



Fort Myers Beach Town Council

**Diamondhead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Tuesday, February 21, 2023

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
- VIII. APPROVAL OF MINUTES**

- A. Town Council - February 6, 2023
- B. Management & Planning Session - February 9, 2023
- C. Town Council Special Meeting - February 9, 2023

IX. CONSENT AGENDA

- A. International Fine Arts Studio Inc.
Approve the construction contract between the Town of Fort Myers Beach and International Fine Arts Studio Inc. for repair services to the Mound House historic buildings and to authorize the Town Manager to execute the contract on behalf of the Town and waive the bond requirement per Code 2-484.c.(2) .
- B. Scotts® Field Refurbishment Program Application
Approve staff to apply for the Scotts® Field Refurbishment Program Application for enhancements to the ball fields at Bay Oaks Recreations Campus.

X. PUBLIC HEARINGS

- A. Ordinance 23-04; Pink Shell CPD Amendment
1st Reading and Public Hearing on proposed Ordinance 23-04 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 13-23, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 200 AND 275 ESTERO BLVD., FORT MYERS BEACH; PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on March 6, 2023 at 9:00 AM.
- B. Ordinance 23-02; Corner Lot and Setback Regulations
Second and Final reading, Public Hearing and adoption of proposed Ordinance 23-02 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 3, SECTION 34-638 MINIMUM SETBACKS, SECTION 34-2 DEFINITIONS, AND TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open second public hearing and then vote to approve the Ordinance.
- C. Ordinance 23-03; Nonconforming Lots, Minimum Use Determinations and Administrative Variances
Second reading and Public Hearing of proposed Ordinance 23-03 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 4, SECTIONS 34-3273 GENERAL REQUIREMENTS FOR RESIDENTIAL USES ON NONCONFORMING LOTS, SECTION 34-3274 MINIMUM USE DETERMINATIONS, AND CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Final adoption of ordinance 23-03
- D. Resolution 23-17;237 Old San Carlos, SEZ20220095 for a permanent shared parking lot and VAR20220094 variance from landscape, design and location requirements
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING SPECIAL EXCEPTION SEZ20220095 AND VARIANCE VAR20220094 TO ALLOW THE USE OF PERMANENT SHARE PARKING WITH DIMENSIONAL AND DESIGN VARIANCES FOR THE PROPERTY LOCATED AT 237 OLD SAN CARLOS BOULEVARD; AND PROVIDING FOR AN EFFECTIVE DATE

XI. ADMINISTRATIVE AGENDA**A. Resolution 23-16: Estero Island Emergency Berm**

Approve Resolution 23-16 entitled: A Resolution of the Town Council of the Town of Fort Myers Beach, Florida, Accepting the Ranking of Grubbs Emergency Services, LLC (“Grubbs”) as the Top Ranked Responsible and Responsive Bidder to ITB-23-08-CD “Estero Island Emergency Berm”; Approving an Agreement Between the Town and Grubbs for the Construction of the Estero Island Beach Emergency Berm; Authorizing the Execution of the Agreement and Expenditure of Budgeted, Emergency, and/or Grant Funds by the Town Manager; and Providing an Effective Date

XII. FINAL PUBLIC COMMENT**XIII. TOWN MANAGER'S ITEMS****XIV. TOWN ATTORNEY'S ITEMS****XV. COUNCILMEMBERS ITEMS AND REPORTS****XVI. ADJOURNMENT**

NOTE: THIS MEETING IS STEAMED 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.



For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

1. **Requested Motion:**

Town Council - February 6, 2023

Meeting Date: February 21, 2023

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

APPROVAL OF MINUTES

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Draft TC minutes 2.6.23

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Created/Initiated - 2/13/2023



Fort Myers Beach Town Council

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Minutes

Monday, February 6, 2023

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veatch and Council Member Woodson.

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Council Member Veatch moved to move A. under the Consent Agenda to follow the presentation; second by Mayor Allers.
Motion carried unanimously.

Council Member King moved to approve the final agenda as amended; second by Mayor Allers
Motion carried unanimously.

V. PUBLIC COMMENT

Wendy Herron, resident, commented that people were taking pictures of residential neighborhoods and being disruptive to the recovery. She suggested installing Residents Only signs on her street and noted she and her neighbors would cover the costs of the sign. She thanked everyone for their efforts to make the island whole.

David Bauer, resident, noted that the town informed him that he had to move his front porch back six inches, which cost him \$20,000.00. He added that because he was not allowed to raise his air conditioner, it was lost in the hurricane. He asked that the town look at reality regarding setbacks and that property owners should be able to repair or rebuild what existed before the hurricane. He stated the canals were in bad shape and needed to be dredged.

Tauheedah Mateen from the Small Business Association (SBA) indicated that the State did not receive an extension for Hurricane Ian, but the SBA was still accepting applications for physical damages; however, the applicant had to submit a justification as to why they missed the deadline. She urged residents and business owners to speak with SBA representatives if they had questions.

Richard Durling from Marvin Homes represented a property owner whose home was destroyed. The house was less than 700 square feet and the homeowner wanted to rebuild a two-story home over parking on the same footprint. Mr.

Durling requested that property owners be allowed to build taller structures like the funky fish houses in Cape Harbour. He suggested that the Town Council address the issue upfront.

Jesse Field introduced himself and requested that he be considered for appointment to the Bay Oaks Recreational Campus Advisory Board (BORCAB). Madeline Boyd, resident and co-owner of the Beach Bar, thanked everyone who helped to clean the sidewalks.

Dawn Goetzel, Director of Sales for Marvin Homes, represented a customer who wanted to rebuild her home. She read a letter from her client concerning rebuilding a two-story house on the same footprint and noted many neighbors had two-story homes.

Tom Torgerson, resident, commented on the beach dune renourishment and noted he was concerned about the beach vegetation options. He described the characteristics of the railroad vine and suggested that it be included in the low-profile option.

Neery Korn, business owner, commented that he still did not have electricity in Times Square and asked for help.

Dan Dodrill, home builder, represented a property owner who wanted to rebuild a two-story home over parking. He described similar tall homes built in the neighborhood before the hurricane.

Chris Rayburn, resident, thanked the staff for being so responsive. He supported the beach renourishment but was concerned regarding the easement language. He noted that he sent his concerns to Environmental Projects Manager Chadd Chustz.

Charles Drake, resident, visited Mexico Beach last year and noted there were still a lot of vacant lots four years after Hurricane Michael. He suggested the town work towards rebuilding the tax base.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Vice Mayor Atterholt thanked everyone involved for cleaning the sidewalks over the weekend.

Council Member Veach recognized the homeowners in the Hibiscus Dr. neighborhood who were replanting the cul-de-sac.

Council Member Woodson commented on the cleanup and the commitment. She agreed that the town needed to continue to look at rebuilding and thanked those who commented.

Mayor Allers noted there was a joint beach cleanup in addition to the sidewalk cleanup. He thanked the contractors who volunteered to help remove sand.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**A. Anchorage Advisory Committee Appointments****Appoint Members to the FY2022-2023 Anchorage Advisory Committee (AAC)**

Council Member Veach moved to approve the applicants for the AAC;
second by Mayor Allers.
Motion carried unanimously.

B. Audit Committee Appointments**Appoint Members to the FY2022-2023 Audit Committee**

Council Member King moved to approve the applicants for the Audit Committee; second by Vice Mayor Atterholt.
Motion carried unanimously.

C. Bay Oaks Recreational Campus Advisory Board Appointments**Appoint Members to the FY2022-2023 Bay Oaks Recreational Campus Advisory Board (BORCAB)**

Mayor Allers stated there were three open positions and six applicants. Betty Simpson, Bruce Butcher and Jessie Field were appointed.

D. Cultural and Environmental Learning Center Advisory Board Appointments**Appoint Members to the FY2022-2023 Cultural and Environmental Learning Center Advisory Board (CELCAB)**

Mayor Allers stated there were four open positions and five applicants. Town Clerk Baker indicated that one applicant was not a resident and would need a waiver to participate if chosen. Another applicant would need a waiver to participate on more than one committee if chosen. Barbara Hill, Betty Simpson, Cherie Smith and Kerrie Henderson were appointed.

Mayor Allers approved waivers for Betty Simpson and Kerrie Henderson;
second by Council Member Veach.
Motion carried unanimously.

E. Marine and Environmental Resources Task Force Appointments**Appoint Members to the FY2022-2023 Marine and Environmental Resources Task Force (MERTF)**

Council Member Veach moved to approve the applicants; second by Mayor Allers.
Motion carried unanimously.

F. Public Safety Committee Appointment**Appoint Members to the FY2022-2023 Public Safety Committee (PSC)**

Mayor Allers stated there were three open positions and four applicants. Council Member Veach noted some candidates were not residents. Heidi Jungwirth, Dawn Thomas and Keran Farrell were appointed.

Vice Mayor Atterholt moved to approve waivers for Heidi Jungworth and

Keran Farrell; second by Council Member Woodson.
Motion carried unanimously.

VIII. APPROVAL OF MINUTES

- A. Town Council January 9, 2023
Mayor Allers moved to approve the minutes; second by Council Member King.
Motion carried unanimously.
- B. Management & Planning Session January 12, 2023
Mayor Allers moved to approve the minutes; second by Council Member King.
Motion carried unanimously.
- C. Town Council January 23, 2023
Mayor Allers moved to approve the minutes; second by Council Member King.
Motion carried unanimously.

IX. PRESENTATION

- A. Emergency Berm and Estero Island Nourishment Projects status

Coastal Engineering Consultants, Inc.

Michael Poff from Coastal Engineering Consultants, Inc. utilized PowerPoint for his presentation. He discussed the two construction elements of the project. He noted that they had been working on beach renourishment, as stated in B., for several years and A. was for an emergency berm due to the damage from Hurricane Ian.

Slides include Beach Fill Segments; North: Bowditch Point-Canal St.; Central: Canal St.-Lannark Ave.; South: Creciente Condo-Sun Caper; Hurricane Ian Impacts; Borrow Areas; Permit Status; Updated Preliminary Opinion of Probable Project Cost; Beach Project Funding; Construction Easements; Easement Definition Sketch; Construction Details; Pipeline Corridors & Landings North & South; What to Expect; Post-Construction Requirements; Emergency Berm; Typical Cross Sections and Funding & Schedule.

Mr. Poff described the process and timeline to request a modification to the vegetation options for the dunes.

Mayor Allers moved to direct staff and Mr. Poff to pursue adding a fourth option through the county and state for a railroad vine; second by Vice Mayor Atterholt. Mayor Allers withdrew his motion because the railroad vine was already included in the dune management plan.

X. CONSENT AGENDA**A. Estero Island Emergency Berm Construction Phase Services.**

Authorize the Town Manager to execute Supplemental Task Authorization #2 for Contract RFQ-21-09-EN with Coastal Engineering Consultants, Inc. for Estero Island Emergency Berm Construction Phase Services.

Council Member Veach moved to authorize; second by Mayor Allers.
Motion carried unanimously.

B. Estero Island Beach Nourishment Project.

Authorize the Town Manager to execute Supplemental Task Authorization #3 for with Coastal Engineering Consultants, Inc. for the Estero Island Beach Nourishment Project.

Town Attorney Herin, Jr. stated that this item was separate from the berm construction and had been on and off the agenda for over a year. He suggested that it be pulled for discussion if Vice Mayor Atterholt wished.

Vice Mayor Atterholt moved to pull this item from the Consent Agenda for discussion; second by Council Member Veach.
Motion carried unanimously.

Council Member King moved to authorize; second by Mayor Allers.
Motion carried unanimously.

C. Resolutions: 23-12, 23-13, 13-14 and 23-15

Approve Resolutions Extending the Town Declaration of State of Local Emergency for the period February 6 - February 12, 2023, February 13, 2023 - February 19, 2023, February 20, 2023 - February 26, 2023 and February 27, 2023 - March 5, 2023

Vice Mayor Atterholt moved to approve the resolutions; second by Council Member King.
Motion carried unanimously.

XI. PUBLIC HEARINGS**A. Ordinance 22-13; Fees by Resolution**

Final reading and second public hearing on proposed ordinance 22-13 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ESTABLISHING A NEW SECTION 1-13 OF CHAPTER 1 OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE ADOPTION, AMENDMENT AND IMPLEMENTATION OF FEES AND FEE SCHEDULES BY RESOLUTION UNLESS PROHIBITED BY STATE LAW OR THE TOWN CHARTER, PROVIDING FOR CODIFICATION, CONFLICT OF LAW, SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance.

No public comment.

Council Member Woodson moved to approve the ordinance; second by Mayor Allers.

Motion carried unanimously by roll call vote.

B. Ordinance 23-02; Corner Lot and Setback Regulations

First reading and Public Hearing of proposed Ordinance 23-02 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 3, SECTION 34-638 MINIMUM SETBACKS, SECTION 34-2 DEFINITIONS, AND TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open first public hearing and schedule for second reading and final adoption Tuesday, February 21, 2023 at 9:00 a.m.

Mayor Allers read the title of the ordinance.

Community Development Planner Sarah Propst explained that topics in the ordinance related to setbacks. She utilized PowerPoint for her presentation. Slides included Corner Lots as modified by the Local Planning Agency (LPA); Porches, Stoops and Additional Setback; Return of the 7.5-foot and 10-foot Side Setbacks. Council Member Veach suggested keeping the percentage calculation and tweaking it for smaller lots and planner Propst agreed that the percentage was fairer for smaller lots. Additional items included side street setbacks for Matanzas Street and Matanzas Court and elevating mechanical equipment and electrical panels for existing homes.

Public comment:

Carolyn Caney from Woodland Custom Homes agreed with the proposed side street setbacks and the three-foot encroachment of air conditioning units. She felt setbacks for lots over 75 feet wide should be 10 feet.

Kara Stewart noted that the 7.5-foot setback up to and including a 75-foot lot was standard. She commented that the percentages were challenging to work with and did affect lots smaller than 75 feet.

Dave Lay, resident, planned to elevate his house and a 15% setback requirement would be wider than he had. He noted that elevating homes

required additional space for landings and stairwells. He encouraged the Council to revert to the old setbacks.

Jerry Kim, resident, described his unusual corner lot on Estero Blvd. He indicated the rear setback was not addressed.

Fred Drovdic, consultant, supported the LPA's recommendation. He noted a client has a lot of 75 feet and 6 inches and suggested that the ordinance round down to the nearest foot. He brought up side street setbacks for 76 feet lots and felt that going to 80 feet would take care of some variance requests.

Public comment closed.

Vice Mayor Atterholt moved to approve Ordinance 23-02 as proposed and recommended by the LPA and schedule it for a second reading on Tuesday, February 21, 2023, at 9:00 a.m.; second by Council Member Woodson.

Council Member Veach supported a 10% setback with a minimum of 7.5 feet.

He felt that percentages would help people who would be penalized by having lots a little too large.

Mayor Allers questioned air conditioners encroaching on the neighbors. Planner Propst responded that it was for existing houses only and the original intent was for generators. New homes will be required to meet setbacks. Council Member Woodson supported the proposal.

Motion carried 4-1 by roll call vote with Council Member Veach dissenting.

C. Ordinance 23-03; Nonconforming Lots, Minimum Use Determinations and Administrative Variances

First reading and Public Hearing of proposed Ordinance 23-03 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 4, SECTIONS 34-3273 GENERAL REQUIREMENTS FOR RESIDENTIAL USES ON NONCONFORMING LOTS, SECTION 34-3274 MINIMUM USE DETERMINATIONS, AND CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open first public hearing and schedule for second reading and final adoption Tuesday, February 21, 2023 at 9:00 a.m.

Mayor Allers read the title of the ordinance.

Planner Propst noted that two sections of the code made small cottage lots undevelopable and a few amendments to the code would make those lots developable. Slides in her presentation included Sec. 34-3273 General Requirements for Residential Uses on Nonconforming Lots; Section 34-3273 Minimum Use Determinations; What This Accomplishes and What This Does Not Accomplish and Sec. 34-268 Administrative Setback Variances. She noted that administrative approval was very narrow to protect staff from making decisions that should go before the Council and allow property owners to build back what they had before the hurricane.

Public comment:

Richard Durling from Marvin Homes indicated that his client wanted to build a two-story in the existing footprint and give additional setbacks to the neighbors. He supported allowing staff to approve two-story houses administratively.

Dan Dodrill from Daniel Wayne Homes noted his clients had small cottage lots and felt that if they met all the setbacks, they should be allowed to build two-story houses. He commented that the cost was prohibitive for an 800-square-foot house.

Jerry Kim agreed with the previous comments and felt two-story houses should be approved administratively, especially if they did not block anyone's view.

Public comment closed.

Mayor Allers was in favor of allowing administrative variances for two-story houses.

Council Member Woodson agreed with Mayor Allers.

Council Member Veach was concerned about emergency access between houses with small setbacks. He suggested more of a setback with two stories. Planner Propst stated that she would contact the fire department regarding access for emergency vehicles for the second reading.

Vice Mayor Atterholt verified that if staff had concerns about approving a variance, they could deny the request.

Council Member Woodson mentioned the cost per square foot with one story versus two stories.

Mayor Allers moved to approve Ordinance 23-03 as written, with the exception of adding a second story to be brought back for a second hearing on Tuesday, February 21, 2023, at 9:00 a.m.; second by Council Member King.

Motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA

A. Contract for Bay Oaks Recreation Center emergency dry out services

Authorize the Town Manager to execute a first amendment to the existing contract with Coastal Maintenance and Restoration to include the emergency dry out services for Bay Oaks Recreation Center.

Director of Culture, Parks & Recreation Alison Giesen indicated the amendment was for the dry-out services previously approved for a temporary town hall. Interim Town Manager Wilkins commented that the work was already done to dry out Bay Oaks and was separate from a temporary town hall.

Council Member Veach moved to authorize; second by Council Member King.

Motion carried unanimously.

B. Mound House Historic Preservation Repairs

Accept the sole source proposal from Fine Art Conservation Studios Inc in the amount of \$119,223.55, for repairs to the historic structures at the Mound House damaged by Hurricane Ian and authorize the Town Manager (or designee) to negotiate the final price and contract terms for presentation and approval by the Town Council at a subsequent meeting.

Director Giesen stated the company was international and they provided services for the town on other occasions. She included background information for the company in the packet.

Council Member Woodson moved to accept the proposal; second by Vice Mayor Atterholt.

Motion carried unanimously.

- C. RFP-23-07-AD; Disaster Recovery and Mitigation Consulting Services
Motion to approve an Agreement between the Town of Fort Myers Beach and Tidal Basin Government Consulting, LLC, the top ranked respondent to RFP-23-07-AD - Disaster Recovery and Mitigation Consulting Services for Incidents and Events and authorizing the Town Manager to execute and expend budgeted funds on behalf of the Town.
Council Member King moved to approve; second by Council Member Woodson.
Motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

Bill Perry questioned whether the FEMA berm sand placed close to homes without seawalls would be considered public land and public use.

Bill Perry questioned whether the FEMA emergency berm and renourishment easements were both for 15 years. Town Attorney Herin, Jr. replied that both were intended to give access to the contractors. He indicated that the easements would be seaward of the dunes and people should not be cutting through them.

XIV. TOWN MANAGER'S ITEMS

Interim Town Manager Wilkins appreciated the sidewalk cleanup over the weekend. He noted the legislature was meeting to discuss \$50 million for hurricane relief funds. He stated the first meeting with the builders' user group went well and another would be held on Saturday. The meetings were to discuss issues with builders regarding the permit system. Lee County announced that Lynn Hall Park would be open on April 15, 2023, with Crescent Beach and Bowditch opening on May 15, 2023. Lee County was also working on cleaning the sidewalks and streets.

XV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. addressed Mr. Perry's question and stated that the area covered by the easement was for public use, as previously discussed. He noted that it depended on the property as to where the berm would be located. He stated that customary public use as defined by case law meant enjoyment but not holding parties. He added that there were additional restrictions to protect the dune area.

- A. Request for attorney-client "shade" meetings to discuss pending litigation:
Persaud Properties FL Investments, LLC, v. Town of Fort Myers Beach, Florida and Roger Hernstadt; Case No. Case No. 2:21-cv-384-JLB-NPM
pending before the United States District Court Middle District of Florida, Fort Myers Division.

Persaud Properties FL Investments, LLC vs. Town of Fort Myers Beach, Florida, Case No. 2017-CA-000219 pending before the Circuit Court of the 20th Judicial Circuit in and for Lee County

Town Attorney Herin, Jr. requested authorization to schedule shade meetings for both cases. He noted the first case involved the dispute regarding the sale of alcoholic beverages at the Sunset Grill and the second concerned the two homes constructed on the lot adjacent to where the Junkanoo existed.

Mayor Allers moved to authorize the Town Attorney to schedule those meetings; second by Council Member King.
Motion carried unanimously.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Council Member King requested clarification regarding the location of the emergency berm. Town Attorney Herin, Jr. thought an engineer was involved in determining where it was located, and Interim Town Manager Wilkins agreed and added the property owner did have some latitude. Council Member King questioned whether one could opt out of the beach renourishment but opt in for the emergency berm. Town Attorney Herin, Jr. replied that if one opted out of the beach renourishment project, nothing would be done to the property except the beach renourishment up to the mean high water line.

Council Member Woodson requested an update regarding FP&L and street lighting. Mayor Allers replied he had a meeting on Friday with FP&L. Council Member Woodson wondered if they should address the code from the past few years to see whether it could be streamlined. Interim Town Manager Wilkins felt an analysis would be helpful. Planner Propst stated that the code would be reviewed by the Corradino Group. Council Member Woodson brought up food trucks operating without a permit; Interim Town Manager Wilkins will look into the issue.

Council Member Veach suggested discussing the future of the Bay Oaks building. Mayor Allers stated that the November deadline in the loan was not to use the funds but to construct the building. Interim Town Manager Wilkins noted that he was figuring out which projects the town could complete by November. Council Member Veach questioned whether they could change the agenda to allow agencies to comment in the Advisory Committee Items section to enable dialogue with Town Council Members. Vice Mayor Atterholt replied that Council Members could ask for unanimous consent to proceed out of order. Council Member Veach heard that people were doing work without permits and questioned allowing a limited partial amnesty. He received support to add it to a future M&P and Interim Town Manager Wilkins received consensus to add fees. Council Member Veach encouraged people to wear shoes in the sand due to debris. He concluded by noting that, according to the census, the town has lost 12.5% of its population over the last 10 years.

XVII. ADJOURNMENT

Council Member King moved to adjourn; second by Mayor Allers. Motion carried unanimously.

The meeting was adjourned at 1:02 p.m.

1. **Requested Motion:**

Meeting Date: February 21, 2023

Management & Planning Session - February 9, 2023

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

APPROVAL OF MINUTES

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Draft MandP minutes 2.9.23

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Created/Initiated - 2/13/2023



Fort Myers Beach Management & Planning Session

Diamondhead
Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931

Minutes

Thursday, February 9, 2023

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veatch and Council Member Woodson.

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Discussion: Impact fees for Beach School re-build

John Koss, resident and member of the ad-hoc committee for the elementary school, did not support the use of portable classrooms for \$15-20 million and suggested they use the money to start building a new school behind the historical school building. He mentioned not being able to fit all the kids in the historical building while mitigating the damage and using the library's third floor for the overflow. Council Member Veatch noted that the school district determines the school enrollment. Mr. Koss commented that the goal was to reach an enrollment of 150 children in five years and he looked at a new school and building the enrollment as two separate issues. He questioned how they could increase enrollment without a school.

Mr. Koss commented that the kids had to wait an hour and 10 minutes for the bus to pick them up yesterday and waited over two hours in the afternoon. He stated that they needed a new school, or the reality would be busing kids in the future.

Council Member Woodson brought up advertising recruitment and acknowledged that it would be difficult without a brick-and-mortar school. Mr. Koss reiterated to the school board that they could not build enrollment without facilities. He noted a public meeting with the school board was scheduled on February 22, 2023, and he would provide details later.

Council Member King thanked Mr. Koss and stated that the Town Council supported the parents and the school.

Vice Mayor Atterholt described a recent meeting and indicated that a model was developed to reach 176 students in five years. Calculations showed that the average cost per student was \$9,600.00, which was less than half of what they were currently paying and put them in sync with schools in the area.

Based on recent conversations with the school board, he did not think a discussion regarding impact fees was necessary today.

Mayor Allers thought the issue was building a new school, using portable classrooms or a combination of both. He felt discussing the school's future was appropriate without drawing a hard line in the sand.

Vice Mayor Atterholt stated that the school district had the money from insurance and FEMA to rebuild the school.

Council Member Woodson questioned whether the town needed to pressure the school district for the funds. Mayor Allers suggested taking the money out of the discussion and focusing on how the town could increase enrollment in five years. Council Member Veach questioned what would happen if the school was built, but the town could not meet the enrollment goal. Mr. Koss replied that if the school board was willing to spend the money on portables, they could build some level of facility behind the historical building so the town would have something.

Council Member Veach suggested creating an interlocal agreement with the school board to work with them if the town did not reach the enrollment goal in five years. Mr. Koss noted that the school district control included giving the town a magnet school with school choice and providing the town with avenues to build enrollment. The district would not change the boundary lines to increase enrollment.

Council Member Woodson questioned whether the Sanibel school had room for the town's students. Mr. Koss did want to speak for Sanibel, but he thought that students who could not fit into the historical school might be able to attend Sanibel in the short term.

A consensus was reached to support an interlocal agreement of some kind. Town Attorney Herin, Jr. stated that Lee County adopted an ordinance to collect impact fees for schools in 2001.

Council Member Veach indicated the question was what the town could do to encourage the district to build a new school so the town could avoid absorbing the cost of the portables in three to five years.

B. Discussion: Side Street Ingress/Egress vs Estero Blvd.

Council Member Veach questioned whether the Council was interested in moving the egresses away from Estero Blvd. He added that parking would be affected in some locations, but traffic could be alleviated. Consensus was reached to direct staff to look into the topic.

C. Discussion: Density

Council Member Veach brought up creating a point system to allow more density. Mayor Allers suggested following the legislature because a current bill could preempt density ideas. Vice Mayor Atterholt noted that his conversations with developers included presenting ideas to mitigate traffic congestion in exchange for more density. Mayor Allers questioned whether the town wanted to encourage more vehicles and build a parking garage or to encourage people to shuttle into town. He urged developers to think outside the box concerning traffic. Council Member Veach brought up pedestrian overpasses for developments on both sides of Estero Blvd. Vice Mayor Atterholt suggested that guardrails be installed to channel people to the overpasses. Consensus was reached to direct staff to research a point system.

Mayor Allers moved to recess the meeting at 10:01 a.m. to open a special meeting; second by Council Member King.
Motion carried unanimously.

~Meeting reconvened at 10:35 a.m.~

D. Discussion: Fee Schedule

Council Member Woodson felt that the beach vendors and parasailing fees were a priority. She mentioned discussing fees for Bay Oaks, since there was no facility.

Mayor Allers proposed a fee of \$425.00 for parasailing and jet ski permits with an annual increase of 3% and a beach vendor fee of \$119.00 with an annual increase of 3%.

Council Member Veach noted that there was a lot of enforcement concerning beach vendors, which was an additional expense. Council Member Woodson suggested increasing the fees for violations rather than punishing everyone. Mayor Allers agreed to discuss violation fees. Council Member King felt they should discuss prorating fees due to Ian. Council Member Woodson agreed. Interim Town Manager Wilkins will direct staff to research the implications of all fees discussed.

Mayor Allers suggested a discussion surrounding a lower parking rate with a higher violation fee. Town Attorney Herin, Jr. described the fees involved with the Special Magistrate's process, which depended on whether the violator paid the fine or appealed the citation. Mayor Allers proposed returning parking fees to \$3.00 an hour. Vice Mayor Atterholt suggested creating a five to ten-minute warning before the meter ran out of time. Mayor Allers stated that the system did warn people concerning the time. Town Attorney Herin, Jr. explained that the system provided a 30-minute warning with an opportunity to add time via the app.

Vice Mayor Atterholt questioned whether the town's system could charge \$3.00 for residents and \$5.00 for non-residents. Interim Town Manager Wilkins responded that he would check the system. He also suggested

setting up a grace period of five to ten minutes before issuing a citation. Council Member King suggested scheduling a presentation of how the app worked at an M&P. He agreed with lowering the parking fees and increasing the violation fee and brought up establishing a flat rate for beach parking.

Council Member Veach commented that there was a resident pass with limited parking locations. He added that lowering the parking rate to \$3.00 significantly impacted revenues.

Mayor Allers suggested opening the two-hour minimum parking. Council Member Veach noted that the minimum was meant for businesses to keep traffic moving. Mayor Allers suggested that staff bring back numbers regarding fee changes discussed, including researching other municipalities. Council Member Veach wondered about discussing a consumer pricing index for all fees. Council Member Woodson suggested holding off on discussing an increase in fees until the beach was back in business.

Council Member Veach brought up an amnesty period for people working without a permit. Town Attorney Herin, Jr. responded that the Florida Building Code set the fee and that he would verify. Vice Mayor Atterholt noted that the website included items that did and did not require a permit. He questioned whether they could give consideration to people who self-reported that they did work without a permit. Town Attorney Herin, Jr. added that the Florida Building Code stated what required a permit and what was exempt according to state law. It would depend on the Special Magistrate to determine whether self-reporting deserved consideration. He noted that the town provided several opportunities, which usually spanned months, to allow people to come into compliance before the issue came before the Special Magistrate.

Council Member Woodson suggested setting a prorated fee for short-term rentals and did not support an extra \$100.00 charge for additional bedrooms. Council Member Veach provided an analysis regarding what similar municipalities charged and added that short-term rentals affected the housing shortage. He commented that they needed a balance to remain a community. He noted the fee was proportional to the income of renting a larger unit. Council Member King agreed to address the fee. He questioned whether Margaritaville and upcoming developments would impact short-term rentals. Council Member Woodson wondered about limiting the number of rental units individuals could have. Council Member Veach did not support changing the short-term rental ordinance and mentioned fees were to apply to workforce housing. He indicated that short-term rentals doubled over the past four years and the town lost resident population. Vice Mayor Atterholt noted that some businesses were discussing building workforce housing on their properties.

