.5-foot side setbacks so they could all rebuild.

James Zink, resident, stated that three of his lots were 45 feet deep. He proposed that homeowners with documentation or a survey of their previous home be allowed to build back in the same footprint.

Dave Leigh, resident, brought up side setbacks. He intended to elevate his home and in order to meet FEMA guidelines, he would have to move all mechanical and electrical equipment from the ground to above BFE (Base Flood Elevation). Stairs and landings would have to be added to access the first level. He requested that the town change the side setbacks back to 7.5 feet for lots equal to or less than 75 feet wide. He questioned whether the town would allow stairs and landings to extend into the setback for secondary egress on upper levels. He questioned his zone change from AE13 to AE11.

VI. PUBLIC HEARINGS

A. Carousel RPD Use Table and Maximum Height for a rooftop deck **20220100 6249 Estero Blvd- Amendment to Ord 18-11, Carousel Residential Planned Development (RPD) change to the Use Table and Maximum Height**

Town Attorney Herin, Jr. swore in those providing testimony for all quasi-judicial hearings. Ex parte communications: LPA Member Vanasse recused himself from discussion and voting and there were no disclosed ex parte communications.

Ken Gallander represented Carousel Beach Redevelopment LLC. He distributed his presentation, which included a request to allow for an accessory use on the rooftop. Slides included Subject Property, Aerial View, Schedule of Uses, Adding a Rooftop Deck, Actual Intent of the Rooftop Deck Amenity, Key Factors, Elevation of the Building Under Construction, Representation of the Renderings, No Commercial Grade Amplified Sound

and Request to Add the Rooftop Deck as an Accessory Use. He stated they agreed with the conditions in the staff report. Regarding Commercial Grade Amplified Sound, Mr. Gallander clarified that the intention was to provide a quiet ambiance for guests and owners.

Community Development Planner Jason Green reviewed the request as noted on the yellow sheet and noted that staff recommended approval with conditions.

LPA Member Plummer suggested adding a condition stating that it should not be enclosed. Mr. Gallander replied that it was not an enclosed area and was uninhabitable.

No public comment.

LPA Member Plummer moved to approve the accessory use of the decking on the rooftop for outdoor living amenities and approve the 10-foot additional canopy space with the conditions in the packet plus another that there would be no enclosed structures on the top of the roof and it was compatible with the request; second by LPA Member Bowen.

Motion carried unanimously by roll call vote.

B. Pink Shell CPD Amendment DCI 20220032 to allow Live-Aboard Vessels use
Pink Shell CPD Amendment DCI 20220032-Amendment to the Pink Shell CPD to include Live-Aboard Vessels use

No ex parte communications were disclosed.

Bill Waichulis, Senior VP of Operations for the Pink Shell Resort and Marina, requested that liveaboards be allowed in their marina as permitted by the DEP (Department of Environmental Protection) per their submerged land lease. He noted the resort had a conflict because the town did not define liveaboards, but the DEP defined liveaboards as someone staying over five nights.

LPA Member Plummer questioned whether the Pink Shell provided restrooms, laundry, parking and trash removal. Mr. Waichulis replied that they met all the DEP requirements and were rebuilding the showers. He indicated that there were 41 slips in the marina and guests usually stayed on their vessels. Mr. Waichulis clarified that liveaboards were not allowed to stay longer than six months per the DEP.

Community Development Planner Sarah Propst reviewed the request as stated on the yellow sheet. Staff recommended that the applicant clean up the existing CPDs to clarify which properties are included, the number of allowed units and the number of allowed uses. Staff recommended approval with conditions. Mr. Waichulis confirmed they had an updated land lease agreement through June 27, 2027.

No public comment.

LPA Member Vanasse supported the application and noted that liveaboards were considered transient lodging units. LPA Member Plummer felt that the boats should be required to move in the event of a hurricane. Mr. Waichulis commented that they already required boats to leave the marina.

LPA Member Vanasse moved to recommend approval of the petition with the condition that the marina had to move the vessels before hurricanes and the staff-recommended conditions; second by LPA Member Plummer.

Motion carried unanimously by roll call vote.

C. VAR20220018 an 11 foot street setback reduction for a pool

VAR20220018, 8180 Lagoon Road - Variance for an 11 foot reduction of a pool street setback

No ex parte communications were disclosed.

Chris DeCosta represented the applicant and submitted a presentation. He stated the request was for a variance for a pool without a cage. He described the property's location, provided pictures of the site before the hurricane and noted it was a corner lot with two 25-foot side setbacks. In his presentation, he discussed 34-638 in the code regarding details of minimum setback dimensions in the packet materials concerning accessory use structures. He acknowledged that the pool was a design choice, but the situation was dictated mainly by the unique configuration of the property. He submitted letters from the neighbors.

He reviewed the criteria for appeal of a setback variance and concluded that pursuant to 34-87, the petitioners met the requirements for a setback variance for their proposed pool. LPA Member Plummer questioned whether the pool extended beyond the footprint of the building. Mr. DeCosta replied negatively.

Planning and Zoning Department Senior Planner Jason Smalley noted that even though the structure did not extend past the building, it did not meet the minimum setback of 25 feet. He pointed out that in 2014, the pool was developed at a 26-foot setback and noted there was no record of why the house ended up with an 11-foot setback. He stated that there was room along Tarpon to install the pool without going into street setbacks.

LPA Member Vanasse interpreted the code differently than staff regarding the table with setbacks applying to accessory structures. He noted that several other sections dealt with accessory uses and did not think the table was intended for accessory uses because they were dealt with elsewhere. Planner Smalley explained how staff interpreted the code and noted that it had been applied consistently during his tenure.

LPA Member Sudduth questioned whether the pool was treated differently because it was a corner lot. Planner Smalley replied that they referred to the intent in the code to not have accessory structures extending further than the house.

Public comment:

Jim Steele, neighbor across the street, noted the applicant had a fence around his property and the pool was not as wide as the house. He questioned why he could not make the pool as wide as the house. He supported the applicant.

Bill Pohlman, next-door neighbor, felt the addition of the pool would be great for the neighborhood. He did not find the pool intrusive.

Public comment closed.

Planner Smalley suggested that a hedge requirement be added if the LPA decided to approve the request.

LPA Members Plummer and Vanasse supported the request. LPA Member Vanasse based his support on the clear language in the code. LPA Member Eckmann supported the variance, because the neighbors supported the request and the house was 11 feet from the road.

Town Attorney Herin, Jr. reminded everyone that the basis for approving or denying an application was whether or not the applicant met the criteria in the code. The neighbors' opinions had nothing to do with the applicant meeting the criteria.

LPA Member Plummer moved to approve the 11-foot street setback reduction for the pool at 8180 Lagoon Rd. and found it did meet the findings and conclusions and to include a condition to add a standard vegetation hedge; second by LPA Member Sudduth.

Motion carried unanimously by roll call vote.

- D. SEZ20220095 for a permanent shared parking lot and VAR20220094 variance from landscape, design and location requirements

SEZ20220095, VAR20220094 237 Old San Carlos - Special Exception for a permanent shared parking lot and variances from LDC requirement for landscaping, design and location

The recording started with Attorney Sarah Spector from Roetzel & Andress reviewing the variance requests. She described slides from her presentation regarding what the parking lot would look like. She stated they were asking for a special exception to extend the shared parking lot highlighted in yellow on the slide. The following slide summarized several variances in operating the parking lot safely. She described removing one entrance and exiting onto 3rd Street, the location of handicapped spaces, the provision of the code relative to the downtown district and future land use designation. She pointed out that the LDC (Land Development Code) identified three locations for a parking garage on Old San Carlos and none had been developed. She described slides concerning two prior conditions and noted they were not proposing redevelopment. Attorney Spector provided slides clarifying staff comments surrounding the variances. The following slide contained pictures of the opaque buffer between the parking lot and adjacent rights of way and additional slides displayed visuals concerning additional variances. She noted they withdrew the variance request regarding tiered parking and described the proposed reduced visibility. She reviewed slides with staff comments, maps and the staff's denial of the request. She requested that the LPA recommend approval.

LPA Member Eckmann questioned why they needed more parking spaces. Applicant John Richard distributed a handout and responded that there was a shortage of parking. LPA Member Vanasse brought up variances associated with buffering and landscape islands; he felt they could afford to lose a few parking spaces to provide those items. Kara Stewart explained that the buffer on Old San Carlos would assist with visibility and locations were identified for

internal landscaping. She suggested that hedges could be added. Mr. Richard stated that trees would be added and he wanted the parking lot to be beautiful with a view of the lagoon. Ms. Stewart described the design to address drainage towards the rear of the property and explained the dimensions of the parking spaces.

LPA Member Safford disclosed ex parte communications with Mr. Richard and Ms. Stewart and Chair Cereceda spoke with Mr. Richard. No other members disclosed ex parte communications.

Ms. Stewart explained the special exception conflict with the previous approval and noted the prior approval was for a permanent shared parking lot. She disagreed that it was redevelopment because they were expanding the existing special exception.

Planner Sarah Propst noted the staff report was longer than usual. The report was included in the packet of information. She reviewed the variance requests in detail, described graphics within the report and discussed the conditions. She concluded that the staff recommended that the LPA recommend denial.

LPA Member Safford questioned whether Planner Propst agreed it was not a redevelopment. Planner Propst replied that the code did not define redevelopment and the issue was that they were redeveloping part of the parking lot to be a permanent shared parking lot. She noted that it was redeveloping the site differently. Town Attorney Herin, Jr. explained that it was an existing use that did not meet all the code requirements. If they expand that use, the entire site had to be up to code, thus the request for variances. They did not get to the variances unless they granted the special exception.

Planner Propst addressed tiered parking and defined crosswalks. She added that lighting would eventually be required.

No public comment.

Ms. Stewart could not find any tiered parking on the beach and Planner Propst noted the code did not contain compact parking spaces. Chair Cereceda removed the fifth variance for tiered parking per the applicant and the LPA believed it did not apply.

LPA Member Plummer moved to approve the special exception portion of the request based on the information in the staff report, the testimony presented before the LPA and finds that the applicant has met the standards outlined in the comprehensive plan and LDRs for the requested special exception as reflected in the staff report; second by LPA Member Bowen.

Motion carried unanimously by roll call vote.

Planner Propst stated the code required a 10% landscaping area internal to the parking lot. LPA Member Vanasse commented that he could support the request if the applicant looked at the amount of landscape required and provided something aesthetic, such as clustering the landscape. He noted it might help if the applicant tabled the request and came back with an

enhancement plan to justify the variance. Town Attorney Herin, Jr. indicated that the LPA could potentially deny the variance request as submitted, but they would grant a variance to the locational requirement for the 10% landscape in the internal area in a way that was most efficient and aesthetically pleasing.

LPA Member Plummer felt that it was a pedestrian-friendly area and as long as there was a buffer, she was not opposed to reducing the internal landscape. LPA Member Safford questioned whether they wanted to add landscape that would block the view. LPA Member Eckmann could not support a reduction in the percentage of landscaping because the lot needed trees. Town Attorney Herin, Jr. suggested that the LPA ask the applicant to provide a visual so they could see what the changes would look like. Chair Cereceda questioned whether the LPA objected to the proposed perimeter landscaping. Four LPA Members expressed concern about the perimeter buffer and LPA Member Plummer supported adding palm trees to take up less space.

There was no concern regarding variances three and four. LPA Member Vanasse supported adding compact parking spaces to variance five. Planner Propst described the visibility triangle for safe ingress and egress concerning variance six. LPA Member Vanasse described ways to mitigate the reduced triangle visibility.

Chair Cereceda questioned whether the LPA wanted to table the hearing for further clarification on landscaping. LPA Member Vanasse suggested that the LPA could recommend that the Town Council address their concerns. Town Attorney Herin, Jr. stated that the LPA had to vote on each item and make a recommendation. He recommended that the LPA recommend denial, but if the applicant were to provide the information, the recommendation could be in support of the request. Chair Cereceda did not think that numbers one and two met the landscaping requirement, but they could.

LPA Member Vanasse moved to recommend approval of variance number three; second by LPA Member Safford.

Motion carried unanimously by roll call vote.

LPA Member Vanasse moved to recommend approval of variance number seven with the condition that landscaping and potential fencing hardscapes within the visibility triangle be limited to no more than three and a half feet tall, the cabbage palm be removed and pedestrian signs be added; second by LPA Member Safford.

Motion carried unanimously by roll call vote.

LPA Member Vanasse moved to recommend approval for the variance to not provide interconnectivity to the adjacent lot because of the current development; second by LPA Member Plummer.

Motion carried unanimously by roll call vote.

LPA Member Vanasse did not support the parking lot dimensions because he felt there were design solutions and LPA Members agreed.

LPA Member Vanasse moved to recommend denial of variance six with the caveat that they could support part of the request, especially with compact parking with a good faith effort to redesign the parking lot; second by LPA Member Eckmann.

Motion carried unanimously by roll call vote.

Regarding variances one and two, LPA Member Eckmann could not support a reduction in landscaping for the parking lot. He felt that shade was needed with islands of trees. LPA Member Plummer supported adding palm trees and providing a smaller area for landscape, so parking spaces did not have to be reduced. LPA Member Bowen felt that more landscaping was needed than what was shown. LPA Member Safford agreed and would like more palm trees with a visual presentation. Chair Cereceda felt all landscaping was essential, although she thought a double-stacked 15-foot perimeter buffer seemed excessive. She would deny variances one and two with the commentary made and move it to Town Council. LPA Member Plummer suggested that it should be stated that the LPA would consider a reduced buffer for both variances. LPA Member Vanasse wanted to see a planting plan.

LPA Member Eckmann moved to deny variance requests one and two and that before the variance requests could be approved, the LPA needed to see a planting plan and landscaping internal to the parking lot with a reduction in the buffer but not a reduction to the 10%; second by LPA Member Plummer.

LPA Member Plummer discussed the 10% concerning the view triangle that would push it to the back and would block the water view. LPA Member Safford agreed with not blocking the view and questioned why they would deny the perimeter plan if they all agreed with what was presented. Chair Cereceda replied that it was not an actual plan and did not meet the criteria for a variance request. LPA Member Vanasse wanted to see internal landscaping and it did not have to be 10%, but it was about form and aesthetics. The planting plan should show what the code requires and the applicant should explain the reason for their proposal if it varies from the code.

Motion carried unanimously by roll call vote.

E. VAR20220098 Side Setback Variance

VAR20220098 3780 Estero Blvd- Variance for the reduction of side setbacks by 1.5 feet.

Chair Cereceda read the variance request. No ex parte communications were disclosed.

Certified Planner Fred Drovdic represented Matthew and Kristi Davis. He

distributed his presentation and reviewed the variance request. Slides included the Location; Property Overview; Site Plans; Design; FDEP Setback Letter; and Criteria for Variance B. He felt they met the criteria and noted they agreed with the staff's analysis of the other four.

He understood the justification for the denial of B but noted the applicant moved forward with detailed construction plans per an approved letter and met the setbacks before the LPA adopted changes to the setback. The applicant requested relief from the burden of the code change. He reviewed the remainder of the criteria in the staff report and recommended approval of the variance of 1.5 on each side to 10 feet. He added that, to his knowledge, he had not received opposition.

Planner Smalley pointed out that a neighbor did express opposition to the request yesterday. He did not dispute anything in Mr. Drovdic's presentation. Staff recommended disapproval because the applicants were in the pre-build phase and could make changes. LPA Member Plummer questioned whether the applicant was in the process when the setbacks were changed. Planner Smalley responded affirmatively but noted they were not too far into the process to prevent them from making changes. LPA Member Plummer felt the variance should be considered because they were in the pipeline.

No public comment.

LPA Member Vanasse moved to recommend approval of the variance request and that the LPA found it to be consistent with the variance criteria found in the LDC; **second by ?**

Motion carried unanimously by roll call vote.

F. Text Amendment to LDC Sec 34-638 Minimum Setbacks, Table 34-3, and Sec 34-2 Definitions

Text Amendment to LDC Sec. 34-638 Minimum Setbacks, Table 34-3, and Sec 34-2 Definitions Setback and Corner Lot Regulations

Planner Propst reviewed the corner lots and setbacks presentation. She noted that for corner lots 50 feet or less wide, there would be a 10-foot side street setback; lots greater than 50 feet wide up to 60 feet wide would have a 15-foot side street setback; lots greater than 60 feet up to 75 feet wide would have a 20-foot wide side street setback and lots greater than 75 feet would have a 25-foot side street setback. The front street setback was 25 feet and the rear yard setback was 20 or 25 feet depending on whether it was on the water. Planner Propst stated that the measurement was from the front property line and the side street property line was from that property line adjacent to the right of the way to the edge of the house. She commented on measuring a trapezoid-shaped lot and noted it was defined in the code. Planner Propst reviewed porches, stoops and additional setbacks. She indicated that concerning side street setbacks, the porch or stoop could encroach up to half of the distance, not more than 10. If there was a decreased setback of 10 feet, they could encroach with a porch 5 feet of that. Lots that take access from smaller side streets would have to show how

vehicles will be kept on the site and not encroach into the right of way. Additional setbacks for houses with more than 65 feet of frontage were decreased. Lots more than 85 feet wide would be the regular 12-foot step-out. More than 50 feet up to 85 feet would be half of that. Less than or equal to 50 feet would be 3 feet.

Planner Propst noted that there would be a return to the 7.5-foot setback and the 10-foot setback. The proposed language would eliminate the requirement for the 15% side setback and the side setback would return to the previous side setback distance of 7.5 feet and 10 feet for lots greater than 75 feet or wider. LPA Member Sudduth commented on setbacks for larger lots and LPA Member Vanasse discussed the massing of houses on larger lots.

The LPA unanimously recommended that the footnote be removed from the dimension table regarding Matanzas Street and Matanzas Court.

Planner Propst reviewed mechanical equipment encroachment and questioned whether elevating resolved the issue. LPA Member Vanasse brought up distinguishing between side setbacks and side street setbacks. Planner Green noted that the request was originally for generators. LPA Member Eckmann commented that elevating the equipment would hinder emergency access and the noise would travel further. Chair Cereceda did not like mechanical equipment encroaching into the setbacks. LPA Member Plummer felt that existing homes had to have somewhere to put the equipment. Planner Propst stated that the code allowed equipment to be replaced in the same location, but whole-house generators were required to be above flood elevation. She questioned whether they wanted to limit the requirement for emergency equipment.

Public comment:

Fred Drovdic brought up corner lots on Estero Blvd. and a public beach access. He distributed a memo regarding amendments to LDC Section 34-638(d) and specifically 6, which were corner lot street setbacks. He referred to criteria on the back page which outlined new sections and described adding a 5th section detailed in the handout distributed to the LPA.

Glen Harris clarified that the intent for generators was to get them above flood for existing homes but not to include mechanical equipment. He noted the goal was to raise service panels above flood with a four-foot platform and to provide access. He explained why he supported a 20% side setback instead of 30%. He commented on massing houses.

Michael Perez from Coastal Life discussed setbacks and elevated houses, ingress and egress, cantilevers, platforms for mechanical equipment, generators and utility requirements, FEMA guidelines and insurance. He felt that cantilevers were the best option.

Alexis Cressbow represented Tony and Lynn Demillo and discussed their lot on the corner of the Aberdeen beach access and Estero Blvd. She noted that the owners asked that a side yard setback be treated as the norm for the beach accesses.

Public comment closed.

LPA Member Vanasse noted that some homes still existed on beach accesses and questioned the idea of changing setbacks for new homes. Planner Green indicated that protecting the view corridors was part of the comprehensive plan.

Planner Propst questioned whether generators and panels could be located on lanais. Mr. **Perez** replied that generators had exhaust concerns and had location requirements. Meters could be relocated but it would cost more. Planner Green mentioned the difference between retrofitting existing homes and new regulations.

LPA Member Vanasse supported changing corner lot side street setbacks for lots 60 feet to 75 feet to a 15-foot side street setback. Lots over 75 feet would be changed to a 20-foot side street setback. LPA Members agreed with the change.

Planner Green stated that existing mechanical equipment could be elevated, and new construction had to be built compliant with setbacks. New equipment on existing homes was the issue if there was no room for a generator. LPA Member Safford supported allowing generators to encroach on existing properties, and LPA Members agreed.

LPA Member Plummer moved to approve the corner lots as charted, except lots 60 to 75 feet will be reduced to a 15-foot side street setback and lots over 75 feet to a 20-foot side street setback; the porches were accepted as charted; the return to the 7.5 feet was correct and properties wider than 75 feet would be 10 feet; Matanzas Court and Matanzas Street will go to 7.5 feet instead of 10 feet and mechanical equipment encroachments on existing homes may encroach 3 feet and no encroachment for new homes; second by LPA Member Sudduth.

Motion carried unanimously.

G. Proposed amendments to Sec. 34-3273 Residential Uses on Nonconforming Lots and Sec. 34-3274 Minimum Use Determinations

Text amendment to Sec. 34-3273 Residential Uses on Nonconforming Lots and Sec. 34-3274 Minimum Use Determinations

Planner Propst noted that she would refer to very small lots containing small beach cottages as cottage lots. Exhibit A amended the cottage lots that did not meet the provisions in the code. Section 34-3273 was changed to only require the receipt of an affirmative minimum use determination. Section 34-3274 was amended to allow access to the right-of-way with an improved access easement. Requiring an improved access easement would ensure a reasonable width for a drivable surface to access the property for emergency services. The lots will require variances because they will not meet the required setbacks, potential building coverage or impervious surface coverage. Planner Propst stated that Exhibit B contained an amendment to Section 34-268 regarding administrative setback variances for discussion. The language for administrative variances was very limiting and she indicated that they wanted the options to be very narrow so the staff was not put in a questionable position to make decisions that the Council should decide. She

added that the limit of 1,000 square feet and a single story would allow rebuilding the small beach cottage homes without a full-blown variance. LPA Member Vanasse suggested allowing people to build back with the same footprint pre-disaster but not allowing more than a five-foot setback. Chair Cereceda summarized that staff could administratively grant the same footprint and any expansion would require a variance. LPA Members supported allowing up to 1,000 square feet and anything over that would require pre-disaster proof.

Public comment:

A gentleman confirmed that he could rebuild his pre-disaster home, which was 1,350 square feet, without going through the variance process.

Public comment closed.

LPA Member Plummer moved to accept the recommended text amendments to Sec. 34-3273 on residential uses on nonconforming lots and Sec. 34-3274 minimum use determinations plus the code modifications proposed for Sec. 34-268 administrative setback variances with the changes discussed; second by LPA Member Vanasse.

Motion carried unanimously.

H. Comprehensive Plan Future Land Use Element and Draft Future Land Use Map

11: 00 a.m. or later start - Discussion about Comprehensive Plan Future Land Use Element and Draft Future Land Use Map

Eddie Ng from The Corradino Group provided a draft Future Land Use Element (FLUE) and a Future Land Use Map (FLUM). He discussed the limitations of the island and what could change; new districts, workforce housing and creating a walkable community for all ages. He brought up mixed-use districts and preserving the character of the town.

Recommendations included moving towards a more form-based code rather than a unit-to-unit or a ratio and what could be regulated by a floor area intensity and looking at the minimum sizes of units. He noted it would allow the market to adapt without changing the comprehensive plan. He stated they would have to be careful about how and where to build regarding height and intensity to preserve the view. Mr. Ng discussed a map of the wetland conservation area and Estero Blvd., removing the overlay and changing mixed residential to medium residential and low-density residential for neighborhoods. He brought up the location of civic structures and recommended that recreation be included in the civic space.

Some slides included images of other barrier islands and the Times Square district. He described the image that limited the height on the beach and moved the intensity closer to the bridge, a gradient from the core, mixed-use districts and increased density for hotels, motels and Airbnbs (Air Bed and Breakfast). He expanded on short-term vacation rentals intruding into residential neighborhoods, affordable housing projects and the gradient and trajectory of density on Estero Blvd. LPA Member Safford felt the image should be reversed. Mr. Ng brought up accommodating existing buildings

and noted he could go back to make the civic center lower and push the area back.

Planner Green discussed mixed-use and marinas. Mr. Ng stated that they could explore alternatives for viable approaches incorporating mixed uses while preserving the marina function.

LPA Member Safford questioned the impact of no residential in Times Square and what happened to homeowners who still had a house standing pre-disaster and if the house was destroyed, could they rebuild. He mentioned concerns regarding buffering for people who still had a house in the area. Mr. Ng replied that standing houses would be grandfathered, but he did not envision residential homes in the long term and noted that insurance would be very high for a single-family residence. Planner Green indicated that the challenge was conflicting uses and questioned whether it was going to be commercial or whether they were going to include residential and require extra buffers. Mr. Ng discussed a core to support basic services mid-island. The Civic Center in Coconut Village RV Park was discussed. Topics included public benefits, identifying priorities for the town, what the town wanted to require and incentivize area by area, and acquiring or maintaining and improving beach accesses.

Mr. Ng mentioned windows and tinting. The Publix Commercial Park was the next topic. Planner Green brought up density site by site. LPA Member Eckmann commented that he saw a reduction of residential and an increase in commercial areas with increased densities, which would not help the traffic situation. He noted that before the hurricane, a few offices and some buildings were empty. He felt the island was a destination and questioned how the Sabal Dr. and Bayview Ave. neighborhood would become commercialized with the number of homes in that area. LPA Member Vanasse did not see the character changing in that area due to the number of individual owners. LPA Member Eckmann noted that a lot of the property on the bay side of Estero Blvd. was demolished, creating an opportunity for a commercial strip. Planner Green remarked that the area was an example of potential horizontal mixed-use.

Planner Green read edits in the marina category and noted that the idea was to identify the primary use and to allow for some other mixture of uses.

LPA Member Plummer felt it would be helpful to determine what kind of businesses they lost and whether they were needed. She questioned how many homes were lost and whether they were homesteads or vacation homes. She felt it was important to identify what those homes represented and whether homesteaders would return. Mr. Ng responded that he would try to track down the data and stated that before the hurricane, the future land use projection indicated the town was about 2/3 homesteaded.

The neighborhood center was reviewed. LPA Member Vanasse described the area and commented that the neighborhood would not support any other activity than the non-profit Women's Center. He felt that it made sense to shift the boundaries to where the commercial activity used to be, which included the car wash, Century 21, the Hideaway and the Lahania. He

suggested removing the Women's Center and Mosquito Control and putting them in a civic category. Planner Green brought up non-profit-based service areas based on discussions with developers.

Mr. Ng moved on to Theater and Arts. He wanted the area to remain medium and low density.

Mr. Ng suggested that the Santini Village district be subdivided the same as in the north and whether to add towers was discussed. Chair Cereceda suggested a joint meeting with Town Council before moving forward. Planner Green requested that the LPA read the language in the goals, objectives and policies, including the strikethroughs.

LPA Member Vanasse brought up public input opportunities, and planner Green noted that many people were no longer on the island. LPA Member Vanasse indicated that parking comprehensively needed to be discussed and Planner Green responded that he would forward the parking analysis done several years ago.

Public comment:

Terry Persaud, owner of the old Sunset Beach Grill, felt that rebuilding Times Square should be the first priority and without Times Square, it would be difficult to encourage people to visit. He believed they needed to keep the area mixed-use and address parking, density and height. He indicated that businesses should be involved in discussions surrounding rebuilding.

Public comment closed.

LPA Member Safford questioned inviting the public to a workshop similar to what TPI did. Chair Cereceda agreed it was a great idea at some point.

I. LDC Text Amendment for Temporary Use for travel trailers, mobile homes, and recreational vehicles for housing post disaster

LDC Text Amendment to permit travel trailers, mobile homes, and Recreational Vehicles as a Temporary Use for housing post disaster.

Town Attorney Herin, Jr. apologized for not distributing the material but noted it was a short document taken from several municipalities in the Keys. The proposed ordinance would allow the types of uses stated in the text amendment in any zoning district. Those types of uses would be allowed to relocate and put in a temporary location until permanent facilities could be built, including residential properties and individual homeowners. Institutional zoning was included because one particular site was large enough to accommodate multiple trailers. He continued to read the proposed amendment and noted the town was already doing what was in the text. The initial term would be 18 months, but there were provisions for administrative relief. Chair Cereceda questioned whether it was strictly for residential. Town Attorney Herin, Jr. replied affirmatively but noted it could be expanded. No public comment.

LPA Member Plummer moved to direct the Town Attorney to forward this language to the Town Council with a recommendation of approval; second by LPA Member Safford.

Motion carried unanimously.

VII. ADMINISTRATIVE AGENDA**A. Discussion - Public Hearing Process Simplification****Options to reduce time requirements in the public hearing process.**

Tabled to next meeting.

VIII. LPA MEMBERS ITEMS/REPORTS

LPA Member Plummer suggested that residents contact Director Steve Poposki regarding a requirement to obtain double appraisals to prove that the assessed letters were low. She stated that it was not a town requirement. She brought up a Jeopardy question and noted that no one knew the answer was Hurricane Ian. LPA Member Vanasse questioned when the next meeting was and what was on the agenda.

Chair Cereceda agreed that they needed a discussion about Times Square to take impossible items off the table for discussion.

No items from other members.

IX. LPA ATTORNEY ITEMS/REPORTS

No items.

X. COMMUNITY DEVELOPMENT ITEMS/REPORTS

No items. The next meeting was February 14, 2023.

XI. ITEMS FOR NEXT MONTHS AGENDA

CB Zoning, the hearing process and possibly two applications.

XII. ADJOURNMENT

LPA Member Safford moved to adjourn; second by LPA Member Plummer.
Motion carried unanimously.

The meeting was adjourned at 4:57 p.m.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME VANASSE PATRIK		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE LPA	
MAILING ADDRESS 5711 Lander St.		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY FMB	COUNTY LEC	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY	
DATE ON WHICH VOTE OCCURRED 11/18/23		NAME OF POLITICAL SUBDIVISION: Town of Fort Myers Beach	
		MY POSITION IS: ☐ ELECTIVE ☒ APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Patrick Vancasse, hereby disclose that on January 17, 20 23:

(a) A measure came or will come before my agency which (check one or more)

- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☒ inured to the special gain or loss of client, Carousel Beach Redevelopment LLC, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

A client of my consulting firm, The Neighborhood Company, has a petition for a PD Amendment coming before the LPA. The client is represented by my business partner, Ken Crallender. I will be recusing myself.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

1/18/2023

Date Filed



Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2023-936**

1. Requested Motion:

Meeting Date: February 14, 2023

SEZ-20220120; 6875 Estero Blvd; Recommendation of approval of Special Exception for Work/Live use

Why the action is necessary:

The use of the building as both the applicant's place of business and private residence requires a Special Exception per Tables 34-1 & 34-2 and sec. 34-1774 of the Town's Land Development Code.

What the action accomplishes:

Granting the special exception will allow the applicant to use the lot for both commercial and residential uses, rehabilitating a structure which has been unoccupied for many years.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Per Tables 34-1 & 34-2 and sec. 34-1774 of the Town's Land Development Code, a special exception is required for the mixed use proposed by the applicant.

5. Background:

Applicant has requested a Special Exception to allow the use of an existing building for both their commercial office and the addition of an additional floor to develop their single-family residence at 6875 Estero Blvd, formerly a medical arts building.

Attachments:

1. SEZ_20220120_6875 Estero_Interiors Unlimited Live_Work_02102023_jas_sp
2. 13775096-Special Exception Narrative Statement
3. 13774980-Architectural Plans
4. Interiors Unlimited_Exterior 1
5. Interiors Unlimited_Exterior 2
6. 13882984-REVISED Civil Engineering Plans
7. 6875 Estero Blvd_Topo Survey
8. 6875 Estero Blvd_Application Package

Financial Impact:

N/A

6. Alternative Action

7. Staff Recommendations:

N/A

8. Recommended Approval:

Date: February 10, 2023

Steve Poposki, Community Development Director

Date: February 10, 2023

John R Herin Jr, Town Attorney

Date: February 10, 2023

Amy Baker, Town Clerk



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ—Special Exception, 20220120

CASE NAME: 6875 Estero Blvd, allow for Work/ Live use within existing building.

LPA

HEARING DATE: February 14, 2023 at 9.00 AM

STAFF

RECOMMENDATION: Approve with conditions

**PREPARED/
SUBMITTED BY:** Jason Smalley/ Jason Green AICP, CFM

I. APPLICATION SUMMARY

Applicant/Owner: Haley Ward Inc./Lemos Unlimited, LLC.

Request: The applicant is requesting Special Exception described in sec. 34-1774 to redevelop an existing commercial building and add a second floor as a primary residence for the applicant and family.

Subject property: See attached site plan

Physical Address: 6875 Estero Blvd.

STRAP #: 03-47-24-W1-00002.0020

FLU: Mixed Residential

Zoning: Commercial Office

Adjacent zoning and land uses:

North:	RESIDENTIAL Planned Development (RPD) Multi-Family Condominiums
South:	Residential Multi-Family (RM) Residential-Family Condominiums
East:	Residential Multi-Family (RM) Residential-Family Condominiums
West:	Residential Multi-Family (RM) Residential-Family Condominiums

II. BACKGROUND AND ANALYSIS

Background:

Ahmad Kareh, the applicant's representative for 6875 Estero Blvd, *Interiors Unlimited*, is requesting a Special Exception to develop a General Office which will serve administrative, storage and customer meeting space. The hours of operation for the office are 8 am to 4 pm, Monday through Friday.

The lot's current use as Commercial Office will continue to exist and will not measurably affect the wider neighborhood's character. The rehabilitation of the lot and building will serve to correct historical complaints that the unoccupied lot collected trash and the landscaping was overgrown. The addition of a residential unit will not greatly increase intensity considering that private vehicles will be stored within the building and limitations to the type of activity that can be done on-site will not create noise or visual nuisances. Additional conditions have been recommended by staff to address impacts of the General Office use.

Analysis:

Interiors Unlimited has been a business on Fort Myers Beach for almost 20 years. The property was previously used as a medical office but has been unoccupied for many years. The applicant wishes to refresh the exterior and add a second floor to accommodate a primary residence and customary accessory uses including a garage, covered decks, spa and an elevator.

The structure has a ground-floor footprint of 8,272-square feet, and a proposed second level footprint of 7,651-square feet for a total floor area of 15,923-square feet. The garage is proposed to be separated into use for the residential unit as well as storage to serve the commercial activities, the applicant has assured staff that the storage area wouldn't be utilized for manufacturing or construction purposes to retain the office nature of the project.

Commented [L1]: Explain where or how it was on the island. That sentence right before the previous property use is a little confusing without an explanation.

The recommendations of staff for developing buffer plantings and limitations on activities which may reasonably create excessive noise or outdoor storage can be found in this staff report under the headings "Conditions of Approval." No additional deviations are proposed.

Neighborhood Compatibility:

In review of the aerial photography of the neighborhood, staff found the property is situated among multi-family housing but isn't out of place considering that the previous use as a medical office had existed there for many years with minimal disruption to the peaceful residential use of the wider area. The lot has been cited for dilapidated awnings in 2016 and abandoned signage in 2017, but there have been no other compliance actions since.

Findings and Conclusions:

LDC Sec. 34-88 sets forth the required findings and conclusions for the approval of a special exception:

- a. *Whether there exist changed or changing condition which make approval of the request appropriate*

The property will continue to be used for commercial purposes while the addition of the residential use is generally compatible with the surrounding uses.

- b. *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

The request is consistent with goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan and the Future Land Use Map (Mixed Residential).

- c. *Whether the request meets or exceeds all performance and locational standards for the proposed use*

The request meets performance and location standards if approved

- d. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The request will have no impact on protection, conservation, or preservation of environmentally critical areas and natural resources

- e. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

There is no anticipated negative impact or injury to surrounding properties as the property was previously used as an office and all storage will be indoors.

- f. Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Town's Land Development Code.*

The request will be in compliance with the applicable zoning provisions and supplemental regulations.

III. RECOMMENDATION

Staff finds that the request for a Work/ Live Special Exception meets the criteria set forth in Section 34-88 of the LDC.

Therefore, staff recommends that the LPA recommend **APPROVAL WITH CONDITIONS** for SEZ-20220120, to allow use of the building as both General Office and Residential.

IV. CONDITIONS OF APPROVAL

1. The applicant must provide Community Development staff a buffer-planting plan, prior to issuance of building permits, which maintains and improves the existing greenspace and trees, while increasing the buffer/ screening areas which are adjacent to the multi-family properties on the North, East and South-East property lines.
2. Outdoor storage shall not be allowed.
3. Manufacturing, assembly, and other intensifications which would change the approved use as General Office will not be allowed.

Staff Report Exhibits:

- A – Site Plan
- B – Architectural Plans
- C – Complete Application



HALEY WARD

ENGINEERING | ENVIRONMENTAL | SURVEYING

INTERIORS UNLIMITED

SPECIAL EXCEPTION NARRATIVE STATEMENT

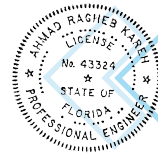
FOR

LEMOS UNLIMITED, LLC
7205 ESTERO BOULEVARD, SUITE 702
FORT MYERS BEACH, FLORIDA 33931
PHONE: (239) 463-5320

HALEY WARD PROJECT NUMBER
2011380.001(22-12)

December 20, 2022

Prepared By:
Haley Ward, Inc.
13041 McGregor Boulevard
Fort Myers, FL 33919
(239) 481-1331



cn=Ahmad R. Kareh, State of Florida, Professional Engineer, License No. 43324, o=Printed copies of this document are not considered signed and sealed and the signature must be verified on any electronic copies., ou=This item has been digitally signed and sealed by Ahmad R. Kareh on the date indicated here., email=akareh@cesincusa.com, c=US 2022.12.20 12:30:49 -05'00'

Ahmad R. Kareh, P.E., M.S.C.E.
Florida License Number 43324
Certificate of Authorization Numbers
EB32664 & LB8267



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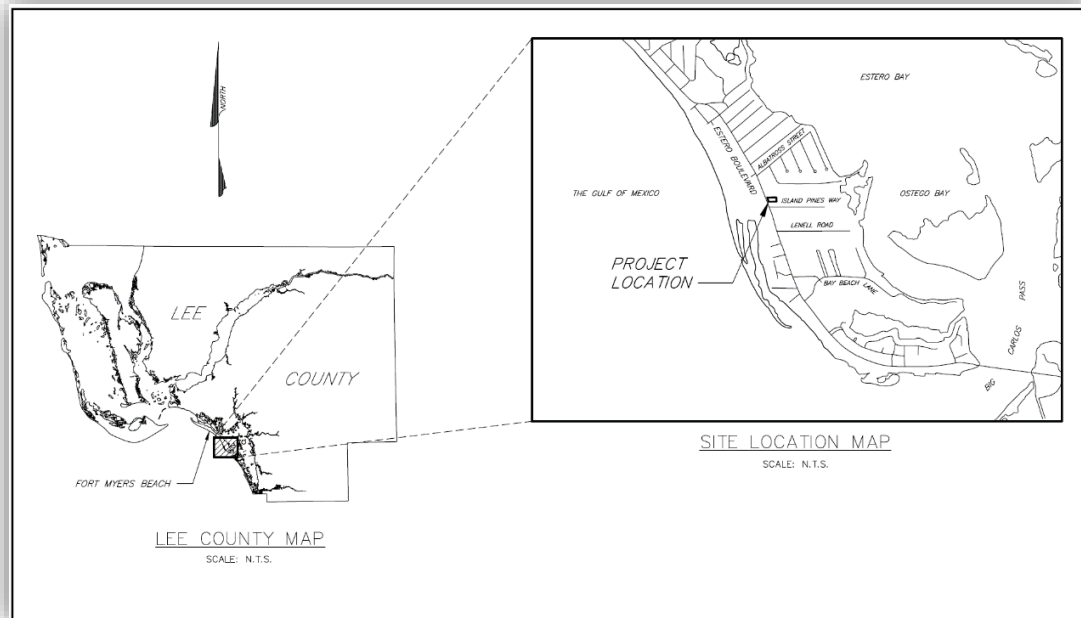
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1.0 Project Narrative

1.1 Location

The subject parcel is located in Section 3, Township 47 South, Range 24 East, Town of Fort Myers Beach, Lee County, Florida. The general location of the subject parcel is shown in the context Map below:



1.2 History & Project Summary

The subject parcel encompasses an existing vacant commercial medical offices building. The scope of work proposes to renovate the existing building and add a second floor to create a two-story Work/Live building with a retail space on the ground floor and a residential unit on the second floor, along with refurbishing the existing parking lot and adding landscaping and a water management system.

1.3 Zoning & Future Land Use

This subject parcel is currently zoned Commercial Office (CO) Zoning District, which will allow Work/Live uses as a Special Exception per LDC Tables 34-1 & 34-2. The project falls within the Mixed Residential Future Land Use.

1.4 Special Exception Request Intent

The intent of this Request for Special Exception is to allow the Work/Live Use within the Commercial Office Zoning District.



1.5 Special Exception Considerations

The Special Exception review requires consideration of the following items, as described in LDC Section 34-88. - Special exceptions.

Sections 2.1 - 2.9 of this narrative statement provides justification for each item listed below:

- (1) Whether there exist changed or changing conditions which make approval of the request appropriate.*
- (2) The testimony of any applicant.*
- (3) The recommendation of staff and of the local planning agency.*
- (4) The testimony of the public.*
- (5) Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.*
- (6) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
- (7) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*
- (8) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*
- (9) Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.*



2.0 Special Exception Justification

2.1 Changing Conditions

This Special Exception request is appropriate at this time because as the traffic within the Town of Fort Myers Beach only continues to get busier as more residents and tourists flock to experience the Island charm (not considering the aftermath of Hurricane Ian), a Work/Live unit eliminates all commuting trips that would otherwise be associated with this residence & business.

2.2 Applicant Testimony

Forthcoming.

2.3 Staff Recommendation

Forthcoming in the Staff Report.

2.4 Public Testimony

Forthcoming during the Public Hearings.

2.5 Comprehensive Plan Consistency

The Comprehensive Plan outlines the roadmap for the future of the Town of Fort Myers Beach. The subject site falls within the “Mixed Residential” Future Land Use, which the Plan describes as follows:

POLICY 4-B-4 “MIXED RESIDENTIAL”: designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for legally existing dwelling units). Commercial activities are limited to lower-impact uses...

As a residence with a limited retail commercial use on the ground floor, the proposed development will move this property closer to its intended future use by converting a high activity medical office (allowed use) into a small retail and residential Work/Live development.



2.6 Performance and Locational Standards

The proposed project encompasses an improvement onto an existing development, where access will stay the same and the site will receive a multitude of improvements.

2.7 Conservation

This is a redevelopment of an existing commercial use instead of developing a vacant or environmentally critical area. There are no natural resources existing on the subject site. Moreover, the proposed stormwater management system will provide runoff treatment to improve water quality on the island.

2.8 Compatibility

The proposed change from Medical Offices to Work/Live moves this property towards greater compatibility with the condominium residential uses that are adjacent to the subject site. Having direct access to Estero Boulevard makes this parcel a perfect candidate for retaining a limited commercial use along with a residential unit in a Work/Live arrangement.

2.9 LDC Compliance

The Land Development Code provides more specific criteria relevant to this case.

LDC Section 34-647. - CO (Commercial Office) Zoning District describes the purpose of the district as *“The purpose of the CO zoning district is to allow office uses on land that is visible to the traveling public or on land that can serve as a transition between commercial and residential uses.”*

Furthermore, LDC Section 34-1774. - *Work/Live dwelling unit is defined as “a single dwelling unit in acommercial building, where the predominate use of the unit is commercial....parking spaces shall be in accordance with the commercial parking standards in § 34-2020 of this chapter, plus two spaces for the dwelling unit. Commercial uses in Work/Live units are limited to retail store, small”.*



The proposed use is a limited retail use with a single dwelling unit within one (1) building, which falls squarely within the prescribed limits of the existing zoning and definition of a Work/Live use.

3.0 Conclusion

3.1 Summary of Request Intent

The intent of this Request for Special Exception is to allow the Work/Live Use within the Commercial Office Zoning District.

3.2 Summary of Qualifications for Special Exception

The request for Special Exception is qualified by its compatibility and compliance with the Comprehensive Plan, and the Land Development Code to the extent possible (considering that this is an existing development). Furthermore, the proposed development falls squarely within the prescribed limits of the existing zoning and definition of a Work/Live use. As outlined in LDC Tables 34-1 & 34-2, this use requires approval through the Special Exception public hearing process.

3.3 Special Exception Request

The information contained in this Narrative Statement clearly shows that the proposed Special Exception request meets or exceeds all of the requirements of the Comprehensive Plan, and the Land Development Code.

With this in mind, Lemos Unlimited, LLC respectfully requests that the Town Staff and Local Planning Agency members duly consider evidence set forth in the Narrative Statement above in support of this Special Exception Request when considering whether the request is consistent with the goals, objectives, policies and intent of the Comprehensive Plan, and whether the request is in compliance with the Land Development Code.

ADDITIONS and RENOVATIONS
for
6875 ESTERO

6875 ESTERO BOULEVARD
CITY OF FORT MYERS BEACH
FORT MYERS BEACH, FLORIDA 33931

NOT FOR CONSTRUCTION

50% DESIGN DEVELOPMENT DOCUMENTS
20.DECEMBER.2022

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STUDIO 2 ARCHITECTURE PLANNING LLC
530 CYPRESS WAY EAST
NAPLES, FLORIDA 34110
ROCCO J COSTA III (QUALIFYING AGENT) 239.877.6973
LAZARO HERNANDEZ 239.272.7087
FLORIDA QUALIFYING AGENT LICENSE NO. AR0015837

AGENCY HAVING JURISDICTION

TOWN OF FORT MYERS BEACH / LEE COUNTY

PROJECT DESCRIPTION

PER THE PROJECT REQUIREMENTS THE STRUCTURE, EXTERIOR WALLS AND FOUNDATION WILL REMAIN. THE EXISTING ROOF STRUCTURE AND EXISTING INTERNAL BEARING WALLS AND OR COLUMNS WILL BE REMOVED TO ALLOW THE DEVELOPMENT OF A NEW TWO-STORY BUILDING.

THEREFORE, THE PROJECT SHALL CONSIST OF THE RECONSTRUCTION OF THE SINGLE-STORY EXISTING STRUCTURE AT 6875 ESTERO BOULEVARD. THE PROJECT UPON COMPLETION SHALL BE A TWO-STORY BUILDING HOUSING ON THE GROUND FLOOR INTERIORS UNLIMITED A MERCANTILE SPACE WITH THE RESIDENTIAL COMPONENT, FOYER AND RESIDENTIAL GARAGE FOR THE RESIDENCE ABOVE. THE SECOND FLOOR SHALL BE A SINGLE-FAMILY RESIDENCE FOR THE OWNER'S OF INTERIORS UNLIMITED.

IT IS UNDERSTOOD BY THE ARCHITECT THAT THIS PROJECTS MEETS THE REQUIREMENTS SET FORTH THROUGH THE SPECIAL EXEMPTION AS APPROVED ON 00.00.0000

APPLICABLE CODES

ALL PROPOSED TENANT IMPROVEMENTS SHALL BE DESIGNED UNDER CURRENT CODES, SPECIFICALLY:

FLORIDA EXISTING BUILDING CODE 2020, 7TH EDITION, FLORIDA BUILDING CODE 2020, 7TH EDITION AND ALL ASSOCIATED / REFERENCED VOLUMES.

THIS REVIEW HAS BEEN PERFORMED USING THE FLORIDA FIRE PREVENTION CODE 2020, 7TH EDITION, INCORPORATING NFPA 101, LIFE SAFETY CODE, AND ADOPTED BY THE STATE OF FLORIDA ON DECEMBER 31, 2020.

SEE ALSO STRUCTURAL, PLUMBING, MECHANICAL AND ELECTRICAL DRAWING DOCUMENTS FOR OTHER APPLICABLE CODES.

BUILDING OCCUPANCY CLASSIFICATION

BUILDING OCCUPANCY CLASSIFICATION PER FBC, CHAPTER 5, SECTION 508, EACH PORTION OF A BUILDING SHALL BE INDIVIDUALLY CLASSIFIED IN ACCORDANCE WITH SECTION 302.1. WHERE A BUILDING CONTAINS MORE THAN ONE OCCUPANCY GROUP OR PORTION THEREOF SHALL COMPLY WITH THE APPLICABLE PROVISIONS OF SECTION 508.2, 508.3 OR 508.4, OR A COMBINATION OF THESE SECTIONS.

IT IS UNDERSTOOD BY THE ARCHITECT THAT THE GROUND FLOOR SHALL BE CONSIDERED MERCANTILE "M".

THEREFORE:

FLOOR LEVEL	OCCUPANCY CLASSIFICATION
FIRST FLOOR	MERCANTILE "M"
SECOND FLOOR	RESIDENTIAL "R-3"

IT IS UNDERSTOOD BY THE ARCHITECT THAT THE SECOND FLOOR SINGLE RESIDENTIAL UNIT SHALL BE CONSIDERED RESIDENTIAL "R-3". PER SECTION 508.4, THE REQUIRED SEPARATION BETWEEN OCCUPANCIES SHALL BE 1-HOUR.

THE LOAD CALCULATIONS ARE AS FOLLOWS:

OCCUPANCY LOAD CALCULATED BY USE: FBC SECTION 1004, TABLE 1004.5			
MERCANTILE "M"	(60 GROSS)	4,506 SF GROSS	72 PERSONS
RESIDENTIAL "R-3"	(200 GROSS)	6,077 SF GROSS	31 PERSONS
TOTAL NUMBER OF PERSONS			103 PERSONS

OCCUPANCY LOAD CALCULATED BY USE: (MOST RESTRICTIVE) PER FPPC TABLE 101:7.3.1.2 OCCUPANT LOAD FACTOR			
MERCANTILE (SALES ON GRADE) (30 GROSS)	4,506 SF GROSS	151 PERSONS	
RESIDENTIAL (200 GROSS)	6,077 SF GROSS	31 PERSONS	
TOTAL NUMBER OF PERSONS		182 PERSONS	

CONSTRUCTION TYPE

PER FBC, SECTION 602.5 TYPE V-B; UNPROTECTED WITH AUTOMATIC SPRINKLER SYSTEM

ALLOWABLE HEIGHTS AND AREAS

PER FBC, TABLE 504.3a ALLOWABLE BUILDING HEIGHT IN FEET ABOVE GRADE BASED ON TYPE V-B, SPRINKLED, MOST RESTRICTIVE HEIGHT PROVIDED.

BUILDING HEIGHT ALLOWED:	40'-0"
BUILDING HEIGHT PROPOSED:	34'-8 3/4"

PER FBC TABLE 504.4 ALLOWABLE NUMBER OF STORIES ABOVE GRADE PLANE BASED ON TYPE V-B, SPRINKLED, MOST RESTRICTIVE PROVIDED.

NUMBER OF STORIES ALLOWED:	2-STORIES
NUMBER OF STORIES PROPOSED:	2-STORIES

FBC, TABLE 506.2 ALLOWABLE AREAS IN SQUARE FEET, NO AREA MODIFICATION REQUESTED. BASED ON TYPE V-B, SPRINKLED, MULTI-STORY "SM", MOST RESTRICTIVE AREA PROVIDED.

FLOOR AREA ALLOWED:	27,000 SF
FLOOR AREA PROPOSED:	15,923 SF

BUILDING AREA BREAKDOWN IS AS FOLLOWS:

GROUND LEVEL PLAN	SECOND LEVEL PLAN
AIR-CONDITIONED SPACE	AIR-CONDITIONED SPACE
SHOWROOM	4,998 SF
RESIDENTIAL LOBBY	422 SF
SUB-TOTAL	5,420 SF
NON-CONDITIONED SPACE	NON-CONDITIONED SPACE
ARCADÉ	565 SF
COVERED AREAS	435 SF
RESIDENTIAL GARAGE	1,834 SF
DECORATIVE WALL BUMP-OUTS	18 SF
SUB-TOTAL	2,852 SF
TOTAL AREA (GROUND LEVEL)	8,272 SF
TOTAL AREA (SECOND LEVEL)	7,651 SF

MIXED OCCUPANCY REQUIREMENTS

FBC, SECTION 506.2.4 MIXED-OCCUPANCY, MULTISTORY BUILDINGS

EACH STORY OF A MIXED-OCCUPANCY BUILDING WITH MORE THAN ONE STORY ABOVE GRADE PLANE SHALL INDIVIDUALLY COMPLY WITH THE APPLICABLE REQUIREMENTS OF SECTION 508.1. FOR BUILDINGS WITH MORE THAN THREE STORIES ABOVE GRADE PLANE, THE TOTAL BUILDING AREA SHALL BE SUCH THAT THE AGGREGATE SUM OF THE RATIOS OF THE ACTUAL AREA OF EACH STORY DIVIDED BY THE ALLOWABLE AREA OF SUCH STORIES, DETERMINED IN ACCORDANCE WITH EQUATION 508-3, BASED ON THE APPLICABLE PROVISIONS OF SECTION 506.1, SHALL NOT EXCEED THREE. (STRIKE-THROUGH TEXT IS NOT APPLICABLE TO THIS PROJECT).

27BUILDING CODE REQUIREMENTS

FIRE RATINGS OF STRUCTURAL ELEMENTS

PER FBC, TABLE 601 FIRE-RESISTANCE RATING REQUIREMENTS FOR BUILDING ELEMENTS BASED ON TYPE V-B, MOST RESTRICTIVE PROVIDED.

BUILDING ELEMENT	ALLOWABLE	PROPOSED
STRUCTURAL FRAME	0 HOUR	0 HOUR
BEARING WALLS		
EXTERIOR, >230'	0 HOUR	0 HOUR
INTERIOR	0 HOUR	0 HOUR
NONBEARING WALLS		
EXTERIOR >30'	0 HOUR	0 HOUR
NONBEARING WALLS AND PARTITIONS	0 HOUR	0 HOUR
INTERIOR	0 HOUR	0 HOUR
FLOOR CONSTRUCTION (SEE COMPONENT ELEMENTS BELOW)	0 HOUR	1 HOUR
ROOF CONSTRUCTION	0 HOUR	0 HOUR

NOTES:

d. NOT LESS THAN THE FIRE-RESISTANCE RATING REQUIRED BY OTHER SECTIONS OF THIS CODE.

e. NOT LESS THAN THE FIRE-RESISTANCE RATING BASED ON FIRE SEPARATION DISTANCE (SEE TABLE 602).

f. NOT LESS THAN THE FIRE-RESISTANCE RATING AS REFERENCED IN SECTION 704.10.

FIRE RATINGS OF COMPONENT ELEMENTS

COMPONENT	REQUIRED SEPARATION (HOURS)	MINIMUM FIRE DOOR (HOURS)
SHAFTS (FBC 713.4)	1-HOUR	N/A
CORRIDOR WALLS	N/A	N/A
FIRE PARTITION (FBC SECTION 708.1 ITEM 1) (OCCUPANCY SEPARATION FBC 508.4)	1-HOUR	1-HOUR
HORIZONTAL SEPARATION (FBC SECTION 711)	1-HOUR	N/A
FIRE BARRIER (FBC TABLE 707.3.10)	N/A	N/A

PER FBC 420.3 HORIZONTAL SEPARATION

FLOOR ASSEMBLIES SEPARATING DWELLING UNITS IN THE SAME BUILDING, FLOOR ASSEMBLIES SEPARATING SLEEPING UNITS IN THE SAME BUILDING AND FLOOR ASSEMBLIES SEPARATING DWELLING OR SLEEPING UNITS FROM OTHER OCCUPANCIES CONTIGUOUS TO THEM IN THE SAME BUILDING SHALL BE CONSTRUCTED AS HORIZONTAL ASSEMBLIES IN ACCORDANCE WITH SECTION 711.

PER FBC SECTION 711 FLOOR AND ROOF ASSEMBLIES

711.1 GENERAL

HORIZONTAL ASSEMBLIES SHALL COMPLY WITH SECTION 711.2. NON FIRE-RESISTANCE-RATED FLOOR AND ROOF ASSEMBLIES SHALL COMPLY WITH SECTION 711.3.

711.2 HORIZONTAL ASSEMBLIES

HORIZONTAL ASSEMBLIES SHALL COMPLY WITH SECTIONS 711.2.1 THROUGH 711.2.6.

711.2.1 MATERIALS

ASSEMBLIES SHALL BE OF MATERIALS PERMITTED BY THE BUILDING TYPE OF CONSTRUCTION.

711.2.2 CONTINUITY

ASSEMBLIES SHALL BE CONTINUOUS WITHOUT VERTICAL OPENINGS, EXCEPT AS PERMITTED BY THIS SECTION AND SECTION 712.

711.2.3 SUPPORTING CONSTRUCTION

THE SUPPORTING CONSTRUCTION SHALL BE PROTECTED TO AFFORD THE REQUIRED FIRE-RESISTANCE RATING OF THE HORIZONTAL ASSEMBLY SUPPORTED.

EXCEPTION: IN BUILDINGS OF TYPE ~~III-B~~ III-B OR VB CONSTRUCTION, THE CONSTRUCTION SUPPORTING THE HORIZONTAL ASSEMBLY IS NOT REQUIRED TO BE FIRE-RESISTANCE RATED AT THE FOLLOWING:

- HORIZONTAL ASSEMBLIES AT THE SEPARATIONS OF INCIDENTAL USES AS SPECIFIED BY TABLE 509 PROVIDED THE REQUIRED FIRE-RESISTANCE RATING DOES NOT EXCEED 1 HOUR.
- HORIZONTAL ASSEMBLIES AT THE SEPARATIONS OF DWELLING UNITS AND SLEEPING UNITS AS REQUIRED BY SECTION 420.3.
- HORIZONTAL ASSEMBLIES AT SMOKE BARRIERS CONSTRUCTED IN ACCORDANCE WITH SECTION 709.

711.2.4.1 SEPARATING MIXED OCCUPANCIES

WHERE THE HORIZONTAL ASSEMBLY SEPARATES MIXED OCCUPANCIES, THE ASSEMBLY SHALL HAVE A FIRE-RESISTANCE RATING OF NOT LESS THAN THAT REQUIRED BY SECTION 508.4 BASED ON THE OCCUPANCIES BEING SEPARATED.

FPPC MULTIPLE OCCUPANCIES SEPARATION REQ.

PER FPPC 101:6.1.14 MULTIPLE OCCUPANCIES, FPPC 101:6.1.14.1 MULTIPLE OCCUPANCIES, SHALL COMPLY WITH THE REQUIREMENTS OF FPPC 101:6.1.14.1 AND ONE OF THE FOLLOWING

(1) MIXED OCCUPANCIES

(2) SEPARATED OCCUPANCIES

IT IS UNDERSTOOD BY THE ARCHITECT THAT THIS PROJECT SHALL BE CONSIDERED SEPARATE OCCUPANCIES PER FPPC 6.1.14.4 AND THE FOLLOWING:

PER FPPC TABLE 101:6.1.4.4.1(a) AND TABLE 101:6.1.4.4.1 (b) REQUIRED SEPARATION OF OCCUPANCIES (HOURS)

REDUCTION IN RATING INDICATED DUE TO PRESENCE OF SPRINKLERS IN ACCORDANCE WITH NFPA 101:9.7.1.1 (1) AND SUPERVISED IN ACCORDANCE WITH NFPA 101:9.7.2

OCCUPANCY TYPE	SINGLE-FAMILY RESIDENTIAL	STORAGE LOW & ORDINARY
MERCANTILE	1-HOUR	N/A

MAXIMUM AREA OF EXTERIOR WALL OPENINGS

PER FBC TABLE 705.8 MAXIMUM AREA OF EXTERIOR WALL OPENINGS BASED ON FIRE SEPARATION DISTANCE AND DEGREE OF OPENING PROTECTION

FIRE SEPARATION DISTANCE (FEET)	DEGREE OF OPENING PROTECTION	ALLOWABLE AREA
30 OR GREATER	UNPROTECTED, SPRINKLERED	NL

NOTE:

- THE AREA OF UNPROTECTED AND PROTECTED OPENINGS SHALL NOT BE LIMITED FOR GROUP R-3 OCCUPANCIES, WITH A FIRE SEPARATION DISTANCE OF 5 FEET OR GREATER.

27BUILDING CODE REQUIREMENTS

EGRESS REQUIREMENTS

MERCANTILE "M" OCCUPANCY

	ALLOWABLE	PROPOSED
EXIT ACCESS TRAVEL DISTANCE (FBC TABLE 1017.2)	250 FT.	87.58 FT.
DEAD END CORRIDOR (FBC SECTION 1020.4)	50 FT.	N/A
MINIMUM CORRIDOR WIDTH (FBC TABLE 1020.2)	44 IN.	N/A
MINIMUM NUMBER OF EXITS (FBC TABLE 1006.3.2)	2	3
COMMON PATH OF TRAVEL (FBC TABLE 1006.2.1)	75 FT.	21.58 FT.

RESIDENTIAL "R-3" OCCUPANCY

	ALLOWABLE	PROPOSED
EXIT ACCESS TRAVEL DISTANCE (FBC TABLE 1017.2)	250 FT.	194.42 FT.
DEAD END CORRIDOR (FBC SECTION 1020.4)	N/A	N/A
MINIMUM CORRIDOR WIDTH (FBC TABLE 1020.2)	36 IN.	48 IN.
MINIMUM NUMBER OF EXITS (FBC TABLE 1006.3.2 ITEMS 4&5)	1	1
COMMON PATH OF TRAVEL (FBC TABLE 1006.2.1)	125 FT.	69.25 FT.

PER FBC SECTION 1030 EMERGENCY ESCAPE AND RESCUE (STRIKE-THROUGH TEXT IS NOT APPLICABLE TO THIS PROJECT).

1030.1 GENERAL

IN ADDITION TO THE MEANS OF EGRESS REQUIRED BY THIS CHAPTER, PROVISIONS SHALL BE MADE FOR EMERGENCY ESCAPE AND RESCUE OPENINGS IN ~~GROUP R-2 OCCUPANCIES IN ACCORDANCE WITH TABLES 1006.3.3(4) AND 1006.3.3(9) AND GROUP R-3 OCCUPANCIES~~. BASEMENTS AND SLEEPING ROOMS BELOW THE FOURTH STORY ABOVE GRADE PLANE SHALL HAVE AT LEAST ONE EXTERIOR EMERGENCY ESCAPE AND RESCUE OPENING IN ACCORDANCE WITH THIS SECTION. ~~WHERE BASEMENTS CONTAIN ONE OR MORE SLEEPING ROOMS, EMERGENCY ESCAPE AND RESCUE OPENINGS SHALL BE REQUIRED IN EACH SLEEPING ROOM, BUT SHALL NOT BE REQUIRED IN ADJOINING AREAS OF THE BASEMENT. SMOKE OPENINGS SHALL OPEN DIRECTLY INTO A PUBLIC WAY OR TO A YARD OR COURT THAT OPENS TO A PUBLIC WAY.~~

1030.2 MINIMUM SIZE

EMERGENCY ESCAPE AND RESCUE OPENINGS SHALL HAVE A MINIMUM NET CLEAR OPENING OF 5.7 SQUARE FEET (0.53 M2).

~~EXCEPTION: THE MINIMUM NET CLEAR OPENING FOR GRADE FLOOR EMERGENCY ESCAPE AND RESCUE OPENINGS SHALL BE 5 SQUARE FEET (0.46 M2).~~

1030.2.1 MINIMUM DIMENSIONS

THE MINIMUM NET CLEAR OPENING HEIGHT DIMENSION SHALL BE 24 INCHES (610 MM). THE MINIMUM NET CLEAR OPENING WIDTH DIMENSION SHALL BE 20 INCHES (508 MM). THE NET CLEAR OPENING DIMENSIONS SHALL BE THE RESULT OF NORMAL OPERATION OF THE OPENING.

1030.3 MAXIMUM HEIGHT FROM FLOOR

EMERGENCY ESCAPE AND RESCUE OPENINGS SHALL HAVE THE BOTTOM OF THE CLEAR OPENING NOT GREATER THAN 44 INCHES (1118 MM) MEASURED FROM THE FLOOR.

1030.4 OPERATIONAL CONSTRAINTS

EMERGENCY ESCAPE AND RESCUE OPENINGS SHALL BE OPERATIONAL FROM THE INSIDE OF THE ROOM WITHOUT THE USE OF KEYS OR TOOLS, BARS, GRILLES, GRATES OR SIMILAR DEVICES ARE PERMITTED TO BE PLACED OVER EMERGENCY ESCAPE AND RESCUE OPENINGS PROVIDED THE MINIMUM NET CLEAR OPENING SIZE COMPLIES WITH SECTION 1030.2 AND SUCH DEVICES SHALL BE RELEASABLE OR REMOVABLE FROM THE INSIDE WITHOUT THE USE OF A KEY, TOOL OR FORCE GREATER THAN THAT WHICH IS REQUIRED FOR NORMAL OPERATION OF THE EMERGENCY ESCAPE AND RESCUE OPENING. WHERE SUCH BARS, GRILLES, GRATES OR SIMILAR DEVICES ARE INSTALLED IN EXISTING BUILDINGS, SMOKE ALARMS SHALL BE INSTALLED IN ACCORDANCE WITH SECTION 907.2.1.1 REGARDLESS OF THE VALUATION OF THE ALTERATION.

FINISH REQUIREMENTS

FINISH REQUIREMENT FBC TABLE 803.11: WITH AUTOMATIC SPRINKLER SYSTEM

GROUP	INTERIOR EXIST STAIRWAYS AND RAMPS AND EXIT PASSAGEWAYS	CORRIDORS AND ENCLOSURE FOR EXIT ACCESS STAIRWAYS AND RAMPS	ROOMS AND ENCLOSED SPACES
M	B	C	C
R-3	C	C	C

PER FBC SECTION 2211.1 STRUCTURAL FRAMING

FOR COLD-FORMED STEEL LIGHT-FRAME CONSTRUCTION, THE DESIGN AND INSTALLATION OF THE FOLLOWING STRUCTURAL FRAMING SYSTEMS, INCLUDING THEIR MEMBERS AND CONNECTIONS, SHALL BE IN ACCORDANCE WITH AISI S240 AND SECTIONS 2211.1.1 THROUGH 2211.1.3, AS APPLICABLE:

- FLOOR AND ROOF SYSTEMS,
- STRUCTURAL WALLS,
- SHEAR WALLS, STRAP BRACED WALLS AND DIAPHRAGMS TO RESIST IN-PLANE LATERAL LOADS, AND
- TRUSSES

PER FBC SECTION 2211.2 NONSTRUCTURAL MEMBERS

FOR COLD-FORMED STEEL LIGHT-FRAME CONSTRUCTION, THE DESIGN AND INSTALLATION OF NONSTRUCTURAL MEMBERS AND CONNECTIONS SHALL BE IN ACCORDANCE WITH AISI S220.

IN ADDITION REFER TO STRUCTURAL ENGINEERING DOCUMENTS FOR ADDITIONAL CODE REQUIREMENTS.