Mayor Allers reiterated that the legislature was addressing workforce housing in their current session, which might affect the future of discussions.

Council Member Woodson brought up special event fees and wondered if their fees aligned with other municipalities. Vice Mayor Atterholt described the town partnering with entities for events. Council Member Veach questioned whether Council Member Woodson felt that \$100.00 was too

high. Council Member Woodson did not but noted that other fees and components were involved. Council Member Veach was not sure now was the time to encourage more people on the beach due to safety issues. Mayor Allers did not think \$100.00 was too high, but he agreed that the town might be able to streamline the process.

IV. AGENDA MANAGEMENT

- A. February Agenda Management
Add canal cleanup and dredging.
Add budget discussion.

V. ADJOURNMENT

Council Member King moved to adjourn; second by Mayor Allers.
Motion carried unanimously.

The meeting was adjourned at 12:03 p.m.

1. **Requested Motion:**

Meeting Date: February 21, 2023

Town Council Special Meeting - February 9, 2023

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

APPROVAL OF MINUTES

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Draft Special TC 2.9.23

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Created/Initiated - 2/13/2023



Fort Myers Beach Special Town Council

Diamondhead
Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931

Minutes

Thursday, February 9, 2023

10:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King, Council Member Veatch and Council Member Woodson.

II. APPROVAL OF FINAL AGENDA

Mayor Allers moved to approve the final agenda; second by Council Member King. Motion carried unanimously.

III. ADMINISTRATIVE AGENDA

A. Resolution 23-16; ITB-23-08-CD Estero Island Emergency Berm

Approve Resolution 23-16 entitled: A Resolution of the Town Council of the Town of Fort Myers Beach, Florida, Accepting the Ranking of Grubbs Emergency Services, LLC ("Grubbs") as the Top Ranked Responsible and Responsive Bidder to ITB-23-08-CD "Estero Island Emergency Berm"; Approving an Agreement Between the Town and Grubbs for the Construction of the Estero Island Beach Emergency Berm; Authorizing the Execution of the Agreement and Expenditure of Budgeted, Emergency, and/or Grant Funds by the Town Manager; and Providing an Effective Date

Town Attorney Herin, Jr. explained that the number two ranked bidder, Bergeron Land Development Inc. challenged the bid award; therefore, under the town code, the bid process was put on hold until the challenge was resolved. One way to resolve the matter was to throw out the bid and start from scratch. This action would not take any more time than it would to process the bid protest. Bergeron did not think that Grubbs met the minimum qualifications to do the work. Mayor Allers questioned what would happen if the results ended up the same the second time. Town Attorney Herin, Jr. replied that staff would have to ensure all bidders met the minimum qualifications. Mayor Allers questioned what the town could do to prevent this from happening again.

Michael Poff from Coastal Engineering reviewed credentials and resumes for

Grubbs. Since their subcontractor (ICS) was currently doing beach screening adjacent to the emergency berm, he recommended moving forward with them. They did not meet the criteria as the prime to demonstrate projects placing beach-compatible sand on the beach; however, Bergeron did not meet the criteria either. He noted they could add language to the evaluation criteria to allow bidders to qualify for the project. He indicated the challenge was working closer to the sea turtle nesting season.

Town Attorney Herin, Jr. described the timeline for the appeal process. He guessed the process could take 30 days or longer and the bid process could take less time. Town Attorney Herin, Jr. restated that the further they get away from the landfall of Ian, the less likely FEMA would rely on the emergency procurement process and reimbursement could be jeopardized. Interim Town Manager Wilkins questioned whether it was expeditious for the Council to conduct a hearing at their next meeting. He asked whether FEMA would request additional requirements if it gets pushed back past six months of the event. Mr. Poff replied that the town had to show true progress with the project to qualify for a time extension. He stated they would have to request an extension to finish the project anyway.

Town Attorney Herin, Jr. stated that the earliest the hearing could be scheduled would be the first meeting in March due to the timeline of the appeal process and giving notice to involved parties.

Mr. Poff questioned whether they could wait 10 days to see whether an appeal would be filed rather than throw out all bids today. He explained his idea and noted they would not lose any time in the process.

Environmental Projects Manager Chadd Chustz suggested sending out another bid while waiting to see if an appeal was filed.

Council Member Veach supported Mr. Poff's plan. Mayor Allers respectfully asked Bergeron to remove their protest. Mr. Poff noted that both companies were qualified to do the work, but neither showed they were bringing sand to the beach. Town Attorney Herin, Jr. stated he would contact Bergeron's attorney immediately after the Council made a decision.

Consensus was reached to move forward with the current process and not rebid. Town Attorney Herin, Jr. will contact the attorney. He confirmed that staff should move forward with a parallel track for a new bid document in case the protest was filed within 10 days.

Council Member Veach moved to adjourn the meeting; second by Council Member Woodson. Motion carried unanimously.

The meeting was adjourned at 10:25 a.m.

1. **Requested Motion:**

Meeting Date: February 21, 2023

Approve the construction contract between the Town of Fort Myers Beach and International Fine Arts Studio Inc. for repair services to the Mound House historic buildings and to authorize the Town Manager to execute the contract on behalf of the Town and waive the bond requirement per Code 2-484.c.(2) .

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. IFACS Contract

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Alison Giesen, Director of Cultural, Parks & Recreation
Alison Giesen, Director of Cultural, Parks & Recreation
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 2/15/2023
Approved - 2/15/2023
Approved - 2/15/2023
Approved - 2/15/2023
Final Approval - 2/15/2023

CONSTRUCTION CONTRACT AGREEMENT

AGREEMENT

THIS CONTRACT is made this ____ day of _____ 2023 by and between the TOWN OF FORT MYERS BEACH, FLORIDA, hereinafter called "**TOWN**," and **International Fine Art Conservation Studios Inc.,** a corporation, hereinafter called "**CONTRACTOR**."

WITNESSETH: For and in consideration of the mutual covenants herein set forth, the parties agree as follows:

ARTICLE 1. WORK

The CONTRACTOR shall commence and complete all work for Intersection Improvement- Traffic Signalization Estero Boulevard at Old San Carlos Boulevard ITB-20-26-PW, in accordance with the Contract Documents. CONTRACTOR shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the project described in the Contract Documents. A Scope of Services is attached marked Exhibit "A".

ARTICLE 2. CONTRACT SUM

2.1. The TOWN shall pay the CONTRACTOR, in current funds, for the performance of the work described in Exhibit "A", subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of:

\$ 119,223.55

said amount being the **Total Base Bid Amount** as listed on the CONTRACTOR's Official Bid Proposal Form that was submitted for this project.

ARTICLE 3. PROGRESS PAYMENTS

Based upon applications for payments submitted to TOWN'S Representative by the CONTRACTOR, and Certificates for Payment issued by the TOWN'S representative, the TOWN shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

3.1. Not later than ninety (90) calendar days following the approval of an Application for payment, TOWN will make payment to CONTRACTOR in an amount equal to ninety percent (90%) of that portion of the Contract Price properly allocated to labor, materials and equipment incorporated in the Work and ninety percent (90%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the TOWN.

3.1.1 At the discretion of the Project Manager and final authorization by the Public Works Manager, once the project reaches 50% completion, the retainage shall be reduced to five percent (5%) of the total contract amount, provided the project is on schedule. At any time the project falls behind schedule, the TOWN retains the exclusive right to revert back to the original contract terms by withholding 10% retainage until the project is back on schedule or the project is completed.

3.2. Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the TOWN shall determine for all incomplete work, unsettled claims or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

The Term “**Contract Documents**” shall include this Contract; addenda; CONTRACTOR’s Bid, except to the extent it conflicts with any other contractual provision; the Notice to Proceed, the Public Payment and Performance Bond(s); the Bid Package prepared and issued by the TOWN; the General Conditions; the Specifications and Drawings; any Special Conditions; all Written Amendments; Certificates of Insurance; Change Orders; and Work Change Directives or Field Orders. In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

5.1. The CONTRACTOR shall commence work as required by the CONTRACT DOCUMENTS and as provided in the Official Notice to Proceed.

5.2. Substantial and Final completion shall be achieved not later than the number of days specified in the Bid Proposal, unless the period for substantial completion is extended otherwise by the CONTRACT DOCUMENTS or by written agreement of the parties.

5.3. Work must begin no later than 10 days after the issuance of a Notice to Proceed.

5.4. Time is of the essence in the performance of this Contract.

Liquidated Damages:

5.5. The TOWN and CONTRACTOR recognize that time is of the essence of this agreement and that the TOWN will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding and the actual loss suffered by the TOWN if the work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that Liquidated Damages will be assessed according to Supplemental Condition # 14 on Page F-5.

The TOWN shall have the right to deduct all damages due from the final payment request as well as retainage.

Any sums due and payable hereunder by the CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely

to be sustained by the TOWN estimated at the time of executing the Contract. When the TOWN reasonably believes that substantial Completion will be inexcusably delayed, the TOWN shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the TOWN to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving substantial Completion, or any part thereof, for which the TOWN has withheld payment, the TOWN shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable as liquidated damages, less sums incurred by the Town resulting from CONTRACTOR's delay in achieving substantial completion.

The CONTRACTOR shall also be liable for any actual damages sustained by the TOWN after CONTRACTOR has achieved substantial completion for CONTRACTOR's failure to fully complete the Contract Documents. Actual damages may include, but not be limited to, costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity and overhead. The TOWN shall have the right to deduct all damages due from final payment request as well as retainage.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce TOWN to enter into this Agreement, CONTRACTOR makes the following representations:

CONTRACTOR has been familiarized with the Contract Documents and the nature and extent of the work required to be performed, locality, local conditions, the areas of intended construction including surface and sub-surface conditions, and Federal, State and Local laws, ordinances, rules and regulation that in any manner may affect costs, progress or performance of the work.

CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site which may affect cost, progress or performance of the work.

CONTRACTOR has made or caused to be made examinations, investigations, tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, test, reports or similar data are or will be required by CONTRACTOR for such purposes.

CONTRACTOR has correlated the results of all such observations, examination, investigations, test, reports and data with the terms and conditions of the Contract Documents.

CONTRACTOR has given TOWN written notice of all conflicts, errors or discrepancies that have been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by TOWN is acceptable to CONTRACTOR.

ARTICLE 7. GENERAL CONDITIONS

7.1 RESPONSIBILITY OF THE CONTRACTOR.

7.1.1 PROSECUTION OF THE WORK.

The CONTRACTOR shall be responsible for the good condition of the Work until its release from its obligations. It shall bear all losses resulting to it on account of the amount or character of the Work, the character of the ground or existing underground installation being different from what it anticipated, or on account of the weather or the elements.

Information shown on the Drawings as to the location of the existing utilities has been prepared from the most reliable data available to the TOWN. This information is not guaranteed, however, and it shall be this CONTRACTOR's responsibility to determine the location, character and depth of existing utilities. Extreme caution shall be exercised to eliminate any possibility of any damage to utilities resulting from CONTRACTOR's activities. The location of all overhead utilities shall be verified and the TOWN notified on any conflict which might occur. The CONTRACTOR shall be responsible for determining which poles will need shoring during excavation and shall provide such shoring and support as is required.

Caution shall be exercised by the CONTRACTOR in grading operations, as some existing underground utilities have a minimum cover. The CONTRACTOR shall be responsible for replacing any underground facility broken or dislocated during construction for which sufficient underground information has been shown on the plans.

ARTICLE 8. TERMINATION FOR CONVENIENCE

This Contract may be terminated by TOWN for its convenience upon thirty (30) days prior written notice to CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the date of such termination, an amount prorated in accordance with the work substantially performed under this Agreement. Such amount shall be paid by the TOWN after inspection of the work to determine the extent of performance under this Agreement, whether completed or in progress.

ARTICLE 9. PROJECT RECORDS

The CONTRACTOR shall maintain auditable records concerning the project adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting methods, and the TOWN reserves the right to determine the record-keeping method in the event of non-conformity. These records shall be maintained for five (5) years after final payment has been

made, ten (10) years for capital improvements to real property, and shall be readily available to TOWN personnel with reasonable notice, and to other persons in accordance with the Florida Public Records Law.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, AMY@FMBGOV.COM, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.1. Final payment, constituting the entire unpaid balance of the Contract Price shall be paid by the TOWN to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, form No. FMB: 013, has been approved by the TOWN.
- 10.2. Terms used in the Agreement which are defined in the General Conditions of the Contract (Part F) shall have the meaning designated in those conditions.
- 10.3. The TOWN and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.4. This Agreement may not be assigned except with the written consent of the TOWN, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 10.5. The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that he shall hold harmless and defend the TOWN and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the TOWN, excluding only the sole negligence of the TOWN. This provision shall also pertain to any claims brought against the TOWN by any employee of the CONTRACTOR, or sub-CONTRACTOR(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection.
- 10.6. This Agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or oral.
- 10.7. The invalidity or unenforceability of any particular provision of this Agreement shall not

affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

- 10.8. No Amendments or changes to the terms or conditions of this agreement shall be valid unless in writing and signed by all parties.
- 10.9. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. All claims and/or dispute resolution concerning this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. Any litigation between the parties arising from this Agreement shall be conducted in Lee County, Florida. In the event of any litigation and/or binding arbitration arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees.
- 10.10. TOWN reserves unto itself sole authority to execute and authorize the issuance of Change Orders, directives, or other documents to the CONTRACTOR which impact on or change the Contract Time or Price. These actions by the TOWN will be taken after due consideration of the recommendations and analysis of the TOWN's architect or consulting engineer, if applicable. This provision supersedes any other contradictory provisions in the Contract Documents.
- 10.11 Pursuant to existing laws and procedures in the State of Florida, and if approved and authorized by the TOWN's Council, any dispute arising out of or relating to any of the contract documents or this Agreement shall be submitted to binding arbitration in Lee County, Florida, before a single lawyer arbitrator having at least ten (10) years' experience in similar matters, and who is mutually acceptable to the parties, or approved as selected by the Lee County Court Mediation/ Arbitration Office. The parties shall equally divide the expenses of such arbitration, and the prevailing party in such arbitration shall be entitled to award of reasonable attorney fees and costs (exclusive of the actual cost of arbitration to be shared equally by the parties) incurred in the preparation for arbitration of such dispute and further such prevailing party shall also be entitled to reasonable attorney fees and costs incurred in any proceedings to enforce or compel its arbitration rights or obtain order(s) confirming such arbitration or award or any attorney fees or cost incurred in proceeding thereafter to enforce such rights in addition to the above and foregoing rights.
- 10.12 No provision in this contract shall be construed more strongly against either party or in a light less favorable to either party because of who drafted it as a method of contract interpretation.

In witness whereof, TOWN and CONTRACTOR have signed this agreement. One counterpart has been retained by the Town Clerk, one to the Project Sponsoring Department, and one part each has been delivered to the CONTRACTOR. All portions of the Contract Document have been signed or identified by TOWN and CONTRACTOR.

Signed, sealed, and delivered in the presence of:

(Secretary)

(Corporate Seal)

(International Fine Art Conservation Studios, Inc.)

BY: _____
(Title)

Date: _____

TOWN OF FORT MYERS BEACH COUNCIL
FORT MYERS BEACH, FLORIDA

ATTEST:

BY: _____
Town Clerk

Date: _____

BY: _____
Town Manager

Date: _____

APPROVED AS TO FORM

BY: _____
Town Attorney

EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS _____ day of _____, **2023**
BETWEEN THE TOWN AND **International Fine Art Conservation Studios Inc.**, PROVIDER.

1. **SCOPE OF SERVICES**: The Provider will perform the following services under this Agreement:

Please see Attachment 1

**FEDERAL EMERGENCY MANAGEMENT AGENCY
PUBLIC ASSISTANCE**

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally-Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Access to Records: The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

DHS Seal, Logo, and Flags: The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

Domestic Preference for Procurements 200.322 As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Prohibition on Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

Program Fraud and False or Fraudulent Statements or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Rights to Inventions Made Under a Contract or Agreement: Exempt from FEMA Public Assistance Funding

Suspension and Debarment: (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Procurement of Recovered Materials (§200.323) (Over \$10,000): In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Termination for Cause and Convenience (over \$10,000): See Standard Purchase Order and/or Contract Terms and Conditions

Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000): Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000): Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Clean Air Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

**STATE OF FLORIDA PROVISIONS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM**

Applicable Laws - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

Data Collection: The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

Record Retention: A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**Compliance with Federal Law, Regulations, And Executive Orders
and Acknowledgement of Federal Funding**

Certification

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Town for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Town and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Town may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name _____

Date _____

Authorized Signature _____

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

TOWN OF FORT MYERS BEACH																					
ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT																					
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.																					
A. PRIME VENDOR/CONTRACTOR INFORMATION																					
PRIME NAME		PRIME FBD NUMBER		CONTRACT DOLLAR AMOUNT																	
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS SA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN Y N		IS THE ACTIVITY OF THIS CONTRACT...																	
		DBE? Y N		CONSTRUCTION ? Y N																	
		MBE? Y N		CONSULTATION? Y N																	
		WBE? Y N		OTHER? Y N																	
		SDB 8A? Y N																			
IS THIS SUBMISSION A REVISION?		Y N		IF YES, REVISION NUMBER _____																	
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION																					
DBE	M/WBE	VETERAN	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)																
TOTALS:																					
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR																					
NAME OF SUBMITTER			DATE		TITLE OF SUBMITTER																
EMAIL ADDRESS OF PRIME (SUBMITTER)			TELEPHONE NUMBER		FAX NUMBER																
NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files.																					
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">ETHNICITY</th> <th style="text-align: center;">CODE</th> </tr> </thead> <tbody> <tr> <td>Black American</td> <td>BA</td> </tr> <tr> <td>Hispanic American</td> <td>HA</td> </tr> <tr> <td>Native American</td> <td>NA</td> </tr> <tr> <td>Subcont. Asian American</td> <td>SAA</td> </tr> <tr> <td>Asian-Pacific American</td> <td>APA</td> </tr> <tr> <td>Non-Minority Women</td> <td>NMW</td> </tr> <tr> <td>Other: not of any other group listed</td> <td>O</td> </tr> </tbody> </table>						ETHNICITY	CODE	Black American	BA	Hispanic American	HA	Native American	NA	Subcont. Asian American	SAA	Asian-Pacific American	APA	Non-Minority Women	NMW	Other: not of any other group listed	O
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Asian-Pacific American	APA																				
Non-Minority Women	NMW																				
Other: not of any other group listed	O																				
D. SECTION TO BE COMPLETED BY TOWN OF FORT MYERS BEACH																					
DEPARTMENT NAME		FMB CONTRACT # (FBI/RFP or PO/REQ)		GRANT PROGRAM/CONTRACT																	
ACCEPTED BY:					DATE																

LOBBYING CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Contractor (Firm Name)

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

Attachment 1



International Fine Art Conservation Studios Inc.

HISTORIC CONSULTANTS

RESTORERS AND CONSERVATORS OF PAINTINGS, MURALS & HISTORIC DECORATION

P. O. Box 81509, ATLANTA, GEORGIA 30366

WWW.IFACS.NET

TEL: 404-794-6142

EMAIL: IFACS@BELL SOUTH.NET

January 20th 2023

Federal ID# 56-1678718

Ms. Alison Giesen,
Director of Culture, Parks & Recreation
Town of Fort Myers Beach
The Mound House
451 Connecticut Street,
Fort Myers Beach, FL 33931

Dear Ms. Giesen,

**Re; Report and Cost Proposal for Post Hurricane
Ian Damage and Repairs at the Mound House.**



Further to our meeting at the Mound House on Thursday 17th November 2022, and our proposal dated December 2nd 2022, please find our report and cost proposal for the scope of work as scheduled below;

Overview.

On Thursday 17th November 2022, the writer attended site and inspected the Mound House with Ms. Alison Giesen, Director, Culture, Parks & Recreation, the Town of Fort Myers Beach. The purpose was to assess the damage to the building caused by Hurricane Ian on October 26th 2022 and to provide a cost proposal for all repairs to the damaged surfaces and structure to two of the historical buildings (The Mound House, a 1921 Arts and Crafts Style Structure and the 1921 Garage) located at 451 Connecticut Street, Fort Myers Beach, FL 33931.

All photographs included within this report were either taken on November 17th 2022 or later. They reflect the condition of the building

Recipient of The Art Commission of The City of New York "Excellence in Design" Award – 1995 & 1996

Recipient of the Kansas Preservation Alliance "Award for Excellence" - 2004

Recipient of the Salina Heritage Commission Design Award - 2004

Recipient of the Shutze Award for Craftsmanship - 2007

Recipient of "Building Champaign Parks" Award for Exceptional Work at the Virginia Theatre – 2013

SPLIA Preservation Award for the Apse Mural at the Old Whalers' Church, Sag Harbor, NY – 2016

Florida Trust for Historic Preservation - Outstanding Achievement Award for Flagler College – 2017

Florida Trust for Historic Preservation - Outstanding Achievement Award for Ca'd'Zan Pool Restoration – 2019

Florida Trust for Historic Preservation - Outstanding Achievement Award for the Dixie Mansion – 2020





January 20th 2023

Ms. Alison Giesen,

The Mound House, The Town of Fort Myers Beach
Re; Report and Cost Proposal for Post Hurricane Ian Damage
and Repairs at the Mound House.

A. Generally, the condition of the structure appears sound. The main damage was caused by hurricane force winds and the tidal surge. Several of the second floor porch screens were ripped apart from the wind, the roof sustained considerable damage and is scheduled for replacement. Currently the roof is effectively shrink wrapped to prevent ingress of rainwater prior to replacement. Some of the gutters and down pipes are missing and will have to be replaced.



B. As the building is constructed directly on a 2,000 year old historic shell mound, it is doubtful how solid the foundations are after the various alterations made over the years. It is possible there is just a concrete slab. The other concern is that shell mounds are quite fluid and there is often differential settlement due to the shells moving depending on sea levels, strong tides affecting the water table level and occasional hurricanes and storm surges, all which can move the structure 'floating' on top of the shells, however compacted they may be. Several settlement cracks in the surrounding concrete paving around the building show signs of past movement, and these have been repaired by IFACS during past visits necessitated by inclement weather, specifically Hurricane Irma back in 2017.



C. The storm surge reached the Mound House and Office/Garage building and flooded the ground floors of both buildings. The timber ground floors in the Mound House have buckled and will need to dry out prior to refinishing. During the refinishing preparation, the structural floor timbers will be inspected for any signs of damage, and if any is recorded, some replacement may be necessary to retain the structural integrity of the ground floors.





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D. The installed hurricane door and window protection, consisting of woven flexible material secured with Tapcon concrete screws installed into the brickwork adjoining the windows and doors, were effective in preventing damage, although several of the Tapcons were ripped from the walls, and the fabric was torn in several areas. The damaged fabric will have to be replaced and new chemical anchors installed to prevent future removal by hurricane force winds. The strength of the wind and rain coupled with salt water from the storm surge has damaged the timber windows and doors, causing substantial rusting to the fixtures, fittings, hardware and screens. Further inspection will be made prior to commencement of restoration work to ascertain the necessity to replace all or some of the screens, hardware etc., or whether they can be repaired and reused. The basic window and door carcasses and frames are sound but will need adjusting, repairing and repainting.





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E. The bead-board floors and ceilings on the second floor porch have been affected by the wind and rain blowing in from the roof and through the screens and will need substantial repairs and realignment as well as redecoration.





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F. All repairs will comply with the US Department of Interior's Guidelines for the Rehabilitation of Historical Buildings in order to preserve the historical integrity and as much of the historic fabric as possible of these buildings that have been designated as historically significant and are listed in the National Register of Historic Places.

G. Scope of Work.

1. Exterior.

i Screens.

Screens on the 2nd floor porch area – several panels were blown out during the hurricane and need to be rescreened with Bronze screening as attached details. Some of the support and framing timbers need repair and/or replacing.



ii Gutters and Downpipes.

Replacement gutters and downpipes need to be sourced, purchased and reinstalled. (This may form part of the re-roofing project, depending on the roofing contractor's recommendations.)



iii Hurricane Screening.

Replace damaged and ripped screens (supplied by Client) and reinstall Tapcon anchors or similar chemical anchors and ensure all existing anchors are permanently secured within the brickwork.





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iv External Beadboard Ceilings and 2nd Floor
External Porch Floors.

Check all beadboard and floorboards for damage/splitting/warping/rot or loose boards and re-fix or replace as necessary. Check on structural and support timber and joists if soft spots or damage noted during replacement of boards and repair/reinforce/renew as necessary. Apply Boracare or D/2 biocide to any voids or interstitial spaces above the ceiling or beneath the floorboards to prevent any mould or insect infestations.



v External Brick Columns.

Inspect all brickwork support columns and repair/re-mortar/repaint as necessary.

vi Shingle Siding.

Inspect all shingles around the exterior elevations and re-fix/repair/repaint as necessary.

vii Exterior Hardware.

Inspect all exterior hardware on French doors for salt water damage from the storm surge and replace as necessary to match any remaining existing hardware.





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viii Windows, Doors and Screens.

Inspect all windows, doors and screens for storm damage and repair and prepare all surfaces for repainting including removal of delaminating paint, any glazing to windows, replacement of broken glass, replacement of damaged or rusting screens, to restore the appearance to pre-hurricane Ian condition. Ensure all windows and doors fit properly or adjust as necessary to mitigate any ingress of rain or storm water.





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ix Exterior Decoration.

Inpaint/Redecorate all storm damaged exterior paintwork to walls, columns, beadboard, windows, doors and trim as necessary, to restore the appearance to pre-hurricane Ian condition. Wash down all areas of previously painted masonry brickwork and prepare samples of lime based colour washes for client approval and apply to prepared masonry damaged by storm surge and torrential rain and winds.



2. Interior.

i. Flooring.

Restore all storm surge damaged/warping/splitting and springing ground floor heart pine flooring as necessary including checking on floor joists and executing all repairs and refinishing repaired/restored/replaced areas of floors as necessary including stabilizing any 'soft' spots, all levelling necessary, staining water stained/bleached boards as necessary to restore the appearance to pre-hurricane Ian condition.





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ii Walls and Baseboards.

Restore all storm surge damaged baseboards and dry wall as necessary including checking on studs and executing all repairs and refinishing repaired/restored/replaced areas of walls or baseboards as necessary to restore the appearance and condition to pre-hurricane Ian state.



H. Office Building/Garage.

Check all interior baseboards, walls and thresholds and all areas of the exterior of the building that suffered damage by Hurricane Ian and repair and redecorate as necessary to restore the interiors and exterior of Office Building/Garage to restore the appearance to pre-hurricane condition.





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INTERNATIONAL FINE ART CONSERVATION STUDIOS Inc.

P.O. Box 81509, Atlanta, GA 30366

January 20th 2023

The Mound House Estimate - Post Hurricane Ian Restoration.



Line Item Analysis

		Cost
The Mound House.		
G. Scope of Work.		
1 Exterior.		
i) Screens.		\$ 8,368.00
a) Allowance for Bronze Screening.		\$ 1,000.00
ii) Gutters and Downpipes (Allowance).		\$ 3,138.00
a) Allowance for Materials.		\$ 500.00
iii) Hurricane Screening.		\$ 4,184.00
iv) External Beadboard Ceilings and Porch Floors.		\$ 15,899.20
a) Allowance for Materials.		\$ 3,500.00
v) External Brick Columns.		\$ 2,928.80
vi) Shingle Siding.		\$ 1,673.60
vii) Exterior Hardware		\$ 4,707.00
a) Allowance for Materials.		\$ 2,000.00
viii) Windows, Doors and Screens.		\$ 24,058.00
a) Allowance for Materials.		\$ 1,500.00
ix) Exterior Decoration.		\$ 15,271.60
x) Allowance for Scaffolding/Access Lifts.		\$ 3,000.00
2 Interior.		
i) Flooring.		\$ 4,884.82
ii) Walls and Baseboards.		\$ 1,046.00
H. Office Building/Garage.		
i) Interior and Exterior Repairs.		\$ 2,092.00
Sub-Total		\$ 99,751.02
Accommodation.		
Airbnb - 2/6/23 - 3/10/23 (4 Bed/2 Baths)	\$ 16,000.00	\$ 16,000.00
Sub-Total		\$ 115,751.02
Contingency Sum - For unforeseen conditions.	3%	\$ 3,472.53
Total Cost Proposal.		\$ 119,223.55



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Ms. Alison Giesen,

The Mound House, The Town of Fort Myers Beach
Re; Report and Cost Proposal for Post Hurricane Ian Damage
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Summary

All in accordance with Sections G & H above and conditioned by notes a through o below.

Total Project Estimate \$119,223.55

- Our price includes for craftsman, materials, insurances, accommodation and supervision.
- The work will be commenced at an agreed date early in 2023, and be completed approximately 4 weeks after commencement, depending on prevailing site and weather conditions.
- Our Estimate includes for a team of four senior craftsmen for the duration of the project.
- Allowances have been included above for the various materials, scaffolding and/or access equipment, accommodation and a contingency sum. Material and accommodation costs will be supported by invoices/receipts during the final account analysis/submission.

Notes:

- a. We have assumed that this work can be executed during the period to be agreed, if other Mound House projects are being executed, with free unencumbered access to areas that are included within our proposal.
- b. In order to properly execute the works in accordance with the agreed contract sum, IFACS will require access to the property as detailed, a programme of works for which will be discussed and agreed. It is proposed to provide a conservator or conservators to attend site at specific times to execute the works within the agreed period. During drying and/or curing periods there may be no IFACS staff on site.
- c. The Client will at all times keep the areas where IFACS are working available to allow continuity of working. The Client shall not take any action, which could adversely affect the works executed by IFACS either during that execution or at any time during the drying or curing times that will be specified and supplied to the Client.
- d. We have allowed for protection and daily cleanup in the areas where we are working.
- e. The Client will ensure that an adequate electrical supply and clean running water adjacent to the work areas will be provided free of charge for the duration of the project.
- f. An initial site meeting with the Client is requested to review the project, ensure the correct specification and materials as well as the locations and to answer queries and ensure continuity.
- g. If you find our proposal acceptable we would require a mobilization payment of 30% to be made upon commencement on site, an interim stage payment of 30% after two weeks on site, a further stage payment of 20% after 3 weeks on site with the balance of 20% being paid within 7 days from completion and acceptance of the work by yourselves. No retention is to be held.