PLUMBING FIXTURE COUNT

PER FBC, BUILDING, CHAPTER 29, TABLE 2902.1

MERCANTILE "M" OCCUPANCY, OCCUPANCY LOAD = 72 PERSONS	REQUIRED	PROVIDED
FIXTURE TYPE		
WATER CLOSET (1/500):	1	2
LAVATORY (1/750):	1	2
DRINKING FOUNTAINS (1/1000):	1	1 (HI-LOW)
SERVICE SINK	1	1

RESIDENTIAL "R-3" OCCUPANCY, OCCUPANCY LOAD = 31 PERSONS

FIXTURE TYPE	REQUIRED	PROVIDED
WATER CLOSET (1 PER DWELLING):		6
LAVATORY (1/10):	4	8
DRINKING FOUNTAINS (N/A):	N/A	N/A
BATHTUB OR SHOWER (1 PER DWELLING)	1	6
KITCHEN SINK (1 PER DWELLING)	1	1
CLOTHES WASHER (1 PER DWELLING)	1	1

MISC. REQUIREMENTS

- THE CONTRACTOR SHALL MEET THE REQUIREMENTS OF APPENDIX F AS IT PERTAINS TO RODENT PROOFING, VERMIN CONTROL AND SECTION 1816 TERMITE PROTECTION, (IF APPLICABLE).
- ALL HANDRAILS, GUARDRAILS, GRAB BARS AND THE SUCH SHALL MEET FBC SECTION 1607.8 WITH SUBSECTIONS 1607.8.1.1 AND (OR) 1607.8.2.
- THIS PROJECT SHALL HAVE FIRE EXTINGUISHERS PER NFPA 10.
- THE CONTRACTOR SHALL BE AWARE THAT A SEPARATE PERMIT SHALL BE REQUIRED FOR THE FOLLOWING:
 - SIGNS

27BUILDING CODE REQUIREMENTS

PRIVATE SWIMMING POOL

THIS PROJECT SHALL HAVE PROVIDED ON THE SECOND FLOOR OUTDOOR DECK AND WITHIN THE RESIDENTIAL OCCUPANCY, A PRIVATE SPA. THIS SPA SHALL MEET THE REQUIREMENTS SET FORTH WITHIN THE FBC CODE SECTION 454.2 "PRIVATE SWIMMING POOLS "PRIVATE".

IN ADDITION,

PER SECTION 454.2.17 RESIDENTIAL SWIMMING BARRIER REQUIREMENT

RESIDENTIAL SWIMMING POOLS SHALL COMPLY WITH SECTIONS 454.2.17.1 THROUGH 454.2.17.3.

EXCEPTION: A SWIMMING POOL WITH AN APPROVED SAFETY POOL COVER COMPLYING WITH ASTM F1346.

454.2.17.1 OUTDOOR SWIMMING POOLS

OUTDOOR SWIMMING POOLS SHALL BE PROVIDED WITH A BARRIER COMPLYING WITH SECTIONS 454.2.17.1.1 THROUGH 454.2.17.1.14.

454.2.17.1.9

WHERE A WALL OF A DWELLING SERVES AS PART OF THE BARRIER, ONE OF THE FOLLOWING SHALL APPLY:

- ALL DOORS AND WINDOWS PROVIDING DIRECT ACCESS FROM THE HOME TO THE POOL SHALL BE EQUIPPED WITH AN EXIT ALARM COMPLYING WITH UL 2017 THAT HAS A MINIMUM SOUND PRESSURE RATING OF 85 DBA AT 10 FEET (3048 MM). ANY DEACTIVATION SWITCH SHALL BE LOCATED AT LEAST 54 INCHES (1372 MM) ABOVE THE THRESHOLD OF THE ACCESS. SEPARATE ALARMS ARE NOT REQUIRED FOR EACH DOOR OR WINDOW IF SENSORS WIRED TO A CENTRAL ALARM SOUND WHEN CONTACT IS BROKEN AT ANY OPENING.

EXCEPTIONS:

- SCREENED OR PROTECTED WINDOWS HAVING A BOTTOM SILL HEIGHT OF 48 INCHES (1219 MM) OR MORE MEASURED FROM THE INTERIOR FINISHED FLOOR AT THE POOL ACCESS LEVEL.
- WINDOWS FACING THE POOL ON THE FLOOR ABOVE THE FIRST STORY.
- SCREENED OR PROTECTED PASS-THROUGH KITCHEN WINDOWS 42 INCHES (1067 MM) OR HIGHER WITH A COUNTER BENEATH.
- ALL DOORS PROVIDING DIRECT ACCESS FROM THE HOME TO THE POOL MUST BE EQUIPPED WITH A SELF-CLOSING, SELF-LATCHING DEVICE WITH POSITIVE MECHANICAL LATCHING/LOCKING INSTALLED A MINIMUM OF 54 INCHES (1372 MM) ABOVE THE THRESHOLD, WHICH IS APPROVED BY THE AUTHORITY HAVING JURISDICTION.
- A SWIMMING POOL ALARM THAT, WHEN PLACED IN A POOL, SOUNDS AN ALARM UPON DETECTION OF AN ACCIDENTAL OR UNAUTHORIZED ENTRANCE INTO THE WATER. SUCH POOL ALARM MUST MEET AND BE INDEPENDENTLY CERTIFIED TO ASTM F2208, TITLED "STANDARD SAFETY SPECIFICATION FOR RESIDENTIAL POOL ALARMS," WHICH INCLUDES SURFACE MOTION, PRESSURE, SONAR, LASER, AND INFRARED ALARMS. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "SWIMMING POOL ALARM" DOES NOT INCLUDE ANY SWIMMING PROTECTION ALARM DEVICE DESIGNED FOR INDIVIDUAL USE, SUCH AS AN ALARM ATTACHED TO A CHILD THAT SOUNDS WHEN THE CHILD EXCEEDS A CERTAIN DISTANCE OR BECOMES SUBMERGED IN WATER.

FPPC REHABILITATION CLASSIFICATION

PER THE PROJECT REQUIREMENTS THE STRUCTURE, EXTERIOR WALLS AND FOUNDATION WILL ONLY REMAIN. THE EXISTING ROOF STRUCTURE AND EXISTING INTERNAL BEARING WALLS AND OR COLUMNS WILL BE REMOVED TO ALLOW THE DEVELOPMENT OF A NEW TWO-STORY BUILDING HOUSING INTERIORS UNLIMITED AT THE GROUND FLOOR AND A SINGLE-FAMILY RESIDENTIAL UNIT LOCATED ON THE SECOND FLOOR OF THE BUILDING.

IN ACCORDANCE WITH FPPC 101:43.5.2 EXTENSIVE MODIFICATIONS

PER FPPC 101:43.5.2.1 THE MODIFICATION OF AN ENTIRE BUILDING OR AN ENTIRE OCCUPANCY WITHIN A BUILDING SHALL BE CONSIDERED AS A RECONSTRUCTION. AN SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 43.6 FOR THE APPLICABLE OCCUPANCY, UNLESS OTHERWISE SPECIFIED IN 101:43.5.2.2. (STRIKE-THROUGH TEXT IS NOT APPLICABLE TO THIS PROJECT).

THEREFORE, THE CLASSIFICATION OF REHABILITATION WORK IS PER SHALL BE CONSIDERED "RECONSTRUCTION".

THE PROJECT SHALL MEET APPLICABLE CODES AS STATED WITHIN "APPLICABLE CODES" SECTION OF THE BUILDING REQUIREMENTS.

FPPC MISC. OCCUPANCY REQUIREMENTS

PER FPPC 101 CHAPTER 24 ONE- AND TWO-FAMILY DWELLINGS

PER FPPC 101:24.1.3 MULTIPLE OCCUPANCY

SOLE MEANS OF EGRESS IS THROUGH RESIDENTIAL OCCUPANCY ONLY; WHICH IS SEPARATED FROM NON-RESIDENTIAL OCCUPANCY BY A 1-HOUR SEPARATION WALL PER CODE AND NOTED WITHIN "FIRE RATINGS OF COMPONENT ELEMENTS", THIS PAGE, AND WITH AUTOMATIC SPRINKLER SYSTEM.

PER FPPC 101:24.2 MEANS OF ESCAPE REQUIREMENTS, THIS RESIDENCE SHALL HAVE ONE (1) PRIMARY MEANS OF ESCAPE PER FPPC 101:24.2.2.2.

PER FPPC 101:24.2.2.1.2 A SECONDARY MEANS OF ESCAPE SHALL NOT BE REQUIRED WHERE ONE OF THE FOLLOWING CONDITIONS IS MET:

- THE BEDROOM OR LIVING AREA HAS A DOOR LEADING DIRECTLY TO THE OUTSIDE OF THE BUILDING AT OR TO THE FINISH GROUND LEVEL.
- THE DWELLING UNIT IS PROTECTED THROUGHOUT BY AN APPROVED AUTOMATIC SPRINKLER SYSTEM IN ACCORDANCE WITH 24.3.5.

PER FPPC CHAPTER 36 NEW MERCANTILE OCCUPANCIES

PLEASE NOTE PER FPPC 36.1.2.2 SUB-CLASSIFICATION OF OCCUPANCY THE SUB-CLASSIFICATION SHALL BE CONSIDERED CLASS "B" PER FPPC 101:36.1.2.2.1 (2)(a).

27BUILDING CODE REQUIREMENTS

ZONING

ZONING CLASSIFICATION:

	ALLOWABLE	PROPOSED
SITE REQUIREMENTS		
MIN. LOT SQ. FOOTAGE	7,000 SF	28,468 SF
MIN. LOT WIDTH	75 FT	123.74 FT
MIN. LOT DEPTH	100 FT	210.13 FT
FLOOR AREA RATIO	1.2 %	.55 %
SETBACKS		
FRONT STREET	10 FT	10 FT
SIDE NON-WATERFRONT	7 FT	7 FT
REAR	20 FT	20 FT
HEIGHTS		
MAX. BUILDING HEIGHT	30 FT (SEC. 34-631a(2))	31 FT 4 INCHES
MAX. STORIES	3	2
FOLIO ID		
--		
STRAP NUMBER		
--		
FLOOD ZONE		
FLOOD ZONE ZONE AE (EL 11)		
VERSION NUMBER 2.4.3.5		
MAP NUMBER: 12071C0567G		
PANEL NUMBER: 567 OF 685		
MAP REVISION DATE: NOVEMBER 17, 2022		

27BUILDING CODE REQUIREMENTS

STUDIO 2

ARCHITECTURE PLANNING

STUDIO 2 ARCHITECTURE PLANNING LLC

530 CYPRESS WAY EAST
NAPLES, FLORIDA 34110
239.877.6973
239.272.7087
FL REGISTRATION NO. AA26001299

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ADDITIONS and RENOVAT'S. 6875 ESTERO

6875 ESTERO BOULEVARD
CITY OF FORT MYERS BEACH
FORT MYERS, FLORIDA 33931
NO. REVISION DESCRIPTION DATE

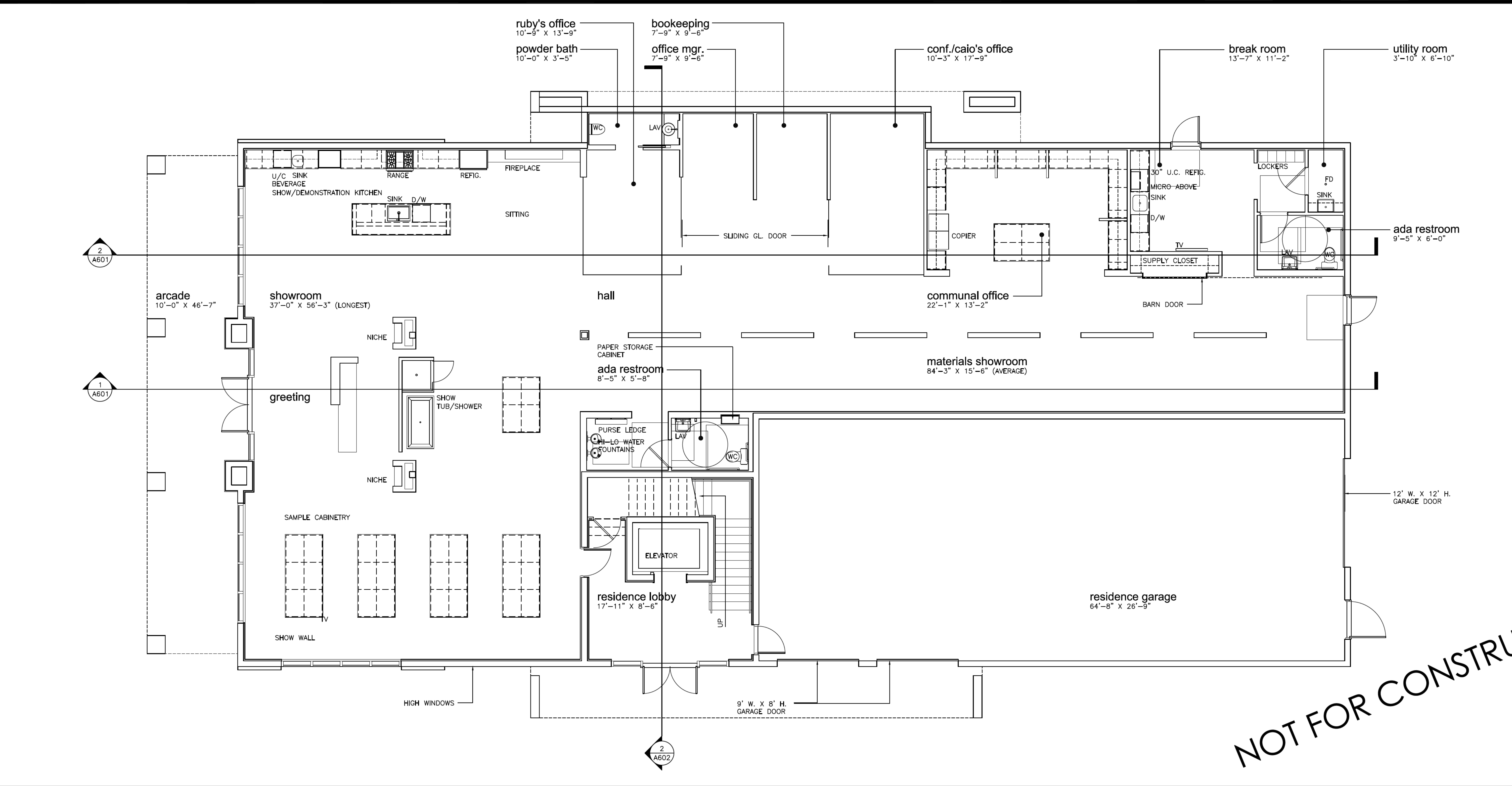
PROJECT NO.: 22_6785ESTERO
ISSUE DATE: 15 DECEMBER 2022
SHEET: _____

LIFE SAFETY PLAN DATA AND DETAILS

A002

DESIGN DEVELOPMENT DOCUMENTS

27BUILDING CODE REQUIREMENTS



GROUND LEVEL FLOOR PLAN (NOTATIONAL) SCALE: 3/16"=1'-0"		
AREA CALCULATIONS	FLOOR AREA CALCULATIONS	MINIMUM PLUMBING FIXTURES

STUDIO2

ARCHITECTURE
PLANNING

STUDIO 2 ARCHITECTURE PLANNING LLC

530 CYPRESS WAY EAST
NAPLES, FLORIDA 34110

ROCCO J COSTA II (QUALIFYING AGENT) 239.877.6973
LAZARO HERNANDEZ 239.272.7087
FLORIDA QUALIFYING AGENT LICENSE NO. AR0015837

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NOT FOR CONSTRUCTION

ADDITIONS
and
RENOVAT'S.
6875 ESTERO

6875 ESTERO BOULEVARD
CITY OF FORT MYERS BEACH
FORT MYERS BCH, FL 33931

NO.	REVISION	DESCRIPTION	DATE

PROJECT NO.: 22_6875ESTERO
ISSUE DATE: 15.DECEMBER.2022
SHEET:

GROUND LEVEL
FLOOR PLAN
(NOTATIONAL)

A201b

DESIGN DEVELOPMENT DOCUMENTS

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ADDITIONS
and
RENOVAT'S.
6875 ESTERO

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CITY OF FORT MYERS BEACH
FORT MYERS BCH, FL 33931

[illegible]

PROJECT NO.: 22_6875ESTERO

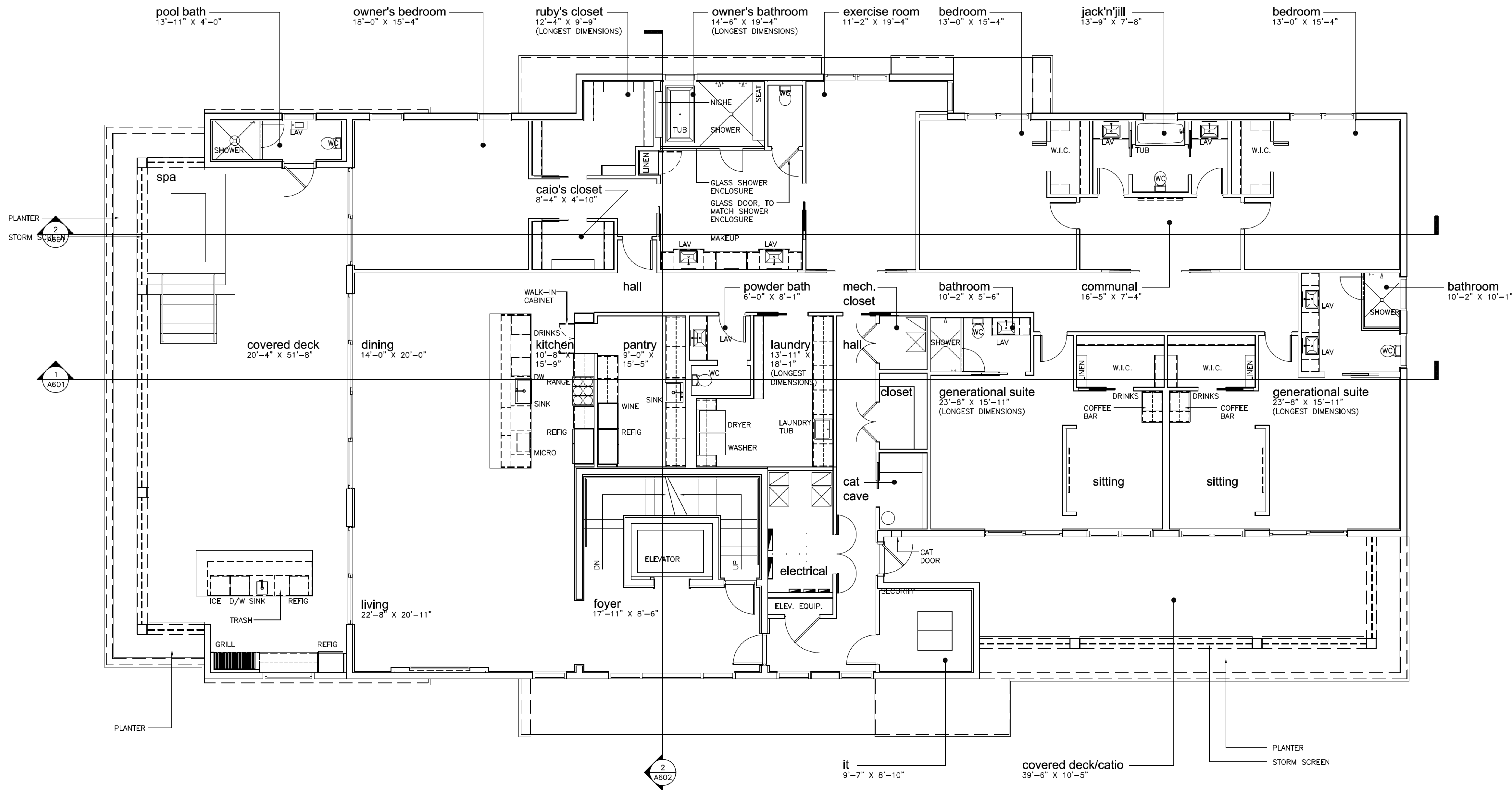
ISSUE DATE: 15.DECEMBER.2022

SHEET:

SECOND LEVEL
FLOOR PLAN
(NOTATIONAL)

A202b

DESIGN DEVELOPMENT DOCUMENTS



SECOND LEVEL FLOOR PLAN (NOTATIONAL)

SCALE: 3/16"=1'-0"

OWNER'S BATHROOM (OPTION 01)

SCALE: 3/16"=1'-0"

OWNER'S BATHROOM (OPTION 02)

SCALE: 3/16"=1'-0"

NOT USED

SCALE:

NOT FOR CONSTRUCTION	6875 ESTERO BOULEVARD CITY OF FORT MYERS FORT MYERS BCH, FL
	NO. REVISION DESCRIPTION





SPECA EXCEPTION & DEVELOPMENT ORDER
FOR
INTERIORS UNLIMITED

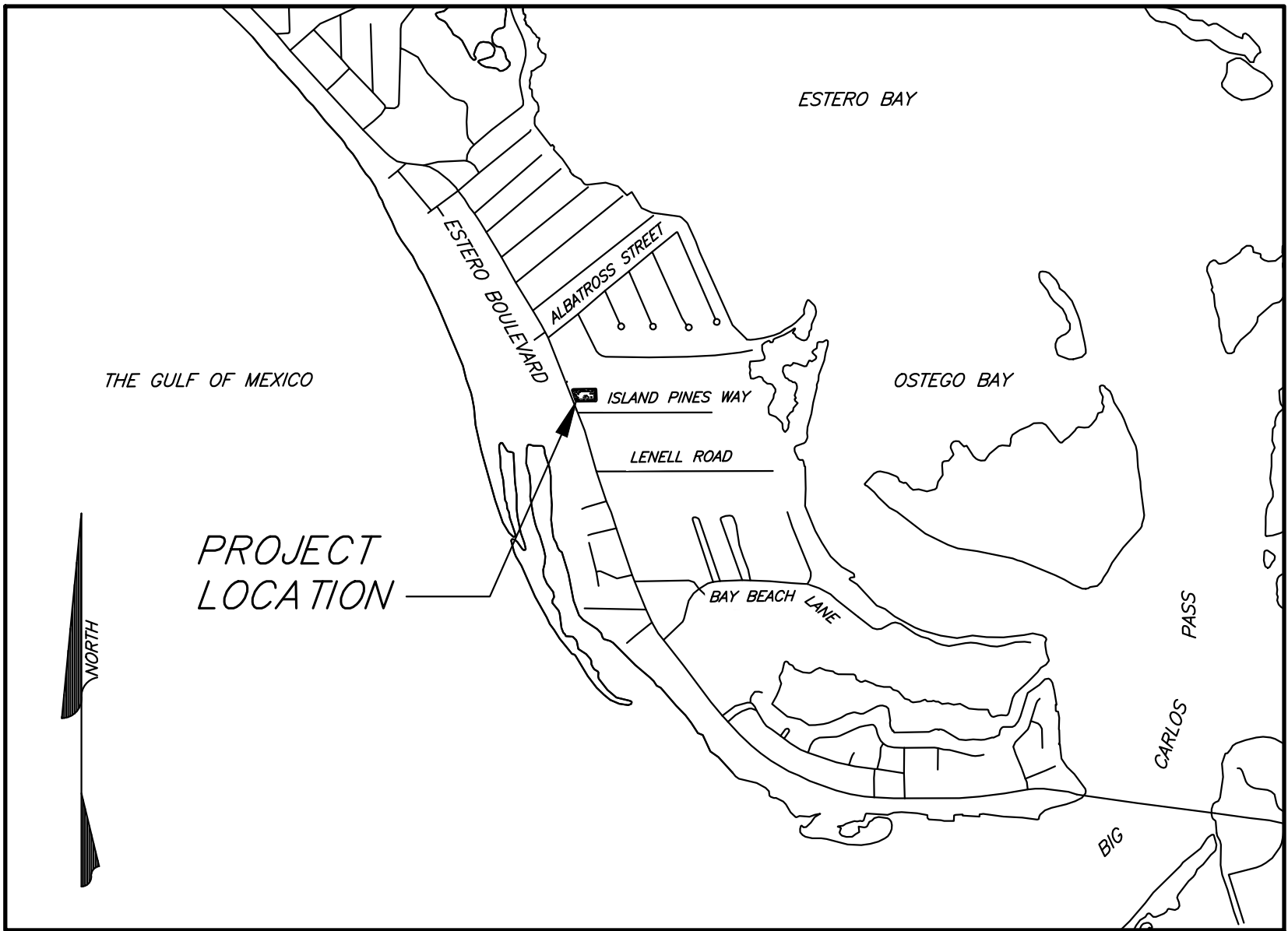
SECTION 03, TOWNSHIP 47 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA

DRAWING INDEX:

- C-1
- C-2
- COVER SHEET
DEMOLITION PLAN
SITE PLAN
SURVEY

LIST OF UTILITY PROVIDERS:

WATER	TOWN OF FORT MYERS BEACH 2525 ESTERO BOULEVARD FORT MYERS BEACH, FLORIDA 33931 PHONE: 239-463-9914
SEWER	LEE COUNTY UTILITIES 7391 COLLEGE PARKWAY FORT MYERS, FLORIDA 33907 PHONE: 239-533-8845
ELECTRIC	LEE COUNTY ELECTRIC COOPERATIVE, INC. 4941 BAYLINE DRIVE NORTH FORT MYERS, FLORIDA 33917 PHONE: 800-599-2356
CABLE	COMCAST DIGITAL CABLE 12641 CORPORATE LAKES DRIVE FORT MYERS, FLORIDA 33913 PHONE: 800-934-6489
TELEPHONE	CENTURYLINK 8441 LITTLETON ROAD NORTH FORT MYERS, FLORIDA 33903 PHONE: 239-225-0206
FIRE	FORT MYERS BEACH FIRE CONTROL DISTRICT 17891 SAN CARLOS BOULEVARD FORT MYERS BEACH, FLORIDA 33931 PHONE: 239-590-4210
REFUSE COLLECTION	WASTE MANAGEMENT 17101 PINE RIDGE ROAD FORT MYERS BEACH, FL 33931 PHONE: 239-334-1224



SITE LOCATION MAP

SCALE: N.T.S.

ENGINEER & SURVEYOR:

HALEY WARD, INC.

ENGINEERING | ENVIRONMENTAL | SURVEYING

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919

FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERS EB32664 & LB8267

PHONE: (239) 481-1331 | WWW.HALEYWARD.COM

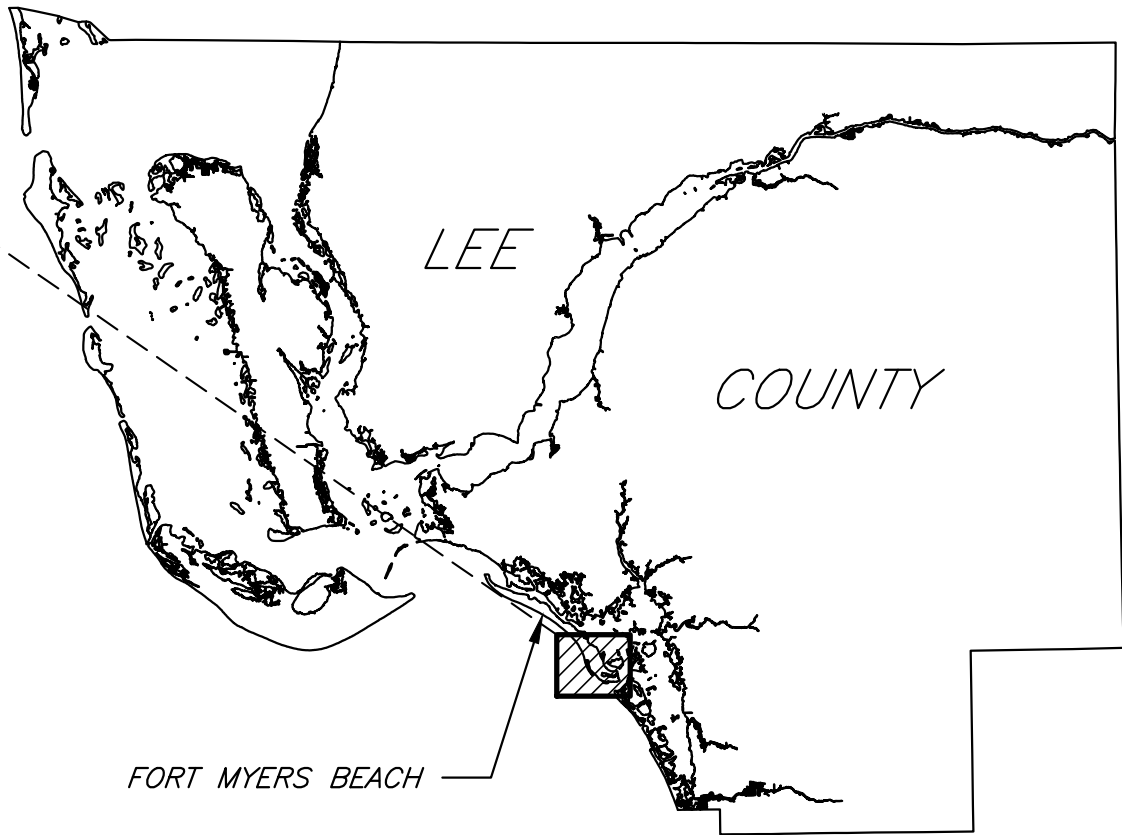
OWNER & DEVELOPER:

LEMONS UNLIMITED, LLC
7205 ESTERO BOULEVARD, SUITE 702
FORT MYERS BEACH, FLORIDA 33931
PHONE: (239) 463-5320

PROJECT INFORMATION:

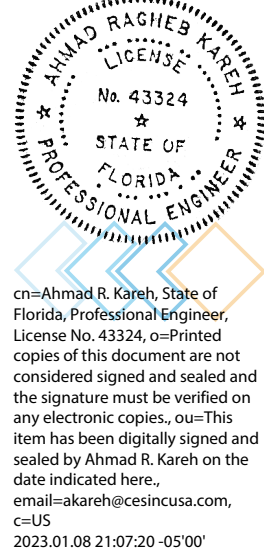
HALEY WARD PROJECT NUMBER: 2011380
(22-12)
PROJECT NAME: INTERIORS UNLIMITED

6875 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
SECTION 3, T 47S, R 24E
PARCEL STRAP NUMBER:
03-47-24-W1-00002.0020



LEE COUNTY MAP

SCALE: N.T.S.



DATE: 2023.01.08 21:07:20 -05'00'

OWNER/PROPERTY INFORMATION:
OWNER: LEMOS UNLIMITED, LLC
7205 ESTERO BOULEVARD, SUITE 702
FORT MYERS BEACH, FLORIDA 33931
PROPERTY ADDRESS: 6875 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931

ELEVATIONS NOTE:
ALL ELEVATIONS ARE IN FEET AND
BASED ON THE N.A.V.D. 1988 (NORTH
AMERICAN VERTICAL DATUM OF 1988),
AND N.G.S. BENCHMARK 800B2.

FEDERAL EMERGENCY MANAGEMENT AGENCY NATIONAL FLOOD INSURANCE PROGRAM FLOOD INSURANCE RATE MAP INFORMATION	
COMMUNITY NUMBER	120673
MAP NUMBER	12071C 0567G
DATE OF FIRM INDEX	11-17-2022
FIRM ZONE	AE & VE
BASE FLOOD ELEVATION	11' & 12' N.A.V.D.

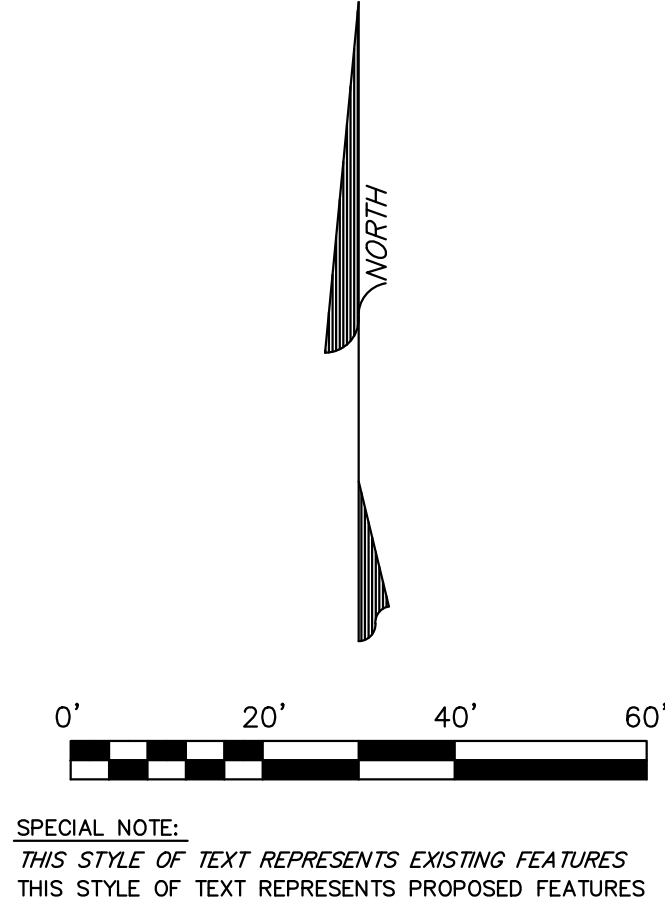
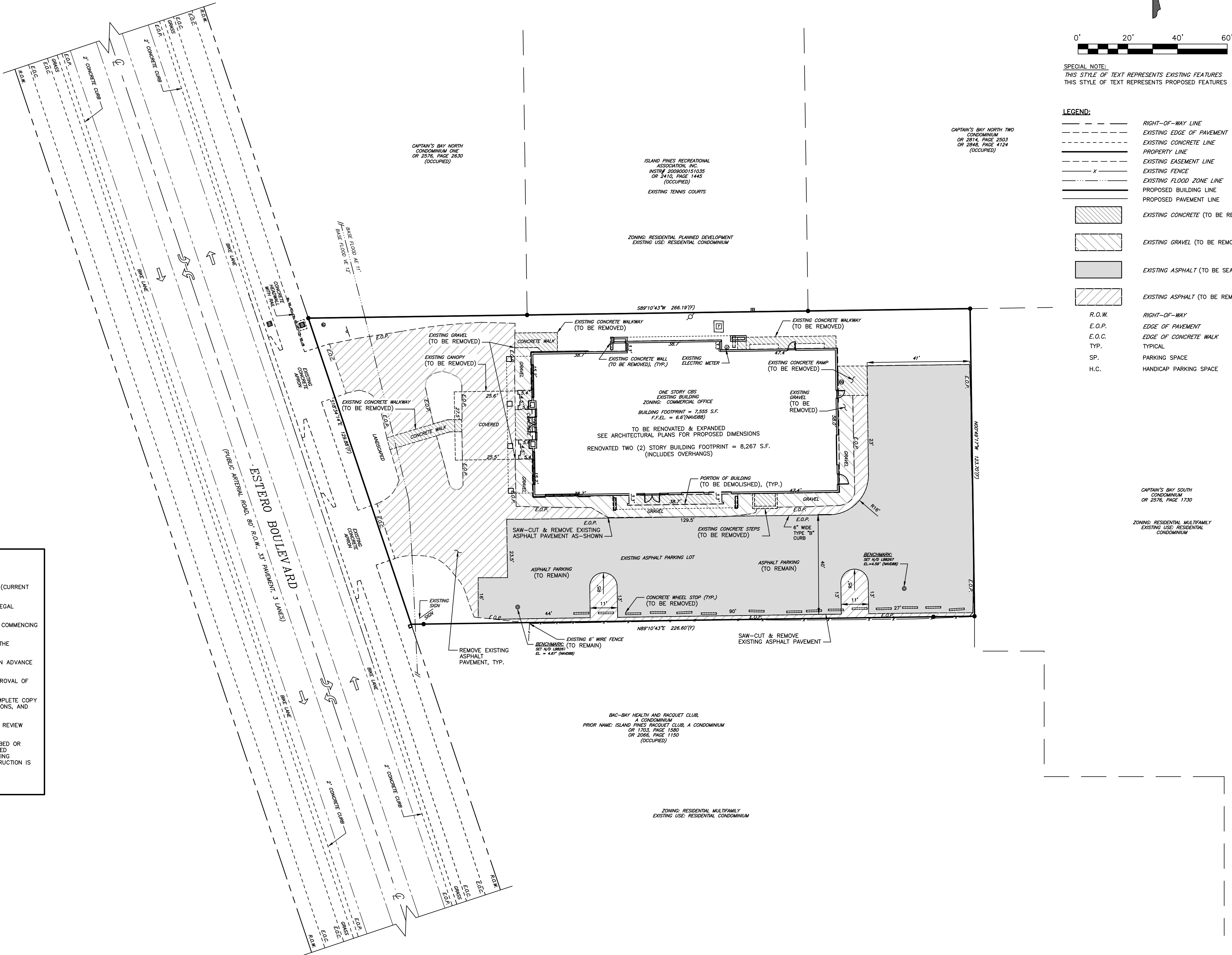
- GENERAL NOTES:
- BOUNDARY AND TOPOGRAPHIC INFORMATION WAS OBTAINED FROM A SURVEY PERFORMED BY HALEY WARD, INC. DATED MAY 19, 2022.
 - PER THE CURRENT FLOOD MAPS, THE PARCEL FLOOD ZONES ARE AE & VE WITH BASE FLOOD ELEVATIONS OF 11' & 12' N.A.V.D. FLOOD INFORMATION MUST BE VERIFIED WITH ALL PERMITTING REGULATORY ENTITIES PRIOR TO COMMENCING ANY WORK OR APPLICATION DEPENDENT ON SAID FLOOD INFORMATION.
 - INFORMATION ON THE EXISTING WATER AND SEWER SERVICES LOCATIONS IN THE VICINITY OF THE PROJECT HAVE BEEN PROVIDED BY THE TOWN OF FORT MYERS BEACH WATER AND LEE COUNTY UTILITIES. THERE ARE STRUCTURES AND AN EXISTING BUILDING ON THIS PARCEL. THERE WILL BE NO POTENTIAL IMPACTS TO GROUND AND SURFACE WATERS.
 - ELEVATIONS SHOWN ARE IN FEET ABOVE NORTH AMERICAN VERTICAL DATUM (N.A.V.D.) OF 1988, & BASED ON NGS BENCHMARK NUMBER 800B2.
 - THIS PROPERTY DOES NOT LIE WITHIN AN ARCHAEOLOGICAL SENSITIVITY ZONE.
 - ALL PERVIOUS AND DISTURBED AREAS ARE TO BE PROTECTED BY VEGETATIVE COVER.
 - FOR MINIMUM BURIAL DEPTH FOR ALL UTILITY LINES, SEE UTILITY DETAILS.
 - SITE SOILS CLASSIFICATION IS BASED ON U.S.S.C.S. SOIL SURVEY OF LEE COUNTY, FLORIDA DATED AUGUST 25TH, 2021. SOIL TYPES ARE 7 - MATLACHA GRAVELLY FINE SAND-URBAN LAND COMPLEX, S9 - URBAN LAND, AND I1B - KESSON FINE SAND-TIDAL-URBAN LAND COMPLEX.
 - ALL CONSTRUCTION WITHIN THE COUNTY RIGHT-OF-WAYS (IF ANY) SHALL CONFORM TO THE FEDERAL MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD), THE F.D.O.T.'S ROADWAY AND TRAFFIC DESIGN STANDARDS, THE F.D.O.T. STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION.
 - THERE ARE NO APPARENT FLOWING WELLS ON THIS SITE.
 - FORTUITOUS FINDS: DURING CONSTRUCTION, IF ANY HISTORICAL OR ARCHAEOLOGICAL FINDS ARE OBSERVED, ALL WORK SHALL CEASE IN THE AREA. THE DEVELOPER, OWNER, CONTRACTOR, OR AGENT THEREOF MUST NOTIFY THE TOWN OF FORT MYERS BEACH DEPARTMENT OF PUBLIC WORKS IMMEDIATELY IF HISTORIC, OR PREHISTORIC ARTIFACTS, REMAINS, OR FEATURES ARE FOUND DURING CONSTRUCTION. EXAMPLES MAY INCLUDE FRAGMENTS OF STONE TOOLS, SHELLS, SHELL TOOLS, POTTERY, GLASS, BOTTLES, ANIMAL BONES, BUILDING FOUNDATIONS, SHELL MOUNDS, OR SAND MOUNDS. THE TOWN OF FORT MYERS BEACH, DEPARTMENT OF PUBLIC WORKS WILL ASSESS THE SIGNIFICANCE OF THE FINDS IN A TIMELY MANNER.
 - UNMARKED HUMAN BURIALS: IF ANY HUMAN SKELETAL REMAINS ARE FOUND, ALL WORK IN THE AREA MUST STOP, AND THE NEAREST LAW ENFORCEMENT OFFICE SHOULD BE CONTACTED IMMEDIATELY. ACCORDING TO STATE LAW (F.S. 872.05), IT IS UNLAWFUL TO DAMAGE, OR DESTROY A HUMAN BURIAL. THE TOWN OF FORT MYERS BEACH, DEPARTMENT OF PUBLIC WORKS MUST ALSO BE NOTIFIED.

- DEMOLITION NOTES:
- CONTRACTOR SHALL BE RESPONSIBLE FOR DAMAGES TO EXISTING UTILITIES.
 - MAINTENANCE OF TRAFFIC SHALL FOLLOW F.D.O.T. STANDARD PLANS INDEX NO. 102 (CURRENT EDITION), INCLUDING FLAGGING.
 - CONTRACTOR SHALL BE RESPONSIBLE FOR ALL HAZARDOUS MATERIAL SPILLS OR ILLEGAL POLLUTION CAUSED BY HIS FORCES OR SUBCONTRACTORS.
 - CONTRACTOR IS RESPONSIBLE FOR DETERMINING ACTUAL SITE CONDITIONS PRIOR TO COMMENCING DEMOLITION.
 - ANY DISCREPANCIES ON THE DRAWINGS SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER BEFORE COMMENCING DEMOLITION.
 - THE CONTRACTOR SHALL CONTACT ALL CONCERNED UTILITIES AT LEAST 48 HOURS IN ADVANCE OF DEMOLITION OPERATIONS.
 - NO FIELD CHANGES OR DEVIATIONS FROM PLANS WILL BE MADE WITHOUT PRIOR APPROVAL OF THE ENGINEER.
 - CONTRACTOR SHALL HAVE AVAILABLE AT THE JOB SITE, AT ALL TIMES, ONE (1) COMPLETE COPY OF THE CONTRACT DOCUMENTS, INCLUDING PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND COPIES OF ALL REQUIRED PERMITS.
 - CONTRACTOR SHALL BE RESPONSIBLE FOR ALL TRADE PERMITS. CONTRACTOR SHALL REVIEW REQUIRED PERMITS PRIOR TO COMMENCING DEMOLITION.
 - ANY EXISTING MONUMENTATION SHALL BE PROTECTED. IF MONUMENTATION IS DISTURBED OR DESTROYED, IT SHALL BE REPLACED AFTER CONSTRUCTION IS COMPLETE, TO REQUIRED ACCURACY, BY A FLORIDA LICENSED P.S.M. IF MONUMENTATION IS IN DANGER OF BEING DISTURBED OR DESTROYED, IT SHALL BE REFERENCED AND REPLACED AFTER CONSTRUCTION IS COMPLETE, BY FLORIDA LICENSED P.S.M.
 - CONTRACTOR IS RESPONSIBLE FOR MAINTENANCE OF TRAFFIC.



EXCAVATION NOTE:
PRIOR TO ANY WORK, CONTRACTOR SHALL CONTACT "SUNSHINE STATE ONE CALL OF FLORIDA" AT 1-800-432-4770 TO LOCATE ALL EXISTING UTILITY LINES WITHIN THE LIMITS OF CONSTRUCTION TO AVOID ANY CONFLICT OR INTERRUPTION OF SERVICE.

PRE-DEVELOPMENT SITE DATA		
	AREA (S.F.)	PERCENTAGE (%)
PARCEL AREA	30,479	100.00
EXISTING BUILDING	7,555	24.79
EXISTING ASPHALT PARKING	16,471	54.04
EXISTING CONCRETE WALKWAYS & RAMP	750	2.46
EXISTING GRAVEL	1,177	3.86
TOTAL EXISTING IMPERVIOUS AREA	25,953	85.15
PERVIOUS AREA	4,526	14.85



- SPECIAL NOTE:
THIS STYLE OF TEXT REPRESENTS EXISTING FEATURES
THIS STYLE OF TEXT REPRESENTS PROPOSED FEATURES
- LEGEND:
- RIGHT-OF-WAY LINE
 - EXISTING EDGE OF PAVEMENT
 - EXISTING CONCRETE LINE
 - PROPERTY LINE
 - EXISTING EASEMENT LINE
 - EXISTING FENCE
 - EXISTING FLOOD ZONE LINE
 - PROPOSED BUILDING LINE
 - PROPOSED PAVEMENT LINE
 - EXISTING CONCRETE (TO BE REMOVED)
 - EXISTING GRAVEL (TO BE REMOVED)
 - EXISTING ASPHALT (TO BE SEALCOATED)
 - EXISTING ASPHALT (TO BE REMOVED)
 - R.O.W. RIGHT-OF-WAY
 - E.O.P. EDGE OF PAVEMENT
 - E.O.C. EDGE OF CONCRETE WALK
 - TYP. TYPICAL
 - SP. PARKING SPACE
 - H.C. HANDICAP PARKING SPACE

HALEY WARD, INC.
ENGINEERING | ENVIRONMENTAL | SURVEYING
WWW.HALEYWARD.COM
PHONE: (239) 481-1331 | FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERS EB32664 & LB2627
PROJECT NO.: 2011380.001(22-12) | START DATE: JULY 08, 2022 | SCALE: 1" = 20'

HALEY WARD, INC.
7205 ESTERO BOULEVARD, SUITE 702
FORT MYERS BEACH, FLORIDA 33931
PHONE: (239) 463-5520
SECTION 03, T 47S, R 24E, LEE COUNTY, FLORIDA
DATE: 03-47-24

DEMOLITION PLAN
SHEET C-1
FILE: 03-47-24

REVISIONS PER CLIENT'S REQUEST - 01/06/2023
REVISIONS PER ARCHITECT'S CHANGES - 12/30/2022
STATUS

INTERIORS UNLIMITED
7205 ESTERO BOULEVARD, SUITE 702
FORT MYERS BEACH, FLORIDA 33931
PHONE: (239) 463-5520
SITE ADDRESS: 6875 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931
SECTION 03, T 47S, R 24E, LEE COUNTY, FLORIDA
FILE: 2011380.001(22-12) DEMO plotted 23/01/06 12:51:01 PM. adp6020

FILE: 03-47-24

OWNER/PROPERTY INFORMATION:
OWNER: LEMOS UNLIMITED, LLC
7205 ESTERO BOULEVARD, SUITE 702
FORT MYERS BEACH, FLORIDA 33931
PROPERTY ADDRESS: 6875 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931



EXCAVATION NOTE:
PRIOR TO ANY WORK, CONTRACTOR SHALL CONTACT "SUNSHINE STATE ONE CALL OF FLORIDA" AT 1-800-432-4770 TO LOCATE ALL EXISTING UTILITY LINES WITHIN THE LIMITS OF CONSTRUCTION TO AVOID ANY CONFLICT OR INTERRUPTION OF SERVICE.

OFFSITE FEATURES NOTE:
MANY OF THE FEATURES OUTSIDE OF THE PROPERTY LINES ARE DERIVED FROM LEE COUNTY AERIAL IMAGERY AND PICTURES OF THE AREA, AND ARE SHOWN FOR CONTEXT PURPOSES ONLY.

ELEVATIONS NOTE:
ALL ELEVATIONS ARE IN FEET AND BASED ON THE N.A.V.D. 1988 (NORTH AMERICAN VERTICAL DATUM OF 1988), AND N.G.S. BENCHMARK 800B2.

LEGEND:

RIGHT-OF-WAY LINE
EXISTING EDGE OF PAVEMENT
CENTER LINE
PROPERTY LINE
EXISTING CONCRETE LINE
EXISTING EASEMENT LINE
EXISTING FENCE
EXISTING LOT LINE
EXISTING FLOOD ZONE LINE
PROPOSED BUILDING LINE
PROPOSED PAVEMENT LINE

EXISTING ASPHALT (TO BE SEAL COATED)
PROPOSED CONCRETE
R.O.W.
E.O.P.
E.O.C.
TYP.
SP.
H.C.
RIGHT-OF-WAY
EDGE OF PAVEMENT
EDGE OF CONCRETE WALK
TYPICAL
PARKING SPACE
HANDICAP PARKING SPACE

0' 20' 40' 60'

SPECIAL NOTE:
THIS STYLE OF TEXT REPRESENTS EXISTING FEATURES
THIS STYLE OF TEXT REPRESENTS PROPOSED FEATURES

FEDERAL EMERGENCY
MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM
FLOOD INSURANCE RATE MAP INFORMATION
COMMUNITY NUMBER 120673
MAP NUMBER 12071C 0567G
DATE OF FIRM INDEX 11-17-2022
FIRM ZONE AE & VE
BASE FLOOD ELEVATION 11' & 12' N.A.V.D.

C.O. PROPERTY DEVELOPMENT REGULATIONS:
MINIMUM LOT SIZE = 7,500 S.F.
MINIMUM LOT WIDTH = 75 FEET
MINIMUM LOT DEPTH = 100 FEET
MAXIMUM HEIGHT (3 STORIES) = 30 FEET ABOVE BASE FLOOD ELEVATION
PER SECTION 34-631. OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE
MAXIMUM FLOOR AREA RATIO = 1.2

SCHEDULE OF USES:
• DWELLING UNITS, OTHER RETAIL OR BUSINESS ESTABLISHMENTS (WORK/LIVE)

SETBACKS TABLE		
	MINIMUM REQUIRED (FT.)	MINIMUM PROVIDED (FT.)
FRONT	10.0	63.0
SIDE	7.0	9.4
REAR	20.0	54.0

BUFFERS TABLE			
	MINIMUM REQUIRED	MINIMUM EXISTING	MINIMUM PROVIDED
FRONT	15' TYPE "D"	15'	15' TYPE "D"
NORTH SIDE	15' TYPE "C"	VARIES (MIN. 3')	VARIES (MIN. 5') (NO WALL)
SOUTH SIDE	15' TYPE "C"	0'	VARIES (MIN. 2') (NO WALL)
REAR	15' TYPE "C"	0'	0'

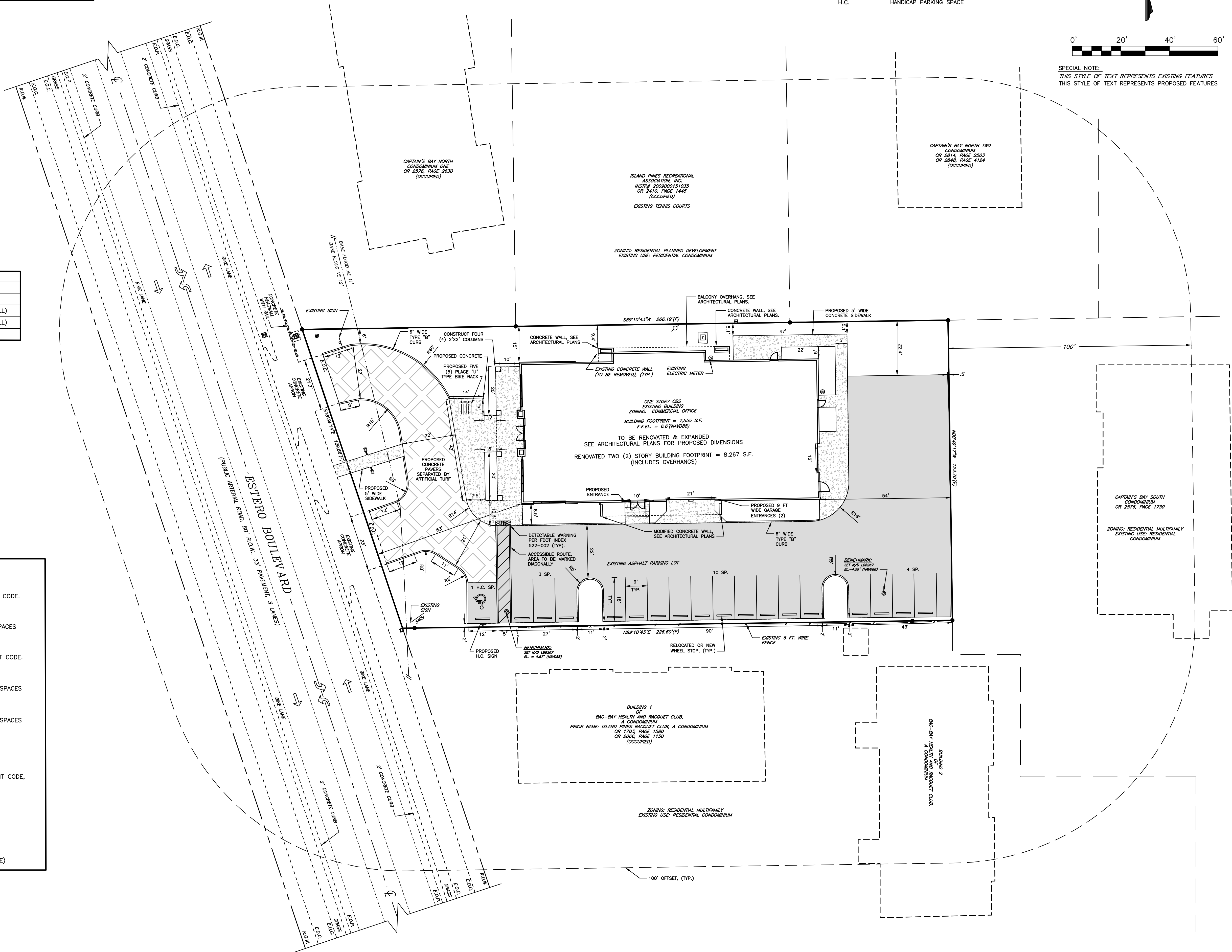
SITE INFORMATION:
PARCEL SIZE = 0.70 ACRES
CURRENT ZONING = COMMERCIAL OFFICE (C.O.)
FUTURE LAND USE MAP = MIXED RESIDENTIAL

POST-DEVELOPMENT SITE DATA		
	AREA (S.F.)	PERCENTAGE (%)
PARCEL AREA	30,479	100.00
REMODELED BUILDING	7,306	23.97
MODIFIED ASPHALT PARKING	9,864	32.36
PROPOSED CONCRETE PAVERS AND TURF DRIVE	3,001	9.85
PROPOSED CONCRETE	2,658	8.72
TOTAL PROPOSED IMPERVIOUS AREA	22,829	74.90
PERVIOUS AREA	7,650	25.10

PARKING CALCULATIONS:

COMMERCIAL USES: OFFICES:
PER SECTION [34-2020.(d)(2)f.] OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE.
PROPOSED OFFICE AREA = 668 S.F.
REQUIRED NUMBER OF PARKING SPACES = 668 S.F. X $(\frac{2}{1,000})$ = 1.3 PARKING SPACES
COMMERCIAL USES: OTHER RETAIL OR BUSINESS ESTABLISHMENTS:
PER SECTION [34-2020.(d)(2)i.2] OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE.
PROPOSED RETAIL/ BUSINESS AREA = 2,286 S.F.
REQUIRED NUMBER OF PARKING SPACES = 2,286 S.F. X $(\frac{3}{1,000})$ = 6.9 PARKING SPACES
PROPOSED STORAGE AREA = 2,234 S.F.
REQUIRED NUMBER OF PARKING SPACES = 2,234 S.F. X $(\frac{2}{1,000})$ = 4.5 PARKING SPACES
TOTAL REQUIRED NUMBER OF PARKING SPACES = 13 PARKING SPACES
TOTAL PROVIDED NUMBER OF PARKING SPACES = 18 PARKING SPACES
RESIDENTIAL USES: DWELLING UNITS WITH COMMON PARKING LOTS:
PER SECTION [34-2020.(d)(1)b.5] OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, THE MINIMUM REQUIREMENT IS PLUS 2.0 PARKING SPACES FOR THE DWELLING UNIT.
PROPOSED NUMBER OF RESIDENTIAL UNITS = 1 UNIT
REQUIRED NUMBER OF PARKING SPACES = 1 UNIT X 2 = 2 PARKING SPACES
PROVIDED NUMBER OF PARKING SPACES = 2 PARKING SPACES (GARAGE)

PROPOSED BICYCLE RACK 1 SPACE WITH FIVE (5) SLOTS
OVERALL PROPOSED PARKING SPACES 20 SPACES (INCLUDES 1 HANDICAP SPACE)



AHMAD R. KAREH, STATE OF FLORIDA,
PROFESSIONAL ENGINEER, LICENSE NO. 43324

LEMOS UNLIMITED, LLC
7205 ESTERO BOULEVARD, SUITE 702
FORT MYERS BEACH, FLORIDA 33931
PHONE: (239) 460-5320

HALEY WARD, INC.
ENGINEERING | ENVIRONMENTAL | SURVEYING
WWW.HALEYWARD.COM
13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919
PHONE: (239) 481-1331 | FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERS EB32664 & EB28267

SITE
PLAN

SHEET
C-2

FILE: 03-47-24

INTERIORS UNLIMITED
SITE ADDRESS: 6875 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931
SECTION 03, T 47S, R 24E, LEE COUNTY, FLORIDA
FILE: P:\FL2011380\LEMOS_UNLIMITED_LC0014875\ESTERO BOULEVARD FM-INTERIOR UNLIMITED-ARK02-CAD_1 SITE - plotted 23/01/06 12:51:06 PM, adepozo

DRAFTING BY: A.G. DEL POZO
DESIGNED BY: A.G. DEL POZO
APPROVED BY: A.R. KAREH
PROJECT NO: 2011380.001(22-12) START DATE: JULY 08, 2022 SCALE: 1" = 20'
LOCATION: P:\FL2011380\LEMOS_UNLIMITED_LC0014875\ESTERO BOULEVARD FM-INTERIOR UNLIMITED-ARK02-CAD_1 SITE - plotted 23/01/06 12:51:06 PM, adepozo

03-47-24



HALEY WARD

ENGINEERING | ENVIRONMENTAL | SURVEYING

FORMERLY:
CES INC

December 20, 2022

VIA E-MAIL ONLY zoningpermits@fmbgov.com

Mr. Jason Smalley, Senior Planner
Planning & Zoning Division
Department of Community Development
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931

VIA E-MAIL ONLY jsmalley@fmbgov.com

RE: Interiors Unlimited
Haley Ward Project Number 2011380.001(22-12)

Dear Mr. Smalley:

Per our pre-application meeting on July 7th, 2022, attached herewith is an Application for Public Hearing for the above referenced project. In addition, the following is a list of the submitted items in support of this application.

1. A check for the review fee in the amount of \$3,800.00.
2. Application for Public Hearing.
3. Supplement PH-A.
4. Affidavit.
5. Disclosure of Ownership Interest form.
6. Letter of Authorization.
7. Letter of Ownership.
8. Copy of the Warranty Deed.
9. Copy of the Title Insurance Policy.
10. Site Location Map.
11. Variance Report including a map, list of surrounding property owners and two (2) sets of mailing labels within 500 feet of the subject parcel.
12. Special Exception Narrative Statement.
13. Legal Description & Sketch of the subject parcel.
14. Architectural Plans including Floor Plans, Elevations, and Colored Rendering.
15. Boundary & Topographic Survey.
16. Civil Engineering Plans.

Mr. Jason Smalley | Special Exception Submittal | 12.20.2022 | 2011380.001(22-12) | Page 1

13041 McGregor Boulevard, Fort Myers, FL 33919
T: 239.481.1331 | HALEYWARD.COM



If you should have any questions regarding any of the above, please do not hesitate to call me.

Very truly yours,

HALEY WARD, INC.

Ahmad R. Kareh, P.E., M.S.C.E.
Senior Vice President & Regional Engineering Manager
ARK/js

cc: Ms. Ruby C. Pessotti, Authorized Member
Lemos Unlimited, LLC
w/enclosures



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 6875 Estero Boulevard Fort Myers Beach, FL 33931
STRAP Number: 03-47-24-W1-00002.0020
Applicant: Haley Ward Inc. Phone: (239) 481-1331
Contact Name: Ahmad R. Kareh, P.E. Phone: (239) 214-0397
Email: akareh@haleyward.com Fax: (239) 481-1073
Current Zoning District: Commerial Office (C.O.)
Future Land Use Map (FLUM) Category: Mixed Residential
FLUM Density Range: 1-6 Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

- ☒ Special Exception
☐ Variance
☐ Conventional Rezoning
☐ Planned Development ☐ Commercial ☐ Residential
☐ Master Concept Plan Extension
☐ Appeal of Administrative Action
☐ Vacation of Platted Right-of-way and Easement
☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A
PH-B
PH-C
PH-D
PH-E
PH-F
PH-G
attach on separate sheet

PART I – General Information

A. Applicant*: Haley Ward, Inc. Phone: (239) 481-1331
**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*
Applicant Mailing Address: 13041 McGregor Boulevard Fort Myers, FL 33919
Email: akareh@haleyward.com Fax: (239) 481-1073
Contact Name: Ahmad Kareh, P.E. Phone: (239) 214-0397



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|--|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☒ Authorized Representative* ☐ Other* (please indicate) _____ | | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Haley Ward, Inc. c/o Ahmad R. Kareh, P.E. Phone: (239) 481-1331
Address: 13041 McGregor Boulevard Fort Myers, FL 33919
Email: akareh@haleyward.com Fax: (239) 481-1073

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: N/A Phone: _____

Address: _____

Email: _____ Fax: _____

Name: N/A Phone: _____

Address: _____

Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☒ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation ☐ Right-of-Way ☐ Easement

☐ Other. Please Explain: _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: N/A Description: _____

Code Section: N/A Description: _____

Code Section: N/A Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: N/A Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Ahmad R. Kareh swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Ahmad R. Kareh

Signature

Ahmad R. Kareh, P.E.

Printed Name

STATE OF FLORIDA COUNTY OF LEE

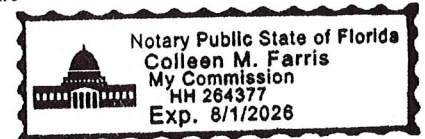
The foregoing instrument was certified and subscribed before me by means of X physical presence OR online notarization, this 20th day of December, 2022, by
Ahmad R. Kareh, ☒ who is personally known to me OR ☐ who has produced

N/A as identification.

(SEAL)

Colleen M. Farris
Notary Public Signature

PART V
Property Ownership (Multiple Owners)



☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☒ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☒ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address
N/A

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office	Percentage of Stock
Lemos Unlimited, LLC	100%
7205 Estero Boulevard, Suite 702 Fort Myers Beach, FL 33931	
Ruby C. Pessotti	50%
Caio A. Pessotti	50%

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	Percentage of Interest
N/A	

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address	Percentage of Ownership
N/A	

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office	Percentage of Stock
N/A	



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
N/A	

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

SEE ATTACHED EXECUTED FORM

Signature

Ruby C. Pessotti, Authorized Member

Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Ruby C. Pessotti (name), as Authorized Member (title)
of Lemos Unlimited, LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

Lemos Unlimited, LLC

Name of Entity (corporation, partnership, LLP, LLC, etc)

SEE ATTACHED EXECUTED FORM

Signature

Ruby C. Pessotti

Typed or Printed Name

Authorized Member

Title

Date

STATE OF FLORIDA COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ___ physical presence OR ☐ online notarization, this ___ day of December, 2022, by Ruby C. Pessotti, ☐ who is personally known to me OR ☐ who has produced ___ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 03-47-24-W1-00002.0020

Property Address: 6875 Estero Boulevard Fort Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 126.79 Average feet
Depth (please provide an average width if irregular in shape) 246.40 Average feet
Frontage on street: 129.88 feet. Frontage on waterbody: 0 feet
Total land area: 30,479 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

From the Sky Bridge keep driving on Estero Boulevard. The subject parcel lies on
the east side of Estero Boulevard north from Island Pines Way.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- line. Exhibit 6-2
- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
 - D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
 - E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
 - F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
 - G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
 - H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
 - I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.),
LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Ruby C. Pessotti (name), as Authorized Member (title) of
Lemos Unlimited, LLC (company), swear or affirm under oath, that I am the
owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Lemos Unlimited, LLC

Name of Entity (corporation, partnership, LLP, LLC, etc)

Ruby Pessotti
Signature

Authorized Agent

Title

Ruby C. Pessotti

Typed or Printed Name

Date

STATE OF FLORIDA COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical
presence OR ☐ online notarization, this 12th day of December, 2022 by

Ruby C. Pessotti, ☒ who is personally known to me OR ☐ who has produced
_____ as identification.



Shelly L. McNeel
Notary Public
State of Florida
Comm# HH274548
Expires 6/25/2026

Shelly McNeel
Notary Public Signature



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

Lemos Unlimited, LLC

100%

7205 Estero Boulevard

Fort Myers Beach, FL 33931

Ruby C. Pessotti

50%

Caio A. Pessotti

50%

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office	Percentage of Stock
_____	_____
_____	_____
_____	_____
_____	_____

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Ruby C. Pessotti
Signature

Ruby C. Pessotti, Authorized Member
Printed Name
Lemos Unlimited, LLC

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this _____ day of December, 2022
by Ruby C. Pessotti who is personally known to me or has produced _____
(type of identification) as identification.

Signature of Notary Public

Printed Name of Notary Public



Case# _____ Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name:	Interiors Unlimited
Authorized Applicant:	Haley Ward, Inc. / Ahmad Kareh, P.E.
LEPA STRAP Number(s):	03-47-24-W1-00002.0020

Current Property Status:	Developed / Vacant Medical Offices Building
Current Zoning:	Commercial Office
Future Land Use Map (FLUM) Category:	Mixed Residential
Platted Overlay?	☐ yes ☒ no FLUM Density Range: 1-6

Requested Action:

☐	Use of premises in the EC (Environmentally Critical) zoning district for:
N/A	
☒	Use of premises in the <u>Commercial Office</u> zoning district for:
Work/Live under Section 34-1774	



Case# _____ Date Received: _____

PART I
Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

The proposed project will encompass renovating and expanding into an existing building where the first floor will be converted & utilized for a retail enterprise (Interiors Unlimited) in addition to a retail storage space with a portion of the first floor to be utilized for a residential garage & lobby to serve the new/added second floor which will be the live portion of the Work/Live proposed use.
Based on Table 34-1, this proposed use will require a Special Exception.

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
SEE THE ATTACHED SPECIAL EXCEPTION NARRATIVE STATEMENT

Granting the requested Special Exception could impact surrounding properties as follows:
A . Provide a low impact and appropriate use for the vacant building.
B. Increase green space and buffers on the subject parcel.
C. Add landscaping on the subject parcel.
D. Add water management system on the subject parcel.

PART 2

Submittal Requirements

All applications for a special exception must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplemental form PH-A
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening.
- Fee in the amount of \$3800.00/\$3300.00 for an amendment

For New Communication Towers: N/A

- a. Lee County Application for Communication Tower
- b. Shared-Use Plan Agreement

For Consumption of Alcoholic Beverages (COP) license approval:

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

For transit terminals: N/A

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

For use of the EC zoning district: N/A

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Authorized Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements: SEE ATTACHMENT

"Request for..."

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

"The property qualifies for a special exception because..."

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

"Granting the requested special exception could impact surrounding properties as follows..."

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

Submittal Requirements Check List and Filing Guide



A completed Public Hearing Application Form.



A completed Supplemental form PH-A.

Site Plan. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Authorized Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

Requested Action: Indicate the nature of the request and include the current zoning of the property.



Case# _____ Date Received: _____

Part 1 Narrative Statements: "Request for..."

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

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Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
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- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

"Granting the requested special exception could impact surrounding properties as follows..."

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

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All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government



Case# _____ Date Received: _____

- corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy line. Exhibit 6-2
 - C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
 - D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
 - E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
 - F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
 - G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
 - H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
 - I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must have either of the affidavits in Part V & VI, notarized, signed and submit, as applicable.