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- h. Once the work has been completed and accepted by the Client, the Client is responsible for all protection.
- i. If extra works are necessitated due to the expansion of the scope of works or if change orders are instructed by the Client, IFACS reserves the right to negotiate the extra costs of these works and to increase the programme to allow sufficient time to execute these works. This will apply in the event of other trades causing disruption and/or delays to the schedule.
- j. All matters of a financial or programme implication will be dealt with by way of an IFACS site query sheet which will be used as a method of determining answers to questions, agreement of site instructions, requests for any change orders necessitated by changed conditions or by design alterations or Client changes.
- k. The Client will at all times keep the areas where IFACS are working available to allow continuity of working. Advance notice of any activities which will preclude IFACS working during those activities will be provided to IFACS to allow adequate time to schedule the work accordingly. Generally IFACS works an 8 ½ or 9 hour day and an occasional Saturday. No Sunday working will be scheduled.
- l. Should work outside of regular hours be necessary, the Client will allow IFACS additional access to the site, providing prior arrangements have been made with the Client.
- m. IFACS is fully insured in respect of their sections of work and will cover workers compensation, third party and their own plant and materials. The Client will cover all other aspects of the required insurances as required, including accidental damage, fire and flood, etc. IFACS Liability insurance is rated at \$3 million for any specific incident. A copy of IFACS Insurance coverage is available upon request.
- n. IFACS will require access to their working areas from the dates specified in accordance with a schedule to be agreed between IFACS and the Client, prior to commencement.
- o. IFACS will staff the site with senior conservators. Mary Aldrich, IFACS Chief Conservator will be responsible for the day-to-day IFACS activities on site.

If you have any queries on any of the above or require clarification of any element of our above proposal, please do not hesitate to call me.

I look forward to hearing from you in due course.

Best regards,

For and on behalf of International Fine Art Conservation Studios Inc.,

Geoffrey Steward
Managing Director

PHIFER

INSECT SCREENING

SPECIALTY
METAL SCREEN
FOR WINDOWS, DOORS
AND PORCHES

WEAVING
EXCELLENCE
WITH
INNOVATION

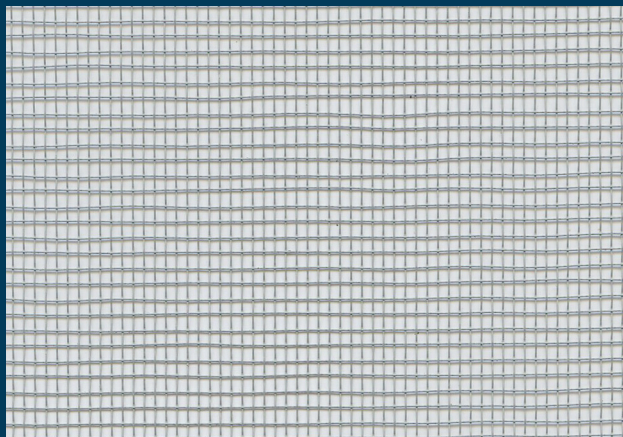


Galvanized Screen

BY PHIFER

Galvanized Screen is a high performance standard steel screen ideal for a number of indoor/outdoor and industrial uses. Galvanized with a protective coating to prevent rusting and enhance durability, this screening is a popular choice for insect screening, fencing, landscaping, farming and building and construction projects.

Gray

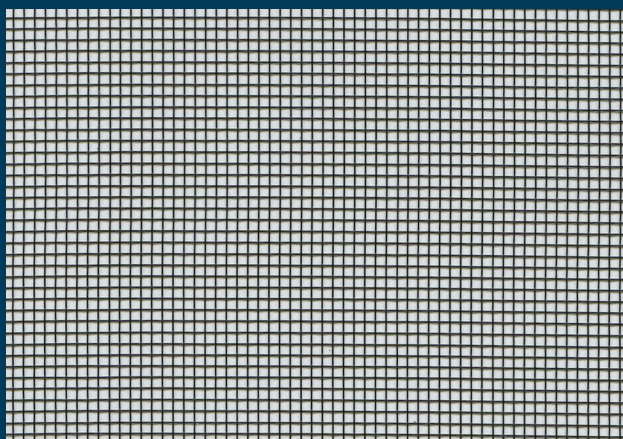


SeeVue®

BY PHIFER

SeeVue® is woven from stainless steel, which improves visibility with its fine wire diameter, and makes this product much stronger than standard insect screen. SeeVue is designed to maximize an outward view, making it sharper and more brilliant. It allows superior airflow, meets the high standard of insect protection, and is suitable for fabrication in conventional screening applications such as windows, doors and porches and safe to use with pressure-treated lumber.

Black

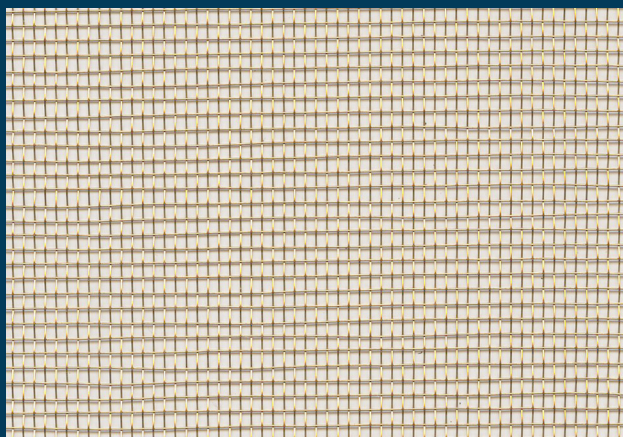


Bronze Screen

BY PHIFER

Bronze Screen is an effective way to control pests, while reviving the elegant charm of past years. Its bright copper color weathers to a beautiful dark bronze finish, coordinating with copper architectural accents such as roofing, dormers, and gutters. Made of 90% copper, it is excellent for use in screen doors, windows and porches providing strength and durability.

Bronze*



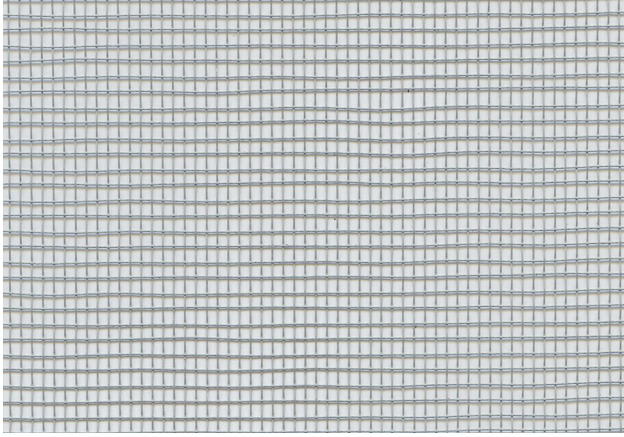
Bronze, stainless steel and galvanized steel – Phifer covers the bases with a host of brawny metal screening options suitable for window, door and porch applications. Strength and durability combine with good ventilation and insect protection in this range for the complete screening package.

Specialty Metal Screen

FOR WINDOWS, DOORS AND PORCHES



Gray



GALVANIZED

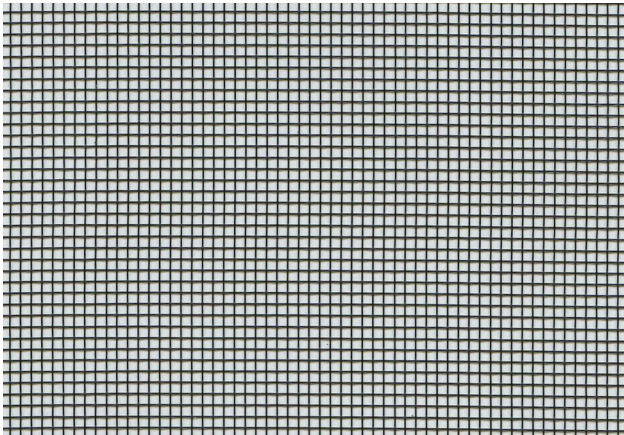
COLORS Gray

WIDTHS 24", 30", 36", and 48" (60.9 cm, 76.2 cm, 91.4 cm, 96.2 cm, and 121.9 cm)

ROLL LENGTH 100' (30.48 m)

PACKAGING Individually boxed

Black



SEEVUE

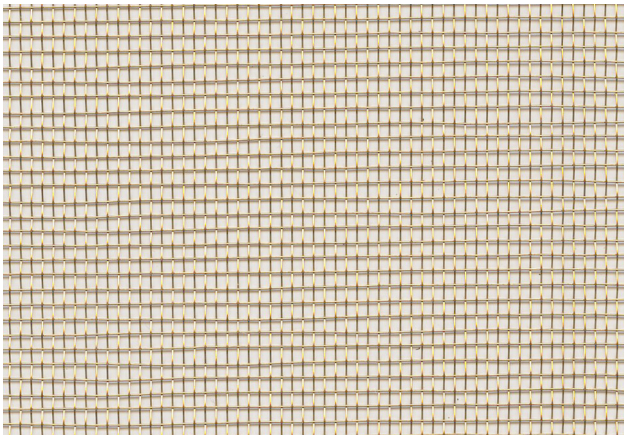
COLORS Black

WIDTHS 36", 48", and 60" (91.4 cm, 121.9 cm, and 152.4 cm)

ROLL LENGTH 50' and 100' (15.24 m and 30.48 m) in all widths; 25' (7.62 m) in all widths except 60" (152.4 cm)

PACKAGING Individually boxed

Bronze*



BRONZE

COLORS Bronze*

WIDTHS 24", 30", 36", 42", 48", 60" and 72" (60.7 cm, 76.2 cm, 91.4 cm, 106.7 cm, 121.9 cm, 152.4 cm and 182.9 cm)

ROLL LENGTH 50' and 100' (15.24 m and 30.48 m)

PACKAGING Individually boxed

**The brite copper color of Bronze Screen weathers to a beautiful dark bronze finish.*



P. O. Box 1700 • Tuscaloosa, Alabama 35403 -1700 USA
Phone: 205.345.2120 • FAX: 205.750.4890
Toll Free USA/Canada: 1.800.854.9473
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REMEDIAL CONSTRUCTION TECHNICAL BULLETIN

BORA-CARE®

Existing Construction Treatments for the
Prevention of Subterranean Termites



BORA-CARE® TECHNICAL BULLETIN:

Existing Construction Treatments for the Prevention of Subterranean Termites and other WDOs

(ALWAYS READ, UNDERSTAND AND FOLLOW LABEL COMPLETELY BEFORE ANY APPLICATIONS.)

INTRODUCTION

Bora-Care is a highly effective, long-lasting termiticide, insecticide and fungicide concentrate that can be used against active subterranean termite infestations and other wood destroying organisms in existing construction. Since its introduction to the pest control industry in 1990, Bora-Care has protected wood against wood destroying organisms (WDOs) such as termites, powderpost beetles, carpenter ants and decay fungi in both preventative and remedial treatments.

Bora-Care penetrates wood components and may be used on all cellulosic materials including wood, plywood, particle board, paper, oriented strand board (OSB), cardboard and wood composite structural components to protect them from WDOs. It may also be applied to concrete block, metals, PVC plumbing pipes, bath traps and other non-cellulosic materials found in structures. This will keep termites out of a structure's potential entry points, preventing wood damage.

Existing construction treatments may include:

- 24-inch band treatments to prevent subterranean termite infestation
- Spot treatments of WDO-infested areas
- Remedial or preventative treatments in areas such as attics, basements, crawlspaces or enclosed wall voids.

- Complete whole-house treatments using a combination of the above treatments

See Table A for the Bora-Care solution ratios appropriate to the kind of treatment(s) you need to do.

Always check area regulations to make sure your treatment program is in compliance.

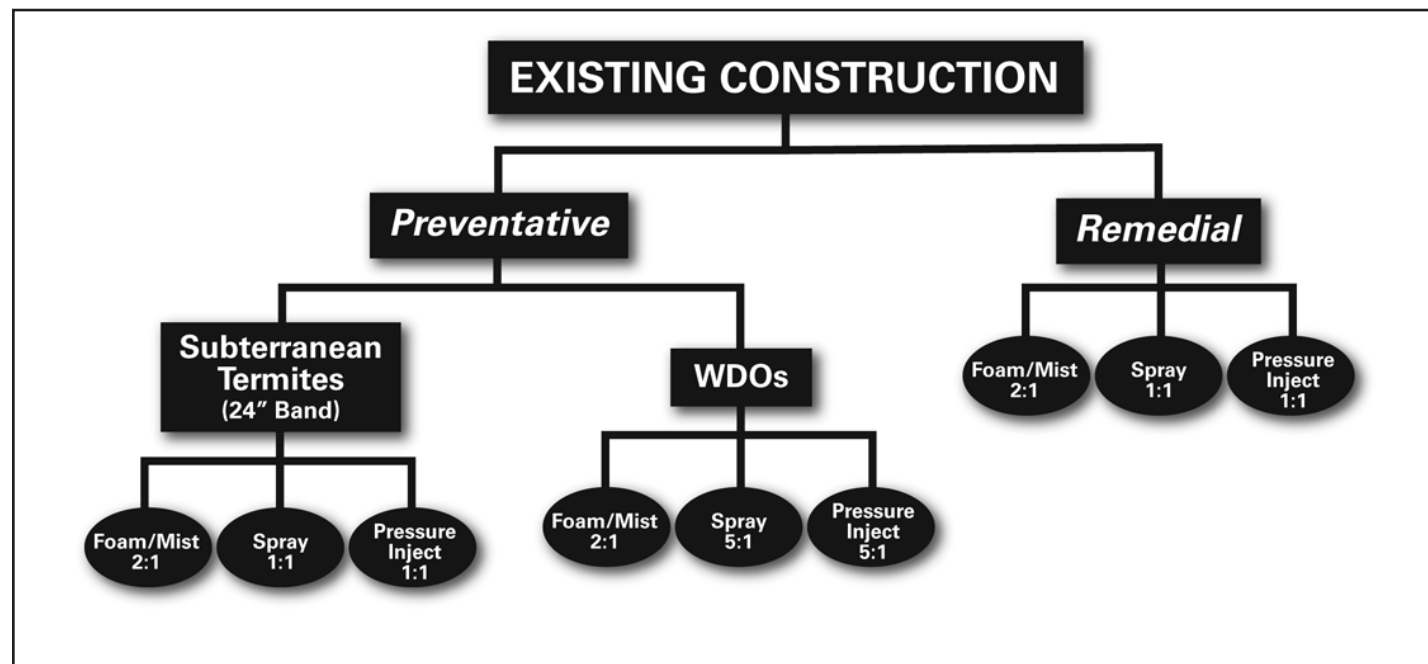
WHY BORA-CARE IS ENVIRONMENTALLY FRIENDLY

Bora-Care as a concentrate contains an active ingredient of 40% Disodium Octaborate Tetrahydrate (DOT) and incorporates a patented glycol mixture that enhances penetration and absorption of DOT into wood. Bora-Care has very low oral and dermal toxicities and when applied to a structure will not adversely affect the environment. Since Bora-Care is only applied to the food source of wood destroying organisms and/or termite entry points, less pesticide and water is required. In addition, Bora-Care has very low odor and the treated wood can be handled when dry. Bora-Care emits no VOCs (volatile organic compounds).

Little risk is associated with Bora-Care when properly applied or used. However, it is a legal requirement to always follow the label and to wear the specified personal protective equipment. Refer to label and MSDS for specific information.

COMPATABILITY

Bora-Care will not corrode metals normally used in



construction, including ferrous metals, galvanized metals, screws and nails. Bora-Care will not affect electrical wiring, but it is recommended that power is turned off until the area is dry.

Bora-Care will not discolor most wood and is compatible with most paints and sealants. If the aesthetic look of the wood is a concern, test a small, non-visible area for discoloration. After the test section has dried, apply the paint or sealant (if one will be used) to ensure compatibility.

HOW BORA-CARE WORKS

Rather than creating a toxic barrier in the soil surrounding a home or structure, Bora-Care is applied directly on the structure. Bora-Care provides double protection by acting both as a toxicant to WDOs and as a deterrent to termite tubing. For more information on how and why Bora-Care works, see our web site, www.nisuscorp.com.

HOW TO CONDUCT EXISTING CONSTRUCTION/REMEDIAL TREATMENTS

Inspection

Inspect all areas of the structure, concentrating on the foundation areas, window framing, door framing, baseboards and all areas where subterranean termites are known to infest or enter a structure. Inspect for signs of infestation such as wings and bodies of swarming alates, termite shelter tubes, live termites or wood damage. For inaccessible or non-visible areas of possible infestation, use the latest available technology and equipment to inspect these areas.

Calculating the amount of Bora-Care required

Measurement of the area to be treated is required to determine the amount of Bora-Care solution needed for a label application and a particular treatment. When determining the amount needed, always try to avoid extra or leftover solution. It is very difficult to list exact product application usage due to varying building construction and materials found in structures in different parts of the country. As a result, the following product usage information should be considered a general guideline and not a standard of application. It is based on label applications in common building construction. For situations not covered in this technical bulletin, contact Nisus Corporation.

Bora-Care wood applications are based on treating board feet of lumber. Approximately 1 gallon of Bora-Care solution (regardless of the ratio of water to Bora-Care) will be needed to treat 400 sq. ft. of 1" thick wood surface area or 400 board feet. The actual amount of Bora-Care solution needed will depend on the amount of wood to be treated and whether injection as well as spray or foam is needed. Topical spray applications will require a second application in areas where only 1 to 2 sides of a wood member is exposed. The second application can be done after a 20-minute delay. NOTE: The quantity of Bora-Care needed for lineal or square feet of wood remains the same whether applying one application to all sides of the wood, or when applying two

coats of solution to one to two sides of a wood component.

On non-cellulosic materials, the calculation is based on surface area. Approximately 1 gallon of Bora-Care mixed solution will be needed to treat 400 sq. ft. of surface area.

One accurate and fast method to measure linear footage is to use a measuring wheel around the outside foundation areas to be treated and using a tape measure or "clean" measuring wheel for the linear footage of the interior areas to be treated.

To determine the amount of Bora-Care needed to treat an area, use the *Application Rate Chart* and the *Existing Construction Application Worksheet* found at the end of this bulletin. The *Application Rate Chart* lists various construction foundations and gives instructions and amounts of Bora-Care to be used on both wood and non-cellulosic areas, and is based on registered label applications. The *Application Rate Chart* shows a simple way to total all application areas. (See www.nisuscorp.com to download an interactive spreadsheet version.)

Application Safety

Before beginning any chemical treatment, it is important to consider safety in application. According to the Bora-Care label, the applicator must wear a long-sleeved shirt, long pants, socks, shoes, chemical resistant gloves and protective eye wear. When applying Bora-Care in a confined area with no ventilation, wear a NIOSH approved respirator.

If spraying or drilling overhead, tarp or cover surfaces underneath the work area in preparation for solution that may exit galleries. Spills or over-spray can be cleaned with a damp cloth or absorbed with appropriate materials. (Read label for complete safety information.)

Be careful not to over-apply foam or mist in wall voids or you may create a moisture concern, as solution may leak out of wall area.

Mixing Bora-Care

Per label requirements, for a 24" band preventative termite and WDO treatment, Bora-Care concentrate must be mixed with water as a 1:1 solution (one part water to one part Bora-Care concentrate) for WDO remedial control applications when applied as a spray. For example, on a single family home, add the application amounts needed for an existing structure. *Remember:* Only mix enough Bora-Care 1:1 solution needed for that day's applications. The 1:1 solution should not be stored in the spray tank or other container for more than 24 hours. Refer to label for specific directions.

For example, to mix four gallons of Bora-Care solution, you will need the following equipment and materials:

- A five-gallon pail
- 2 gallons water (Warm water may reduce mixing time, but is not required.)
- Mixing impeller like those used to mix paint – preferably plastic (a plastic tip "Squirrel Brand" mixing impeller works very well without chipping the plastic sides of the mixing container). If using a metal mixing impeller, do not allow

the impeller to touch sides or bottom of pail. This may create small plastic chips that could clog spraying equipment.

- Drill
- Recommended personal protective equipment, including long-sleeved shirt, gloves and eye protection.
- 2 gallons Bora-Care concentrate
- OPTIONAL: To make it easier to see where Bora-Care solutions have been applied, an appropriate dye or colorant may be added to the solution when diluting Bora-Care with water. Refer to the dye/colorant product label for recommended amount to add to the Bora-Care solution.

NOTE: Using a marker dye or pigment in Bora-Care solutions on surfaces that will be visibly displeasing to the customer is not recommended. Dye/colorant color or darkness does not indicate the amount or concentration of Bora-Care applied. If dye/colorant is applied to non-target areas, be sure to clean with water immediately.

1. Pour 1½ gallons of water into a five-gallon pail.
2. Attach mixing impeller to drill and begin agitation.
3. Gradually pour two gallons of Bora-Care into water and continue to mix solution.

4. Use the remaining 1/2 gallon of water to triple-rinse the two Bora-Care containers and pour contents into mixing solution.
5. Continue to mix until solution becomes clear or you do not feel resistance of any remaining concentrate. Normal mixing time may be 5-10 minutes.

Tools and Application Methods

There is no one tool that can effectively apply Bora-Care in all situations. The use of these applications is designed to provide for a label application of Bora-Care on wood and cellulosic materials that are subject to possible attack by termites and other WDOs.

The following is a description of the equipment and treatment methods that exist today:

- a. 2-4 gallon spray applications:
Use a 2-4 gallon handheld stainless steel sprayer or backpack sprayer to apply up to 2-4 gallons of solution at a time.
- b. 10-100 gallon spray applications: For larger amounts, a 10-100 gallon spray unit with mechanical pump is recommended. For best results, this unit should also have mechanical agitation for proper mixing to prevent any potential clogging of spray equipment.

TABLE B: BORA-CARE DILUTION RATIOS & APPLICATION METHODS <i>For Preventative and Remedial Treatment of Subterranean Termites and Other WDOs in Existing Homes</i>	
<i>Dilution Ratio</i>	<i>Application Notes</i>
1 part water to 1 part Bora-Care (1:1) for spray or drill/inject treatments	Spray, mist or foam bare wood with an appropriate dilution of Bora-Care solution to the point of wetness. When possible, drill and inject solution directly into active infestations. Inaccessible areas (such as between studs in wall voids) should be foamed or high-pressure misted, or drill and inject through wallboard directly into studs with active infestations.
2 part waters to 1 part Bora-Care (2:1) for mist or foam treatments	

TABLE C: COVERAGE AREAS FOR ONE GALLON OF BORA-CARE SOLUTION
• 400 board feet of lumber • 400 sq. ft. of 1" thick or less plywood or OSB (sheathing treated 1x on 2 sides OR 2x on 1 side) • 200 linear feet of exposed stud walls to a height of 24" • 50 linear feet of 8' high exposed stud walls • 200 sq. ft. of crawlspace (when entirety is treated) • 100 sq. ft. of crawlspace (when only 24" band on perimeter is treated)

TABLE D: APPLICATION RATES FOR BORA-CARE SOLUTION

TYPE OF AREA	MISTING / INJECTING	FOAMING
Uninsulated Wall Voids	Mist 24" band: Use 1 oz/void (= 7.5 oz / 10 l.f.) Mist Entire Void: Use 3.5 oz/void (= 26.25 oz / 10 l.f.) Mist Drywall-Concrete Combo Voids: Use 2oz / void (= 15 oz / 10	Foam 24" band: Use 20-40 oz/void (= 150-300 oz / 10 l.f.) Foam Drywall-Concrete Combo Voids: Use 15-20 oz/void (= 112.5-150 oz / 10 l.f.)
Insulated Wall Voids	Mist Drywall Voids: Use 2 oz/void (= 15 oz / 10 l.f.) Mist Drywall-Sheathing Combo Voids: Use 3 oz / void (= 22.5 oz / 10 l.f.)	Foam Drywall Voids: Use 40 oz/void (= 300 oz / 10 l.f.) Foam Drywall-Sheathing Combo Voids: Use 60 oz/void (= 450 oz / 10 l.f.)
Window & Door Frames	Mist a 2:1 solution Inject a 1:1 solution at a rate of 1 oz / l.f.	Foam a 2:1 solution at a rate of 10 oz / l.f.)
Soffits & Eaves	Mist a 2:1 solution at a rate of 12 oz / 10 l.f.	N/A

c. High Pressure Misting Unit: High pressure developed from this type of unit allows treatment of areas such as hollow wall voids by misting can be accomplished in a short time and more thoroughly without over-wetting. Calibration of the tip will allow you to know how much liquid you are applying in the void, so you can avoid damage due to over-application. The use of a high pressure pump with an atomizing tip will allow the delivery of tiny droplets rather than a coarse spray. This can be used for treating wall voids or inaccessible areas. For high pressure misting applications into wall voids, use machines reviewed by Nisus and specifically designed for high pressure misting into wall voids.

Electric or Gas Spray Unit: A primary tool in pre- or post-construction treatment when the broadcast application of a liquid is required. Topical sprays of Bora-Care solution should be applied evenly to wood using a medium to coarse spray at low pressures (e.g., 30-40 psi). Low pressure application will reduce drips, off-target overspray and splash-back, and will result in proper amounts of active ingredient on surfaces. The uses may vary with the addition of specialized application tools such as:

- a. Fan Spray Wand: To coat the surface of exposed wood members.
- b. Pin Stream: To treat cracks behind wood members.

Compressed Air Sprayer: Used in situations where you are either doing a small re-treatment of an area or spraying into areas where it is not possible to reach with other equipment. It is not generally designed to do the entire job because of a smaller capacity for treatment solution. The compressed air sprayer can be used with a variety of attachments for various jobs, including fan spray and needle injection.

Foaming: Choose foaming when excess moisture may be a problem or in difficult-to-reach areas such as around insulation in wall voids and door and window facings.

- a. Foaming agent: Nisus recommends ProFoam® Platinum for Bora-Care foaming applications. ProFoam Platinum is specially formulated to be used with borates and other termiticides for the best foam solution.
- b. Mixing foam: Mix foam product per label directions to produce the ratio of foam to Bora-Care solution required. Typically, 3-8 ounces of foaming agent per gallon of solution is needed. This will produce a dry foam with the desired expansion ratio of approximately 20:1 (20 gal. foam per 1 gal. aqueous solution). This should result in a Bora-Care foam with a consistency that adheres to wood surfaces and minimizes run-off.
- c. Foam machines: Since every foam machine produces different foams, refer to the equipment manufacturer's manual for specific instructions. To foam into wall voids, use a foam machine designed for wall foaming applications and approved by Nisus Corporation.

Tips needed:

- Attic Foam Gun: To treat between insulation and ceiling joists.
- Needle: To inject foam into infested wood.
- J-Tip: To inject foam into areas such as wall voids.

Calibration of Foaming Equipment and Foaming Material: Apply a known volume of foam solution from the foaming equipment into a pre-measured container such as one from the paint department of a hardware store. Allow foam to dissipate into a liquid. A de-

foaming agent can also be used to speed up this process. The volume measurement of foam compared to the volume measurement of the resulting liquid is the foam ratio. Use a moisture meter to determine the flow of foam into void.

Example: If you measure a gallon of foam (128 oz.), and the foam dissipates to 6.4 oz., the ratio is 128/6.4 or 20:1.

NOTE: De-foaming agents can be purchased from your distributor. When placed in a small spray bottle and sprayed lightly onto the foam, the agent works well to reduce the foam back to a liquid.

Pressure Injection: Injection tips should be brass or other metal and fit snugly into the drilled hole to prevent dripping or spray back. Use a short injection tip (approximately 1 inch). This will allow the solution to flow into the drilled wood.

- a. Heavily Infested Wood: Bora-Care solution or foam should be injected into infested wood. Drill and inject until the liquid or foam runs out of openings or damaged areas. This procedure is not an alternative to spraying; it can supplement spraying for active galleries or when structural wood is greater than 4 inches thick. It is possible post-treatment swarming could occur for a while after application if only a topical treatment is used. Injection treatments can reduce post-treatment swarming callbacks.
- b. Injection into active galleries:
 - Liquid Injection: Locate and inject up to 1 ounce of Bora-Care (1:1 solution) per board foot into active galleries.
 - Foam Injection: Locate and inject up to 20 ounces foam (2:1 solution of 2 parts water + 1 part Bora-Care) per board foot into active galleries.
- c. Unfinished, Sealed or Painted Wood (including the wood adjacent to the infested areas): The application tip should be designed to avoid splash back.
- d. Application Technique: Injection holes (typically 7/64" or 1/8" in diameter) should be drilled in the area of suspected or known infestation.

Drill the holes through the widest dimension of the wood that is available. Holes should extend approximately 3/4 of the way into the beam. If the widest surface is not accessible, holes can be drilled approximately 8-10 inches apart into a narrower surface.

Press and hold the injection tip firmly into each hole and inject solution until runoff is observed from other holes, galleries, kick-out holes, etc. You may get splash back if the wood is solid. Release the trigger, wait briefly and withdraw the injection tip.

Excess solution can be absorbed with paper towels and disposed of in ordinary trash.

The holes should be in a diamond pattern and be spaced approximately 4-6 inches across the grain and 12-16 inches along the grain (Figure 1). When possible, the wood should be treated one diamond length pattern beyond the immediate area of visible infestation.

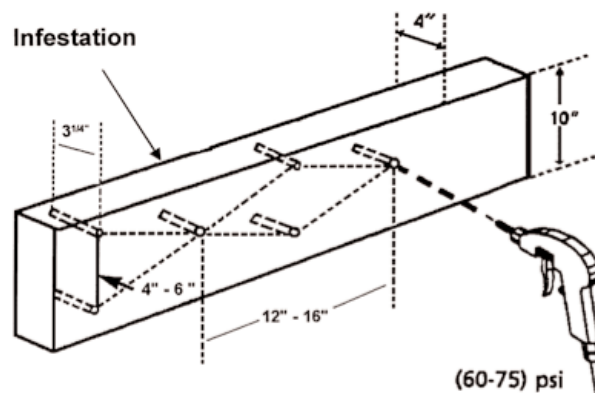


Figure 1: Drill and pressure injection of a 4" x 10" structural beam with Bora-Care solution.

SPECIFICATIONS FOR SPECIFIC STRUCTURAL AREAS

Keep in mind that every structure is unique and that you will need to use your best judgment in each case, with safety as the primary concern. Untreated areas are unprotected areas and will not prevent termite tubing or damage from wood destroying organisms.

Bora-Care should only be topically applied to wood, plywood, particleboard and other cellulosic materials where an intact water repellent barrier such as paint, stain or a sealer is not present. Dirt, debris and any existing water repellent finish must be removed to permit absorption of Bora-Care into the wood.

NOTE: An existing construction preventative subterranean termite treatment with a 1:1 Bora-Care solution requires the creation of a continuous horizontal and vertical barrier by treating all potential entry points. This includes the structural wood of both internal and external walls (sill plates, wall studs and exterior wood sheathing), foundations (concrete surfaces), bath traps, pipe protrusions and other areas. Interior walls are also treated to prevent termite entry due to cracks that may occur in the slab. This may be accomplished using the techniques described in this technical bulletin and also in the Bora-Care New Construction Technical Bulletin.

Attic Applications

If an infestation is found in an attic, first determine if the infestation may be secondary to water or moisture damage created by structural defects. If so, first have the defects corrected, then treat with Bora-Care. Spray Bora-Care solution on all accessible wood in the area

of the infestation: rafters, trusses, top-plates, ceiling joists, plywood, particleboard, etc. Accessible areas with known infestations should be drilled and injected with liquid or foam solution to speed eradication and reduce callbacks. Foam may be used in difficult-to-reach areas such as around insulation.

If the infestation can be traced to a ground contact infestation, treat the attic area and also the areas in contact with the foundation as listed below. If an infestation is present beneath or partially hidden by insulation, remove the insulation to directly treat the area.

Interior Applications

Bath Traps and Pipe Penetrations (Slab Foundations Only): Bath traps, pipe penetrations and the slab areas around them must be treated both horizontally and vertically to protect from termite entry into the structure.

Treat the interior of all bath traps with 8-16 ounces of Bora-Care solution per square foot of the bath trap area. Apply a continuous 12" horizontal band of a 1:1 Bora-Care solution on the slab surrounding the bath traps to include any accessible bare wood (such as horizontal sill plates). All studs must be treated vertically to a height of 24 inches.

Pipe and plumbing penetrations must be treated with a 1:1 Bora-Care solution to a height of two feet. Extend treatment at least 6 inches out horizontally onto the slab surface surrounding the penetrations.

Available Bare Wood Stud Walls and Sill Plates: Treat all exposed sides of the studs (3-4 sides) with one coat of Bora-Care solution 24 inches up from the sill plate. If access to the wood is limited to one or two sides (some sill plates or married studs), then spray the exposed sides twice, waiting 20 minutes between applications.

To determine the amount of Bora-Care needed to treat sill plates and studs, measure the linear footage of interior and exterior stud walls. One gallon of Bora-Care solution will cover 200 linear feet of stud walls with a 24-inch vertical application up from the slab (excluding sheathing).

Available Bare Exterior Sheathing: Both sides (interior and exterior) of the bottom 24 inches of the exterior sheathing (up from the foundation) must be treated with one coat of a continuous vertical barrier of a 1:1 Bora-Care solution. If only one side is accessible then two applications on the available surface are required (be sure to document such applications).

One gallon of Bora-Care solution will cover 400 square feet of cellulosic sheathing. This includes one vertical application of solution on each side or two applications on one side.

Enclosed stud walls: When sheetrock (drywall), paneling or other finished building material prevents access to an area, Bora-Care should be applied with a high pressure misting machine or a foam application. The foam will run along each stud or the high pressure mist will hit each stud.

Preparations prior to treatment:

1. Have a wet/dry vacuum plugged into a remote power source and ready to use. Electrical power must be turned off and remain off in the area of application for a period of time to allow the treatment to dry when treatments are made near electrical outlets.
2. For foaming applications, use a non-intrusive moisture meter to check the moisture in the wall before and after treatment. Move the meter from the floor vertically along the wall to get a baseline reading. A normal reading should be from 9% to 15%. A sticky note can be used to record the reading on the wall. Continue on all walls in the areas to be treated.
3. Locate studs in the area to be treated using a stud finder.
4. Divide and direct foam or mist in a way that best allows the solution to cover sill plate surfaces and wood stud surfaces.
5. Repeat the moisture check 30 to 45 minutes after treating the void. Move the meter from the floor vertically along the wall to determine where the foam is moving and if it is covering the sill and stud surfaces. If there is a blockage in the wall, you will get a high moisture reading at the blockage.
6. Patch the holes with appropriate filler compound, and paint if required.
 - b. Enclosed Stud Walls (Uninsulated): Normally the interior walls will not contain insulation.

To treat the bottom portion of the void only, drill a single hole between studs at the bottom of the wall (immediately above the kick plate/skirting board). A timed and calibrated foam or mist injection is sufficient to treat the sill plate and bottom 24 inches of stud areas (see Figure 2).

To treat the entire hollow wall, make a small hole at the bottom of the wall near the baseboard and/or making another drill hole near the top of the wall. The objective is to obtain uniform coverage of the studs, the top and bottom plates and the back of the wallboard inside the void area.

NOTE: Do not over-treat the void. There is no need to completely fill the void with foam or liquid. You only need to coat the wood and cellulosic materials in contact with a concrete foundation. **YOU ARE PLACING**

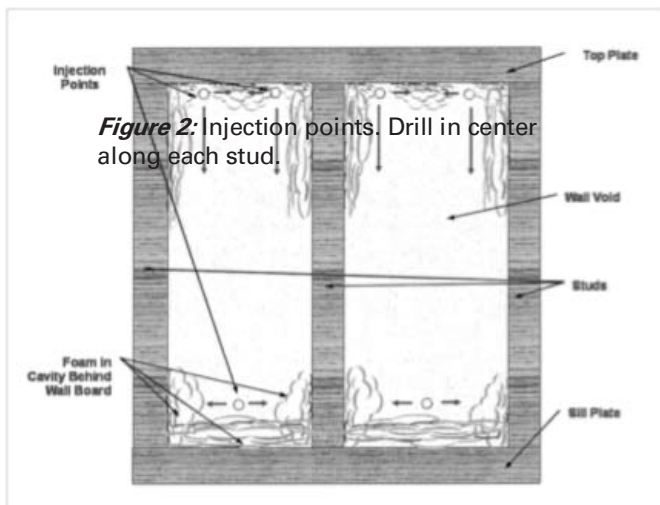


Figure 2: Injection points. Drill in center along each stud.

A LIQUID IN A VOID AREA. THE POSSIBILITY OF WATER DAMAGE MUST BE KEPT IN MIND AT ALL TIMES.

Misting Into Uninsulated Wall Void Areas:

- a. 24-inch band (preventative): Apply 1 ounce of a 2:1 Bora-Care solution into each uninsulated wall void to be treated. This is approximately 7.5 ounces of solution for every 10 feet of uninsulated wall void area. Apply 2 ounces of 2:1 Bora-Care misted solution into each void area if one side of the wall is covered with cellulosic sheathing (such as OSB or plywood)
- b. Entire void (preventative and remedial): If sheetrock is attached to concrete foundation walls by furring strips with approximately 1 inch of clearance between sheetrock and concrete, mist with approximately 2 ounces of 2:1 Bora-Care solution every 16-20 inches by treating the top of the sheet rock to let the solution flow down to cover concrete wall, furring strips and the back side of the sheetrock and by treating up from the bottom directing the solution up to cover concrete wall, furring strips and the back of the sheet rock.

Foaming Into Uninsulated Wall Voids:

- a. 24-inch band (preventative): Use a 2:1 Bora-Care solution mixed with foaming agent to create a dry foam (20:1 or higher). Apply 20-40 ounces of foam in each wall void area to be treated. This results in about 150-300 ounces of foam needed per 10 lineal feet of wall void area.
- b. Entire void (preventative and remedial): Treat by misting with a 2:1 solution of Bora-Care at the rate of 3.5 ounces per void. Treating from the top of the void and up from the bottom of the void, direct mist to cover all wood and concrete wall foundation areas. If sheetrock is attached to concrete foundation walls by furring strips with approximately 1 inch of clearance between sheetrock and concrete, foam 15-

20 ounces of a 2:1 Bora-Care solution in a 20:1 ratio foam every 16-20 inches by treating the top of the sheet rock to let the foam flow down to cover concrete wall, furring strips and the back side of the sheetrock and by treating up from the bottom, directing the foam up to cover concrete wall, furring strips and the back of the sheet rock.

Special Applications

There are some special application situations where other treatments may be used. When multiple boards are bonded together to form a wide beam or girder, they may be drilled and injected with Jecta[®] (a concentrated borate gel designed to be injected into thick or sealed wood components) at the point where they come into contact with the foundation.

Walls (Insulated)

Because exterior walls normally contain insulation, treating them effectively can be more difficult.

Drill two holes to either side of the stud. If insulation is tightly packed in the void, it can usually be moved slightly and temporarily using the foaming or misting tip prior to injecting.

For preventative treatment, apply the mist or foam in a direction that best coats sill plate area and wall wood studs at least 24 inches up from concrete foundation. If possible, direct foam or mist around both sides of insulation.

In an area of infestation, you can treat with mist or foam on each side of the stud, staying close to allow the solution to move along the stud instead of soaking into the insulation.

The use of a moisture meter against the drywall can tell you where the foam is moving and will help you to decide if more or less treatment is needed in a particular void.

Misting Into Insulated Wall Void Areas: Apply 2 ounces of a 2:1 Bora-Care misted solution into each insulated wall void to be treated. This application relates to 15 ounces of solution for every 10 feet of insulated wall void area.

Apply 3 ounces of a 2:1 Bora-Care misted solution into each wall void if one side of the wall void has cellulosic sheathing (such as OSB or plywood). Pull insulation away from sheathing with spray tip or tool before application.

Foaming into Insulated Wall Void Areas: Mix a 2:1 Bora-Care solution with foaming agent for foaming treatments. Use a 20:1 or higher foam ratio.

- a. 24-inch band (preventative): apply 40 ounces of foam into each wall void to be treated. This relates to 300 ounces of foam product per 10 linear feet of void area. Apply 60 ounces of foam to each void area if

one side of the wall void has cellulosic sheathing such as OSB or plywood.

- b. Entire void (preventative and remedial): Foam at the rate of 40 ounces of foam with a 2:1 Bora-Care solution in a 20:1 ratio or higher foam. Direct foam down from the top of the void and up from the bottom of the void to cover the surface areas of the wall studs, sills and concrete wall foundations.

Basement or Crawl Space Structure

Spray a 1:1 Bora-Care solution on all bare wood in contact with foundation walls. Apply at the rate of 1 gallon of solution per 100 linear feet of foundation sill plates, floor joists, header and subfloor listed above in a 24" band for preventative treatment. Apply 1 gallon of solution per 200 linear feet of the above areas for remedial/all WDOs treatment.

A second application is required when only one or two sides of the wood member is exposed (box headers and sills). Drill and inject active infestations with a Bora-Care 1:1 solution.

Perimeter Elements: This is composed of the foundation sill plate, header or band joist, floor joists and subfloor. If the area is inaccessible, then an access point must be created or the area cannot be treated.

- a. Foundation Sill Plate: Treat horizontally with two coats (assuming only one or two sides of the sill plate are accessible) of 1:1 Bora-Care solution on the foundation sill plate, waiting at least 20 minutes between coats.
- b. Header or Band Joist: Treat all accessible sides with one coat of same solution. If only one or two sides are accessible, treat with two coats of solution.
- c. Floor Joists: Treat all accessible sides (assuming three sides are exposed) with one coat of Bora-Care solution.
- d. Subfloor: Apply two coats of solution only on the underside of the wooden subfloor.

Finished Basement Areas: Treat all interior wood stud walls, pipe penetrations and bath traps as described above.

To prevent subterranean termite tubing on:

- a. Concrete-Masonry Foundation Support Piers: Treat all concrete/masonry support piers at least 24 inches vertically from the ground. Measure the linear footage of concrete-masonry foundation support piers and multiply by two.
- b. Crawl Space/Basement Concrete-Masonry Foundations: Measure in front of all concrete- masonry foundation walls. Treat all interior concrete- masonry wall surfaces up at least 24 inches from the basement slab or crawl space soil. Horizontally extend the treatment 2-8 inches out onto slab

surfaces. Apply 1 gallon of a Bora-Care 1:1 solution per 400 square feet of treated surface area.

EXTERIOR APPLICATIONS

Bora-Care can be applied to bare siding, trim or logs.

Applications can be made by spray or pressure injection techniques. Painted or sealed wood can be treated by pressure injection, or the wood can be stripped prior to a spray application. See the Dimensional Lumber or Log Home Technical Bulletins for more information on application rates for log homes, decks, siding and more.

Protect any surrounding plants and ornamentals from accidental contact with the solution.

Infested Window and Door Frames

Treat window and door frames by drilling and injecting foam or liquid in the surrounding voids or by drilling and injecting infested wood. Use a moisture meter to determine how well the foam is moving in the voids. Normally, you will only need one hole on each side of the window and one on the bottom.

NOTE: Window and door framing can vary. It is difficult to determine wood framing after the wallboard or sheetrock is installed. Take care not to apply excessive liquid product solution into these areas.

Misting or injecting window and door framing: Apply by mist or injection up to 1 ounce of solution per linear foot of window framing or door framing in areas of application. A 2:1 Bora-Care solution mist application or a 1:1 Bora-Care solution liquid injection is used in confirmed or suspected areas of active infestation.

Foaming into window and door framing: Direct up to 10 ounces of foam per linear foot into wall areas around window and door framing. Use a 2:1 Bora-Care solution mixed with a foam concentrate to create a 20:1 or higher foam ratio for confirmed or suspected activity.

Exterior Overhang Area or Eaves (Soffit Area)

If WDOs have penetrated an exterior overhang, soffit or eave area due to direct contact to the ground or excessive moisture, spray the exposed, unfinished wood with Bora-Care 1:1 solution and drill and mist void areas. Active galleries can be injected or foamed.

Misting into eaves and soffit areas: Apply up to 12 ounces of a 2:1 Bora-Care solution per 10 linear feet of soffit or eaves. Application may be made through the soffit vents or by drilling into the soffit/eaves void area. Apply only enough Bora-Care solution to coat the surfaces of the wood, being careful not to over-treat the area.

Decks & Gazebos

Bora-Care can be used to treat wood decks and other exterior structures. Prepare the wood by removing any

dirt, debris or sealants that will interfere with the application and absorption of Bora-Care. After the deck is dry to the touch with no standing puddles, a Bora-Care 1:1 solution can be applied to the wood.

Following treatment, the deck can be sealed to prolong performance.

REOCCURRENCE OR RETREATMENTS

When responding to a reoccurrence of subterranean termites, go through the following steps:

Inspection

Do a thorough inspection of the property (not just one small area). Look at the graph and any other documentation that may help you to determine where treatment may be needed. Try to recreate the service you did and determine if it was the proper treatment. Ask yourself: What has been done? What hasn't been done? Did I drill and inject? Are there conditions conducive to infestation? Problems and conducive conditions which may have led to the infestation, or that may do so in the future, should also be corrected. If necessary, a borate indicator test kit (available from your distributor) can be used to validate treatment.

Identification

Identify where the infestation is to determine whether it is the area that was originally treated or if it is in an untreated area.

Problem Solving

Determine what needs to be done to take care of the problem. After the treatment, inspections should be performed on a regular basis and additional preventative sprays or injection treatments of Bora-Care can be made, if desired.

Communication

Let the customer know what you found, what you did about it and what they should expect from your service. Answer their questions.

DOCUMENTATION

It is important to graph the structure and fully

document the Bora-Care application, including where dye or colorant was and was not used, areas that were not accessible (such as only one side of sheathing) and so forth. This documentation will be a very important tool for future inspections.

CUSTOMER COMMUNICATION

It is also important to talk to the builder, contractor or homeowner to explain the treatment and educate them on conducive conditions that could cause a WDO infestation and the need for the PMP to do a thorough onsite annual inspection to determine if any new conducive conditions have been created. A product is only as good as the application, and because you are a Pest Management Professional, we hope you will utilize this information to protect you, your company and—most importantly—the homeowner from potential WDO infestation and damage.

CARE OF SPRAY EQUIPMENT

Normal care and maintenance of spray equipment is sufficient. Bora-Care solutions are compatible with stainless steel, brass and all plastic components of spray equipment. Bora-Care solutions should be mixed as needed and drained from equipment daily. After use, equipment should be rinsed with clean water (warm if possible) to flush any remaining Bora-Care from the sprayer. The rinsate may be saved in appropriately labeled service containers for future preparations of Bora-Care solutions (in place of fresh water). It is always best to try to use up all product onsite.

Spray/Injection Tips: Under some conditions, spray tips may clog due to evaporation. Spray tips can be unclogged by flushing or soaking in warm water.

CLEAN-UP ON NON-TARGET AREAS

Occasionally, Bora-Care solutions may drip or run onto glass surfaces such as windows and doors or other non-target areas. After drying, a sticky residue may appear. This can be removed easily with warm water, but is easier to remove before it dries.



NISUS
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APPLICATION RATE CHART for Subterranean and Formosan Termites

Bora-Care New Construction 2-Foot Vertical & Horizontal Treatment

For whole house wood treatment, active infestation treatment or drywood termite prevention, refer to the *BORA-CARE Termite Technical Bulletin* or the *Drywood Termite Technical Bulletin*.

The application rates and instructions on this chart are based on standard building practices and materials. All application rates are based on BORA-CARE label instructions. **Always read the BORA-CARE label before application.**

TYPE OF TREATMENT		WHEN TO USE	APPLICATION INSTRUCTIONS	COVERAGE PER 1 GALLON OF 1:1 SOLUTION
SLAB	Slab Foundation (wood & concrete)	Use as preventive treatment against termites.	Apply to sill/base plate and 24" up on studs and other wood members in contact with slab foundation. Apply second coat on sill. Spray concrete 2"-8" horizontally out from sill or base plate. Treat all pipe protrusions within stud walls or free standing in slab 24" up from slab and extending horizontally 6" out on the slab surface.	200 linear feet (Measure linear feet of stud walls to be treated)
	Sheathing (wood)		Vertically apply to both sides of exterior sheathing to point of wetness. If one side is inaccessible, apply two coats to one side at least 20 minutes apart.	400 square feet (Measure area: length X width)
	Bath Traps	To prevent entry of termites.	Apply into bath trap area and extend at least 1' out onto slab surface.	8-16 ounces of solution per square foot of bath trap area
CRAWL SPACE	Crawl Space (wood)	Use as preventive treatment against termites.	Apply to all wood in a 24" area from exterior wall (to include sill plate, header joist, floor joists and subfloor). Apply second coat on sill and header joist. Apply to all wood in contact with foundation pier out 24" from foundation pier.	100 linear feet (Measure linear feet of all foundation walls & piers to be treated)
	Up From Soil (concrete)	To complete the 2' vertical treatment requirement on interior surface of foundation walls.	Measure linear footage of concrete-masonry foundation wall <i>and also</i> around each foundation pier, and multiply by 2 to get square footage of treatment area. Apply to foundation wall and piers 24" up from soil.	400 square feet (Measure area: length X width)
	Exterior Wall Vertical Treatment (wood)	To complete the 2' vertical requirement for exterior foundation treatments.	Apply up 12" up onto structural wood components above the top of the header joist (to include the edge of the sub-floor, sill above sub-floor, stud wall and exterior sheathing).	160 linear feet (in addition to amounts listed above)
BASEMENTS	Basement	Use as preventive treatment against termites.	Apply to all wood in a 24" area from exterior wall (to include sill plate, header joist, floor joists and subfloor). Apply second coat on sill and header joist.	100 linear feet (Measure linear feet of all foundation walls & piers to be treated)
	Up From Concrete	To complete the 2' vertical treatment requirement on interior surface of foundation walls.	Measure linear footage of concrete-masonry foundation wall, and multiply by 2 to get square footage of treatment area. Apply to foundation wall 24" up from concrete.	400 square feet (Measure area: length X width)
	Exterior Wall Vertical Treatment (wood)	To complete the 2' vertical requirement for exterior foundation treatments.	Apply up 12" up onto structural wood components above the top of the header joist (to include the edge of the sub-floor, sill above sub-floor, stud wall and exterior sheathing).	160 linear feet (in addition to amounts listed above)
	Bath Traps	To prevent entry of termites.	Apply into bath trap area and extend at least 1' out onto slab surface.	8-16 ounces of solution per square foot of bath trap area
	Finished Basement	Additional treatment required for finished basement.	Walls in contact with foundation: Vertically apply to all wood including sill plate, total stud boards and all the top plate (or runner). Vertically treat all plumbing protrusions (as listed under slab construction). Spray slab 2"-8" horizontally out from sill or base plate. Interior Walls: Apply to sill/base plate and 24" up on studs and other wood members in contact with slab foundation. Apply second coat on sill. Spray concrete 2"-8" horizontally out from sill or base plate. Treat all pipe protrusions within stud walls or free standing in slab 24" up from slab and extend horizontally 6" out on the slab surface.	50 linear feet (Measure linear feet of all stud wall sills attached to solid foundation) 200 linear feet (Measure linear feet of stud walls to be treated)

BORA-CARE NEW CONSTRUCTION APPLICATION WORKSHEET

(2 ft. Barrier Treatment)

■ SLAB AREAS

LINEAR FEET OF ALL EXTERIOR WOOD STUD WALLS.....
 (Treat sills, slab & 24" vertical band) _____

LINEAR FEET OF ALL INTERIOR WOOD STUD WALLS..... + _____
 (Treat sills, slab & 24" vertical band) _____

= _____
 (Total linear feet of stud walls)

NOTE: Plumbing penetrations included in calculations.

÷ 200 = **A.** _____

NUMBER OF BATH TRAPS
 (16 oz. / sq. ft.) _____

x .125 = **B.** _____

LINEAR FEET OF ALL EXTERIOR SIDING WALLS
 (Treat exterior plywood or OSB siding 24" vertical band; amounts same for treating both sides once or on one side twice.) _____

x 2 = _____

÷ 400 = **C.** _____

(Square feet of siding)

TOTAL GALLONS OF BORA-CARE 1:1 SOLUTION NEEDED (A+B+C) = _____

■ CRAWL SPACE OR BASEMENT AREAS

LINEAR FEET OF SILL PLATES ON FOUNDATION (wood)
 (Treat foundation sill plate, header, floor joists & subfloor as a 24" horizontal band.) _____

LINEAR FEET OF WOOD ELEMENTS AROUND PIERS (number of piers: _____ x 8) + _____
 (Treat all wood in contact with pier in 24" horizontal band.) _____

= _____
 (Total linear feet)

÷ 100 = **A.** _____

LINEAR FEET OF EXTERIOR WOOD STUD WALLS
 (Treat exterior walls, sills, studs & sheathing 12" above box header & sills to satisfy 2' rule.) _____

÷ 160 = **B.** _____

LINEAR FEET OF ALL CRAWL SPACE/BASEMENT CONCRETE WALLS (wood)
 (Measure linear feet around support piers and foundation. Treat 24" vertical band.) _____

x 2 = _____
 (Square feet)

÷ 400 = **C.** _____

LINEAR FEET OF ALL INTERIOR STUD WALLS (finished basement)
 (Treat sills, slab & 24" vertical band.) _____

NOTE: Plumbing penetrations included in calculations.

÷ 200 = **D.** _____

LINEAR FEET OF STUD WALLS AGAINST FOUNDATION (finished basement)
 (Within 3" of foundation, treat entire stud, slab, sill plate on slab & top plate.) _____

÷ 50 = **E.** _____

NUMBER OF BATH TRAPS (basement slabs only)
 (16 oz. / sq. ft.) _____

x .125 = **F.** _____

TOTAL GALLONS OF BORA-CARE 1:1 SOLUTION NEEDED (A+B+C+D+E+F) = _____



D/2 Biological Solution

Discover the D/2 difference!

D/2 Biological Solution is a biodegradable, easy to use liquid that removes stains from mold, algae, mildew, lichens and air pollutants. It is effective on marble, granite, limestone, brownstone, travertine, masonry, terra cotta, concrete, stucco, wood, and other architectural surfaces including monuments, sculpture and headstones. A contact time of only 10 to 15 minutes followed by scrubbing with a soft nylon or natural bristle brush will loosen most biological and air pollutant staining.

D/2 Biological Solution is effective for removing harmful biological and air pollutant staining from many building materials including masonry, marble, granite, limestone, brownstone, travertine, terra cotta, concrete, stucco, wood, canvas and vinyl & aluminum siding.

Features and Benefits

- **Fast acting:** 10 to 15 minutes contact time for great results.
- **Biodegradable**
- **Contains no acids, salts, or chlorine**
- **pH neutral**
- **Will not etch metals or glass**
- **Safer to use around plantings**
- **Is not a hazardous material and requires no special handling or protection**
- **Use full strength, no in-field mixing required**
- **Shelf life of 5 years**

Application Procedures

Always do a spot test sample before proceeding with project. D/2 works best when air and surface temperatures are 45°F or above. Use D/2 undiluted for best results. In the event of

excessive plant exposure, rinse all plants and water in all planted ground areas.

Immediate Result Method

1. Apply D/2 Biological Solution with a brush, roller, hand pump sprayer (garden style pump sprayer) or low pressure power sprayer.
2. Allow undiluted D/2 to remain on the surface 10-15 minutes.
3. Apply additional D/2 as necessary to maintain a wet surface.
4. Scrub with soft nylon or natural bristle brush. **DO NOT USE METAL BRUSH.**
5. Lightly mist with water and continue scrubbing.
6. Rinse thoroughly with clean, potable water.

No Scrub/No Rinse Method

1. Apply D/2 Biological Solution with a brush or pump sprayer to a dry surface. Do not pre-wet the surface.
2. Allow to dry. Repeat if there are heavy biological stains.

D/2 works with the elements and results occur within one week to one month depending on severity of growth and weather conditions. The surface will become cleaner over time as the subsurface biological stains release.

Safety Information

D/2 Biological Solution is non-mutagenic, and contains no carcinogenic compounds as defined by NTP, IARC, or OSHA. It is considered essentially non-toxic by swallowing, as it has an oral LD50 of 2.0 g/kg of body weight. No special ventilation is required during use.

Packaging and Coverage

D/2 Biological Solution is available in 1 gallon and 5 gallon containers, and 55 gallon drums. The area that can be treated with one gallon of D/2 will vary considerably as a function of the nature and extent of biological deposits, as well as the physical characteristics of the surface. Typical coverage to remove medium deposits will vary from 250 to 350 square feet per gallon.

Technical Data

Physical Form Transparent, low viscosity liquid

Color Almost colorless

pH 9.5

Specific Gravity 1.01g/cc

Solubility in Water Complete

Vapor Pressure 25 mm Hg @ 20°C

Notice: The information contained herein is based on our own research and the research of others, and it is provided solely as a service to help users. It is believed to be accurate to the best of our knowledge. However, no guarantee of its accuracy can be made, and it is not intended to serve as the basis for determining this product's suitability in any particular situation. For this reason, purchasers are responsible to make their own tests and assume all risks associated with using this product.

10/2012

1. **Requested Motion:**

Meeting Date: February 21, 2023

Approve staff to apply for the Scotts® Field Refurbishment Program Application for enhancements to the ball fields at Bay Oaks Recreations Campus.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Scotts® Field Refurbishment Program Application

In 2023, the Scotts® Field Refurbishment Program will provide grants of products and services, with a value up to \$50,000, to three youth-serving organizations that are in need of renovations to existing ballfields. A blue ribbon panel of judges will determine the final grantees. In addition to the grant, Scotts will host special celebrations for the winning communities. Applications will be accepted from January 17, 2023 - February 28, 2023, with project work to take place in Spring & Summer 2023.

Program Background

The Scotts® Field Refurbishment Program is a major diamond and green space renovation initiative that has provided 35 youth-focused baseball and softball fields across the country with significant upgrades. Scotts, the Official Lawn Care Company of Major League Baseball, enters its eighth season as an official partner of the "PLAY BALL" initiative. Together, MLB and Scotts are encouraging youth and communities to get outside and enjoy activities, like baseball and softball.

Grant Award Packages

Each refurbishment will include one (1) infield makeover that incorporates a new infield with sod and infield dirt. Other enhancements may include:

- New pitcher's mound
- New home plate and batter's boxes
- New bases and anchors

CRITERIA AND REQUIREMENTS

Grant applications will be evaluated on the following criteria:

- The ability of the grant to increase youth participation and improve the quality of youth baseball and softball programming
- The ability of the grant to enhance the lives of underserved children
- The ability of the grant to improve the local community
- The organization's ability to leverage the grant to generate more support for the field and programming

Application Requirements:

Incomplete applications will not be eligible for consideration. Applicants will be notified by e-mail as to the status of their proposal.

2023 Scotts® Field Refurbishment Program Calendar:

January 17 - February 28, 2023: Applications Accepted

March 1 - April 28, 2023: Grant Decisions
Week of May 1, 2023: Grant Awards Announcement
Spring & Summer 2023: Project Implementation

Attachments:

1. Scotts® Field Refurbishment Program Application 2023

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Alison Giesen, Director of Cultural, Parks & Recreation
Alison Giesen, Director of Cultural, Parks & Recreation
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 2/14/2023
Approved - 2/14/2023
Approved - 2/14/2023
Approved - 2/14/2023
Final Approval - 2/15/2023

Scotts® Field Refurbishment Program Application

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Program Background

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Each refurbishment will include one (1) infield makeover that incorporates a new infield with sod and infield dirt. Other enhancements may include:

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- The ability of the grant to improve the local community
- The organization's ability to leverage the grant to generate more support for the field and programming

Application Requirements:

Incomplete applications will not be eligible for consideration. Applicants will be notified by e-mail as to the status of their proposal.