LEMONS UNLIMITED, LLC
7205 ESTERO BOULEVARD, SUITE 702
FORT MYERS BEACH, FL 33931

PHONE NUMBER: (239) 463-5320

TO WHOM IT MAY CONCERN:

RE: INTERIORS UNLIMITED

I, RUBY C. PESSOTTI, THE AUTHORIZED MEMBER OF LEMONS UNLIMITED, LLC,
THE OWNER OF THE ABOVE REFERENCED PROPERTY, HEREBY AUTHORIZE HALEY WARD,
INC., TO ACT ON OUR BEHALF IN MATTERS RELATIVE TO THE PERMITTING OF THE ABOVE
REFERENCED PROPERTY.

Ruby Pessotti

RUBY C. PESSOTTI, AUTHORIZED MEMBER
LEMONS UNLIMITED, LLC

12/13/22
DATE

STATE OF FLORIDA
COUNTY OF LEE

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 13th DAY OF
DECEMBER 2022, BY RUBY C. PESSOTTI, WHO IS PERSONALLY KNOWN TO ME
AND WHO DID NOT TAKE AN OATH.

Shelly McNeel

NOTARY PUBLIC, STATE OF FLORIDA

Shelly McNeel

PRINTED NAME OF NOTARY PUBLIC

MY COMMISSION EXPIRES:



Shelly L. McNeel
Notary Public
State of Florida
Comm# HH274548
Expires 6/25/2026

LEMONS UNLIMITED, LLC
7205 ESTERO BOULEVARD, SUITE 702
FORT MYERS BEACH, FL 33931

PHONE NUMBER: (239) 463-5320

TO WHOM IT MAY CONCERN:

RE: INTERIORS UNLIMITED

I, RUBY C. PESSOTTI, THE AUTHORIZED MEMBER OF LEMONS UNLIMITED, LLC, DO
HEREBY SWEAR AND AFFIRM THAT LEMONS UNLIMITED, LLC IS THE OWNER OF THE
FOLLOWING DESCRIBED PROPERTY:

PARCEL STRAP NUMBER: 03-47-24-W1-00002.0020

Ruby Pessotti
RUBY C. PESSOTTI, AUTHORIZED MEMBER
LEMONS UNLIMITED, LLC

12-12-22
DATE

STATE OF FLORIDA
COUNTY OF LEE

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 12th DAY OF
December 2022, BY RUBY C. PESSOTTI, WHO IS PERSONALLY KNOWN TO
ME AND WHO DID NOT TAKE AN OATH.

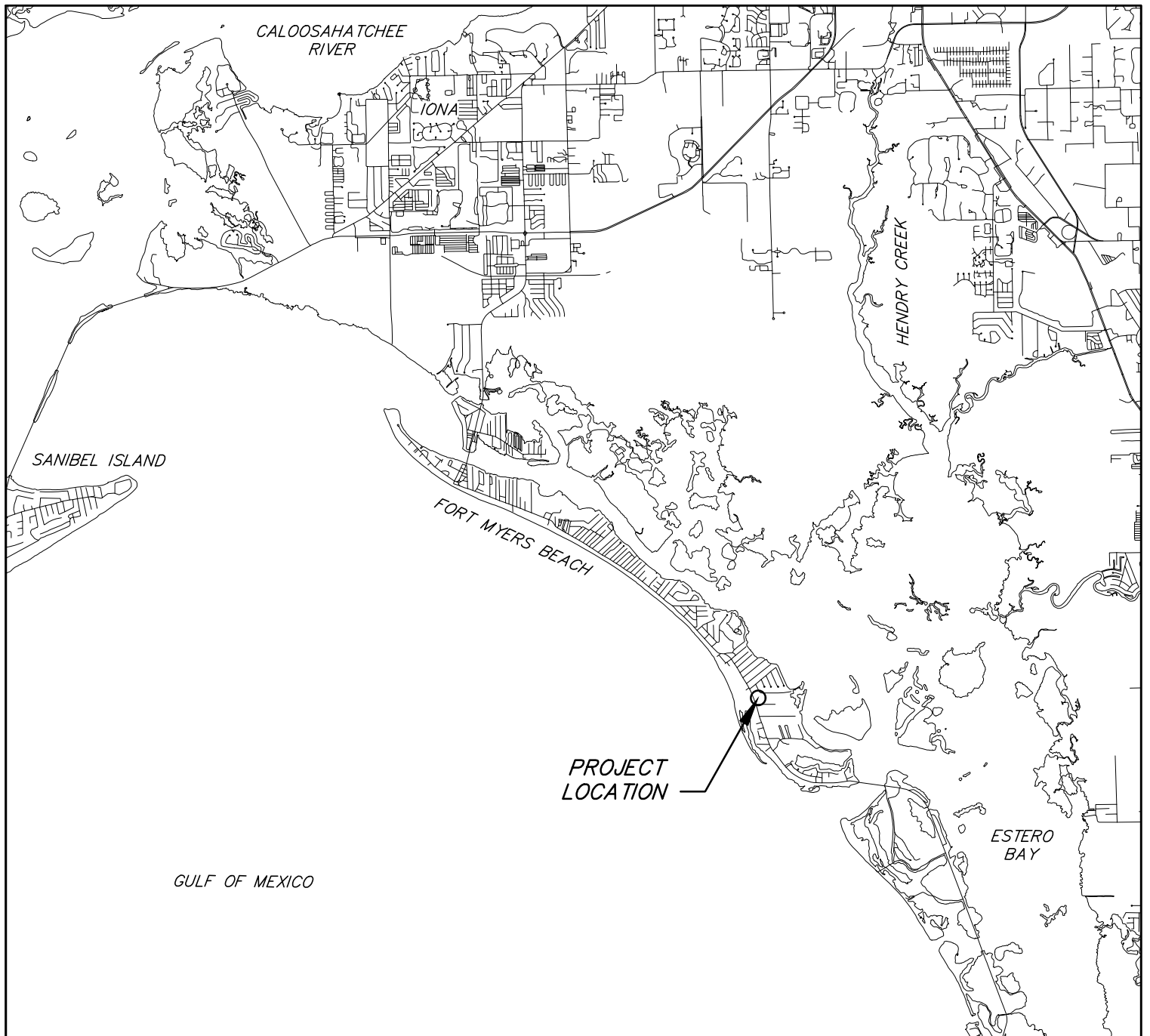
Shelly McNeel
NOTARY PUBLIC, STATE OF FLORIDA

Shelly McNeel
PRINTED NAME OF NOTARY PUBLIC

MY COMMISSION EXPIRES:



Shelly L. McNeel
Notary Public
State of Florida
Comm# HH274548
Expires 6/25/2026



SITE LOCATION MAP

SCALE: N.T.S.

PARCEL STRAP NUMBER:

STRAP: 03-47-24-W1-00002.0020

PARCEL ADDRESS:

6875 ESTERO BOULEVARD FORT MYERS BEACH, FLORIDA 3393

INTERIORS UNLIMITED

SECTION 03, TOWNSHIP 47 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA

Old Republic National Title Insurance Company

OWNER'S POLICY Schedule A

Policy No.:
OF6-9003311

Date of Policy:
January 24, 2022 @ 04:32 PM

Agent's File Reference:
JDS 39988-1

Amount of Insurance: \$1,700,000.00

Premium: \$6,825.00

Address Reference: 6875 Estero Blvd, Fort Myers Beach, FL 33931

1. Name of Insured: Lemos Unlimited, LLC, a Florida limited liability company
2. The estate or interest in the Land that is insured by this policy is: Fee Simple as shown by instrument recorded under Instrument Number 2022000025567 of the Public Records of Lee County, Florida.
3. Title is vested in: Lemos Unlimited, LLC, a Florida limited liability company
4. The Land referred to in this policy is described as follows:

Parcel 1:

A tract or parcel of land being a part of Government Lot 1, Section 3, Township 47 South, Range 24 East, Estero Island, Lee County, Florida and described as follows:

Beginning at a concrete monument in the Easterly right of way line of Estero Boulevard (80 feet wide) known as State Road 865, which point is 300.0 feet, measured at right angles, South of the North line of said Government Lot 1; thence run South 17 degrees 51' 30" East along said Easterly right of way line of Estero Boulevard for 120.00 feet; thence run East, parallel to the North line of said Government Lot 1 for 213.20 feet; thence North, at right angles for 114.22 feet; thence West parallel to and 300 feet, measured at right angles, South of the North line of said Government Lot 1 for a distance of 250.0 feet to the Point of Beginning.

AND

Old Republic National Title Insurance Company

, (612) 371-1111

Agent No.: 200

Issuing Agent:

Henderson, Franklin, Starnes & Holt, P.A. (B)
3451 Bonita Bay Blvd.
Suite 206
Bonita Springs, FL 34134



Agent's Signature
John D. Spear, Esq.

Old Republic National Title Insurance Company

OWNER'S POLICY **Schedule A (Continued)**

Policy No.:
OF6-9003311

Agent's File Reference:
JDS 39988-1

Parcel 2:

A tract or parcel of land being a part of Government Lot 1, Section 3, Township 47 South, Range 24 East, Estero Island, Lee County, Florida and described as follows:

Commencing at a concrete monument in the Easterly right of way line of Estero Boulevard (80 feet wide) known as State Road 865, which point is 300.0 feet, measured at right angles, South of the North line of said Government Lot 1; thence run South 17 degrees 51' 30" East along said Easterly right of way of Estero Boulevard for 120.0 feet to the Point of Beginning; thence continue South 17 degrees 51' 30" East 10.0 feet; thence run East, parallel to the North line of said Government Lot 1 for 210.13 feet; thence North at right angles for 9.52 feet; thence West 213.20 feet to the Point of Beginning.

AND

Parcel 3:

A tract or parcel of land being a part of Government Lot 1, Section 3, Township 47 South, Range 24 East, Estero Island, Lee County, Florida and described as follows:

Commencing at a concrete monument in the Easterly right of way line of Estero Boulevard (80 feet wide) known as State Road 865, which point is 300.0 feet, measured at right angles, South of the North line of said Government Lot 1; thence run East, parallel to and 300.0 feet South of the North line of said Government Lot 1 for 250.0 feet to a Point of Beginning; thence continue East 16.5 feet; thence run South at right angles for 123.74 feet; thence run West at right angles for 16.5 feet; thence run North at right angles for 123.74 feet to the Point of Beginning.

Old Republic National Title Insurance Company

OWNER'S POLICY Schedule B

Policy No.:
OF6-9003311

Agent's File Reference:
JDS 39988-1

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. General or special taxes and assessments required to be paid in the year 2022 and subsequent years.
2. Rights or claims of parties in possession not recorded in the Public Records.
3. Any encroachment, encumbrance, violation, variation or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.
4. Easements or claims of easements not recorded in the Public Records.
5. Any lien, or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.
6. Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land(s) insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.
7. Lee County Ordinance No. 86-14 recorded November 30, 1990, in O.R. Book 2189, Page 3281; and amended by Ordinance No. 86-38 in O.R. Book 2189, Page 3334, Public Records of Lee County, Florida.
8. Exceptions 2-5 are hereby deleted.
9. Mortgage in the sum of \$3,530,000.00 from LEMOS UNLIMITED LLC, a Florida limited liability company to First Horizon Bank dated 1/21/2022 and recorded under Instrument Number 2022000025568 of the Public Records of Lee County, Florida.



STATE OF FLORIDA
LEE COUNTY PROPERTY APPRAISER



Mailing Address:
P.O. Box 1546
Fort Myers, Florida 33902-1546

Physical Address:
2480 Thompson Street
Fort Myers, Florida 33901-3074

Telephone: (239) 533-6100 -- (866) 673-2868 (From anywhere in continental US/Canada/Florida except 239 area code)

Facsimile: (239) 533-6160 -- **Website:** www.leepa.org

VARIANCE REPORT

Date: 12/9/2022 12:00:00 AM

Buffer: 500

Affected: 495

SUBJECT PARCEL:

OWNER NAME AND ADDRESS

LEMONS UNLIMITED LLC
7205 ESTERO BLVD STE 702
FORT MYERS BEACH FL 33931

STRAP & LOCATION

03-47-24-W1-00002.0020
6875 ESTERO BLVD
FORT MYERS BEACH 33931

LEGAL DESCRIPTION

BEG ON E R/W LI SR 865 300 FT
S OF NLY LI GOVT LOT 1 TH S
ALG ELY R/W LI SD SR

AFFECTED PARCELS:

OWNER NAME AND ADDRESS

KLINE KEVIN EDWARD &
10 FAIRVIEW BLVD
FORT MYERS BEACH FL 33931

STRAP & LOCATION

34-46-24-W4-00400.0050
10 FAIRVIEW BLVD
FORT MYERS BEACH 33931

LEGAL DESCRIPTION

FAIRVIEW ISLES UNIT 3 PB 10
PG 123 LOT 5

INDEX

1

TURNER DOUGLAS W SR
12 FAIRVIEW BLVD
FORT MYERS BEACH FL 33931

34-46-24-W4-00400.0060
12 FAIRVIEW BLVD
FORT MYERS BEACH 33931

FAIRVIEW ISLES UNIT 3 PB 10
PG 123 LOT 6

2

JONES FRANK C II & MARSHA A TR
1632 36TH AVE CT
GREELEY CO 80634

34-46-24-W4-00400.0070
14 FAIRVIEW BLVD
FORT MYERS BEACH 33931

FAIRVIEW ISLES UNIT 3 PB 10
PG 123 LOT 7

3

36 MIMI LLC
16 FAIRVIEW BLVD
FORT MYERS BEACH FL 33931

34-46-24-W4-00400.0080
16 FAIRVIEW BLVD
FORT MYERS BEACH 33931

FAIRVIEW ISLES UNIT 3 PB 10
PG 123 LOT 8

4

ROMANIUK ALEXANDER &
22 VALLEYVIEW CT
KLEINBURG ON LOJ 1C0 CANADA

34-46-24-W4-00400.0090
18 FAIRVIEW BLVD
FORT MYERS BEACH 33931

FAIRVIEW ISLES UNIT 3 PB 10
PG 123 LOT 9

5

OBOYLE DANIEL F & JULIE
635 W LAKESIDE AVE
CLEVELAND OH 44113

34-46-24-W4-00400.0100
20 FAIRVIEW BLVD
FORT MYERS BEACH 33931

FAIRVIEW ISLES UNIT 3 PB 10
PG 123 LOT 10

6

HUBER THOMAS W TR 3745 NATHAN LN N PLYMOUTH MN 55441	34-46-24-W4-00400.0130 17 FAIRVIEW BLVD FORT MYERS BEACH 33931	FAIRVIEW ISLES UNIT 3 PB 10 PG 123 LOT 13	7
ISLAND TIMES ESTATE LLC 15 FAIRVIEW BLVD FORT MYERS BEACH FL 33931	34-46-24-W4-00400.0140 15 FAIRVIEW BLVD FORT MYERS BEACH 33931	FAIRVIEW ISLES UNIT 3 PB 10 PG 123 LOT 14	8
BREWSTER KATHERINE F 13 FAIRVIEW BLVD FORT MYERS BEACH FL 33931	34-46-24-W4-00400.0150 13 FAIRVIEW BLVD FORT MYERS BEACH 33931	FAIRVIEW ISLES UNIT 3 PB 10 PG 123 LOT 15	9
FAIRVIEW ISLES CONDO ASSN 6655 ESTERO BLVD FORT MYERS BEACH FL 33931	34-46-24-W4-02300.00CE 6659 ESTERO BLVD FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO COMMON AREA OR 1439 PG 180	10
POINTE ESTERO CONDO 6640 ESTERO BLVD FORT MYERS BEACH FL 33931	34-46-24-W4-02500.00CE 6642 ESTERO BLVD FORT MYERS BEACH 33931	POINTE ESTERO CONDO COMMON AREA DESC OR BK 1775 PG 4765 + OR BK 1854 PG 0395	11
DRK VENTURES LLC 980 NORTH HILL LN CINCINNATI OH 45224	03-47-24-W1-00001.0020 ACCESS UNDETERMINED FORT MYERS BEACH	PARL IN N 600 FT G L 1 AS DESC OR 2039 PG 1571 LESS INST#2007000329210 + 2007000329211	12
ISLAND PINES RECREATIONAL UNIT #248 22676 ISLAND PINES WAY FORT MYERS BEACH FL 33931	03-47-24-W1-00001.00CE 6675 ESTERO BLVD FORT MYERS BEACH 33931	NW 1/4 S ALY E SIDE OF ESTERO BLV FOR 315.19 E 88 FT TO POB TENNIS CTS OR 2410 PG 1445	13
ISLAND PINES RECREATIONAL MYERS BRETT HOLZ AND CO PA 12671 WHITEHALL DR FORT MYERS FL 33907	03-47-24-W1-00001.03CE ISLAND PINES RECREATIONAL C/E FORT MYERS BEACH 33931	PARL IN N 600 FT G L 1 AS DESC INST#2007000329210 + 2007000329211	14
TIITF/SOVEREIGNTY LANDS DEPT OF ENVIR PROTECTION 3900 COMMONWEALTH BLVD TALLAHASSEE FL 32399	03-47-24-W1-00001.1000 ACCESS UNDETERMINED FORT MYERS BEACH	ISLAND LOCATED IN SECS 3 4 + 10 TWP 47 RGE 24	15
ISLAND PINES RECREATIONAL ASSN MYERS BRETHOLTZ + CO 12671 WHITEHALL DR FORT MYERS FL 33907	03-47-24-W1-00002.00CE ISLAND PINES RECREATIONAL C/E FORT MYERS BEACH 33931	600 FT OF N L SWC 03 595.83 E OF ESTERO BLV AKA REC # 6	16
FMBH LLC 501 GOODLETTE RD N STE D100 NAPLES FL 34102	03-47-24-W1-00003.0010 6890 ESTERO BLVD FORT MYERS BEACH 33931	S 460 FT OF N 1060 FT OF GOVT LOT 1 LYING WLY OF ESTERO BLVD	17

ISLAND PINES RECREATIONAL UNIT #248 22676 ISLAND PINES WAY FORT MYERS BEACH FL 33931	03-47-24-W1-0000A.00CE 6661 ESTERO BLVD 6691 FORT MYERS BEACH 33931	LAND RES FUT DEV PT OF CAPTAINS BAY NORTH DESC OR 2501 PG 3794 GREEN AREA LESS OR 2814 PG 2503	18
SANDARAC I 6666 ESTERO BLVD FORT MYERS BEACH FL 33931	03-47-24-W1-02800.00CE 6666 ESTERO BLVD FORT MYERS BEACH 33931	SANDARAC 1 COMMON AREA OR 1163 P 856 THRU 897	19
SANDARAC ASSOCIATION INC SANDARAC II ASSOCIATION INC 6666 ESTERO BLVD FORT MYERS BEACH FL 33931	03-47-24-W1-03800.00CE SANDARAC 2 C/E FORT MYERS BEACH 33931	SANDARAC II COMMON AREA DESC OR 1339 PG 1713	20
BAC-BAY HEALTH +RACQUET CLUB SENTRY MANAGEMENT INC 2180 W SR 434 STE 5000 LONGWOOD FL 32779	03-47-24-W1-05100.00CE 22796/772 ISLAND PINES WAY FORT MYERS BEACH 33931	BAC-BAY + ADMIRAL BAY PH-1 OR 1703 PG 1580 + OR 2066 PG 1150 COMMON ELEMENTS	21
ESTERO COVE CONDOMINIUM ASSOCI 6891 ESTERO BLVD FORT MYERS BEACH FL 33931	03-47-24-W1-05500.00CE 6889 ESTERO BLVD FORT MYERS BEACH 33931	ESTERO COVE CONDO DESC OR 1765 PG 2993 COMMON ELEMENTS + UNIT 312	22
CAPTAINS BAY NORTH ONE ASSN SENTRY MANAGEMENT INC 2180 W SR 434 STE 5000 LONGWOOD FL 32779	03-47-24-W1-06800.00CE CAPTAINS BAY NORTH C/E FORT MYERS BEACH 33931	CAPTAINS BAY NORTH CONDO ONE OR 2526 PG 2630 CE:POOL+TENNIS	23
CAPTAINS BAY SOUTH CONDOMINIUM 22748 ISLAND PINES WAY #502 FORT MYERS BEACH FL 33931	03-47-24-W1-06900.00CE 22704 ISLAND PINES WAY FORT MYERS BEACH 33931	CAPTAINS BAY SOUTH CONDO DESC OR 2576 PG 1730 C/E- POOL + TENNIS	24
CAPTAINS BAY NORTH TWO ASSN SENTRY MANAGEMENT INC 2180 W SR 434 STE 5000 LONGWOOD FL 32779	03-47-24-W1-07300.00CE CAPTAINS BAY NORTH TWO CONDO C/E FORT MYERS BEACH 33931	CAPTAIN'S BAY NORTH TWO CONDO OR 2814 PG 2503 + OR 2848 PG 4124 COMMON ELEMENTS	25
PYNE ELIZABETH B 6655-111 ESTERO BLVD FORT MYERS BEACH FL 33931	34-46-24-W4-02300.1110 6655 ESTERO BLVD 111 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 111	26
RIZZUTO ANTHONY N TR 1013 W DOUGLAS AVE NAPERVILLE IL 60540	34-46-24-W4-02300.1120 6655 ESTERO BLVD 112 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 112	26
FASULO KAREN M & JOSEPH 12 HERRICK DR OLD TAPPAN NJ 7675	34-46-24-W4-02300.1130 6655 ESTERO BLVD 113 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 113	26
UNKNOWN HEIRS OF 10333 MAYFIELD AVE APT 1 N OAK LAWN IL 60453	34-46-24-W4-02300.1140 6655 ESTERO BLVD 114 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 114	26

SCHEIDER MARY F TR 4778 W EMPIRE RD FREEPORT IL 61032	34-46-24-W4-02300.1150 6655 ESTERO BLVD 115 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 115	26
KRIETEMEYER STEPHEN L & 20572 ROAD 23-T FORT JENNINGS OH 45844	34-46-24-W4-02300.1160 6655 ESTERO BLVD 116 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 116	26
BURSTAD CHARLENE A + 46 LANG ST CONCORD MA 1742	34-46-24-W4-02300.2110 6655 ESTERO BLVD 211 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 211	26
SCHMIDT ERICH & GERTRUDE 6655 ESTERO BLVD #212 FORT MYERS FL 33931	34-46-24-W4-02300.2120 6655 ESTERO BLVD 212 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 212	26
MATHENY MARY T TR 6655 ESTERO BLVD #213 FORT MYERS BEACH FL 33931	34-46-24-W4-02300.2130 6655 ESTERO BLVD 213 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 213	26
LOKEN TIMOTHY LEE + 5235 NORTH ARM DR MOUND MN 55364	34-46-24-W4-02300.2140 6655 ESTERO BLVD 214 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 214	26
FLOCO FMB LLC 4336 N DAYTON ST UNIT 2 CHICAGO IL 60613	34-46-24-W4-02300.2150 6655 ESTERO BLVD 215 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 215	26
METCALFE MARIA L TR 18 HALL RD STONEHAM MA 2180	34-46-24-W4-02300.2160 6655 ESTERO BLVD 216 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 216	26
FINN WILLIAM SHAWN & KIM D S 16 W 32570 LUTERBACH CT DELAFIELD WI 53018	34-46-24-W4-02300.3110 6655 ESTERO BLVD 311 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 311	26
SHARP COMPANY + 6103 SPRINGSIDE AVE DOWNERS GROVE IL 60516	34-46-24-W4-02300.3120 6655 ESTERO BLVD 312 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 312	26
CURTIS KATHERINE M 7519 FOREST BEACH RD WATERVLIET MI 49098	34-46-24-W4-02300.3130 6655 ESTERO BLVD 313 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 313	26
JORDAN RICHARD + 31 DONCASTER ST ROSLINDALE MA 2131	34-46-24-W4-02300.3140 6655 ESTERO BLVD 314 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 314	26

ROBERT D MCCOWEN TRUST + 4237 FAIRWAY LANE JACKSON MI 49201	34-46-24-W4-02300.3150 6655 ESTERO BLVD 315 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 315	26
SCHMELING RANDY W & 1512 RIVER DR MANDAN ND 58554	34-46-24-W4-02300.3160 6655 ESTERO BLVD 316 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 316	26
RIEDEL CURT W & CATHERINE E L/ 6665 ESTERO BLVD #121 FORT MYERS BEACH FL 33931	34-46-24-W4-02300.1210 6665 ESTERO BLVD 121 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 121	27
GIUFFRE JOSEPH J & CAROL J 6665 ESTERO BLVD #122 FORT MYERS BEACH FL 33931	34-46-24-W4-02300.1220 6665 ESTERO BLVD 122 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 122	27
BRIERLEY HERBERT F & 10606 RED HAWK LN SPRING GROVE IL 60081	34-46-24-W4-02300.1230 6665 ESTERO BLVD 123 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 123	27
KRONENBERGER JOHN E & 14111 S 87TH AVE ORLAND PARK IL 60462	34-46-24-W4-02300.1240 6665 ESTERO BLVD 124 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 124	27
CARROLL DENNIS L & TAMARA A 111 WOODFIELD PL DANVILLE IN 46122	34-46-24-W4-02300.1250 6665 ESTERO BLVD 125 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 125	27
SMITH MICHAEL L & 50 MONTROSE CRES MARKHAM ON L3R 7Z5 CANADA	34-46-24-W4-02300.1260 6665 ESTERO BLVD 126 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 126	27
MALONE RONALD P SR 513 W CHESTER ST LONG BEACH NY 11561	34-46-24-W4-02300.2210 6665 ESTERO BLVD 221 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 221	27
CALVELAGE BILLY J & DEBRA S 21838 ROAD R FORT JENNINGS OH 45844	34-46-24-W4-02300.2220 6665 ESTERO BLVD 222 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 222	27
CODY MAUREEN A TR 6665 ESTERO BLVD #223 FORT MYERS BEACH FL 33931	34-46-24-W4-02300.2230 6665 ESTERO BLVD 223 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 223	27
PARKER BRUCE D & ANNETTE R 35018 N KNOLLWOOD DR INGLESIDE IL 60041	34-46-24-W4-02300.2240 6665 ESTERO BLVD 224 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 224	27

VENTURO GENNARO L/E 6 DUQUETTE DR HAVERHILL MA 1830	34-46-24-W4-02300.2250 6665 ESTERO BLVD 225 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 225	27
TOUCHETTE DENNIS P TR 981 CLAYTONBROOK DR BALLWIN MO 63011	34-46-24-W4-02300.2260 6665 ESTERO BLVD 226 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 226	27
SULLIVAN PATRICK & 6620 OAKLAND AVE INDIANAPOLIS IN 46220	34-46-24-W4-02300.3210 6665 ESTERO BLVD 321 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 321	27
MIKEL TODD P & DAWN L 13117 N EASTSHORE DR SYRACUSE IN 46567	34-46-24-W4-02300.3220 6665 ESTERO BLVD 322 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 322	27
SULLIVAN REAL ESTATE 13322 W SHERBERN DR CARMEL IN 46032	34-46-24-W4-02300.3230 6665 ESTERO BLVD 323 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 323	27
KRIETEMEYER STEVEN L & 20572 RD 23T FORT JENNINGS OH 45844	34-46-24-W4-02300.3240 6665 ESTERO BLVD 324 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 324	27
JNC ESCAPES LLC 9156 AERIE LAKE ROAD ALBORN MN 55702	34-46-24-W4-02300.3250 6665 ESTERO BLVD 325 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 325	27
KRIETEMEYER STEPHEN L & 20572 ROAD 23T FORT JENNINGS OH 45844	34-46-24-W4-02300.3260 6665 ESTERO BLVD 326 FORT MYERS BEACH 33931	FAIRVIEW ISLES CONDO OR 1439 PG 180 UNIT 326	27
LEBEN MARY C L/E 6670 ESTERO BLVD UNIT A101 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.1010 6670 ESTERO BLVD A101 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A101	28
ZANIK CORPORATION MIKE MOLTER 4001 E 900 S LAFAYETTE IN 47909	03-47-24-W1-0280A.1020 6670 ESTERO BLVD A102 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A102	28
MORELLI FRED M JR & MARIA A 403 W GALENA BLVD PO BOX 1406 AURORA IL 60506	03-47-24-W1-0280A.1040 6670 ESTERO BLVD A104 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A104	28
HERBERT EDWARD J & BETSY L 2310 KINGSLEY DR GRAND PRAIRIE TX 75050	03-47-24-W1-0280A.1050 6670 ESTERO BLVD A105 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A105	28

LOGAN DAVID L & MARY A PO BOX 3383 DECATUR IL 62524	03-47-24-W1-0280A.2010 6670 ESTERO BLVD A201 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A201	28
PLATTEN ARLENE M TR 7413 WAKE ROBIN DR PARMA OH 44130	03-47-24-W1-0280A.2020 6670 ESTERO BLVD A202 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A202	28
CURTIS RONALD 6670 ESTERO BLVD #A203 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.2030 6670 ESTERO BLVD A203 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A203	28
BANKS THEODORE J JR + 598 DECKERS POINT RD MARION CENTER PA 15759	03-47-24-W1-0280A.2040 6670 ESTERO BLVD A204 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A204	28
TICE MATTHEW P TR 9940 WINSTON ROAD PINCKNEY MI 48169	03-47-24-W1-0280A.2050 6670 ESTERO BLVD A205 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A205	28
KLUNE MICHAEL E + 5508 BREMER RD MC FARLAND WI 53558	03-47-24-W1-0280A.3010 6670 ESTERO BLVD A301 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A301	28
KLINT THOMAS A & DENISE A 12162 KERRY ST COON RAPIDS MN 55433	03-47-24-W1-0280A.3020 6670 ESTERO BLVD A302 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A302	28
ABALLAVATE LLC 3 NEW ENGLAND WAY LINCOLN RI 02865	03-47-24-W1-0280A.3030 6670 ESTERO BLVD A303 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A303	28
CYNTHIA J PIERCE TRUST + 223 EMS T46 LN LEESBURG IN 46538	03-47-24-W1-0280A.3040 6670 ESTERO BLVD A304 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A304	28
RANDALL L YOUTS TRUST + 68760 S SHORE DR EDWARDSBURG MI 49112	03-47-24-W1-0280A.3050 6670 ESTERO BLVD A305 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A305	28
PORTER MARY E 14 ARTHUR LANE YARMOUTH PORT MA 02675	03-47-24-W1-0280A.4010 6670 ESTERO BLVD A401 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A401	28
STEELE TWILLA M 4926 CHAUCER RD FORT WAYNE IN 46835	03-47-24-W1-0280A.4020 6670 ESTERO BLVD A402 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A402	28

DBW LLC 14335 MILLCHESTER CIR CHESTERFIELD MO 63017	03-47-24-W1-0280A.4030 6670 ESTERO BLVD A403 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A403	28
MORA DANA E 18251 SW 25TH ST MIRAMAR FL 33029	03-47-24-W1-0280A.4040 6670 ESTERO BLVD A404 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A404	28
LEMKE DOLORES E TR + 9650 250TH ST W LAKEVILLE MN 55044	03-47-24-W1-0280A.4050 6670 ESTERO BLVD A405 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A405	28
HARRIS J GEORGE TR 1204 BEDDINGTON PARK NASHVILLE TN 37215	03-47-24-W1-0280A.5010 6670 ESTERO BLVD A501 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A501	28
CONRAD CHARLES N & CATHY P 6670 ESTERO BLVD #A502 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.5020 6670 ESTERO BLVD A502 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A502	28
6670 ESTERO LLC 105 WAUGH ST COLUMBIA MO 65201	03-47-24-W1-0280A.5030 6670 ESTERO BLVD A503 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A503	28
DBW LLC 14335 MILLCHESTER CIR CHESTERFIELD MO 63017	03-47-24-W1-0280A.5040 6670 ESTERO BLVD A504 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A504	28
KOHAN ANDREA 115 LOUISE AVE SAULT STE MARIE ON P6A 6A5 CANADA	03-47-24-W1-0280A.5050 6670 ESTERO BLVD A505 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A505/PS#A505	28
SMITH GREGORY L 3020 JORDON GROVE WEST DES MOINES IA 50265	03-47-24-W1-0280A.6010 6670 ESTERO BLVD A601 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A601	28
SMART STEPHEN D & JILL B 5420 CHALLEN PL DOWNERS GROVE IL 60515	03-47-24-W1-0280A.6020 6670 ESTERO BLVD A602 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A602	28
PELICANS HIDEAWAY LLC CYNTHIA JEFFCOTT 4700 MICASA CT FORT MYERS FL 33901	03-47-24-W1-0280A.6030 6670 ESTERO BLVD A603 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A603	28
PEREZ SAM & SUSAN M 403 QUEEN ST S HAMILTON ON L8P 3T8 CANADA	03-47-24-W1-0280A.6040 6670 ESTERO BLVD A604 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A604	28

MCCONNELL KATHY ANN TR 7311 W CHESTER RD WEST CHESTER OH 45069	03-47-24-W1-0280A.6050 6670 ESTERO BLVD A605 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A605	28
VRANEY GILBERT G & LINDA K TR 603 RIVERVIEW DR THIENSVILLE WI 53092	03-47-24-W1-0280A.7010 6670 ESTERO BLVD A701 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A701	28
P5 OF LEE COUNTY INC 5905 TARPON GARDENS CIR # 201 CAPE CORAL FL 33914	03-47-24-W1-0280A.7020 6670 ESTERO BLVD A702 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A702	28
K4 OF LEE COUNTY INC 5905 TARPON GNDS CIR #201 CAPE CORAL FL 33914	03-47-24-W1-0280A.7030 6670 ESTERO BLVD A703 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A703	28
AIC HOLDINGS INC 205 ALTA AMHERSTBURG ON N9V 3R3 CANADA	03-47-24-W1-0280A.7040 6670 ESTERO BLVD A704 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A704	28
COMPTON BETH ANN 8722 HEATHERSTONE PL ZIONSVILLE IN 46077	03-47-24-W1-0280A.8010 6670 ESTERO BLVD A801 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A801	28
FISCHER SUSAN D TR 2316 W 141ST ST LEAWOOD KS 66224	03-47-24-W1-0280A.8020 6670 ESTERO BLVD A802 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A802	28
RUBLE BRYAN R TR 7030 E MORNING VISTA LN SCOTTSDALE AZ 85266	03-47-24-W1-0280A.8030 6670 ESTERO BLVD A803 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A803	28
SWIGART FAMILY LP 405 N SWIFT ST WINNEBAGO IL 61088	03-47-24-W1-0280A.9010 6670 ESTERO BLVD A901 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A901	28
SWIGART JAMES L TR 405 NORTH SWIFT ST WINNEBAGO IL 61088	03-47-24-W1-0280A.9020 6670 ESTERO BLVD A902 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A902	28
KABELE RICHARD W TR 137 GRANTWOOD DR HOLLY SPRINGS NC 27540	03-47-24-W1-0280A.1060 6672 ESTERO BLVD A106 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A106	29
SIZEMORE ROGER L + 15908 HILLTOP DR LOWELL IN 46356	03-47-24-W1-0280A.1070 6672 ESTERO BLVD A107 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A107	29

BLUE ELLEN J TR 6893 GARLAND LANE NORTH MAPLE GROVE MN 55311	03-47-24-W1-0280A.1080 6672 ESTERO BLVD A108 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A108	29
PHELAN THOMAS W 6672 ESTERO BLVD #A109 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.1090 6672 ESTERO BLVD A109 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A109	29
OBRIEN JILL TR 6672 ESTERO BLVD #A110 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.1100 6672 ESTERO BLVD A110 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A110	29
ASSINK NORMA JEAN TR 13395 TYLER ST HOLLAND MI 49424	03-47-24-W1-0280A.1110 6672 ESTERO BLVD A111 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A111	29
STEARNS NANCY A TR 6672 ESTERO BLVD #A206 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.2060 6672 ESTERO BLVD A206 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A206	29
POWERS BERNARD SHAUN & 55 E ERIE ST #4705 CHICAGO IL 60611	03-47-24-W1-0280A.2070 6672 ESTERO BLVD A207 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A207	29
PLATTEN JANE M 1777 W 30TH ST CLEVELAND OH 44113	03-47-24-W1-0280A.2080 6672 ESTERO BLVD A208 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A208	29
MICHAEL DIANNE 621 E MEHRING WAY UNIT 2109 CINCINNATI OH 45202	03-47-24-W1-0280A.2090 6672 ESTERO BLVD A209 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A209	29
SWIGART JAMES + 405 N SWIFT ST WINNEBAGO IL 61088	03-47-24-W1-0280A.2100 6672 ESTERO BLVD A210 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A210	29
MCGRATH MICHAEL J 4815 TRITON CT W CAPE CORAL FL 33904	03-47-24-W1-0280A.2110 6672 ESTERO BLVD A211 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A211	29
BRODERICK CYNTHIA S TR 9115 WHISPERINGHILL DR CINCINNATI OH 45242	03-47-24-W1-0280A.3060 6672 ESTERO BLVD A306 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A306	29
KOVACS WILLIAM F & KAREN S 25 KNUSTEN DR WEST ORANGE NJ 7052	03-47-24-W1-0280A.3070 6672 ESTERO BLVD A307 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A307	29

FENNEMAN + BROWN FLORIDA LLC 2902 E MORGAN ST MARTINSVILLE IN 46151	03-47-24-W1-0280A.3080 6672 ESTERO BLVD A308 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A308	29
RICHTER FAMILY LTD PRTNRSP #2 142 OAKMONT CT LAWRENCEBURG IN 47025	03-47-24-W1-0280A.3090 6672 ESTERO BLVD A309 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A309	29
PETROFF SANDRA L TR 6672 ESTERO BLVD # A310 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.3100 6672 ESTERO BLVD A310 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 UNIT A 310	29
HOLM MICHAEL J TR 6672 ESTERO BLVD #A311 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.3110 6672 ESTERO BLVD A311 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A311	29
ST PIERRE PAUL & KRISTIN 3037 ALDWYCH CT GREENWOOD IN 46143	03-47-24-W1-0280A.4060 6672 ESTERO BLVD A406 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A406	29
DIMATTEO ROSE 6672-A407 ESTERO BLVD FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.4070 6672 ESTERO BLVD A407 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A407	29
SARAYU LLC 10894 BRIXTON LN FISHERS IN 46037	03-47-24-W1-0280A.4080 6672 ESTERO BLVD A408 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A408	29
GATES DANIEL W + KAREN R 248 SHEEDY RD VESTAL NY 13850	03-47-24-W1-0280A.4090 6672 ESTERO BLVD A409 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A409	29
VANCURA BRADLEY R TR 6176 NE KENSINGTON LEES SUMMIT MO 64064	03-47-24-W1-0280A.4100 6672 ESTERO BLVD A410 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A410	29
VANDERBILT KAREN 213 ROUTE 87 COLUMBIA CT 6237	03-47-24-W1-0280A.4110 6672 ESTERO BLVD A411 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A411	29
AUSTIN JUDY TR PO BOX 595 OCCOQUAN VA 22125	03-47-24-W1-0280A.5060 6672 ESTERO BLVD A506 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A506	29
MALLOY MATTHEW THOMAS & 400 ARMY NAVY DR APT #1511 ARLINGTON VA 22202	03-47-24-W1-0280A.5070 6672 ESTERO BLVD A507 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A507	29

GANOSELLIS SUSAN + 6672 ESTERO BLVD #A508 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.5080 6672 ESTERO BLVD A508 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A508	29
HARTMAN KELLY 10894 BRIXTON LANE FISHERS IN 46037	03-47-24-W1-0280A.5090 6672 ESTERO BLVD A509 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A509	29
MCCONNELL MATTHEW J & 1066 WESTCHESTER WAY CINCINNATI OH 45244	03-47-24-W1-0280A.5100 6672 ESTERO BLVD A510 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A510	29
COOK SHARON LEE TR 6672 ESTERO BLVD APT 511A FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.5110 6672 ESTERO BLVD A511 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A511	29
POWERS GERALD J II 1650 IVERNESS DR UNIT 11 BILLINGS MT 59105	03-47-24-W1-0280A.6060 6672 ESTERO BLVD A606 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A606	29
LOMAS PENELOPE C TR 23630 WATERSIDE DR ESTERO FL 34134	03-47-24-W1-0280A.6070 6672 ESTERO BLVD A607 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A607	29
CLARK RICHARD & GHIORZI BOB 6672 ESTERO BLVD #A608 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.6080 6672 ESTERO BLVD A608 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A608	29
FRANCIS LOLA J L/E 9605 MELBOURNE AVE ALLEN PARK MI 48101	03-47-24-W1-0280A.6090 6670 ESTERO BLVD A609 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A609	29
CIRILLA ALFRED J JR 2474 TURK HILL RD VICTOR NY 14564	03-47-24-W1-0280A.6100 6672 ESTERO BLVD A610 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A610	29
YOUNG GEORGE ELMER III TR 1064 YELLOW JASMINE CT LONGS SC 29568	03-47-24-W1-0280A.6110 6672 ESTERO BLVD A611 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A611	29
WARRINGTON SUSAN M TR 6672 ESTERO BLVD #A706 MYERS BEACH FL 33931	03-47-24-W1-0280A.7060 6672 ESTERO BLVD FORT A706 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A706	29
KAISER EDWARD J & DOLORES J 2043 FAIRWAY BLVD HUDSON OH 44236	03-47-24-W1-0280A.7070 6672 ESTERO BLVD A707 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A707	29

COSSU SERGIO F & AILEEN R 279 COBBLESTONE LN BETHLEHEM PA 18020	03-47-24-W1-0280A.7080 6672 ESTERO BLVD A708 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A708	29
TJ3 HOLDINGS LLC 1416 MEGGIN MELANNE LN NEWARK OH 43055	03-47-24-W1-0280A.7090 6672 ESTERO BLVD A709 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A709	29
PRAWER ADAM J + 721 SUWANNEE CT NE SAINT PETERSBURG FL 33702	03-47-24-W1-0280A.7100 6672 ESTERO BLVD A710 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A710	29
CONROY YOLONDE L 3566 HEATHERWOOD AVE SPRINGFIELD OH 45503	03-47-24-W1-0280A.7110 6672 ESTERO BLVD A711 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A711	29
WARRINGTON SUSAN M TR 6672 ESTERO BLVD UNIT A706 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.8060 6672 ESTERO BLVD A806 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A806	29
KINNISH KATHLEEN R TR 9321 W RAVEN PL TINLEY PARK IL 60487	03-47-24-W1-0280A.8070 6672 ESTERO BLVD A807 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A807	29
RICCOBONO ANGELO 6672 ESTERO BLVD UNIT A808 FORT MYERS BEACH FL 33931	03-47-24-W1-0280A.8080 6672 ESTERO BLVD A808 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A808	29
QUINN FAMILY LLC BRIAN J QUINN 3672 WINDBER BLVD PALM HARBOR FL 34685	03-47-24-W1-0280A.8090 6672 ESTERO BLVD A809 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A809	29
BARBIERI CAROL 53 BROAD ST FLEMINGTON NJ 8822	03-47-24-W1-0280A.8100 6672 ESTERO BLVD A810 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A810	29
SWIGART JAMES L TR 405 N SWIFT ST WINNEBAGO IL 61088	03-47-24-W1-0280A.9060 6672 ESTERO BLVD A906 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A906	29
KIRBY MARTY & TAMMIE 311 N ABBEY RD URBANA IL 61802	03-47-24-W1-0280A.9070 6672 ESTERO BLVD A907 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A907	29
ST PIERRE PAUL & KRISTIN 3037 ALDWYCH CT GREENWOOD IN 46143	03-47-24-W1-0280A.9080 6672 ESTERO BLVD A908 FORT MYERS BEACH 33931	THE SANDARAC I CONDO OR 1163 PG 856 APT A908	29

BISHOP R LARRY & 6660 ESTERO BLVD #101 MYERS BEACH FL 33931	FORT	03-47-24-W1-03800.1010 6660 ESTERO BLVD 101 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 101	30
HICKS DONNA REED 6660 ESTERO BLVD #102 FORT MYERS BEACH FL 33931		03-47-24-W1-03800.1020 6660 ESTERO BLVD 102 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 102	30
FAIRBANKS APARTMENTS LLC PO BOX 148 RICHMOND KY 40476		03-47-24-W1-03800.1040 6660 ESTERO BLVD 104 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 104	30
YODER TODD & MICHELLE 1520 OAK ST WYANDOTTE MI 48192		03-47-24-W1-03800.1050 6660 ESTERO BLVD 105 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 105	30
FREEMAN ALBERT W & 265 EIGHT MILE POINT RD DRO-MEDONTE ON L3V 0X2 CANADA		03-47-24-W1-03800.2010 6660 ESTERO BLVD 201 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 201	30
ASSINK BONNIE K TR 13275 TYLER ST HOLLAND MI 49424		03-47-24-W1-03800.2020 6660 ESTERO BLVD 202 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 202/PS#7	30
GENARD CATHY A 1114 BAUGHMAN HOLLOW RD GREENSBURG PA 15601		03-47-24-W1-03800.2030 6660 ESTERO BLVD 203 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 203	30
KETELHUT RONALD D & ANN L 42900 CARDINAL WAY NOVI MI 48375		03-47-24-W1-03800.2040 6660 ESTERO BLVD 204 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 204	30
GATES DANIEL L JR 3514 MISHAWAKA AVE SOUTH BEND IN 46615		03-47-24-W1-03800.2050 6660 ESTERO BLVD 205 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 205	30
OTT JAMES P TR 9106 CHERRY POINT RD MANITOU BEACH MI 49253		03-47-24-W1-03800.3010 6660 ESTERO BLVD 301 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 301	30
KLIEMAN JENNIFER & MICHAEL 13400 30 MILE RD WASHINGTON MI 48095		03-47-24-W1-03800.3020 6660 ESTERO BLVD 302 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 302	30
FRANZ SIGRID E & HELMUT TR 6660 ESTERO BLVD APT 303B FORT MYERS BEACH FL 33931		03-47-24-W1-03800.3030 6660 ESTERO BLVD 303 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 303	30

MARINO JOSEPH & WANDA T 30 HIGH POINT LN SCARSDALE NY 10583	03-47-24-W1-03800.3040 6660 ESTERO BLVD 304 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 304	30
BARNEY MARVIN A & ARLENE N 218 PALMER CIR NE WARREN OH 44484	03-47-24-W1-03800.3050 6660 ESTERO BLVD 305 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 305	30
RICKEN DAVE M & LORID 2720 S LAKEVIEW DR CLEAR LAKE IA 50428	03-47-24-W1-03800.4010 6660 ESTERO BLVD 401 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 401	30
SCHOENFELDT MARK TR 1508 POPLAR LANE WAUSAU WI 54403	03-47-24-W1-03800.4020 6660 ESTERO BLVD 402 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 402	30
VAN FOSSEN JODY & 12860 SCHOOL LANE RD CROTON OH 43013	03-47-24-W1-03800.4030 6660 ESTERO BLVD 403 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 403	30
HERNANDEZ ALAIN RODOLFO & 11328 LAKELAND CIR FORT MYERS FL 33913	03-47-24-W1-03800.4040 6660 ESTERO BLVD 404 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 404	30
GERVOLINO COLLEEN & 151 SUTTON AVE TOTOWA NJ 7512	03-47-24-W1-03800.4050 6660 ESTERO BLVD 405 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 405	30
BELLISSIMO VINCENT S & 34 BUCK DR POUGHQUAG NY 12570	03-47-24-W1-03800.5010 6660 ESTERO BLVD 501 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 501	30
KLEDZIK CARY & LAURA 2006 STIERS CT BATAVIA IL 60510	03-47-24-W1-03800.5020 6660 ESTERO BLVD 502 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 502	30
AMY AVJEAN TRUST + AMY FRASER AVJEAN 2576 LEACH DR NAPERVILLE IL 60564	03-47-24-W1-03800.5030 6660 ESTERO BLVD 503 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 503	30
STRYCKER KATHERINE A TR W240N2361 RANGE LINE CT#A PEWAUKEE WI 53072	03-47-24-W1-03800.5040 6660 ESTERO BLVD 504 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 504	30
LUCY CAROLYN S 4755 LIBERTY RD DOLPHIN VA 23843	03-47-24-W1-03800.5050 6660 ESTERO BLVD 505 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 505	30

BARR JANIS E 6319 COLONIAL DR WHITESTOWN IN 46075	03-47-24-W1-03800.6010 6660 ESTERO BLVD 601 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 601	30
SCHIEMANN JEFFREY J TR 845 HANOVER RD GATES MILLS OH 44040	03-47-24-W1-03800.6020 6660 ESTERO BLVD 602 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 602	30
NEAL TERRY L/E 6660 ESTERO BLVD #603 MYERS BEACH FL 33931	03-47-24-W1-03800.6030 6660 ESTERO BLVD 603 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 603	30
SCHIEMANN LIMITED LIABILITY CO 845 HANOVER RD GATES MILLS OH 44040	03-47-24-W1-03800.6040 6660 ESTERO BLVD 604 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 604	30
BUDIL PAUL C 6660 ESTERO BLVD #605 FORT MYERS BEACH FL 33931	03-47-24-W1-03800.6050 6660 ESTERO BLVD 605 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 605	30
BOWMAN JERRY L & JUDITH M + EASTERN VIRGINIA LAW GROUP 130 W PLUME ST NORFOLK VA 23510	03-47-24-W1-03800.7010 6660 ESTERO BLVD 701 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 701	30
SEMLING FAYE A TR 1201C HERITAGE CT MERRILL WI 54452	03-47-24-W1-03800.7020 6660 ESTERO BLVD 702 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 702	30
CACCAMO FRANK M & GLORIA C 599 6TH AVE EAST NORTHPORT NY 11731	03-47-24-W1-03800.7030 6660 ESTERO BLVD 703 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 703	30
WILLIAMS THOMAS E & CAROL J 15052 BASS LAKE RD MAPLE GROVE MN 55311	03-47-24-W1-03800.7040 6660 ESTERO BLVD 704 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 704	30
SHANNON JANET A TR 6660 ESTERO BLVD #705 FORT MYERS BEACH FL 33931	03-47-24-W1-03800.7050 6660 ESTERO BLVD 705 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 705	30
GABEL HELEN J TR 9130 CHERRY POINT RD MANITOU BEACH MI 49253	03-47-24-W1-03800.8010 6660 ESTERO BLVD 801 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 801	30
GABEL HELEN J TR 9130 CHERRY POINT RD MANITOU BEACH MI 49253	03-47-24-W1-03800.8020 6660 ESTERO BLVD 802 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 802	30

MURPHY MARY A L/E PO BOX 7455 NEW BEDFORD MA 2742	03-47-24-W1-03800.8030 6660 ESTERO BLVD 803 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 803	30
LIROT CHRISTOPHER E & 1376 BALMORAL CT AURORA IL 60502	03-47-24-W1-03800.8040 6660 ESTERO BLVD 804 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 804	30
SOMEWHERE IN THE SUN LLC 8221 VOLTAIRE CT WAYNESVILLE OH 45068	03-47-24-W1-03800.9010 6660 ESTERO BLVD 901 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 901	30
MACHOCK JAMES E & 9624 FOXWOOD PASSAGE FORT WAYNE IN 46835	03-47-24-W1-03800.9020 6660 ESTERO BLVD 902 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 902	30
COHEN JEFFREY LOUIS 2417 DOGWOOD SEASON DR CHATTANOOGA TN 37421	03-47-24-W1-03800.9030 6660 ESTERO BLVD 903 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 903	30
SIMONS WILLARD & MARIE 355 N SHORE RD CUBA NY 14727	03-47-24-W1-03800.1060 6662 ESTERO BLVD 106 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 106	31
BREDESON GORDON W TR 27 GREENWAY GABLES MINNEAPOLIS MN 55403	03-47-24-W1-03800.1070 6662 ESTERO BLVD 107 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 107	31
HEAT PROPERTIES LLC 4200 CANTERA DR UNIT 208 WARRENVILLE IL 60555	03-47-24-W1-03800.1080 6662 ESTERO BLVD 108 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 108	31
FAIRCLOUGH NEVILLE D & 22 WINDY RIDGE DRIVE SCARBOROUGH ON M1M 1H5 CANADA	03-47-24-W1-03800.1090 6662 ESTERO BLVD 109 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 109	31
SCHMID TIMOTHY V & DEBORAH + 2728 GRANT EVANSTON IL 60201	03-47-24-W1-03800.1100 6662 ESTERO BLVD 110 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 110	31
STOCK PAULA L & FRANCIS L 4535 LINE 26 RR 2 ST PAULS STATION ON NOK 1V0 CANADA	03-47-24-W1-03800.1110 6662 ESTERO BLVD 111 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 111	31
WILLIAMS CHRISTI M TR 331 DIAMOND ST UNIT B ARCADIA CA 91006	03-47-24-W1-03800.2060 6662 ESTERO BLVD 206 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 206	31

GENTRY CAROLYN J TR 6545 146TH AVE HOLLAND MI 49423	03-47-24-W1-03800.2070 6662 ESTERO BLVD 207 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 207	31
DECHANT THELMA M TR 15965 WEST RD OBERLIN OH 44074	03-47-24-W1-03800.2080 6662 ESTERO BLVD 208 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 208	31
KMC SANDARAC CO LLC 9605 PARAGON ST APT 108 MIDDLETON WI 53562	03-47-24-W1-03800.2090 6662 ESTERO BLVD 209 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 209	31
DEIFEL JON H & BARBARA L TR 2279 QUAIL RUN FARM LANE CINCINNATI OH 45233	03-47-24-W1-03800.2100 6662 ESTERO BLVD 210 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 210	31
PURTILL DONALD L & 397 SANDHURST DR HIGHLAND HEIGHTS OH 44143	03-47-24-W1-03800.2110 6662 ESTERO BLVD 211 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 211	31
NELSON SHERRY TR 611 LAUREL AVE WILMETTE IL 60091	03-47-24-W1-03800.3060 6662 ESTERO BLVD 306 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 306	31
ONEAL LARRY W & VIKKI C 2628 LONGWOOD DR LAKELAND FL 33811	03-47-24-W1-03800.3070 6662 ESTERO BLVD 307 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 307	31
TREEHOUSE PROPERTIES LLC 9666 HALSEY DR INDIANAPOLIS IN 46256	03-47-24-W1-03800.3080 6662 ESTERO BLVD 308 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 308	31
BUDCHUK GARY E TR 38397 HURON POINTE DRIVE HARRISON TOWNSHIP MI 48045	03-47-24-W1-03800.3090 6662 ESTERO BLVD 309 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 309	31
BUTORAC TERRY M TR 2169 125TH LN NW COON RAPIDS MN 55448	03-47-24-W1-03800.3100 6662 ESTERO BLVD 310 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 310	31
STOCK FRANCIS LEO & RR 2 LINE # 26 911 # 4535 ST PAULS ON NOK 1V0 CANADA	03-47-24-W1-03800.3110 6662 ESTERO BLVD 311 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 311	31
RICKEN DAVID M & LORI D 2720 S LAKEVIEW DR CLEAR LAKE IA 50428	03-47-24-W1-03800.4060 6662 ESTERO BLVD 406 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 406	31

CATES RONALD EDWIN & 710 SOUTH 500 WEST MARION IN 46953	03-47-24-W1-03800.4070 6662 ESTERO BLVD 407 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 407	31
ALCON LLC 3023 BEALS BRANCH DR LOUISVILLE KY 40206	03-47-24-W1-03800.4080 6662 ESTERO BLVD 408 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 408	31
SPENCER ROBERT BRUCE TR 4265 VINTAGE DR PROVO UT 84604	03-47-24-W1-03800.4090 6662 ESTERO BLVD 409 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 409	31
KREIE MERIDETH & PAUL 821 N CHESTNUT AVE ARLINGTON HEIGHTS IL 60004	03-47-24-W1-03800.4100 6662 ESTERO BLVD 410 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 410	31
FUN SHINE LIMITED COMPANY + LESLIE DYBALA 7958 HIDDEN HARBOUR DR E HOLLAND OH 43528	03-47-24-W1-03800.4110 6662 ESTERO BLVD 411 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 411	31
VONDERHARR BRIAN ALAN & 4427 ST ANDREWS DRIVE BLAINE MN 55449	03-47-24-W1-03800.5060 6662 ESTERO BLVD 506 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 506	31
BABIAK EDMUND J 4804 SYLVAN PRAIRIE CT SYLVANIA OH 43560	03-47-24-W1-03800.5070 6662 ESTERO BLVD 507 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 507	31
BRAY MYNA J TR 1514 RIDGEPOINTE PLACE DR LAKE SAINT LOUIS MO 63367	03-47-24-W1-03800.5080 6662 ESTERO BLVD 508 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 508	31
COVINO MAURICE 6662 ESTERO BLVD #509 MYERS BEACH FL 33931	03-47-24-W1-03800.5090 6662 ESTERO BLVD 509 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 509	31
SINATRA RANDALL P & 1024 CAYUGA DR NIAGARA FALLS NY 14304	03-47-24-W1-03800.5100 6662 ESTERO BLVD 510 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 510	31
PIERCE DAVID T + 1511 WILDERNESS WAY LONGVIEW TX 75604	03-47-24-W1-03800.5110 6662 ESTERO BLVD 511 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 511	31
FMB CONDO LLC 19436 LA SERENA FORT MYERS FL 33967	03-47-24-W1-03800.6060 6662 ESTERO BLVD 606 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 606	31

KOHART SHARYN L & JERRY P 275 LN 220 LAKE GAGE ANGOLA IN 46703	03-47-24-W1-03800.6070 6662 ESTERO BLVD 607 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 607	31
MEEKER LYNDA S TR 27461 COUNTRY CLUB DR BONITA SPRINGS FL 34134	03-47-24-W1-03800.6080 6662 ESTERO BLVD 608 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 608	31
KAVANAUGH JOYCE C + 340 BOSTON POST RD EAST LYME CT 6333	03-47-24-W1-03800.6090 6662 ESTERO BLVD 609 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 609	31
KLAUSNER ARNO & DORIS HAUPTSTRASSE 68 9871 SEEBODEN AUSTRIA	03-47-24-W1-03800.6100 6662 ESTERO BLVD 610 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 610	31
JOHNSON LUCY S TR KEITH E JOHNSON JR 212 SADDLE CREEK CT MACON GA 31210	03-47-24-W1-03800.6110 6662 ESTERO BLVD 611 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 611	31
BALL DONALD W SR TR 6662 ESTERO BLVD #807B FORT MYERS BEACH FL 33931	03-47-24-W1-03800.7060 6662 ESTERO BLVD 706 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 706	31
MROZINSKI GERALD LEE 4848 OAK GROVE CT NE CEDAR RAPIDS IA 52411	03-47-24-W1-03800.7070 6662 ESTERO BLVD 707 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 707	31
CARLSON BRYAN J TR PO BOX 468 ERIE IL 61250	03-47-24-W1-03800.7080 6662 ESTERO BLVD 708 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 708	31
DEJEAN TRACEY TR 308 PINETREE CRES BEACONSFIELD QC H9W 5E1 CANADA	03-47-24-W1-03800.7090 6662 ESTERO BLVD 709 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 709	31
LOLLAR JAMES WAYMON & 20155 SOUTHAMTON DR LIVONIA MI 48152	03-47-24-W1-03800.7100 6662 ESTERO BLVD 710 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 710	31
PAUK LAUREL R 6662 ESTERO BLVD #711 FORT MYERS BEACH FL 33931	03-47-24-W1-03800.7110 6662 ESTERO BLVD 711 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 711	31
BALL DONALD W SR TR 6662 ESTERO BLVD #807B FORT MYERS BEACH FL 33931	03-47-24-W1-03800.8060 6662 ESTERO BLVD 806 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 806	31

WHITE LISA FEDDER + 1401 SE 8TH ST DEERFIELD BEACH FL 33441	03-47-24-W1-03800.8070 6662 ESTERO BLVD 807 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 807	31
VALLEY PROPERTY SERVICES LLC PO BOX 2872 APPLETON WI 54912	03-47-24-W1-03800.8080 6662 ESTERO BLVD 808 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 808	31
WEISENSTEIN TERRY P & 1740 STONEYBROOK WAY BLACKLICK OH 43004	03-47-24-W1-03800.8090 6662 ESTERO BLVD 809 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 809	31
PHYLLIS JOAN ELIZABETH STEELE 33 SWIFT WATERS RD BROCKVILLE ON K6V 5S9 CANADA	03-47-24-W1-03800.8100 6662 ESTERO BLVD 810 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 810	31
ERIKS RONALD E & SHARON M L/E 13300 LAKE SHORE DR UNIT 302 CEDAR LAKE IN 46303	03-47-24-W1-03800.8110 6662 ESTERO BLVD 811 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 811	31
KING BRIAN L TR 6662 ESTERO BLVD #906 FORT MYERS BEACH FL 33931	03-47-24-W1-03800.9060 6662 ESTERO BLVD 906 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 906	31
MULLETT DAVID B & 123 CARTER CT VIENNA VA 22180	03-47-24-W1-03800.9070 6662 ESTERO BLVD 907 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 907	31
HASTINGS CHARLES M TR ROBERT ALEX HASTINGS SONNENRAIN 2 DIETLIKON 8305 SWITZERLAND	03-47-24-W1-03800.9080 6662 ESTERO BLVD 908 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 908	31
COOK BRIAN & JODI 16181 KINSALE DR WESTFIELD IN 46062	03-47-24-W1-03800.9090 6662 ESTERO BLVD 909 FORT MYERS BEACH 33931	SANDARAC 2 CONDO OR 1339 PG 1713 UNIT 909	31
SHANDY HOLDINGS LLC 20636 STATE ROUTE BB MEMPHIS MO 63555	03-47-24-W1-05101.1110 22796 ISLAND PINES WAY 111 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 1 UNIT 111	32
BOYER SHELLY M 201 S WASHINGTON ST MEMPHIS MO 63555	03-47-24-W1-05101.1120 22796 ISLAND PINES WAY 112 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 1 UNIT 112	32
ANTRIM MARY P 430 HIGHSPIRE RD GLENMOORE PA 19343	03-47-24-W1-05101.1130 22796 ISLAND PINES WAY 113 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 1 UNIT 113	32

PICCERILL LOUISE + 2374 E 72ND ST BROOKLYN NY 11234	03-47-24-W1-05101.1140 22796 ISLAND PINES WAY 114 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 1 UNIT 114	32
JAMES E + SUSAN D CAVANAUGH TR 103 SEGSBURY ROAD AMHERST NY 14221	03-47-24-W1-05101.1210 22796 ISLAND PINES WAY 121 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 1 UNIT 121	32
JAMES H + SUSAN D CAVANAUGH TR 103 SEGSBURY RD AMHERST NY 14221	03-47-24-W1-05101.1220 22796 ISLAND PINES WAY 122 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 1 UNIT 122	32
DKW INVESTMENTS INC 974 GRAND AV W CHATHAM ON N7L 5H6 CANADA	03-47-24-W1-05101.1230 22796 ISLAND PINES WAY 123 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 1 UNIT 123	32
FIGUEROA CANDIDO R & 7920 NW 67TH ST MIAMI FL 33166	03-47-24-W1-05101.1240 22796 ISLAND PINES WAY 124 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 1 UNIT 124	32
LEASK LEO & ANN 175 ANN MARIE MONROE MI 48162	03-47-24-W1-05102.2110 22772 ISLAND PINES WAY 211 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 2 UNIT 211	33
FIGUEROA CANDIDO & 7920 NW 67TH ST MIAMI FL 33166	03-47-24-W1-05102.2120 22772 ISLAND PINES WAY 212 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 2 UNIT 212	33
ZVANOVEC ROBERT & DEBORAH 10456 169TH ST LAKEVILLE MN 55044	03-47-24-W1-05102.2130 22772 ISLAND PINES WAY 213 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 2 UNIT 213	33
ANDERSON LEWIS L + 695 E WESTERN RESERVE RD TROTTERS CHASE # 504 POLAND OH 44514	03-47-24-W1-05102.2140 22772 ISLAND PINES WAY 214 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 2 UNIT 214	33
MIDAAS PROPERTIES LLC 5930 WATERVILLE MONCLOVA RD WATERVILLE OH 43566	03-47-24-W1-05102.2210 22772 ISLAND PINES WAY 221 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 2 UNIT 221	33
SINATRA RYAN T & PATRICIA J 5307 ELM DR LEWISTON NY 14092	03-47-24-W1-05102.2220 22772 ISLAND PINES WAY 222 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 2 UNIT 222	33
GONZALEZ ANN M TR 502 N FINDLAY RD HASKINS OH 43525	03-47-24-W1-05102.2230 22772 ISLAND PINES WAY 223 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 2 UNIT 223	33

SQUIRES JOSEPH JOHN & 12458 HICKORY AVE GREENE IA 50636	03-47-24-W1-05102.2240 22772 ISLAND PINES WAY 224 FORT MYERS BEACH 33931	BAC-BAY HEALTH AND RACQUET CLUB DESC OR2066 PG1150 BLDG 2 UNIT 224	33
CROFTS WILLIAM T + 1308 N AUDUBON RD INDIANAPOLIS IN 46219	03-47-24-W1-05500.1110 6897 ESTERO BLVD 111 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 111 OR 1765 PG 2993	34
DEGRYSE ROBERT P & MARIA A 3940 LEEWARD PASSAGE CT #103 BONITA SPRINGS FL 34134	03-47-24-W1-05500.1120 6897 ESTERO BLVD 112 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 112 OR 1765 PG 2993	34
STERLING MARYANN 6897 ESTERO BLVD #113 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.1130 6897 ESTERO BLVD 113 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 113 OR 1765 PG 2993	34
SHEETS DENNIS D 43 GETTYSBURG COATESVILLE IN 46121	03-47-24-W1-05500.1140 6897 ESTERO BLVD 114 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 114 OR 1765 PG 2993	34
MCNICHOLS DANIEL A + 4908 N MERRIMACK AV CHICAGO IL 60630	03-47-24-W1-05500.1150 6897 ESTERO BLVD 115 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 115 OR 1765 PG 2993	34
NIXON DOUGLAS E TR 1524 CARLSON DR GARDNERVILLE NV 89410	03-47-24-W1-05500.1160 6897 ESTERO BLVD 116 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 116 OR 1765 PG 2993	34
RAO FORTUNATO + 60 GLEN LONG AV TORONTO ON M6B 2M2 CANADA	03-47-24-W1-05500.1210 6897 ESTERO BLVD 121 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 121 OR 1765 PG 2993	34
MILLER CHARLES E + GINA L+ 191 E MAIN ST BATAVIA OH 45103	03-47-24-W1-05500.1220 6897 ESTERO BLVD 122 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 122 OR 1765 PG 2993	34
LISCIO LEONARDO 46 FORESTER CRES MARKHAM ON L6C 1W2 CANADA	03-47-24-W1-05500.1230 6897 ESTERO BLVD 123 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 123 OR 1765 PG 2993	34
GROSSO TONY + 46 FORESTER CRES MARKHAM ON L6C 1W2 CANADA	03-47-24-W1-05500.1240 6897 ESTERO BLVD 124 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 124 OR 1765 PG 2993	34
SCHMEICHEL DONALD & GLORIA 781 VIMY RD WINNIPEG MB R2Y 0T4 CANADA	03-47-24-W1-05500.1250 6897 ESTERO BLVD 125 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 125 OR 1765 PG 2993	34