2023 Scotts® Field Refurbishment Program Calendar:

January 17 - February 28, 2023: Applications Accepted

March 1 - April 28, 2023: Grant Decisions

Week of May 1, 2023: Grant Awards Announcement

Spring & Summer 2023: Project Implementation

1. **Requested Motion:**

Meeting Date: February 21, 2023

1st Reading and Public Hearing on proposed Ordinance 23-04 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 13-23, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 200 AND 275 ESTERO BLVD., FORT MYERS BEACH; PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on March 6, 2023 at 9:00 AM.

Why the action is necessary:

The request changes the uses in the CPD zoning district to allow live aboard vessels. The Town Council must read the ordinance at two public hearings.

What the action accomplishes:

Adopting the ordinance will allow the applicant to have live aboard vessels in the marina.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance.

4. **Submitter of Information:**

5. **Background:**

JABO LLC, owner of 200 and 275 Estero Blvd, Pink Shell, is requesting an amendment to the existing CPD, resolution 13-23 (Exhibit B), to allow the mooring of live aboard vessels at the existing docks, in compliance with the submerged land lease.

Attachments:

1. Ordinance 23-04
2. Exhibit A Uses and Conditions List
3. Staff Report TC
4. Exhibit B Resolution 13-23
5. Exhibit C Existing MCP
6. Exhibit D Submerged land lease mod approval
7. Exhibit E DEP Compliance Inspection
8. Exhibit F Pink Shell Application
9. Exhibit G Request to Withdraw Mobile Food Unit
10. Exhibit H Postcard to Adjacent Properties

Financial Impact:

unknown

6. **Alternative Action**

Amend the proposed ordinance and schedule a second hearing.

7. **Management Recommendations:**

Set a second hearing for the adoption of the proposed ordinance 23-04.

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning
Steve Poposki, Community Development Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 2/2/2023
Approved - 2/2/2023
Approved - 2/3/2023
Approved - 2/10/2023
Final Approval - 2/15/2023

ORDINANCE 23-04

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 13-23, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 200 AND 275 ESTERO BLVD., FORT MYERS BEACH; PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend. or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, JABO LLC ("Applicant"), the owner of the property generally located at 200 & 275 Estero Blvd. and identified by STRAP numbers 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0340 & 24-46-23-W1-00700.037A ("Property"), filed an application to amend the Property's Commercial Planned Development ("CPD") to allow live aboard vessels at the existing docking facility; and

WHEREAS, the Property is in the Mixed Residential and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach, and is under common control of the Applicant as listed in the public records of Lee County Property Appraiser; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 18, 2023, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 6-0 to recommend approval of the CPD amendment with conditions, and

WHEREAS, on February 21, 2023 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Fort Myers Beach Land Development Code ("LDC"); and

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on March 6, 2023; at which time the Town Council gave full and complete consideration to the request of the Applicant,

the recommendation of the LPA, the recommendation of staff, including the consideration and findings in the staff report, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council finds the proposed CPD amendment with conditions of approval are **consistent/not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve/approve with conditions/deny** the Application.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof that the requested zoning amendment **does/does not** meet the requirements of the Town Comprehensive Plan and LDC and approving the request to allow the use of on-site brewing and consumption of malt liquor with conditions **is/is not** in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES/DENIES** the requested amendment to the CPD zoning of the Property.

Section 3. Town Resolution 13-23 is repealed and replaced by this Ordinance and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 9. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 10. This Ordinance will take effect immediately upon adoption by the Town Council.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this ____ day of May 2022.

Dan Allers, Mayor _____
Jim Atterholt, Vice Mayor _____
John R King, Council Member _____
Bill Veach, Council Member _____
Karen Woodson, Council Member _____

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

John R. Herin, Jr., Town Attorney

Exhibits

Exhibit B Schedule of Uses and Conditions of Approval

Exhibit A – List of Uses & Conditions

The Town Council APPROVES the applicant's request for an amendment to the existing Pink Shell CPD. Approval is subject to the Schedule of Allowable Uses and seven (7) Conditions of Approval, set forth with specificity below. Underline indicates language added during this amendment to the CPD, strikethrough indicates language removed during this amendment to the CPD.

Schedule of Allowable Uses

Residential

Principal:

- Dwelling unit, single-family (one existing cottage only)
- Dwelling unit, two family (one existing cottage only)
- Dwelling unit, multi-family (92 existing units in White Sands Villas only)
- Group Quarters (See condition 6 Resolution 10-05¹)

Accessory:

- Residential accessory uses

Lodging

Principal:

- Hotel/motel (43 existing guest units in Captiva Villas only)
- Rental of any permitted dwelling unit for periods of one day or longer
- Resort
- Timeshare Units

Accessory:

Resort accessory uses, including:

- Parking
- Rental of beach furniture and cabanas
- Boat rental
- Charter and tour boats
- Personal watercraft operations office
- Parasailing operations office
- Sailing office
- Docks for use by water taxi or water shuttle (See condition 7 Resolution 10-06²)
- Meeting space
- Kids camp and crafts
- Signs
- Business center

Subordinate commercial uses

Office

Principal:

- NONE

Accessory:

- Administrative Office

Exhibit A – List of Uses & Conditions

Home occupation (no outside help) Commercial accessory use

Retail

Principal:

Recreational facilities - commercial. in conjunction with a membership
Subordinate commercial uses including restaurant, personal services,
retail store (small)

Accessory:

ATM

On-premises and package sale for off-premises consumption of alcoholic
beverage

Marine

Principal:

NONE

Accessory:

Dock (for lease to non-occupants of the principal use)

Dock (for use by resort occupants)

Live aboard vessel mooring slips (in compliance with submerged land
lease)

Civic

Principal:

Beach or bay access

Essential services

Essential service equipment

Park, neighborhood

¹ Resolution 10-05, Condition 6. *Any lawfully existing dwelling unit, guest unit, or timeshare unit within the subject property may be used as group quarters for employee housing without regard for occupancy time limitations applicable to guests as set forth in LDC Section 34-1801(b)(4). Occupancy of group quarters is limited solely to bona fide employees of the Pink Shell Resort, including the businesses lawfully operating on the subject property in compliance with this zoning resolution and all other applicable regulations. Under no circumstances may occupancy of any dwelling unit, guest unit, or timeshare unit exceed the lawful occupancy established by applicable building, fire, and life-safety codes. If no building, fire, or life-safety code provisions are more restrictive, the number of occupants of any individual living unit used for group quarters must not exceed four adults, or one family, whichever is larger. The term "family" is defined in LDC Section 34-2, as may be amended from time to time.*

² Resolution 10-06, Condition 7. *Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41 boat slips currently are allowed by the state submerged land lease. Use of submerged land must*

Exhibit A – List of Uses & Conditions

comply with all applicable local, state, and federal regulations. ~~No live-aboard uses are permitted.~~ Cruise ships are prohibited as provided by LDC Sections 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion of the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.

Conditions of Approval: In approving the amendment to the CPD zoning of the Property, the following conditions of approval are imposed on the Applicant and the Property.

1. The terms and conditions of all previous resolutions shall continue in full force except as expressly altered by this amendment.
2. All development must be consistent with the Master Concept Plan (MCP) titled "Pink Shell CPD Gulf Side" or "Pink Shell CPD Bay Side" and marked with a revision date of August 27, 2013 attached as Exhibit A.
3. The approved schedule of uses are limited to those detailed on this document, ~~the attached Exhibit A F.~~
4. (Condition 7 of Resolution 10-06, amended as follows) Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. ~~No live-aboard uses are permitted.~~ Cruise ships are prohibited as provided by LDC Section 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, with the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.
5. Slip numbers 1, 2, 3 and 4 may not be used as live-aboard vessel mooring slips

Exhibit A – List of Uses & Conditions

as long as 309 Estero Blvd is under separate ownership from JABO LLC.

6. The applicant must coordinate the clarification of the existing CPD ownership, addresses and parcel IDs, conditions and deviations to clarify which properties are included and which are excluded from the regulations created by the multiple ordinances bearing the Pink Shell Resort name, starting with Z-82-170. The applicant shall create a new master ordinance that contains all approved uses for each property that has been included in Pink Shell rezonings and amendments, clarifying any properties that have been withdrawn from the CPD.
7. All boats, docked at the Pink Shell marina, must be removed upon issuance of a hurricane warning for the Town of Ft. Myers Beach.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Commercial Planned Development Amendment

CASE NUMBER: DCI Rezoning, 20220032

CASE NAME: 200 and 275 Estero Blvd, amend the existing Commercial Planned Development to allow live-aboard mooring slips at the marina

TOWN COUNCIL HEARING DATE: February 21, 2023 at 9 AM

LPA HEARING DATE: January 18, 2023 at 9:00 AM

STAFF RECOMMENDATION: Approve with conditions

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP/ Jason Green AICP, CFM

I. APPLICATION SUMMARY

Applicant/Owner: JABO LLC, Bill Waichulis

Request: The applicant is requesting an amendment to the existing CPD to allow live-aboard vessels in association with the submerged land lease.

Subject property: Exhibit C – Adopted Master Concept Plan

Physical Address: 200 & 275 Estero Blvd

STRAP #: 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0340 &
24-46-23-W1-00700.037A

FLU: Mixed Residential & Recreation

Zoning: Commercial Planned Development

Adjacent zoning and land uses:

North:	Bay, Matanzas Pass
South:	ENVIRONMENTALLY CRITICAL (EC) Recreation
East:	COMMERCIAL PLANNED DEVELOPMENT (CPD) & COMMERCIAL RESORT (CR) Mixed Residential
West:	COMMERCIAL PLANNED DEVELOPMENT (CPD) Mixed Residential

II. BACKGROUND AND ANALYSIS

Background:

JABO LLC, owner of 200 and 275 Estero Blvd, Pink Shell, is requesting an amendment to the existing CPD, resolution 13-23 (Exhibit B), to allow the mooring of live aboard vessels at the existing docks, in compliance with the submerged land lease (Exhibit D).

The Pink Shell CPD has a long history, starting with the original rezoning in 1982 (Z-82-170). Staff was able to locate 15 resolutions adopted by Lee County and the Town of Fort Myers Beach, which enable the current development and uses. Because of the large number of resolutions adopted by the County and the Town and the myriad property descriptions and addresses, staff is recommending a condition that would require the applicant to provide a master ordinance that clarifies all associated addresses, parcel IDs, applicable conditions, uses, and deviations.

The existing approved CPD resolution allows the following uses:

Residential

Principal:

- Dwelling unit, single-family (one existing cottage only)
- Dwelling unit, two family (one existing cottage only)
- Dwelling unit, multi-family (92 existing units in White Sands Villas only)
- Group Quarters (See condition 6 Resolution 10-05¹)

Accessory:

Residential accessory uses

Lodging

Principal:

- Hotel/motel (43 existing guest units in Captiva Villas only)
- Rental of any permitted dwelling unit for periods of one day or longer
- Resort
- Timeshare Units

Accessory:

Resort accessory uses, including:

- Parking
- Rental of beach furniture and cabanas
- Boat rental
- Charter and tour boats
- Personal watercraft operations office
- Parasailing operations office
- Sailing office
- Docks for use by water taxi or water shuttle (See condition 7 Resolution 10-06²)
- Meeting space
- Kids camp and crafts
- Signs
- Business center

Subordinate commercial uses

Office

Principal:

NONE

Accessory:

- Administrative Office
- Home occupation (no outside help) Commercial accessory use

Retail

Principal:

- Recreational facilities - commercial. in conjunction with a membership
- Subordinate commercial uses including restaurant, personal services, retail store (small)

Accessory:

- ATM
- On-premises and package sale for off-premises consumption of alcoholic beverage

Marine

Principal:

NONE

Accessory:

- Dock (for lease to non-occupants of the principal use)
- Dock (for use by resort occupants)

Civic

Principal:

- Beach or bay access
- Essential services
- Essential service equipment
- Park, neighborhood

¹ Resolution 10-05, Condition 6. *Any lawfully existing dwelling unit, guest unit, or timeshare unit within the subject property may be used as group quarters for*

employee housing without regard for occupancy time limitations applicable to guests as set forth in LDC Section 34-1801(b)(4). Occupancy of group quarters is limited solely to bona fide employees of the Pink Shell Resort, including the businesses lawfully operating on the subject property in compliance with this zoning resolution and all other applicable regulations. Under no circumstances may occupancy of any dwelling unit, guest unit, or timeshare unit exceed the lawful occupancy established by applicable building, fire, and life-safety codes. If no building, fire, or life-safety code provisions are more restrictive, the number of occupants of any individual living unit used for group quarters must not exceed four adults, or one family, whichever is larger. The term "family" is defined in LDC Section 34-2, as may be amended from time to time.

² Resolution 10-06, Condition 7. *Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. No live-aboard uses are permitted. Cruise ships are prohibited as provided by LDC Sections 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion of the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.*

Analysis:

The applicant proposes the removal of the prohibition on liveaboard boats at the existing docks. This prohibition is explained in the note ², above. The Pink Shell property has a submerged land lease for the docks and the prohibition on liveaboards was included in the original DEP Submerged Land Leases in the past. That prohibition was removed from the 2017 renewal and allowed 17 liveaboard slips, the 2022 approved modification to the DEP Submerged Land Lease, attached as Exhibit D, indicates that DEP has approved 39 designated boat slips for liveaboards.

A liveaboard is defined as a vessel docked at that facility and inhabited by a person or persons for any five consecutive days or a total of ten days within a thirty-day period. Per the DEP permit, in no event shall such liveaboards status exceed six months within any 12-month period, nor shall any such vessel constitute a legal or primary residence.

The existing docks, pump out facility and all state requirements are in compliance with the submerged land lease, as indicated by the attached DEP compliance inspection report (Exhibit E).

Neighborhood Compatibility:

The proposed addition of mooring slips for live-aboard vessels at the existing marina will be unlikely to negatively impact adjacent properties. In order to decrease the likelihood that nearby residences are affected by additional noise that may be associated with a live-aboard guests, a condition has been added which would not allow live-aboard vessels to moor at the four slips numbered 4, 3, 2, and 1, which are closest to 309 Estero Boulevard.

Considerations, Findings and Conclusions:

LDC Sec. 34-85 and 34-216 sets forth the required findings and conclusions for the approval of a Planned Development Ordinance Amendment:

Sec. 34-85. Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

There is no error or ambiguity regarding the allowed uses for this development.

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

- The submerged land lease has changed and now allows the mooring of live-aboard vessels and the marina facility meets all code requirements for live-aboard vessels.

(3) The impact of a proposed change on the intent of this chapter.

No impact beyond those experienced by the resort, are anticipated.

(4) The testimony of any applicant.

To be heard at the public hearing.

(5) The recommendation of staff and of the local planning agency.

Provided in this staff report and associated presentation.

(6) The testimony of the public.

To be heard at the public hearing.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

This proposed amendment is consistent with the goals, objectives, policies and intent of the Comprehensive Plan.

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

The proposed uses meet or exceed all environmental quality and creation of nuisance performance standards and locational standards.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Urban services are available and adequate for these uses.

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

The request will not cause any damage to the environment or natural resources.

(11) 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 proposed uses are compatible with existing uses and will not cause damage, nuisance or other detriment. To ensure no negative impacts from live-aboard vessels to adjacent properties, a condition has been included to disallow the mooring of live-aboard vessels nearest the residential properties to the west of the marina.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

The proposed uses are not anticipated to have any effect on transportation facility capacity.

The request is in compliance with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code.

Sec. 34-216. The recommendation made to the town council must be supported by the guidelines set forth in Sec. 34-85 of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

a. The proposed use or mix of uses is appropriate at the subject location;

The live-aboard vessels will be at a facility that provides the necessary services for live-aboard vessels and will not be allowed near the residential property to the west.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Conditions have been added to safeguard the public interest.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

The proposed conditions are related to any noise concerns associated with the live-aboard use adjacent to residential properties.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

The proposed use is a minor modification to the existing resort use. The marina use is existing and live-aboard vessels will not be allowed closest to the Commercial Resort property to the east.

III. RECOMMENDATION

At the LPA hearing on January 18th, 2023, the LPA recommended approval of the requested amendment with conditions. In addition to the staff proposed conditions the LPA recommended a condition requiring that boats must be removed when an evacuation order is in effect for the island. The applicant agreed to that condition and it has been included in the conditions listed below and the ordinance.

Staff finds that the amendment to the CPD meets the required findings and conclusions for the approval of a Planned Development Ordinance Amendment found in Sec. 34-85 and 34-216 of the land development code. Staff recommends approval of DCI20220032 to allow the live-aboard vessels at the Pink Shell Resort, with the attached conditions.

IV. CONDITIONS OF APPROVAL

1. The terms and conditions of all previous resolutions shall continue in full force except as expressly altered by this amendment.
2. All development must be consistent with the Master Concept Plan (MCP) titled "Pink Shell CPD Gulf Side" or "Pink Shell CPD Bay Side" and marked with a revision date of August 27, 2013 attached as Exhibit C.
3. The approved schedule of uses are limited to those detailed on the attached Exhibit A.
4. (Condition 7 of Resolution 10-06, amended as follows) Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. ~~No live-aboard uses are permitted.~~ Cruise ships are prohibited as provided by LDC Section 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, with the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.
5. Slip numbers 1, 2, 3 and 4 may not be used as live-aboard vessel mooring slips as long as 309 Estero Blvd is under separate ownership from JABO LLC.
6. The applicant must coordinate the clarification of the existing CPD ownership, addresses and parcel IDs, conditions and deviations to clarify which properties

are included and which are excluded from the regulations created by the multiple ordinances bearing the Pink Shell Resort name, starting with Z-82-170. The applicant shall create a new master ordinance that contains all approved uses for each property that has been included in Pink Shell rezonings and amendments, clarifying any properties that have been withdrawn from the CPD.

7. All boats, docked at the Pink Shell marina, must be removed upon issuance of a warning for the Town of Ft. Myers Beach.

V. APPROVED DEVIATIONS

No deviations have been requested associated with this amendment. All previously approved deviations apply.

Staff Report Exhibits:

- A – List of Uses and Conditions
- B – Resolution 13-23
- C – Master Concept Plan
- D – Submerged Land Lease Modification Approval
- E – DEP Compliance Inspection
- F – Application Documents
- G – Request to withdraw mobile food unit use
- H – Postcards to Adjacent Properties

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 13-23
DCI2013-0002 Pink Shell CPD Amendment

WHEREAS, Beverly Grady, Esq., authorized agent for New Pink Shell, LLC, owner of property located at 171-191, 200, 251-281 & 275/322 Estero Boulevard Fort Myers Beach, Florida has requested an amendment to the existing CPD, known as the Pink Shell CPD, to add 'Recreation, Commercial with membership' to the approved schedule of uses and allow the use of the parking areas on Lots 38 & 39 for parking for employees, guests and members; and

WHEREAS, the subject property is located in both the Mixed Residential and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP numbers are 24-46-23-W1-00700.0320, 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0290, 24-46-23-W1-00700.0340, 24-46-23-W1-00700.037A; and

WHEREAS, the legal description for the subject property is attached as *Exhibit A*; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 17, 2013; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-212.

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on October 21, 2013, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-013, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-212.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2013-013 and the standards for granting variances, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for an amendment to an existing Commercial Planned Development to add 'Recreation, Commercial with membership' to the approved schedule of uses and enable the use of the parking areas on Lots 38 & 39 for parking for employees, guests and members subject to the following conditions:

CONDITIONS OF APPROVAL

1. *The terms and conditions of all previous resolutions shall continue in full force except as expressly altered by this amendment.*
2. *All development must be consistent with the Master Concept Plan (MCP) titled "Pink Shell CPD Gulf Side" or "Pink Shell CPD Bay Side" and marked with a revision date of August 27, 2013 attached as Exhibit B.*

3. *The definition of 'Recreational, Commercial with membership' will be as follows: Includes but not limited to resort accessory uses, subordinate commercial uses including food and beverage services, personal services, fitness facility, pools, beach access and docks.*
4. *The approved schedule of uses are limited to those detailed on the attached Exhibit G*
5. *The total number of commercial memberships is not to exceed 350.*

APPROVED DEVIATIONS

All previously approved deviations have been consolidated into one document, attached as *Exhibit F*.

FINDINGS AND CONCLUSIONS

Based upon an analysis of the application and the standards for approval of a planned development rezoning found in Section 34-85 and 34-216 of the LDC, LPA recommends that the Town Council make the following findings and conclusions:

1. *Whether there exists an error or ambiguity which must be corrected.*
No error or ambiguity exists on the subject property; the application is to request amendments to the approved schedule of uses to allow 'Recreation, Commercial with membership' and to allow parking for employees, guests and members on Lots 38 & 39. (see *Exhibit B* for the Master Concept Plan). **APPROVE**
2. *Whether there exist changed or changing conditions which make approval of the request appropriate.*
The applicant is requesting a change in the existing schedule of uses for the Pink Shell Resort. This request change the conditions of the approved CPD requires an amendment to the CPD. The applicant suggests that additions of 'Recreation, Commercial with membership' and modifications to parking on Lots 38 & 39 will not result in any negative impacts and will operate essentially in the same manner as currently exists on the subject property. However, Staff remains concerned about the undefined number of memberships and the total number of parking spaces provided. **APPROVE**
3. *The impact of a proposed change on the intent of this chapter.*
The proposed amendment to the CPD will implement the provisions found in Section 34-214, procedure for amending planned developments. The application and request, therefore, are consistent with the provisions found within Chapter 34 of the Land Development Code. **APPROVE**
4. *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*
As discussed in the analysis section of this report, the requested amendment is consistent with the Comprehensive Plan, particularly with the provisions within both the Recreation and Mixed Residential future land use categories that require commercial zoning changes to comply with the planned development zoning process. **APPROVE**
5. *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*
The request to amend the CPD for the Pink Shell Resort to include 'Recreation, Commercial with membership' ad to modify allowable parking on Lots 38 & 39 generally meets all performance and locational standards for the proposed uses. No new structures or

substantial improvements are proposed, nor are any deviations from LDC regulations requested. **APPROVE**

6. *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

The applicant has indicated that urban services are available and adequate to serve the proposed changes. **APPROVE**

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

The request to amend the schedule of uses and modify parking will have no impact on environmentally critical areas or natural resources. However, any lighting visible from the beach and/or included on any future plans development order plans will be required to meet all applicable environmental codes including, but not limited to, Sea Turtle lighting requirement as found in LDC Section 14-79. **APPROVE**

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 request to amend the CPD for the Pink Shell Resort to include 'Recreation, Commercial with membership' and to modify allowable parking on Lots 38 & 39 is compatible with surrounding uses. The applicant is not requesting any new uses just the ability to offer the recreation facilities already existing on the subject property on a commercial membership level. This is compatible with existing or planned uses and will not cause damage, hazard, nuisance, or other detriment to persons or property. **APPROVE**

9. *Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.*

The existing trolley stop and sidewalk from the resort to the trolley stop is consistent with the standards set forth in LDC Section 10-442. **APPROVE**

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Kosinski and seconded by Council Member List, and upon being put to a vote, the result was as follows:

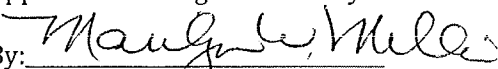
Alan Mandel, Mayor	AYE
Jo List	AYE
Dan Andre	AYE

Joe Kosinski, Vice Mayor	AYE
Bob Raymond	AYE

DULY PASSED AND ADOPTED THIS **21st** day of **OCTOBER, 2013**.

By: 
Alan Mandel, Mayor

Approved as to legal sufficiency:

By: 
Fowler White Boggs, P.A.
Town Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

EXHIBIT A

LEGAL DESCRIPTION:

A TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 2,3,4,5,6,8,9 AND 10 OF GULFSHORE, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 88, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA;

LOTS 34,35, AND 36 AND NORTHWESTERLY 25 FEET OF LOT 33 OF UNIT NO. 4, ISLAND SHORES, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 37, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LOTS 29 THROUGH 32 AND THE NORTHWEST 1/2 OF LOT 28, OF BLOCK "D", UNIT NO. 4, ISLAND SHORES, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. LOTS 33,34,35,36,38 AND 39, BLOCK "D", ISLAND SHORES CLUB SECTION, A SUBDIVISION, AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

LOTS 37 THROUGH 42 OF ISLAND SHORES CLUB SECTION, A SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

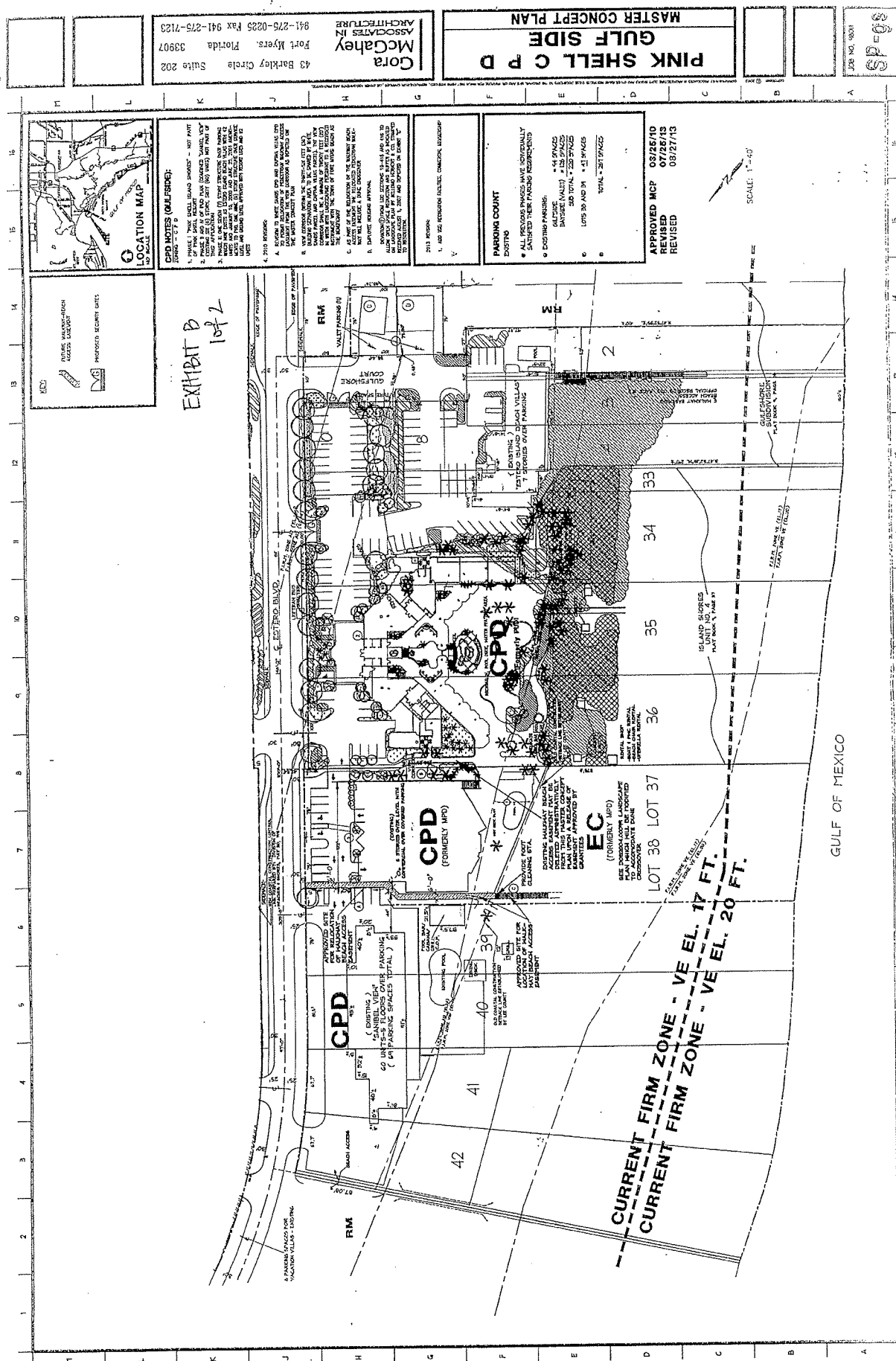
LESS ANY PORTION THEREOF LYING BELOW THE MEAN HIGH TIDE LINE OF THE MANTANZAS PASS AND THE EROSION CONTROL LINE OF THE GULF OF MEXICO.

LESS AND EXCEPT THE FOLLOWING:

A TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA ALSO BEING PART OF LOTS 2,3,4,8 AND 9 OF GULFSHORE SUBDIVISION, PLAT BOOK 9, PAGE 88 ALSO PART OF LOTS 33 AND 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULFSHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.47°52'35"E. FOR 76.76 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 50.00 FEET; THENCE N.40°31'28"E. FOR 14.49 FEET; THENCE N.50°19'25"W. FOR 27.57 FEET; THENCE N.59°22'01"W. FOR 20.23 FEET; THENCE S.39°40'35"W. FOR 31.50 FEET; THENCE S.59°17'28"E. FOR 2.30 FEET; THENCE S.30°21'33"W. FOR 15.24 FEET; THENCE N.58°42'37"W. FOR 3.31 FEET; THENCE S.29°58'13"W. FOR 29.45 FEET; THENCE S.48°42'33"W. FOR 77.19 FEET; THENCE S.40°09'10"E. FOR 31.53 FEET; THENCE S.07°36'21"E. FOR 57.08 FEET; THENCE S.47°52'35"W. FOR 233.95 FEET TO A POINT ON THE EROSION CONTROL LINE AS RECORDED IN PLAT BOOK 70, PAGE 25 OF THE PUBLIC RECORDS OF LEE, COUNTY, FLORIDA; THENCE S.34°48'21"E. ALONG SAID EROSION CONTROL LINE FOR 40.76 FEET; THENCE S.37°26'30"E. FOR 108.35 FEET TO THE SOUTHEREASTERLY LINE OF SAID LOT 2; THENCE N.47°52'35"E. ALONG SAID SOUTHEASTERLY LINE FOR 351.39 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPT SANIBEL VIEW VILLAS, A CONDOMINIUM AS RECORDED IN O.R. 3559, PAGE 222 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND WHITE SAND VILLAS, A CONDOMINIUM AS RECORDED IN O.R. 4203, PAGE 2100 OF SAID PUBLIC RECORDS.



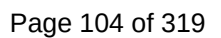


EXHIBIT F

Deviations – 2001 Captiva Villas – Resolution 01-26

1. Deviation from LDC Section 34-940 which requires Mixed Use Planned Developments to have at least 300 or more dwelling units and either 100,000 square feet of commercial floor area or be located on a parcel of 10 or more acres, to allow the requested intensities.
2. Deviation from LDC Section 34-935e(4) which requires buildings be separated a distance of one-half the sum of the building heights, to allow separation of 36 feet instead of 82 feet, and to allow a separation 44 feet instead of 59 feet.
3. Deviation from LDC Section 34-802 to allow hotel units with a maximum of 750 square feet and 1300 square feet. At least 14 of the 43 units are limited to a maximum of 750 square feet. In no case will the total area of the 43 units exceed 28,219 square feet.
4. Deviation from LDC Section 34-2175 which states buildings may not exceed 25 feet in height above base flood elevation to allow a building 83 feet in height above base flood elevation. No more than 7 floors over one ground floor of parking only will be developed.
5. Deviation from Land Development Code 34-2017(a) which requires parking lot aisles and spaces have a paved, dust free, all weather surface, to allow an unpaved surface (no parking lots with the following conditions:
 1. The alternative parking surface must be a stabilized surface of clean (washed) angular gravel or other similar porous material over a well-drained base. The surface will be continually maintained in a dust free manner. Stabilization may be accomplished by turf blocks or proprietary cellular or modular porous paving systems installed in accordance with manufacturer's specifications.
 2. The disabled parking spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.
 3. Parking stripes will not be required on the alternative surface, however, parking bumpers must be used to identify the required number of parking spaces.

B. DEVIATIONS – 2010 Gulfside – Resolution 10-05

Deviation #1. Withdrawn

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The

Exhibit B - Ordinance 13-23 (8 of 9)

remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". Town Council **APPROVES** Deviation #2.

B. DEVIATIONS – 2010 Bayside – Resolution 10-06

Deviation #1. Withdrawn

Deviation #2. Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C". **The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-a-way for access to the proposed trash compacter. Town Council APPROVES deviation #2 as modified.**

EXHIBIT 4

SCHEDULE OF USES
(Underling depicts new uses)

Residential

Principal:

Dwelling unit, single-family (one existing cottage only)
Dwelling unit, two family (on existing cottage only)
Dwelling unit, multi-family (92 existing units in White Sands Villas only)
Group Quarters (See condition 6 Resolution 10-05)

Accessory:

Residential accessory uses

Lodging

Principal:

Hotel/motel (43 existing guest units in Captiva Villas only)
Rental of any permitted dwelling unit for periods of one day or longer
Resort
Timeshare units

Accessory:

Resort accessory uses, including:

Parking
Rental of beach furniture and cabanas
Boat rental
Charter and tour boats
Personal watercraft operations office
Parasailing operations office
Sailing office
Docks for use by water taxi or water shuttle (See Condition 7 Resolution 10-06)
Meeting space
Kids camp and crafts
Signs
Business center
Subordinate commercial uses

Office

Principal:

NONE

Accessory:

Administrative Office
Home occupation (no outside help)
Commercial accessory uses

Retail

Principal:

Recreational facilities – commercial, in conjunction with a membership*
Subordinate commercial uses including restaurant, personal services, retail store (small)

Accessory:

ATM
On-premises and package sale for off-premise consumption of alcoholic beverages

Marine

Principal:

NONE

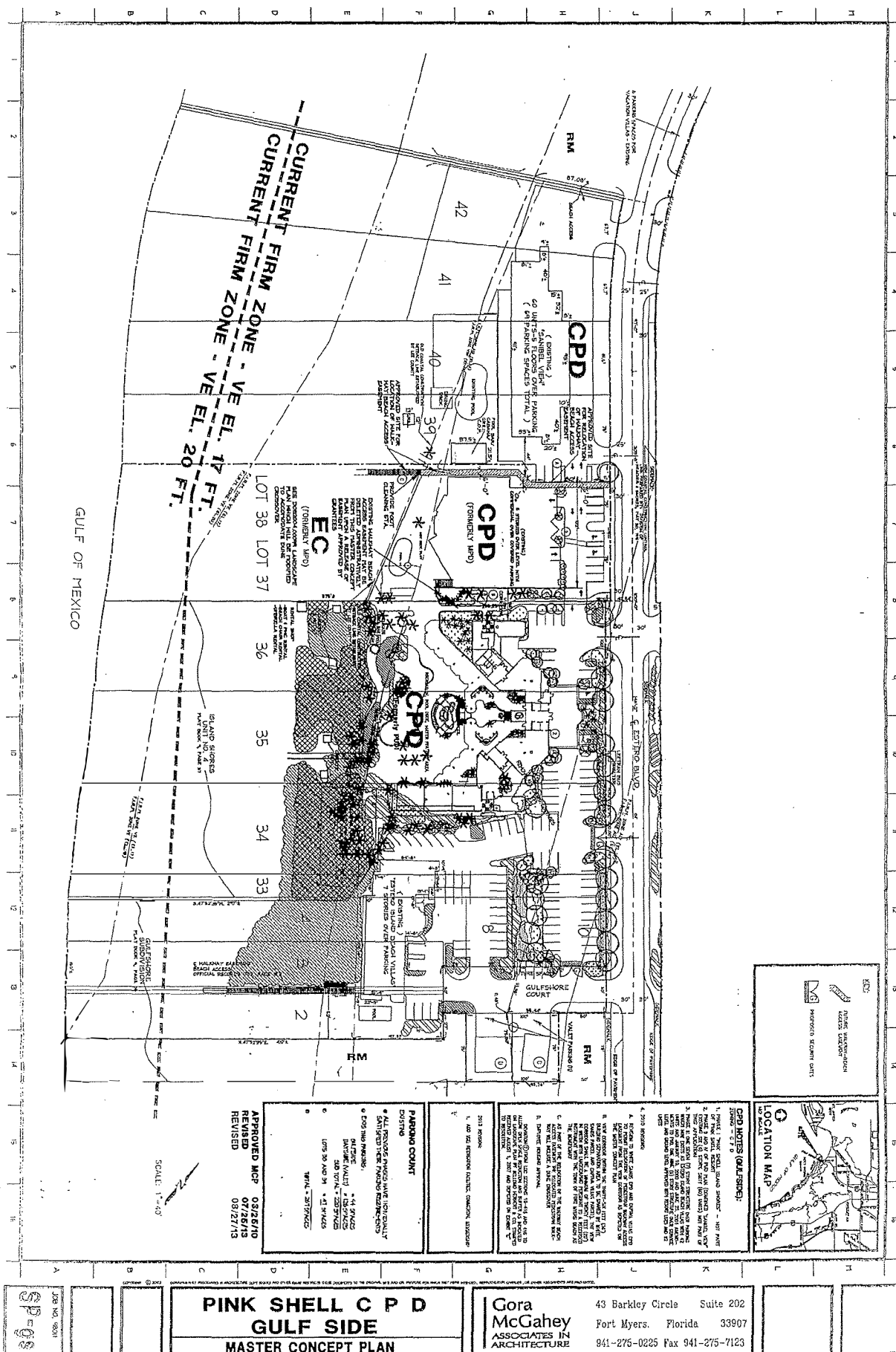
Accessory:

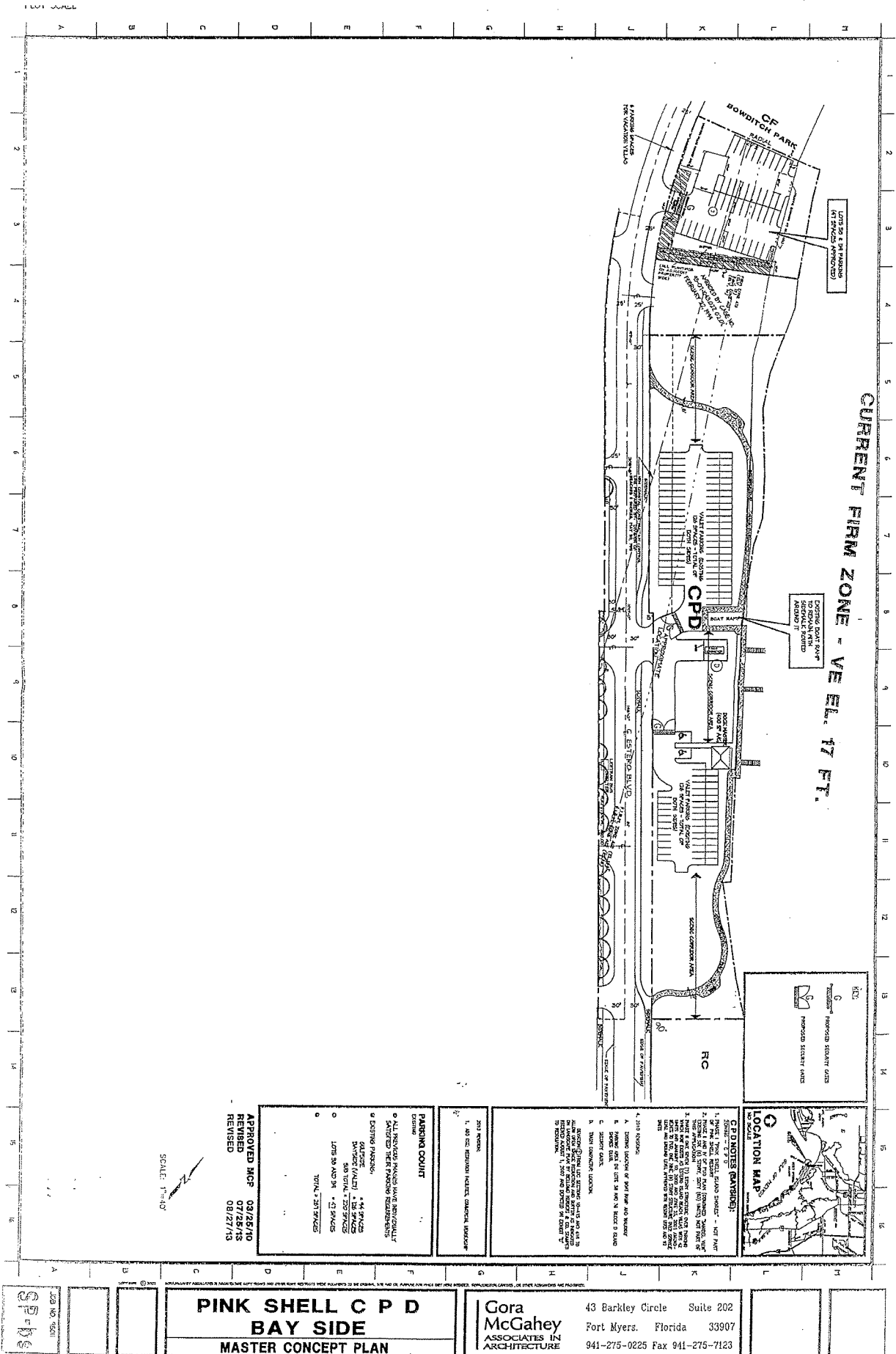
Dock (for lease to non-occupants of the principal use)
Dock (for use by resort occupants)

Civic

Principal:

Beach or bay access
Essential services
Essential service equipment
Park, neighborhood







FLORIDA DEPARTMENT OF Environmental Protection

South District
PO Box 2549
Fort Myers FL 33902-2549
SouthDistrict@FloridaDEP.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

10/25/2022

Jabo LLC- Pink Shell- Bill Waichulis
275/322 Estero Blvd
Fort Myers, FL 33931
BWaichulis@boykin.com

File No.: 0185701-008 EM, Lee County
Modification of Permit No(s): 0185701-005 EI
BOT File No: 360010245

Dear Jabo LLC- Pink Shell- Bill Waichulis :

Your request to modify the Permit No. 005 has been received and reviewed by Department staff.

The proposed permit modification is to:
Increase the desired number of liveaboards

After review by staff, the proposed modification is not expected to adversely affect water quality and will not be contrary to the public interest.

Modifications to the permit are shown as follows: deletions are struck through (i.e. ~~abc~~) and additions are underlined (i.e. abc).

Liveaboards shall be authorized at ~~17~~ 39 designated boat slips with permanent hard-piped connections to a fixed sewage pumpout facility connected to the Lee County Utilities wastewater treatment system. Each liveaboard slip shall be clearly designated as a liveaboard slip by a sign at each liveaboard slip that is visible to marina patrons. A liveaboard shall be defined as a vessel docked at the facility that is inhabited by person or persons for any five consecutive days or a total of ten days within a thirty-day period. Additional liveaboard slips at the permitted docking facility may be authorized by the Department through a modification to this permit if: (1) the permittee provides fixed, hard-piped sewage pumpout connections to those liveaboard slips; (2) the permittee provides written documentation from the appropriate public utility provider demonstrating that the public utility provider has adequate capacity to accept and treat the additional sewage generated by such additional liveaboard vessels; and (3) the permittee is in compliance with the permit.

0 Project drawings have been stamped void. 14 project drawings have been added.

Since the proposed modification(s) along with the above amended permit conditions and monitoring requirements are not expected to result in any adverse environmental impact and water quality degradation, the permit is hereby modified as requested. By copy of this letter and the attached drawings, we are notifying all necessary parties of the modification.

This letter does not alter the permit other than as described above. This letter and referenced enclosures must be attached to the original permit. A copy of the original permit can be obtained here:

[https://depdms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&\[guid=23.1124700.1\]&\[profile=Permitting_Authorization\]](https://depdms.dep.state.fl.us:443/Oculus/servlet/shell?command=getEntity&[guid=23.1124700.1]&[profile=Permitting_Authorization])

The final documents required to execute the modified sovereign submerged land lease will be sent to you by the Department's Division of State Lands for execution. The Department intends to issue the modified sovereign submerged land lease, upon satisfactory execution of those documents, including payment of required fees and compliance with the modified permit conditions above.

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, any email address, any facsimile number, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190,

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 action is filed with the Clerk of the Department.

Thank you for applying to the Submerged Lands and Environmental Resource Permit Program. If you have any questions regarding this matter, please contact Jeffrey Passerello at 239-344-5620 or by email at Jeffrey.Passerello@FloridaDEP.gov When referring to this project, please reference the file number listed above.

Executed in Orlando, Florida

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Daniel Sensi
Environmental Administrator
South District

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this document and authorization to use sovereignty submerged lands, including all copies, were sent to the addressee and to the following listed persons:

U.S. Army Corps of Engineers, [Fort Myers](#)
Kathy Griffin, Division of State Lands, BOT # 360010245, Kathy.Griffin@dep.state.fl.us
Lee County Property Appraiser, dataservices@leepa.org

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52(7), F.S., with the designated Department clerk, receipt of which is hereby acknowledged.



Clerk

October 25, 2022
Date

Enclosures:

14 New Project drawings

SLIP MATRIX & LINE TABLE

BOAT SLIP MATRIX		LIVEBOARDS ALLOWED
SLIP #	SLIP SIZE	
#1	28' x 70'	YES
#2	22' x 70'	YES
#3	22' x 70'	YES
#4	22' x 70'	YES
#5	22' x 70'	YES
#6	22' x 70'	YES
#7	18' x 50'	YES
#8	18' x 50'	YES
#9	18' x 50'	YES
#10	18' x 50'	YES
#11	18' x 35'	YES
#12	28' x 35'	YES
#13	12' x 35'	YES
#14	12' x 27'	YES
#15	12' x 27'	YES
#16	12' x 35'	YES
#17	28' x 35'	YES
#18	18' x 50'	YES
#19	18' x 50'	YES
#20	22' x 70'	YES
#21	22' x 70'	YES
#22	18' x 50'	YES
#23	22' x 70'	YES
#24	22' x 68'	YES
#25	22' x 68'	YES
#26	22' x 68'	YES
#27	22' x 68'	YES
#28	18' x 68'	YES
#29	16' x 25'	YES
#30	16' x 25'	YES
#31	16' x 40'	YES
#32	12' x 30'	YES
#33	12' x 30'	YES
#34	12' x 30'	YES
#35	12' x 30'	YES
#36	33' x 100'	YES
#37	33' x 100'	YES
#38	11' x 56'	NO
#39	20.5' x 56'	NO
#40	12' x 40'	YES
#41	12' x 40'	YES

SURVEY CONSISTS OF SHEETS 1
THROUGH 13 AND IS NOT VALID
WITHOUT COMPLETE SET

SPECIFIC PURPOSE SURVEY

A PARCEL OF SUBMERGED LAND
LYING IN

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

Pg 13 REVISED

Received
Electronically

April 12, 2022
South District



LINE	BEARING	DISTANCE
L1	N26°56'33"W	1.29'
L2	N63°03'27"E	13.75'
L3	N18°03'27"E	3.77'
L4	N26°56'33"W	30.42'
L5	N26°56'33"W	30.42'
L6	N71°56'33"W	3.77'
L7	S63°03'27"W	13.75'
L8	N26°56'33"W	1.29'
L9	N28°03'20"W	7.25'
L10	S47°52'35"W	5.00'
L11	N47°52'35"E	110.42'
L12	N39°58'13"W	43.97'
L13	N47°05'31"E	39.64'
L14	N42°51'04"W	10.12'
L15	N47°08'56"E	56.08'
L16	N69°39'32"E	49.12'
L17	S15°25'01"E	4.00'
L18	N73°53'52"E	13.04'
L19	S35°37'08"E	47.11'
L20	S54°22'52"W	20.00'
L21	S35°37'08"E	36.00'
L22	S54°22'52"W	15.00'
L23	S35°37'08"E	44.00'
L24	S54°22'52"W	10.00'
L25	S35°37'08"E	42.03'
L26	S40°22'13"E	51.41'
L27	N43°45'32"E	9.88'
L28	S46°14'28"E	14.00'
L29	S43°45'32"W	1.65'
L30	S46°14'28"E	16.00'
L31	S43°45'32"W	1.23'
L32	S46°14'28"E	14.00'
L33	N43°45'32"E	13.03'
L34	N43°45'32"E	20.00'
L35	N43°45'32"E	20.55'
L36	S46°14'28"E	36.50'
L37	S42°36'24"E	45.89'
L38	S47°23'36"W	30.00'
L39	N42°36'24"W	17.00'
L40	S47°23'36"W	41.27'
L41	S44°09'25"E	4.66'
L42	S45°50'35"W	9.07'
L43	N53°54'24"W	60.91'
L44	N49°50'45"W	50.46'
L45	N50°01'33"W	50.48'
L46	N42°51'10"E	9.27'
L47	N35°38'49"W	15.29'
L48	N40°59'55"W	75.01'
L49	N39°58'41"W	75.05'
L50	N39°58'13"W	75.05'

TITLE:

SPECIFIC PURPOSE SURVEY



METRON
SURVEYING & MAPPING, LLC

LAND SURVEYORS-PLANNERS
LB# 7071

10970 SOUTH CLEVELAND AVENUE
UNIT #605
FORT MYERS, FLORIDA 33907
PHONE: (239) 275-8575
FAX: (239) 275-8457

www.metronfl.com

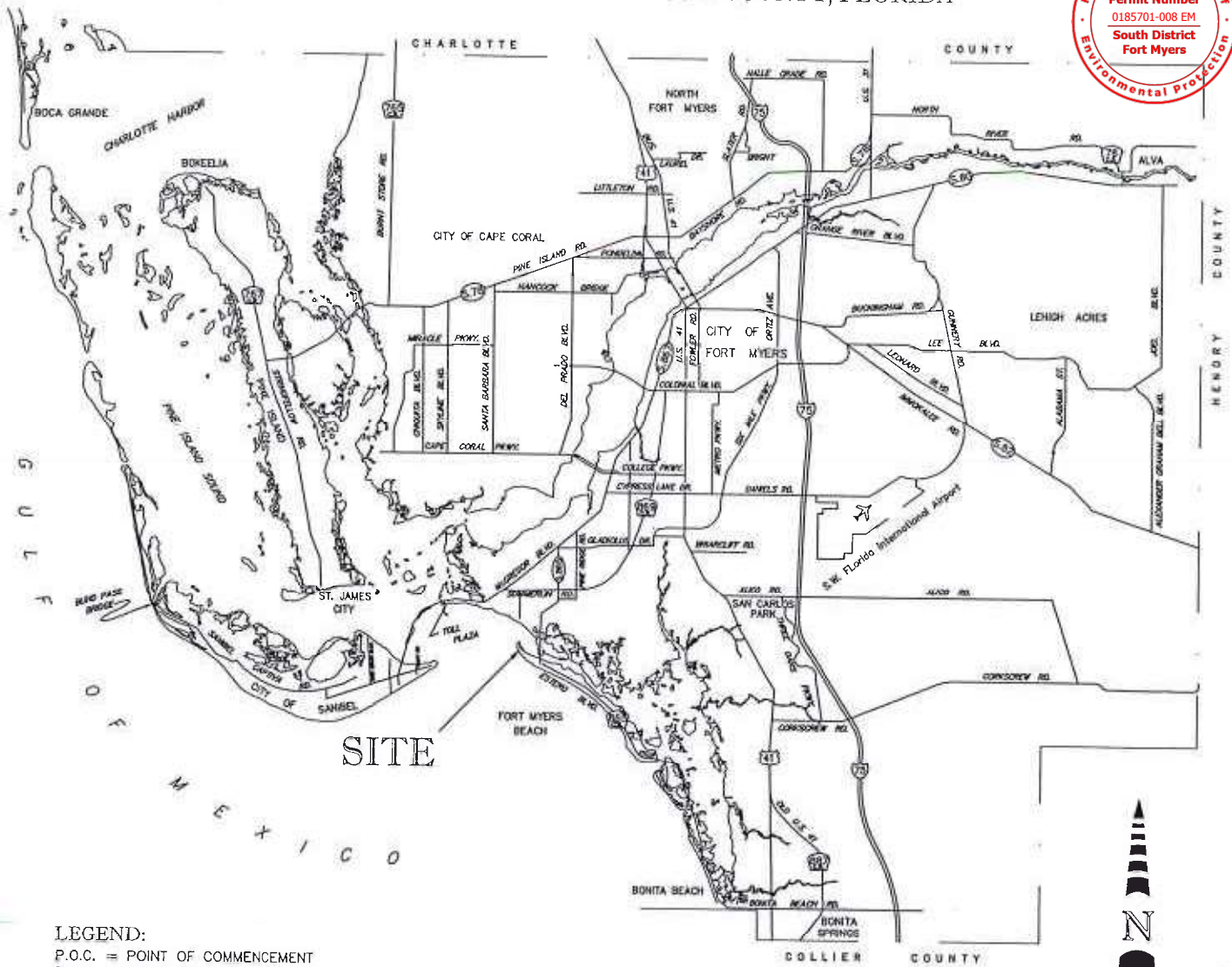
FILE NAME: 10627ASBUILT.dwg	FIELD BOOK/PAGE: N/A	PROJECT NO.: 10627	SHEET: 13 OF 13
SKETCH DATE: 3-22-13	DRAWN BY: BUD	SCALE: N/A	CHECKED BY: TLM
			(S-T-R) 24-46-23

SPECIFIC PURPOSE SURVEY

SURVEY CONSISTS OF SHEETS 1
THROUGH 13 AND IS NOT VALID
WITHOUT COMPLETE SET

OF
A PARCEL OF SUBMERGED LAND
LYING IN

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA



- LEGEND:**
- P.O.C. = POINT OF COMMENCEMENT
 - P.O.B. = POINT OF BEGINNING
 - F.I.R. = FOUND IRON ROD & CAP
 - ID. IDENTIFICATION
 - FND. = FOUND
 - N/D = NAIL & DISC
 - ENG. = ENGINEERING
 - F.I.P. = FOUND IRON PIPE & CAP
 - T.O.B. = TOP OF BANK
 - # = BOAT SLIP NUMBER
 - ⊠ = ELECTRIC SERVICE
 - ⊙ = CONCRETE PILING
 - ⊙ = WOOD PILING
 - SPC = PUMP-OUT CONNECTION
 - ⊕ = FIRE EXTINGUISHER
 - ⊕ = FIRE VALVE
 - ⊠ = GARBAGE RECEPTACLE
 - ⊠ = TRANSFORMER
 - ⊠ = FIBERGLASS DECK BOX
 - ⊠ = ALUMINUM LADDER
 - ⊠ = SANITARY PUMP CONTROLS
 - ⊠ = FIRE DEPARTMENT CONNECTION
 - ⊠ = FREE-STANDING ELECTRIC METER
 - ⊠ = SIGN

RECEIVED

AUG 28 2017

D.E.P. South District

TABLE OF CONTENTS

SHEET 1	COVER
SHEET 2	LEGAL DESCRIPTION
SHEET 3	UPLAND PROPERTY/PROPOSED KEY MAP
SHEETS 4-6	SKETCH OF LEASE & PROPOSED DETAILS
SHEET 7	ASBUILT KEY MAP
SHEETS 8-12	ASBUILT DETAILS
SHEET 13	BOAT SLIP MATRIX/LINE TABLE

TITLE: SPECIFIC PURPOSE SURVEY			
		10970 SOUTH CLEVELAND AVENUE UNIT #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com	
LAND SURVEYORS-PLANNERS LB# 7071			
FILE NAME: 10627ASBUILT.dwg	FIELD BOOK/PAGE: N/A	PROJECT NO.: 10627	SHEET: 1 OF 13
SKETCH DATE: 3-22-13	DRAWN BY: BUD	SCALE: N/A	CHECKED BY: TLM
			(S-T-R) 24-46-23

LEGAL DESCRIPTION

DESCRIPTION:
SUBMERGED LAND LEASE #1
SEE SHEET 4 OF 13 FOR SKETCH OF DESCRIPTION
(AS PREPARED BY THIS FIRM)
A PARCEL OF SUBMERGED LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, PART OF ESTERO PASS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 39, BLOCK "D" OF ISLAND SHORES CLUB SECTION AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE N.71°52'35"E. ALONG THE NORTHERLY LINE OF SAID LOT 39 FOR A DISTANCE OF 120.25 FEET TO THE WET FACE OF A CONCRETE SEAWALL; THENCE S.28°11'21"E. ALONG SAID SEAWALL FOR A DISTANCE OF 62.13 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED SUBMERGED LAND LEASE; THENCE N.63°03'27"E. FOR A DISTANCE OF 100.57 FEET; THENCE N.26°56'33"W. FOR A DISTANCE OF 1.29 FEET; THENCE N.63°03'27"E. FOR A DISTANCE OF 13.75 FEET; THENCE N.18°03'27"E. FOR A DISTANCE OF 3.77 FEET; THENCE N.26°56'33"W. FOR A DISTANCE OF 30.42 FEET; THENCE N.63°03'27"E. FOR A DISTANCE OF 133.19 FEET; THENCE S.26°56'33"E. FOR A DISTANCE OF 76.00 FEET; THENCE S.63°03'27"W. FOR A DISTANCE OF 133.19 FEET; THENCE N.26°56'33"W. FOR A DISTANCE OF 30.42 FEET; THENCE N.71°56'33"W. FOR A DISTANCE OF 3.77 FEET; THENCE S.63°03'27"W. FOR A DISTANCE OF 13.75 FEET; THENCE N.26°56'33"W. FOR A DISTANCE OF 1.29 FEET; THENCE S.63°03'27"W. FOR A DISTANCE OF 100.43 FEET TO AN INTERSECTION WITH THE WET FACE OF A CONCRETE SEAWALL, THENCE N.28°03'20"W. ALONG SAID SEAWALL FOR A DISTANCE OF 7.25 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 11,019 SQUARE FEET OR 0.25 ACRES, MORE OR LESS.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN)

AND ALSO

SUBMERGED LAND LEASE #2
SEE SHEET 5 OF 13 FOR SKETCH OF DESCRIPTION
(AS PREPARED BY THIS FIRM)
A PARCEL OF SUBMERGED LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, PART OF ESTERO PASS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST HALF (NW 1/2) OF LOT 28, BLOCK "D" OF UNIT NO. 4 ISLAND SHORES AS RECORDED IN PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE N.42°07'25"W. ALONG THE NORTHERLY RIGHT OF WAY LINE OF ESTERO BOULEVARD FOR A DISTANCE OF 400.00 FEET TO A POINT THE SOUTH LINE OF ISLAND SHORES CLUB SECTION AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.47°52'35"W. ALONG SAID PLAT LINE AND SAID RIGHT OF WAY FOR A DISTANCE OF 5.00 FEET; THENCE N.42°07'25"W. ALONG SAID RIGHT OF WAY FOR A DISTANCE OF 225.00 FEET TO THE SOUTHEAST CORNER OF LOT 35 OF SAID ISLAND SHORES CLUB SECTION; THENCE N.47°52'35"E. LEAVING SAID RIGHT OF WAY ALONG THE NORTHERLY PROPERTY LINE OF SAID LOT 35 FOR A DISTANCE OF 110.42 FEET TO AN INTERSECTION WITH THE WET FACE OF A CONCRETE SEAWALL AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED SUBMERGED LAND LEASE; THENCE N.39°58'13"W. A DISTANCE OF 43.97 FEET; THENCE N.47°05'31"E. A DISTANCE OF 39.64 FEET; THENCE N.42°51'04"W. A DISTANCE OF 10.12 FEET; THENCE N.47°08'56"E. A DISTANCE OF 56.08 FEET; THENCE N.69°39'32"E. A DISTANCE OF 49.12 FEET; THENCE N.73°53'52"E. A DISTANCE OF 65.18 FEET; THENCE S.15°25'01"E. A DISTANCE OF 4.00 FEET; THENCE N.73°53'52"E. A DISTANCE OF 13.04 FEET; THENCE S.16°06'08"E. A DISTANCE OF 160.11 FEET; THENCE S.35°37'08"E. A DISTANCE OF 47.11 FEET; THENCE S.54°22'52"W. A DISTANCE OF 20.00 FEET; THENCE S.35°37'08"E. A DISTANCE OF 36.00 FEET; THENCE S.54°22'52"W. A DISTANCE OF 15.00 FEET; THENCE S.35°37'08"E. A DISTANCE OF 44.00 FEET; THENCE S.54°22'52"W. A DISTANCE OF 10.00 FEET; THENCE S.35°37'08"E. A DISTANCE OF 42.03 FEET; THENCE S.40°22'13"E. A DISTANCE OF 51.41 FEET; THENCE N.43°45'32"E. A DISTANCE OF 9.88 FEET; THENCE S.46°14'28"E. A DISTANCE OF 14.00 FEET; THENCE S.43°45'32"W. A DISTANCE OF 1.65 FEET; THENCE S.46°14'28"E. A DISTANCE OF 16.00 FEET; THENCE S.43°45'32"W. A DISTANCE OF 1.23 FEET; THENCE S.46°14'28"E. A DISTANCE OF 14.00 FEET; THENCE N.43°45'32"E. A DISTANCE OF 13.03 FEET; THENCE S.46°14'28"E. A DISTANCE OF 88.00 FEET; THENCE N.43°45'32"E. A DISTANCE OF 20.00 FEET; THENCE S.46°14'28"E. A DISTANCE OF 122.00 FEET; THENCE N.43°45'32"E. A DISTANCE OF 20.55 FEET; THENCE S.46°14'28"E. A DISTANCE OF 36.50 FEET; THENCE S.43°45'32"W. A DISTANCE OF 79.98 FEET; THENCE S.42°36'24"E. A DISTANCE OF 45.89 FEET; THENCE S.47°23'36"W. A DISTANCE OF 30.00 FEET; THENCE N.42°36'24"W. FOR A DISTANCE OF 17.00 FEET; THENCE S.47°23'36"W. FOR A DISTANCE OF 41.27 FEET; THENCE S.44°09'25"E. FOR A DISTANCE OF 4.66 FEET; THENCE S.45°50'35"W. FOR A DISTANCE OF 9.07 FEET TO AN INTERSECTION WITH THE WET FACE OF A CONCRETE SEAWALL; THENCE N.53°54'24"W., ALONG SAID SEAWALL, A DISTANCE OF 60.91 FEET; THENCE N.49°50'45"W. ALONG SAID SEAWALL A DISTANCE OF 50.46 FEET; THENCE N.50°01'33"W. ALONG SAID SEAWALL A DISTANCE OF 50.48 FEET; THENCE N.42°51'10"E. ALONG SAID SEAWALL A DISTANCE OF 9.27 FEET; THENCE N.39°56'10"W. ALONG SAID SEAWALL A DISTANCE OF 284.20 FEET; THENCE N.35°38'49"W. ALONG SAID SEAWALL A DISTANCE OF 15.29 FEET; THENCE N.40°59'55"W. ALONG SAID SEAWALL A DISTANCE OF 75.01 FEET; THENCE N.39°58'41"W. ALONG SAID SEAWALL A DISTANCE OF 75.05 FEET; THENCE N.39°58'13"W. ALONG SAID SEAWALL A DISTANCE OF 75.05 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 100,125 SQUARE FEET OR 2.30 ACRES, MORE OR LESS.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN)

SPECIFIC PURPOSE SURVEY

OF
A PARCEL OF SUBMERGED LAND
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA



NOTES:

THIS IS A FIELD SURVEY.