WHITE ROGER C L/E 6897 ESTERO BLVD #126 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.1260 6897 ESTERO BLVD 126 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 126 OR 1765 PG 2993	34
COLLINS DENNIS F + 10401 MENARD AVE APT 109 OAK LAWN IL 60453	03-47-24-W1-05500.1310 6897 ESTERO BLVD 131 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 131 OR 1765 PG 2993	34
PARSONS RICARDO & 6586 HYPOLUXO RD UNIT 184 LAKE WORTH FL 33467	03-47-24-W1-05500.1320 6897 ESTERO BLVD 132 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 132 OR 1765 PG 2993	34
KREIGEL HAZEL J TR 2034 OLMSTEAD DR WOODSTOCK IL 60098	03-47-24-W1-05500.1330 6897 ESTERO BLVD 133 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 133 OR 1765 PG 2993	34
GREEN LINDA 6897 ESTERO BLVD UNIT 134 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.1340 6897 ESTERO BLVD 134 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 134 OR 1765 PG 2993	34
MILLER HARRY R & DAWN 19861 COUNTY RD 272 MEMPHIS MO 63555	03-47-24-W1-05500.1350 6897 ESTERO BLVD 135 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 135 OR 1765 PG 2993	34
COSTELLO KEVIN M & 461 EAST ST WESTWOOD MA 2090	03-47-24-W1-05500.1360 6897 ESTERO BLVD 136 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 136 OR 1765 PG 2993	34
LALIMA KAECKER ROSALIE TR 1313 42ND ST BROOKLYN NY 11219	03-47-24-W1-05500.1410 6897 ESTERO BLVD 141 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 141 OR 1765 PG 2993	34
BULA JAMES & NANCY LEE 15 PERCHERON RD MANALAPAN NJ 7726	03-47-24-W1-05500.1420 6897 ESTERO BLVD 142 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 142 OR 1765 PG 2993	34
EVANS NEIL & JENNIFER 11434 SOUTH SAWYER CHICAGO IL 60655	03-47-24-W1-05500.1430 6897 ESTERO BLVD 143 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 143 OR 1765 PG 2993	34
TANGNEY BERNARD P TR 6897 ESTERO BLVD #144 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.1440 6897 ESTERO BLVD 144 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH V UNIT 144	34
JOHNSON STEVEN L + BEVERLY J 1510 HABERSHAM GATE DR CUMMING GA 30041	03-47-24-W1-05500.1450 6897 ESTERO BLVD 145 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 145 OR 1765 PG 2993	34

POLLOCK PAMELA + 6897 ESTERO BLVD #146 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.1460 6897 ESTERO BLVD 146 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 146 OR 1765 PG 2993	34
PALL JANINE M TR 42578 N ADDISON LN ANTIOCH IL 60002	03-47-24-W1-05500.1510 6897 ESTERO BLVD 151 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 151 OR 1765 PG 2993	34
ALVAREZ HERMAN & CLARA 13 COBB CT HUNTINGTON NY 11743	03-47-24-W1-05500.1520 6897 ESTERO BLVD 152 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 152 OR 1765 PG 2993	34
ZOCOLO LORI A 1617 MAPLE ROAD CLEVELAND OH 44121	03-47-24-W1-05500.1530 6897 ESTERO BLVD 153 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 153 OR 1765 PG 2993	34
CROFTS WILLIAM T + 1308 N AUDUBON RD INDIANAPOLIS IN 46219	03-47-24-W1-05500.1540 6897 ESTERO BLVD 154 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 154 OR 1765 PG 2993	34
SLACK JERALD D TR 6897 ESTERO BLVD #155 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.1550 6897 ESTERO BLVD 155 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 155 OR 1765 PG 2993	34
ALLEN TERRY W & JULIE M 6897 ESTERO BLVD #156 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.1560 6897 ESTERO BLVD 156 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 156 OR 1765 PG 2993	34
RAHRIG RANDALL L TR 8926 SW 85TH LOOP OCALA FL 34481	03-47-24-W1-05500.1610 6897 ESTERO BLVD 161 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 161 OR 1765 PG 2993	34
COSTELLO JOHN F + 6897 ESTERO BLVD #162 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.1620 6897 ESTERO BLVD 162 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 162 OR 1765 PG 2993	34
DAVID ANDERSON TRUST + 41787 N LOTUS AVE ANTIOCH IL 60002	03-47-24-W1-05500.1630 6897 ESTERO BLVD 163 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 163 OR 1765 PG 2993	34
MACDONNELL FREDERICK M TR 85 ACADEMY ST BRAINTREE MA 2184	03-47-24-W1-05500.1640 6897 ESTERO BLVD 164 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 164 OR 1765 PG 2993	34
DITROIA RAYMOND & NANCY + 8 OLIVER ST SALEM MA 1970	03-47-24-W1-05500.1650 6897 ESTERO BLVD 165 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 165 OR 1765 PG 2993	34

YZAGUIRRE CYNTHIA O PO BOX 5307 IMMOKALEE FL 34143	03-47-24-W1-05500.1660 6897 ESTERO BLVD 166 FORT MYERS BEACH 33931	ESTERO COVE PH V UNIT 166 OR 1765 PG 2993	34
TIMOTHY M FARRELL TRUST + 2813 STONEY CREEK DR ELGIN IL 60124	03-47-24-W1-05500.2110 6899 ESTERO BLVD 211 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2293 UNIT 211	35
DUCKSTEIN GEORGE M & LORI L 707 LARUEL ST CLEWISTON FL 33440	03-47-24-W1-05500.2120 6899 ESTERO BLVD 212 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 212	35
PIETKIEWICZ CATHLEEN HURLEY & 6899 ESTERO BLVD #213 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.2130 6899 ESTERO BLVD 213 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 213	35
PETERSON PAUL C & 6899 ESTERO BLVD # 214 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.2140 6899 ESTERO BLVD 214 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 214	35
OREILLY PATRICK & CONSTANCE 10527 S AVERS AVE CHICAGO IL 60655	03-47-24-W1-05500.2150 6899 ESTERO BLVD 215 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 215	35
SCHABERT MICHAEL 20409 S HUNTER DR FRANKFORT IL 60423	03-47-24-W1-05500.2160 6899 ESTERO BLVD 216 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 216	35
RICCI VINCENT III & 1 DIXWELL RD NEW CITY NY 10956	03-47-24-W1-05500.2210 6899 ESTERO BLVD 221 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 221	35
DAVID E BICKES TRUST + PO BOX 300975 WATERFORD MI 48330	03-47-24-W1-05500.2220 6899 ESTERO BLVD 222 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 222	35
RIZZO GUY A 2627 MOUNTAINCREST AVE NIAGARA FALLS ON L2J 4H8 CANADA	03-47-24-W1-05500.2230 6899 ESTERO BLVD 223 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 223	35
LEFORT BRIAN TR 60 HOFFMAN RD ELLINGTON CT 6029	03-47-24-W1-05500.2240 6899 ESTERO BLVD 224 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 224	35
CAREL VIRGINIA A 12165 JASON AVE HASTINGS MN 55033	03-47-24-W1-05500.2250 6899 ESTERO BLVD 225 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 225	35

BARLOW PATRICK & SANDRA 2992 MARCEL ST OTTAWA ON K1V 8H7 CANADA	03-47-24-W1-05500.2260 6899 ESTERO BLVD 226 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 226	35
DEMICK RICHARD L & DEBORAH 3308 COVENTRY CT JOLIET IL 60431	03-47-24-W1-05500.2310 6899 ESTERO BLVD 231 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 231	35
CHANG LORA G 6899 ESTERO BLVD #232 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.2320 6899 ESTERO BLVD 232 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 232	35
COSTA GILBERT W TR 162B PETTEY LANE WESTPORT MA 2790	03-47-24-W1-05500.2330 6899 ESTERO BLVD 233 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 233	35
CASWELL MARK S & LESLIE J 6212 RIVER POINTE DR LOUISVILLE KY 40258	03-47-24-W1-05500.2340 6899 ESTERO BLVD 234 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 234	35
LAGROW WALTER L & 3956 WATERSTONE WAY SPRINGFIELD IL 62711	03-47-24-W1-05500.2350 6899 ESTERO BLVD 235 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 235	35
ENSKAT ELIZABETH TR 6899 ESTERO BLVD #236 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.2360 6899 ESTERO BLVD 236 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 236	35
VINSON GEORGE S L/E 5570 NORTH SHORE DR CLARKLAKE MI 49234	03-47-24-W1-05500.2410 6899 ESTERO BLVD 241 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 241	35
ALVES NORMAN A & NATALIE 6899 ESTERO BLVD #242 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.2420 6899 ESTERO BLVD 242 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 242	35
BURNETT ROBERT & ALICE 52 S 1ST ST SURF CITY NJ 8008	03-47-24-W1-05500.2430 6899 ESTERO BLVD 243 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 243	35
DAVID JOHN GARNEY TRUST + 2S151 KENT RD GLEN ELLYN IL 60137	03-47-24-W1-05500.2440 6899 ESTERO BLVD 244 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 244	35
HARRIS CHARLES M & PAULA D 2525 CRYSTAL DR JOLIET IL 60435	03-47-24-W1-05500.2450 6899 ESTERO BLVD 245 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 245	35

GUIDO VINCENTN A + 1 ASHLEY TER MALVERNE NY 11565	03-47-24-W1-05500.2460 6899 ESTERO BLVD 246 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 246	35
GOSE MANFRED + 50 NEBO RD HAMILTON ON L8W 2E3 CANADA	03-47-24-W1-05500.2510 6899 ESTERO BLVD 251 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 251	35
DEMPSEY DAVID J & 6899 ESTERO BLVD #252 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.2520 6899 ESTERO BLVD 252 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 252	35
MAHONEY JAMES TIMOTHY & 243 WETZEL HOLLOW LN MAURERTOWN VA 22644	03-47-24-W1-05500.2530 6899 ESTERO BLVD 253 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 253	35
SURICK FRANK MICHAEL & 6899 ESTERO BLVD #254 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.2540 6899 ESTERO BLVD 254 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 254	35
RANOUS JAMES S & BARBARA A 3 WEST DRIVE BALLSTON LAKE NY 12019	03-47-24-W1-05500.2550 6899 ESTERO BLVD 255 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 255	35
VENTRONE MARTIN J & KAREN L TR 219 WOODRIDGE DR CRANBERRY TOWNSHIP PA 16066	03-47-24-W1-05500.2560 6899 ESTERO BLVD 256 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 256	35
ALDERTON JUDITH A + 6899 ESTERO BLVD #261 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.2610 6899 ESTERO BLVD 261 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 261	35
KINGSBURY WALLACE G & 6899 ESTERO BLVD #262 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.2620 6899 ESTERO BLVD 262 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 262	35
PRENTIS STEPHEN J & JOANN 229 M ST SOUTH BOSTON MA 2127	03-47-24-W1-05500.2630 6899 ESTERO BLVD 263 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 263	35
WILLIAM JAMES GROUP LLC 12027 IVA ST GRETN A NE 68028	03-47-24-W1-05500.2640 6899 ESTERO BLVD 264 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 264	35
SALLO ANTHONY A + 309 W SAWISSVALE AVE PITTSBURGH PA 15218	03-47-24-W1-05500.2650 6899 ESTERO BLVD 265 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 265	35

KRUK VOLODYMYR & 406 VAUGHN CIR AURORA IL 60502	03-47-24-W1-05500.2660 6899 ESTERO BLVD 266 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 UNIT 266	35
WILLIAMS ROBERT L & DIANE 866 TULIP LN NAPERVILLE IL 60540	03-47-24-W1-05500.4110 6893 ESTERO BLVD 411 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 411	36
STEPHANY CHARLES & RUTH 60 TETON CT LAFAYETTE IN 47905	03-47-24-W1-05500.4120 6893 ESTERO BLVD 412 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 412	36
ENGLEHARDT WILLIAM + 21 GRAHAM AVE WAYNE NJ 7470	03-47-24-W1-05500.4130 6893 ESTERO BLVD 413 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 413	36
TAVE DENNIS & LINDA Y TR 81 KENNARD RD MAHOPAC NY 10541	03-47-24-W1-05500.4140 6893 ESTERO BLVD 414 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 414	36
RENNA ANTHONY & SHARON A 6893 ESTERO BLVD #415 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.4150 6893 ESTERO BLVD 415 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 415	36
INTERRANTE SAM I 6893 ESTERO BLVD UNIT 416 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.4160 6893 ESTERO BLVD 416 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 416	36
DARIN GENE V 6893 ESTERO BLVD # 421 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.4210 6893 ESTERO BLVD 421 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 421	36
PIETRUS TINA M + 6893 ESTERO BLVD #422 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.4220 6893 ESTERO BLVD 422 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 422	36
WOLF THOMAS H & DEBORAH L N4863 COUNTY ROAD F BONDUEL WI 54107	03-47-24-W1-05500.4230 6893 ESTERO BLVD 423 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 423	36
BOSMAN JOHANNA C + 544 MENZCEL CRESCENT NEWMARKET ON L3X 2P2 CANADA	03-47-24-W1-05500.4240 6893 ESTERO BLVD 424 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 424	36
DAVIS SHAWN R & CHRYSTAL 9675 EL CAMINO LN PLAIN CITY OH 43064	03-47-24-W1-05500.4250 6893 ESTERO BLVD 425 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 425	36

WHITTY THOMAS A & WENDY R 14 TRUMAN DR NORTH EASTON MA 2356	03-47-24-W1-05500.4260 6893 ESTERO BLVD 426 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 426	36
HANNA TIMOTHY R & JOY C TR 13679 WILDFLOWER WAY NE PRIOR LAKE MN 55372	03-47-24-W1-05500.4310 6893 ESTERO BLVD 431 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 431	36
REYNOLDS ROBERT K TR 2600 SONNINGTON DR DUBLIN OH 43016	03-47-24-W1-05500.4320 6893 ESTERO BLVD 432 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 432	36
BARLOW HARRY + 1118 STOKES DR CORNWALL ON K6J 5J5 CANADA	03-47-24-W1-05500.4330 6893 ESTERO BLVD 433 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 433	36
RIZZO GUY 2627 MOUNTAINCREST AVE NIAGARA FALLS ON L2J 4H8 CANADA	03-47-24-W1-05500.4340 6893 ESTERO BLVD 434 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 434	36
ROMAINE JOHN R TR 346 PROSPECT AVE DUMONT NJ 7628	03-47-24-W1-05500.4350 6893 ESTERO BLVD 435 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 435	36
MALATESTINIC NICHOLAS 245 E 87TH ST APT 15F NEW YORK NY 10128	03-47-24-W1-05500.4360 6893 ESTERO BLVD 436 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 436	36
HURLEY THOMAS F II 16 BRENDRIDGE DR EAST AMHERST NY 14051	03-47-24-W1-05500.4410 6893 ESTERO BLVD 441 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 441	36
BROCK MARINA L + 87 CALWELL DR PORT PERRY ON L9L 1T7 CANADA	03-47-24-W1-05500.4420 6893 ESTERO BLVD 442 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 442	36
PINTO ARLANDO & ZULMIRA 59 BLOSSOM DR TOMS RIVER NJ 8753	03-47-24-W1-05500.4430 6893 ESTERO BLVD 443 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 443	36
WERNER CARL R + CYNTHIA K WERNER 2116 HARBORVIEW BLVD LORAIN OH 44052	03-47-24-W1-05500.4440 6893 ESTERO BLVD 444 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 444	36
KENNEDY JOHN A & CARRIE M 6946 GARNER RD NIAGARA FALLS ON L2E 6S5 CANADA	03-47-24-W1-05500.4450 6893 ESTERO BLVD 445 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 445	36

SCHULTZ JOHN G SR & 12872 S BRIAN PL PALOS PARK IL 60464	03-47-24-W1-05500.4460 6893 ESTERO BLVD 446 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 446	36
SCHULTZ JOHN G SR TR 12872 S BRIAN PL PALOS PARK IL 60464	03-47-24-W1-05500.4510 6893 ESTERO BLVD 451 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 451	36
HAWKE JON D & KRISTINE S 905 KIEFFER ST WOOSTER OH 44691	03-47-24-W1-05500.4520 6893 ESTERO BLVD 452 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 452	36
MARTIN KAREN M & JOSEPH T 8601 MORRIS RD HILLIARD OH 43026	03-47-24-W1-05500.4530 6893 ESTERO BLVD 453 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 453	36
CECCARELLI GLORIA + 2958 WILSON LN GLENVIEW IL 60026	03-47-24-W1-05500.4540 6893 ESTERO BLVD 454 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 454	36
HURLEY THOMAS F II 16 BRENDRIDGE DR EAST AMHERST NY 14051	03-47-24-W1-05500.4550 6893 ESTERO BLVD 455 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 455	36
BOLE GARRY L & CHERYL E 8180 RIVER BAY DR E INDIANAPOLIS IN 46240	03-47-24-W1-05500.4560 6893 ESTERO BLVD 456 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 456	36
DUBICKI DIANNE M 3759 BENNETT ST DEARBORN MI 48124	03-47-24-W1-05500.4610 6893 ESTERO BLVD 461 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 461	36
STEIER SANDRA J TR #532 AT LEXINGTON SQUARE 400 W BUTTERFIELD RD ELMHURST IL 60126	03-47-24-W1-05500.4620 6893 ESTERO BLVD 462 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 462	36
SHAFFER JAMES L TR 6893 ESTERO BLVD #463 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.4630 6893 ESTERO BLVD 463 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 463	36
MICCO ROBERT C 399 BARTZ RD VALPARAISO IN 46383	03-47-24-W1-05500.4640 6893 ESTERO BLVD 464 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 464	36
MUNIZ EDUARDO & 10265 SW 93RD TER MIAMI FL 33176	03-47-24-W1-05500.4650 6893 ESTERO BLVD 465 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 465	36

SPIESS GWEN NADINE TR 4606 LAKESHORE ROAD FORT GRATIOT MI 48059	03-47-24-W1-05500.4660 6893 ESTERO BLVD 466 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-II UNIT 466	36
ARNDT MICHAEL J & DENISE C 3385 GRANDVIEW CT SHELBY TWP MI 48316	03-47-24-W1-05500.5110 6895 ESTERO BLVD 511 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 511	37
NICOTRA JOSEPH & NANCY E TR 6895 ESTERO BLVD #512 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.5120 6895 ESTERO BLVD 512 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 512	37
LALIMA KAECKER ROSALIE TR 1313 42ND ST BROOKLYN NY 11219	03-47-24-W1-05500.5130 6895 ESTERO BLVD 513 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 513	37
SCHULTZ KEITH & BRENDA + 1703 WAMPLERS LAKE RD BROOKLYN MI 49230	03-47-24-W1-05500.5140 6895 ESTERO BLVD 514 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 514	37
BRIER KENNETH LEO TR 14870 CURB BIT LANE COLORADO SPRINGS CO 80921	03-47-24-W1-05500.5150 6895 ESTERO BLVD 515 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 515	37
DALZIEL SANDRA F 6895 ESTERO BLVD FORT MYERS BEACH FL 33931	03-47-24-W1-05500.5160 6895 ESTERO BLVD 516 FORT MYERS BEACH 33931	ESTERO COVE OR 1756 PG 2993 PH-III UNIT 516	37
DONNIE M SNOW TRUST + 2980 SNOW RD BURLINGTON KY 41005	03-47-24-W1-05500.5210 6895 ESTERO BLVD 521 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 521	37
PETERSON DEAN K & SANDRA L 6895 ESTERO BLVD #522 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.5220 6895 ESTERO BLVD 522 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 522	37
FABER STEVEN GLEN & N10436 WATER ST RD LOMIRA WI 53048	03-47-24-W1-05500.5230 6895 ESTERO BLVD 523 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 523	37
BARBARA J SNOW TRUST + 2980 SNOW RD BURLINGTON KY 41005	03-47-24-W1-05500.5240 6895 ESTERO BLVD 524 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 524	37
LOWNEY MARK P SR + 66 CONVERSE RD MARION MA 2738	03-47-24-W1-05500.5250 6895 ESTERO BLVD 525 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 525	37

REXHEPI REXHEP & ZIFE + 1347 JAMESWAY FORT ATKINSON WI 53538	03-47-24-W1-05500.5260 6895 ESTERO BLVD 526 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 526	37
MASCARO PETER & LAURA TR 7019 JOANN CIR NIAGARA FALLS NY 14304	03-47-24-W1-05500.5310 6895 ESTERO BLVD 531 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 531	37
WIERTEL JAMES MARK & 3012 BEAVER DAM DR MONROE NC 28110	03-47-24-W1-05500.5320 6895 ESTERO BLVD 532 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 532	37
KNICKLE JAMES G & ELLEN A 6895 ESTERO BLVD # 533 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.5330 6895 ESTERO BLVD 533 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 533	37
KARAGEORGIS ATHANASIOS KONSTAN 801 FOREST PINE CT SENECA SC 29672	03-47-24-W1-05500.5340 6895 ESTERO BLVD 534 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 534	37
KAECKER R J & 6895 ESTERO BLVD #535 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.5350 6895 ESTERO BLVD 535 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 535	37
POLKA JOHN J JR & JULIE A 6920 SUNNYDALE DR NIAGARA FALLS NY 14304	03-47-24-W1-05500.5360 6895 ESTERO BLVD 536 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 536	37
SILVA ROY & SUSAN 24 BRAYTON RD SMITHFIELD RI 2917	03-47-24-W1-05500.5410 6895 ESTERO BLVD 541 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 541	37
HERMAN KATHLEEN A L/E 550 HALL RD ELMA NY 14059	03-47-24-W1-05500.5420 6895 ESTERO BLVD 542 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 542	37
BRUCKNER KATHERINE 6895 ESTERO BLVD #543 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.5430 6895 ESTERO BLVD 543 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 543	37
BOOKMAN SUSAN J + 51 COOSEBERRY HILL WETHERSFIELD CT 6109	03-47-24-W1-05500.5440 6895 ESTERO BLVD 544 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 544	37
HARTER JOHANN TR JOHN F HARTER 8345 W MADISON CT NILES IL 60714	03-47-24-W1-05500.5450 6895 ESTERO BLVD 545 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 545	37

GRIFFIN DANIEL J & 3914 W 102ND PL CHICAGO IL 60655	03-47-24-W1-05500.5460 6895 ESTERO BLVD 546 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 546	37
ALEXANDER ANNILE R & JEAN M 58 CLAIRE DR BRIDGEWATER NJ 8807	03-47-24-W1-05500.5510 6895 ESTERO BLVD 551 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 551	37
PEDERSEN LINDA M + PO BOX 99543 SEATTLE WA 98139	03-47-24-W1-05500.5520 6895 ESTERO BLVD 552 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 552	37
GRICUS ROBERT W & KAREN L TR 5746 S MAYFIELD AVE CHICAGO IL 60638	03-47-24-W1-05500.5530 6895 ESTERO BLVD 553 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 553	37
O'FARRELL MARGARET E TR 6895 ESTERO BLVD #554 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.5540 6895 ESTERO BLVD 554 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 554	37
OBERMEIER MAUREEN 209 N LOUISIANA AVE MICHIGAN CITY IN 46360	03-47-24-W1-05500.5550 6895 ESTERO BLVD 555 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 555	37
BERTHOLET KELLY 2801 BERTHOLET BLVD STE 101 VALPARAISO IN 46383	03-47-24-W1-05500.5560 6895 ESTERO BLVD 556 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 556	37
BARTOLUCCI MASSIMO & INA L/E 43581 NAVES CT CLINTON TWP MI 48038	03-47-24-W1-05500.5610 6895 ESTERO BLVD 561 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 561	37
BOBAY ANDREW V & 7879 SUDELEY CT WESTERVILLE OH 43081	03-47-24-W1-05500.5620 6895 ESTERO BLVD 562 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 562	37
BISIGNANO DOMINIC J + 6895 ESTERO BLVD #563 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.5630 6895 ESTERO BLVD 563 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 563	37
REXHEPI BURIM 1347 JAMESWAY FORT ATKINSON WI 53538	03-47-24-W1-05500.5640 6895 ESTERO BLVD 564 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 564	37
LUERS BERND-RUDIGER & 8621 77TH AVE GLENDALE NY 11385	03-47-24-W1-05500.5650 6895 ESTERO BLVD 565 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 565	37

PUFFER TOM & BARBARA W TR 6895 ESTERO BLVD # 566 FORT MYERS BEACH FL 33931	03-47-24-W1-05500.5660 6895 ESTERO BLVD 566 FORT MYERS BEACH 33931	ESTERO COVE OR 1765 PG 2993 PH-III UNIT 566	37
TOMLANOVICH MICHAEL + 575 S WATER ST MARINE CITY MI 48039	03-47-24-W1-06800.1010 6661 ESTERO BLVD 101 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH CONDO ONE OR 2526 PG 2635 UNIT 101	38
MCGRAVEY VINCENT J TR 13 MT AIRY CT ORCHARD PARK NY 14127	03-47-24-W1-06800.1020 6661 ESTERO BLVD 102 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH CONDO ONE OR 2526 PG 2635 UNIT 102	38
LEONARD RHONDA LS + 3387 WATER ST MUSCATINE IA 52761	03-47-24-W1-06800.1030 6661 ESTERO BLVD 103 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH CONDO ONE OR 2526 PG 2635 UNIT 103	38
SCHAFER TANN R & 1739 WARMINGTON CT BALLWIN MO 63021	03-47-24-W1-06901.1010 22748 ISLAND PINES WAY 101 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 101	39
LALIME JANE E TR 4 EDINBURGH DR NASHUA NH 3062	03-47-24-W1-06901.1020 22748 ISLAND PINES WAY 102 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 102	39
MUSTONE ANTONIO L & 1 WINTERBERRY LN N NORTH READING MA 1864	03-47-24-W1-06901.1030 22748 ISLAND PINES WAY 103 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 103	39
STANKOV GEORGE S & 56434 SHOREBROOK CT UTICA MI 48316	03-47-24-W1-06901.2010 22748 ISLAND PINES WAY 201 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 201	39
HAWLEY KEVIN & AIMEE 2371 BLUESTONE DR FINDLAY OH 45840	03-47-24-W1-06901.2020 22748 ISLAND PINES WAY 202 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 202	39
MADALENO CONRAD G & 9780 ALHAMBRA LN BONITA SPRINGS FL 34135	03-47-24-W1-06901.2030 22748 ISLAND PINES WAY 203 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 203	39
PRYZBEK MICHAEL JOSEPH RR3 10 FIRELANE 2A NIAGARA ON THE LAKE ON LOZ 1J0 CANADA	03-47-24-W1-06901.3010 22748 ISLAND PINES WAY 301 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 301	39
WRIGHT DONALD E + GAYLE M 1324 S SHORE DR ERIE PA 16505	03-47-24-W1-06901.3020 22748 ISLAND PINES WAY 302 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 302	39

OCONNOR JANE & JOSEPH 5415 PARKSIDE LANSING MI 48917	03-47-24-W1-06901.3030 22748 ISLAND PINES WAY 303 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 303	39
VERDIGLIONE ROBERT J + 21457 SHERIDAN RUN ESTERO FL 33928	03-47-24-W1-06901.4010 22748 ISLAND PINES WAY 401 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 401	39
CRNJAK DANIEL THOMAS TR 10734 S MAPLEWOOD AVE CHICAGO IL 60655	03-47-24-W1-06901.4020 22748 ISLAND PINES WAY 402 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 402	39
PLOWCHA CAROLE R + 22748 ISLAND PINES WAY #403 FORT MYERS BEACH FL 33931	03-47-24-W1-06901.4030 22748 ISLAND PINES WAY 403 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 403	39
SCHWEIZER EBERHARD TR 1099 PROSPECT AV MOUNTAINSIDE NJ 7092	03-47-24-W1-06901.5010 22748 ISLAND PINES WAY 501 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 501	39
WAGNER KARL H + 32 HILLSIDE AVE FLORHAM PARK NJ 7932	03-47-24-W1-06901.5020 22748 ISLAND PINES WAY 502 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 502	39
TOMPOROWSKI SANDRA A TR 22748 ISLAND PINES WAY #503 FORT MYERS BEACH FL 33931	03-47-24-W1-06901.5030 22748 ISLAND PINES WAY 503 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PHASE III BLDG 1 UNIT 503	39
PICKERT JOHN A & MARGARET A TR 3800 W 109TH PL CHICAGO IL 60655	03-47-24-W1-06902.1010 22736 ISLAND PINES WAY 101 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 101	40
SPRING ANDREW J & BERNICE A 22736 ISLAND PINES WAY #102 FORT MYERS BEACH FL 33931	03-47-24-W1-06902.1020 22736 ISLAND PINES WAY 102 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 102	40
WOOD PAUL C & JUDITH A 11 WATERSIDE PL PITTSBURGH PA 15222	03-47-24-W1-06902.1030 22736 ISLAND PINES WAY 103 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 103	40
LEOTTA ROSARIO + 22736 ISLAND PINES WAY #201 FORT MYERS BEACH FL 33931	03-47-24-W1-06902.2010 22736 ISLAND PINES WAY 201 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 201	40
PENSA FRANK + 6 NOBLE CT LONG VALLEY NJ 7853	03-47-24-W1-06902.2020 22736 ISLAND PINES WAY 202 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 202	40

PERISIN JAMES J & KIMBERLY 22160 CLARY SAGE DR FRANKFORT IL 60423	03-47-24-W1-06902.2030 22736 ISLAND PINES WAY 203 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 203	40
MCALLISTER THOMAS D 3752 CROFTON CT FORT MYERS FL 33916	03-47-24-W1-06902.3010 22736 ISLAND PINES WAY 301 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 301	40
KELLER JILL B 308 CHIP SHOT COVE OWENSBORO KY 42303	03-47-24-W1-06902.3020 22736 ISLAND PINES WAY 302 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 302	40
HOBBS BEVERLY P TR 1310 OAK PARK RD COUNCIL BLUFFS IA 51503	03-47-24-W1-06902.3030 22736 ISLAND PINES WAY 303 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 303	40
MURPHY KEVIN J & MARGARET M 5450 W 108TH PL OAK LAWN IL 60453	03-47-24-W1-06902.4010 22736 ISLAND PINES WAY 401 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 401	40
CIRCELLI S MIKE + 14 UPLANDS DR LONDON ON N5X 3V6 CANADA	03-47-24-W1-06902.4020 22736 ISLAND PINES WAY 402 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 402	40
STOKES KARLEY R 6895 ESTERO BLVD FORT MYERS BEACH FL 33931	03-47-24-W1-06902.4030 22736 ISLAND PINES WAY 403 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 403	40
DUGAN DANIEL F JR TR 22736 ISLAND PINES WAY #501 FORT MYERS BEACH FL 33931	03-47-24-W1-06902.5010 22736 ISLAND PINES WAY 501 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 501	40
CIRCELLI SALVATORE & ANNA + 14 UPLANDS DR LONDON ON N5X 3V6 CANADA	03-47-24-W1-06902.5020 22736 ISLAND PINES WAY 502 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 502	40
LUGINBUHL JOANN 5 BENJAMIN DR ELLINGTON CT 6029	03-47-24-W1-06902.5030 22736 ISLAND PINES WAY 503 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 PH III-B BLDG 2 UNIT 503	40
PARKER PETER LAWRENCE 25 JOYCE BLVD STOUFFVILLE ON L4A 4N4 CANADA	03-47-24-W1-06903.1010 22700 ISLAND PINES WAY 101 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 101	41
CHURCHILL PROPERTY SERVICES NEIL HASTIE + KEELY HASTIE 8711 BELLE MEADE DRIVE FORT MYERS FL 33908	03-47-24-W1-06903.1020 22700 ISLAND PINES WAY 102 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 102	41

22604 ISLAND PINE WAY LLC 12913 ARBOR CT PALOS PARK IL 60464	03-47-24-W1-06903.1030 22700 ISLAND PINES WAY 103 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 103	41
KAZIK JOHN S TR 19 EASTINGS WAY BARRINGTON IL 60010	03-47-24-W1-06903.2010 22700 ISLAND PINES WAY 201 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 201	41
MICHAEL GIOIA TRUST 22700 ISLAND PINES WAY #202 FORT MYERS BEACH FL 33931	03-47-24-W1-06903.2020 22700 ISLAND PINES WAY 202 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 202	41
MARTZ JUDY 2327 FLAGSTONE DR FLUSHING MI 48433	03-47-24-W1-06903.2030 22700 ISLAND PINES WAY 203 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 203	41
TARDUCCI MARNA M 39000 COUNTRY CLUB DR FARMINGTON HILLS MI 48331	03-47-24-W1-06903.3010 22700 ISLAND PINES WAY 301 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 301	41
HOOT PAULINE V TR 6811 WHITEFIELD ST DEARBORN HEIGHTS MI 48127	03-47-24-W1-06903.3020 22700 ISLAND PINES WAY 302 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 302	41
SAUDER DANNY L TR 3028 STATE ROUTE 430 MANSFIELD OH 44903	03-47-24-W1-06903.3030 22700 ISLAND PINES WAY 303 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 303	41
MCANDREWS ELEANOR R 3603 MCROBERTS RD # 202 PITTSBURGH PA 15234	03-47-24-W1-06903.4010 22700 ISLAND PINES WAY 401 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 401	41
MCMULLEN LINDA J TR 8081 CAMPBELL AVE HALE MI 48739	03-47-24-W1-06903.4020 22700 ISLAND PINES WAY 402 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 402	41
KOPP KEVIN T & SUSAN J 252 OAK KNOLL DR CHIPPEWA FALLS WI 54729	03-47-24-W1-06903.4030 22700 ISLAND PINES WAY 403 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 403	41
OHERN DIANE J TR 22700 ISLAND PINES WAY #501 FORT MYERS BEACH FL 33931	03-47-24-W1-06903.5010 22700 ISLAND PINES WAY 501 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 501	41
SICILIANO LOUIS E & BETTINA TR 824 BRYANT AVE NEW HYDE PARK NY 11040	03-47-24-W1-06903.5020 22700 ISLAND PINES WAY 502 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 502	41

PETERNEL JACOB R + 3345 WOODWIND DR JEFFERSON HILLS PA 15025	03-47-24-W1-06903.5030 22700 ISLAND PINES WAY 503 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR BK 2576 PG 1724 PH III- C BLDG 3 UNIT 503	41
BISHOP NANCY L L/E 6300 TALLMADGE RD ROOTSTOWN OH 44272	03-47-24-W1-06904.0101 22724 ISLAND PINES WAY 101 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 101	42
SMACIARZ DAVID J & GINA M 22724 ISLAND PINES WAY #102 MYERS BEACH FL 33931	FORT 03-47-24-W1-06904.0102 22724 ISLAND PINES WAY 102 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 102	42
HAJDUK FRANCOIS & 52 COUNTRY SQUIRE RD PALOS HEIGHTS IL 60463	03-47-24-W1-06904.0103 22724 ISLAND PINES WAY 103 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 103	42
NIKSIC JEREMY & KATHLEEN 9750 S CENTRAL PARK EVERGREEN PARK IL 60805	03-47-24-W1-06904.0201 22724 ISLAND PINES WAY 201 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 201	42
MADDEN FRANK E & JEANETTE A 90 TIMBERLINE DR LEMONT IL 60439	03-47-24-W1-06904.0202 22724 ISLAND PINES WAY 202 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 202	42
FULKERSON KIMBERLY S 6579 EAST HARROLD RD CHURUBUSCO IN 46723	03-47-24-W1-06904.0203 22724 ISLAND PINES WAY 203 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 203	42
O'ROURKE MICHAEL F TR 15 WILLOW DR CHARLESTON MO 63834	03-47-24-W1-06904.0301 22724 ISLAND PINES WAY 301 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 301	42
JULIANO ALBERT G & ANGELA C 1805 SLITTING MILL RD GLEN MILLS PA 19342	03-47-24-W1-06904.0302 22724 ISLAND PINES WAY 302 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 302	42
FAHRNER LEE M & MARY H 11664 LOMBARDY COURT PINCKNEY MI 48169	03-47-24-W1-06904.0303 22724 ISLAND PINES WAY 303 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 303	42
HOLMES SHAWN R & LAURA E 4 CALLENDER RD ROAMING SHORES OH 44085	03-47-24-W1-06904.0401 22724 ISLAND PINES WAY 401 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 401	42
SHEARER NANCY L TR 3604 TUDOR DR BUTLER PA 16001	03-47-24-W1-06904.0402 22724 ISLAND PINES WAY 402 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 402	42

BEECHAM ROBERT J & LINDA R PO BOX 563 TREMONT IL 61568	03-47-24-W1-06904.0403 22724 ISLAND PINES WAY 403 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 403	42
MATH STEVEN P 3113 12TH AVE MOLINE IL 61265	03-47-24-W1-06904.0501 22724 ISLAND PINES WAY 501 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 501	42
EMERY STEPHEN F & JACKIE L 22724 ISLAND PINES WAY #502 FORT MYERS BEACH FL 33931	03-47-24-W1-06904.0502 22724 ISLAND PINES WAY 502 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 502	42
URRUTIA DIEGO 13 SOUTHLAND DR HILLSBOROUGH NJ 8844	03-47-24-W1-06904.0503 22724 ISLAND PINES WAY 503 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 4 UNIT 503	42
BAUER ERIN K TR 833 W 37TH ST CHICAGO IL 60609	03-47-24-W1-06905.0101 22712 ISLAND PINES WAY 101 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 101	43
CROSS RUBIA JUCIANE & 1119 STATE ROUTE 707 ROCKFORD OH 45882	03-47-24-W1-06905.0102 22712 ISLAND PINES WAY 102 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 102	43
KERR THOMAS & DONNA + 17004 ODELL AVE TINLEY PARK IL 60477	03-47-24-W1-06905.0103 22712 ISLAND PINES WAY 103 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 103	43
WARBURTON ROBERT H & GAIL L 10 W FARMINGTON ST FENWICK ISLAND DE 19944	03-47-24-W1-06905.0201 22712 ISLAND PINES WAY 201 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 201	43
WALERY LOIS T TR 13350 S OAK HILLS PKWY PALOS HEIGHTS IL 60463	03-47-24-W1-06905.0202 22712 ISLAND PINES WAY 202 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 202	43
SPALLETTA MARY ROSE 22712 ISLAND PINES WAY # 203 FORT MYERS BEACH FL 33931	03-47-24-W1-06905.0203 22712 ISLAND PINES WAY 203 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 203	43
POPONICK JANET M 601 DADE LN RICHMOND HEIGHTS OH 44143	03-47-24-W1-06905.0301 22712 ISLAND PINES WAY 301 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 301	43
ANTON BRIAN J & SHARON C 5630 GRIFFITH DR BRIGHTON MI 48116	03-47-24-W1-06905.0302 22712 ISLAND PINES WAY 302 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 302	43

JOHNSON KEITH E & CORINNA M 6050 LOCHMORE DR COMMERCE TOWNSHIP MI 48382	03-47-24-W1-06905.0303 22712 ISLAND PINES WAY 303 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 303	43
ROSLAN DALE R & 22712 ISLAND PINES WAY #401 FORT MYERS BEACH FL 33931	03-47-24-W1-06905.0401 22712 ISLAND PINES WAY 401 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 401	43
GRAF GENE A & MARY J L/E 8220 MILL CREEK DRIVE MADISON WI 53719	03-47-24-W1-06905.0402 22712 ISLAND PINES WAY 402 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 402	43
CONNOR WILLIAM 22712 ISLAND PINES WAY #403 FORT MYERS BEACH FL 33931	03-47-24-W1-06905.0403 22712 ISLAND PINES WAY 403 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 403	43
MPU SOUTHBOUND LLC 6750 S LOOMIS RD DEWITT MI 48820	03-47-24-W1-06905.0501 22712 ISLAND PINES WAY 501 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 501	43
MCGUIRE THOMAS F & KAREN M 22712 ISLAND PINES WAY #502 FORT MYERS BEACH FL 33931	03-47-24-W1-06905.0502 22712 ISLAND PINES WAY 502 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 502	43
KNIGHTLY JAMES PATRICK TR 3720 W 111TH ST #403 CHICAGO IL 60655	03-47-24-W1-06905.0503 22712 ISLAND PINES WAY 503 FORT MYERS BEACH 33931	CAPTAIN'S BAY SOUTH CONDO DESC OR 2576 PG 1724 BLDG 5 UNIT 503	43
RUTLEDGE RUTH & 712 S TOWAMENEIN AVE LANSDALE PA 19446	03-47-24-W1-07300.1010 6691 ESTERO BLVD 101 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 + OR2848/4124 UNIT 101	44
WENDLANDT DAVID C & 29907 NORTH PARK CT NEW BOSTON MI 48164	03-47-24-W1-07300.1020 6691 ESTERO BLVD 102 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 + OR2848/4124 UNIT 102	44
CHRISTOFOROU ANDREAS & 376 WHITNEY AVE HAMILTON ON L8S 2H4 CANADA	03-47-24-W1-07300.1030 6691 ESTERO BLVD 103 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 + OR2848/4124 UNIT 103	44
STEFANOWSKI RICK & POLA 5 KEW GARDENS RICHMON HILL ON L4B 1R4 CANADA	03-47-24-W1-07300.2010 6691 ESTERO BLVD 201 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 201	44
MCDERMOTT LAURA K + PLASTICSLAAN 1 BERGEN OP ZOOM 4612 PX NETHERLANDS	03-47-24-W1-07300.2020 6691 ESTERO BLVD 202 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 202	44

SIMON JOHN C & LINDA 7911 REDONDO LN ORLAND PARK IL 60462	03-47-24-W1-07300.2030 6691 ESTERO BLVD 203 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 203	44
BURKE NEIL & JAMIE 90 MAYFAIR RD POUGHQUAG NY 12570	03-47-24-W1-07300.3010 6691 ESTERO BLVD 301 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 301	44
DENKHAUS DAVID G & DIANE L TR 7879 BRIGHTON RD BRIGHTON MI 48116	03-47-24-W1-07300.3020 6691 ESTERO BLVD 302 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 302	44
COREA EDWARD V JR & 6691 ESTERO BLVD #303 FORT MYERS BEACH FL 33931	03-47-24-W1-07300.3030 6691 ESTERO BLVD 303 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 303	44
RYAN MICHAEL J TR W11424 READ CEDAR DR LODI WI 53555	03-47-24-W1-07300.4010 6691 ESTERO BLVD 401 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 401	44
HEALY MARILYN 45 S CANTERBURY RD AURORA IL 60506	03-47-24-W1-07300.4020 6691 ESTERO BLVD 402 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 402	44
ROUSE FREDERICK F & ANN T 2380 W HILL DR MADISON WI 53711	03-47-24-W1-07300.4030 6691 ESTERO BLVD 403 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 403	44
DENKHAUS DAVID G & DIANE L TR 7879 BRIGHTON RD BRIGHTON MI 48116	03-47-24-W1-07300.5010 6691 ESTERO BLVD 501 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 501	44
WENDLANDT DAVID C & 29907 NORTH PARK CT NEW BOSTON MI 48164	03-47-24-W1-07300.5020 6691 ESTERO BLVD 502 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 502	44
UNDHJEM KJETIL 295 HAMPTON ST UNIT 204 HAMPTON VIC 3188 AUSTRALIA	03-47-24-W1-07300.5030 6691 ESTERO BLVD 503 FORT MYERS BEACH 33931	CAPTAINS BAY NORTH TWO CONDO OR2814/2503 OR2848/4124 UNIT 503	44



STATE OF FLORIDA
LEE COUNTY PROPERTY APPRAISER



Mailing Address:
P.O. Box 1546
Fort Myers, Florida 33902-1546

Physical Address:
2480 Thompson Street
Fort Myers, Florida 33901-3074

Telephone: (239) 533-6100 -- (866) 673-2868 (From anywhere in continental US/Canada/Florida except 239 area code)

Facsimile: (239) 533-6160 -- **Website:** www.leepa.org

VARIANCE REPORT MAP

Date: 12/9/2022 12:00:00 AM

Buffer: 500

Affected: 495

SUBJECT PARCEL:

OWNER NAME AND ADDRESS

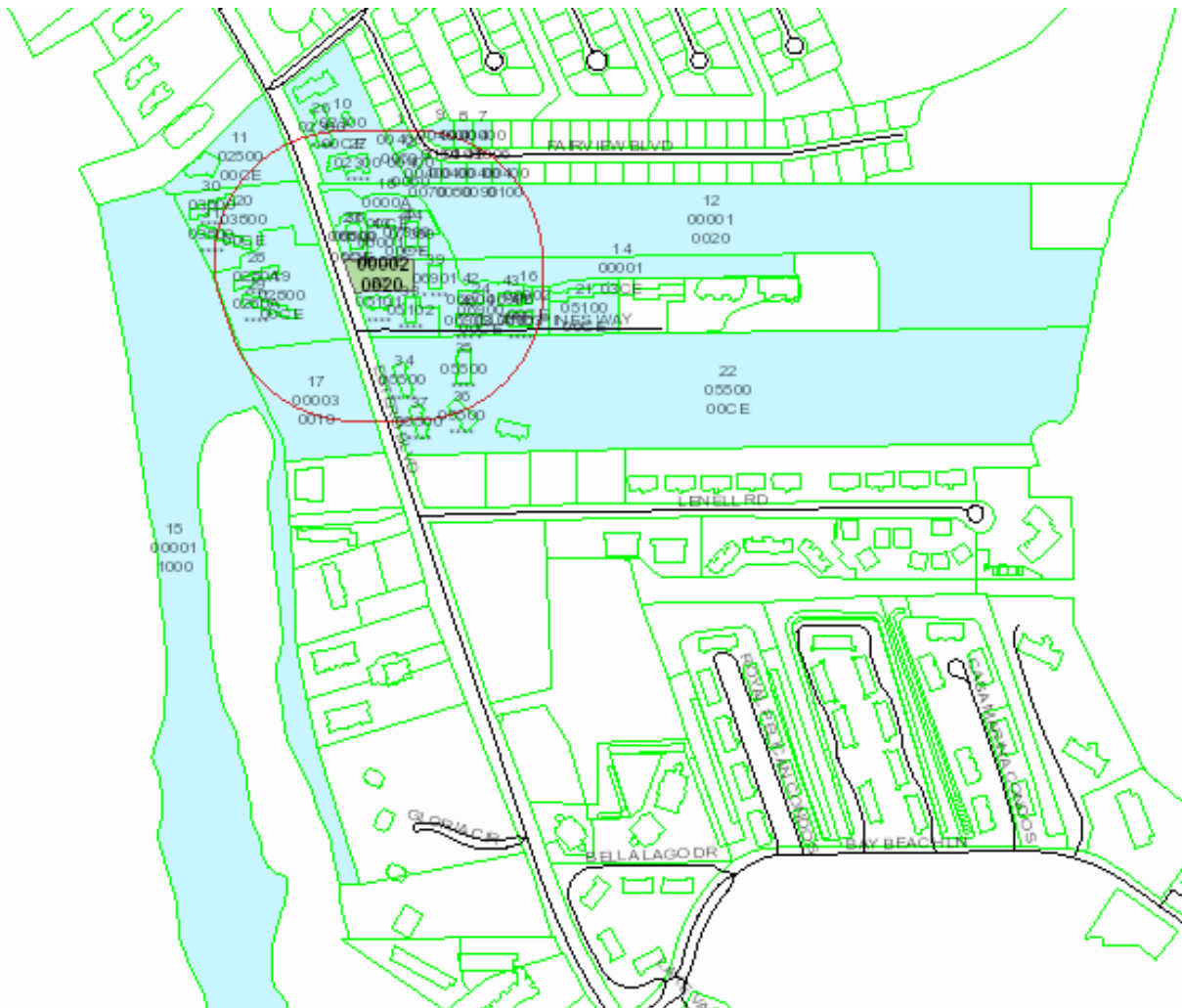
LEMONS UNLIMITED LLC
7205 ESTERO BLVD STE 702
FORT MYERS BEACH FL 33931

STRAP & LOCATION

03-47-24-W1-00002.0020
6875 ESTERO BLVD
FORT MYERS BEACH 33931

LEGAL DESCRIPTION

BEG ON E R/W LI SR 865 300 FT S
OF NLY LI GOVT LOT 1 TH S ALG
ELY R/W LI SD SR



Prepared by and return to:
John D. Spear, Esq.

Henderson, Franklin, Starnes & Holt, P.A. (B)
3451 Bonita Bay Blvd. Suite 206
Bonita Springs, FL 34134
239-344-1100
File Number: JDS 39988-1

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Warranty Deed

This Warranty Deed made this 21st day of January, 2022 between Piyush Bhatnagar whose post office address is 1675 Flowers Crossing Dr., Grand Rapids, MI 49525, grantor, and LEMOS UNLIMITED LLC, a Florida limited liability company whose post office address is 7205 Estero Blvd., Suite 702, Fort Myers Beach, FL 33931, grantee:

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Lee County, Florida to-wit:

Parcel 1:

A tract or parcel of land being a part of Government Lot 1, Section 3, Township 47 South, Range 24 East, Estero Island, Lee County, Florida and described as follows:

Beginning at a concrete monument in the Easterly right of way line of Estero Boulevard (80 feet wide) known as State Road 865, which point is 300.0 feet, measured at right angles, South of the North line of said Government Lot 1; thence run South 17 degrees 51' 30" East along said Easterly right of way line of Estero Boulevard for 120.00 feet; thence run East, parallel to the North line of said Government Lot 1 for 213.20 feet; thence North, at right angles for 114.22 feet; thence West parallel to and 300 feet, measured at right angles, South of the North line of said Government Lot 1 for a distance of 250.0 feet to the Point of Beginning.

AND

Parcel 2:

A tract or parcel of land being a part of Government Lot 1, Section 3, Township 47 South, Range 24 East, Estero Island, Lee County, Florida and described as follows:

Commencing at a concrete monument in the Easterly right of way line of Estero Boulevard (80 feet wide) known as State Road 865, which point is 300.0 feet, measured at right angles, South of the North line of said Government Lot 1; thence run South 17 degrees 51' 30" East along said Easterly right of way of Estero Boulevard for 120.0 feet to the Point of Beginning; thence continue South 17 degrees 51' 30" East 10.0 feet; thence run East, parallel to the North line of said Government Lot 1 for 210.13 feet; thence North at right angles for 9.52 feet; thence West 213.20 feet to the Point of Beginning.

AND

Parcel 3:

A tract or parcel of land being a part of Government Lot 1, Section 3, Township 47 South, Range 24 East, Estero Island, Lee County, Florida and described as follows:

Commencing at a concrete monument in the Easterly right of way line of Estero Boulevard (80 feet wide) known as State Road 865, which point is 300.0 feet, measured at right angles, South of the North line of said Government Lot 1; thence run East, parallel to and 300.0 feet South of the North line of said Government Lot 1 for 250.0 feet to a Point of Beginning; thence continue East 16.5 feet;

thence run South at right angles for 123.74 feet; thence run West at right angles for 16.5 feet; thence run North at right angles for 123.74 feet to the Point of Beginning.

Parcel Identification Number: 03-47-24-W1-00002.0020

Subject to taxes for 2022 and subsequent years; covenants, conditions, restrictions, easements, reservations and limitations of record, if any.

Grantor warrants that at the time of this conveyance, the subject property is not the Grantor's homestead within the meaning set forth in the Constitution of the State of Florida, nor is it contiguous to or a part of homestead property. Grantor's residence and homestead address is in Michigan.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to **December 31, 2021**.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

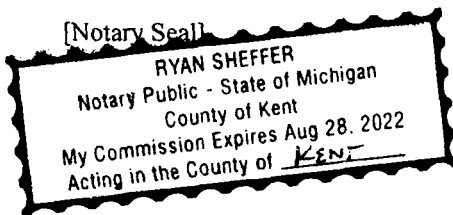
Amanda Anderson
Witness Name: Amanda Anderson

Alicia Hill
Witness Name: Alicia Hill

Piyush Bhatnagar
Piyush Bhatnagar

State of MICHIGAN
County of KENT

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 18 day of January, 2022 by Piyush Bhatnagar, who ☐ is personally known or ☒ has produced a driver's license as identification.



Ryan Sheffer
Notary Public

Printed Name: RYAN SHEFFER

My Commission Expires: AUGUST 28, 2022

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2023-938**

1. Requested Motion:

Meeting Date: February 14, 2023

Approve/Approve with conditions/Deny SEZ 20220104 Texas Hold'em and Squeeze Me Inn Dune Walkover and Boardwalk based on the findings and conclusions with LDC Sec 34-88 Special Exceptions and Sec 34-87 Variances.

Why the action is necessary:

Special Exception and Variance applications are required to be heard by the LPA and a recommendation provided to the Town Council. The meeting is a public hearing where the applicant, staff, and the public may present findings and information.

What the action accomplishes:

The LPA will forward a recommendation on to the Town Council for consideration.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

Texas Hold'em LLC and Squeeze Me Inn LLC have submitted an application for a Special Exception for a dune walkover and boardwalk within the EC zoning district; and an application for a variance from Section 34-652 f.2.c of the LDRs regarding the maximum width of proposed structures in the EC zoning district. The owner's properties are located at 8150 and 8170 Estero Boulevard.

An application for a Special Exception by the same applicants was denied by the Town Council in 2019. Town staff recommended denial of that request and the LPA forwarded a recommendation of approval to the Town Council. The applicants have submitted another application for Special Exception and a variance for the structure width on September 22, 2022. The requested use appears to be similar in nature to the application denied in 2019.

Town staff has reviewed the joint application and it is staff's professional opinion that the applicants have failed to provide sufficient information to determine if they are in compliance with the technical standards of the Town's LDC. Staff has also provided a review of the application materials relevant to the criteria outlined in LDC Sec. 34-88 - Special Exceptions and LDC Sec. 34-652 - Variances. In summary, the request is not consistent with the Town's LDC or relevant Comprehensive Plan policies. Additional details are provided in both the Staff Report and the Sufficiency/Review letter in the packet.

Attachments:

1. Staff Report SEZ_20220103 VAR 20220104 Dune Walkover_LPA
2. 1-Application for public hearing - Shared Walkover 9-13-2022
3. 2 -PH-A Supplement Shared Dune Walkover 9-13-2022
4. 3- Variance Supplement PH-B 9-13-2022
5. Texas Holdem Dune Walkover SE Sufficiency and Review Letter

Financial Impact:

N/A

6. **Alternative Action**

Approve/Deny/Approve with conditions

7. **Staff Recommendations:**

8. **Recommended Approval:**

Steve Poposki, Community Development Director

Date: February 10, 2023

John R Herin Jr, Town Attorney

Date: February 10, 2023

Amy Baker, Town Clerk

Date: February 10, 2023



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception and Variance

CASE NUMBER: SEZ—Special Exception, 20220103 VAR 20220104

CASE NAME: 8150 and 8170 Estero Boulevard
LPA

HEARING DATE: February 14, 2023 at 9:00 AM

**STAFF
RECOMMENDATION:** Denial

**PREPARED/
SUBMITTED BY:** Jason Green AICP, CFM

I. APPLICATION SUMMARY

Applicant/Owner: Texas Hold'em LLC and Squeeze Me Inn, LLC

Request: The applicant is requesting Special Exception to construct a dune walkover and boardwalk within the EC Zoning District. The application also includes a request for a 1 foot variance from 34-652 f.2.c to allow a five feet instead of four feet dune walkover width.

Physical Address: 8150 and 8170 Estero Boulevard

STRAP #: 03-47-24-W3-00300.0190 & 03-47-24-W3-00300.0200

FLU: Recreation

Zoning: Environmentally Critical

Adjacent zoning and land uses:

North:	Estero Boulevard, RS (Single-family) zoning; Low Density FLUM; Single-family dwellings
South:	Critical Wildlife Area; Lagoon; Gulf of Mexico/Beach
East:	Residential Single-family (RS) zoning; Low Density and Environmentally Critical FLUM; Single-family dwellings
West:	Residential Single-family (RS) zoning; Low Density and Environmentally Critical FLUM; Single-family dwellings

II. BACKGROUND AND ANALYSIS

The subject property is located at the southern end of the island, near the intersection of Estero Boulevard and Tarpon Road. The applicant(s) have requested approval of a dune walkover with associated boardwalk within the Environmentally Critical (EC) zoning district. The proposed location of the boardwalk will connect to two single-family lots within the RS zoning district. The applicants are requesting to share access to the boardwalk and dune walkover between 8150 and 8170 Estero Boulevard. A portion of the proposed structures run along shared property lines towards the Gulf of Mexico. The proposed structure turns in a southeastern direction approximately halfway from the terminus of the proposed project. The proposed length is not clear, and dimensions of the proposed structure weren't provided on the applicants' submitted site plan. The end of the dune walkover ends prior to the area labeled on the applicants' plan as dune and sand (it shows the dune walkover ending in an area of buttonwood mangroves)

The application has provided a survey dated 2017, a preliminary site plan showing only the layout of what is labeled as a dune walkover and boardwalk; and narrative supplementing the applications for the special exception and variance request. The applicant has also included the FDEP Consolidated Final Order that found the proposed structure will not adversely impact public health, safety, or welfare. However, those findings are not based on the Town's Special Exception criteria and evaluation process, which the FDEP Consolidated Final Order states the applicant must comply with.

Special Exception Use

The LDC Chapter 34 defines the term special exception use as follows:

Use, special exception means a use or certain specified departures from the regulations of this chapter that may not be appropriate generally or without restriction throughout a zoning district, but which, when controlled as to number, area, location, or relation to the neighborhood, would promote the

public health, safety, welfare, order, comfort, convenience, appearance, or prosperity, and may be permitted, in accordance with all applicable regulations.

The language used in the definition of a Special Exception is a critical component to the LPA and Town Council's consideration of this application, and any other special exception application. The applicant has stated their opinion that the proposed use and structure(s) complies with the Comprehensive Plan and Land Development Code policies and regulations, respectively; and therefore, should be approved. The definition provided in the LDC goes beyond a check list of policies and regulations or technical standards to be met. In staff's opinion it directs the Town to consider the overall impact and promotion of health, safety, and welfare of the general public. The definition clearly states the purpose of the special exception process is to determine if "controlled as to number, area, location, or relation to the neighborhood." If a request promotes these elements, then it may be permitted in accordance with all applicable regulations. However, compliance with the technical regulations in of itself does not confirm compliance with the purpose and intent of the definition elements mentioned above.

A similar application for the same use at the same properties was considered by the Town Council in 2019. During that review, staff recommended denial based on the application materials presented for review. The Town Council determined that the proposed use and structure were not consistent with the Town's Land Development Code and Comprehensive Plan. This current application was submitted September 22nd, 2022, and has been reviewed for sufficiency and compliance with the Land Development Code and Comprehensive Plan.

The applicant states the purpose of the request is to protect the existing dune system while providing access to the beach and gulf from their private property. They provide statements that Mr. Rood is a disabled person by definition of the American Disabilities Act and has difficulties walking and requires mobility and assistance devices including cane, sit-down power scooter, Segway, and wheelchair for access to the public beach.

The applicant's narrative further explains that the dune walkover will be designed to comply with the Town's regulations and "eliminate any impacts to the surrounding natural resources and prevent any negative impacts to the surrounding properties and residents." The applicant has provided responses to each of the Town's LDC Sec. 34-88, items 1-9.

Staff has provided responses to each of those items also, based on our review of the Town's LDC, Comprehensive Plan, in the public record, and the materials submitted by the applicant. Those responses can be found below in the Findings and Conclusions section of this staff report. In summary, the applicant has not provided sufficient or relevant documentation to address the Town's criteria. The application fails to provide details, specifics, or recent data that helps understand what is proposed and how it may or may not have an impact to the public and community. A copy of the

sufficiency and review letter has been provided as part of this public hearing packet. Additionally, the applicant has selected a few policies from the Comprehensive Plan and misapplied or misstated their intent. More detail is provided below.

Findings and Conclusions:

LDC Sec. 34-88 sets forth the required findings and conclusions for the approval of a special exception:

1. *Whether there exist changed or changing condition which make approval of the request appropriate*

The applicant's narrative attempts to identify two justifications, (1) the proposed dune walkover as a necessary use due to the accretion along the shoreline; and (2) the LDC allows dune walkovers so they should be permitted to have one. Both assumptions are incorrect. The first assumption, based on accretion, is why the Special Exception process exists. The intent is to evaluate location, type of construction, environmental and community features that may support or not support the location of a use and structure(s). The simple occurrence of accretion doesn't support the approval of a Special Exception. If anything, the amount, nature, and type of accretion are important factors in deciding placement of a dune walkover or any other structure. Substantial accretion may very well be the reason not to locate a structure in a certain location. The applicant has not provided sufficient documentation of recent changes to the shoreline and subject properties since 2017 and post Ian. Secondly, the assumption that the LDC (and Comprehensive Plan) speak to encouraging dune walkovers is removed from context. The LDC and Comprehensive Plan identify dune walkovers to protect dune systems. The applicant states "homeowners currently traverse this dune system on foot with some difficulty." However, since the proposed structure(s) is for private use between two property owners, the difficult conditions to traverse will remain in place for adjacent property owners. This proposal does not address or resolve that issue; therefore, and does not set forth a comprehensive strategy to address potential dune and vegetation impacts.

2. *Testimony of the applicant*
3. *The recommendation of staff and the local planning agency*
4. *Testimony of the public*
5. *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

The applicant's response to this section provides several incorrect analyses of the Town's Comprehensive Plan.

- i. Future Land Use Element Policy 4-A-6 refers to beach accesses as an essential part of the Town's character. They shall be maintained and expanded whenever possible. The applicant seems to indicate that their private access qualifies

under this policy when all other references to beach access points within the Comprehensive Plan are in reference to publicly owned, maintained, and operated. Generally the policies and data and analysis are referring to the public right-of-way that dead end into the beach where the Town has a history of providing parking and access for the public to the beach. This public realm component is evident in Table 10-1, Table 11-3, Table 14-1, Policy 1-A-2, reference to beach access point as a public amenity on page 4-25, providing additional access for visitors and residents to the beach via additional beach access on page 5-21, Table 5-9 identifying the 46 public beach access points, Policy 5-E-1 stating the use of public funds to provide continued maintenance to beach access points, Table 7-A-5 Parking Spaces at Beach Access Points, pedestrian crossings at beach access points on page 7-A-44, a reference to “the beach accesses” on page 14-2.

- ii. Policies 4-B-8 and 4-B-9 don’t address the applicant’s request. They are simply stating where the recreation category will be located; and what allowable uses are allowed in the wetland category, which the subject property is not, respectively.
- iii. Coastal Management Element Policy 5-D-1-ii refers to the protection of sand dunes. The applicant claims their application directly supports their request yet no plans, documents, or other evidence has been provided other than a narrative that states they intend to protect the dune and natural vegetation.
- iv. Coastal Management Element Policy 6-E-1 requires all new development approved after the adoption of this Plan and for public beach areas within the town at appropriate crossing points require a dune walkover. The applicant has not proposed “new development” other than the construction of a proposed structure. The single-family lots were platted or created prior to adoption of the plan and the upland homes were built years ago. The intent of the policy is to direct new development to identify where and how pedestrians are going to access the beach through their property. The policies intent is clearly to provide direction to projects that have the potential to create substantial foot traffic and to plan for that traffic appropriately. The applicant’s proposal only serves their two properties.

6. *Whether the request meets or exceeds all performance and locational standards for the proposed use*

The applicant’s analysis indicates that their application meets the requirements set forth in LDC Sec. 34-652 f.2. a-g; however, the applicant has provided no documentation showing compliance of any of items a-e, or g. Furthermore, they claim to be compliant with side setbacks of the EC zoning district (25 feet, Table 34-3), yet clearly show a proposed structure on a shared property line with a portion of the proposed structure on each property.

7. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The applicant claims to have provided sufficient evidence and documentation to show proof that the proposed structure will protect, conserve, or preserve environmentally critical areas and natural resources; yet no plans, documents, or other evidence has been provided other than a narrative that demonstrate the project will protect, conserve, or preserve environmentally critical areas and natural resources.

8. *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The applicant claims to have provided sufficient evidence and documentation to show proof that the proposed structure will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property; yet no plans, documents, or other evidence has been provided other than a narrative that demonstrate the project is compatible, and will not cause nuisance or harm to the surrounding natural environment.

9. *Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Town's Land Development Code.*

The only analysis provided by the applicant indicates previous rulings within the FDEP Consolidated Final Order that found that the proposed structure will not adversely impact public health, safety or welfare. However, those findings are not based on the Town's Special Exception criteria and evaluation process. Furthermore, the applicant hasn't provided any relevant data or analysis, studies, or expert findings related to the proposed location of the structure and how the current conditions may or not be impacted. It should be noted that the DEP Consolidated Final Order specifically states that the proposed dune walkover is subject to compliance with all local government regulations.

The analysis for Item 9 also fails to provide sufficient evidence that the proposed structure is compliant with Chapter 34 of the Town's Land Development Code.

Variance Findings

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. *That there are/**are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is/**is not** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

The applicant has not provided any documentation that the additional width is necessary, a best management practice, or a technical requirement for compliance with other competing regulations.

- b. That the conditions justifying the variance **are**/are not the result of actions of the applicant taken after the adoption of the regulation in question.*

The applicant has chosen to request a five feet wide structure.

- c. That the variance granted is/**is not** the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

The applicant has not provided any justification of how the standard width is an unreasonable burden.

- d. That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

It doesn't appear that the structure is proposed for the general welfare and the required width would not have an impact based on what was presented.

- e. That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

No evidence or documentation has been provided that shows any reason to amend the regulations.

III. RECOMMENDATION

Staff finds that the request for a Special Exception does not meet the criteria set forth in Section 34-88 of the LDC. Staff finds that the request for a variance from the dune walkover width does not meet the criteria set forth in Section 34-87 of the LDC. and

Therefore, staff recommends that the LPA recommend **DENIAL** for SEZ-20220103, to construct a dune walkover and boardwalk for two private properties used primarily as single-family residential within the EC zoning district. Staff also recommends denial of the Variance VAR 20220104 due to insufficient information provided by the applicant as how approval of the variance complies with Sec 34-87. Staff also finds that consideration of the variance should only be given at such time as the request for Special Exception is considered sufficient and complies with the Town's LDC and Comprehensive Plan.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 8150 & 8170 Estero Blvd. Fort Myers Beach, FL

STRAP Number: 03-47-24-W3-00300.0190 & 03-47-24-W3-00300.0200.

Applicant: TEXAS HOLD'EM & SQUEEZE ME Phone: 817-320-5851

Contact Name: EDWARD ROOD/KURT KROEMER. Phone: 317-694-2133

Email: INFO@SQUEEZEMEINN.COM Fax: _____

Current Zoning District: RS & EC

Future Land Use Map (FLUM) Category: LOW DENSITY / RECREATION

FLUM Density Range: N/A Platted Overlay: ☒ YES ☐ NO

ACTION REQUESTED

☒ Special Exception

☒ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: SQUEEZE ME INN/TEXAS HOLD'EM. Phone: 317-694-2133

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

Applicant Mailing Address: 5353 S700E WHITESTOWN, IN 46075.

Email: INFO@SQUEEZEMEINN.COM Fax: _____

Contact Name: KURT KROEMER / ED ROOD. Phone: 317-694-2133



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: NELSON MARINE Phone: 239-992-4443
Address: 10923 ENTERPRISE AVE. BONITA SPRINGS, FL
Email: INFO@NELSONMARINE.COM Fax: 239-992-0765

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: AMY PETRICK ESQ. Phone: 561-640-0820
Address: 360 SOUTH ROSEMARY AVE S1100, WEST PALM BEACH.
Email: APETRICK@LLW-LAW.COM Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☒ Special Exception
- ☒ Variance from LDC Section 34 - 652 f.2.c
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- ☐ Appeal of Administrative Action
- ☐ Vacation ☐ Right-of-Way ☐ Easement
- ☐ Other. Please Explain: _____
- _____
- _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical

presence OR ____ online notarization, this ____ day of _____, 20____, by

_____, ☐ who is personally known to me OR ☐ who has produced

_____ as identification.

(SEAL)

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☒ Complete Disclosure of Interest Form (see below)
- ☒ Attach list of property owners as Exhibit 5-1
- ☒ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office	Percentage of Stock
KURT & MARY KROEMER.	42.46%
KAYLENE HERNANDEZ	19.18%
Barbara Schroeder	19.18%
Alexandra Kroemer	19.18%

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address	Percentage of Ownership

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office	Percentage of Stock



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, KURT KROEMER (name), as MANAGING MEMBER (title)
of SQUEEZE ME INN LLC. (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

SQUEEZE ME INN LLC

Name of Entity (corporation, partnership, LLP, LLC, etc)

Kurt D Kroemer

Signature

KURT D KROEMER

Typed or Printed Name

MANAGING MEMB

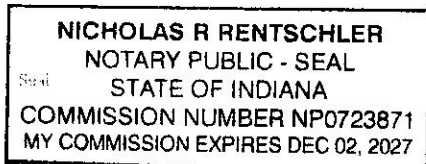
Title

9/9/2022

Date

STATE OF IN COUNTY OF BOONE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 9th day of September 2022, by Kurt D Kroemer ☐ who is personally known to me OR ☒ who has produced INDIANA DRIVERS LICENSE as identification.



Nicholas R Rentschler
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 03-47-24-W3-00.300 & 03-47-24-W3-00300.0200

Property Address: 8150 & 8170 ESTERO BLVD

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☒ Yes. Property identified in subdivision: GRAND OLE MAN

Book: 29 Page: 26& Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

Edward Rood

50%

Reily Rood

50%

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Edward Rood (name), as MANAGING MEMBER. (title)
of Texas Hold'em LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

Texas Hold'em

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Edward Rood

Typed or Printed Name

MANAGING MEMB

Title

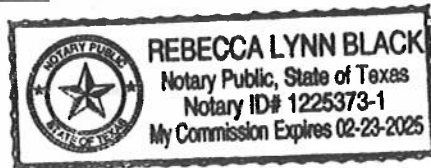
Date

8-30-2022

STATE OF Texas COUNTY OF Hempill

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 30 day of August, 2022, by

Edward Rood, ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Rebecca Lynn Black
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 03-47-24-W3-00.300 & 03-47-24-W3-00300.0200

Property Address: 8150 & 8170 ESTERO BLVD

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☒ Yes. Property identified in subdivision: GRAND OLE MAN

Book: 29 Page: 26& Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 75 + 75 = 150 TOTAL feet

Depth (please provide an average width if irregular in shape) 830 feet

Frontage on street: 150 feet. Frontage on waterbody: 183 feet

Total land area: 2.8 ☒ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

THE RESIDENTIAL PROPERTIES ARE LOCATED ON THE SOUTH SIDE OF
ESTERO BLVD, FRONTING THE GULF OF MEXICO, APPROXIMATELY 0.40 MILE
WEST OF BIG CARLOS PASS BRIDGE

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☒ Attach a map showing the surrounding property owners as Exhibit 6-7.

☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☒ Low Density

☐ Mixed Residential

☐ Boulevard

☐ Pedestrian Commercial

☐ Marina

☒ Recreation

☐ Wetlands

☐ Platted Overlay

Exhibit 5 – 1

Owners Mailing Addresses

Strap: 03-47-24-W3-00300.0190

Owner: Texas Hold'em LLC

8150 Estero Blvd

Fort Myers Beach, FL 33931

Strap: 03-47-24-W3-00300.0200

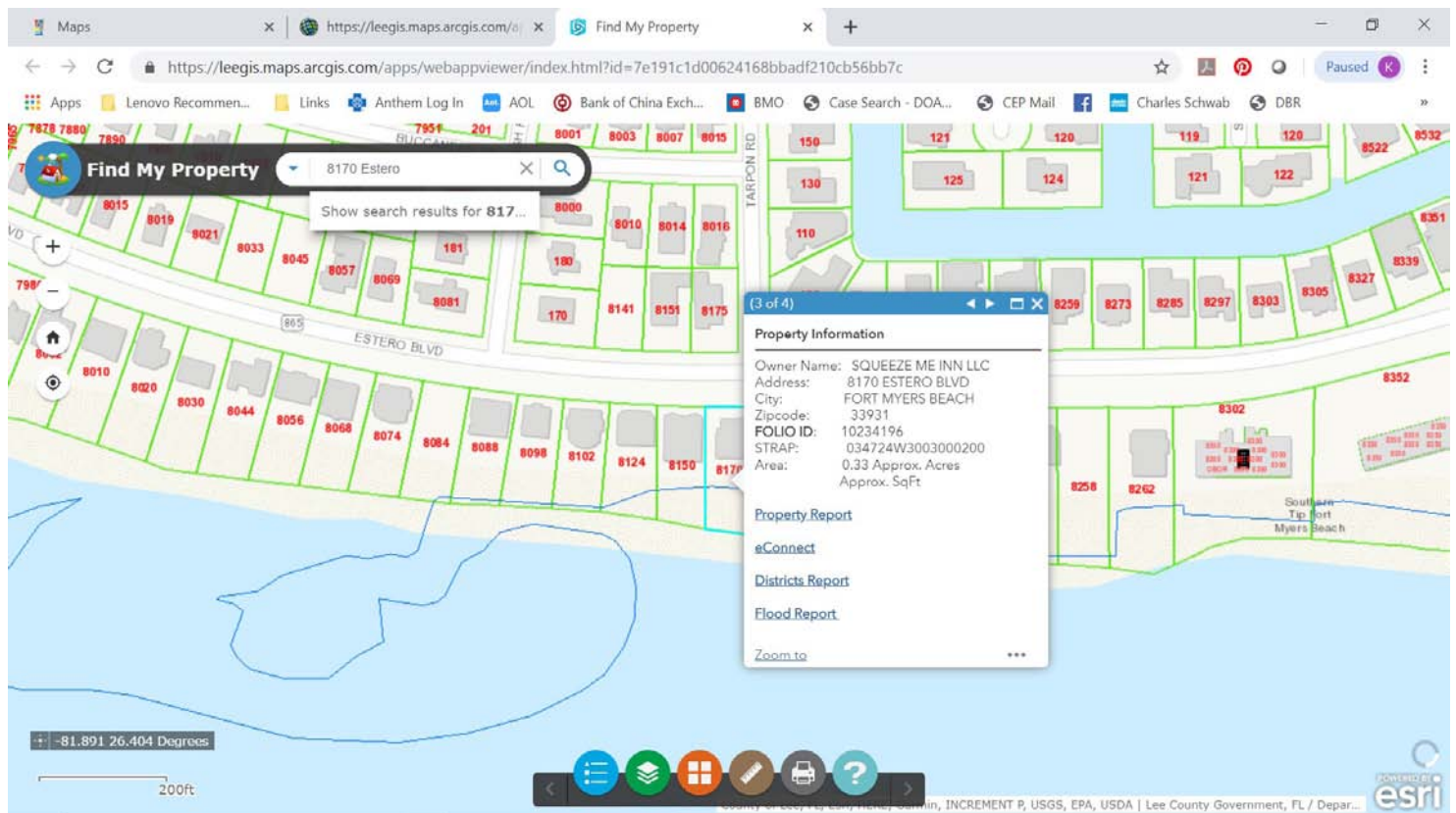
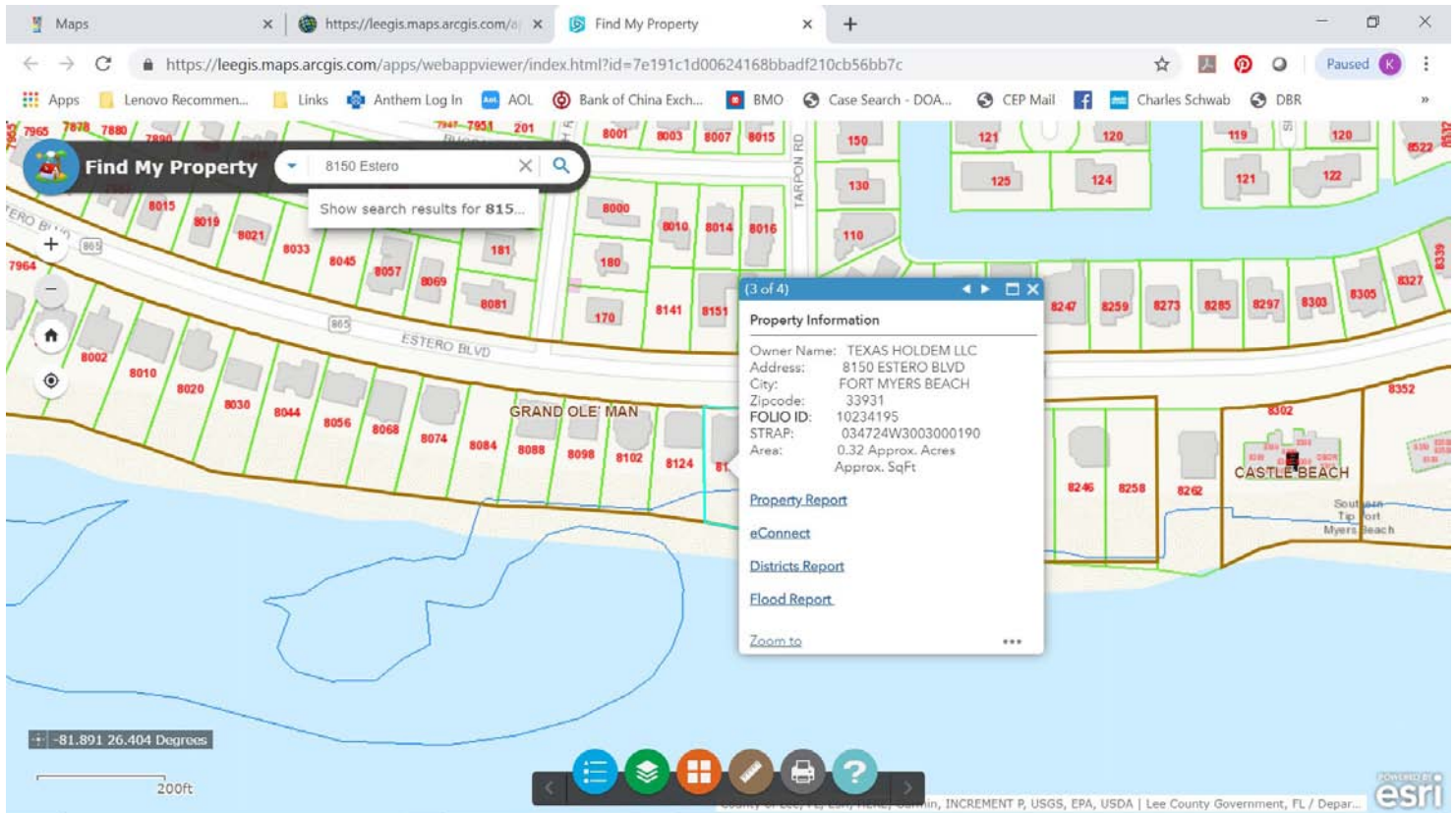
Owner: Squeeze Me Inn, LLC

5353 S 700 E

Whitestown, IN 46075

Property Ownership

Exhibit 5-2



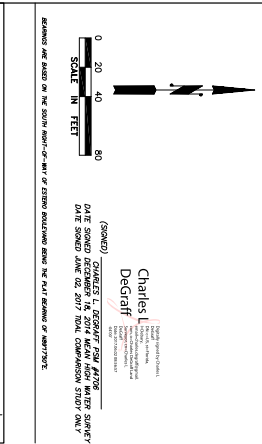
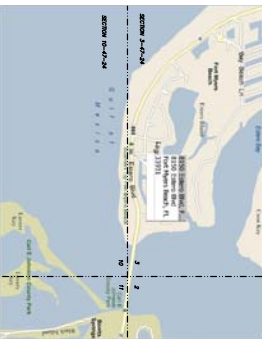
SURVEYORS NOTES

BOUNDARY AND MEAN HIGH WATER SURVEY

ESTERO BOULEVARD

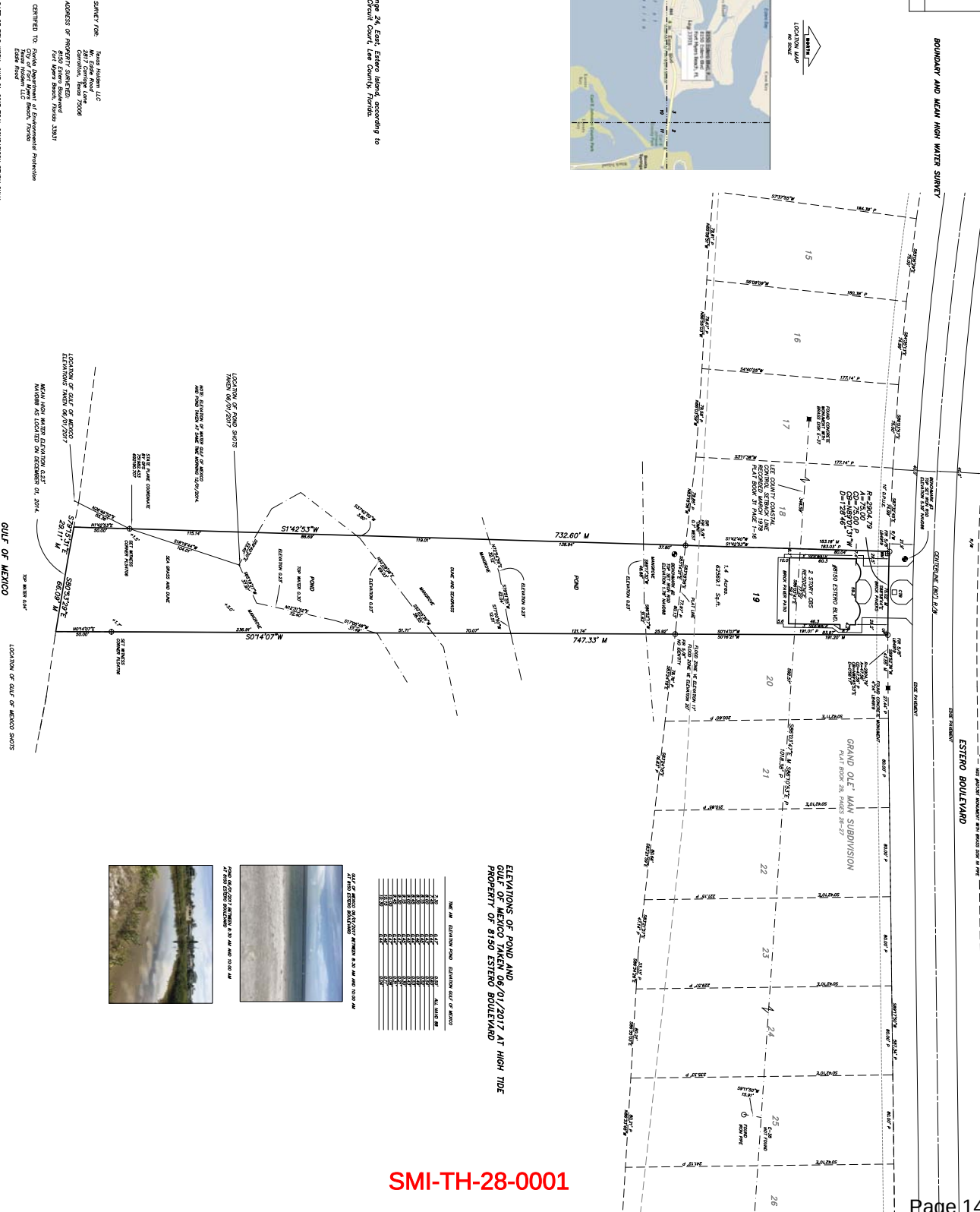
Page 146 of 346
- 19 - 000001

- 19 - 00000

[illegible][illegible]

LEGAL DESCRIPTION:

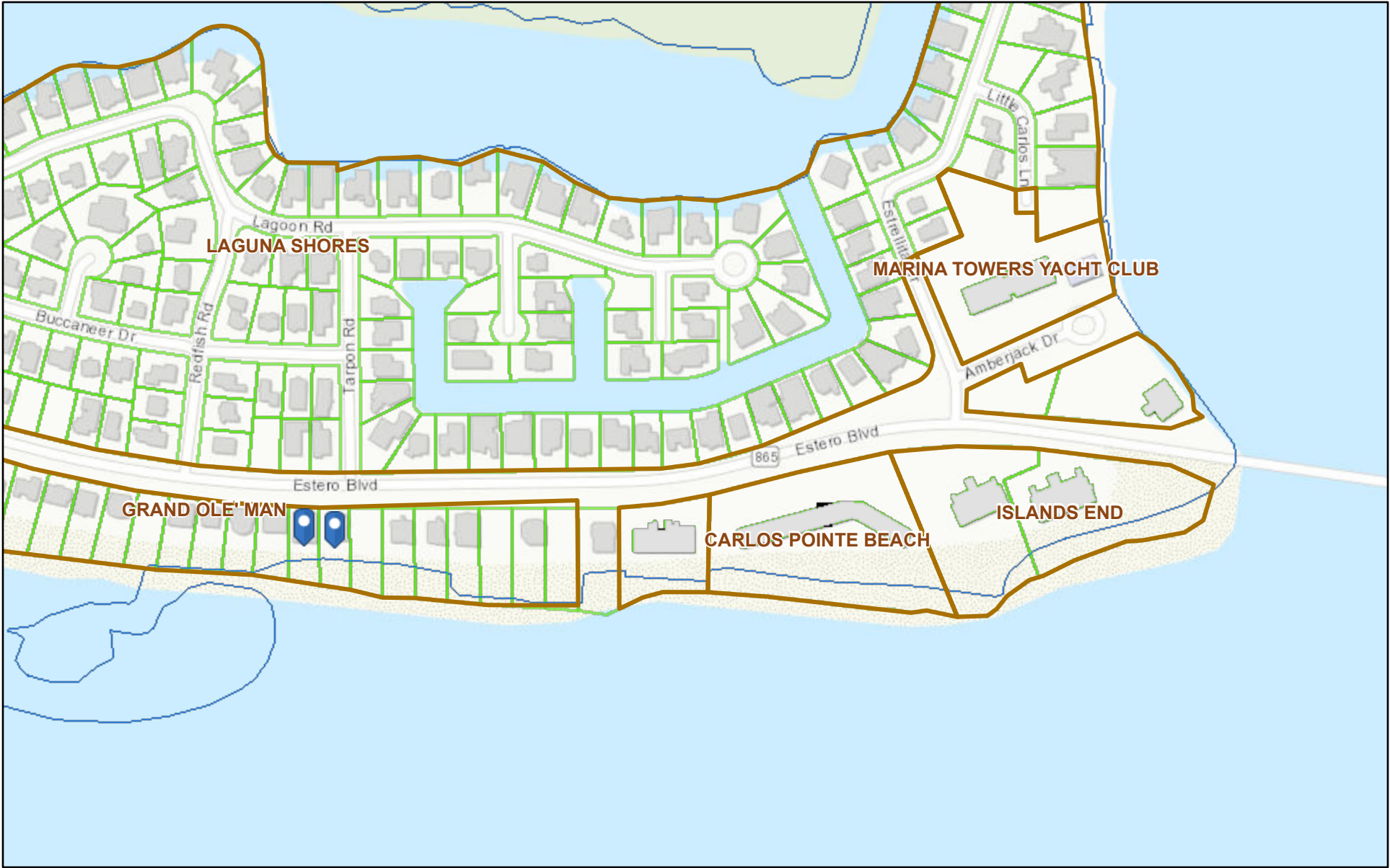
Lot 19, GRAND OLE' MAN, a subdivision in Sections 3 and 10, Township 47 South, Range 24 East, Estero Island, according to the plat thereof as recorded in Plat Book 23, Page 26, Records of the Clerk of the Circuit Court, Lee County, Florida.



ELEVATIONS OF POND AND
GULF OF MEXICO TAKEN 06/01/2017 AT HIGH TIDE
PROPERTY OF 8150 ESTERO BOULEVARD

SMI-TH-28-0001

Lee County



6/9/2019, 10:46:43 AM

Subdivisions

Parcel

CondoFootprints

Condo

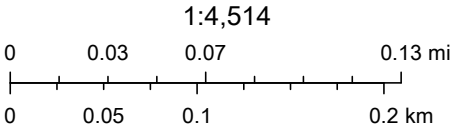
Mobile Home Lot

County Boundary

City Boundary

Coastline

Boundary



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS,

Subjects: 1

EXHIBIT 6-6 LIST OF PROPERTY OWNERS 500 FT FROM BOTH PROPERTIES:

Date: 8/23/2022 12:00:00 AM

List Size: 48

FolioId	STRAP	OwnerName	OwnerNar	MailAddress	MailAddr	MailCity	MailState	MailZip	MailCount	SiteNumbr	SiteStreet	SiteUnit	SiteCity	SiteZip	Legal
10234196	03-47-24-W3-00300.0200	SQUEEZE ME INN LLC		711 FRANKLIN TRACE		ZIONSVILLE IN		46077		8170	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 20
10234195	03-47-24-W3-00300.0190	TEXAS HOLDEM LLC		2817 CARRIAGE LN		CARROLLT TX		75006		8150	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 19<CR>+ ACCRETED LANDS
10234065	03-47-24-W3-00103.0360	WINN ELEANOR		7950 BUCCANEER DR		FORT MYE FL		33931		7950	BUCCANEER DR		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 3 PB 9 PG 30<CR>LOT 36
10234066	03-47-24-W3-00103.0370	BENES OLDRIKH &		181 REDFISH RD		FORT MYE FL		33931		181	REDFISH RD		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 3 PB 9 PG 29-30<CR>LOT 37
10234067	03-47-24-W3-00103.0380	BEZON JOAN F L/E		8081 ESTERO BLVD		FORT MYE FL		33931		8081	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK.3 PB 9 PG 29<CR>LOT 38
10234068	03-47-24-W3-00103.0390	HARRIS BLAIR J & VALERIE J		8069 ESTERO BLVD		FORT MYE FL		33931		8069	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK.3 PB 9 PG 29<CR>LOT 39
10234079	03-47-24-W3-00104.0010	MCNULTY WALTER M		5471 W 7TH CT		HIALEAH FL		33012		8175	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK.4 PB 9 PG 30<CR>LOT 1
10234080	03-47-24-W3-00104.0020	PETERSON ERICK &		7333 93RD ST SW		HOWARD MN		55349		8151	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK.4 PB 9 PG 29<CR>LOT 2
10234081	03-47-24-W3-00104.0030	TORRES CANDY CONSTANZA &		13621 SW 16TH ST		DAVIE FL		33325		8141	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK.4 PB 9 PG 29<CR>LOT 3
10234082	03-47-24-W3-00104.0040	PAYNE CYNTHIA GRACE		170 REDFISH RD		FORT MYE FL		33931		170	REDFISH RD		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK.4 PB 9 PG 29<CR>LOT 4
10234083	03-47-24-W3-00104.0050	COAKE ROBERT V & SUSAN C TR		180 REDFISH RD		FORT MYE FL		33931		180	REDFISH RD		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 4 PB 9 PG 29<CR>LOT 5
10234084	03-47-24-W3-00104.0060	ESCUE MARY E L/E		8000 BUCCANEER DR		FORT MYE FL		33931		8000	BUCCANEER DR		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 4 PB 9 PG 29<CR>LOT 6
10234085	03-47-24-W3-00104.0070	OHLIN DOUGLAS J & SUSAN		8010 BUCCANEER DR		FORT MYE FL		33931		8010	BUCCANEER DR		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 4 PB 9 PG 29<CR>LOT 7
10234086	03-47-24-W3-00104.0080	RAMBOW ERIC & KEREN		1333 PARKRIDGE PL		CINCINNA OH		45208		8014	BUCCANEER DR		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 4 PB 9 PG 30<CR>LOT 8
10234087	03-47-24-W3-00104.0090	FOERSTER ROSA +		8016 BUCCANEER DR		FORT MYE FL		33931		8016	BUCCANEER DR		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 4 PB 9 PG 30<CR>LOT 9
10234088	03-47-24-W3-00105.0010	TJOSVOLD YVONNE		8015 BUCCANEER DR		FORT MYE FL		33931		8015	BUCCANEER DR		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK.5 PB 9 PG 29<CR>LOT 1
10234089	03-47-24-W3-00105.0020	GULINO JOHN & JEANNE		82 WOODLOT RD		RIDGE NY		11961		8007	BUCCANEER DR		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 5 PB 9 PG 29<CR>LOT 2
10234090	03-47-24-W3-00105.0030	MASON RANDY & LYNN M		8003 BUCCANEER DR		FORT MYE FL		33931		8003	BUCCANEER DR		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK.5 PB 9 PG 29<CR>LOT 3
10234091	03-47-24-W3-00105.0040	GREEN BRADLEY G & SHELIA A TR		8001 BUCCANEER DR		FORT MYE FL		33931		8001	BUCCANEER DR		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 5 PB 9 PG 29<CR>LOT 4
10234119	03-47-24-W3-00225.0000	MAITZ CORY J & EMILIA P		124 SAND DOLLAR DR		FORT MYE FL		33931		124	SAND DOLLAR DR		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR>PB 9 PG 84<CR>LOT 25
10234120	03-47-24-W3-00226.0000	CLARK STEPHEN R & LARENNE S		125 SAND DOLLAR DR		FORT MYE FL		33931		125	SAND DOLLAR DR		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR> PB 9 PG 84<CR>LOT 26
10234121	03-47-24-W3-00227.0000	THOMPSON RUSSELL & PATTI		4930 DEFIANCE TRAIL		DELPHOS OH		45833		121	SAND DOLLAR DR		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR>PB 9 PG 84<CR>LOT 27
10234127	03-47-24-W3-00233.0000	STEELE JAMES H		170 TARPON RD		FORT MYE FL		33931		170	TARPON RD		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR>PB 9 PG 84<CR>LOT 33
10234128	03-47-24-W3-00234.0000	SALVAGGIO JOSEPH R		150 TARPON RD		FORT MYE FL		33931		150	TARPON RD		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR> PB 9 PG 84<CR>LOT 34
10234129	03-47-24-W3-00235.0000	GULINO JOHN & JEANNE		82 WOODLOT RD		RIDGE NY		11961		130	TARPON RD		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR> PB 9 PG 84<CR>LOT 35
10234130	03-47-24-W3-00236.0000	GULINO ANTHONY & LISA TR		84 WOOD LOT RD		RIDGE NY		11961		110	TARPON RD		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR>PB 9 PG 84<CR>LOT 36
10234131	03-47-24-W3-00237.0000	MIGLIORATTI PHILIP & LISA M		382 LAKE RD		WEBSTER NY		14580		100	TARPON RD		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR> PB 9 PG 84<CR>LOT 37
10234132	03-47-24-W3-00238.0000	JACKSON PHILIP & CATHY		1998 OGLEBAY DR		WHEELING WV		26003		8211	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR> PB 9 PG 84<CR>LOT 38
10234133	03-47-24-W3-00239.0000	8223 ESTERO LLC		8415 LAGOON ROAD		FORT MYE FL		33931		8223	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR> PB 9 PG 84<CR>LOT 39
10234134	03-47-24-W3-00240.0000	ECKHARDT ROSS A & ASHLEY N		8235 ESTERO BLVD		FORT MYE FL		33931		8235	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR> PB 9 PG 84<CR>LOT 40
10234135	03-47-24-W3-00241.0000	ESTERO 3 LLC		5359 N RD 400 W		BARGERSV IN		46106		8247	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR> PB 9 PG 84<CR>LOT 41
10234136	03-47-24-W3-00242.0000	WENSTRUP LAWRENCE F &		8259 ESTERO BLVD		FORT MYE FL		33931		8259	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 2<CR>PB 9 PG 84<CR>LOT 42
10234189	03-47-24-W3-00300.0130	MARRONE GEORGE C & MAY L		8074 ESTERO BLVD		FORT MYE FL		33931		8074	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 13
10234190	03-47-24-W3-00300.0140	CORTINAS ANGEL A &		7370 SW 153RD ST		PALMETTC FL		33157		8084	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR> PB 29 PG 27<CR>LOT 14
10234191	03-47-24-W3-00300.0150	BOURGON TAMMY RAE TR		8088 ESTERO BLVD		FORT MYE FL		33931		8088	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 15
10234192	03-47-24-W3-00300.0160	CAMERON JOHN F		18452 CUTLASS DR		FORT MYE FL		33931		8098	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 16
10234193	03-47-24-W3-00300.0170	CRENSHAW ELIZABETH MARIE +		51785 SKIS DR		SOUTH LYI MI		48178		8102	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 17
10234194	03-47-24-W3-00300.0180	PROCK DENNIS M		8124 ESTERO BLVD		FORT MYE FL		33931		8124	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR> PB 29 PG 27<CR>LOT 18
10234195	03-47-24-W3-00300.0190	TEXAS HOLDEM LLC		2817 CARRIAGE LN		CARROLLT TX		75006		8150	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 19<CR>+ ACCRETED LANDS
10234197	03-47-24-W3-00300.0210	LARRY DEN HERDER TRUST +		8180 ESTERO BLVD		FORT MYE FL		33931		8180	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR> PB 29 PG 27<CR>LOT 21
10234198	03-47-24-W3-00300.0220	DRENTH JENNIFER L TR		8540 STONEGATE CT		SAINT JOH IN		46373		8200	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 22
10234199	03-47-24-W3-00300.0230	TYLER FLORA		8214 ESTERO BLVD		FORT MYE FL		33931		8214	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 23
10234200	03-47-24-W3-00300.0240	GAC PROPERTIES LLC		6051 HOLATEE TRL		SOUTHWE FL		33330		8222	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 24
10234201	03-47-24-W3-00300.0250	NIGHT HERON LLC		116 PROSPECT AVE		GUILFORD CT		6437		8236	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR> PB 29 PG 27<CR>LOT 25
10234202	03-47-24-W3-00300.0260	CAMERON JAMES A		47 FAIRVIEW BLVD		FORT MYE FL		33931		8246	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR>PB 29 PG 27<CR>LOT 26
10234203	03-47-24-W3-00300.0270	ESTERO 3 LLC		5359 N 400 W		BURGERSV IN		46106		8258	ESTERO BLVD		FORT MYE	33931	GRAND OLE MAN<CR> PB 29 PG 27<CR>LOT 27
10234064	03-47-24-W3-00103.0350	LEMARO INC		449 HARVEST RD		DANDAS ON	L9H 5E2 CANADA			7940	BUCCANEER DR		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 3 PB 9 PG 30<CR>LOT 35
10234069	03-47-24-W3-00103.0400	MCHUGH JONATHAN E &		8057 ESTERO BLVD		FORT MYE FL		33931		8057	ESTERO BLVD		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 3 PB 9 PG 30<CR>LOT 40
10234025	03-47-24-W3-00102.0010	POSILILCO VINCENTO &		145 HARVARD ST		WESTBUR NY		11590		201	REDFISH RD		FORT MYE	33931	LAGUNA SHORES UNIT 1<CR>BLK 2 PB 9 PG 29 30<CR>LOT 1

EXHIBIT 6-7 MAP OF PROPERTY OWNERS 500 FT.





Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name: SHARED DUNE WALKOVER
Authorized Applicant: SQUEEZE ME INN & TEXAS HOLD'EM LLC
LeePA STRAP Number(s):
03-47-24-W3-00300.0190 & 03-47-24-W3-00300.0200

Current Property Status: SINGLE FAMILY RESIDENTIAL / 01
Current Zoning: RS & EC
Future Land Use Map (FLUM) Category: LOW DENSITY RESIDENTIAL
Platted Overlay? ☐ yes ☒ no FLUM Density Range: N/A

Requested Action:

☒	Use of premises in the EC (Environmentally Critical) zoning district for: SHARED DUNE WALKOVER
☐	Use of premises in the _____ zoning district for:

PART I

Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

The property is developed with two homes between Estero Blvd and the Gulf of Mexico. A single shared walkover is proposed to protect the dune system. This request is to allow the dune walkover as a special exception under the provisions of a minor structure under the town's land development code section 34-652 (e).6.
The applicant, Mr. Rood, is a disabled person as defined by the Americans with Disabilities Act, requires the special exception to construct the walkover as a reasonable accommodation for him to access the beach on the rear of his property.
Because of his disability involving limitations on walking, Mr. Rood requires, and will require, mobility and assistive devices including a cane, sit-down power scooter, Segway, and wheelchair to enable him to access the public beach.

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
Please see attached project narrative.

Project Narrative and Special Exception Standards Analysis

In Support of the Application for a Dune Walkover at
8150 and 8170 Estero Boulevard, Fort Myers Beach, FL

I. REQUEST

Texas Hold'em, LLC and Squeeze Me Inn, LLC (the "Applicants") make this request for approval of a Special Exception to allow a dune walkover as an accessory to the two residential homes located at 8150 and 8170 Estero Boulevard (the "Subject Property").

II. SUBJECT PROPERTY AND PROPOSED DUNE WALKOVER DETAILS

The Subject Property is located on the south side of Estero Boulevard, adjacent to the Gulf of Mexico. The Subject Property has a land use designation of "Low Density Residential" along Estero Boulevard and "Recreation" for the remainder of the property as it extends towards the Gulf. The zoning is likewise split between "Residential Single Family (RS)" along Estero Boulevard, and "Environmentally Critical (EC)" adjacent to the Gulf.

The residences located on the Subject Property are separated from the waters of the Gulf of Mexico by a dune system consisting of low-lying dunes covered with native vegetation, and a shallow non-tidal lagoon. The proposed dune walkover has been designed to: conform to the Town's Comprehensive Plan and Land Development Code (the "LDC"), eliminate any impacts to the surrounding natural resources, and prevent any negative impacts to the surrounding properties and residents.

The proposed dune walkover consists of an approximately 298-foot long wooden structure, supported by wooden pilings. An initial design was elevated and had handrails running along both sides. In coordination with the State permitting agencies, the handrails were removed, the walkover was made narrower, and the elevation was lowered to the lowest level permitted by applicable regulations. Steps from the boardwalk at the waterward end have been replaced by a shallow ramp. The walkover begins at the centerline of the two residential properties, continuing out perpendicular to the shoreline. The walkway makes one minor deflection to the east in order to prevent any intrusion into the Little Estero Island Critical Wildlife Area (the "LEICWA").

III. EXISTING STATE PERMITS

To construct the proposed dune walkover, the Applicants filed: 1) an application for an Environmental Resource Permit (ERP); 2) an application for a letter of consent easement for the use of sovereignty submerged lands (SSL Authorization); 3) a petition for waiver from Florida Administrative Code Rules 62B-33.008(3)(c) and (d) to allow for completion and consideration of an application for a Coastal Construction Control Line (CCCL) permit (CCCL Waiver); and 4) an application for a CCCL permit (CCCL Permit).

The requested environmental permits were all issued for the project, but were challenged by the Town and another third party. A hearing was held before an Administrative Law Judge on September 18, 2018. A Consolidated Final Order was issued on May 9th, 2019 by the Florida Department of Environmental Protection which upheld and approved the issuance of all the permits requested. Citations to that Final Order will be noted herein as (Order, p. #).

IV. SPECIAL EXCEPTION STANDARDS

Section 34-88 of the LDC provides the considerations to be taken into account upon reviewing a request for a special exception. The following narrative details the compliance with those considerations, as applicable.

“Sec. 34-88 – Special Exceptions

(b) Considerations. In reaching its decision, the town council shall consider the following whenever applicable:”

“(1) Whether there exist changed or changing conditions which make approval of the request appropriate.”

Analysis: The Applicants’ request for the dune walkover is to allow for access to the Gulf of Mexico, without impacting the accreted dune system. Changed conditions are evident in the significant accretion that has occurred, creating a large dune system separating the Subject Property from the Gulf of Mexico. Evidence was established during the Administrative Hearings on the environmental permits that “over the last 50 plus years...and especially within the last ten to 15,...this shoreline has been accreting.” (Order, p. 12.)

While homeowners currently traverse this dune system on foot with some difficulty, the LDC discourages this in recognition of negative impacts this can cause. Section 34-1575 (c) “*No development will be permitted which alters the dune system, except for narrow pathways as permitted by [§ 34-652\(d\)\(10\)](#) of this LDC and excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection*”. Accordingly, the LDC establishes the appropriateness of this Special Exception in view of the dune system that has developed adjacent to the Subject Property.

“(2) The testimony of any applicant.”

Analysis: The Applicants provide this written testimony, and will provide testimony at all public hearings to address any issues or questions as may arise from staff and the hearing boards.

“(3) The recommendation of staff and of the local planning agency.”

Analysis: Applicants will work with staff and the local planning agency to address any questions they may have in preparation of their recommendations.

“(4) The testimony of the public.”

Analysis: Applicants will attend all public hearings to address any questions that may arise from the public concerning the request.

“(5) Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.”

Analysis: The request for a dune walkover at the Subject Property is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.

Future Land Use Element, Policy 4-A-6 states: “The beaches provide incomparable recreational and environmental benefits to the town; careful management of the beach, including renourishment when necessary, can increase both. Frequent beach accesses are essential to the town’s character and shall be maintained and expanded where possible.”

The special exception request for the dune walkover represents an expanded beach access, while protecting the vegetation and dune system as it exists today.

Future Land Use Element, Policy 4-B-8 states in part: “‘RECREATION’: ... Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category... Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities.”

The proposed dune walkover supports the use of the portions of the Subject Property with a “Recreation” Future Land Use designation as a bathing beach and for a beach access point as permitted by this Policy.

Future Land Use Element, Policy 4-B-9 regarding wetlands states in part, “Other allowable uses, if compatible with wetland functions, are passive recreation, walking access to tidal waters (boardwalks and docks), and restoration of degraded habitats.”

While not technically within the “Wetland” Future Land Use category, the shallow non-tidal lagoon has apparently led Town staff to conclude that wetland requirements may be implicated. The proposed dune walkover perfectly aligns with this permitted use for wetland locations, as addressed by this Policy.

Coastal Management Element, Policy 5-D-1-ii states, “Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected and non-native exotics removed. Dune walkovers should be constructed where they do not exist and existing structures should be maintained.”

This Policy directly supports the Applicants’ position that the proposed walkover will protect the dune system and the vegetation found there. The Consolidated Final Order specifically found evidence that bolsters the Town’s Policy as it relates to the proposed dune walkover, stating, “...there was no reasonable alternative to the proposed dune walkover, other than the more disruptive and destructive means of providing access to the Gulf of Mexico currently in use.” (Order, p. 40.)

Conservation Element, Policy 6-E-1 states, “For any beachfront development approved after the adoption of this plan and for all public beach areas within the town, state-approved dune walkover structures shall be required at appropriate crossing points. These same structures are also encouraged wherever pedestrians will be crossing dune areas.”

This Policy strongly reflects the importance the Town has placed on utilizing dune walkovers to protect the dune and beach system. This Policy requires all future beachfront development to provide a dune walkover, and these structures are to be “encouraged wherever pedestrians will be crossing dune areas.” The Applicants’ proposal expressly meets this Policy of the Town’s Comprehensive Plan by providing a dune walkover where pedestrian activity currently exists.

“(6) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.”

Analysis: The dune walkover as proposed meets all performance and locational standards found in the LDC:

- Walkovers must be placed perpendicular to the dune or no more than 30 degrees from perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover. (Sec. 34-652 f.2.a.)
- Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete. (Sec. 34-652 f.2.b.)
- Walkovers cannot exceed four feet in width when serving single-family homes or six feet in width otherwise. Alternate widths require a variance. (See Variance with this application) (Sec. 34-652 f.2.c)
- Walkovers must be elevated at least two feet, and no more than three feet, above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dune and dune vegetation. (See design note on boundary survey) (Sec. 34-652 f.2.d.)
- Walkovers must be constructed in a manner that minimizes short-term disturbance of the dune system. Any dune vegetation destroyed during construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization and increases either plant density or area of plantings. (Sec. 34-652 f.2.e)
- Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31) (Sec. 34-652 f.2.f)
- Walkovers may not be attached to any other structures. (Sec 34-652 f.2.g.)
- The dune walkover is to be constructed within the riparian extensions of the Subject Property. (Sec. 26-43.a.1.)
- The dune walkover meets the side setback in the EC zoning district of 25 feet. (Sec. 34-652; Table 34-3)

“(7) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.”

Analysis: Both the Town’s Comprehensive Plan and the LDC recognize the fact that a dune walkover provides a benefit to the ecological community and is the preferred method for protecting the dune system and vegetation. As noted above, the Coastal Management Element states, “Dune walkovers should be constructed where they do not exist and existing structures should be maintained.” (Policy 5-D-1-ii.) The Conservation Element likewise provides that dune walkovers should be “encouraged wherever pedestrians will be crossing dune areas.” (Policy 6-E-1).

LDC Sec 34-652 e.6 Perpendicular dune walkovers on property, when required to protect indigenous plant communities and when elevation change exists, in accordance with [§ 10-415\(b\)](#) and subsection (f).

In summarizing the findings of the Administrative Law Judge, the Consolidated Final Order made several findings concerning the impacts of the dune walkover to the dune system. These findings include:

“...by a preponderance of the competent, substantial, and persuasive evidence in the record, that the proposed dune walkover will pose no demonstrable environmental or social costs.” (Order, p. 38.)

“...the proposed dune walkover will have no effect on the use of the beach, shorebirds, or the LEICWA.” (Order, p. 38.)

“...that there was no reasonable alternative to the proposed dune walkover, other than the more disruptive and destructive means of providing access to the Gulf of Mexico currently in use.” (Order, p. 40.)

As such, the factual findings in the administrative hearing on this project have conclusively established that the proposed dune walkover will protect and preserve the environmentally critical areas and natural resources.

“(8) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.”

Analysis: The proposed dune walkover will be compatible with the existing and planned uses and will not cause damage, hazard, nuisance, or other detriment. The design of the dune walkover has been modified to minimize its impacts through making it lower, narrower, removing any handrails, and otherwise limiting its scale. The design, consistent with the Town’s regulations, and the State environmental permit requirements, will insure no hazards or damage will accrue to persons or property.

“(9) Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.”

Analysis: The proposed dune walkover will be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use. Sec. 34-88 (d)(1) states:

“The town council shall grant the special exception unless it finds that granting the special exception is contrary to the public interest and the health, safety, comfort, convenience, and welfare of the citizens of the town, or that the request is in conflict with the criteria in this section.”

In the Consolidated Final Order, several conclusions of law were reached based upon the evidence presented. These findings include, “The dune walkover will have a beneficial effect on the native vegetation in its immediate area.” (Order, p. 18); “Shorebirds, whether or not they are protected species, will not be impacted by the Project.” (Order, p. 22); and that there was no finding of “adverse impacts to quarter quality.” (Order, p. 23)

Furthermore, the Consolidated Final Order found that there was no evidence that the dune walkover will “adversely affect the public health, safety, or welfare or the property of others. (Order, p. 28).

V. CONCLUSION

As the Applicants have amply demonstrated through their application, plans, narrative, and the acquisition of required State environmental permits, the proposed dune walkover will comply with all Town zoning regulations, protect the natural resources in the area, and will generate no negative impacts on surrounding properties or the community at large. Accordingly, we respectfully request the issuance of the Special Exception for the Subject Property.

3 = BETA

R = RADIUS

CH = CHAINS

L = ARC LENGTH

T = TANGENT

GR = GARAGE

RR = RAILROAD

GV = GUT VIRE

SEC = SECTION

FB = PLAT BOOK

FND = FOUND

R/W = RIGHT-OF-WAY

TT = TIN TAB

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

LEGEND OF SYMBOLS AND ABBREVIATIONS

CONC = CONCRETE

TR = TYPICAL

BLK = BLOCK

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

NGVD = NATIONAL GEODETIC VERTICAL DATUM

CONC = CONCRETE

TR = TYPICAL

BLK = BLOCK

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

CH = CHAINS

ENG = RANGE

VV = WATER VALVE

WV = WATER METER

PIR = POINT OF BEGINNING

CTV = CABLE TELEVISION RISER

UP = UTILITY POLE

W/M = WATER MAIN

C/L = CENTERLINE

PTAN = TRANSFORMER PAD

ELEV = ELEVATION

TEL = TELEPHONE RISER

F.B. = FIELD BOOK

SUBJECT PROPERTY LIES IN FLOOD ZONE VE, ELEVATION 17', PER "FLOOD INSURANCE RATE MAP" (F.I.R.M.), COMMUNITY PANEL NUMBER 120673 0569 F, LAST REVISION DATE: 08/26/2008.

SURVEYORS NOTES

THIS PLAT OF THE HEREON DESCRIBED PROPERTY IS A TRUE AND CORRECT PRESENTATION OF A RECENT SURVEY MADE AND PLATED UNDER MY DIRECTION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF MEETS THE MINIMUM TECHNICAL STANDARDS ADOPTED BY THE STATE OF FLORIDA AS PER CHAPTER 54-17, FLORIDA ADMINISTRATIVE CODE PURSUANT TO CHAPTER 407, FLORIDA STATUTES. THIS SURVEY HAS BEEN PERFORMED BASED ON A DESCRIPTION ISSUED VERBALLY BY THE CLIENT AND WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE. THE SURVEYOR HAS MADE NO INDEPENDENT SEARCH FOR EASEMENTS, OWNERSHIP, RESTRICTIVE COVENANTS OR OTHER FACTS THAT MAY AFFECT TITLE.

NOTE: SUBJECT TO EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD, THERE ARE NO VISIBLE ENCROACHMENTS EXCEPT THOSE SHOWN.

ELEVATIONS SHOWN HAVE BEEN DERIVED FROM DATA OBTAINED FROM NORTH AMERICAN VERTICAL DATUM (NAVD 88) MONUMENTS (1988 DATUM) EXCEPT WHEN ELEVATIONS ARE NOTED AS BEING ASSUMED. ONLY ABOVE GROUND EVIDENCE OF UNDERGROUND UTILITIES SHOWN.

THIS SURVEY DOES NOT DETERMINE OR REFLECT OWNERSHIP, TITLE, ZONING OR FREEDOM FROM ENCUMBRANCES AND IS ONLY FOR THE LANDS DESCRIBED ABOVE.

THIS SURVEY IS FOR THE SOLE PURPOSES INTENDED BY THE SURVEYOR AND ONLY FOR THE INDIVIDUALS AND / OR INSTITUTIONS LISTED ABOVE UNDER "CERTIFIED TO".

REVERSED DISTANCES (W) ARE NOTED ONLY WHEN THEY DIFFER FROM PLAT (P) OR CALCULATED (C) DISTANCES.

1. THIS MEAN HIGH WATER LINE SURVEY COMPLIES WITH CHAPTER 177, PART II.
2. THE PROCEDURE FOR DETERMINING ELEVATION OF MEAN HIGH WATER WAS PROVIDED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION WITH INSTRUCTION TO USE +0.20 FEET NAVD 88 AS THE MEAN HIGH WATER ELEVATION FOR THIS SITE.
3. BENCHMARK #1 IS NGS TIDAL BENCHMARK A01581 ELEVATION 3.90 FEET NAVD 88. METAL DISK IN PIPE 50" NORTH CENTERLINE ESTERO BOULEVARD AND 28" EAST CENTERLINE TARPON.
4. ELEVATIONS SHOWN ARE GROUND SPOT ELEVATION DESIGNATED THUS.
5. THE 1978 LEE COUNTY COASTAL CONSTRUCTION SETBACK LINE WAS ESTABLISHED FROM FOUND MONUMENTS "BOOB-2" AND "E-37".

LEGAL DESCRIPTION:

Lot 20, GRAND OLE' MAN, a subdivision in Sections 3 and 10, Township 47 South, Range 24, East, Estero Island, according to the plat thereof as recorded in Plat Book 29, Page 26, Records of the Clerk of the Circuit Court, Lee County, Florida.

SURVEY FOR: Squeeze Me Inn, LLC
711 Franklin Trace
Zionsville, IN 46077

ADDRESS OF PROPERTY SURVEYED:
8170 Estero Boulevard
Fort Myers Beach, Florida 33931

CERTIFIED TO: Florida Department of Environmental Protection
City of Fort Myers Beach, Florida
Squeeze Me Inn, LLC

DATE OF FIELD WORK, DECEMBER 18, 2014
JOB # 14-0182
STRAP# 03-47-24-W3-00300.0200
FIELD BOOK 1402 PAGE 40-49 FIELD BOOK 2015-1, PAGE 2,3,5-9

(SIGNED) CHARLES L. DEGRAFF PSM #4706

0 20 40 80
SCALE IN FEET

BEARINGS ARE BASED ON THE SOUTH RIGHT-OF-WAY OF ESTERO BOULEVARD BEING THE PLAT BEARING OF N89°17'50"E.

The seal appearing on this document was authorized by Charles DeGraff PSM 4706 on August 10, 2017

CHARLES DEGRAFF LAND SURVEYOR
Land Surveyors and Mappers
301 Hazeltine Drive, Debary, Florida 32713

Phone (239) 699-8572
Email charles.degraff@gmail.com
Web www.surveycapacoral.com

PERMITTEE: Texas Hold'em LLC and
Squeeze Me Inn LLC
PERMIT NUMBER: LE-1567

6. The dune walkover shall be set at a minimum elevation for stringers and cross members to be installed without requiring excavation of existing dune topography. Width of the walkover deck shall not exceed 5 feet. Posts for the walkover structure shall not be greater than 6-inch diameter, and shall not be encased in concrete. The structure shall be designed to minimize debris generation from pickets and other non-structural members. Walkovers shall extend at least up to the existing line of vegetation but not further than 10 feet seaward of the vegetation. The optimum siting of the walkover structure shall be determined by the staff representative of the Department during the preconstruction conference to provide maximum protection to the existing dune topography and vegetation located on the site and to avoid interference with public access.

NOTE: ELEVATION OF WATER GULF OF MEXICO
AND POND TAKEN AT SAME TIME MORNING 12/01/2014.

MEAN HIGH WATER ELEVATION 0.20'
NAVD88 AS LOCATED ON DECEMBER 01, 2014.

GULF OF MEXICO

SHEET 1 OF 1
Page 160 of 346

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

FLORIDA AUDUBON SOCIETY, INC.,)
)
 Petitioner,)
)
 v.)
)
 TEXAS HOLD'EM, LLC; SQUEEZE ME)
 INN, LLC; AND DEPARTMENT OF)
 ENVIRONMENTAL PROTECTION,)
)
 Respondents.)

OGC CASE NO. 16-1346
DOAH CASE NO. 16-7148

TOWN OF FORT MYERS BEACH, FLORIDA,)
)
 Petitioner,)
)
 v.)
)
 TEXAS HOLD'EM, LLC; SQUEEZE ME)
 INN, LLC; AND DEPARTMENT OF)
 ENVIRONMENTAL PROTECTION,)
)
 Respondents.)

OGC CASE NO. 16-1343
DOAH CASE NO. 16-7149

FLORIDA AUDUBON SOCIETY, INC., AND)
 TOWN OF FORT MYERS BEACH, FLORIDA,)
)
 Petitioners,)
)
 v.)
)
 TEXAS HOLD'EM, LLC; SQUEEZE ME)
 INN, LLC; AND DEPARTMENT OF)
 ENVIRONMENTAL PROTECTION,)
)
 Respondents.)

OGC CASE NOS. 17-0959
 18-0214
DOAH CASE NOS. 18-1451
 18-2141

CONSOLIDATED FINAL ORDER

An Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) on March 20, 2019, submitted a Recommended Order (RO) to the Department of Environmental Protection (DEP or Department) in the above captioned administrative proceeding. A copy of the RO is attached hereto as Exhibit A. DEP timely filed exceptions on April 4, 2019. Texas Hold'em, LLC (Texas Hold'em), and Squeeze Me Inn, LLC (Squeeze Me Inn), collectively the Applicants, timely filed exceptions on April 4, 2019. The Petitioner Florida Audubon Society, Inc., (Audubon or Petitioners) timely filed one exception on April 9, 2019. No party filed responses to the exceptions.

This matter is now before the Secretary of the Department for final agency action.

BACKGROUND

These consolidated cases involve agency actions related to a “dune walkover” (dune walkover or Project) proposed by the applicants, Texas Hold'Em, LLC, and Squeeze Me Inn, LLC (the Applicants). To construct the proposed dune walkover, the Applicants filed: 1) an application for an Environmental Resource Permit (ERP); 2) an application for a letter of consent easement for the use of sovereignty submerged lands (SSL Authorization); 3) a petition for waiver from Florida Administrative Code Rules 62B-33.008(3)(c) and (d) to allow for completion and consideration of an application for a Coastal Construction Control Line (CCCL) permit (CCCL Waiver); and 4) an application for a CCCL permit (CCCL Permit).

On September 29, 2016, the Department of Environmental Protection (the Department or DEP), in its own capacity, and in its capacity as staff to the Board of Trustees of the Internal Improvement Trust Fund (BTITF or BOT), issued Consolidated Environmental Resource Permit No. 36-0320034-001 and Letter of Consent Easement to Use Sovereign Submerged

Lands No. 360239365 (collectively the Consolidated Permit) to the Applicants for the construction of a 1,491.5 square-foot beach boardwalk.

On November 4, 2016, Petitioners, Audubon and the Town of Fort Myers Beach (Town), each filed an Amended Petition for Administrative Hearing challenging the Consolidated Permit. The Amended Petitions were transmitted to DOAH, assigned as Case Nos. 16-7148 and 16-7149, respectively, consolidated for hearing, and initially set to be heard on June 12 through 16, 2017.

The hearing on the Consolidated Permit cases was continued, and the cases placed in abeyance to allow for the associated CCCL Permit application to be processed by DEP.

On May 3, 2017, the Applicants amended their application to relocate the boardwalk outside of the established limits of the Little Estero Island Critical Wildlife Area (LEICWA). DEP reviewed the proposed changes and determined that the project, as amended, continued to meet the criteria for issuance of the Consolidated Permit, and transmitted the revised Notice of Intent and Revised Draft Environmental Resources Permit and State Owned Submerged Lands Authorization to DOAH on May 10, 2017.

DEP has established a CCCL for Little Estero Island. A permit is required before any person may conduct construction activities seaward of the CCCL. On May 4, 2017, after having determined that the proposed dune walkover was, in whole or in part, seaward of the CCCL, the Applicants applied for the CCCL Permit. On June 8, 2017, DEP issued a request for marine turtle impact review to the Florida Fish and Wildlife Conservation Commission (FFWCC). On July 27, 2017, FFWCC responded to the request with two recommended CCCL Permit conditions: that no construction occur during nesting season (May 1 through October 31); and that all vehicles be operated in accordance with FFWCC's Best Management Practices for Operating Vehicles on the Beach. Both conditions were accepted by the Applicants.

On August 11, 2017, the Applicants filed their Petition for Waiver of Rules 62B-33.008(3)(c) and (d), which was supplemented on October 3, 2017, and amended on November 9, 2017. The CCCL Waiver has the effect of allowing the required evidence of ownership of the property encompassed by the CCCL Permit application, and the written evidence that the proposed dune walkover does not violate local setback requirements or zoning codes to be submitted after issuance of the CCCL Permit, with a permit condition requiring submission of the information prior to DEP issuing a Notice to Proceed, which would authorize the Applicants to commence construction.

On September 29, 2017, the Applicants submitted revised construction and site plans for the proposed dune walkover that reduced its overall footprint from six to five feet across; lowered its height from three feet, ten inches to two feet, six inches above the sand; replaced steps with a ramp; and removed the 3-foot handrails.

On February 7, 2018, DEP issued a Final Order Granting Petition for Waivers, File No. LE-1567V, which granted the CCCL Waiver.

On March 2, 2018, Audubon and the Town each filed a Petition for Administrative Hearing challenging the CCCL Waiver. The Petitions were transmitted to DOAH, consolidated by the DOAH Clerk's office and assigned as Case No. 18-1451.

On March 30, 2018, DEP issued the proposed Permit for Construction or Other Activities Pursuant to Section 161.053, Florida Statutes, No. LE-1567, which authorized the construction of the dune walkover seaward of the CCCL.

On April 20, 2018, Audubon and the Town each filed a Petition for Administrative Hearing challenging the CCCL Permit. The Petitions were transmitted to DOAH, consolidated by DOAH Clerk's office and assigned as Case No. 18-2141.

On May 10, 2018, Case Nos. 16-7148, 16-7149, 18-1451, and 18-2141 were consolidated for hearing, and the final hearing on the consolidated cases was scheduled for September 18 through 21, 2018.

On June 28, 2018, DEP and the Applicants filed a Joint Notice of Revisions to Draft Environmental Resource Permit and State Owned Submerged Lands Authorization (Joint Notice), which incorporated the September 29, 2017, modifications into the Consolidated Permit. Audubon and the Town each filed a Petition for Formal Administrative Hearing, which were accepted as their Second Amended Petitions to challenge the Consolidated Permit as modified by the Joint Notice.

On September 11, 2018, the parties filed their Joint Prehearing Stipulation and an Amended Joint Prehearing Stipulation (JPS). The JPS contained 39 stipulations of fact and law, and eight stipulations of law, each of which is adopted and incorporated herein, if not specifically, then by reference. The list of stipulated facts provided a comprehensive listing of the various applications, submissions, amendments, petitions, and the like.

The statement of the issues of fact remaining for disposition provided by the parties did little to narrow the real issues in dispute. Having been provided with little to no limitation on the issues in dispute, the ALJ stated that he would attempt to address the permitting standards as comprehensively as possible.

The hearing convened on September 18, 2018, as scheduled.

The ERP under review, having been issued under the authority of chapter 373, Florida Statutes, was subject to the modified burden of proof established in section 120.569(2)(p), Florida Statutes. The SSL Authorization was issued under the authority of chapter 253, Florida Statutes; the CCCL Permit under the authority of chapter 161, Florida Statutes; and the CCCL

Waiver under the authority of section 120.542, Florida Statutes. Thus, the burden remained with the Applicants to demonstrate entitlement to those elements. To simplify the order of presentation, the Applicants and DEP presented their cases in full, with Petitioners' standing witnesses taken out of order for the witnesses' convenience.

Joint Exhibits 1 through 13, consisting of the Consolidated Permit file; the CCCL Permit file; the CCCL Waiver file; various surveys, sketches, and aerials related to the proposed dune walkover; the June 28 Revised Notice of Intent for the ERP/Consent and attached documents; and the resumes of DEP witnesses Tony McNeal, Megan Mills, and Richard Malloy, were received in evidence by stipulation of the parties.

The Applicants called the following witnesses: Kurt Kroemer, managing member of Squeeze Me Inn, LLC; Edward Rood, managing member of Texas Hold'Em, LLC; Robert Case, P.E., who was tendered and accepted as an expert in civil engineering; Michael Dombrowski, P.E., who was tendered and accepted as an expert in coastal engineering; and Shane Johnson, who was tendered and accepted as an expert in zoology and ecology. Applicants' Exhibits 4 through 7, 9, 10, 13 through 23, 25, and 72 through 74 were received in evidence. Applicants' Exhibit 73 consisted of the deposition testimony of Charles DeGraff, an expert in surveying, who was more than 100 miles from the hearing location on the date of the hearing. His deposition was accepted pursuant to Florida Rule of Civil Procedure 1.330 and was given the same weight as though the deponent testified in person.

DEP called Megan Mills, its ERP program administrator; and Tony McNeal, P.E., its CCCL program administrator, and offered Joint Exhibits 1 through 13.

Audubon called Julie Brashears Wraithmell, its president; and Brad Cornell, both on the issue of standing. The Town called Roger Hernsteadt, its manager; Jason Green, its community

development director; and Rae Burns, its environmental technician, on the issue of standing.

Petitioners jointly called Ms. Burns; Dr. Robert Young, who was accepted as an expert in coastal geology and coastal management; and Nancy Douglass, an employee of the FFWCC.

Petitioners' Exhibits 1, 2, 7, 25, 33, 42 through 44, 47, 49, 62, 64, and 72 were received in evidence.

A three-volume Transcript of the final hearing was filed on November 6, 2018. The parties were allowed 20 days from the filing of the Transcript within which to file their proposed recommended orders. Petitioners moved for a further extension of time to file their proposed recommended orders until December 10, 2018, which was granted. DEP moved to enlarge the page limit for the proposed recommended orders to 70 pages, which was also granted. All parties timely filed Proposed Recommended Orders, each of which was considered in the ALJ's preparation of his Recommended Order.

SUMMARY OF THE RECOMMENDED ORDER

The Parties

Squeeze Me Inn, LLC, is a limited liability corporation incorporated in the State of Florida. Kurt Kroemer is its managing member. Squeeze Me Inn, LLC, owns a single-family home at 8170 Estero Boulevard in Fort Myers Beach, Florida, and pays taxes on the property. Mr. Kroemer purchased the property through Squeeze Me Inn, LLC, based on his enjoyment of the beach. He visits the property five times per year on average and intends to retire there. (RO ¶ 1).

Texas Hold'Em, LLC, is a limited liability company incorporated in the State of Florida. Edward Rood is its managing member. Texas Hold'Em, LLC, owns a single-family home at 8150 Estero Boulevard in Fort Myers Beach, Florida, and pays taxes on the property. Mr. Rood

uses the home four to five times per year. He enjoys visiting the Gulf of Mexico and the adjacent beach area behind his house. (RO ¶ 2).

DEP is an agency of the State of Florida, pursuant to section 20.255, Florida Statutes. DEP is the permitting authority in this proceeding and issued the Consolidated Permit, the CCCL Waiver, and the CCCL Permit at issue in this proceeding to the Applicants. DEP performs staff duties and functions on behalf of the BTITF related to the review of applications for authorization to use sovereignty submerged lands necessary for an activity regulated under chapter 373, part IV, Florida Statutes, for which DEP has permitting responsibility. § 253.002(1), Fla. Stat. DEP has been delegated the authority to take action, without any input from the BTITF, on applications for authorization to use sovereignty submerged lands necessary for an activity regulated under chapter 373, part IV, Florida Statutes, for which DEP has permitting responsibility. § 253.002(1), Fla. Stat. (2018); Fla. Admin. Code R. 18-21.0051(2). (RO ¶¶ 3-4).

Audubon is an organization incorporated in the State of Florida. Audubon has roughly 20,000 members statewide, and 5,000 members in Southwest Florida, some of whom it contends are in the “direct vicinity” of the project. Audubon’s mission statement is to protect birds and their habitat for the benefit of people and wildlife. (RO ¶ 5).

The Town is an incorporated municipality located on the west coast of Florida along the Gulf of Mexico. The proposed dune walkover is within the Town limits. (RO ¶ 6).

Standing

Audubon considers the LEICWA and its surrounding areas important, because it is “important to the birds.” Audubon was involved in the process of establishing the LEICWA, and its members volunteer to help monitor and manage the LEICWA. The LEICWA is a renowned bird-watching site. Audubon members have assisted in “posting for nesting birds, as well as

fielding volunteers who are bird stewards. They chaperone the colony to protect it from disturbance, especially on busy beach going weekends.” The interest in areas outside of the LEICWA is less apparent, though Audubon alleged that the areas around the LEICWA are important to the birds and, thus, Audubon’s members, since “birds unfortunately don’t recognize boundaries.” In addition, Audubon alleged that the dune walkover would irreparably harm the lagoon and the coastal habitat seaward of it, which is important habitat for imperiled species that are critical for the enjoyment of Audubon’s members. Audubon’s interest in contesting the CCCL and the CCCL Waiver is tied to the reasons for its ERP and SSL standing. (RO ¶¶ 7-8).

The Town’s interest in the Consolidated Permit and the CCCL Permit was related to the importance of the Ft. Myers Beach beaches, including those in the LEICWA, to the Town’s economy from ecotourism. The Town’s interest in shorebirds is that they contribute to the Town’s economy by “draw[ing] people to select to visit Fort Myers Beach versus other areas of the state.” The Town spends money for beach maintenance to compete for tourism dollars, but does not track the number of visitors to the beach where the Project would be located. The Town’s interest in challenging the CCCL Waiver was that “it goes outside the normal process” and “creates confusion among applicants and the public.” However, the CCCL Waiver would have no effect on the Town’s processing of development orders. In addition, the Town was concerned that the boardwalk, as a frangible structure, could cause damage to the property of nearby private individuals. The interest in that regard was not to the property or resources of the Town, but to “[o]ur residents and our property owners.” (RO ¶¶ 9-10).

The Project Area

Little Estero Island is part of a barrier island system that has developed over decades through the gradual accretion of sand onto the shoreline. (RO ¶ 12).

The proposed dune walkover is proposed to be constructed on property just west of Big Carlos Pass, a maintained navigational channel that connects inland coastal waters to the Gulf of Mexico. Big Carlos Pass is a tidally dominated inlet, which results in a very dynamic shoreline in its immediate vicinity. (RO ¶ 13).

Creation and Fate of the “Lagoon” and Current Shoreline

Fort Myers Beach experiences offshore sediment transport that transfers sand along the shoreline from Estero Island towards Big Carlos Pass. In addition, movement of water through Big Carlos Pass agitates and suspends sand, creating an “ebb shoal” at the Gulf side of the pass. Currents generated by wave action transport sand from the ebb shoal offshore along the shoreline on both sides of the pass. The sediment transport results in the development of shoals and swash bars offshore from the Project site. Those features are gradually pushed towards the shore, and eventually “weld” onto the shoreline. (RO ¶ 14).

Big Carlos Pass was recently (after the October 20, 2015, issuance of the authorizing permit) dredged to maintain, realign, and straighten the inlet channel. The dredged material, consisting of approximately 350,000 cubic yards of sand, was deposited along 4,500 linear feet just offshore to the west of the Project vicinity. (RO ¶ 15).

The process of accretion, and the “welding” of a shoreward-moving sandbar has resulted in the creation of an enclosed and shrinking body of water between the shoreline and the upland. What was previously the shoreline of the Gulf of Mexico is, for now, the landward shoreline of the “lagoon.” (RO ¶ 16).

During significant storm events, the area can experience overwash, when storm-driven tides and waves overtop the existing Gulf shoreline, spilling into the lagoon. The overwash pushes sand into the lagoon, creating “fans” of sand and sediment, in a process by which the

lagoon is continually filled in and narrowed. As established by Mr. Dombrowski, the Applicants' coastal engineer, "what we would anticipate over time is that you keep on getting this over-topping of sand that keeps on filling in on the back side of the lagoon which will eventually fill in with sand." (RO ¶ 17).

In addition to overwash, rain and stormwater can fill the lagoon, which can result in the creation of temporary drainage outlets. For example, the area was impacted by Tropical Storm Alberto on Memorial Day 2018. Ms. Burns visited the area after the storm, in June 2018, and observed more water in the lagoon and in surrounding areas, including the sandy areas within the LEICWA. By July 18, 2018, at which time the photographs that comprise Petitioners' Exhibit 7 were taken, the water levels in the lagoon were lower. During a visit nearer to the date of the hearing, there was less water in the lagoon due to diminished rainfall, and water no longer flowed through the remnants of the drainage channels. Thus, stormwater drainage, rather than tidal connection, is the most likely cause of the swashes observed in the series of photographs taken on July 18, 2018. (RO ¶ 18).

For the lagoon to be considered "tidal," there would have to be an established connection between the lagoon and the Gulf of Mexico to allow for the regular periodic exchange of waters through tidal ebbs and flows. Mr. DeGraff took a series of "water shots" of the levels in the lagoon and the Gulf of Mexico. Whereas water levels in the Gulf of Mexico changed with the tides, the water levels in the lagoon remained constant, which supports that there is no connection between the two water bodies. (RO ¶ 19).

Overwash and storm events may temporarily open one-way connections and outfalls of water between the lagoon and the Gulf of Mexico as a result of accumulation of water in the back-barrier environment. If enough water is pushed into the lagoon, it will find an exit, but the

flow is “not back and forth again through a particular cut,” as would be the case with an established and regular tidal connection. (RO ¶ 20).