THE PURPOSE OF THIS SURVEY IS TO SHOW THE SUBMERGED LAND LEASE PROPERTY AND ALL EXISTING AND PROPOSED LOCATION LYING WITHIN.

BEARINGS BASED ON THE NORTH RIGHT OF WAY LINE OF ESTERO BOULEVARD AS BEARING N.42°07'25"W.

COORDINATES SHOWN HEREON WERE DERIVED FROM DEPARTMENT OF NATURAL RESOURCES REFERENCE MONUMENT R179 AND ARE STATE PLANE FOR THE FLORIDA WEST ZONE NAD 83/1990 ADJUSTMENT.

THE MEAN HIGH WATER ELEVATION (.14' NAVD 88) AS SHOWN HEREON WAS ESTABLISHED BY EXTENDING THE ELEVATION SHOWN AT MEAN HIGH WATER INTERPOLATION POINT NO. 872-5366.

ABOVE GROUND OR UNDERGROUND IMPROVEMENTS, UTILITIES AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.

THIS PLAT PREPARED AS A SPECIFIC PURPOSE SURVEY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OR JURISDICTIONAL AREAS OF ANY FEDERAL, STATE, REGIONAL OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHT-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

ELEVATIONS SHOWN HEREON ARE BASED ON NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).

THE LINEAR FOOTAGE OF SHORELINE AREA = 1,751'±

TOTAL SUBMERGED LAND LEASE AREA IS 111,144 SQUARE FEET, MORE OR LESS.

ALL DIMENSIONS PLAT AND FIELD VERIFIED, UNLESS OTHERWISE SHOWN.

DATE OF LAST FIELD WORK: 8-23-2017.

NOTE:

SEE SHEET 1 OF 13 FOR LEGEND.
SEE SHEET 4 OF 13 FOR SKETCH OF LEASE #1
SEE SHEET 5 OF 13 FOR SKETCH OF LEASE #2
SEE SHEET 13 OF 13 FOR LINE TABLE.

FOR THE EXCLUSIVE USE OF:

- BOARD OF TRUSTEES OF THE INTERNAL
IMPROVEMENT TRUST FUND OF THE STATE
OF FLORIDA

RECEIVED

AUG 28 2017

D.E.P. South District

SURVEY CONSISTS OF SHEETS 1
THROUGH 13 AND IS NOT VALID
WITHOUT COMPLETE SET

BY:

TIMOTHY LEE MANN
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 15# 5836

DATE SIGNED: 8-24-2017

REVISED 8/24/17 - UPDATE AS-BUILT DRAWINGS TO REFLECT CHANGES

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER.

TITLE: SPECIFIC PURPOSE SURVEY			
		10970 SOUTH CLEVELAND AVENUE UNIT #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com	
LAND SURVEYORS-PLANNERS LB# 7071			
FILE NAME: 10627ASBUILT.dwg	FIELD BOOK/PAGE: N/A	PROJECT NO.: 10627	SHEET: 2 OF 13
SKETCH DATE: 3-22-13	DRAWN BY: BUD	SCALE: N/A	CHECKED BY: TLM
			(S-1-R) 24-46-23

SPECIFIC PURPOSE SURVEY

OF

A PARCEL OF SUBMERGED LAND

LYING IN

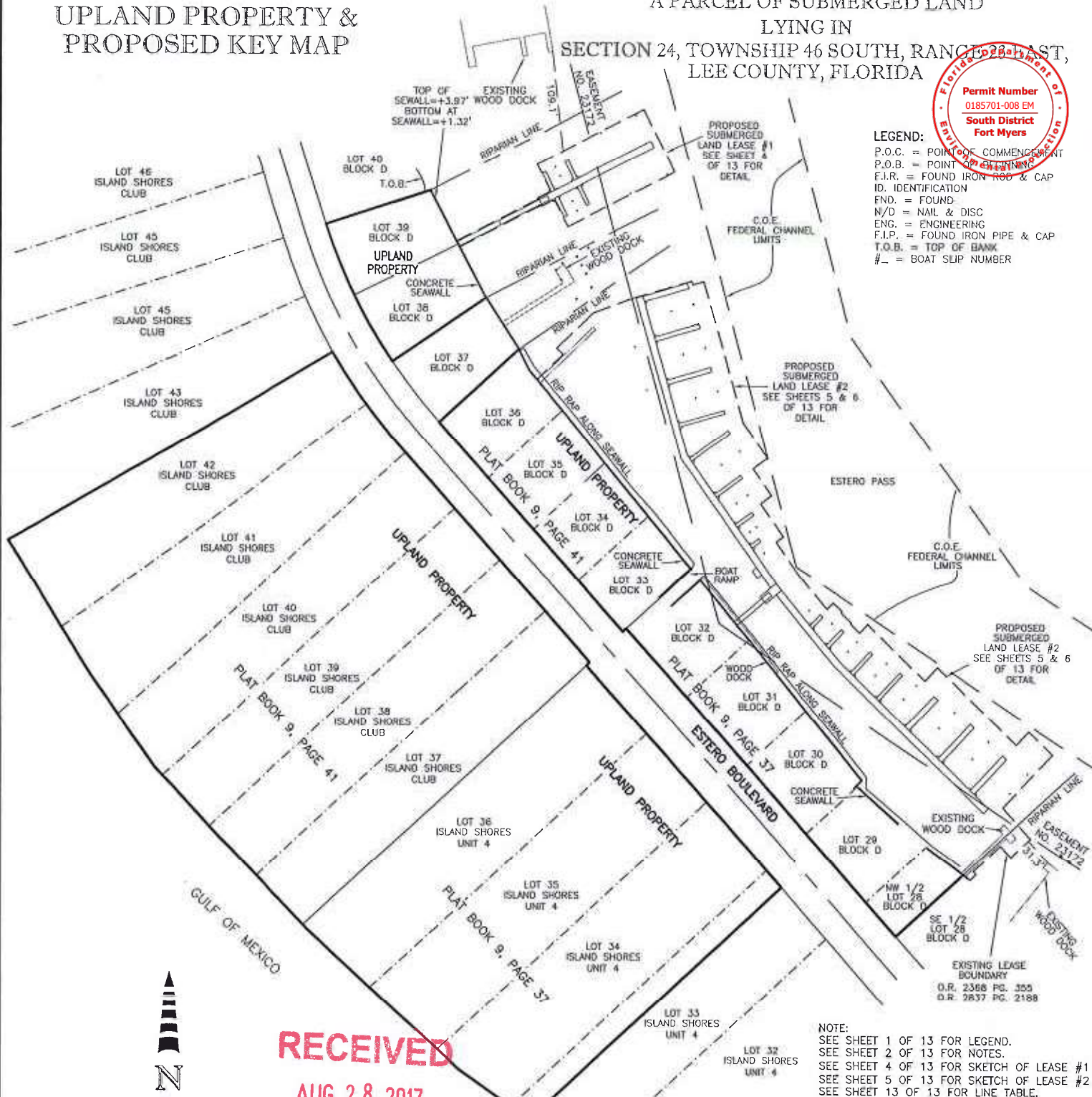
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 28 EAST,
LEE COUNTY, FLORIDA

UPLAND PROPERTY &
PROPOSED KEY MAP



LEGEND:

P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
F.I.R. = FOUND IRON ROD & CAP
ID. IDENTIFICATION
FND. = FOUND
N/D = NAIL & DISC
ENG. = ENGINEERING
F.I.P. = FOUND IRON PIPE & CAP
T.O.B. = TOP OF BANK
#- = BOAT SLIP NUMBER



NOTE:
SEE SHEET 1 OF 13 FOR LEGEND.
SEE SHEET 2 OF 13 FOR NOTES.
SEE SHEET 4 OF 13 FOR SKETCH OF LEASE #1
SEE SHEET 5 OF 13 FOR SKETCH OF LEASE #2
SEE SHEET 13 OF 13 FOR LINE TABLE.

RECEIVED

AUG 28 2017

D.E.P. South District

TITLE:

SPECIFIC PURPOSE SURVEY



METRON
SURVEYING & MAPPING, LLC
LAND SURVEYORS-PLANNERS
LB# 7071

10970 SOUTH CLEVELAND AVENUE
UNIT #605
FORT MYERS, FLORIDA 33907
PHONE: (239) 275-8575
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www.metronfl.com

FILE NAME:	FIELD BOOK/PAGE:	PROJECT NO.:	SHEET:
10627ASBUILT.dwg	N/A	10627	3 OF 13
SKETCH DATE:	DRAWN BY:	SCALE:	CHECKED BY:
3-22-13	BUD	1" = 150'	TLM
			(S-T-R)
			24-46-23

SURVEY CONSISTS OF SHEETS 1
THROUGH 13 AND IS NOT VALID
WITHOUT COMPLETE SET

PROPOSED DETAIL SKETCH OF LEASE #1

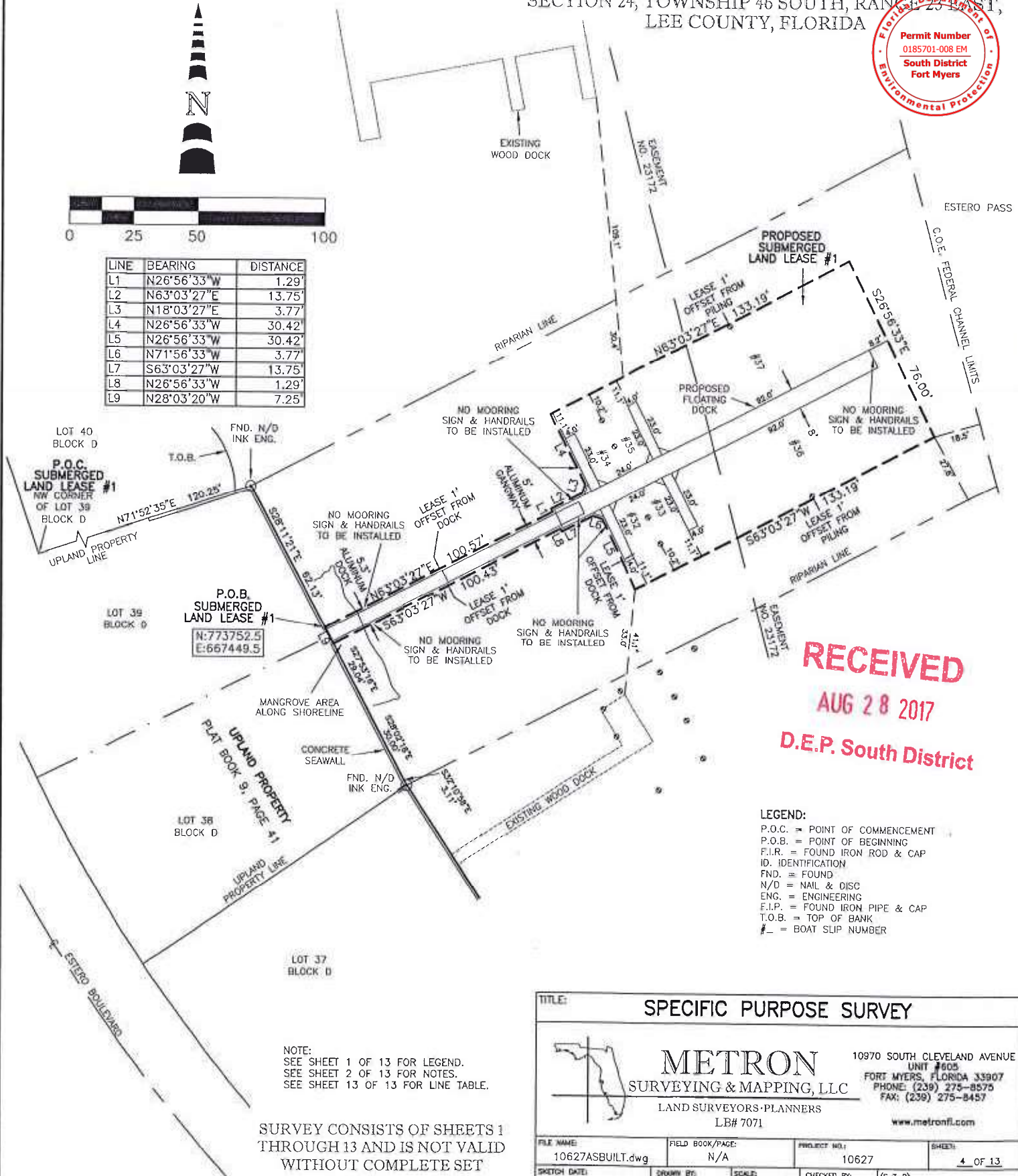
SPECIFIC PURPOSE SURVEY

OF
A PARCEL OF SUBMERGED LAND
LYING IN

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 25 WEST,
LEE COUNTY, FLORIDA



LINE	BEARING	DISTANCE
L1	N26°56'33"W	1.29'
L2	N63°03'27"E	13.75'
L3	N18°03'27"E	3.77'
L4	N26°56'33"W	30.42'
L5	N26°56'33"W	30.42'
L6	N71°56'33"W	3.77'
L7	S63°03'27"W	13.75'
L8	N26°56'33"W	1.29'
L9	N28°03'20"W	7.25'



RECEIVED
AUG 28 2017
D.E.P. South District

LEGEND:
P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
F.I.R. = FOUND IRON ROD & CAP
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FND. = FOUND
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ENG. = ENGINEERING
F.I.P. = FOUND IRON PIPE & CAP
T.O.B. = TOP OF BANK
= BOAT SLIP NUMBER

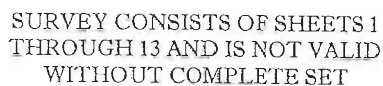
NOTE:
SEE SHEET 1 OF 13 FOR LEGEND.
SEE SHEET 2 OF 13 FOR NOTES.
SEE SHEET 13 OF 13 FOR LINE TABLE.

SURVEY CONSISTS OF SHEETS 1
THROUGH 13 AND IS NOT VALID
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TITLE: SPECIFIC PURPOSE SURVEY			
		10970 SOUTH CLEVELAND AVENUE UNIT #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com	
FILE NAME: 10627ASBUILT.dwg	FIELD BOOK/PAGE: N/A	PROJECT NO.: 10627	SHEET: 4 OF 13
SKETCH DATE: 3-22-13	DRAWN BY: BUD	SCALE: 1" = 50'	CHECKED BY: TLM (S-T-R) 24-46-23

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

D.E.P. South District



FILE NAME:	FIELD BOOK/PAGE:	PROJECT NO.:	SHEET:
10627ASBUILT.dwg	N/A	10627	<u>6</u> OF <u>13</u>
SKETCH DATE:	DRAWN BY:	SCALE:	CHECKED BY:
3-22-13	BUD	1" = 100'	(S-T-R)
			TLM
			24-46-23

ASBUILT KEY MAP

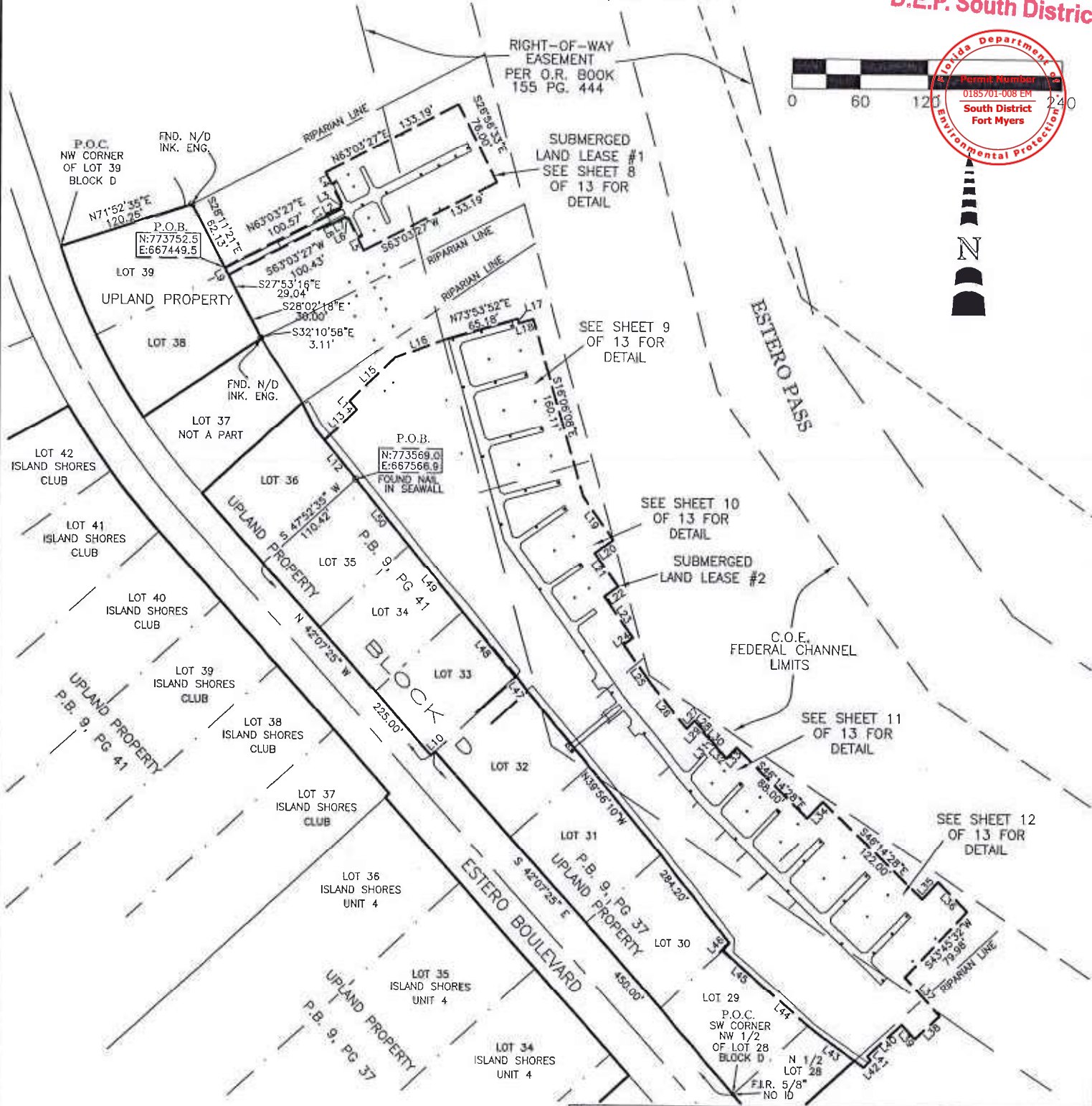
SPECIFIC PURPOSE SURVEY

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SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

RECEIVED

AUG 28 2017

D.E.P. South District



NOTE:
SEE SHEET 1 OF 13 FOR LEGEND.
SEE SHEET 2 OF 13 FOR LEGAL DESCRIPTION & NOTES.
SEE SHEET 4 OF 13 FOR SKETCH OF LEASE #1
SEE SHEET 5 OF 13 FOR SKETCH OF LEASE #2
SEE SHEET 13 OF 13 FOR LINE TABLE.

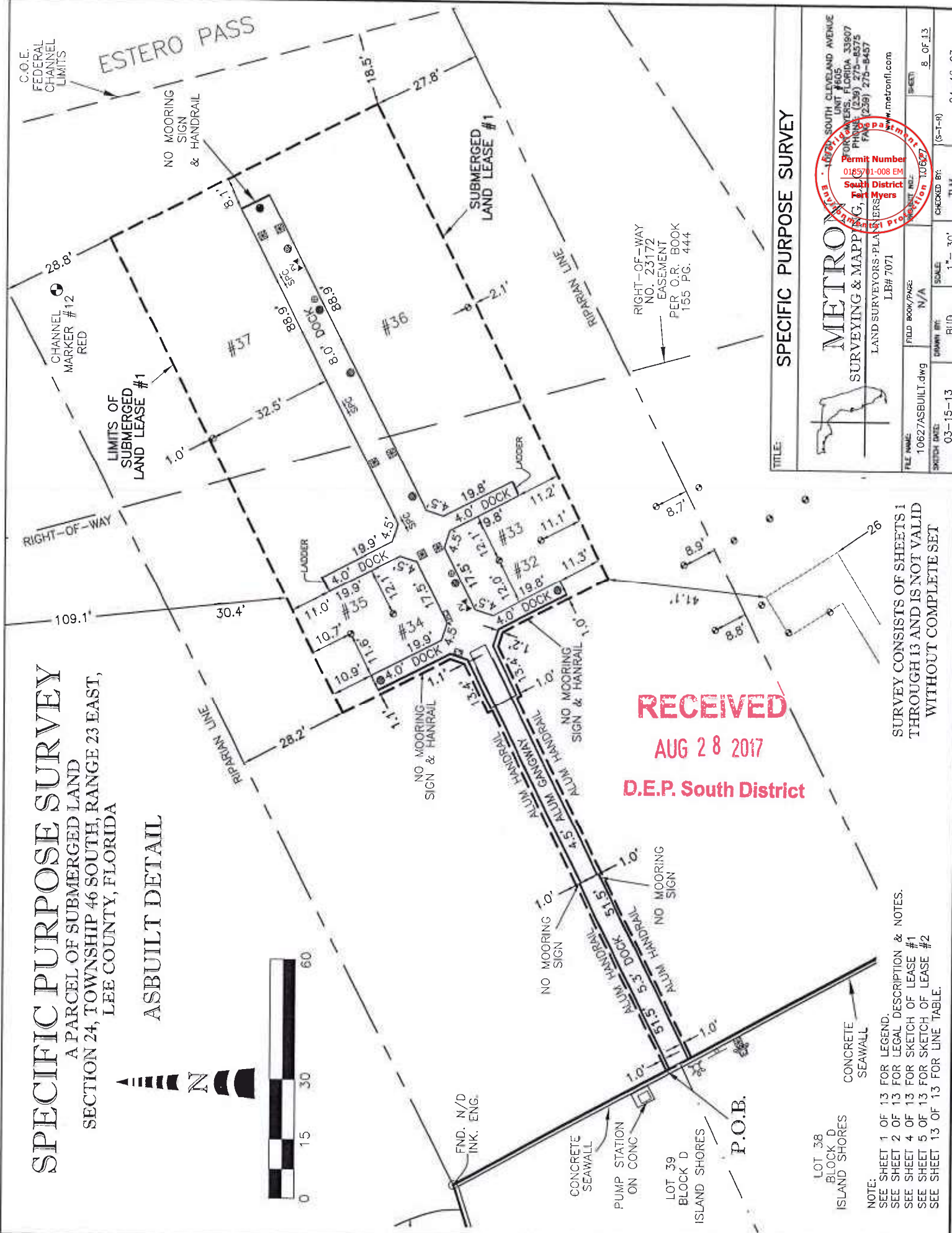
SURVEY CONSISTS OF SHEETS 1
THROUGH 13 AND IS NOT VALID
WITHOUT COMPLETE SET

TITLE: SPECIFIC PURPOSE SURVEY			
		10970 SOUTH CLEVELAND AVENUE UNIT #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com	
LAND SURVEYORS - PLANNERS L.B# 7071			
FILE NAME: 10627ASBUILT.dwg	FIELD BOOK/PAGE: N/A	PROJECT NO.: 10627	SHEET: 7 OF 13
SKETCH DATE: 03-15-13	DRAWN BY: BUD	SCALE: 1" = 120'	CHECKED BY: TLM
			(S-T-R) 24-46-23

SPECIFIC PURPOSE SURVEY

A PARCEL OF SUBMERGED LAND
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

ASBUILT DETAIL



RECEIVED
AUG 28 2017
D.E.P. South District

TITLE: **SPECIFIC PURPOSE SURVEY**

METRON
SURVEYING & MAPPING, INC.
LAND SURVEYORS - PLANNERS
10627
10627
10627

FILE NAME: 10627/ASBUILT.dwg	FIELD BOOK/PAGE: N/A	SHEET NO.: 10627	SHEET: 8 OF 13	CHECKED BY: TLM
DRAWN BY: BUD			SCALE: 1" = 30'	
SWITCH DATE: 03-15-13			TLM# 24-46-23	

Permit Number
0185711-008 EM
South District
Myers
www.mtmetron.com
LB# 7071

SURVEY CONSISTS OF SHEETS 1
THROUGH 13 AND IS NOT VALID
WITHOUT COMPLETE SET

NOTE:
SEE SHEET 1 OF 13 FOR LEGEND.
SEE SHEET 2 OF 13 FOR LEGAL DESCRIPTION & NOTES.
SEE SHEET 4 OF 13 FOR SKETCH OF LEASE #1
SEE SHEET 5 OF 13 FOR SKETCH OF LEASE #2
SEE SHEET 13 OF 13 FOR LINE TABLE.

LOT 38
BLOCK D
ISLAND SHORES

CONCRETE
SEAWALL

PUMP STATION
ON CONC.

LOT 39
BLOCK D
ISLAND SHORES

P.O.B.