The ALJ concluded that the preponderance of the evidence demonstrates that the “lagoon” is not tidally connected to the Gulf of Mexico but is, rather, a feature that experiences no tidal ebb and flow and is, under normal conditions, disconnected from the Gulf of Mexico. (RO ¶ 21).

The big picture view of the process of shoaling, welding, filling, and narrowing of the “lagoon,” and ultimate reestablishment of the previously existing shoreline is depicted in Petitioners’ Exhibit 44, which the ALJ found to be a fascinating and visually compelling time-lapse of the Petitioners’ Exhibit 44 images at <https://earthengine.google.com/timelapse/#v=26.40708,-81.89551,11.491,latLng&t=0.00>. (RO ¶ 22).

The persistent narrowing of the temporary lagoon is depicted in Petitioners’ Exhibit 43. The ALJ found that exhibit 43, consisting of a series of aerial photographs, demonstrates convincingly the accretional nature of the area in front of the Applicants’ property, and offers support for evidence that “over the last 50 plus years . . . and especially within the last ten to 15, is that this shoreline has been accreting.” Competent, substantial evidence establishes that the accretional trend will naturally continue and may be further influenced by the deposition of dredged spoil from Big Carlos Pass, and supports the testimony of Mr. Dombrowski that the lagoon will naturally fill in with the cycle, at some future time, repeating itself. (RO ¶ 23).

In the area of the Project, the shoreline has been accreting at a rate of around 28 feet (or more) per year between 1999 and 2011. In the last 52 years, the shoreline to the east of the Project area has grown by more than 600 feet. To the west of the Project area, within the

LEICWA, overwash events and alluvial fans associated with such events demonstrate the accretional nature of the shoreline. (RO ¶ 24).

Mr. Kroemer owns a Hobie Wave Runner sailboat, which requires about 12 inches of water, and two kayaks, which require two to three inches of water that he uses in the Gulf of Mexico. To access the Gulf, Mr. Kroemer paddles or pushes the boats - depending on the season - through the lagoon and then takes them over land to the Gulf. The water levels in the lagoon are not sufficient to allow for the sailboat to traverse year-round. (RO ¶ 25).

The ALJ found that the greater weight of the evidence supports a finding that the water area over which the dune walkover is proposed will, as a process of accretion, fill with sand creating an unimpeded pathway to the Gulf of Mexico, as was the case prior to the most recent accretionally welded sand bar. The suggestion that the shoreline will erode and ultimately become open water is not supported by the evidence. (RO ¶ 26).

Vegetation

The vegetation in the vicinity of the proposed dune walkover and surrounding the lagoon include mangroves; shrubby plants, including bay cedar and marsh elder; and facultative grass species, such as hurricane grass. The Project area is becoming increasingly more vegetated, with plant communities pioneering at the ground cover level, followed by shrubs and small trees. The area is generally undergoing natural ecological succession. The vegetation in the areas over which the proposed dune walkover is to be constructed, including the ground cover, is too thick to be conducive for shorebird nesting, which generally occurs in areas that are open, and sandy or shelly. The mangroves that fringe the lagoon range from five to seven feet in height, and the shrubby vegetation in the Project area can be up to four feet in height. (RO ¶¶ 27-28).

Wildlife

The beaches in the area are used by shorebirds and migratory birds for nesting, foraging, and loafing. Birds that have been observed in the general vicinity of the LEICWA include Snowy Plovers, Wilson's Plovers, American Oystercatchers, Black Skimmers, and Least Terns. (RO ¶ 29).

Snowy Plovers, American Oystercatchers, Black Skimmers, and Least Terns are designated by the FFWCC as threatened bird species. Those species are also identified by DEP as "Listed Wildlife Species that are Aquatic or Wetland Dependent and that Use Upland Habitats for Nesting or Denning" in A.H. Table 10.2.7-1, with Snowy Plovers and Least Terns listed as "State-designated Threatened," and American Oystercatchers and Black Skimmers listed as "State Species of Special Concern." Wilson's Plovers are not a species listed as threatened, of special concern, or of any other protected classification by the FFWCC or DEP. (RO ¶¶ 30-31).

Snowy Plovers, American Oystercatchers, Black Skimmers, and Least Terns prefer clear, open sand for nesting. They lay their eggs on the sand or in shallow "scrapes" or depressions in the sand. The eggs generally match the substrate, and the coloration of the chicks allows them to blend in with the sand, providing a camouflaging defense against predators. Those species are colony nesters, nesting in groups as a reproductive strategy. Wilson's Plovers also prefer open sandy areas, but will occasionally nest in nearby sparsely vegetated areas, referred to by Mr. Johnson as "salt and pepper" coverage, which have pockets of open sand. Such areas exist waterward of the proposed terminus of the dune walkover. Wilson's Plovers are solitary nesters. Shorebirds will typically not nest in areas with vegetative cover. Mangroves and other tall, woody species of plants create perching opportunities for crows and other avian predators, while

ground-dwelling predators like snakes can move through vegetation and predate shorebird nests. (RO ¶¶ 32-34).

Applicants' Exhibits 6 and 9 depict the extent of shorebird utilization, including nesting, of habitat in the immediate Project vicinity based on a series of 2017 and 2018 site visits, historic aerial photographs, and FFWCC shorebird data. Applicants' Exhibit 6 provides a visual representation of the wide utilization of the open raked beach area east of the Project for nesting, with only scattered use of "salt and pepper" vegetated areas by non-threatened Wilson's Plovers. Applicants' Exhibits 6 and 9, in combination with Mr. Johnson's testimony and field notes, is found to be the most accurate and representative depiction of the utilization of the Project area by shorebirds. (RO ¶ 35).

There have been shorebird sightings on the sandy shoreline waterward of the terminus of the proposed dune walkover. The closest recorded bird sighting to the Project area, involving a Wilson's Plover nest scrape and, subsequently, a nesting female at that location, was approximately 150 feet southwest of the waterward terminus of the dune walkover in an area of "salt and pepper" vegetation. During his site visits in 2017, Mr. Johnson observed considerable pedestrian traffic along the shoreline waterward of the Project area. It was in this general area that he had noted the presence of Wilson's Plovers. He explained that Wilson's Plovers can tolerate pedestrian traffic as long as it does not "get right up on" their nests. When nesting areas are roped off, Wilson's Plovers can tolerate pedestrian traffic up to the protective barrier as long as it does not encroach into the protected area. (RO ¶¶ 36-37).

Sea turtles also have the potential to nest just above the high tide mark in the dunes waterward of the proposed dune walkover. A staked sea turtle nest west of the Project area was observed by Ms. Burns during her July 2018 visit to the area. Sea turtles do not typically nest in

vegetated areas. Given both the distance to and vegetative cover at the waterward terminus of the dune walkover, sea turtles would be unlikely to migrate to the Project area to excavate a nest. There was no evidence that pedestrian access to the location at which Ms. Burns observed the staked sea turtle nest was restricted. Rather, the evidence establishes that pedestrian traffic is allowable and common along the shoreline. People walking along the shore could easily happen upon the staked area, just as Ms. Burns did, and just as Mr. Johnson did during his visits to the area. In that regard, the Applicants, even if they were to take a longer and more circuitous route to the shoreline, would not be restricted in walking along the shoreline in the vicinity of the nest. The ALJ concluded that the preponderance of the evidence establishes that the proposed dune walkover will have no adverse effect on nesting sea turtles in the area. (RO ¶¶ 38-39).

The LEICWA

Property to the west of the proposed dune walkover has been designated by the State of Florida as the LEICWA. The LEICWA includes some vegetated land adjacent and parallel to the footprint of the proposed dune walkover. The proposed dune walkover is not within the boundary of the LEICWA. At times, portions of the LEICWA are roped off by the FFWCC to demarcate shorebird nests and nesting colonies, and to channel pedestrian access through the LEICWA. The ALJ concluded that there was no persuasive evidence that pedestrian traffic through the LEICWA is disruptive to the birds using the LEICWA or to their nesting patterns. (RO ¶¶ 40-41).

Posted and roped-off areas are not intended to identify the geographic extent of the LEICWA, and are often not specific to shorebird nest sightings, but instead represent larger areas “to allow the birds to have more availability to choose where they’re going to nest.” (RO ¶ 42).

Roughly 300 feet east of the Project area and the LEICWA boundary (as scaled using Petitioner's Exhibit 6) is a large raked, sandy area which is maintained free of vegetation. A large number of shorebirds and shorebird nests have been documented on the open, sandy area. The open, sandy area is directly abutted to its north by homes and by what appear to be larger multi-family structures. In addition, the open area is "preferred by a lot of beach goers to have open sand to walk through instead of walking through vegetation. So it's been manipulated mechanically to be open." The ALJ concluded that there was no evidence that the direct proximity of such residential structures, their inhabitants, and beachgoers have any disruptive affect on the large nesting colonies inhabiting that area. (RO ¶ 43).

A four-foot-high, three-foot-wide education kiosk placed by the FFWCC is located on the shore side of the LEICWA. A roughly seven-foot-high, 15-inch-wide sign, educating beachgoers about the LEICWA and of the needs of the birds that frequent the area has been placed at the edge of the LEICWA. Neither of the signs incorporate any features designed to discourage their use as perches. Both of the signs provide an elevated and unobstructed vantage point into the LEICWA's primary nesting area. The signs, which are much greater in height and nearer to the LEICWA's preferred shorebird nesting habitat than the proposed dune walkover "can serve as perches" for predatory birds in the area. Although there was evidence that Petitioners' members and employees monitor the signs for evidence that they are being used as perches, there was no evidence to suggest what might happen if they were. (RO ¶ 44).

Although the dune walkover is not within the boundary of the LEICWA, Ms. Wraithmell testified that "[t]he birds unfortunately don't recognize boundaries." The ALJ concluded that while birds may not recognize boundaries, regulators must. Standards that apply within a designated critical wildlife area do not apply outside of a critical wildlife area, even within feet

of the boundary. That is why boundaries, including legal descriptions, are set. Since the proposed dune walkover is not within the boundary of the LEICWA, the ALJ concluded that standards applicable within critical wildlife areas cannot be applied. (RO ¶ 45).

The Proposed Dune Walkover

The dune walkover is proposed as a 1,491.50 square-foot (298.3 feet in length by 5 feet in width) piling-supported wooden walkway five feet in width. Its original six-foot width was reduced to five feet, which remains adequate to accommodate the anticipated need for the use of a wheelchair or mobility device by one of the Applicants. The steps at the waterward end of the proposed dune walkover were replaced with ramps, also for use by a wheelchair or similar device. The replacement of the initially proposed stairs with a ramp will also reduce “lift” forces in the event of a storm. (RO ¶ 46).

The dune walkover will serve to minimize foot traffic on the native dune vegetation, and channel the foot traffic from its terminus to the shore of the Gulf of Mexico. As such, the dune walkover will have a beneficial effect on the native vegetation in its immediate area. (RO ¶ 47).

As originally proposed, the dune walkover was to have been three feet, ten inches above the ground surface, with three-foot-high handrails. To address the concerns posed by others, particularly the FFWCC, the height was lowered to two feet, six inches above the ground surface, which is the maximum height for a structure to be built without handrails. The handrails were removed in their entirety, and the design does not contain any pickets or other “non-structural members.” Thus, the proposed dune walkover is, at its highest point, two feet, six inches above the ground surface. Mangroves in the vicinity of the dune walkover are generally from five to seven feet in height, and commonly occurring shrubby vegetation of four feet in height was observed in the area. Thus, the dune walkover is well below the elevation of the

surrounding vegetation. The dune walkover, as currently proposed, has no value as a perch or vantage point for avian predators. (RO ¶ 48).

The posts that support the structure will be round, six inches in diameter, and installed five feet deep into the sand. The posts will not be encased in concrete, but will be wrapped to prevent leaching of any potentially toxic compounds into the environment. The walking surface of the dune walkover will be made of slatted decking, with a one-half inch space between each deck board. The proposed ERP indicated that gaps will allow sufficient light penetration to maintain the underlying vegetative habitat. The ALJ concluded that there was no persuasive evidence to the contrary. (RO ¶ 49).

In its final configuration, the proposed dune walkover is fully compliant with, though substantially smaller and less intrusive than, the generally acceptable siting, design, and elevation provisions set forth in the DEP Beach and Dune Walkover Guidelines. The construction plans do not require the use of vehicles, other than to deliver the material to the site. There will be no placement of fill. There will be no lighting, either in construction or in operation. (RO ¶¶ 50, 52).

As mitigation for the minimal impacts associated with the crossing of the lagoon, and at DEP's direction, the Applicants purchased 0.01 saltwater forest and 0.1 saltwater herbaceous mitigation credits in the Pine Island Mitigation Bank, to offset for any remaining impacts not avoided through the design modifications. The ALJ concluded that the evidence established, by a preponderance of the competent, substantial, and persuasive evidence adduced at the hearing, that the proposed mitigation was sufficient to offset any environmental impacts resulting from the proposed Project, even before its width was decreased from six feet to five feet. (RO ¶ 53).

The alterations to the proposed dune walkover as described herein were largely made to address the concerns expressed by the FFWCC in its comments of August 27, 2015; July 20, 2016; and July 27, 2017, and the proposed ERP and CCCL Permit incorporates all of the conditions requested by the FFWCC. It was established that the Applicants have addressed and met the FFWCC's concerns regarding the proposed Project. (RO ¶ 54).

Environmental Resource Permit

The issuance or denial of an ERP is generally governed by section 373.414, Florida Statutes, chapter 62-330, Florida Administrative Code, and the Environmental Resource Permit Applicant's Handbook, Volume I (A.H.). Section 373.4131(1) requires DEP to adopt statewide environmental resource permitting rules. DEP has done so through the adoption of rules 62-330.301 and 62-330.302, Florida Administrative Code. (RO ¶¶ 55-56).

The Applicants met their burden of demonstrating they met all applicable standards and were entitled to issuance of the ERP by entering the application and DEP's notice of intent of issue the ERP in evidence. Therefore, a finding that there was insufficient evidence introduced by Petitioners to rebut the prima facie case is sufficient to establish that the grounds for issuance have been met. (RO ¶ 57).

Based on the entirety of the record of this proceeding, the ALJ concluded that the Applicants provided reasonable assurances that the proposed dune walkover meets the requirements for the ERP. (RO ¶ 58).

Rule 62-330.301(1)

Rule 62-330.301(1), Florida Administrative Code, provides that an applicant for an ERP must provide reasonable assurance that the permitted activity will not cause adverse affects. The standards established by rule are further described in the A.H. (RO ¶ 59)

Water quantity impacts: Rule 62-330.301(1)(a) and A.H. Section 10.2.2.4

Piling supported structures do not typically impact a water body's depth or flow. The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the piling-supported dune walkover would reduce the depth, duration, or frequency of inundation or saturation in the lagoon; would increase the depth, duration, or frequency of inundation through changing the rate or method of discharge of water to the lagoon or by impounding water in the lagoon; or could have the effect of altering water levels in the lagoon. To the contrary, the ALJ found there was substantial testimony that the proposed dune walkover will not cause adverse water quantity impacts to receiving waters and adjacent lands. (RO ¶ 60).

Adverse flooding: Rule 62-330.301(1)(b)

The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse flooding to on-site or off-site property. (RO ¶ 61).

Adverse impacts to existing surface water storage and conveyance capabilities: Rule 62-330.301(1)(c)

The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse impacts to existing surface water storage and conveyance capabilities. (RO ¶ 62).

Adverse impacts to the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters: Rule 62-330.301(1)(d) and A.H. Section 10.2.2

The A.H. provides that “[i]n evaluating whether an applicant has provided reasonable assurances under these provisions, de minimis effects shall not be considered adverse for the purposes of this section.” In accordance with the A.H., DEP provided information to the

FFWCC and solicited comments on the proposed dune walkover in its various configurations. The ALJ found that the Applicants met every listed substantive concern expressed by the FFWCC in its comments of August 27, 2015; July 20, 2016; and July 27, 2017. The proposed ERP incorporates all of the conditions requested by the FFWCC. (RO ¶ 63).

The A.H. section 10.2.2 also provides that “[t]he need for a wildlife survey will depend upon the likelihood that the site is used by listed species and the bald eagle, considering site characteristics and the range and habitat needs of such species, and whether the proposed activity will impact that use.” In its August 27, 2015, comments, the FFWCC requested that the Applicants provide an assessment of anticipated impacts to wildlife. Thereafter, on December 2, 2015, Mr. Rood provided information to DEP explaining the densely vegetated nature of the proposed dune walkover location, and its lack of value to nesting shorebirds. He noted the general distance, i.e., 100 to 150 yards, from the terminus of the proposed dune walkover to the nearest shorebird nesting area and “roped off nesting areas.” (RO ¶ 64).

The A.H. provides that “[t]he need for a wildlife survey will depend upon the likelihood that the site is used by listed species and the bald eagle, considering site characteristics and the range and habitat needs of such species.” As a result of Mr. Rood’s explanation of the characteristics of the Project location, on December 11, 2015, the FFWCC withdrew its request for the survey and wildlife assessment. (RO ¶ 65).

The ALJ concluded that the preponderance of the competent, substantial, and persuasive evidence demonstrates that there will be no adverse impacts to the value of functions provided to any species of concern provided by the lagoon and associated wetlands that will result from the construction and use of the proposed dune walkover. Shorebirds, whether or not they are protected species, will not be impacted by the Project. The ALJ found that there was no

evidence to support a finding that wading birds foraging in the lagoon, as depicted in photographs taken by Ms. Burns, would be affected in any way. (RO ¶ 66).

Water quality impacts: Rule 62-330.301(1)(e) and A.H. Section 10.2.4

An ERP applicant must provide reasonable assurance that a project will not adversely affect the quality of receiving waters such that State water quality standards will be violated. (RO ¶ 67).

DEP required turbidity control to address short-term water quality issues attendant with construction. Best management practices to minimize construction-related turbidity are required. The sand in the area is coarse, with a small percentage of sands and clays, further minimizing the potential for turbidity. The pilings are required to be wrapped to prevent any chemicals used to treat the pilings from leaching into the soil or water. The structure will be constructed outward from the boardwalk deck, thus, minimizing impacts to surrounding vegetation and surface waters. The ERP is conditioned on adherence to Best Management Practices to ensure that oils, greases, gasoline, or other pollutants are not released into the wetlands or surface waters. (RO ¶ 68).

The ALJ concluded that the preponderance of the competent, substantial, and persuasive evidence demonstrates that there will be no adverse impacts on water quality associated with the construction or use of the proposed dune walkover. The evidence introduced by Petitioners was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse impacts to water quality. (RO ¶ 69).

Secondary impacts: Rule 62-330.301(1)(f) and A.H. Sections 10.1.1(f) and 10.2.7

An ERP applicant must provide reasonable assurance that the Project will not cause adverse secondary impacts. The secondary impact criterion consists of four parts as established in A.H. section 10.2.7(a) through (d). (RO ¶ 70).

The proposed dune walkover will not have any lighting so as to impact turtle nesting and will not use vehicles except as necessary to deliver building supplies. Other secondary impacts identified in A.H. section 10.2.7(a) are not applicable. (RO ¶ 71).

The ALJ concluded that the preponderance of the competent, substantial, and persuasive evidence in this proceeding established that the area in which the proposed dune walkover is to be constructed will not adversely impact the ecological value of uplands for any listed bird species of concern for nesting or foraging as set forth in A.H. section 10.2.7(b). The Project area is thickly vegetated, which is not conducive for use by shorebirds that frequent the LEICWA. The nearest documented shorebird presence is well removed from the dune walkover terminus. (RO ¶ 72).

The evidence established that the pedestrian traffic resulting from the use of the dune walkover will not disturb Wilson's Plovers, which is the only observed species that uses the "salt and pepper" vegetation between the dune walkover and the Gulf of Mexico. Any nests would, as are existing nests in the area, be marked. Wilson's Plovers are tolerant of pedestrian traffic as long as it does not directly encroach into their nesting area. (RO ¶ 73).

The suggestion that the Applicants' use of the proposed dune walkover will disrupt the habits of shorebirds observed near its terminus disregards the fact that the area is already used by the Applicants to access the beach. Furthermore, the beach itself, which is much nearer to observed bird sightings, is popular and frequently used, without restriction, by beachgoers other

than the Applicants. There was no evidence that such pedestrian access along the beach adversely affects shorebirds. (RO ¶ 74).

Pedestrian access is allowed directly through areas of the LEICWA that are more thickly populated with nests of shorebird species less tolerant of pedestrian traffic than the Wilson's Plovers. There was no evidence that such pedestrian access through the LEICWA adversely affects shorebirds. (RO ¶ 75).

The open, sandy area to the east of the Project area is extensively used for nesting by large colonies of various protected shorebird species. That area is directly bounded by single and multi-family residences and is a popular area for beach access. The ALJ found that there was no evidence that human presence near, and pedestrian access through, the areas used by colonies of shorebirds adversely affected those shorebirds. (RO ¶ 76).

The Applicants presently drag their Hobie sailboat and kayaks across the lagoon and through the dunes. The dune walkover will allow them to simply wheel or carry those vessels across the lagoon and dunes without further impact. The ALJ found that the evidence in this case does not support a finding that the existing pedestrian access will be increased by the dune walkover but, to the contrary, suggests that the walkover will allow access in a much less disruptive and destructive manner. (RO ¶ 77).

A.H. sections 10.2.7(c) and (d), governing, respectively, associated activities that have the potential to cause impacts to significant historical and archaeological resources and future project phases or activities, are not applicable to the proposed dune walkover. (RO ¶ 78).

The ALJ concluded that the preponderance of the competent, substantial, and persuasive evidence demonstrates that there will be no adverse secondary impacts associated with the construction or use of the proposed dune walkover. The evidence introduced by Petitioners was

not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse secondary impacts. (RO ¶ 79).

Adverse impacts to the maintenance of Minimum Flows and Levels: Rule 62-330.301(1)(g)

The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse impacts to the maintenance of surface or groundwater levels or surface water flows. (RO ¶ 80).

Adverse impacts to a Work of the District: Rule 62-330.301(1)(h)

The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse impacts to a Work of the District. (RO ¶ 81).

Capable of performing and functioning as proposed: Rule 62-330.301(1)(i)

The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will not be capable of performing and functioning as proposed. (RO ¶ 82).

Conducted by a person with the financial, legal and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit: Rule 62-330.301(1)(j)

The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will not be conducted by persons with the financial, legal, and administrative capability of ensuring that the proposed dune walkover will be constructed in accordance with the terms and conditions of the ERP. The legal ability to undertake the activities that are encompassed by the SSL Authorization, CCCL Permit, and CCCL Waiver are being decided herein, and their lack of finality does not constitute a failure to meet this ERP permitting criteria. (RO ¶ 83).

Comply with any applicable special basin or geographic area criteria: Rule 62-330.301(1)(k)

The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will not comply with any applicable special basin or geographic area criteria. (RO ¶ 84).

Public Interest Test - Section 373.414(1), Florida Statutes, Rule 62-330.302(1)(a), and A.H. Section 10.2.3

Section 373.414(1) provides that an applicant for an ERP must provide reasonable assurance that the permitted activity will not cause violations of state water quality standards and that such activity is not contrary to the public interest. (RO ¶ 85).

As set forth in the discussion of rule 62-330.301(1)(e) and A.H. section 10.2.4 above, the Applicants demonstrated that the proposed dune walkover will not cause violations of state water quality standards. The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause violations of state water quality standards. (RO ¶ 86).

The seven factors that constitute the public interest test are established in section 373.414(1)(a), Florida Statutes, reiterated in rule 62-330.302(1)(a), and explained in greater detail in A.H. section 10.2.3. As set forth previously, some of the criteria would appear to have no relevance to this case. However, since Petitioners failed to provide any substantive narrowing of the issues in the JPS, that ALJ found it necessary to go through each and every factor to ensure that some element of the ERP analysis required “pursuant to all applicable rules and statutes” does not go unaddressed. (RO ¶ 87).

Whether the activity will adversely affect the public health, safety, or welfare or the property of others: Section 373.414(1)(a)1.; Rule 62-330.302(1)(a)1.; A.H. Section 10.2.3.1

The evaluation of the factors for consideration under this element of the public interest test include environmental issues such as “mosquito control; proper disposal of solid, hazardous, domestic or industrial waste; aids to navigation; hurricane preparedness or cleanup; environmental remediation, enhancement or restoration; and similar environmentally related issues.” The evaluation also includes impacts to shellfish harvesting areas; flooding or the alleviation of flooding on the property of others; and affects on the water table that could result in the drainage of off-site wetlands or other surface waters. (RO ¶ 88).

The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will adversely affect the public health, safety, or welfare or the property of others. (RO ¶ 89).

Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats: Section 373.414(1)(a)2.; Rule 62-330.302(1)(a)2.; A.H. Section 10.2.3.2

A.H. section 10.2.3.2 provides that the “fish and wildlife” element of the public interest test is to be evaluated as follows:

The Agency’s public interest review of that portion of a proposed activity in, on, or over wetlands and other surface waters for impacts to ‘the conservation of fish and wildlife, including endangered or threatened species, or their habitats’ is encompassed within the required review of the entire activity under section 10.2.2, above.

(RO ¶ 90).

As set forth herein, the ALJ concluded that the preponderance of the competent, substantial, and persuasive evidence demonstrates that the proposed dune walkover will not adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats. (RO ¶ 91).

Moreover, the ALJ concluded that the Petitioners did not prove by a preponderance of competent and substantial evidence that the Applicants failed to meet the standards set forth in section 373.414(1)(a)2. Florida Statutes, rule 62-330.302(1)(a)2., Florida Administrative Code, and A.H. section 10.2.3.3. (RO ¶ 92).

Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling: Section 373.414(1)(a)3.; Rule 62-330.302(1)(a)3.; A.H. Section 10.2.3.3

With regard to this element of the public interest test, A.H. section 10.2.3.3 provides, in pertinent part, that:

In reviewing and balancing the criterion on navigation, erosion and shoaling in section 10.2.3(c), above, the Agency will evaluate whether the regulated activity located in, on or over wetlands or other surface waters will:

- (a) Significantly impede navigability or enhance navigability. The Agency will consider the current navigational uses of the surface waters and will not speculate on uses that may occur in the future. Applicants proposing to construct bridges or other traversing works must address adequate horizontal and vertical clearance for the type of watercraft currently navigating the surface waters
- (b) Cause or alleviate harmful erosion or shoaling
- (c) Significantly impact or enhance water flow

(RO ¶ 93).

The only evidence of any form of vessels using the lagoon was the Applicants' act of paddling or dragging the Hobie sailboat and kayaks across the lagoon to access the navigable waters of the Gulf of Mexico. Such does not constitute "current navigational uses of the surface waters." The ALJ concluded that the preponderance of the evidence in this case establishes that there is no "current" navigational use of the lagoon. No testimony or evidence was elicited that the lagoon supported any form of boating or other navigational use. No person owning property abutting the lagoon that might be affected by some restriction on their navigational rights objected to the proposed dune walkover. The ALJ concluded that the evidence introduced by

Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will significantly impede navigability. (RO ¶ 94).

Ms. Mills testified that “piling supported structures are used in dynamic systems all the time. Specifically, you know, because they don’t really have an effect on the movement of sand.” The ALJ found that her testimony, combined with that of the Applicants’ expert witnesses regarding the nature of the area, was sufficient to establish that the proposed dune walkover will not cause harmful erosion or shoaling. Accordingly, the ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause erosion or shoaling. (RO ¶ 95).

The ALJ found that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will significantly impact or enhance water flow. (RO ¶ 96).

The ALJ concluded that the Petitioners did not prove by a preponderance of competent and substantial evidence that the Applicants failed to meet the standards set forth in section 373.414(1)(a)3, Florida Statutes; rule 62-330.302(1)(a)3., Florida Administrative Code; and A.H. section 10.2.3.3. (RO ¶ 97).

Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity: Section 373.414(1)(a)4.; Rule 62-330.302(1)(a)4.; A.H. Section 10.2.3.4

The evaluation of the factors for consideration under this element of the public interest test include adverse effects to sport or commercial fisheries or marine productivity, including the elimination or degradation of fish nursery habitat, change in ambient water temperature, change in normal salinity regime, reduction in detrital export, change in nutrient levels, or other adverse effects on populations of native aquatic organisms. (RO ¶ 98).

The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will adversely affect sport or commercial fisheries or marine productivity. The public interest evaluation under these regulatory provisions also includes effects on “existing recreational uses of a wetland or other surface water,” which could include impacts to “the current use of the waterway for boating.” (RO ¶¶ 99-100).

Other than evidence that the Applicants had to paddle or push their shallow draft sailboat and kayaks across the lagoon to reach the Gulf, there was no evidence to establish that the lagoon has any recreational use. The DEP determined that it does not, based on the fact that the lagoon is not of a permanent depth to support navigation and was intermittently (at best) connected to the Gulf of Mexico. The ALJ found that Ms. Mills’ testimony to that effect was persuasive, and consistent with that of Mr. Kroemer’s testimony. (RO ¶ 101).

The standards applicable to impacts to recreational uses are directed to “existing” and “current” uses. There was no evidence of anyone currently using the lagoon for recreational boating. Mr. Rood indicated that he had never seen anyone boating in the lagoon. There was no evidence that anyone else along the lagoon even had a boat. Mr. Kroemer, when asked if his neighbors could use the dune walkover to portage their boats across the lagoon testified that “I’m not aware that they have boats.” No property owners with homes along the lagoon objected to the proposed dune walkover. (RO ¶ 102).

The ALJ concluded that the evidence in this case establishes that the proposed dune walkover will not adversely affect fishing or recreational values, or marine productivity in the vicinity of the proposed Project. (RO ¶ 103).

Whether the activity will be of a temporary or permanent nature: Section 373.414(1)(a)5.; Rule 62-330.302(1)(a)5.; A.H. Section 10.2.3.5

The proposed dune walkover is intended to provide permanent access to the Gulf of Mexico, as opposed to being a temporary structure. This finding should not be conflated with whether the proposed dune walkover is an “expendable structure” for purposes of the CCCL Permit, as will be discussed herein. (RO ¶ 104).

Whether the activity will adversely affect or will enhance significant historical and archaeological resources: Section 373.414(1)(a)6.; Rule 62-330.302(1)(a)6.; A.H. Section 10.2.3.6

The ALJ found there was no evidence introduced by Petitioners in this case to support a finding that the proposed dune walkover will affect significant historical and archaeological resources in any manner. (RO ¶ 105).

The current condition and relative value of functions being performed by areas affected by the proposed activity: Section 373.414(1)(a)7.; Rule 62-330.302(1)(a)7.; A.H. Section 10.2.3.7

The ALJ concluded that the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will adversely affect the current condition and relative value of functions being performed by the waters of and wetlands surrounding the lagoon. (RO ¶ 106).

The evidence in this case was almost entirely directed to nesting and feeding habitat of shorebirds frequenting the LEICWA. The ALJ concluded that the preponderance of the evidence established that the areas affected by the proposed dune walkover are not conducive for nesting, feeding, or loafing by Snowy Plovers, American Oystercatchers, Black Skimmers, or Least Terns. The Applicants’ Exhibit 6, which was relied upon by each of the parties, showed no observed sightings of those species near the lagoon or the smaller water feature. There was one observed sighting of a non-threatened Wilson’s Plover near the edge of the smaller water feature,

though not directly affected by the proposed dune walkover, and no observed sightings of any of the identified species of concern near the lagoon or in the waters of either water body.

Moreover, there was no evidence that the proposed dune walkover would affect the wading birds or shorebirds photographed by Ms. Burns. (RO ¶¶ 107-108).

The ALJ concluded that the Petitioners did not prove by a preponderance of competent and substantial evidence that the Applicants failed to meet the standards set forth in section 373.414(1)(a)7., Florida Statutes; rule 62-330.302(1)(a)7., Florida Administrative Code; and A.H. section 10.2.3.7. (RO ¶ 109).

Cumulative Impacts: Section 373.414(8); Rule 62-330.302(1)(b); A.H. Sections 10.1.1(g) and 10.2.8

A.H. section 10.2.8 provides, in pertinent part, that:

The impact on wetlands and other surface waters shall be reviewed by evaluating the impacts to water quality as set forth in section 10.1.1(c), above, and by evaluating the impacts to functions identified in section 10.2.2, above. If an applicant proposes to mitigate these adverse impacts within the same drainage basin as the impacts, and if the mitigation fully offsets these impacts, then the Agency will consider the regulated activity to have no unacceptable cumulative impacts upon wetlands and other surface waters, and consequently, the condition for issuance in section 10.1.1(g) will be satisfied.

(RO ¶ 110).

Section 373.4136, Florida Statutes, establishes that the use of mitigation credits is sufficient to offset adverse impacts for an activity in the mitigation bank service area, and provides, in pertinent part, that:

(6) The department or water management district shall establish a mitigation service area for each mitigation bank permit . . . Except as provided herein, mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area shall depend upon the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts . . .

(a) In determining the boundaries of the mitigation service area, the department or the water management district shall consider . . . at a minimum, the extent to which the mitigation bank:

* * *

3. Will provide for the long-term viability of endangered or threatened species or species of special concern; [and]

* * *

5. Can reasonably be expected to offset specific types of wetland impacts within a specific geographic area. . . .

* * *

(c) Once a mitigation bank service area has been established by the department or a water management district for a mitigation bank, such service area shall be accepted by all water management districts, local governments, and the department.

(RO ¶ 111).

The Applicants have proposed mitigation in the form of the purchase of 0.01 saltwater forested mitigation bank credits and 0.01 saltwater herbaceous mitigation bank credits from the Pine Island Mitigation Bank. The proposed dune walkover is within the service area established for the Pine Island Mitigation Bank. The mitigation credits, which were initially calculated based on a six-foot-wide dune walkover, are more than sufficient to offset any adverse impacts of the proposed five-foot-wide dune walkover on the wetlands and surface waters in the Project area. (RO ¶ 112).

Ms. Mills testified that the proposed dune walkover would have “[n]o adverse cumulative impacts because the project would be doing mitigation, with mitigation bank credits within the surface area established for the mitigation bank.” Her testimony established that the statutory offset criteria is applied when a project (and a mitigation bank such as the Pine Island Mitigation Bank) is on a barrier island which, because there is no “drainage” except to the Gulf of Mexico,

is not within a “drainage basin.” The ALJ concluded that her testimony was persuasive, meets the statutory criteria in section 373.4136, and was accepted. (RO ¶ 113).

There are no existing permits or pending applications for similar dune walkovers in the area. Given the presence of the LEICWA to the west, applications for similar walkovers within its boundary are unlikely and, if made, would have to comply with critical wildlife area restrictions. (RO ¶ 114).

The evidence in this case establishes that the proposed dune walkover will not result in unacceptable cumulative impacts upon wetlands and other surface waters. Furthermore, the ALJ concluded that the Petitioners did not prove by a preponderance of competent and substantial evidence that the Applicants failed to meet the standards set forth in section 373.414(1)(a)7., Florida Statutes; rule 62-330.302(1)(a)7., Florida Administrative Code; and A.H. section 10.2.3.7. (RO ¶ 115).

Elimination or Reduction of Impacts: A.H. Section 10.2.1

A.H. section 10.2.1 provides, in pertinent part, that:

The following factors are considered in determining whether an application will be approved by the Agency: the degree of impact to wetland and other surface water functions caused by a proposed activity; whether the impact to these functions can be mitigated; and the practicability of design modifications for the site that could eliminate or reduce impacts to these functions, including alignment alternatives for a proposed linear system.

(RO ¶ 116).

A.H. section 10.2.1.1 provides, in pertinent part, that:

The term ‘modification’ shall not be construed as including the alternative of not implementing the activity in some form, nor shall it be construed as requiring a project that is significantly different in type or function

(RO ¶ 117).

A.H. section 10.2.1.2 provides, in pertinent part, that:

The Agency will not require the applicant to implement practicable design modifications to reduce or eliminate impacts when:

* * *

b. The applicant proposes mitigation that implements all or part of a plan that provides regional ecological value and that provides greater long term ecological value than the area of wetland or other surface water to be adversely affected.

(RO ¶ 118).

As set forth previously, the Applicants proposed mitigation in the form of the purchase of 0.01 saltwater forested mitigation bank credits and 0.01 saltwater herbaceous mitigation bank credits from the Pine Island Mitigation Bank. The Project area is within the service area established for the Pine Island Mitigation Bank. Ms. Mills testified that “any habitat can be used for nesting and denning, I think any impacts have been offset by the mitigation.” The ALJ credited her testimony. The ALJ concluded that the evidence was also sufficient to establish that the mitigation was in an amount that offsets the impacts of the proposed dune walkover on the lagoon, provides regional ecological value, and provides greater long-term ecological value than the area of the lagoon affected. Based on the Findings of Fact set forth herein, and as supported by a preponderance of the persuasive evidence adduced at the hearing, the ALJ concluded that the Applicants were under no requirement to implement practicable design modifications to reduce or eliminate impacts from the proposed dune walkover. (RO ¶ 119).

Despite having no obligation to do so, the Applicants did implement practicable design modifications, resulting in a realignment of the dune walkover to eliminate any encroachment on the LEICWA, the reduction of the width of the Project from six feet to five feet, and the elimination of features that resulted in a much lower and unobtrusive structure. The Applicants

also agreed to permit conditions to implement construction methodologies to reduce impacts, and eliminate lighting that could affect adjacent habitats. (RO ¶ 120).

In addition to the foregoing, the ALJ found that Ms. Mills testified convincingly that the boardwalk in this area would serve to minimize unrestricted and unchanneled foot traffic, and direct traffic so that people are not “using other manners that aren't specifically defined causing more adverse impacts” through natural and sandy areas. (RO ¶ 121).

The ALJ concluded that the Petitioners did not prove by a preponderance of competent and substantial evidence that the Applicants failed to meet the standards set forth in A.H. sections 10.2.1 and 10.2.1.2. (RO ¶ 122).

Environmental Resource Permit - Ultimate Finding of Fact

The ALJ concluded that a preponderance of the competent, substantial evidence in this case establishes that the Applicants demonstrated their entitlement to the issuance of the ERP, meeting the standards established in section 373.414, Florida Statutes, rules 62-330.301 and 62-330.302, Florida Administrative Code, and the applicable sections of the A.H. The ALJ concluded that the Petitioners did not meet their burden of demonstrating that the ERP should not be issued. (RO ¶ 123).

SSL Authorization

The sovereignty lands at issue in this case are those that were under state ownership prior to the landward migration and attachment of the sandbar. *See* Fla. Admin. Code R. 18-21.003(61). The Applicants did not dispute that a SSL Authorization was appropriate. (RO ¶ 124).

The standards for issuance of an SSL Authorization, including a Letter of Consent Easement, are generally established in Rule 18-21.004, Florida Administrative Code. (RO ¶ 125).

Based on the entirety of the record of this proceeding, the ALJ concluded that the Applicants provided reasonable assurances that the proposed dune walkover meets the requirements for the SSL Authorization. (RO ¶ 126).

Rule 18-21.004(1)(a) - Contrary to the public interest

Rule 18-21.004(1)(a) provides that “activities on sovereignty lands must be not contrary to the public interest.” (RO ¶ 127).

As established by DEP:

Rule 18-21.004(1)(a) requires an applicant to demonstrate that an activity proposed to be conducted on sovereignty submerged lands will not be contrary to the public interest. . . . [T]o meet this standard, it is not necessary that the applicant show that the activity is affirmatively in the ‘public interest,’ as that term is defined in rule 18-21.003(51), Florida Administrative Code. Rather, it is sufficient that the applicant show that there are few, if any, ‘demonstrable environmental, social, and economic costs’ of the proposed activity.

Defenders of Crooked Lake, Inc. v. Krista Howard and Dep’t of Env’tl Prot., DOAH Case No. 17-5328, FO at 26 (Fla. DOAH July 5, 2018; Fla. DEP Aug. 16, 2018). (RO ¶ 128).

The ALJ concluded that the Applicants have demonstrated, by a preponderance of the competent, substantial, and persuasive evidence in the record, that the proposed dune walkover will pose no demonstrable environmental or social costs. (RO ¶ 129).

The ALJ found that the suggestion that the construction of the proposed dune walkover will adversely affect the economic viability of the LEICWA or the Town is, under the facts of this case, simply implausible. The facts stipulated by the parties provide that “the beach and the ecotourism generated by the potential for birdwatching is important for the Town’s economy.” However, the ALJ concluded that the preponderance of the evidence demonstrates that the proposed dune walkover will have no effect on the use of the beach, shorebirds, or the LEICWA. (RO ¶ 130).

The fact that the proposed dune walkover is a private structure does not militate against its meeting the public interest test. As stated by Ms. Mills, “it’s not contrary to the Board’s public interest test because the Board has outlined through its rule a procedure for a private homeowner to get consent through an easement to use Sovereign Submerged Lands.” The ALJ credited her testimony. (RO ¶ 131).

For the reasons set forth herein, the ALJ concluded that the Applicants met the provisions of the “public interest test” established in rule 18-21.004(1)(a), Florida Administrative Code. (RO ¶ 132).

Rule 18-21.004(2) - Resource management

Rule 18-21.004(2)(a) provides, in pertinent part, that:

All sovereignty lands shall be considered single use lands and shall be managed primarily for the maintenance of essentially natural conditions, propagation of fish and wildlife, and traditional recreational uses such as fishing, boating, and swimming. Compatible secondary purposes and uses which will not detract from or interfere with the primary purpose may be allowed.

(b) Activities which would result in significant adverse impacts to sovereignty lands and associated resources shall not be approved unless there is no reasonable alternative and adequate mitigation is proposed.

* * *

(i) Activities on sovereignty lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat, and other natural or cultural resources. Special attention and consideration shall be given to endangered and threatened species habitat.

(RO ¶ 133).

By providing a means of channeling and making the Applicants’ existing access across sovereignty lands less disruptive and damaging to the lagoon, dunes, and bird species, the proposed dune walkover meets the principles that the sovereignty lands be maintained in their essentially natural conditions, and that they be conducive to the propagation of fish and wildlife.

The proposed dune walkover involves use of sovereignty lands to facilitate access to the waters of the Gulf of Mexico for traditional uses such as fishing, boating, and swimming. (RO ¶¶ 134-135).

The testimony of the Applicants was sufficient to demonstrate that there was no reasonable alternative to the proposed dune walkover, other than the more disruptive and destructive means of providing access to the Gulf of Mexico currently in use. The ALJ found that though a strong argument can be made that the proposed dune walkover has fewer impacts and is more protective of sovereignty lands than the Applicants' existing (and lawful) means of access, the Applicants provided sufficient mitigation as described herein. (RO ¶ 136).

The Project, by virtue of steps taken to minimize its footprint to the minimum necessary to allow access by wheelchair or mobility device, to remove handrails, and by construction methods, including construction from the decking, has been designed to minimize destruction of wetland vegetation on sovereignty lands. (RO ¶ 137).

The modifications to the Project, including the lowering of the dune walkover; elimination of handrails; the agreement to forego lighting; the steps taken to eliminate effects on water quality; and the termination of the dune walkover in a densely vegetated area not favored by shorebirds, have minimized adverse impacts on fish and wildlife habitat, including habitat for endangered and threatened species of shorebirds and marine turtles. (RO ¶ 138).

For the reasons set forth herein, the ALJ concluded that the Applicants met the provisions of the "resource management" provisions established in rule 18-21.004(2), Florida Administrative Code. (RO ¶ 139).

Rule 18-21.004(3) - Riparian rights

Rule 18-21.004(3), Florida Administrative Code, provides that activities undertaken on sovereignty lands be conducted so as not to unreasonably infringe upon traditional, common law riparian rights of upland property owners adjacent to sovereignty submerged lands. (RO ¶ 140).

Section 253.141, Florida Statutes, provides that “[t]he land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach.” Neither the Applicants nor their neighbors hold title to the mean high water (MHW) mark of the Gulf of Mexico. (RO ¶¶ 141-142).

The MHW line, as of December 1, 2014, was at what is generally depicted as the shoreline of the Gulf of Mexico. The two more upland water features, i.e., the lagoon and the smaller body, both labeled as “Pond” on the 2014 mean high water survey, were well landward of the MHW. (RO ¶ 143).

The lagoon, which is normally isolated from the Gulf of Mexico, is not of a depth to be routinely navigable in fact, and frequently has so little water as to require that even kayaks be dragged across, is simply not a navigable water body. (RO ¶ 144).

Pursuant to section 253.141, Florida Statutes, neither the Applicants nor their neighbors currently have riparian rights to the lagoon or the smaller feature. (RO ¶ 145).

Even if it were to be determined that the Applicants’ neighbors had riparian rights to the lagoon, any restriction or infringement on traditional rights of ingress, egress, boating, bathing, and fishing would not be “unreasonable.” The evidence established that adjacent upland property owners did not have vessels that would be expected to use the lagoon. There was no suggestion that the ability to traverse the lagoon to access the navigable waters of the Gulf of Mexico, much as the Applicants do now, would be affected. The proposed dune walkover would

not restrict bathing or fishing, and the photographic and testimonial evidence established not only that such activities are not engaged in as a matter of fact, but that the shallow, isolated body of water is not conducive to such activities. Finally, in determining whether any restriction on riparian rights -- even if they existed -- was “unreasonable,” it is not inconsequential that no property owners fronting the lagoon objected to or challenged the proposed Project. (RO ¶ 146).

The ALJ found that the evidence in this case established that the lagoon is not a navigable body of water. The MHW line is waterward of the lagoon, and the property lines of the Applicants and their neighbors do not extend to the MHW line. Thus, proximity to that water feature does not serve to confer “riparian” rights on them. Even if the adjacent upland property owners had riparian rights to the lagoon, under the facts of this case, any restriction on such rights created by the proposed dune walkover would not be “unreasonable.” Finally, the mechanism for enforcing such rights would be with the adjacent upland owners, not Petitioners. (RO ¶ 147).

For the reasons set forth above, the ALJ concluded that the Applicants met the “riparian rights” provisions established in rule 18-21.004(3), Florida Administrative Code. (RO ¶ 148).

Rule 18-21.004(7) - General conditions

As established by a preponderance of the evidence, the ALJ found that the proposed dune walkover has been designed, and is subject to conditions as to its construction, that will avoid and minimize adverse impacts to sovereignty submerged lands and resources. Thus, the ALJ concluded that the Applicants met the standards for issuance of the SSL Authorization established in rule 18-21.004(7)(d), Florida Administrative Code. (RO ¶ 149).

As established by a preponderance of the evidence, the ALJ found that the proposed dune walkover has been designed, is subject to conditions as to its construction, and is intended for use

in a manner that will not adversely affect shorebirds or sea turtles. Thus, the ALJ concluded that the Applicants met the standards for issuance of the SSL Authorization established in rule 18-21.004(7)(e), Florida Administrative Code. (RO ¶ 150).

As established by a preponderance of the evidence, the ALJ found that the lagoon is not a navigable body of water. Furthermore, even if it were navigable, any restriction created by the proposed dune walkover will not be “unreasonable.” Finally, if the adjacent upland owners holding such riparian rights believe such rights to have been infringed, despite their not having heretofore objected to the proposed Project, and a court of competent jurisdiction determines that riparian rights have been unlawfully affected, DEP has the authority to require that the SSL Authorization be modified in accordance with the court’s decision. Thus, the ALJ concluded that the Applicants met the standards for issuance of the SSL Authorization established in rule 18-21.004(7)(f), Florida Administrative Code. (RO ¶ 151).

As established by a preponderance of the evidence, the ALJ concluded that the proposed dune walkover will not create a navigational hazard. Unlike the “public interest” navigational standards for obtaining an ERP, the “navigational hazard” standard for obtaining a SSL Authorization pursuant to rule 18-21.004(7), though not defined, includes such things as unsafe conditions adjacent to docks and boat slips. *Pirtle v. Voss and Dep’t of Env’tl. Prot.*, Case No. 13-0515 (Fla. DOAH Sep. 23, 2013; Fla. DEP Dec. 26, 2013). A mere inconvenience does not constitute the type of navigational hazard contemplated by the rule. *Woolshlager v. Rockman and Dep’t of Env’tl. Prot.*, Case No. 06-3296 (Fla. DOAH May 5, 2007; Fla. DEP June 22, 2007). Since there is no proven “navigation” in the lagoon – other than dragging or, when water levels allow, paddling small boats and kayaks across on the way to accessing the navigable waters of the Gulf of Mexico -- there is no navigational hazard created by the proposed dune walkover.

Thus, the ALJ concluded that the Applicants met the standards for issuance of the SSL Authorization established in rule 18-21.004(7)(g), Florida Administrative Code. (RO ¶ 152).

Finally, as established by a preponderance of the evidence, the ALJ concluded that the proposed dune walkover has been designed, is subject to conditions as to its construction, and is intended for the water dependent purpose of traversing the lagoon to allow access to the Gulf of Mexico. Thus, the ALJ concluded that the Applicants met the standards for issuance of the SSL Authorization established in rule 18-21.004(7)(i), Florida Administrative Code. (RO ¶ 153).

SSL Authorization - Ultimate Finding of Fact

The ALJ concluded that a preponderance of the competent, substantial evidence in this case establishes that the Applicants demonstrated their entitlement to the issuance of the Letter of Consent Easement, meeting the standards established in chapter 253, Florida Statutes, and rule 18-21, Florida Administrative Code. (RO ¶ 154).

CCCL Permit

The ALJ found that DEP has established a CCCL on Little Estero Island. A CCCL permit is required before a person may conduct construction activities beyond that line. (RO ¶ 155).

Permitting Procedures

In the Joint Prehearing Stipulation, Petitioners asserted that “the applicable and relevant procedures for granting a coastal construction control line permit application were not appropriately followed.” However, the ALJ concluded that the Petitioners failed to present competent, substantial, and persuasive evidence of any failure by DEP to follow its CCCL permitting procedures. Conversely, the ALJ concluded that DEP established that the project met

all of the applicable siting and design criteria, and that DEP complied with statutory and rule criteria and procedures for reviewing and issuing the CCCL Permit. (RO ¶ 156).

Petitioners have argued that the CCCL Permit should have been procedurally denied because the CCCL Waiver was timely challenged. DEP included special conditions requiring the Applicants to relinquish the CCCL Permit if the CCCL Waiver was denied. In addition, the CCCL Permit does not become final until a Notice to Proceed is issued, which is also conditioned on the CCCL Waiver becoming final. (RO ¶ 157).

The ALJ concluded that based on the fact that construction of the dune walkover cannot commence until all permits and authorizations are issued, there was no material error in procedure arising from DEP sequentially issuing the CCCL Waiver and the CCCL Permit, thus, allowing for their consolidation and litigation without unnecessary delay and duplication. (RO ¶ 158).

Permitting Standards

The ALJ concluded that the Applicants have provided reasonable assurances that the proposed dune walkover meets the requirements for a permit for construction seaward of the coastal construction control line established in section 161.053, Florida Statutes, and chapter 62B-33, Florida Administrative Code. (RO ¶ 159).

The ALJ found that the proposed dune walkover meets the requirements established by rule as a minor structure and was designed in accordance with DEP's Beach and Dune Walkover Guidelines. It is designed to be expendable. The size, height, and elimination of concrete anchors were proposed to minimize resistance to forces associated with high frequency storms, and to allow the dune walkover to break away when subjected to such forces. It meets every

condition proposed by the DEP and the FFWCC. Its minimal size and design is expected to have a minor impact on the beach and dune system. (RO ¶ 160).

The ALJ concluded that a preponderance of the evidence established that the proposed dune walkover will not cause a measurable interference with the natural functioning of the coastal system. (RO ¶ 161).

The ALJ also concluded that a preponderance of the evidence established that the Project, as a result of its size, profile, and location, will have no measurable affect on the existing shoreline change rate. (RO ¶ 162).

The ALJ concluded that a preponderance of the evidence further established that the proposed dune walkover is not reasonably expected to significantly interfere with the ability of the coastal system to recover from a coastal storm. (RO ¶ 163).

Moreover, the ALJ concluded that a preponderance of the evidence established that the Project would have no measurable effect of the topography or the vegetation of the area. As such, there is no evidence to suggest that the proposed dune walkover would render the dune system unstable or subject to catastrophic failure, or that the protective value of the dune system will be significantly lowered. To the contrary, by lessening pedestrian traffic through the dunes, and channeling traffic at its waterward point of termination, the proposed dune walkover will be protective of the dune system and the coastal system. In that regard, DEP generally encourages dune walkovers to protect the beach and dune system. (RO ¶ 164).

As a result of the elimination of lighting, of the restriction on construction during turtle nesting season, and of the Applicants' agreement to all conditions suggested by the FFWCC, the ALJ concluded that the evidence firmly established that the proposed dune walkover will not, by any reasonable measure, result in death or injury to marine turtles, and will result in no

significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering. (RO ¶ 165).

The Project will not result in the removal or destruction of native vegetation. The evidence was sufficient to demonstrate that the Project will not destabilize the beach and dune system. The ALJ found that the greater weight of the evidence establishes that the dune walkover will provide greater protection of the beach and dune system than the Applicants' existing means of access across the lagoon and dunes. The ALJ concluded that the construction of the dune walkover will cause no significant adverse impact, as defined in rule 62B-33.002(26), Florida Administrative Code, to the beach and dune system due to increased erosion by wind or water. (RO ¶ 166).

The proposed dune walkover does not require any excavation. There will be no net excavation or removal of in situ sandy soils of the beach and dune system, and no net excavation of the in situ sandy soils seaward of the control line or 50-foot setback. (RO ¶ 167).

The proposed dune walkover does not include any water directing devices. The ALJ concluded that the preponderance of the competent substantial evidence established that the project will not direct discharges of water seaward in a manner that would result in significant adverse impacts. The evidence established that the proposed Project will result in no erosion-induced surface water runoff within the beach and dune system. (RO ¶ 168).

The evidence establishes that, as a general matter, piling-supported structures do not have an effect on the flow of water. However, in extreme events, water encountering an obstacle can cause the movement of sand around the obstacle. The expendability of a structure and its ability to break away prevents scour from occurring and is designed to minimize impacts. The ALJ concluded that the preponderance of the competent, substantial, and persuasive evidence

establishes that the Project will not increase scour so as to cause a significant adverse impact, and that any effect of the Project on the coastal processes of the area would be, at most, de minimis. (RO ¶ 169).

The design of the proposed dune walkover minimizes the amount of materials that might create debris in the event of a storm. The Applicants removed the handrails, decreased the width of the dune walkover from six feet to five feet, and eliminated pickets and non-structural members. The lowering of the dune walkover, and replacement of the stairs with a ramp that minimizes lift forces, have sufficiently reduced the potential for wind and waterborne missiles. The ALJ concluded that the suggestion that the dune walkover will, in the event of a high frequency storm, form destructive airborne missiles is simply not credible. (RO ¶ 170).

The proposed dune walkover is designed to break apart in the face of destructive storm forces. The ALJ concluded that if every piece of storm-generated debris was a sufficient basis upon which to deny a CCCL permit, then minor structures would be prohibited, since all minor structures are designed to be expendable and to break away in a high-frequency storm. The ALJ concluded that some degree of reason must be applied. The Applicants in this case demonstrated that the proposed dune walkover would not itself be such to create significant adverse impacts if subjected to the destructive forces of such a storm. (RO ¶ 171).

The ALJ concluded that the proposed dune walkover terminates more than 260 feet from the Gulf of Mexico and will not interfere with the public's right to laterally traverse the sandy beach of the Gulf of Mexico. (RO ¶ 172).

The ALJ concluded that the Project area is in a cycle of accretion, has historically accreted, is currently accreting at roughly 28 feet per year, and is expected to continue accreting. (RO ¶ 173).

The ALJ concluded that the suggestion that, within 15 years, the shoreline of the Gulf of Mexico waterward of the Applicants' properties will retreat, and that the proposed dune walkover would thence reach into the Gulf, blocking pedestrian access to the shoreline, was not supported by quantitative analyses, and was not sufficient to outweigh evidence to the contrary presented by the Applicants. The Applicants offered an assessment and report based on past and current conditions at the monument level, which included modeling and sediment budgets showing projected changes of the Project area, none of which support a finding that the shoreline will erode or retreat, or that the proposed dune walkover would be expected to interfere with public access to the shoreline. (RO ¶ 174).

As set forth previously herein, the ALJ concluded that the Project's proposed design, location, and construction methods provide reasonable assurance that there will be no adverse impact to marine turtles, or the coastal system. (RO ¶ 175).

The ALJ concluded that the Applicants provided sufficient evidence of ownership, in that they are the upland owners and the recipients of the SSL Authorization, being addressed concurrently herewith. (RO ¶ 176).

CCCL Permit - Ultimate Finding of Fact

The ALJ concluded that the preponderance of the competent, substantial evidence in this case establishes that the Applicants demonstrated their entitlement to the issuance of the CCCL Permit, meeting the standards established in chapter 161, Florida Statutes, and chapter 62B-33, Florida Administrative Code. (RO ¶ 177).

Final Order Granting Petition for CCCL Waiver

The CCCL Waiver at issue affects the timing requirements of the submission of ownership and land use approvals. The CCCL Waiver does not waive the submission of the

documents, or the requirement that the documents be provided prior to any construction of the proposed dune walkover. The ALJ concluded that a preponderance of the competent substantial evidence establishes that the underlying purpose of chapter 161, Florida Statutes, and rule 62B-33.008, Florida Administrative Code, will be met because construction cannot begin until the Applicants satisfy all substantive requirements for the CCCL Permit. (RO ¶ 178).

At the time the CCCL Petition for Waiver was requested, the Consolidated Permit was being litigated (DOAH Case Nos. 16-7148 and 16-7149), as was the Town's denial of the land use letter requested by the Applicants to comply with the CCCL Permit application requirement. Strict adherence to the requirement that the documents at issue be submitted at the time of the application would have required the Applicants to sequentially litigate issues related to the proposed dune walkover, increasing the time and expense of litigation on all involved. (RO ¶ 179).

The ALJ found that the Petitioners presented no evidence demonstrating how allowing the Applicants to submit the documents prior to being given a Notice to Proceed would adversely affect the Department's ability to carry out the objective of the underlying statutes, or their substantial interests in ensuring the legality of the proposed dune walkover. (RO ¶ 180).

The ALJ concluded that the timing requirement for evidence of ownership and local government approval was appropriately waived to allow for the efficient and cost-effective litigation of all issues related to the proposed dune walkover. To piecemeal the litigation would unnecessarily increase the time, cost, and administrative burden of litigation for no meaningful or substantive reason, and would provide the challengers with an unwarranted litigation advantage. (RO ¶ 181).

The CCCL Waiver affects no substantive or substantial interests of any party to this case. The CCCL Waiver final order neither lessens the necessary indicia of ownership and control required of the Applicants, nor affects the Town's ability to lawfully enforce its local zoning codes. The ALJ found that the waiver to the timing requirements allows for the substantive permitting requirements to be met, without frustrating the Applicants' right to a timely final decision on the Consolidated Permit and CCCL Permit. (RO ¶ 182).

The CCCL Final Order Granting Petition for Waivers does not allow for any construction to begin without Applicants first meeting both the ownership requirement and the local government zoning confirmation requirement. Therefore, the ALJ concluded that the CCCL Petition for Waivers is consistent with the purpose and intent of the governing statutes and rules and results in no injury to Petitioners' legitimate interests. (RO ¶ 183).

CCCL Final Order Granting Petition for Waivers - Ultimate Finding of Fact

The ALJ concluded that the preponderance of the competent, substantial evidence in this case establishes that the CCCL Waiver serves to avoid substantial hardship to the Applicants, and advance principles of fairness by maintaining a fair, equal, and cost-effective forum for litigation between the parties regarding the proposed dune walkover. As such, the ALJ concluded that the Applicants demonstrated their entitlement to issuance of the CCCL Final Order Granting Petition for Waivers, meeting the standards established in section 120.542, Florida Statutes. (RO ¶ 184).

STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of the ALJ "unless the agency first determines from a review of the entire record, and states with particularity in the order, that

the findings of fact were not based on competent substantial evidence.” § 120.57(1)(l), Fla. Stat. (2018); *Charlotte County v. IMC Phosphates Co.*, 18 So. 3d 1079, 1082 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm’n*, 955 So. 2d 61, 62 (Fla. 1st DCA 2007). The term “competent substantial evidence” does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, “competent substantial evidence” refers to the existence of some evidence as to each essential element and as to its admissibility under legal rules of evidence. *See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm’n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996); *Nunez v. Nunez*, 29 So. 3d 1191, 1192 (Fla. 5th DCA 2010).

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers v. Dep’t of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep’t of Env’tl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands County School Bd.*, 652 So. 2d 894, 896 (Fla. 2d DCA 1995). If there is competent substantial evidence to support an ALJ’s findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622, 623 (Fla. 1st DCA 1986).

The ALJ’s decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See, e.g., Peace River/Manasota Reg’l Water Supply Authority v. IMC Phosphates Co.*, 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State, Dep’t of HRS*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm’n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983). In addition, an agency has no authority to make independent or supplemental

findings of fact. *See, e.g., North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994); *Fla. Power & Light Co. v. Fla. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." *See Barfield v. Dep't of Health*, 805 So. 2d 1008, 1012 (Fla. 1st DCA 2001); *L.B. Bryan & Co. v. Sch. Bd. of Broward County*, 746 So. 2d 1194, 1197 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140 1141-42 (Fla. 2d DCA 2001). However, the agency should not label what is essentially an ultimate factual determination as a "conclusion of law" to modify or overturn what it may view as an unfavorable finding of fact. *See, e.g., Stokes v. State, Bd. of Prof'l Eng'rs*, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are "permissible" ones. *See, e.g., Suddath Van Lines, Inc. v. Dep't of Env'tl. Prot.*, 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

Agencies do not have jurisdiction, however, to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations," are not matters over which the agency has "substantive jurisdiction." *See Martuccio v. Dep't of Prof'l Reg.*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Heifetz v. Dep't of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Evidentiary rulings are matters within the ALJ's sound "prerogative . . . as the finder of fact" and may not be reversed on agency review. *See Martuccio*, 622 So. 2d at 609.

RULINGS ON EXCEPTIONS

In reviewing a recommended order and any written exceptions, the agency's final order "shall include an explicit ruling on each exception." *See* 120.57(1)(k), Fla. Stat. (2018).

However, the agency need not rule on an exception that "does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." *Id.*

A party that files no exceptions to certain findings of fact "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact." *Envtl. Coal. of Fla., Inc. v. Broward County*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); *see also Colonnade Med. Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So. 2d 540, 542 (Fla. 4th DCA 2003). However, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction, even when exceptions are not filed. *See* § 120.57(1)(l), Fla. Stat. (2018); *Barfield*, 805 So. 2d at 1012; *Fla. Public Employee Council, v. Daniels*, 646 So. 2d 813, 816 (Fla. 1st DCA 1994).

RULINGS ON AUDUBON'S EXCEPTIONS

Audubon's Exception No. 1 regarding Paragraph (d) of the Recommendation Section

Audubon takes exception to paragraph (d) of the Recommendation Section of the RO, in which the ALJ recommends that the Department "d. issue a Notice to Proceed authorizing the Applicants to commence construction of the proposed dune walkover." (RO, p. 98). Audubon contends that paragraph (d) should be stricken, because CCCL Permit No. LE 1567 and the Final Order Granting Petition for Waivers from conditions of the CCCL permit, No. LE-1567V, specify that a Notice to Proceed authorizing the Applicants to commence construction cannot be

issued by the Department until the Applicants provide the Department with “[a] statement by the Town of Ft. Myers Beach that the project does not contravene local setback requirements or zoning codes.” Specific Condition 21 of CCCL Permit No. LE-1567. The CCCL Permit requires that the terms of the CCCL Waiver be satisfied before issuance of the notice to proceed. In addition, the CCCL Waiver prohibits construction until the notice to proceed is issued. Upon reviewing the CCCL Permit, and the CCCL Waiver, the Department agrees with Audubon’s conclusion. For the abovementioned reasons, Audubon’s exception to paragraph (d) of the Recommendation Section of the RO is granted, and paragraph “d” is stricken.

Based on the foregoing reasons, Audubon’s Exception No. 1 is accepted.

RULINGS ON THE APPLICANTS’ EXCEPTIONS

The Applicants’ Exception No. 1 regarding Paragraphs 124, 135, 142, 143, 145, and 147

The Applicants take exception to the findings of fact in paragraphs 124, 135, 142, 143, 145, and 147 (second and third sentences) of the RO, alleging that each paragraph contains statements that adjudicate title and boundary of real property, which is beyond the jurisdiction of both DOAH and the Department. *Miller v. Dep’t of Business Reg.*, 504 So. 2d 1325, 1327 (Fla. 1st DCA 1987)(Circuit courts have exclusive jurisdiction to adjudicate all actions involving the title and boundaries of real property. Administrative agencies do not, by their nature, have jurisdiction to decide issues inherent in private property impacts.); *Hageman v. Carter*, 17 F.A.L.R. 3684, 3690 (Fla. Dep’t. of Env’tl. Prot. 1995)(“The circuit courts of this state have exclusive jurisdiction over ‘all actions involving titles of boundaries or right of possession of real property’ See Art. V, Sec. 20(c)(3), Fla. Const.; Section 26.012(2)(g), Florida Statutes.”).

The Applicants allege that on at least three occasions, the ALJ concluded that land ownership and title could not be adjudicated in this case. The Applicants note that the ALJ’s

Order dated May 23, 2017, denied a motion to intervene by a third-party who alleged that he has “sole and superior title” to property identified as sovereign land within the Project area. In denying the motion to intervene, the ALJ held that “issues of title are exclusively within the jurisdiction of the circuit courts.” The ALJ further noted that interest in title to land over which the Project will traverse is not the type or nature of interest designed to be protected by these proceedings, and “are not within the substantive jurisdiction of the Division of Administrative Hearings.” Order Denying Motion for Intervention (DOAH May 23, 2017). Moreover, the Applicants noted that in response to their Joint Motion for Protective Order, Motion in Limine and Incorporated Memorandum of Law filed on May 26, 2017, the Petitioners advised the ALJ that “precise ownership of portions of the accreted beachfront are unresolved between DEP and the upland owner” and “title to these lands remains unclear.” Respondents’ Joint Motion for Protective Order, Motion in Limine and Incorporated Memorandum of Law (DOAH May 26, 2017). The Applicants pointed out to the ALJ that given this uncertainty, the Letter of Consent Easement was only being sought over the Project area to the extent of state ownership. *Id.*

Paragraph 124 of the RO:

Regarding paragraph 124 of the RO, the Applicants do not dispute the RO’s statement that “[t]he Applicants did not dispute that a SSL Authorization was appropriate.” (RO ¶ 124). In fact, the Applicants agree with this finding, stating that they had already stated in the record that they had agreed to obtain a SSL authorization in lieu of a dispute over land title. Respondents’ Joint Motion for Protective Order, Motion in Limine and Incorporated Memorandum of Law (DOAH May 26, 2017). However, the Applicants filed an exception to the first sentence in paragraph 124 of the RO. They object to the ALJ’s statement that “the sovereignty lands at issue in this case are those that were under state ownership prior to the landward migration and

attachment of the sandbar. *See* Fla. Admin. Code R. 18-21.003(61),” asserting that the statement is confusing and internally inconsistent. They note that “agreement to undergo administrative permitting processes is not the same as agreeing to the factual boundaries of the properties.” Applicants’ Exception No. 1, p. 7.

When challenging a finding of fact in a RO, the challenging party must allege that the finding is not supported by competent substantial evidence or that the proceeding did not comply with the essential requirements of the law. § 120.57(1)(l), Fla. Stat. (2018); *Charlotte County*, 18 So. 3d at 1087; *Wills*, 955 So. 2d at 62. The Applicant failed to allege either basis for challenging the findings of fact in paragraph 124 of the RO. Moreover, the Department does not find the sentence at issue to be confusing. Following the sentence at issue, the RO cites to rule 18-21.003(61), Florida Administrative Code, which contains the BOT’s definition of “sovereignty submerged lands.” The definition reads, in pertinent part, that “ ‘[s]overeignty submerged lands’ means those lands . . . to which the State of Florida acquired title on March 3, 1985, by virtue of statehood.” This BOT definition implies that the ALJ was referring to the fact that sovereignty submerged lands are those lands that the State of Florida acquired title on March 3, 1985. The ALJ in paragraph 124 does not attempt to determine ownership to such lands or riparian boundaries, which are within the exclusive jurisdiction of the circuit courts. For the abovementioned reasons, the Applicants’ exception to paragraph 124 of the RO is rejected.

Paragraph 135 of the RO:

Next, the Applicant’s take exception to the findings of fact in paragraph 135 of the RO, alleging that no evidence was provided regarding ownership of the lands within the Project area. Paragraph 135 reads, in totality, that [t]he proposed dune walkover involves use of sovereignty lands to facilitate access to the waters of the Gulf of Mexico for traditional uses such as fishing,

boating, and swimming.” The Applicant contends that “[p]aragraph 135 should be rejected as outside the scope of DEP’s jurisdiction and not a matter that can properly be determined in this proceeding.” Applicant’s Exception No. 1, p. 9.

The Department concludes that paragraph 135 of the RO contains mixed findings of fact and conclusions of law. The Department concludes that neither DOAH nor the Department has jurisdiction to determine issues of title, which are exclusively within the jurisdiction of the circuit courts. As noted by the ALJ in his Order Denying Motion to Intervene dated May 23, 2017, interest in title to land over which the Project will traverse is not the type or nature of interest designed to be protected by these proceedings, and “are not within the substantive jurisdiction of the Division of Administrative Hearings.” Order Denying Motion to Intervene (DOAH May 23, 2017); *Miller*, 504 So.2d at 1327. For the abovementioned reasons, the Applicants’ exception to paragraph 135 is granted, and paragraph 135 of the RO is stricken.

Paragraph 142 of the RO:

The Applicants take exception to paragraph 142 of the RO, which reads, in totality, that “[n]either the Applicants nor their neighbors hold title to the mean high water (“MHW”) mark of the Gulf of Mexico.” RO ¶ 142. The Applicants object that paragraph 142 of the RO purports to establish the mean high waterline in the vicinity of the Project, and to adjudicate boundary of the Applicants’ property, the state’s property and the property of the Applicants’ neighbors who were not even parties to these proceedings. The Applicants contend that neither DOAH nor the Department has jurisdiction to adjudicate title to or boundaries of real property; thus, they contend the paragraph should be rejected.

The Department concludes that paragraph 142 of the RO is actually a conclusion of law. Moreover, the Department agrees that neither DOAH nor the Department has jurisdiction to

adjudicate title to or boundaries of real property, which are exclusively within the jurisdiction of the circuit courts. *Miller*, 504 So.2d at 1327. For the abovementioned reasons, the Applicants' exception to paragraph 142 is granted, and paragraph 142 of the RO is stricken.

Paragraph 143 of the RO:

The Applicants take exception to paragraph 143 of the RO, which reads as follows:

The MHW line, as of December 1, 2014, was at what is generally depicted as the shoreline of the Gulf of Mexico. The two more upland water features, i.e., the lagoon and the smaller body, both labeled as 'Pond' on the 2014 mean high water survey, were well landward of the MHW.

RO ¶ 143. The Applicants contend that paragraph 143 of the RO "contain[s] statements that adjudicate title and boundary of real property, which is beyond the jurisdiction of either DOAH or the Department"; and thus, the paragraph should be stricken. Applicants Exception No. 1, pp. 4-5.

The Department concludes that paragraph 143 of the RO contains mixed findings of fact and conclusions of law. Moreover, the Department agrees that neither DOAH nor the Department has jurisdiction to adjudicate title to or boundaries of real property, which are exclusively within the jurisdiction of the circuit courts. *Miller*, 504 So.2d at 1327. For the abovementioned reasons, the Applicants' exception to paragraph 143 is granted, and paragraph 143 of the RO is stricken.

Paragraph 145 of the RO:

The Applicants take exception to paragraph 145 of the RO, which reads, in totality, that "[p]ursuant to section 253.141, neither the Applicants nor their neighbors currently have riparian rights to the lagoon or the smaller feature." RO ¶ 145. The Applicants object that paragraph 145 of the RO again purports to adjudicate title to real property, which is outside the jurisdiction of both DOAH and the Department. As a result, they contend the paragraph should be rejected.

The Department concludes that paragraph 145 of the RO contains mixed findings of fact and conclusions of law. Moreover, the Department agrees that neither DOAH nor the Department has jurisdiction to adjudicate title to or boundaries of real property, which are exclusively within the jurisdiction of the circuit courts. *Miller*, 504 So.2d at 1327. For the abovementioned reasons, the Applicants' exception to paragraph 145 is granted, and paragraph 145 of the RO is stricken.

Paragraph 147 of the RO:

The Applicants take exception to the second and third sentences in paragraph 147 of the RO, which read that "[t]he MHW line is waterward of the lagoon, and the property lines of the Applicants and their neighbors do not extend to the MHW line. Thus, proximity to that water feature does not serve to confer "riparian" rights on them." RO ¶ 147. The Applicants object that the second and third sentences of paragraph 147 of the RO establish the location of the mean high water line and adjudicate the location of the property lines of both the Applicants and properties of neighbors who did not even participate in this proceeding. As a result, they contend these two sentences should be rejected.

The Department concludes that paragraph 147 of the RO contains mixed findings of fact and conclusions of law. Moreover, the Department agrees that neither DOAH nor the Department has jurisdiction to adjudicate title to or boundaries of real property, which are exclusively within the jurisdiction of the circuit courts. *Miller*, 504 So.2d at 1327. For the abovementioned reasons, the Applicants' exception to paragraph 147 is granted, and the second and third sentences in paragraph 147 of the RO are stricken.

Based on the foregoing reasons, the Applicants' Exception No. 1, taking exception to paragraphs 124, 135, 142, 143, 145 and 147 of the RO, is denied in part, and granted in part, as set forth above.

The Applicants' Exception No. 2 regarding Paragraph 155

The Applicants take exception to the findings of fact in paragraph 155 of the RO, alleging that the paragraph contains a scrivener's error. Paragraph 155 of the RO states that "DEP has established a CCCL on Little Estero Island."

When challenging a finding of fact in a RO, the challenging party must allege that the finding is not supported by competent substantial evidence or that the proceeding did not comply with the essential requirements of the law. § 120.57(1)(l), Fla. Stat. (2018); *Charlotte County*, 18 So. 3d at 1087; *Wills*, 955 So. 2d at 62. The Applicants fail to allege either basis for challenging the findings of fact in paragraph 155 of the RO. Even if the Applicant had alleged that the findings in paragraph 155 were not supported by competent substantial evidence, their argument still would fail. The Applicant's findings of fact in paragraph 155 are supported by competent substantial evidence in the form of expert testimony. (McNeal, T. Vol. 2, p. 102; DEP Ex. 9, p. DEP-987). For the abovementioned reasons, the Applicants' exception to paragraph 155 of the RO is rejected.

Based on the foregoing reasons, the Applicants' Exception No. 2 is denied.

RULINGS ON DEP'S EXCEPTIONS

DEP's Exception No. 1 regarding Paragraph 141

DEP takes exception to the findings of fact in paragraph 141 of the RO, alleging that paragraph 141 is a mislabeled conclusion of law. Paragraph 141 of the RO reads, in totality, that "Section 253.141 provides that '[t]he land to which the owner holds title must extend to the

ordinary high watermark of the navigable water in order that riparian rights may attach.”” The Department agrees that paragraph 141 of the RO is a mislabeled conclusion of law. However, since it is a correct quotation of section 253.141, Florida Statutes, the Department accepts the quotation as a correct citation of law. For the abovementioned reasons, DEP’s exception to paragraph 141 of the RO is rejected.

Based on the foregoing reasons, DEP’s Exception No. 1 is denied.

DEP’s Exception No. 2 regarding Paragraph 143

DEP takes exception to the findings in paragraph 143 of the RO, which reads as follows:

The MHW line, as of December 1, 2014, was at what is generally depicted as the shoreline of the Gulf of Mexico. The two more upland water features, i.e., the lagoon and the smaller body, both labeled as ‘Pond’ on the 2014 mean high water survey, were well landward of the MHW.

RO ¶ 143. DEP contends that the term “‘mean high water line’ is a term of legal significance relative to the issue of ownership of state lands, as it denotes the boundary between sovereign lands and private property.” Moreover, DEP cites rule 18-21.003(38), Florida Administrative Code, which defines “mean high water line,” in pertinent part, as follows:

[T]he intersection of the local elevation of mean high water with the shore. Mean high water line along the shore of land immediately bordering on navigable waters is recognized and declared to be the boundary between the foreshore owned by the State of Florida in its sovereign capacity and the uplands subject to private ownership

Fla. Admin. Code R. 18-21.003(38)(2018).

DEP proceeds to provide a lengthy discussion regarding the facts of the case, alleging that the findings of fact in paragraph 143 of the RO are immaterial and irrelevant, and not based on evidence in the case. Without delving into the extensive evidentiary details in the case, the Department finds that paragraph 143 of the RO should be stricken for the initial reason inferred by DEP.

The Department concludes that paragraph 143 contains mixed findings of fact and conclusions of law, based on the RO's reference to a 2014 mean high water survey prepared by Charles DeGraff, whose deposition was admitted in evidence in lieu of live testimony. During Mr. DeGraff's deposition, the parties stipulated that to the extent Mr. DeGraff used the term "mean high water line" in his testimony, he was not making a statement regarding ownership, but merely explaining the lines on his surveys and sketches. Applicants' Ex. No. 73, SMI-TH-73-0031. However, paragraph 143 of the RO purports to establish the mean high waterline in the vicinity of the Project, including in relation to the lagoon and the "pond." As explained above, DEP contends that the term "mean high water line" is a legal term that delineates ownership of state lands, since it denotes the boundary between sovereign lands and private property. As fully articulated in other DEP exceptions to the RO, neither DOAH nor the Department has jurisdiction to adjudicate title to or boundaries of real property; thus, paragraph 143 should be rejected.

The Department concludes that paragraph 143 delineates ownership of state lands. Neither DOAH nor the Department has jurisdiction to adjudicate title to or boundaries of real property, which are exclusively within the jurisdiction of the circuit courts. *Miller*, 504 So.2d at 1327. For the abovementioned reasons, DEP's exception to paragraph 143 is granted, and paragraph 143 of the RO is stricken.

Based on the foregoing reasons, DEP's Exception No. 2 is approved.

DEP's Exception No. 3 regarding Paragraph 142

DEP takes exception to the findings in paragraph 142 of the RO, which reads, in totality, that "[n]either the Applicants nor their neighbors hold title to the mean high water ("MHW") mark of the Gulf of Mexico." RO ¶ 142. DEP objects that paragraph 142 of the RO purports to

make a legal determination of who owns title over the lagoon. As previously discussed by DEP, neither DOAH nor the Department has jurisdiction to adjudicate title to or boundaries of real property; and therefore, paragraph 142 should be stricken. DEP Exception No. 3, p. 10.

The Department concludes that paragraph 142 of the RO is actually a conclusion of law. Moreover, the Department agrees that neither DOAH nor the Department has jurisdiction to adjudicate title to or boundaries of real property, which are exclusively within the jurisdiction of the circuit courts. *Miller*, 504 So.2d at 1327. For the abovementioned reasons, DEP's exception to paragraph 142 is granted, and paragraph 142 of the RO is stricken.

Based on the foregoing reasons, DEP's Exception No. 3 is approved.

DEP's Exception No. 4 regarding Paragraph 144

DEP takes exception to the findings of fact in paragraph 144 of the RO, alleging that the testimony in the hearing regarding whether the lagoon was a navigable water body was in the context of the ERP regulatory permit and not the SSL authorization. However, paragraph 144 of the RO is in the RO's section regarding SSL rule 18-21, Florida Administrative Code (Riparian Rights), and not the section regarding ERP permitting.

When challenging a finding of fact in a RO, the challenging party must allege that the finding is not supported by competent substantial evidence or that the proceeding did not comply with the essential requirements of the law. § 120.57(1)(l), Fla. Stat. (2018); *Charlotte County*, 18 So. 3d at 1087; *Wills*, 955 So. 2d at 62. DEP contends that the findings in paragraph 144 of the RO are not supported by competent substantial evidence. Contrary to DEP's exception, the findings of fact in paragraph 144 of the RO are supported by competent substantial evidence in the form of expert testimony. (Mills, T. Vol. 2, pp. 24-26). For the abovementioned reasons, DEP's exception to the findings of fact in paragraph 144 is rejected.

DEP also contends that the ALJ's statement that the lagoon is not navigable is a conclusion of law, based on incomplete evidence. DEP contends that the "determination of navigability for the purposes of determining title, is to be made as of 1845, the date Florida became a state. *Bd. Of Trustees of Internal Imp. Tr. Fund v. Florida Pub. Utilities Co.*, 599 2d 1356, 1357 (Fla. 1st DCA 1992)." DEP Exception No. 4, p. 11.

The Department concludes that the ALJ in paragraph 144 of the RO merely made a finding of fact that the subject water is *currently* not navigable. See RO ¶ 25, and Mills, T. Vol. 2, pp. 24-26.

Based on the foregoing reasons, DEP's Exception No. 4 is rejected.

DEPs Exception No. 5 regarding Paragraph 145

DEP takes exception to paragraph 145 of the RO, which reads, in totality, that "[p]ursuant to section 253.141, neither the Applicants nor their neighbors currently have riparian rights to the lagoon or the smaller feature." RO ¶ 145. DEP objects that paragraph 145 of the RO purports to adjudicate title to real property, which is outside the jurisdiction of both DOAH and the Department. As a result, they contend the paragraph should be rejected.

The Department concludes that paragraph 145 of the RO contains mixed findings of fact and conclusions of law. Moreover, the Department agrees that neither DOAH nor the Department has jurisdiction to adjudicate title to or boundaries of real property, which are exclusively within the jurisdiction of the circuit courts. *Miller*, 504 So.2d at 1327. For the abovementioned reasons, the Applicants' exception to paragraph 145 is granted, and paragraph 145 of the RO is stricken.

DEP's Exception No. 6 regarding Paragraph 147

DEP takes exception to paragraph 147 of the RO, alleging that this paragraph should be rejected for the same reasons explained in their exceptions to paragraphs 142, 143, 144, and 145.

The Department concludes that paragraph 147 of the RO contains mixed findings of fact and conclusions of law; and grants DEP's exception in part and rejects it in part. The Department agrees with the Applicants analysis articulated above, in which they took exception only to the second and third sentences in paragraph 147 of the RO, which read that "[t]he MHW line is waterward of the lagoon, and the property lines of the Applicants and their neighbors do not extend to the MHW line. Thus, proximity to that water feature does not serve to confer 'riparian' rights on them." RO ¶ 147. The Applicants' objected that the second and third sentences of paragraph 147 of the RO establish the location of the mean high water line and adjudicate the location of the property lines of both the Applicants and properties of neighbors who did not even participate in this proceeding. As a result, they contend these two sentences should be rejected. The Department concludes that the remainder of paragraph 147 of the RO should not be rejected, because it is a conclusion of law or a finding of fact supported by competent substantial evidence in the form of expert testimony. (Mills, T. Vol. 1, pp. 24-26).

The Department concludes that paragraph 147 of the RO contains mixed findings of fact and conclusions of law. Moreover, the Department concludes that neither DOAH nor the Department has jurisdiction to adjudicate title to or boundaries of real property, which are exclusively within the jurisdiction of the circuit courts. *Miller*, 504 So.2d at 1327. For the abovementioned reasons, DEP's exception to paragraph 147 is granted in part and denied in part.

Based on the foregoing reasons, DEP's Exception No. 6 is accepted in part and rejected in part; and accordingly, the second and third sentences in paragraph 147 of the RO are stricken.

DEP's Exception No. 7 regarding Paragraph 219

DEP takes exception to the conclusion of law in paragraph 219 of the RO, alleging that the paragraph's reference to section 161.053(6)(b), Florida Statutes, is a scrivener's error. Upon reviewing section 161.053, Florida Statutes, the Department finds that it does not contain a section 161.053(6)(b); and thus, the reference to section 161.053(6)(b), Florida Statutes, must be a scrivener's error.

Paragraph 291 of the RO quotes section 161.053(6)(b), Florida Statutes, in pertinent part, to read that a "Minor structure' means pile-supported, elevated dune and beach walkover structure. . . . It shall be a characteristic of minor structures that they are considered to be expendable under design wind, wave, and storm forces." DEP contends that the correct reference is to rule 62B-33.002(55)(b), Florida Administrative Code. However, while rule 62B-33.002(55)(b) does define "Minor Structures," the definition is not identical to the definition in paragraph 219 of the RO. Upon reviewing the statutes and rules applicable to the CCCL program, the Department finds that the citation intended by the ALJ was section 161.54(6)(b), Florida Statutes.

For the abovementioned reasons, DEP's exception to paragraph 219 is granted, in part and rejected in part. The Department agrees that the RO's reference in paragraph 219 to section 161.053(6)(b), Florida Statutes, is a scrivener's error; and thus, the Department accepts that portion of DEP's Exception No. 7. However, the Department rejects DEP's conclusion that the ALJ intended to cite to rule 62B-33.002(55)(b), Florida Administrative Code.

Based on the foregoing reasons, the Applicants' Exception No. 7 is accepted in part and denied in part. In addition, the scrivener's error in paragraph 291 of the RO is corrected to cite to Section 161.54(6)(b), Florida Statutes.

DEP's Exception No. 8 regarding Paragraph (d) of the Recommendation Section

DEP takes exception to paragraph "d" of the Recommendation Section of the RO, in which the ALJ recommends that the Department "d. issue a Notice to Proceed authorizing the Applicants to commence construction of the proposed dune walkover." (RO, p. 98). DEP contends that paragraph "d" should be stricken or reworded, because the CCCL Permit requires that the terms of the CCCL Waiver be satisfied before issuance of the notice to proceed. In addition, the Department notes that the CCCL Waiver prohibits construction until the notice to proceed is issued. Upon reviewing the CCCL Permit, and the CCCL Waiver, the Department agrees with DEP's conclusion. For the abovementioned reasons, DEP's exception to paragraph "d" of the Recommendation Section is granted.

Based on the foregoing reasons, DEP's Exception No. 8 is granted, and paragraph "d" of the Recommendation Section of the RO is stricken.

CONCLUSION

Having considered the applicable law in light of the rulings on the above Exceptions, and being otherwise duly advised, it is

ORDERED that:

A. The Recommended Order (Exhibit A) is adopted, except as modified by the above rulings on Exceptions, and is incorporated by reference herein;

B. Consolidated Environmental Resource Permit No. 36-0320034-001 and Letter of Consent Easement to use Sovereign Submerged Lands No. 360239365 is APPROVED, subject to the general and specific conditions set forth therein;

C. Permit for Construction or Other Activities Pursuant to Section 161.053, Florida Statutes, No. LE-1567, is APPROVED, subject to the general and specific conditions set forth therein;

D. Final Order Granting Petition for Waivers, No. LE-1567V, is APPROVED, subject to the conditions set forth therein; and

E. The petitions for hearing filed by the Town of Fort Myers Beach in each of these consolidated cases are dismissed with prejudice for lack of standing, in accordance with the recommendations of the RO.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the

appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 9th day of May, 2019, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



NOAH VALENSTEIN
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.



CLERK
Deputy

5/9/19

DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by electronic mail to:

Andrew J. Baumann, Esquire Amy Taylor Petrick, Esquire Telsula Christy Morgan, Esquire Seth Behn, Esquire Rachael B. Santana, Esquire Lewis, Longman and Walker, P.A. 515 North Flagler Drive, Suite 1500 West Palm Beach, Florida 33401 abaumann@llw-law.com apetrick@llw-law.com tmorgan@llw-law.com sbehn@llw-law.com rsantana@llw-law.com	Marianna Sarkisyan, Esquire Matthew J. Knoll, Esquire Department of Environmental Protection 3900 Commonwealth Blvd., MS 35 Tallahassee, Florida 32399-3000 Marianna.Sarkisyan@FloridaDEP.gov Matthew.Knoll@FloridaDEP.gov
Martha Collins, Esquire Collins Law Group 1110 North Florida Avenue Tampa, Florida 33602 mcollins@collins-lawgroup.com	Pamela Jo Hatley, Esquire Pamela Jo Hatley, P.A. 1110 North Florida Avenue Tampa, Florida 33602 pamela@pamelajohatley.com
John S. Turner, Esquire Peterson Law Group 2525 Estero Boulevard Fort Myers, Florida 33931 jtpetersonpa@gmail.com	William Ward, Esquire The William Ward Law Group, PLLC 606 Riviera Dunes Way Palmetto, Florida 34221 wwlg.william@gmail.com
and by U.S. Mail to:	
Allen Bills Marine, Inc. 3853 East River Drive Fort Myers, Florida 33916	Texas Hold'Em, LLC 2817 Carriage Lane Carrollton, Texas 75006
Squeeze Me Inn, LLC 711 Franklin Trace Zionsville, Indiana 46077	

this 9th day of May, 2019.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


STACEY D. COWLEY
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA AUDUBON SOCIETY, INC.,

Petitioner,

vs.

Case No. 16-7148

TEXAS HOLD'EM, LLC; SQUEEZE ME
INN, LLC; AND DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.

TOWN OF FORT MYERS BEACH,
FLORIDA,

Petitioner,

vs.

Case No. 16-7149

TEXAS HOLD'EM, LLC; SQUEEZE ME
INN, LLC; AND DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.

FLORIDA AUDUBON SOCIETY, INC.,
AND TOWN OF FORT MYERS BEACH,
FLORIDA,

Petitioner,

vs.

Case Nos. 18-1451
18-2141

TEXAS HOLD'EM, LLC; SQUEEZE ME
INN, LLC; AND DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.

Exhibit A

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 18 through 20, 2018, in Fort Myers, Florida, before E. Gary Early, a designated Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner Florida Audubon Society:

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For Petitioner Town of Fort Myers Beach, Florida:

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For Respondents Texas Hold'Em, LLC; and Squeeze Me Inn, LLC:

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Seth Behn, Esquire
Telsula Christy Morgan, Esquire
Amy Taylor Petrick, Esquire
Rachael B. Santana, Esquire
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PRELIMINARY STATEMENT

These consolidated cases involve agency actions related to a "dune walkover"^{1/} ("dune walkover" or "Project") proposed by the applicants, Texas Hold'Em, LLC, and Squeeze Me Inn, LLC (the "Applicants"). In order to construct the proposed dune walkover, the Applicants have filed: 1) an application for an Environmental Resource Permit ("ERP"); 2) an application for a letter of consent easement for the use of sovereignty submerged lands ("SSL Authorization"); 3) petitions for waivers from Florida Administrative Code Rule 62B-33.008(3)(c) and (d) to allow for completion and consideration of an application for a Coastal Construction Control Line ("CCCL") permit ("CCCL Waivers"); and 4) an application for a CCCL permit ("CCCL Permit").

On September 29, 2016, the Department of Environmental Protection (the "DEP"), in its own capacity, and in its capacity as staff to the Board of Trustees of the Internal Improvement Trust Fund ("BTIITF"), issued Consolidated Environmental Resource Permit No. 36-0320034-001 and Letter of Consent Easement to Use Sovereign Submerged Lands No. 360239365 (collectively the "Consolidated Permit") to the Applicants for the construction of a 1,491.5 square-foot beach boardwalk.

On November 4, 2016, Petitioners, Florida Audubon Society, Inc. ("Audubon"), and Town of Fort Myers Beach, Florida

("Town"), each filed an Amended Petition for Administrative Hearing challenging the Consolidated Permit. The Amended Petitions were transmitted to DOAH, assigned as Case Nos. 16-7148 and 16-7149, respectively, consolidated for hearing, and initially set to be heard on June 12 through 16, 2017.

The hearing on the Consolidated Permit cases was continued, and the cases placed in abeyance to allow for the associated CCCL Permit application to be processed by DEP. Procedural motions and their disposition are contained on the docket of Case Nos. 16-7148 and 16-7149.

On May 3, 2017, the Applicants amended their application to relocate the boardwalk outside of the established limits of the Little Estero Island Critical Wildlife Area ("LEICWA"). DEP reviewed the proposed changes and determined that the project, as amended, continued to meet the criteria for the issuance of the Consolidated Permit, and transmitted the revised Notice of Intent and Revised Draft Environmental Resources Permit and State Owned Submerged Lands Authorization to DOAH on May 10, 2017.

DEP has established a CCCL for Little Estero Island. A permit is required before any person may conduct construction activities seaward of the CCCL. On May 4, 2017, after having determined that the proposed dune walkover was, in whole or in

part, seaward of the CCCL, the Applicants applied for the CCCL Permit. On June 8, 2017, DEP issued a request for marine turtle impact review to the Florida Fish and Wildlife Conservation Commission ("FFWCC"). On July 27, 2017, FFWCC responded to the request with two recommended CCCL Permit conditions: that no construction occur during nesting season (May 1 through October 31); and that all vehicles be operated in accordance with FFWCC's Best Management Practices for Operating Vehicles on the Beach. Both conditions were accepted by the Applicants.

On August 11, 2017, the Applicants filed their Petition for Waiver of Rules 62B-33.008(3)(c) and (d), which was supplemented on October 3, 2017, and amended on November 9, 2017. The CCCL Waivers would have the effect of allowing the required evidence of ownership of the property encompassed by the CCCL Permit application, and the written evidence that the proposed dune walkover does not violate local setback requirements or zoning codes to be submitted after the issuance of the CCCL Permit, with a permit condition requiring submission of the information prior to DEP issuing a Notice to Proceed, which would authorize the Applicants to commence construction.

On September 29, 2017, the Applicants submitted revised construction and site plans for the proposed dune walkover that reduced its overall footprint from six to five feet across; lowered its height from three feet, ten inches to two feet, six

inches above the sand; replaced steps with a ramp; and removed the 3-foot handrails.

On February 7, 2018, DEP issued proposed Final Order Granting Petitions for Waivers, File No. LE-1567V, which granted the CCCL Waivers.

On March 2, 2018, Audubon and the Town each filed a Petition for Administrative Hearing challenging the CCCL Waivers. The Petitions were transmitted to DOAH, consolidated by the DOAH Clerk's office and assigned as Case No. 18-1451.

On March 30, 2018, DEP issued the proposed Permit for Construction or Other Activities Pursuant to Section 161.053, Florida Statutes, No. LE-1567, which authorized the construction of the dune walkover seaward of the CCCL.

On April 20, 2018, Audubon and the Town each filed a Petition for Administrative Hearing challenging the CCCL Permit. The Petitions were transmitted to DOAH, consolidated by DOAH Clerk's office and assigned as Case No. 18-2141.

On May 10, 2018, Case Nos. 16-7148, 16-7149, 18-1451, and 18-2141 were consolidated for hearing, and the final hearing on the consolidated cases was scheduled for September 18 through 21, 2018.

On June 28, 2018, DEP and the Applicants filed a Joint Notice of Revisions to Draft Environmental Resource Permit and State Owned Submerged Lands Authorization ("Joint Notice"),

which incorporated the September 29, 2017, modifications into the Consolidated Permit. Audubon and the Town each filed a Petition for Formal Administrative Hearing, which were accepted as their Second Amended Petitions to challenge the Consolidated Permit as modified by the Joint Notice.

In the period leading up to the final hearing, a number of motions were filed, disposition of which is reflected on the docket.

On September 11, 2018, the parties filed their Joint Prehearing Stipulation and an Amended Joint Prehearing Stipulation ("JPS"). The JPS contained 39 stipulations of fact and law, and eight stipulations of law, each of which is adopted and incorporated herein, if not specifically, then by reference. The list of stipulated facts provided a comprehensive listing of the various applications, submissions, amendments, petitions, and the like.

The statement of the issues of fact remaining for disposition provided by the parties did little to narrow the real issues in dispute. For example, Petitioners identified the issues of fact remaining for disposition as:

1. Whether the Applicants, Squeeze Me Inn, LLC and Texas Holdem, LLC are entitled to issuance of the challenged Environmental Resources Permit and authorization to use sovereignty submerged lands pursuant to all applicable rules and statutes.

2. Whether the Applicants, Squeeze Me Inn, LLC and Texas Holdem, LLC, are entitled to issuance of the challenged Permit for Construction or Other Activities Pursuant to Section 161.053, Florida Statutes, and all other CCCL applicable rules and statutes.

3. Whether the Applicants, Squeeze Me Inn LLC and Texas Holdem LLC, are entitled to issuance of the Final Order Granting Petition for Waivers, pursuant to all applicable rules and statutes.

Similarly, DEP identified the issues as:

1. Whether Petitioner Town of Fort Myers Beach, Florida has sufficient standing to challenge each of the three proposed agency actions.

2. Whether Petitioner Florida Audubon Society has sufficient standing to challenge each of the three proposed agency actions.

3. Whether the Applicants, Squeeze Me Inn, LLC and Texas Holdem, LLC are entitled to issuance of the challenged Environmental Resources Permit and authorization to use sovereignty submerged lands.

4. Whether the Applicants, Squeeze Me Inn, LLC and Texas Holdem, LLC, are entitled to issuance of the challenged Permit for Construction or Other Activities Pursuant to Section 161.053, Florida Statutes.

5. Whether the Applicants, Squeeze Me Inn LLC and Texas Holdem LLC, are entitled to issuance of the Final Order Granting Petition for Waivers.

The list provided by the Applicants provided greater detail and specificity as to the issues in dispute, but nonetheless served more as an expanded listing of the regulatory requirements than

a limitation. Having been provided with no limitation on the issues in dispute, the undersigned will attempt to address the permitting standards as comprehensively as possible.

The hearing convened on September 18, 2018, as scheduled.

The ERP under review, having been issued under the authority of chapter 373, Florida Statutes, that element of the hearing was subject to the modified burden of proof established in section 120.569(2)(p), Florida Statutes. The SSL Authorization was issued under the authority of chapter 253, Florida Statutes; the CCCL Permit under the authority of chapter 161, Florida Statutes; and the CCCL Waiver under the authority of section 120.542, Florida Statutes. Thus, the burden remained with the Applicants to demonstrate entitlement to those elements. The burden of proof provisions are discussed in the Conclusions of Law herein. In order to simplify the order of presentation, the Applicants and DEP presented their cases in full, with Petitioners' standing witnesses taken out of order for the witnesses' convenience.

Joint Exhibits 1 through 13, consisting of the Consolidated Permit file; the CCCL Permit file; the CCCL Waiver file; various surveys, sketches, and aerials related to the proposed dune walkover; the June 28 Revised Notice of Intent for the ERP/Consent and attached documents; and the resumes of DEP

witnesses Tony McNeal, Megan Mills, and Richard Malloy,^{2/} were received in evidence by stipulation of the parties.

The Applicants called the following witnesses: Kurt Kroemer, managing member of Squeeze Me Inn, LLC; Edward Rood, managing member of Texas Hold'Em, LLC; Robert Case, P.E., who was tendered and accepted as an expert in civil engineering; Michael Dombrowski, P.E., who was tendered and accepted as an expert in coastal engineering; and Shane Johnson, who was tendered and accepted as an expert in zoology and ecology. Applicants' Exhibits 4 through 7, 9, 10, 13 through 23, 25, and 72 through 74 were received in evidence. Applicants' Exhibit 73 consisted of the deposition testimony of Charles DeGraff, an expert in surveying, who was more than 100 miles from the hearing location on the date of the hearing. His deposition was accepted pursuant to Florida Rule of Civil Procedure 1.330 and will be given the weight as though the deponent testified in person.

DEP called Megan Mills, its ERP program administrator; and Tony McNeal, P.E., its CCCL program administrator, and offered no exhibits beyond Joint Exhibits 1 through 13.

Audubon called Julie Brashears Wraithmell, its president; and Brad Cornell, both on the issue of standing. The Town called Roger Hernsteadt, its manager; Jason Green, its community development director; and Rae Burns, its environmental

technician, on the issue of standing. Petitioners jointly called Ms. Burns; Dr. Robert Young, who was tendered and accepted as an expert in coastal geology and coastal management; and Nancy Douglass, an employee of the FFWCC. Petitioners' Exhibits 1, 2, 7, 25, 33, 42 through 44, 47, 49, 62, 64, and 72 were received in evidence.

A three-volume Transcript of the final hearing was filed on November 6, 2018. The parties were allowed 20 days from the filing of the Transcript within which to file their proposed recommended orders. Petitioners moved for a further extension of time for filing their proposed recommended orders until December 10, 2018, which was granted. DEP moved to enlarge the page limit for the proposed recommended orders to 70 pages, which was also granted. All parties timely filed Proposed Recommended Orders, each of which has been considered in the preparation of this Recommended Order.

The law in effect at the time DEP takes final agency action on the applications being operative, references to statutes are to their current versions, unless otherwise noted. Lavernia v. Dep't of Prof'l Reg., 616 So. 2d 53 (Fla. 1st DCA 1993).

FINDINGS OF FACT

Based upon the demeanor and credibility of the witnesses, the stipulations of the parties, and the evidentiary record of this proceeding, the following Findings of Fact are made:

The Parties

1. Squeeze Me Inn, LLC, is a limited liability corporation incorporated in the State of Florida. Kurt Kroemer is its managing member. Squeeze Me Inn, LLC, owns a single-family home at 8170 Estero Boulevard in Fort Myers Beach, Florida, and pays taxes on the property. Mr. Kroemer purchased the property through Squeeze Me Inn, LLC, based on his enjoyment of the beach. He visits the property five times per year on average, and intends to retire there.

2. Texas Hold'Em, LLC, is a limited liability company incorporated in the State of Florida. Edward Rood is its managing member. Texas Hold'Em, LLC, owns a single-family home at 8150 Estero Boulevard in Fort Myers Beach, Florida, and pays taxes on the property. Mr. Rood uses the home four to five times per year. He enjoys visiting the Gulf of Mexico and the adjacent beach area behind his house.

3. DEP is an agency of the State of Florida, pursuant to section 20.255, Florida Statutes. DEP is the permitting authority in this proceeding and has issued the Consolidated Permit, the CCCL Waiver, and the CCCL Permit at issue in this proceeding to the Applicants.

4. DEP performs staff duties and functions on behalf of the BTIITF related to the review of applications for authorization to use sovereignty submerged lands necessary for

an activity regulated under chapter 373, part IV, for which DEP has permitting responsibility. § 253.002(1), Fla. Stat. DEP has been delegated the authority to take action, without any input from BTIITF, on applications for authorization to use sovereignty submerged lands necessary for an activity regulated under chapter 373, part IV, for which DEP has permitting responsibility. § 253.002(1), Fla. Stat.; Fla. Admin. Code R. 18-21.0051(2).

5. Audubon is an organization incorporated in the State of Florida. Audubon has roughly 20,000 members statewide, and 5,000 members in Southwest Florida, some of whom it contends are in the "direct vicinity" of the project. Audubon's mission statement is to protect birds and their habitat for the benefit of people and wildlife.

6. The Town is an incorporated municipality located on the west coast of Florida along the Gulf of Mexico. The proposed dune walkover is within the Town limits.

Standing^{3/}

7. Audubon considers the LEICWA and its surrounding areas important, because it is "important to the birds." Audubon was involved in the process of establishing the LEICWA, and its members volunteer to help monitor and manage the LEICWA. The LEICWA is a renowned bird-watching site. Audubon members have assisted in "posting for nesting birds, as well as fielding

volunteers who are bird stewards. They chaperone the colony to protect it from disturbance, especially on busy beach going weekends." The interest in areas outside of the LEICWA is less apparent, though Audubon alleged that the areas around the LEICWA are important to the birds and, thus, Audubon's members, since "birds unfortunately don't recognize boundaries." In addition, Audubon alleged that the dune walkover would irreparably harm the lagoon and the coastal habitat seaward of it, which is important habitat for imperiled species that are critical for the enjoyment of Audubon's members.

8. Audubon's interest in contesting the CCCL and the Waiver is tied to the reasons for its ERP and SSL standing.

9. The Town's interest in the Consolidated Permit and the CCCL Permit was related to the importance of the Ft. Myers Beach beaches, including those in the LEICWA, to the Town's economy from ecotourism. The Town's interest in shorebirds is that they contribute to the Town's economy by "draw[ing] people to select to visit Fort Myers Beach versus other areas of the state." The Town spends money for beach maintenance to compete for tourism dollars, but does not track the number of visitors to the beach where the Project would be located.^{4/}

10. The Town's interest in challenging the CCCL Waiver was that "it goes outside the normal process" and "creates confusion among applicants and the public." However, the CCCL Waiver

would have no effect on the Town's processing of development orders. In addition, the Town was concerned that the boardwalk, as a frangible structure, could cause damage to the property of nearby private individuals. The interest in that regard was not to the property or resources of the Town, but to "[o]ur residents and our property owners."

11. Both the Town and Audubon participate in a program that coordinates volunteer efforts to educate beachgoers on nesting birds in the general vicinity of the proposed dune walkover.

The Project Area

12. Little Estero Island is part of a barrier island system that has developed over decades through the gradual accretion of sand onto the shoreline.

13. The proposed dune walkover is proposed to be constructed on property just west of Big Carlos Pass, a maintained navigational channel that connects inland coastal waters to the Gulf of Mexico. Big Carlos Pass is a tidally dominated inlet, which results in a very dynamic shoreline in its immediate vicinity.

Creation and Fate of the "Lagoon" and Current Shoreline

14. Fort Myers Beach experiences offshore sediment transport that transfers sand along the shoreline from Estero Island towards Big Carlos Pass. In addition, movement of water

through Big Carlos Pass agitates and suspends sand, creating an "ebb shoal" at the Gulf side of the pass. Currents generated by wave action transport sand from the ebb shoal offshore along the shoreline on both sides of the pass. The sediment transport results in the development of shoals and swash bars offshore from the Project site. Those features are gradually pushed towards the shore, and eventually "weld" onto the shoreline.

15. Big Carlos Pass was recently (after the October 20, 2015, issuance of the authorizing permit) dredged to maintain, realign, and straighten the inlet channel. The dredged material, consisting of approximately 350,000 cubic yards of sand, was deposited along 4,500 linear feet just offshore to the west of the Project vicinity.

16. The process of accretion, and the "welding" of a shoreward-moving sandbar has resulted in the creation of an enclosed and shrinking body of water between the shoreline and the upland. What was previously the shoreline of the Gulf of Mexico is, for now, the landward shoreline of the "lagoon."

17. During significant storm events, the area can experience overwash, when storm-driven tides and waves overtop the existing Gulf shoreline, spilling into the lagoon. The overwash pushes sand into the lagoon, creating "fans" of sand and sediment, in a process by which the lagoon is continually filled in and narrowed. As established by Mr. Dombrowski, "what

we would anticipate over time is that you keep on getting this over-topping of sand that keeps on filling in on the back side of the lagoon which will eventually fill in with sand."

18. In addition to overwash, rain and stormwater can fill the lagoon, which can result in the creation of temporary drainage outlets. For example, the area was impacted by Tropical Storm Alberto on Memorial Day 2018. Ms. Burns visited the area after the storm, in June 2018, and observed more water in the lagoon and in surrounding areas, including the sandy areas within the LEICWA. By July 18, 2018, at which time the photographs that comprise Petitioners' Exhibit 7 were taken, the water levels in the lagoon were lower. During a visit nearer to the date of the hearing, there was less water in the lagoon due to diminished rainfall, and water no longer flowed through the remnants of the drainage channels. Thus, stormwater drainage, rather than tidal connection, is the most likely cause of the swashes observed in the series of photographs taken on July 18, 2018.

19. In order for the lagoon to be considered "tidal," there would have to be an established connection between the lagoon and the Gulf of Mexico to allow for the regular periodic exchange of waters through tidal ebbs and flows. Mr. DeGraff took a series of "water shots" of the levels in the lagoon and the Gulf of Mexico. Whereas water levels in the Gulf of Mexico

changed with the tides, the water levels in the lagoon remained constant, which supports that there is no connection between the two.

20. Overwash and storm events may temporarily open one-way connections and outfalls of water between the lagoon and the Gulf of Mexico as a result of accumulation of water in the back barrier environment. If enough water is pushed into the lagoon, it will find an exit, but the flow is "not back and forth again through a particular cut," as would be the case with an established and regular tidal connection.

21. The preponderance of the evidence demonstrates that the "lagoon" is not tidally connected to the Gulf of Mexico but is, rather, a feature that experiences no tidal ebb and flow and is, under normal conditions, disconnected from the Gulf of Mexico.

22. The "big picture" view of the process of shoaling, welding, filling, and narrowing of the "lagoon," and ultimate reestablishment of the previously existing shoreline is depicted in Petitioners' Exhibit 44, which images can be viewed as a fascinating and visually compelling time-lapse of the Petitioners' Exhibit 44 images at <https://earthengine.google.com/timelapse/#v=26.40708,-81.89551,11.491,latLng&t=0.00>.

23. The persistent narrowing of the temporary lagoon is well-depicted in Petitioners' Exhibit 43. That exhibit,

consisting of a series of aerial photographs, demonstrates convincingly the accretional nature of the area in front of the Applicants' property, and offers support for evidence that "over the last 50 plus years . . . and especially within the last ten to 15, is that this shoreline has been accreting." Competent, substantial evidence establishes that the accretional trend will naturally continue and may be further influenced by the deposition of dredged spoil from Big Carlos Pass, and supports the testimony of Mr. Dombrowski that the lagoon will naturally fill in with the cycle, at some future time, repeating itself.

24. In the area of the Project, the shoreline has been accreting at a rate of around 28 feet (or more) per year between 1999 and 2011. In the last 52 years, the shoreline to the east of the Project area has grown by more than 600 feet. To the west of the Project area, within the LEICWA, overwash events and alluvial fans associated with such events demonstrate the accretional nature of the shoreline.

25. Mr. Kroemer owns a Hobie Wave Runner sailboat, which requires about 12 inches of water, and two kayaks, which require two to three inches of water that he uses in the Gulf of Mexico. To access the Gulf, Mr. Kroemer paddles or pushes the boats - depending on the season - through the lagoon and then takes them over land to the Gulf. The water levels in the lagoon are not sufficient to allow for the sailboat to traverse year round.

26. The greater weight of the evidence supports a finding that the water area over which the dune walkover is proposed will, as a process of accretion, fill with sand creating an unimpeded pathway to the Gulf of Mexico, as was the case prior to the most recent accretionally welded sand bar. The suggestion that the shoreline will erode and ultimately become open water is not supported by the evidence.

Vegetation

27. The vegetative species in the vicinity of the proposed dune walkover and surrounding the lagoon include mangroves; shrubby plants, including bay cedar and marsh elder; and facultative grass species, such as hurricane grass. The Project area is becoming increasingly more vegetated, with plant communities pioneering at the ground cover level, followed by shrubs and small trees. The area is generally undergoing natural ecological succession.

28. The vegetation in the areas over which the proposed dune walkover is to be constructed, including the ground cover, is too thick to be conducive for shorebird nesting, which generally occurs in areas that are open, and sandy or shelly. The mangroves that fringe the lagoon range from five to seven feet in height, and the shrubby vegetation in the Project area can be up to four feet in height.

Wildlife

29. The beaches in the area are used by shorebirds and migratory birds for nesting, foraging, and loafing. Birds that have been observed in the general vicinity of the LEICWA include Snowy Plovers, Wilson's Plovers, American Oystercatchers, Black Skimmers, and Least Terns.

30. Snowy Plovers, American Oystercatchers, Black Skimmers, and Least Terns are designated by the FFWCC as threatened bird species. Those species are also identified by DEP as "Listed Wildlife Species that are Aquatic or Wetland Dependent and that Use Upland Habitats for Nesting or Denning" in A.H. Table 10.2.7-1, with Snowy Plovers and Least Terns listed as "State-designated Threatened," and American Oystercatchers and Black Skimmers listed as "State Species of Special Concern."

31. Wilson's Plovers are not a species listed as threatened, of special concern, or of any other protected classification by the FFWCC or DEP.

32. Snowy Plovers, American Oystercatchers, Black Skimmers, and Least Terns prefer clear, open sand for nesting. They lay their eggs on the sand or in shallow "scrapes" or depressions in the sand. The eggs generally match the substrate, and the coloration of the chicks allows them to blend in with the sand, providing a camouflaging defense against

predators. Those species are colony nesters, nesting in groups as a reproductive strategy.

33. Wilson's Plovers also prefer open sandy areas, but will occasionally nest in nearby sparsely vegetated areas, referred to by Mr. Johnson as "salt and pepper" coverage, which have pockets of open sand. Such areas exist waterward of the proposed terminus of the dune walkover. Wilson's Plovers are solitary nesters.

34. Shorebirds will typically not nest in areas with vegetative cover. Mangroves and other tall, woody species of plants create perching opportunities for crows and other avian predators, while ground-dwelling predators like snakes can move through vegetation and predate shorebird nests.

35. Applicants' Exhibits 6 and 9 depict the extent of shorebird utilization, including nesting, of habitat in the immediate Project vicinity based on a series of 2017 and 2018 site visits, historic aerial photographs, and FFWCC shorebird data. Applicants' Exhibit 6 provides a visual representation of the wide utilization of the open raked beach area east of the Project for nesting, with only scattered use of "salt and pepper" vegetated areas by non-threatened Wilson's Plovers. Applicants' Exhibits 6 and 9, in combination with Mr. Johnson's testimony and field notes, is found to be the most accurate and

representative depiction of the utilization of the Project area by shorebirds.

36. There have been shorebird sightings on the sandy shoreline waterward of the terminus of the proposed dune walkover. The closest recorded bird sighting to the Project area, involving a Wilson's Plover nest scrape and, subsequently, a nesting female at that location, was approximately 150 feet southwest of the waterward terminus of the dune walkover in an area of "salt and pepper" vegetation.

37. During his site visits in 2017, Mr. Johnson observed considerable pedestrian traffic along the shoreline waterward of the Project area. It was in this general area that he had noted the presence of Wilson's Plovers. He explained that Wilson's Plovers can tolerate pedestrian traffic as long as it does not "get right up on" their nests. When nesting areas are roped off, Wilson's Plovers can tolerate pedestrian traffic up to the protective barrier as long as it does not encroach into the protected area.

38. Sea turtles also have the potential to nest just above the high tide mark in the dunes waterward of the proposed dune walkover. A staked sea turtle nest west of the Project area was observed by Ms. Burns during her July 2018 visit to the area. Sea turtles do not typically nest in vegetated areas. Given both the distance to and vegetative cover at the waterward

terminus of the dune walkover, sea turtles would be unlikely to migrate to the Project area to excavate a nest.

39. There was no evidence that pedestrian access to the location at which Ms. Burns observed the staked sea turtle nest was restricted. Rather, the evidence establishes that pedestrian traffic is allowable and common along the shoreline. People walking along the shore could easily happen upon the staked area, just as Ms. Burns did, and just as Mr. Johnson did during his visits to the area. In that regard, the Applicants, even if they were to take a longer and more circuitous route to the shoreline, would not be restricted in walking along the shoreline in the vicinity of the nest. The preponderance of the evidence establishes that the proposed dune walkover will have no adverse effect on nesting sea turtles in the area.

The LEICWA

40. Property to the west of the proposed dune walkover has been designated by the State of Florida as the LEICWA. The LEICWA includes some vegetated land adjacent and parallel to the footprint of the proposed dune walkover. The proposed dune walkover is not within the boundary of the LEICWA.

41. At times, portions of the LEICWA are roped off by the FFWCC to demarcate shorebird nests and nesting colonies, and to channel pedestrian access through the LEICWA. There was no persuasive evidence that pedestrian traffic through the LEICWA

is disruptive to the birds using the LEICWA or to their nesting patterns.

42. Posted and roped-off areas are not intended to identify the geographic extent of the LEICWA, and are often not specific to shorebird nest sightings, but instead represent larger areas "to allow the birds to have more availability to choose where they're going to nest."

43. Roughly 300 feet east of the Project area and the LEICWA boundary (as scaled using Petitioner's Exhibit 6) is a large raked, sandy area which is maintained free of vegetation. A large number of shorebirds and shorebird nests have been documented on the open, sandy area. The open, sandy area is directly abutted to its north by homes and by what appear to be larger multi-family structures. In addition, the open area is "preferred by a lot of beach goers to have open sand to walk through instead of walking through vegetation. So it's been manipulated mechanically to be open." There was no evidence that the direct proximity of such residential structures, their inhabitants, and beachgoers have any disruptive affect on the large nesting colonies inhabiting that area.

44. A four-foot-high, three-foot-wide education kiosk placed by the FFWCC is located on the shore side of the LEICWA. A roughly seven-foot-high, 15-inch-wide sign, educating beachgoers about the LEICWA and of the needs of the birds that

frequent the area has been placed at the edge of the LEICWA. Neither of the signs incorporate any features designed to discourage their use as perches. Both of the signs provide an elevated and unobstructed vantage point into the LEICWA's primary nesting area. The signs, which are much greater in height and nearer to the LEICWA's preferred shorebird nesting habitat than the proposed dune walkover "can serve as perches" for predatory birds in the area. Although there was evidence that Petitioners' members and employees monitor the signs for evidence that they are being used as perches, there was no evidence to suggest what might happen if they were.

45. Although the dune walkover is not within the boundary of the LEICWA, Ms. Wraithmell testified that "[t]he birds unfortunately don't recognize boundaries." While birds may not recognize boundaries, regulators must. Standards that apply within a designated critical wildlife area do not apply outside of a critical wildlife area, even within feet of the boundary. That is why boundaries, including legal descriptions, are set. Since the proposed dune walkover is not within the boundary of the LEICWA, standards applicable within critical wildlife areas cannot be applied.

The Proposed Dune Walkover

46. The dune walkover is proposed as a 1,491.50 square-foot (298.3 feet in length by 5 feet in width) piling-supported

wooden walkway five feet in width. Its original six-foot width was reduced to five feet, which remains adequate to accommodate an anticipated need for the use of a wheelchair or mobility device by one of the Applicants. The steps at the waterward end of the proposed dune walkover were replaced with ramps, also for use by a wheelchair or similar device. The replacement of the initially proposed stairs with a ramp will also reduce "lift" forces in the event of a storm.

47. The dune walkover will serve to minimize foot traffic on the native dune vegetation, and will channel the foot traffic from its terminus to the shore of the Gulf of Mexico. As such, the dune walkover will have a beneficial effect on the native vegetation in its immediate area.

48. As originally proposed, the dune walkover was to have been three feet, ten inches above the ground surface, with three-foot-high handrails. In order to meet the concerns posed by others, particularly the FFWCC, the height was lowered to two feet, six inches above the ground surface, which is the maximum height for a structure to be built without handrails. The handrails were removed in their entirety, and the design does not contain any pickets or other "non-structural members." Thus, the proposed dune walkover is, at its highest point, two feet, six inches above the ground surface. Mangroves in the vicinity of the dune walkover are generally from five to seven

feet in height, and commonly occurring shrubby vegetation of four feet in height was observed in the area. Thus, the dune walkover is well below the elevation of the surrounding vegetation. The dune walkover, as currently proposed, has no value as a perch or vantage point for avian predators.

49. The posts that support the structure will be round, six inches in diameter, and installed five feet deep into the sand. The posts will not be encased in concrete, and will be wrapped to prevent leaching of any potentially toxic compounds into the environment. The walking surface of the dune walkover will be made of slatted decking, with a one-half inch space between each deck board. The proposed ERP indicated that gaps will allow sufficient light penetration to maintain the underlying vegetative habitat. There was no persuasive evidence to the contrary.

50. In its final configuration, the proposed dune walkover is fully compliant with, though substantially smaller and less intrusive than, the generally acceptable siting, design, and elevation provisions set forth in the DEP Beach and Dune Walkover Guidelines.

51. As originally proposed, the dune walkover would have crossed the LEICWA boundary, though in an area of minimal value to shorebird nesting or feeding. Nonetheless, in order to address the concerns expressed by others, including the FFWCC,

the Applicants modified the configuration of the proposed dune walkover so that it is now completely outside of the boundary of the LEICWA.

52. The construction plans do not require the use of vehicles, other than to deliver the material to the site. There will be no placement of fill. There will be no lighting, either in construction or in operation.

53. As mitigation for the minimal impacts associated with the crossing of the lagoon, and at DEP's direction, the Applicants purchased 0.01 saltwater forest and 0.1 saltwater herbaceous mitigation credits in the Pine Island Mitigation Bank, to offset for any remaining impacts not avoided through the design modifications. It was established, by a preponderance of the competent, substantial, and persuasive evidence adduced at the hearing, that the proposed mitigation was sufficient to offset any environmental impacts resulting from the proposed Project, even before its width was decreased from six feet to five feet.

54. The alterations to the proposed dune walkover as described herein were largely made to address the concerns expressed by the FFWCC in its comments of August 27, 2015; July 20, 2016; and July 27, 2017, and the proposed ERP and CCCL Permit incorporates all of the conditions requested by the

FFWCC. It was established that the Applicants have addressed and met the FFWCC's concerns regarding the proposed Project.

Environmental Resource Permit

55. The issuance or denial of an ERP is generally governed by section 373.414, chapter 62-330, and the Environmental Resource Permit Applicant's Handbook, Volume I ("A.H.").

56. Section 373.4131(1) requires DEP to adopt statewide environmental resource permitting rules. DEP has done so through the adoption of rules 62-330.301 and 62-330.302.

57. Under the burden of proof discussed in the Conclusions of Law herein, the Applicants met their burden of demonstrating that they met all applicable standards and were entitled to issuance of the ERP by entering the application and DEP's notice of intent of issue the ERP in evidence. Therefore, a finding that there was insufficient evidence introduced by Petitioners to rebut the prima facie case is sufficient to establish that the grounds for issuance have been met.

58. Based on the entirety of the record of this proceeding, the Applicants provided reasonable assurances that the proposed dune walkover meets the requirements for the ERP.

Rule 62-330.301(1)

59. Rule 62-330.301(1) provides that an applicant for an ERP must provide reasonable assurance that the permitted

activity will not cause adverse affects. The standards established by rule are further described in the A.H.

Water quantity impacts: Rule 62-330.301(1)(a) and A.H. Section 10.2.2.4

60. Piling supported structures do not typically impact a water body's depth or flow. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the piling-supported dune walkover would reduce the depth, duration, or frequency of inundation or saturation in the lagoon; would increase the depth, duration, or frequency of inundation through changing the rate or method of discharge of water to the lagoon or by impounding water in the lagoon; or could have the effect of altering water levels in the lagoon. To the contrary, there was substantial testimony, and it is found, that the proposed dune walkover will not cause adverse water quantity impacts to receiving waters and adjacent lands.

Adverse flooding: Rule 62-330.301(1)(b)

61. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse flooding to on-site or off-site property.

Adverse impacts to existing surface water storage and conveyance capabilities: Rule 62-330.301(1)(c)

62. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse impacts to existing surface water storage and conveyance capabilities.

Adverse impacts to the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters: Rule 62-330.301(1)(d) and A.H. Section 10.2.2

63. The A.H. provides that "[i]n evaluating whether an applicant has provided reasonable assurances under these provisions, de minimis effects shall not be considered adverse for the purposes of this section." In accordance with the A.H., DEP provided information to the FFWCC and solicited comments on the proposed dune walkover in its various configurations. The Applicants met every listed substantive concern expressed by the FFWCC in its comments of August 27, 2015; July 20, 2016; and July 27, 2017. The proposed ERP incorporates all of the conditions requested by the FFWCC.

64. The A.H. section 10.2.2 also provides that "[t]he need for a wildlife survey will depend upon the likelihood that the site is used by listed species and the bald eagle, considering site characteristics and the range and habitat needs of such species, and whether the proposed activity will impact that use." In its August 27, 2015, comments, the FFWCC requested

that the Applicants provide an assessment of anticipated impacts to wildlife. Thereafter, on December 2, 2015, Mr. Rood provided information to DEP explaining, accurately, the densely vegetated nature of the proposed dune walkover location, and its lack of value to nesting shorebirds. He correctly noted the general distance, i.e., 100 to 150 yards, from the terminus of the proposed dune walkover to the nearest shorebird nesting area and "roped off nesting areas."

65. The A.H. provides that "[t]he need for a wildlife survey will depend upon the likelihood that the site is used by listed species and the bald eagle, considering site characteristics and the range and habitat needs of such species." As a result of Mr. Rood's explanation of the characteristics of the Project location, on December 11, 2015, the FFWCC withdrew its request for the survey and wildlife assessment.

66. As set forth herein, the preponderance of the competent, substantial, and persuasive evidence demonstrates that there will be no adverse impacts to the value of functions provided to any species of concern provided by the lagoon and associated wetlands that will result from the construction and use of the proposed dune walkover. Shorebirds, whether or not they are protected species, will not be impacted by the Project. There was no evidence to support a finding that wading birds

foraging in the lagoon, as depicted in photographs taken by Ms. Burns, would be affected in any way.

Water quality impacts: Rule 62-330.301(1)(e) and
A.H. Section 10.2.4

67. An ERP applicant must provide reasonable assurance that the project will not adversely affect the quality of receiving waters such that State water quality standards will be violated.

68. DEP required turbidity control to address short-term water quality issues attendant with construction. Best management practices to minimize construction-related turbidity are required. The sand in the area is coarse, with a small percentage of sands and clays, further minimizing the potential for turbidity. The pilings are required to be wrapped to prevent any chemicals used to treat the pilings from leaching into the soil or water. The structure will be constructed outward from the boardwalk deck, thus, minimizing impacts to surrounding vegetation and surface waters. The ERP is conditioned on adherence to Best Management Practices to ensure that oils, greases, gasoline, or other pollutants are not released into the wetlands or surface waters.

69. The preponderance of the competent, substantial, and persuasive evidence demonstrates that there will be no adverse impacts on water quality associated with the construction or use

of the proposed dune walkover. The evidence introduced by Petitioners was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse impacts to water quality.

Secondary impacts: Rule 62-330.301(1)(f) and
A.H. Sections 10.1.1(f) and 10.2.7

70. An ERP applicant must provide reasonable assurance that the Project will not cause adverse secondary impacts. The secondary impact criterion consists of four parts as established in A.H. section 10.2.7(a) through (d).

71. The proposed dune walkover will not have any lighting so as to impact turtle nesting, and will involve no vehicles except as necessary to deliver building supplies. Other secondary impacts identified in A.H. section 10.2.7(a) are not applicable.

72. The preponderance of the competent, substantial, and persuasive evidence in this proceeding established that the area in which the proposed dune walkover is to be constructed will not adversely impact the ecological value of uplands for any listed bird species of concern for nesting or foraging as set forth in A.H. section 10.2.7(b). The Project area is thickly vegetated which, as discussed previously, is not conducive for

use by shorebirds that frequent the LEICWA. The nearest documented shorebird presence is well removed from the dune walkover terminus.

73. The evidence established that the pedestrian traffic resulting from the use of the dune walkover will not disturb Wilson's Plovers, which is the only observed species that uses the "salt and pepper" vegetation between the dune walkover and the Gulf of Mexico. Any nests would, as are existing nests in the area, be marked. Wilson's Plovers are tolerant of pedestrian traffic as long as it does not directly encroach into their nesting area.

74. The suggestion that the Applicants' use of the proposed dune walkover will disrupt the habits of shorebirds observed near its terminus disregards the fact that the area is already used by the Applicants to access the beach. Furthermore, the beach itself, which is much nearer to observed bird sightings, is popular and frequently used, without restriction, by beachgoers other than the Applicants. There was no evidence that such pedestrian access along the beach adversely affects shorebirds.

75. Pedestrian access is allowed directly through areas of the LEICWA that are more thickly populated with nests of shorebird species less tolerant of pedestrian traffic than the

Wilson's Plovers. There was no evidence that such pedestrian access through the LEICWA adversely affects shorebirds.

76. As indicated previously, the open, sandy area to the east of the Project area is extensively used for nesting by large colonies of various protected shorebird species. That area is directly bounded by single and multi-family residences, and is a popular area for beach access. There was no evidence that human presence near, and pedestrian access through, the areas used by colonies of shorebirds adversely affected those shorebirds.

77. The Applicants presently drag their Hobie sailboat and kayaks across the lagoon and through the dunes. The dune walkover will allow them to simply wheel or carry those vessels across the lagoon and dunes without further impact. The evidence in this case does not support a finding that the existing pedestrian access will be increased by the dune walkover but, to the contrary, suggests that the walkover will allow access in a much less disruptive and destructive manner.

78. A.H. sections 10.2.7(c) and (d), governing, respectively, associated activities that have the potential to cause impacts to significant historical and archaeological resources and future project phases or activities, are not applicable to the proposed dune walkover.

79. The preponderance of the competent, substantial, and persuasive evidence demonstrates that there will be no adverse secondary impacts associated with the construction or use of the proposed dune walkover. The evidence introduced by Petitioners was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse secondary impacts.

Adverse impacts to the maintenance of Minimum Flows and Levels: Rule 62-330.301(1) (g)

80. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse impacts to the maintenance of surface or groundwater levels or surface water flows.

Adverse impacts to a Work of the District:
Rule 62-330.301(1) (h)

81. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause adverse impacts to a Work of the District.

Capable of performing and functioning as proposed:
Rule 62-330.301(1) (i)

82. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will not be capable of performing and functioning as proposed.

Conducted by a person with the financial, legal and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit:
Rule 62-330.301(1)(j)

83. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will not be conducted by persons with the financial, legal, and administrative capability of ensuring that the proposed dune walkover will be constructed in accordance with the terms and conditions of the ERP. The legal ability to undertake the activities that are encompassed by the SSL Authorization, CCCL Permit, and CCCL Waivers are being decided herein, and their lack of finality does not constitute a failure to meet this ERP permitting criteria.

Comply with any applicable special basin or geographic area criteria: Rule 62-330.301(1)(k)

84. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will not comply with any applicable special basin or geographic area criteria.

Public Interest Test - Section 373.414(1), Florida Statutes, Rule 62-330.302(1)(a), and A.H. Section 10.2.3

85. Section 373.414(1) provides that an applicant for an ERP must provide reasonable assurance that the permitted

activity will not cause violations of state water quality standards and that such activity is not contrary to the public interest.

86. As set forth in the discussion of rule 62-330.301(1)(e) and A.H. section 10.2.4 above, the Applicants demonstrated that the proposed dune walkover will not cause violations of state water quality standards. Furthermore, the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause violations of state water quality standards.

87. The seven factors that constitute the public interest test are established in section 373.414(1)(a), reiterated in rule 62-330.302(1)(a), and explained in greater detail in A.H. section 10.2.3. As set forth previously, some of the criteria would appear to have no relevance to this case. However, since Petitioners failed to provide any substantive narrowing of the issues in the JPS, it is necessary to go through each and every factor to ensure that some element of the ERP analysis required "pursuant to all applicable rules and statutes" does not go unaddressed.^{5/}

Whether the activity will adversely affect the public health, safety, or welfare or the property of others: Section 373.414(1)(a)1.; Rule 62-330.302(1)(a)1.; A.H. Section 10.2.3.1

88. The evaluation of the factors for consideration under this element of the public interest test include environmental issues such as "mosquito control; proper disposal of solid, hazardous, domestic or industrial waste; aids to navigation; hurricane preparedness or cleanup; environmental remediation, enhancement or restoration; and similar environmentally related issues." The evaluation also includes impacts to shellfish harvesting areas; flooding or the alleviation of flooding on the property of others; and affects on the water table that could result in the drainage of off-site wetlands or other surface waters.

89. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will adversely affect the public health, safety, or welfare or the property of others.

Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats: Section 373.414(1)(a)2.; Rule 62-330.302(1)(a)2.; A.H. Section 10.2.3.2

90. A.H. section 10.2.3.2 provides that the "fish and wildlife" element of the public interest test is to be evaluated as follows:

The Agency's public interest review of that portion of a proposed activity in, on, or over wetlands and other surface waters for impacts to "the conservation of fish and wildlife, including endangered or threatened species, or their habitats" is encompassed within the required review of the entire activity under section 10.2.2, above.

91. As set forth herein, the preponderance of the competent, substantial, and persuasive evidence demonstrates that the proposed dune walkover will not adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats.

92. Petitioners did not prove by a preponderance of competent and substantial evidence that the Applicants failed to meet the standards set forth in section 373.414(1)(a)2., rule 62-330.302(1)(a)2., and A.H. section 10.2.3.3.

Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling: Section 373.414(1)(a)3.; Rule 62-330.302(1)(a)3.; A.H. Section 10.2.3.3

93. With regard to this element of the public interest test, A.H. section 10.2.3.3 provides, in pertinent part, that:

In reviewing and balancing the criterion on navigation, erosion and shoaling in section 10.2.3(c), above, the Agency will evaluate whether the regulated activity located in, on or over wetlands or other surface waters will:

(a) Significantly impede navigability or enhance navigability. The Agency will consider the current navigational uses of the surface waters and will not speculate on

uses that may occur in the future.
Applicants proposing to construct bridges or other traversing works must address adequate horizontal and vertical clearance for the type of watercraft currently navigating the surface waters

(b) Cause or alleviate harmful erosion or shoaling

(c) Significantly impact or enhance water flow

94. The only evidence of any form of vessels using the lagoon was the Applicants' act of paddling or dragging the Hobie sailboat and kayaks across the lagoon to access the navigable waters of the Gulf of Mexico. Such does not constitute "current navigational uses of the surface waters." The preponderance of the evidence in this case establishes that there is no "current" navigational use of the lagoon. No testimony or evidence was elicited that the lagoon supported any form of boating or other navigational use. No person owning property abutting the lagoon that might be affected by some restriction on their navigational rights objected to the proposed dune walkover. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will significantly impede navigability.

95. Ms. Mills testified that "piling supported structures are used in dynamic systems all the time. Specifically you know, because they don't really have an effect on the movement

of sand.” Her testimony is credited. Her testimony, combined with that of the Applicants’ expert witnesses regarding the nature of the area, was sufficient to establish that the proposed dune walkover will not cause harmful erosion or shoaling. Furthermore, the evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will cause erosion or shoaling.

96. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will significantly impact or enhance water flow.

97. Petitioners did not prove by a preponderance of competent and substantial evidence that the Applicants failed to meet the standards set forth in section 373.414(1)(a)3.; rule 62-330.302(1)(a)3.; and A.H. section 10.2.3.3.

Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity: Section 373.414(1)(a)4.; Rule 62-330.302(1)(a)4.; A.H. Section 10.2.3.4

98. The evaluation of the factors for consideration under this element of the public interest test include adverse effects to sport or commercial fisheries or marine productivity, including the elimination or degradation of fish nursery habitat, change in ambient water temperature, change in normal

salinity regime, reduction in detrital export, change in nutrient levels, or other adverse effects on populations of native aquatic organisms.

99. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will adversely affect sport or commercial fisheries or marine productivity.

100. The public interest evaluation under these regulatory provisions also includes effects on "existing recreational uses of a wetland or other surface water, which could include impacts to "the current use of the waterway for boating."

101. Other than evidence that the Applicants had to paddle or push their shallow draft sailboat and kayaks across the lagoon to reach the Gulf, there was no evidence to establish that the lagoon has any recreational use. The DEP determined that it does not, based on the fact that the lagoon is not of a permanent depth to support navigation and was intermittently (at best) connected to the Gulf of Mexico. Ms. Mills' testimony to that effect was persuasive, consistent with that of Mr. Kroemer, and is credited.

102. The standards applicable to impacts to recreational uses are directed to "existing" and "current" uses. There was no evidence of anyone currently using the lagoon for recreational boating. Mr. Rood indicated that he had never seen

anyone boating in the lagoon. There was no evidence that anyone else along the lagoon even had a boat. Mr. Kroemer, when asked if his neighbors could use the dune walkover to portage their boats across the lagoon testified that "I'm not aware that they have boats." No property owners with homes along the lagoon objected to the proposed dune walkover.

103. The evidence in this case establishes that the proposed dune walkover will not adversely affect fishing or recreational values, or marine productivity in the vicinity of the proposed Project.

Whether the activity will be of a temporary or permanent nature: Section 373.414(1)(a)5.; Rule 62-330.302(1)(a)5.; A.H. Section 10.2.3.5

104. The proposed dune walkover is intended to provide permanent access to the Gulf of Mexico, as opposed to being a temporary structure. This finding should not be conflated with whether the proposed dune walkover is an "expendable structure" for purposes of the CCCL Permit, as will be discussed herein.

Whether the activity will adversely affect or will enhance significant historical and archaeological resources: Section 373.414(1)(a)6.; Rule 62-330.302(1)(a)6.; A.H. Section 10.2.3.6

105. There was no evidence introduced by Petitioners in this case to support a finding that the proposed dune walkover will affect significant historical and archaeological resources in any manner.

The current condition and relative value of functions being performed by areas affected by the proposed activity: Section 373.414(1)(a)7.; Rule 62-330.302(1)(a)7.; A.H. Section 10.2.3.7

106. The evidence introduced by Petitioners in this case was not sufficient or persuasive to support a finding that the proposed dune walkover will adversely affect the current condition and relative value of functions being performed by the waters of and wetlands surrounding the lagoon.

107. The evidence in this case was almost entirely directed to nesting and feeding habitat of shorebirds frequenting the LEICWA. The preponderance of the evidence established that the areas affected by the proposed dune walkover are not conducive for nesting, feeding, or loafing by Snowy Plovers, American Oystercatchers, Black Skimmers, or Least Terns. The Applicants' Exhibit 6, which was relied upon by each of the parties, showed no observed sightings of those species near the lagoon or the smaller water feature. There was one observed sighting of a non-threatened Wilson's Plover near the edge of the smaller water feature, though not directly affected by the proposed dune walkover, and no observed sightings of any of the identified species of concern near the lagoon or in the waters of either water body.

108. There was no evidence that the proposed dune walkover would affect the wading birds or shorebirds photographed by Ms. Burns.

109. Petitioners did not prove by a preponderance of competent and substantial evidence that the Applicants failed to meet the standards set forth in section 373.414(1)(a)7.; rule 62-330.302(1)(a)7.; and A.H. section 10.2.3.7.

Cumulative Impacts: Section 373.414(8); Rule 62-330.302(1)(b); A.H. Sections 10.1.1(g) and 10.2.8

110. A.H. section 10.2.8 provides, in pertinent part, that:

The impact on wetlands and other surface waters shall be reviewed by evaluating the impacts to water quality as set forth in section 10.1.1(c), above, and by evaluating the impacts to functions identified in section 10.2.2, above. If an applicant proposes to mitigate these adverse impacts within the same drainage basin as the impacts, and if the mitigation fully offsets these impacts, then the Agency will consider the regulated activity to have no unacceptable cumulative impacts upon wetlands and other surface waters, and consequently, the condition for issuance in section 10.1.1(g) will be satisfied.

111. Section 373.4136 establishes that the use of mitigation credits is sufficient to offset adverse impacts for an activity in the mitigation bank service area, and provides, in pertinent part, that:

(6) The department or water management district shall establish a mitigation

service area for each mitigation bank permit Except as provided herein, mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area shall depend upon the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts

(a) In determining the boundaries of the mitigation service area, the department or the water management district shall consider . . . at a minimum, the extent to which the mitigation bank:

* * *

3. Will provide for the long-term viability of endangered or threatened species or species of special concern; [and]

* * *

5. Can reasonably be expected to offset specific types of wetland impacts within a specific geographic area. . . .

* * *

(c) Once a mitigation bank service area has been established by the department or a water management district for a mitigation bank, such service area shall be accepted by all water management districts, local governments, and the department.

112. The Applicants have proposed mitigation in the form of the purchase of 0.01 saltwater forested mitigation bank credits and 0.01 saltwater herbaceous mitigation bank credits from the Pine Island Mitigation Bank. The proposed dune walkover is within the service area established for the Pine

Island Mitigation Bank. The mitigation credits, which were initially calculated based on a six-foot-wide dune walkover, are more than sufficient to offset any adverse impacts of the proposed five-foot-wide dune walkover on the wetlands and surface waters in the Project area.

113. Ms. Mills testified that the proposed dune walkover would have "[n]o adverse cumulative impacts because the project would be doing mitigation, with mitigation bank credits within the surface area established for the mitigation bank." Her testimony established that the statutory offset criteria is applied when a project (and a mitigation bank such as the Pine Island Mitigation Bank) is on a barrier island which, because there is no "drainage" except to the Gulf of Mexico, is not within a "drainage basin." Her testimony was persuasive, meets the statutory criteria in section 373.4136, and is accepted.

114. There are no existing permits or pending applications for similar dune walkovers in the area. Given the presence of the LEICWA to the west, applications for similar walkovers within its boundary are unlikely and, if made, would have to comply with critical wildlife area restrictions.

115. The evidence in this case establishes that the proposed dune walkover will not result in unacceptable cumulative impacts upon wetlands and other surface waters. Furthermore, Petitioners did not prove by a preponderance of

competent and substantial evidence that the Applicants failed to meet the standards set forth in section 373.414(1)(a)7.; rule 62-330.302(1)(a)7.; and A.H. section 10.2.3.7.

Elimination or Reduction of Impacts: A.H. Section 10.2.1

116. A.H. section 10.2.1 provides, in pertinent part,
that:

The following factors are considered in determining whether an application will be approved by the Agency: the degree of impact to wetland and other surface water functions caused by a proposed activity; whether the impact to these functions can be mitigated; and the practicability of design modifications for the site that could eliminate or reduce impacts to these functions, including alignment alternatives for a proposed linear system.

117. A.H. section 10.2.1.1 provides, in pertinent part,
that:

The term "modification" shall not be construed as including the alternative of not implementing the activity in some form, nor shall it be construed as requiring a project that is significantly different in type or function

118. A.H. section 10.2.1.2 provides, in pertinent part,
that:

The Agency will not require the applicant to implement practicable design modifications to reduce or eliminate impacts when:

* * *

b. The applicant proposes mitigation that implements all or part of a plan that provides regional ecological value and that provides greater long term ecological value than the area of wetland or other surface water to be adversely affected.

119. As set forth previously, the Applicants have proposed mitigation in the form of the purchase of 0.01 saltwater forested mitigation bank credits and 0.01 saltwater herbaceous mitigation bank credits from the Pine Island Mitigation Bank. The Project area is within the service area established for the Pine Island Mitigation Bank. Ms. Mills testified that "any habitat can be used for nesting and denning, I think any impacts have been offset by the mitigation." Her testimony is credited. The evidence was also sufficient to establish that the mitigation was in an amount that offsets the impacts of the proposed dune walkover on the lagoon, provides regional ecological value, and provides greater long-term ecological value than the area of the lagoon affected. Based on the Findings of Fact set forth herein, and as supported by a preponderance of the persuasive evidence adduced at the hearing, the Applicants were under no requirement to implement practicable design modifications to reduce or eliminate impacts from the proposed dune walkover.

120. Despite having no obligation to do so, the Applicants did implement practicable design modifications, resulting in a

realignment of the dune walkover to eliminate any encroachment on the LEICWA, the reduction of the width of the Project from six feet to five feet, and the elimination of features that resulted in a much lower and unobtrusive structure. The Applicants also agreed to permit conditions to implement construction methodologies to reduce impacts, and eliminate lighting that could affect adjacent habitats.

121. In addition to the foregoing, Ms. Mills testified convincingly that the boardwalk in this area would serve to minimize unrestricted and unchanneled foot traffic, and direct traffic so that people are not "using other manners that aren't specifically defined causing more adverse impacts" through natural and sandy areas. Her testimony is credited.

122. Petitioners did not prove by a preponderance of competent and substantial evidence that the Applicants failed to meet the standards set forth in A.H. sections 10.2.1 and 10.2.1.2.

Environmental Resource Permit - Ultimate Finding of Fact

123. A preponderance of the competent, substantial evidence in this case establishes that the Applicants demonstrated their entitlement to the issuance of the ERP, meeting the standards established in section 373.414, rules 62-330.301 and 62-330.302, and the applicable sections of the A.H.

Petitioners did not meet their burden of demonstrating that the ERP should not be issued.

SSL Authorization

124. The sovereignty lands at issue in this case are those that were under state ownership prior to the landward migration and attachment of the sandbar. See Fla. Admin. Code R. 18-21.003(61). The Applicants did not dispute that a SSL Authorization was appropriate.

125. The standards for issuance of an SSL Authorization, including a Letter of Consent Easement, are generally established in Florida Administrative Code Rule 18-21.004.

126. Based on the entirety of the record of this proceeding, the Applicants provided reasonable assurances that the proposed dune walkover meets the requirements for the SSL Authorization.

18-21.004(1)(a) - Contrary to the public interest

127. Rule 18-21.004(1)(a) provides that "activities on sovereignty lands must be not contrary to the public interest."

128. As established by the DEP:

Rule 18-21.004(1)(a) requires an applicant to demonstrate that an activity proposed to be conducted on sovereignty submerged lands will not be contrary to the public interest. . . . [T]o meet this standard, it is not necessary that the applicant show that the activity is affirmatively in the "public interest, " as that term is defined in rule 18-21.003(51), Florida Administrative Code.

Rather, it is sufficient that the applicant show that there are few, if any, "demonstrable environmental, social, and economic costs" of the proposed activity.

Defenders of Crooked Lake, Inc. v. Krista Howard and Dep't of Env't'l Prot., DOAH Case No. 17-5328, FO at 26 (Fla. DOAH July 5, 2018; Fla. DEP Aug. 16, 2018).

129. As set forth in detail previously herein, the Applicants have demonstrated, by a preponderance of the competent, substantial, and persuasive evidence in the record, that the proposed dune walkover will pose no demonstrable environmental or social costs.

130. The suggestion that the construction of the proposed dune walkover will adversely affect the economic viability of the LEICWA or the Town is, under the facts of this case, simply implausible. The facts stipulated by the parties provide that "the beach and the ecotourism generated by the potential for birdwatching is important for the Town's economy." However, the preponderance of the evidence demonstrates that the proposed dune walkover will have no effect on the use of the beach, shorebirds, or the LEICWA.

131. The fact that the proposed dune walkover is a private structure does not militate against its meeting the public interest test. As stated by Ms. Mills, "it's not contrary to the Board's public interest test because the Board has outlined

through its rule a procedure for a private homeowner to get consent through an easement to use Sovereign Submerged Lands." Her testimony is credited.

132. For the reasons set forth herein, the Applicants met the provisions of the "public interest test" established in rule 18-21.004(1)(a).

18-21.004(2) - Resource management

133. Rule 18-21.004(2)(a) provides, in pertinent part, that:

All sovereignty lands shall be considered single use lands and shall be managed primarily for the maintenance of essentially natural conditions, propagation of fish and wildlife, and traditional recreational uses such as fishing, boating, and swimming. Compatible secondary purposes and uses which will not detract from or interfere with the primary purpose may be allowed.

(b) Activities which would result in significant adverse impacts to sovereignty lands and associated resources shall not be approved unless there is no reasonable alternative and adequate mitigation is proposed.

* * *

(i) Activities on sovereignty lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat, and other natural or cultural resources. Special attention and consideration shall be given to endangered and threatened species habitat.

134. By providing a means of channeling and making the Applicants' existing access across sovereignty lands less disruptive and damaging to the lagoon, dunes, and bird species, the proposed dune walkover meets the principles that the sovereignty lands be maintained in their essentially natural conditions, and that they be conducive to the propagation of fish and wildlife.

135. The proposed dune walkover involves use of sovereignty lands to facilitate access to the waters of the Gulf of Mexico for traditional uses such as fishing, boating, and swimming.

136. The testimony of the Applicants was sufficient to demonstrate that there was no reasonable alternative to the proposed dune walkover, other than the more disruptive and destructive means of providing access to the Gulf of Mexico currently in use. Though a strong argument can be made that the proposed dune walkover has fewer impacts, and is more protective of sovereignty lands than the Applicants' existing (and lawful) means of access, sufficient mitigation was provided as described herein.

137. The Project, by virtue of steps taken to minimize its footprint to the minimum necessary to allow access by wheelchair or mobility device, to remove handrails, and by construction

methods, including construction from the decking, has been designed to minimize destruction of wetland vegetation on sovereignty lands.

138. The modifications to the Project, including the lowering of the dune walkover; elimination of handrails; the agreement to forego lighting; the steps taken to eliminate effects on water quality; and the termination of the dune walkover in a densely vegetated area not favored by shorebirds, have minimized adverse impacts on fish and wildlife habitat, including habitat for endangered and threatened species of shorebirds and marine turtles.

139. For the reasons set forth herein, the Applicants met the provisions of the "resource management" provisions established in rule 18-21.004(2).

18-21.004(3) - Riparian rights

140. Rule 18-21.004(3) provides that activities undertaken on sovereignty lands be conducted so as to not unreasonably infringe upon traditional, common law riparian rights of upland property owners adjacent to sovereignty submerged lands.

141. Section 253.141 provides that "[t]he land to which the owner holds title must extend to the ordinary high watermark of the navigable water in order that riparian rights may attach."

142. Neither the Applicants nor their neighbors hold title to the mean high water ("MHW") mark of the Gulf of Mexico.^{6/}

143. The MHW line, as of December 1, 2014, was at what is generally depicted as the shoreline of the Gulf of Mexico. The two more upland water features, i.e., the lagoon and the smaller body, both labeled as "Pond" on the 2014 mean high water survey, were well landward of the MHW.

144. The lagoon, which is normally isolated from the Gulf of Mexico, is not of a depth to be routinely navigable in fact, and frequently has so little water as to require that even kayaks be dragged across, is simply not a navigable water body.

145. Pursuant to section 253.141, neither the Applicants nor their neighbors currently have riparian rights to the lagoon or the smaller feature.

146. Even if it were to be determined that the Applicants' neighbors had riparian rights to the lagoon, any restriction or infringement on traditional rights of ingress, egress, boating, bathing, and fishing would not be "unreasonable." The evidence established that adjacent upland property owners did not have vessels that would be expected to use the lagoon. There was no suggestion that the ability to traverse the lagoon to access the navigable waters of the Gulf of Mexico, much as the Applicants do now, would be affected. The proposed dune walkover would not restrict bathing or fishing, and the photographic and

testimonial evidence established not only that such activities are not engaged in as a matter of fact, but that the shallow, isolated body of water is not conducive to such activities. Finally, in determining whether any restriction on riparian rights -- even if they existed -- was "unreasonable," it is not inconsequential that no property owners fronting the lagoon objected to or challenged the proposed Project.

147. The evidence in this case established that the lagoon is not a navigable body of water. The MHW line is waterward of the lagoon, and the property lines of the Applicants and their neighbors do not extend to the MHW line. Thus, proximity to that water feature does not serve to confer "riparian" rights on them. Even if the adjacent upland property owners had riparian rights to the lagoon, under the facts of this case, any restriction on such rights created by the proposed dune walkover would not be "unreasonable." Finally, the mechanism for enforcing such rights would be with the adjacent upland owners, not Petitioners.

148. For the reasons set forth herein, the Applicants met the provisions of the "riparian rights" provisions established in rule 18-21.004(3).

18-21.004(7) - General conditions

149. As established by a preponderance of the evidence, and as previously set forth in the Findings of Fact herein, the

proposed dune walkover has been designed, and is subject to conditions as to its construction, that will avoid and minimize adverse impacts to sovereignty submerged lands and resources. Thus, the Applicants met the standards for issuance of the SSL Authorization established in rule 18-21.004(7) (d).

150. As established by a preponderance of the evidence, and as previously set forth in the Findings of Fact herein, the proposed dune walkover has been designed, is subject to conditions as to its construction, and is intended for use in a manner that will not adversely affect shorebirds or sea turtles. Thus, the Applicants met the standards for issuance of the SSL Authorization established in rule 18-21.004(7) (e).

151. As established by a preponderance of the evidence, and as previously set forth in the Findings of Fact herein, the lagoon is not a navigable body of water. Furthermore, even if it were navigable, any restriction created by the proposed dune walkover will not be "unreasonable." Finally, if the adjacent upland owners holding such riparian rights believe such rights to have been infringed, despite their not having heretofore objected to the proposed Project, and a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the DEP has the authority to require that it be modified in accordance with the court's decision. Thus,

the Applicants met the standards for issuance of the SSL Authorization established in rule 18-21.004(7)(f).

152. As established by a preponderance of the evidence, and as previously set forth in the Findings of Fact herein, the proposed dune walkover will not create a navigational hazard. Unlike the "public interest" navigational standards for obtaining an ERP, the "navigational hazard" standard for obtaining a SSL Authorization pursuant to rule 18-21.004(7), though not defined, includes such things as unsafe conditions adjacent to docks and boat slips. Pirtle v. Voss and Dep't of Env'tl. Prot., Case No. 13-0515 (Fla. DOAH Sep. 23, 2013; Fla. DEP Dec. 26, 2013). A mere inconvenience does not constitute the type of navigational hazard contemplated by the rule. Woolshlager v. Rockman and Dep't of Env'tl. Prot., Case No. 06-3296 (Fla. DOAH May 5, 2007; Fla. DEP June 22, 2007). Since there is no proven "navigation" in the lagoon -- other than dragging or, when water levels allow, paddling small boats and kayaks across on the way to accessing the navigable waters of the Gulf of Mexico -- there is no navigational hazard created by the proposed dune walkover. Thus, the Applicants met the standards for issuance of the SSL Authorization established in rule 18-21.004(7)(g).

153. Finally, as established by a preponderance of the evidence, and as previously set forth in the Findings of Fact

herein, the proposed dune walkover has been designed, is subject to conditions as to its construction, and is intended for the water dependent purpose of traversing the lagoon to allow access to the Gulf of Mexico. Thus, the Applicants met the standards for issuance of the SSL Authorization established in rule 18-21.004(7)(i).

SSL Authorization - Ultimate Finding of Fact

154. A preponderance of the competent, substantial evidence in this case establishes that the Applicants demonstrated their entitlement to the issuance of the Letter of Consent Easement, meeting the standards established in chapter 253 and rule 18-21.

CCCL Permit

155. DEP has established a CCCL on Little Estero Island. A CCCL permit is required before a person may conduct construction activities beyond that line.

Permitting Procedures

156. In the Joint Prehearing Stipulation, Petitioners asserted that "the applicable and relevant procedures for granting a coastal construction control line permit application were not appropriately followed." However, Petitioners failed to present competent, substantial, and persuasive evidence of any failure by DEP to follow its CCCL permitting procedures. Conversely, DEP established that the project met all of the

applicable siting and design criteria, and that DEP complied with statutory and rule criteria and procedures for reviewing and issuing the CCCL Permit.

157. Petitioners have argued that the CCCL Permit should have been procedurally denied because the CCCL Waiver was timely challenged. DEP included special conditions requiring the Applicants to relinquish the CCCL Permit if the CCCL Waivers were denied. In addition, the CCCL Permit does not become final until a Notice to Proceed is issued, which is also conditioned on the CCCL Waivers becoming final.

158. Based on the fact that construction of the dune walkover cannot commence until all permits and authorizations are issued, there was no material error in procedure arising from DEP sequentially issuing the CCCL Waivers and the CCCL Permit, thus, allowing for their consolidation and litigation without unnecessary delay and duplication.

Permitting Standards

159. The Applicants have provided reasonable assurances that the proposed dune walkover meets the requirements for a permit for construction seaward of the coastal construction control line established in section 161.053, Florida Statutes, and Florida Administrative Code Chapter 62B-33.

160. The proposed dune walkover meets the requirements established by rule as a minor structure, and was designed in

accordance with DEP's Beach and Dune Walkover Guidelines. It is designed to be expendable. The size, height, and elimination of concrete anchors were proposed to minimize resistance to forces associated with high frequency storms, and to allow the dune walkover to break away when subjected to such forces. It meets every condition proposed by the DEP and the FFWCC. Its minimal size and design is expected to have a minor impact on the beach and dune system.

161. A preponderance of the evidence established that the proposed dune walkover will not cause a measurable interference with the natural functioning of the coastal system.

162. A preponderance of the evidence established that the Project, as a result of its size, profile, and location, will have no measurable affect on the existing shoreline change rate.

163. A preponderance of the evidence further established that the proposed dune walkover is not reasonably expected to significantly interfere with the ability of the coastal system to recover from a coastal storm.

164. A preponderance of the evidence established that the Project would have no measurable effect of the topography or the vegetation of the area. As such, there is no evidence to suggest that the proposed dune walkover would render the dune system unstable or subject to catastrophic failure, or that the protective value of the dune system will be significantly

lowered. To the contrary, by lessening pedestrian traffic through the dunes, and channeling traffic at its waterward point of termination, the proposed dune walkover will be protective of the dune system and the coastal system. In that regard, DEP generally encourages dune walkovers to protect the beach and dune system.

165. As a result of the elimination of lighting, of the restriction on construction during turtle nesting season, and of the Applicants' agreement to all conditions suggested by the FFWCC, the evidence firmly established that the proposed dune walkover will not, by any reasonable measure, result in death or injury to marine turtles, and will result in no significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering.

166. The Project will not result in the removal or destruction of native vegetation. The evidence was sufficient to demonstrate that the Project will not destabilize the beach and dune system. As set forth herein, the greater weight of the evidence establishes that the dune walkover will provide greater protection of the beach and dune system than the Applicants' existing means of access across the lagoon and dunes. The construction of the dune walkover will cause no significant

adverse impact, as defined in rule 62B-33.002(26), to the beach and dune system due to increased erosion by wind or water.

167. The proposed dune walkover does not require any excavation. There will be no net excavation or removal of in situ sandy soils of the beach and dune system, and no net excavation of the in situ sandy soils seaward of the control line or 50-foot setback.

168. The proposed dune walkover does not include any water directing devices. The preponderance of the competent substantial evidence established that the project will not direct discharges of water seaward in a manner that would result in significant adverse impacts. The evidence established that the proposed Project will result in no erosion-induced surface water runoff within the beach and dune system.

169. The evidence establishes that, as a general matter, piling-supported structures do not have an effect on the flow of water. However, in extreme events, water encountering an obstacle can cause the movement of sand around the obstacle. The expendability of a structure and its ability to break away prevents scour from occurring and is designed to minimize impacts. The preponderance of the competent, substantial, and persuasive evidence establishes that the Project will not increase scour so as to cause a significant adverse impact, and

that any effect of the Project on the coastal processes of the area would be, at most, de minimis.

170. The design of the proposed dune walkover minimizes the amount of materials that might create debris in the event of a storm. The Applicants removed the handrails, decreased the width of the dune walkover from six feet to five feet, and eliminated pickets and non-structural members. The lowering of the dune walkover, and replacement of the stairs with a ramp that minimizes lift forces, have sufficiently reduced the potential for wind and waterborne missiles. The suggestion that the dune walkover will, in the event of a high frequency storm, form destructive airborne missiles is simply not credible.

171. Granted, the proposed dune walkover is designed to break apart in the face of destructive storm forces. If every piece of storm-generated debris was a sufficient basis upon which to deny a CCCL permit, then minor structures would be prohibited, since all minor structures are designed to be expendable and to break away in a high-frequency storm. Some degree of reason must be applied. The Applicants in this case demonstrated that the proposed dune walkover would not itself be such to create significant adverse impacts if subjected to the destructive forces of such a storm.

172. The proposed dune walkover terminates more than 260 feet from the Gulf of Mexico, and will not interfere with

the public's right to laterally traverse the sandy beach of the Gulf of Mexico.

173. The Project area is in a cycle of accretion, has historically accreted, is currently accreting at roughly 28 feet per year, and is expected to continue accreting.

174. The suggestion that, within 15 years, the shoreline of the Gulf of Mexico waterward of the Applicants' properties will retreat, and that the proposed dune walkover would thence reach into the Gulf, blocking pedestrian access to the shoreline, was not supported by quantitative analyses, and was not sufficient to outweigh evidence to the contrary presented by the Applicants. The Applicants offered an assessment and report based on past and current conditions at the monument level, which included modeling and sediment budgets showing projected changes of the Project area, none of which support a finding that the shoreline will erode or retreat, or that the proposed dune walkover would be expected to interfere with public access to the shoreline.

175. As set forth previously herein, the Project's proposed design, location, and construction methods provide reasonable assurance that there will be no adverse impact to marine turtles, or the coastal system.

176. The Applicants provided sufficient evidence of ownership, in that they are the upland owners and the recipients of the SSL Authorization, being addressed concurrently herewith.

CCCL Permit - Ultimate Finding of Fact

177. A preponderance of the competent, substantial evidence in this case establishes that the Applicants demonstrated their entitlement to the issuance of the CCCL Permit, meeting the standards established in chapter 161 and chapter 62B-33.

CCCL Waivers

178. The CCCL Waivers at issue affect the timing requirements of the submission of ownership and land use approvals. The CCCL Waivers do not waive the submission of the documents, or the requirement that the documents be provided prior to any construction of the proposed dune walkover. A preponderance of the competent substantial evidence establishes that the underlying purpose of chapter 161 and rule 62B-33.008, will be met because construction cannot begin until the Applicants satisfy all substantive requirements for the CCCL Permit.

179. At the time the CCCL Waivers were requested, the Consolidated Permit was being litigated (DOAH Case Nos. 16-7148 and 16-7149), as was the Town's denial of the land use letter requested by the Applicants to comply with the CCCL Permit

application requirement. Strict adherence to the requirement that the documents at issue be submitted at the time of the application would have required the Applicants to sequentially litigate issues related to the proposed dune walkover, increasing the time and expense of litigation on all involved.

180. Petitioners presented no evidence demonstrating how allowing the Applicants to submit the documents prior to being given a Notice to Proceed would adversely affect the Department's ability to carry out the objective of the underlying statutes, or their substantial interests in ensuring the legality of the proposed dune walkover.

181. The timing requirement for evidence of ownership and local government approval was appropriately waived to allow for the efficient and cost-effective litigation of all issues related to the proposed dune walkover. To piecemeal the litigation would unnecessarily increase the time, cost, and administrative burden of litigation for no meaningful or substantive reason, and would provide the challengers with an unwarranted litigation advantage.

182. The CCCL Waivers affect no substantive or substantial interests of any party to this case. They neither lessen the necessary indicia of ownership and control required of the Applicants, nor affect the Town's ability to lawfully enforce its local zoning codes. The waiver to the timing requirements

allows for the substantive permitting requirements to be met, without frustrating the Applicants' right to a timely final decision on the Consolidated Permit and CCCL Permit.

183. The CCCL Waiver does not allow for any construction to begin without Applicants first meeting both the ownership requirement and the local government zoning confirmation requirement. Therefore, the CCCL Waivers are consistent with the purpose and intent of the governing statutes and rules, and result in no injury to Petitioners' legitimate interests.

CCCL Waivers - Ultimate Finding of Fact

184. A preponderance of the competent, substantial evidence in this case establishes that the CCCL Waivers serve to avoid substantial hardship to the Applicants, and advance principles of fairness by maintaining a fair, equal, and cost-effective forum for litigation between the parties regarding the proposed dune walkover. As such, the Applicants demonstrated their entitlement to the issuance of the CCCL Waivers, meeting the standards established in section 120.542.

CONCLUSIONS OF LAW

Jurisdiction

185. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

Standing

186. Section 120.52(13) defines a "party," in pertinent part, as a person "whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party." Section 120.569(1) provides, in pertinent part, that "[t]he provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency."

187. Standing under chapter 120 is guided by the two-pronged test established in the seminal case of Agrico Chemical Corporation v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981). In that case, the court held that:

We believe that before one can be considered to have a substantial interest in the outcome of the proceeding, he must show 1) that he will suffer an injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

Id. at 482.

188. Agrico was not intended as a barrier to the participation in proceedings under chapter 120 by persons who are affected by the potential and foreseeable results of agency action. Rather, "[t]he intent of Agrico was to preclude parties from intervening in a proceeding where those parties'

substantial interests are totally unrelated to the issues that are to be resolved in the administrative proceedings.”

Mid-Chattahoochee River Users v. Fla. Dep't of Env'tl. Prot., 948 So. 2d 794, 797 (Fla. 1st DCA 2006) (citing Gregory v. Indian River Cnty., 610 So. 2d 547, 554 (Fla. 1st DCA 1992)).

189. The standing requirement established by Agrico has been refined, and now stands for the proposition that standing to initiate an administrative proceeding is not dependent on proving that the proposed agency action would violate applicable law. Instead, standing requires proof that the petitioner has a substantial interest and that the interest reasonably could be affected by the proposed agency action. Whether the effect would constitute a violation of applicable law is a separate question.

Standing is “a forward-looking concept” and “cannot ‘disappear’ based on the ultimate outcome of the proceeding.” . . . When standing is challenged during an administrative hearing, the petitioner must offer proof of the elements of standing, and it is sufficient that the petitioner demonstrate by such proof that his substantial interests “could reasonably be affected by . . . [the] proposed activities.”

Palm Beach Cnty. Env'tl. Coal. v. Fla. Dep't of Env'tl. Prot., 14 So. 3d 1076, 1078 (Fla. 4th DCA 2009) (citing Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co., 18 So. 3d 1079, 1083 (Fla. 2d DCA 2009); and Hamilton Cnty. Bd.

of Cnty. Comm'rs v. State, Dep't of Envtl. Reg., 587 So. 2d 1378 (Fla. 1st DCA 1991)); see also St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So. 3d 1051, 1055 (Fla. 5th DCA 2011) ("Ultimately, the ALJ's conclusion adopted by the Governing Board that there was no proof of harm or that the harm would be offset went to the merits of the challenge, not to standing.").

190. Audubon alleged that it has standing since the activities proposed will have detrimental effects on the LEICWA, which it has been involved in since its creation, and which its members frequent, enjoy, and provide volunteer services.

191. Audubon's interest in threatened shorebird species that frequent the area would, as alleged, be adversely affected by the potential impacts of the dune walkover. Whether such impacts have been proven goes to the merits of this proceeding, and not to the bare issue of standing.

192. Audubon meets the second prong of the Agrico test, that is, this proceeding is designed to protect it and its members from potential adverse impacts on the public interest, including wildlife and threatened species, water quality and other alleged adverse effects caused by the proposed dune walkover, impacts that are reasonably within the ambit of chapters 373, 253, and 161, and the rules adopted thereunder.

193. The question for determination as to the first prong of the Agrico test is whether Audubon alleged injuries in fact of sufficient immediacy as a result of the proposed Project to entitle it to a section 120.57 hearing. "[T]he injury-in-fact standard is met by a showing that the petitioner has sustained actual or immediate threatened injury at the time the petition was filed, and '[t]he injury or threat of injury must be both real and immediate, not conjectural or hypothetical.'"

S. Broward Hosp. Dist. v. Ag. for Health Care Admin., 141 So. 3d 678, 683 (Fla. 1st DCA 2014) (citing Vill. Park Mobile Home Ass'n v. Dep't of Bus. & Prof'l Reg., 506 So. 2d 426, 433 (Fla. 1st DCA 1987)).

194. Audubon has alleged standing as an association acting on behalf of the interests of its members. The evidence adduced at the hearing is sufficient to demonstrate its associational standing under Florida Home Builders Association v. Department of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982), and its progeny.

195. As a result of the facts supporting standing, there is sufficient evidence to demonstrate that, if the adverse impacts of the proposed agency action were proven, Audubon would be adversely affected by final agency action consistent with that proposed.

196. Audubon has sufficiently alleged and offered proof of an "injury in fact which is of sufficient immediacy to entitle [it] to a section 120.57 hearing." Although Audubon's standing as to the CCCL Waiver is much more tenuous, since it has no substantive bearing on whether or when construction of the dune walkover might be allowed, it is sufficiently related to the CCCL Permit as to establish standing under a broad construction of the concept that is appropriate in this case.

197. Contrary to the environmental and natural resource issues identified by Audubon, the Town based its standing on the Town's economic dependency on tourism and ecotourism which could be disrupted by impact to the LEICWA, as well as its budget for maintenance of the beach and LEICWA. The Town's witnesses also indicated that the Town was affected by the Waiver because the DEP's proposed procedure for issuance of the CCCL Permit went "outside the normal process and could create confusion among applicants and the public," though no specific example of such was provided.

198. A municipality "must demonstrate that its substantial interests will be affected just as a natural person must." As such, the Town "must demonstrate that it will suffer an injury-in-fact which is of sufficient immediacy to entitle it to a hearing, and that the injury is within the 'zone of interest' which the proceeding is designed to protect." Furthermore, the

Town "must demonstrate that its interest exceeds the general interest of its citizens." Hamilton Cnty. v. TSI Southeast, Inc., Case No. 89-6824 (Fla. DOAH July 24, 1990; Fla. DER Sept. 7, 1990), aff'd, Hamilton Cnty. v. Dep't of Env'tl. Reg., 587 So. 2d 1378 (Fla. 1st DCA 1991). The doctrine of *parens patriae* does not serve to confer standing on a municipality to participate in an environmentally based proceeding on behalf of its citizens. See Atlantic Civil, Inc. v. Fla. Power and Light Co. and Dep't of Env't'l Prot., Case No. 15-1746, FO at 25-26 (Fla. DOAH Feb. 15, 2016; Fla. DEP Apr. 21, 2016).

199. The Town did not demonstrate actual injury-in-fact or a real and immediate threat of direct injury to interests that are protected in this type of environmental permitting proceeding. Issues of economic dependency on tourism and ecotourism, and unquantified budgeting matters are not within the zone of interests to be protected in this proceeding. See Vill. of Key Biscayne v. Dep't of Env'tl. Prot., 206 So. 3d 788, 791 (Fla. 3d DCA 2016); Mid-Chattahoochee River Users v. Dep't of Env'tl. Prot., 948 So. 2d at 798; Agrico Chem. Co., 406 So. 2d at 482. Furthermore, issues of compliance with or confusion about the Town's zoning or land use procedures are not within the zone of interests protected by this type of proceeding. See, e.g., Council of Lower Keys v. Charley Toppino

& Sons, Inc., 429 So. 2d 67, 68 (Fla. 3d DCA 1983); Taylor v. Cedar Key Special Water and Sewerage Dist., 590 So. 2d 481 (Fla. 1st DCA 1991).

200. As a result of the foregoing, the Town has failed to demonstrate that it has standing to participate as a party to this proceeding based on the standards and precedent cited above.

201. Respondents/Applicants, Texas Hold'Em, LLC, and Squeeze Me Inn, LLC, have standing as the applicants for the permits and authorizations at issue. Ft. Myers Real Estate Holdings, LLC v. Dep't of Bus. & Prof'l Reg., 53 So. 3d 1158, 1162 (Fla. 1st DCA 2011); Maverick Media Group v. Dep't of Transp., 791 So. 2d 491, 492-493 (Fla. 1st DCA 2001).

Nature of the Proceeding

202. This is a de novo proceeding, intended to formulate final agency action and not to review action taken earlier and preliminarily. Young v. Dep't of Cmty. Aff., 625 So. 2d 831, 833 (Fla. 1993); Hamilton Cnty. Bd. of Cnty. Comm'rs v. Dep't of Env'tl. Reg., 587 So. 2d at 1387; McDonald v. Dep't of Banking & Fin., 346 So. 2d 569, 584 (Fla. 1st DCA 1977).

Burden and Standard of Proof

203. Section 120.569(2) (p) provides that:

For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to

challenge an agency's issuance of a license, permit, or conceptual approval, the order of presentation in the proceeding is for the permit applicant to present a prima facie case demonstrating entitlement to the license, permit, or conceptual approval, followed by the agency. This demonstration may be made by entering into evidence the application and relevant material submitted to the agency in support of the application, and the agency's staff report or notice of intent to approve the permit, license, or conceptual approval. Subsequent to the presentation of the applicant's prima facie case and any direct evidence submitted by the agency, the petitioner initiating the action challenging the issuance of the permit, license, or conceptual approval has the burden of ultimate persuasion and has the burden of going forward to prove the case in opposition to the license, permit, or conceptual approval through the presentation of competent and substantial evidence.

204. The Applicants made their prima facie case of entitlement to the ERP by entering into evidence the complete application files and supporting documentation and the DEP's Consolidated Notice of Intent to Issue Environmental Resource Permit and Letter of Consent Easement to Use Sovereign Submerged Lands. In addition, the Applicants presented the testimony of expert witnesses in support of their application. With the Applicants having made their prima facie case, the burden of ultimate persuasion is on Petitioners to prove their case in opposition to the ERP by a preponderance of the competent and

substantial evidence, and thereby prove that the Applicants failed to provide reasonable assurance that the standards for issuance of the ERP were met.

205. The SSL Authorization is governed by chapter 253. The CCCL Permit is governed by chapter 161. The CCCL Waiver is subject to chapter 120. As such, none of those forms of regulatory approval constitute a "license, permit, or conceptual approval" under chapters 373, 378, or 403. Therefore, the modified burden of proof established in section 120.569(2)(p) does not apply to the SSL Authorization, the CCCL Permit, or the CCCL Waiver. Thus, the Applicants bear the burden of demonstrating, by a preponderance of the evidence, entitlement to those authorizations. Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); Save Our Creeks, Inc. v. Fla. Fish & Wildlife Conser. Comm'n, Case No. 12-3427 (Fla. DOAH July 3, 2013; Fla. DEP Jan. 14, 2014).

206. The standard of proof is preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

Reasonable Assurance Standard

207. Issuance of the proposed Consolidated Permit and CCCL Permit is dependent upon there being reasonable assurance that the activities authorized will meet applicable standards.

208. Reasonable assurance means "a substantial likelihood that the project will be successfully implemented."

Metro. Dade Cnty. v. Coscan Fla., Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992). Reasonable assurance does not require absolute guarantees that the applicable conditions for issuance of a permit have been satisfied. Furthermore, speculation or subjective beliefs are not sufficient to carry the burden of presenting contrary evidence or proving a lack of reasonable assurance necessary to demonstrate that a permit should not be issued. FINR II, Inc. v. CF Indus., Inc., Case No. 11-6495 (Fla. DOAH Apr. 30, 2012; Fla. DEP June 8, 2012).

ERP Permitting Standards

209. Section 373.414(1) provides, as pertinent to the issues in this proceeding, that:

As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, . . . the department shall require the applicant to provide . . . reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), is not contrary to the public interest

(a) In determining whether an activity, which is in, on, or over surface waters or wetlands, as delineated in s. 373.421(1), and is regulated under this part, is not contrary to the public interest . . . the department shall consider and balance the following criteria:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;

2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;
6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and
7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

210. Pursuant to its rulemaking authority, DEP adopted rules 62-330.301 and 62-330.302, which establishes the standards applicable to this proceeding.

211. Rule 62-330.301(1) provides, in pertinent part, that:

- (1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter:
 - (a) Will not cause adverse water quantity impacts to receiving waters and adjacent lands;
 - (b) Will not cause adverse flooding to on-site or off-site property;

- (c) Will not cause adverse impacts to existing surface water storage and conveyance capabilities;
- (d) Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters;
- (e) Will not adversely affect the quality of receiving waters such that the state water quality standards . . . will be violated;
- (f) Will not cause adverse secondary impacts to the water resources ;
- (g) Will not adversely impact the maintenance of surface or ground water levels or surface water flows established pursuant to section 373.042, F.S.;
- (h) Will not cause adverse impacts to a Work of the District established pursuant to section 373.086, F.S.;
- (i) Will be capable, based on generally accepted engineering and scientific principles, of performing and functioning as proposed;
- (j) Will be conducted by a person with the financial, legal and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued; and
- (k) Will comply with any applicable special basin or geographic area criteria

212. Rule 62-330.302(1) provides, in pertinent part, that:

- (1) In addition to the conditions in rule 62-330.301, F.A.C., to obtain an individual or conceptual approval permit under this chapter, an applicant must provide

reasonable assurance that the construction, alteration, operation, maintenance, repair, removal, and abandonment of a project:

(a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, . . . as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Volume I:

1. Whether the activities will adversely affect the public health, safety, or welfare or the property of others;

2. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;

3. Whether the activities will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

4. Whether the activities will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;

5. Whether the activities will be of a temporary or permanent nature;

6. Whether the activities will adversely affect or will enhance significant historical and archaeological resources under the provisions of section 267.061, F.S.; and

7. The current condition and relative value of functions being performed by areas affected by the proposed activities.

(b) Will not cause unacceptable cumulative impacts upon wetlands and other surface waters as set forth in sections 10.2.8 through 10.2.8.2 of Volume I.

213. The A.H. has been adopted for use by DEP and the state's five water management districts. Fla. Admin. Code R. 62-330.010(4). The A.H. was developed "to help persons understand the rules, procedures, standards, and criteria that apply to the environmental resource permit (ERP) program under Part IV of Chapter 373 of the Florida Statutes (F.S.)."

A.H. § 1.0.^{7/}

ERP Conclusion

214. For the reasons set forth in the Findings of Fact herein, a preponderance of the competent, substantial evidence in this case establishes that the Applicants demonstrated their entitlement to the issuance of the ERP, meeting the standards established in the cited provisions of section 373.414, rules 62-330.301 and 62-330.302, and the A.H. Petitioners did not meet their burden of demonstrating that the ERP should not be issued.

SSL Authorization Standards

215. Pursuant to its rulemaking authority, the BTIITF adopted rule 18-21.004,^{8/} which establishes the applicable standards for issuance of the SSL Authorization as follows:

The following management policies, standards, and criteria shall be used in determining whether to approve, approve with conditions or modifications, or deny all requests for activities on sovereignty submerged lands, except activities associated with aquaculture. The management

policies, standards, criteria, and fees for aquacultural activities conducted on or over sovereignty submerged lands are provided in Rules 18-21.020 through 18-21.022, F.A.C.

(1) General Proprietary.

(a) For approval, all activities on sovereignty lands must be not contrary to the public interest

* * *

(2) Resource Management.

(a) All sovereignty lands shall be considered single use lands and shall be managed primarily for the maintenance of essentially natural conditions, propagation of fish and wildlife, and traditional recreational uses such as fishing, boating, and swimming. Compatible secondary purposes and uses which will not detract from or interfere with the primary purpose may be allowed.

* * *

(i) Activities on sovereignty lands shall be designed to minimize or eliminate adverse impacts on fish and wildlife habitat, and other natural or cultural resources. Special attention and consideration shall be given to endangered and threatened species habitat.

* * *

(3) Riparian Rights.

(a) None of the provisions of this rule shall be implemented in a manner that would unreasonably infringe upon the traditional, common law riparian rights, as defined in section 253.141, F.S., of upland property owners adjacent to sovereignty submerged lands.

* * *

(c) All structures and other activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.

* * *

(7) General Conditions for Authorizations. All authorizations granted by rule . . . shall be subject to the general conditions as set forth in paragraphs (a) through (i) below

* * *

(d) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.

(e) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C.

(f) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.

(g) Structures or activities shall not create a navigational hazard.

* * *

(i) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-

water dependent activities authorized under paragraph 18-21.004(1)(g), F.A.C., or any other applicable law.

SSL Authorization Conclusion

216. As established in the Findings of Fact herein, a preponderance of the competent, substantial evidence in this case demonstrates that the Applicants' proposed dune walkover is not contrary to the public interest, and does not violate standards established in chapter 253 and chapter 18-21. The evidence presented by Petitioners was not sufficient to overcome the greater weight of the evidence received from the Applicants.

CCCL Standards

217. The CCCL is a line established pursuant to provisions of section 161.053, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm event. Section 161.053 authorizes CCCL lines in order to protect beach-dune systems from "imprudent construction which can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access."

218. Pursuant to section 161.053(5)(b), DEP "may not issue a permit for any structure, other than a . . . minor structure, . . . which is proposed for a location that, based on the department's projections of erosion in the area, will be seaward

of the seasonal high water line within 30 years after the date of application for the permit."

219. Section 161.053(6) (b) provides, in pertinent part, that a "'Minor structure' means pile-supported, elevated dune and beach walkover structures It shall be a characteristic of minor structures that they are considered to be expendable under design wind, wave, and storm forces." As set forth in the Findings of Fact herein, the proposed dune walkover is a "minor structure."

220. The proposed CCCL Permit is not prohibited by section 161.053(5) (b) .

221. Rule 62B-33.005(2) requires an applicant to provide DEP with "sufficient information pertaining to the proposed project to show that adverse and other impacts associated with the construction have been minimized and that the construction will not result in a significant adverse impact."

222. Rule 62B-33.002(26) provides, in pertinent part, that:

"Impacts" are those effects, whether direct or indirect, short or long term, which are expected to occur as a result of construction and are defined as follows:

(a) "Adverse Impacts" are impacts to the coastal system that may cause a measurable interference with the natural functioning of the coastal system.

(b) "Significant Adverse Impacts" are adverse impacts of such magnitude that they may:

1. Alter the coastal system by:
 - a. Measurably affecting the existing shoreline change rate,
 - b. Significantly interfering with its ability to recover from a coastal storm,
 - c. Disturbing topography or vegetation such that the dune system becomes unstable or suffers catastrophic failure or the protective value of the dune system is significantly lowered, or
2. Cause a take, as defined in section 379.2431(1), F.S., unless the take is incidental pursuant to section 379.2431(1)(h), F.S.

223. The Applicants have demonstrated, by a preponderance of the competent, substantial, and persuasive evidence that the proposed dune walkover will not result in any significant adverse impacts.

224. Rule 62B-33.005(4) requires DEP to issue a permit for construction which an applicant has shown to be clearly justified by demonstrating that all standards, guidelines, and other requirements of chapter 161, part I, Florida Statutes, and chapter 62B-33 have been met, including:

- (a) The construction will not result in removal or destruction of native vegetation which will either destabilize a frontal, primary, or significant dune or cause a

significant adverse impact to the beach and dune system due to increased erosion by wind or water;

(b) The construction will not result in removal or disturbance of in situ sandy soils of the beach and dune system to such a degree that a significant adverse impact to the beach and dune system would result from either reducing the existing ability of the system to resist erosion during a storm or lowering existing levels of storm protection to upland properties and structures;

(c) The construction will not direct discharges of water or other fluids in a seaward direction and in a manner that would result in significant adverse impacts. For the purposes of this rule section, construction shall be designed so as to minimize erosion induced surface water runoff within the beach and dune system and to prevent additional seaward or off-site discharges associated with a coastal storm event;

(d) The construction will not result in the net excavation of the in situ sandy soils seaward of the control line or 50-foot setback;

(e) The construction will not cause an increase in structure-induced scour of such magnitude during a storm that the structure-induced scour would result in a significant adverse impact;

(f) The construction will minimize the potential for wind and waterborne missiles during a storm;

(g) The activity will not interfere with public access, as defined in Section 161.021, F.S.; and

(h) The construction will not cause a significant adverse impact to marine turtles, or the coastal system.

225. The evidence firmly established that the Project would result in de minimis -- if any -- impacts to the beach and dune system. Finally, the project has been revised multiple times to minimize impacts associated with construction.

CCCL Permit Conclusion

226. As established in the Findings of Fact herein, a preponderance of the competent, substantial evidence in this case demonstrates that the Applicants' proposed dune walkover complies with the standards established in chapter 161, part I, and chapter 62B-33. The evidence presented by Petitioners was not sufficient to overcome the greater weight of the evidence received from the Applicants.

CCCL Waivers

227. Rule 62B-33.008(1)(b) and (c)^{9/} provides that any person applying for a permit for construction seaward of the CCCL shall provide the following information:

(b) Sufficient evidence of ownership including the legal description of the property for which the permit is requested.
. . . Other documents submitted as evidence of ownership will be reviewed by the staff and shall be rejected if found not to be sufficient

(c) Written evidence, provided by the appropriate local governmental entity having jurisdiction over the activity, that the

proposed activity, as submitted to the Department, does not contravene local setback requirements or zoning codes.

228. Rule 62B-33.002(2)^{10/} defines "Applicant" to include "the owner of record, agent, leaseholder, or holder of any legal instrument which gives the holder legal authority to undertake the construction for which a permit is sought." A SSL Authorization is a sufficient interest in property to authorize issuance of a CCCL Permit.

229. Section 120.542 provides, in pertinent part, that:

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation. . . .

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

230. The Applicants cannot provide the information required by rule 62B-33.008(1)(b) and (c) due to the litigation challenging the SSL Authorization brought by Petitioners, and due to litigation regarding the determination by Petitioner, Town of Fort Myers Beach, that the proposed dune walkover does not comply with the Town's Land Development Code.

231. The Applicants demonstrated that the purpose of chapter 161, by ensuring that all approvals have been obtained before construction authorized by a CCCL Permit may be undertaken, will be achieved under the conditions imposed by the CCCL Waivers. The CCCL Waivers prohibit the commencement of construction of the proposed dune walkover until evidence is received by DEP of proof of ownership and that the Project will not contravene local zoning, and the DEP issues a Notice to Proceed. Thus, the CCCL Waivers authorize no specific activity, affecting only the timing of the submission of information.

232. Strict application of the ownership and local government approval requirements in this instance would work a hardship and violate principles of fairness by allowing an active challenger to a permitted activity to prevent substantive, efficient, timely, and cost-effective disposition of the applicant's permit application and, through unnecessary delay and sequential litigation, provide an unwarranted litigation advantage to one party over the other.

233. As indicated, the various approvals at issue in this case were consolidated for purposes of fairness and efficiency. Requiring sequential litigation is substantially prejudicial to the Applicants, creating a substantial hardship, and places too great an advantage with Petitioners, thus violating principles of fairness.

CCCL Waivers Conclusion

234. As established in the Findings of Fact herein, a preponderance of the competent, substantial evidence in this case demonstrates that the issuance of the CCCL Waivers of the timing requirements of rule 62B-33.008(1)(b) and (c) protect the Applicants from a substantial hardship, limit an unfair and unwarranted advantage being provided to Petitioners, and meet the standards established in section 120.542.

Conclusion

235. Audubon alleged sufficient facts that, if proven, would establish that it will suffer an injury in fact as a result of the construction of the proposed dune walkover which is of sufficient immediacy to entitle it to a section 120.57 hearing and that its substantial injury is of a type or nature which the proceeding is designed to protect. Audubon, thus, has standing to maintain this proceeding.

236. The Town failed to allege that its substantial injury, which was limited to economic effects of the proposed

dune walkover on the Town and its budget, is of a type or nature which the proceeding is designed to protect. As a result, the Town does not have standing to maintain this proceeding.

237. Applying the standards of reasonable assurance to the Findings of Fact in this case, it is concluded that Petitioners did not meet their burden of ultimate persuasion that the proposed dune walkover, as permitted, will not meet all standards applicable to the ERP.

238. Applying the standards of reasonable assurance to the Findings of Fact in this case, it is concluded that the Applicants met their burden of demonstrating, by a preponderance of the evidence, the proposed dune walkover, as permitted, meets all standards applicable to the SSL Authorization.

239. Applying the standards of reasonable assurance to the Findings of Fact in this case, it is concluded that the Applicants met their burden of demonstrating, by a preponderance of the evidence, the proposed dune walkover, as permitted, meets all standards applicable to the CCCL Permit.

240. Applying the standards of reasonable assurance to the Findings of Fact in this case, it is concluded that the Applicants met their burden of demonstrating, by a preponderance of the evidence, that they met the standards applicable to the CCCL Waivers.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Environmental Protection;

a. enter a final order approving the Consolidated Environmental Resource Permit No. 36-0320034-001 and Letter of Consent Easement to Use Sovereign Submerged Lands No. 360239365, subject to the general and specific conditions set forth therein;

b. enter a final order approving the Permit for Construction or Other Activities Pursuant to Section 161.053, Florida Statutes, No. LE-1567, subject to the general and specific conditions set forth therein;

c. enter a final order approving the Final Order Granting Petitions for Waivers, File No. LE-1567V;

d. issue a Notice to Proceed authorizing the Applicants to commence construction of the proposed dune walkover; and

e. dismiss the petitions for hearing filed by the Town of Fort Myers Beach in each of these consolidated cases.

DONE AND ENTERED this 20th day of March, 2019, in
Tallahassee, Leon County, Florida.



E. GARY EARLY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of March, 2019.

ENDNOTES

^{1/} The structure at issue has been referred to variously as a beach boardwalk, a dune walkover, an access walkway, etc. However, the ERP, SSL Authorization, CCCL Waiver, and CCCL Permit all pertain to the same structure.

^{2/} Mr. Malloy was listed by DEP as a rebuttal witness, and ultimately did not testify.

^{3/} The Applicants challenge Audubon and the Town's standing only as to the CCCL Waiver. DEP challenges Audubon and the Town's standing as to each of the permits and approvals at issue.

^{4/} The Town also identified its ownership and interest in its stormwater management system, and indicated that it "would not like to see that all get flooded and/or further damaged due to any change in the current paradigm." Impacts to the Town's stormwater management system was not pled, was not identified in the JPS, and was not argued in the Town's post-hearing submittal.

^{5/} Section 373.414(1)(a) requires that DEP "shall consider and balance" seven factors, one of which includes adverse effects on navigation. An adverse impact for one of the seven factors does

not necessarily require a determination that the Project is contrary to the public interest. Rather, all of the seven factors must be collectively considered to determine whether, on balance, a proposed project satisfies the public interest test. 1800 Atlantic Developers v. Dep't of Env'tl. Reg., 552 So. 2d 946, 953, 957 (Fla. 1st DCA 1989); Last Stand, Inc. v. Fury Mgmt., Inc. and Dep't of Env'tl. Prot., Case No. 12-2574 (Fla. DOAH Dec. 31, 2012; Fla. DEP Feb. 7, 2013) ("Section 373.414(1)(a) directs the Department to consider and balance the following [seven] criteria.").

^{6/} Properly, ordinary high water ("OHW") refers to non-tidal fresh water and mean high water ("MHW") refers to tidal marine water. As a general matter, the terms OHW and MHW are frequently used interchangeably. See, e.g. Broward Cnty. v. S. Fla. Water Mgmt. Dist. and Dep't of Env'tl. Reg., DOAH Case No. 80-1048 (Fla. DOAH Oct. 13, 1982, Endnote 13; Fla. DER Jan. 20, 1983.).

^{7/} The A.H. has been adopted by reference and is, therefore, a "rule" in and of itself.

^{8/} Rule 18-21.004 is not cited in the JPS or in either of Petitioners' proposed recommended orders, thus leaving it to the imagination of the undersigned to decipher from the combined 140 pages of proposed findings and conclusions whether that seemingly important rule is even at issue.

^{9/} Rule 62B-33.008(3)(c) and (d) was renumbered, without substantive change, to rule 62B-33.008(1)(b) and (c), effective November 28, 2018. Since the rules in effect at the time of final action on a permit are applicable, the current rule numbers will be used.

^{10/} Rule 62B-33.002(4) was renumbered, without substantive change, to rule 62B-33.002(2), effective November 28, 2018.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: Shared Dune Walkover
Authorized Applicant: Squeeze Me Inn / Texas Hold'em
LeePA STRAP Number: 03-47-24-w3-00300.0190 & 03-47-24-w3-00300.0200

Current Property Status:	
Current Zoning: RS & EC	
Future Land Use Map (FLUM) Category: Low Density / Recreation	
Comp Plan Density:	Platted Overlay? ☒ Yes ☐ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
34-652 f. 2. c	Environmentally Critical (EC) zoning district

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from 34-652 f. 2. c (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
Walkovers cannot exceed four feet in width when
serving single-family homes

Reasons for request

Explain why the variance is needed:
The applicant, because of his disability involving limitations on walking, Mr. Rood requires,
and will require, mobility and assistive devices including a cane.
A 5 foot wide walkover allows various mobility devices such as wheelchairs or
scooters to turn around and change direction when needed.
As this walkover is also designed to be shared, the additional width allows passing,
expecially if and when a mobility device is being used.

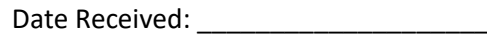
Explain the possible effect the variance, if granted, would have on surrounding properties:

The requested 5 ft width would be a benefit to surrounding properties that use the walkover giving additional foot of safety when passing, especially if Mr. Rood is crossing while in a mobility device.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

Unique to this walkover design, the FDEP & FWC requested the hand rails to be removed as a deterrent for predatory birds to use the walkover as a perch.

Thus, the added foot gives additional safety to users without walkover hand rails.





2/3/2023

Texas Hold'Em LLC and Squeeze Me Inn LLC
8150 and 8170 Estero Boulevard
Fort Myers Beach, FL 33931

RE: Special Exception for Dune Walkover in the EC Zoning District; Variance from maximum width of a Dune Walkover

Dear applicant,

Staff has reviewed your application and provides the following questions, statements, or observations related to the sufficiency of the application. Several of these items identify insufficiencies with the application due to lack of documentation, plans, or other related items.

A. Sufficiency and Appropriate Data/Information

1. Portions of the property included within the requested Special Exception boundary appear to not be owned by the applicant. LDC Sec. 34-202(b)(1) requires evidence of authority of these other property owners.
2. The site plan document that was submitted is dated with a data collection date of 2014. It also does not provide any additional information about the structure, materials, or profile of the structure. It also appears that the proposed design of the structure will be based on data, elevations, and conditions that were collected in 2014.
3. The survey document that was submitted is dated with a data collection date of 2017. Due to the nature of the changing conditions of the beach, dunes, and surrounding lands, especially in a post-land environment, the survey should be updated with more recently collected data. This includes, but not limited to, elevations, locations of dune and vegetation, wetlands, water bodies, etc.
4. A comparison of data from the two different plans, the 2017 survey and the site plan with data collected in 2014, shows a change in elevations, shoreline locations, edge of pond and mangrove locations. None of the data provided shows the proposed structure in reference to current conditions and changes that have occurred since 2017, post land storm event.
5. The site plan indicates the terminus of the proposed structure is located north of the sea grass and dune area and along an area labeled with mangroves. The terminus is based on conditions that were identified in 2014. The distance between the approximate proposed terminus and the area identified as "sea grass and dune" on the submitted site plan is approximately 140-150 feet north of the area on the submitted site plan. More accurate measurements and dimensions will help clarify intent and more accurate landing area of the proposed structure.
6. Pursuant to Sec. 34-202d(2), the Town's LDC requires sufficient site plan detailing the proposed structure(s) in order for it to be reviewed for compliance with the LDC.
7. The application identifies the proposed structure as a dune walkover, however, the application appears to be combining a boardwalk and dune walkover into a singular reference for purposes of the application. The northern terminus of the structure on the site plan refers to a boardwalk structure. Please provide documentation, including any narrative, identifying the different sections and structure types that may be proposed.
8. The application references the need to provide protection of the dune and vegetation system. Despite this claim the application and site plan proposes the terminus of the proposed structure to be short of the area desired to be

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protected from foot traffic or facilitate access by device for someone with a disability. Please provide documentation, narrative, and evidence of how the landing area will protect the dune and vegetation despite appearing to land in an area desired to be protected.

9. The site plan and proposed structure doesn't appear to accommodate typical ADA compliant design, which includes ramps or other techniques that may increase the length of walkovers on the beach and dune system. The lack of information makes it difficult to analyze the impacts of the proposed location of the structure and if the structure can comply with coastal design requirements.
10. The proposed starting point of the structure appears to be located along a property line shared by the two applicants. The site plan doesn't provide sufficient detail to determine if the northern terminus of the proposed structure is within the EC or RC zoning district. It appears based on the labeling of the 1978 Lee County Coastal Control Line that the proposed structure may be entirely within the EC zoning district. It is unclear what height and means of connection to the more upland portions of property are proposed. Depending on design, the proposed structure may require side yard setbacks in the EC zoning district. A variance from any yard setback was not included with the variance application request.
11. A lighting plan has not been provided for evaluation with the Town's LDC and Sea Turtle Lighting ordinance(s).

B. Comprehensive Plan and Land Development Code Analysis

1. The application provides a narrative to address LDC Sec. 34-88, however fails to address or misstate several items within the Town's LDC and Comprehensive Plan. Section IV Special Exception Standards of the application provides the narrative for LDC 34-88 (b) items 1-9.
 - a. Item 1, "Whether there exist changed or changing conditions which make approval of the request appropriate." The applicant's narrative attempts to identify two justifications, (1) the proposed dune walkover as a necessary use due to the accretion along the shoreline; and (2) the LDC allows dune walkovers so they should be permitted to have one. Both assumptions are incorrect. The first assumption, based on accretion, is why the Special Exception process exists. The intent is to evaluate location, type of construction, environmental and community features that may support or not support the location of a use and structure(s). The simple occurrence of accretion doesn't support the approval of a Special Exception. If anything, the amount, nature, and type of accretion are important factors in deciding placement of a dune walkover or any other structure. Substantial accretion may very well be the reason not to locate a structure in a certain location. The applicant has not provided sufficient documentation of recent changes to the shoreline and subject properties since 2017 and post Ian. Secondly, the assumption that the LDC (and Comprehensive Plan) speak to encouraging dune walkovers is removed from context. The LDC and Comprehensive Plan identify due walkovers to protect dune systems. The applicant states "homeowners currently traverse this dune system on foot with some difficulty." However, since the proposed structure(s) is for private use between two property owners, the difficult conditions to traverse will remain in place for adjacent property owners. This proposal does not address or resolve that issue; therefore and does not set forth a comprehensive strategy to address potential dune and vegetation impacts.
 - b. Items 2-4 are reserved for public input and testimony.



- c. Item 5, “Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.” This section provides several incorrect analyses of the Town’s Comprehensive Plan.
 - i. Future Land Use Element Policy 4-A-6 refers to beach accesses as an essential part of the Town’s character. They shall be maintained and expanded whenever possible. The applicant seems to indicate that their private access qualifies under this policy when all other references to beach access points within the Comprehensive Plan are in reference to publicly owned, maintained, and operated. Generally the policies and data and analysis are referring to the public right-of-way that dead end into the beach where the Town has a history of providing parking and access for the public to the beach. This public realm component is evident in Table 10-1, Table 11-3, Table 14-1, Policy 1-A-2, reference to beach access point as a public amenity on page 4-25, providing additional access for visitors and residents to the beach via additional beach access on page 5-21, Table 5-9 identifying the 46 public beach access points, Policy 5-E-1 stating the use of public funds to provide continued maintenance to beach access points, Table 7-A-5 Parking Spaces at Beach Access Points, pedestrian crossings at beach access points on page 7-A-44, a reference to “the beach accesses” on page 14-2.
 - ii. Policies 4-B-8 and 4-B-9 don’t address the applicant’s request. They are simply stating where the recreation category will be located; and what allowable uses are allowed in the wetland category, which the subject property is not, respectively.
 - iii. Coastal Management Element Policy 5-D-1-ii refers to the protection of sand dunes. The applicant claims their application directly supports their request yet no plans, documents, or other evidence has been provided other than a narrative that states they intend to protect the dune and natural vegetation.
 - iv. Coastal Management Element Policy 6-E-1 requires all new development approved after the adoption of this Plan and for public beach areas within the town at appropriate crossing points require a dune walkover. The applicant has not proposed “new development” other than the construction of a proposed structure. The single-family lots were platted or created prior to adoption of the plan and the upland homes were built years ago. The intent of the policy is to direct new development to identify where and how pedestrians are going to access the beach through their property. The policies intent is clearly to provide direction to projects that have the potential to create substantial foot traffic and to plan for that traffic appropriately. The applicant’s proposal only serves their two properties.
- d. Item 6, “Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.”
 - i. The applicant’s analysis indicates that their application meets the requirements set forth in LDC Sec. 34-652 f.2. a-g; however, the applicant has provided no documentation showing compliance of any of items a-e, or g. Furthermore, they claim to be compliant with side setbacks of the EC zoning district (25 feet, Table 34-3), yet clearly show a proposed structure on a shared property line with a portion of the proposed structure on each property.
- e. Items 7 and 8, The applicant claims to have provided sufficient evidence and documentation to show proof that the proposed structure will protect, conserve, or preserve environmentally critical areas and natural

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resources; or show proof of compatibility and not cause nuisance or harm, yet no plans, documents, or other evidence has been provided other than a narrative that demonstrate the project is compatible and will not cause nuisance or harm to the surrounding natural environment.

- f. Item 9, “Whether a requested use will be in compliance with applicable general zoning standards and supplemental regulations pertaining to the use set forth in this chapter.
 - i. The only analysis provided by the applicant indicates previous rulings within the FDEP Consolidated Final Order that found that the proposed structure will not adversely impact public health, safety or welfare. However, those findings are not based on the Town’s Special Exception criteria and evaluation process. Furthermore, the applicant hasn’t provided any relevant data or analysis, studies, or expert findings related to the proposed location of the structure and how the current conditions may or not be impacted. It should be noted that the DEP Consolidated Final Order specifically states that the proposed dune walkover is subject to compliance with all local government regulations.

The analysis for Item 9 also fails to provide sufficient evidence that the proposed structure is compliant with Chapter 34 of the Town’s Land Development Code.

The application for Special Exception has been noticed for a public hearing with the Town’s Local Planning Agency (LPA) at 9 a.m. (or after) on February 14th, 2023. Based on the sufficiency and findings of this review, if you wish to continue the hearing, please let us know prior to the meeting date if you wish to provide additional information or documentation for Town staff to review and consider.

Sincerely,

Jason Green, AICP, CFM



FMBgov.com

Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Bill Veach, Council Member | Karen Woodson, Council Member

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**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: LPA
From: Sarah Propst, Community Development
Date: February 14, 2023
Re: Hearing Process Modifications

BACKGROUND

Staff was directed to provide some options that might shorten or simplify the Hearing Processes. Currently the LPA is the recommending body to the Town Council on many cases. The LPA hears variances, special exceptions, rezonings, proposed amendments to the Land Development Code and Comprehensive Plan updates. That LPA recommendation is then passed along to the Town Council which hears those same cases at least one time, two times in the case of an ordinance change or rezoning, and the Town Council makes the final decision.

This process of multiple hearings by different boards is time consuming and can add additional expense for property owners. There are several options available under Florida law that can simplify the process.

PROPOSED SOLUTIONS

Option 1: The LPA can be the decision-making body for variances and for special exceptions. This would eliminate the need for additional hearings before the Town Council for many cases. If the applicant was unhappy with the outcome of the hearing they would be able to appeal the decision to the Town Council.

Option 2: The Town can hire a Hearing Examiner (HEX). The HEX must be a member of the bar and can hear and decide certain quasi-judicial cases. This lightens the case load for the LPA and the Town Council and removes political influence from the process. Local municipalities that have a HEX, include: Lee County, Hillsborough, Collier County and Cape Coral. Each of those communities has a different process, so there is some flexibility in how the HEX can be used.



Option 3: The Town can eliminate the LPA hearings for variances, special exceptions and rezonings. The Town Council would decide these cases without a recommendation from the LPA. Two Town Council hearings would still be required to adopt ordinances.

SUMMARY

The Town has the option to change some processes to shorten the timeframe by eliminating some of the required hearings. The variance and special exception process can be reduced to a single hearing and those cases do not have to be decided by the Town Council.