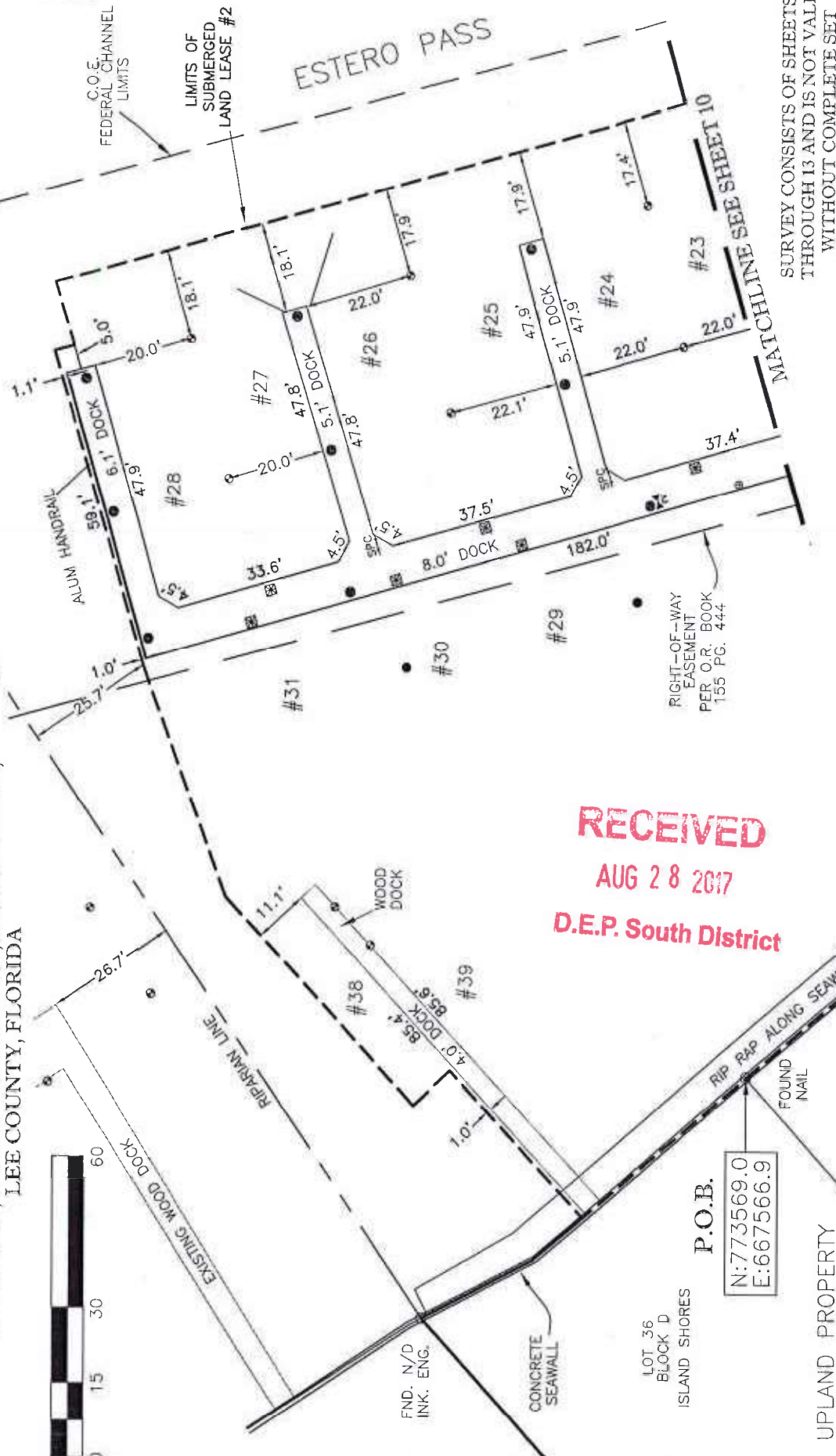
FND. N/D
INK. ENG.

SPECIFIC PURPOSE SURVEY

A PARCEL OF SUBMERGED LAND
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA



ASBUILT DETAIL



SURVEY CONSISTS OF SHEETS 1
THROUGH 13 AND IS NOT VALID
WITHOUT COMPLETE SET

RECEIVED
AUG 28 2017
D.E.P. South District

P.O.B.

N:7735569.0
E:667566.9

UPLAND PROPERTY

LIMITS OF
SUBMERGED
LAND LEASE #2

CONCRETE
SEAWALL

LOT 35
BLOCK D
ISLAND SHORES

NOTE:
SEE SHEET 1 OF 13 FOR LEGEND.
SEE SHEET 2 OF 13 FOR LEGAL DESCRIPTION & NOTES.
SEE SHEET 4 OF 13 FOR SKETCH OF LEASE #1
SEE SHEET 5 OF 13 FOR SKETCH OF LEASE #2
SEE SHEET 13 OF 13 FOR LINE TABLE.

TITLE:

SPECIFIC PURPOSE SURVEY



METRON
SURVEYING & MAPPING
LAND SURVEYORS-PLANNERS
LB# 7071
16915 SOUTH CLEVELAND AVENUE
UNIT #603
FORT MYERS, FLORIDA 33907
PHONE: (239) 275-8575
FAX: (239) 275-8457
www.metronefi.com

Permit Number
0195701-008 EM
South District
Fort Myers

FILE NAME:
10627ASBUILT.dwg

FIELD BOOK/PAGE:
N/A

PROJECT NO.:
10037

SHEET:
9 OF 13

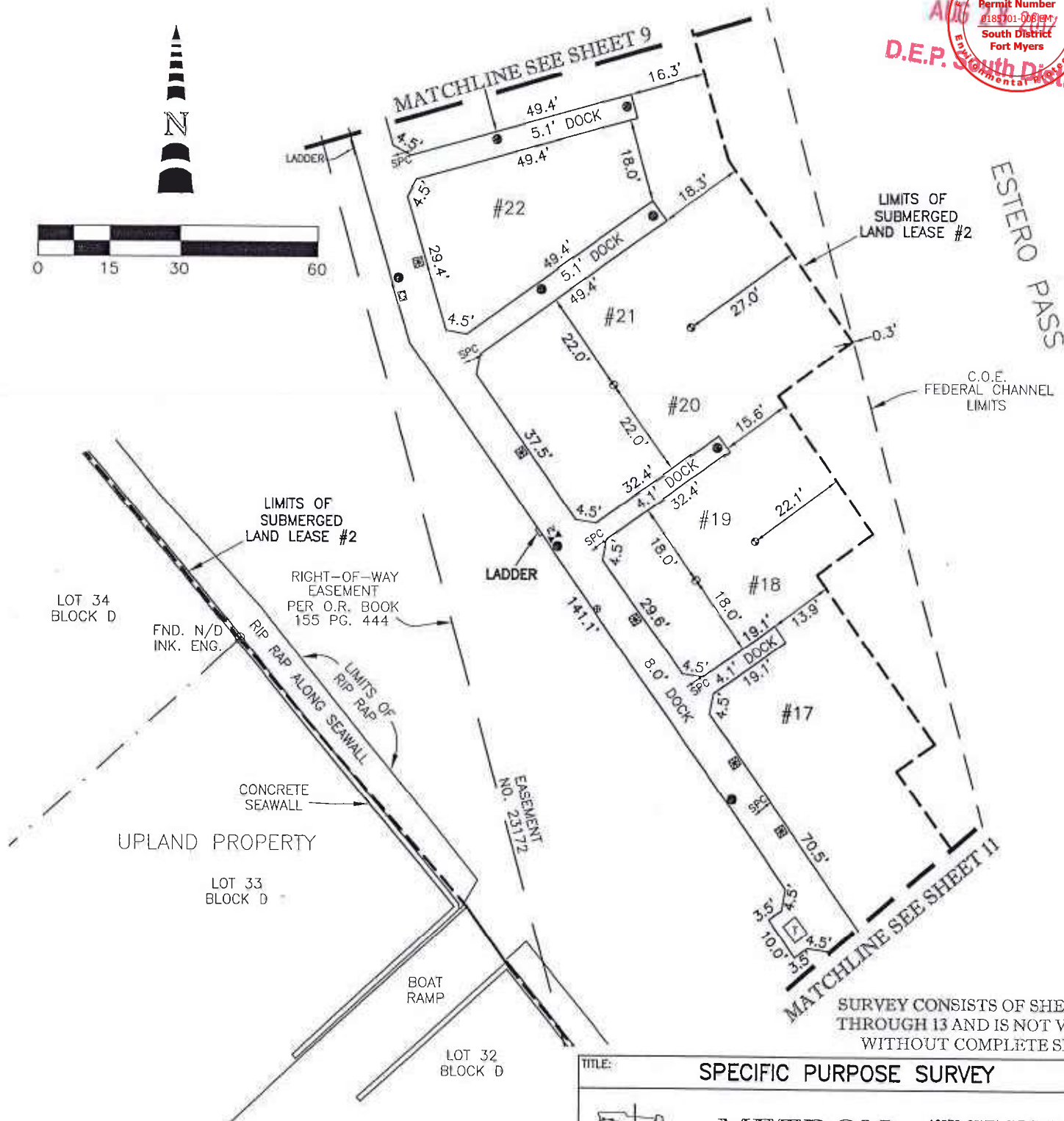
SKETCH DATE:
03-15-13

DRAWN BY:
BUD

CHECKED BY:
(S-1-F)

TLM:
24-46-23

A PARCEL OF SUBMERGED LAND
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA



NOTE:
SEE SHEET 1 OF 13 FOR LEGEND.
SEE SHEET 2 OF 13 FOR LEGAL DESCRIPTION & NOTES.
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SEE SHEET 5 OF 13 FOR SKETCH OF LEASE #2
SEE SHEET 13 OF 13 FOR LINE TABLE.

TITLE: SPECIFIC PURPOSE SURVEY	
	METRON SURVEYING & MAPPING, LLC LAND SURVEYORS-PLANNERS LB# 7071
10970 SOUTH CLEVELAND AVENUE UNIT #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com	

SPECIFIC PURPOSE SURVEY

ASBUILT DETAIL

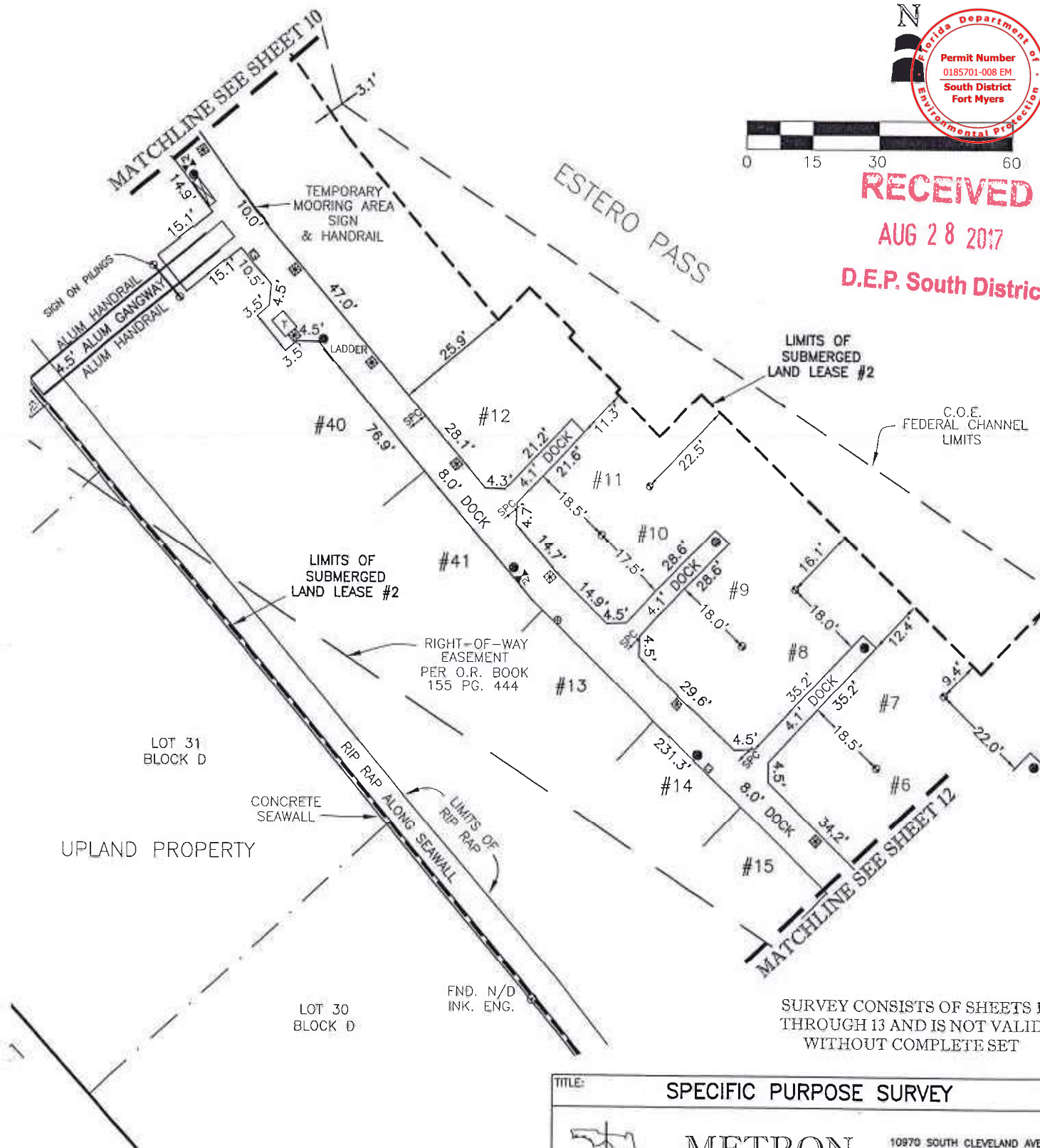
A PARCEL OF SUBMERGED LAND
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA



RECEIVED

AUG 28 2017

D.E.P. South District



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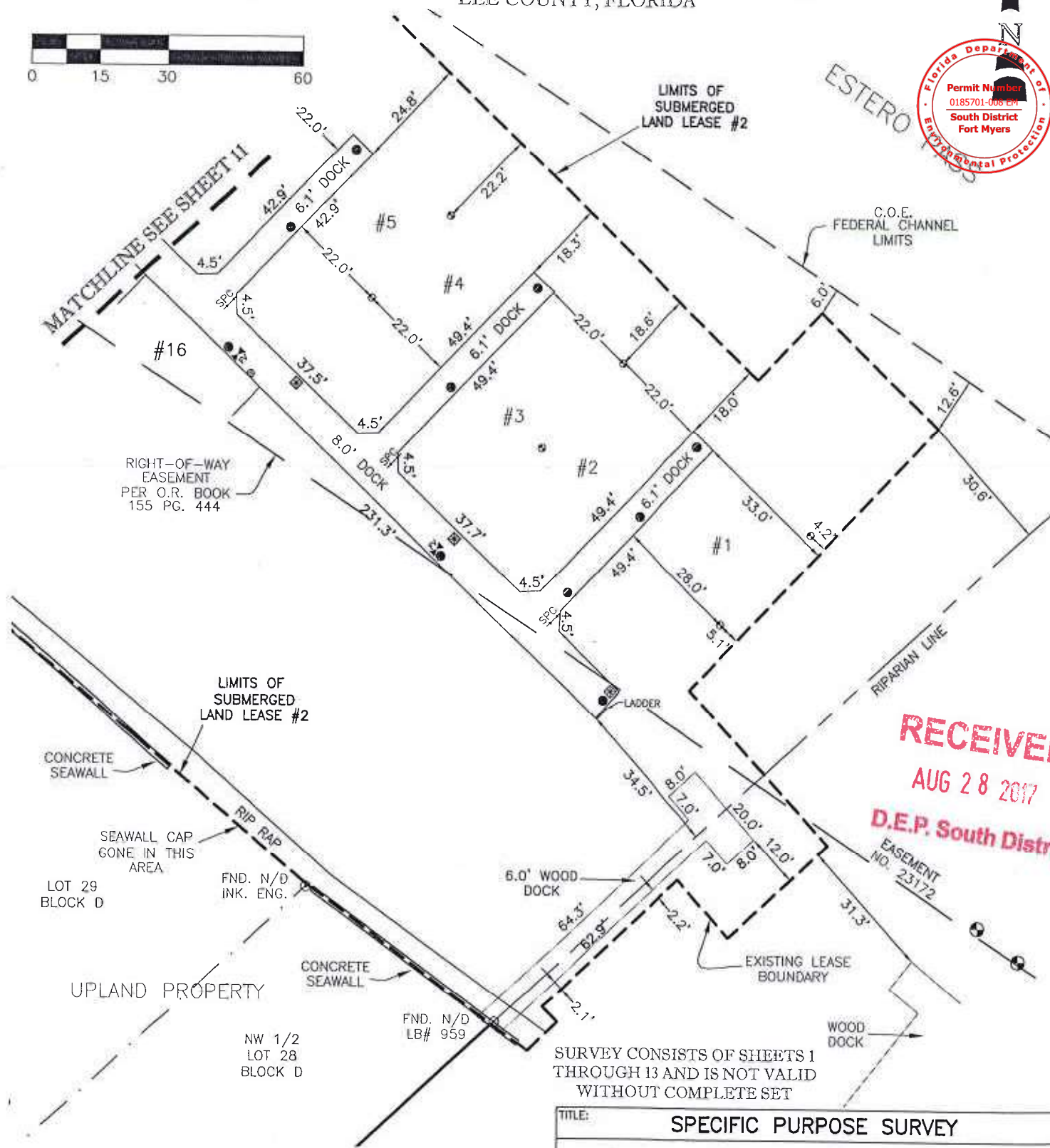
SURVEY CONSISTS OF SHEETS 1
THROUGH 13 AND IS NOT VALID
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		10970 SOUTH CLEVELAND AVENUE UNIT #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com	
FILE NAME: 10627ASBUILT.dwg	FIELD BOOK/PAGE: N/A	PROJECT NO.: 10627	SHEET: 11 OF 13
SKETCH DATE: 03-15-13	DRAWN BY: BUD	SCALE: 1" = 30'	CHECKED BY: (S-T-R) TLM
		24-46-23	

SPECIFIC PURPOSE SURVEY

A PARCEL OF SUBMERGED LAND
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

ASBUILT DETAIL



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D.E.P. South District

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TITLE: SPECIFIC PURPOSE SURVEY			
		10970 SOUTH CLEVELAND AVENUE UNIT #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com	
FILE NAME: 10627ASBUILT.dwg	FIELD BOOK/PAGE: N/A	PROJECT NO.: 10627	SHEET: 12 OF 13
SKETCH DATE: 03-15-13	DRAWN BY: BUD	SCALE: 1" = 30'	CHECKED BY: TLM
		(S-T-R)	24-46-23

SLIP MATRIX & LINE TABLE

BOAT SLIP MATRIX		LIVEBOARDS ALLOWED
SLIP #	SLIP SIZE	
#1	28' x 70'	YES
#2	22' x 70'	YES
#3	22' x 70'	YES
#4	22' x 70'	YES
#5	22' x 70'	YES
#6	22' x 70'	YES
#7	18' x 50'	NO
#8	18' x 50'	NO
#9	18' x 50'	NO
#10	18' x 50'	NO
#11	18' x 35'	NO
#12	28' x 35'	NO
#13	12' x 35'	NO
#14	12' x 27'	NO
#15	12' x 27'	NO
#16	12' x 35'	NO
#17	28' x 35'	NO
#18	18' x 50'	NO
#19	18' x 50'	NO
#20	22' x 70'	YES
#21	22' x 70'	YES
#22	18' x 50'	YES
#23	22' x 70'	YES
#24	22' x 68'	YES
#25	22' x 68'	YES
#26	22' x 68'	YES
#27	22' x 68'	YES
#28	18' x 68'	YES
#29	16' x 25'	NO
#30	16' x 25'	NO
#31	16' x 40'	NO
#32	12' x 30'	NO
#33	12' x 30'	NO
#34	12' x 30'	NO
#35	12' x 30'	NO
#36	33' x 100'	YES
#37	33' x 100'	YES
#38	11' x 56'	NO
#39	20.5' x 56'	NO
#40	12' x 40'	NO
#41	12' x 40'	NO

RECEIVED

AUG 28 2017

D.E.P. South District

SPECIFIC PURPOSE SURVEY

A PARCEL OF SUBMERGED LAND
LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA

LINE	BEARING	DISTANCE
L1	N26°56'33"W	1.29'
L2	N63°03'27"E	13.75'
L3	N18°03'27"E	3.77'
L4	N26°56'33"W	30.42'
L5	N26°56'33"W	30.42'
L6	N71°56'33"W	3.77'
L7	S63°03'27"W	13.75'
L8	N26°56'33"W	1.29'
L9	N28°03'20"W	7.25'
L10	S47°52'35"W	5.00'
L11	N47°52'35"E	110.42'
L12	N39°58'13"W	43.97'
L13	N47°05'31"E	39.64'
L14	N42°51'04"W	10.12'
L15	N47°08'56"E	56.08'
L16	N69°39'32"E	49.12'
L17	S15°25'01"E	4.00'
L18	N73°53'52"E	13.04'
L19	S35°37'08"E	47.11'
L20	S54°22'52"W	20.00'
L21	S35°37'08"E	36.00'
L22	S54°22'52"W	15.00'
L23	S35°37'08"E	44.00'
L24	S54°22'52"W	10.00'
L25	S35°37'08"E	42.03'
L26	S40°22'13"E	51.41'
L27	N43°45'32"E	9.88'
L28	S46°14'28"E	14.00'
L29	S43°45'32"W	1.65'
L30	S46°14'28"E	16.00'
L31	S43°45'32"W	1.23'
L32	S46°14'28"E	14.00'
L33	N43°45'32"E	13.03'
L34	N43°45'32"E	20.00'
L35	N43°45'32"E	20.55'
L36	S46°14'28"E	36.50'
L37	S42°36'24"E	45.89'
L38	S47°23'36"W	30.00'
L39	N42°36'24"W	17.00'
L40	S47°23'36"W	41.27'
L41	S44°09'25"E	4.66'
L42	S45°50'35"W	9.07'
L43	N53°54'24"W	60.91'
L44	N49°50'45"W	50.46'
L45	N50°01'33"W	50.48'
L46	N42°51'10"E	9.27'
L47	N35°38'49"W	15.29'
L48	N40°59'55"W	75.01'
L49	N39°58'41"W	75.05'
L50	N39°58'13"W	75.05'



SURVEY CONSISTS OF SHEETS 1
THROUGH 13 AND IS NOT VALID
WITHOUT COMPLETE SET

TITLE: SPECIFIC PURPOSE SURVEY			
		10970 SOUTH CLEVELAND AVENUE UNIT #505 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com	
		LAND SURVEYORS-PLANNERS LB# 7071	
FILE NAME: 10627ASBUILT.dwg	FIELD BOOK/PAGE: N/A	PROJECT NO.: 10627	SHEET: 13 OF 13
SKETCH DATE: 3-22-13	DRAWN BY: BUD	SCALE: N/A	CHECKED BY: TLM
		(S-T-R) 24-46-23	



FLORIDA DEPARTMENT OF Environmental Protection

South District
PO Box 2549
Fort Myers FL 33902-2549
SouthDistrict@FloridaDEP.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

April 29, 2022

Jabo LLC
c/o Bill Waichulis
275 Estero Blvd.
Fort Myers Beach, FL 33931
BWaichulis@boykin.com

Re: In Compliance Letter
The Pink Shell Resort
Site No. 185701 / Project No. 332293
ERP Permit Nos. 36-0185701-005 & 36-0185701-006
BOT Lease No. 360010245
Estero Pass, Class II Waters
Parcel No. 244623W1007000340 - 275 Estero Blvd., Fort Myers Beach, FL 33931
Lee County – SLERC

Dear Mr. Waichulis:

Department personnel conducted a Lease inspection of the above-referenced facility on April 7, 2022. Based on the information provided during the inspection, the facility was determined to be in compliance. A copy of the inspection report is attached for your records.

The Department appreciates your compliance efforts. Should you have any questions or comments, please contact Gabriella Zaharieff at (239) 344-5640 or by via e-mail at:
Gabriella.Zaharieff@floridadep.gov

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Sweigert".

Elizabeth "Liz" Sweigert
Environmental Administrator
Compliance Assurance Program

ES/gz

Enclosure: Inspection Report

STATE LANDS LEASE INSPECTION

IN COMPLIANCE?	☒ YES ☐ NO	BOT Number:	360010245
ERPce Project #:	332293	Requested by:	Kathy Griffin
ERPce Site #:	185701	Date Requested:	
Property ID#:	244623W1007000340	Date Sent to DSL:	
Term:	5 years	Date of Inspection:	April 7, 2022
Issued:	June 27, 2017	Inspector Name:	Gabriella Zaharieff
Expiration:	June 27, 2022	Telephone #:	239-344-5640

Type of Inspection:

☒ Renewal	☐ Assignment	☐ Modification	☐ Mid-Term	☐ Other: _____
---	-------------------------------------	---------------------------------------	-----------------------------------	---------------------------------------

Attachments:

☒ Photographs	☒ Surveys/Drawings	☐ Other: _____
---	--	---------------------------------------

SITE/CONTACT INFORMATION:

Lessee:	Jabo LLC	AKA/FKA/ADA:	
Current Owner:	Jabo LLC	Email:	BWaichulis@boykin.com
Contact Person:	Bill Waichulis	Title:	Senior VP of Operations
Telephone #:	239-463-8601	County:	Lee
Facility Address:	275 Estero Blvd., Fort Myers Beach, FL 33931		
Waterbody:	Estero Pass	Class:	☐ I ☒ II ☐ III ☐ IV ☐ V
Aquatic Preserve?	N/A		
OFW ?	☐ Yes ☐ No		
Is the lessee information correct?	☒ Yes ☐ No		

SLIP INFORMATION:

1. Number of slips authorized in lease & Number observed:	41/41
2. Number of wetslips for public rental on state lands:	0
3. Are 90% open to the public?	☐ Yes ☐ No ☒ N/A ☐ See Comments
4. Number of wetslips on privately owned land:	0
5. Number of upland dry storage units/slips:	0
6. Does there appear to be liveaboards within the lease area?	☒ Yes ☐ No ☐ N/A ☐ See Comments
7. Is ALL mooring within the lease boundaries?	☒ Yes ☐ No ☐ N/A ☐ See Comments
8. Were past aerals reviewed for mooring compliance?	☒ Yes ☐ No ☐ N/A ☐ See Comments

LEASE INFORMATION

9. What is the current upland use?	Resort Hotel
a. Has the upland use changed?	☐ Yes ☒ No ☐ N/A ☐ See Comments
10. Number of upland residential units:	
11. What is the linear footage of shoreline owned by the applicant immediately adjacent to sovereign submerged lands?	400 ft
12. Are the docking structures in good condition?	☒ Yes ☐ No ☐ N/A ☐ See Comments
13. Were the dock dimensions field verified?	☒ Yes ☐ No ☐ N/A ☐ See Comments
14. Are there any over water roofed structures?	☐ Yes ☒ No ☐ N/A ☐ See Comments
15. Are there any non-water dependent uses: i.e., ship stores; gazebos; Sundecks; harbor master office; wet bar; etc.?	☐ Yes ☒ No ☐ N/A ☐ See Comments
16. Have there been any dock modifications or additions?	☐ Yes ☒ No ☐ N/A ☐ See Comments
17. Does the lease allow for mooring of "cruise to nowhere" vessels?	☐ Yes ☒ No ☐ N/A ☐ See Comments
a. If yes, is "cruise to nowhere gambling"?	☐ Yes ☐ No ☒ N/A ☐ See Comments

18. Is the lease area used for special events (i.e. boat shows, fishing tournaments or celebrations)?

19. What type of fueling is provided?

a. Is it shown on the survey?

20. What type of sewage pump-out is provided?

a. If fixed pump-outs, are they shown on the survey?

21. Are ALL lease standard conditions in compliance?

22. Are ALL special lease conditions in compliance?

23. Details provided on any non-compliance indicated above: cc: Public Lands Administration on Any actions taken

☒	Yes	☐	No	☐	N/A	☐	See Comments
☐	Gas	☐		☐	Diesel	☒	None
☐	Yes	☐	No	☒	N/A	☐	See Comments
☒	Portable	☐		☒	Fixed	☐	None
☐	Yes	☐	No	☒	N/A	☐	See Comments
☒	Yes	☐	No	☐	N/A	☐	See Comments
☒	Yes	☐	No	☐	N/A	☐	See Comments
☐	Yes	☐	No	☒	N/A	☐	See Comments

ADDITIONAL INFORMATION:

24. Is the marina designated as a clean marina or clean boatyard?

If yes, please send a copy of this inspection to

Brenda.Leonard@dep.state.fl.us.

25. Are the fees current (verify with SUPRS/ILMS)?

a. If not current, has an invoice been provided to Lessee?

26. Are the revenue reports forms/slip certifications current?

a. If not current, was the Lessee provided the Forms?

27. Is there any indication as to whether slips are being sold (i.e. For Sale signs at slips, internet sites, flyers, other advertising)?

a. If yes, forward the information to BPLA recurring revenue section. Date sent:

☐	Yes	☐	No	☒	N/A	☐	See Comments
--------------------------	-----	--------------------------	----	-------------------------------------	-----	--------------------------	--------------

☒	Yes	☐	No	☐	N/A	☐	See Comments
☐	Yes	☐	No	☒	N/A	☐	See Comments
☒	Yes	☐	No	☐	N/A	☐	See Comments
☐	Yes	☐	No	☒	N/A	☐	See Comments
☐	Yes	☒	No	☐	N/A	☐	See Comments

STAFF REMARKS:

On Site Observations

- 1). Department staff observed manatee educational signs pursuant to special lease condition 29. A and Permit No. 36-0185701-005.
- 2). Department staff observed a well maintained sewage pump out and sewage pump out log pursuant to special lease condition 29 B.
- 3). Department staff observed that all vessels moored were wholly within the designated slips pursuant to special lease condition 29 C.
- 4). Pursuant to special condition D no vessels were moored in the locations listed in a through f.
- 5). None of the vessels currently moored had a functional head and no holding tank therefore no entries in the log were recording.
- 6). Department staff observed lights and navigation aids along the dock pursuant to special lease condition 29 G.
- 7). Department staff observed that all vessels moored had up to date registrations pursuant to special lease condition 29 H.
- 8). Department staff observed all vessels were in operational condition pursuant to special lease condition 29 I.
- 9). Department staff observed temporary mooring signs pursuant to special lease condition 29 K.
- 10). Department staff observed all pilings were wrapped pursuant to permits Nos. 36-0185701-005 & 36-0185701-006.
- 11). Department staff observed slips 1,2,3,4,5,6,20,21,22,23,24,25,26,27,28,36,37 as live aboard slips with a fixed sewage pump out.
- 12). Department staff observed that the marine management plan was in compliance.
- 13). All standard and special lease conditions are in compliance.
- 14). All permit conditions are in compliance.
- 15). All Annual Revenue Reports (ARR) and Fees are up to date.

FOR LESSOR

Lease is in compliance, please renew.

Inspector Signature: Gabriella Zaharieff

Digitally signed by
Gabriella Zaharieff
Date: 2022.04.27 13:35:27
-04'00'

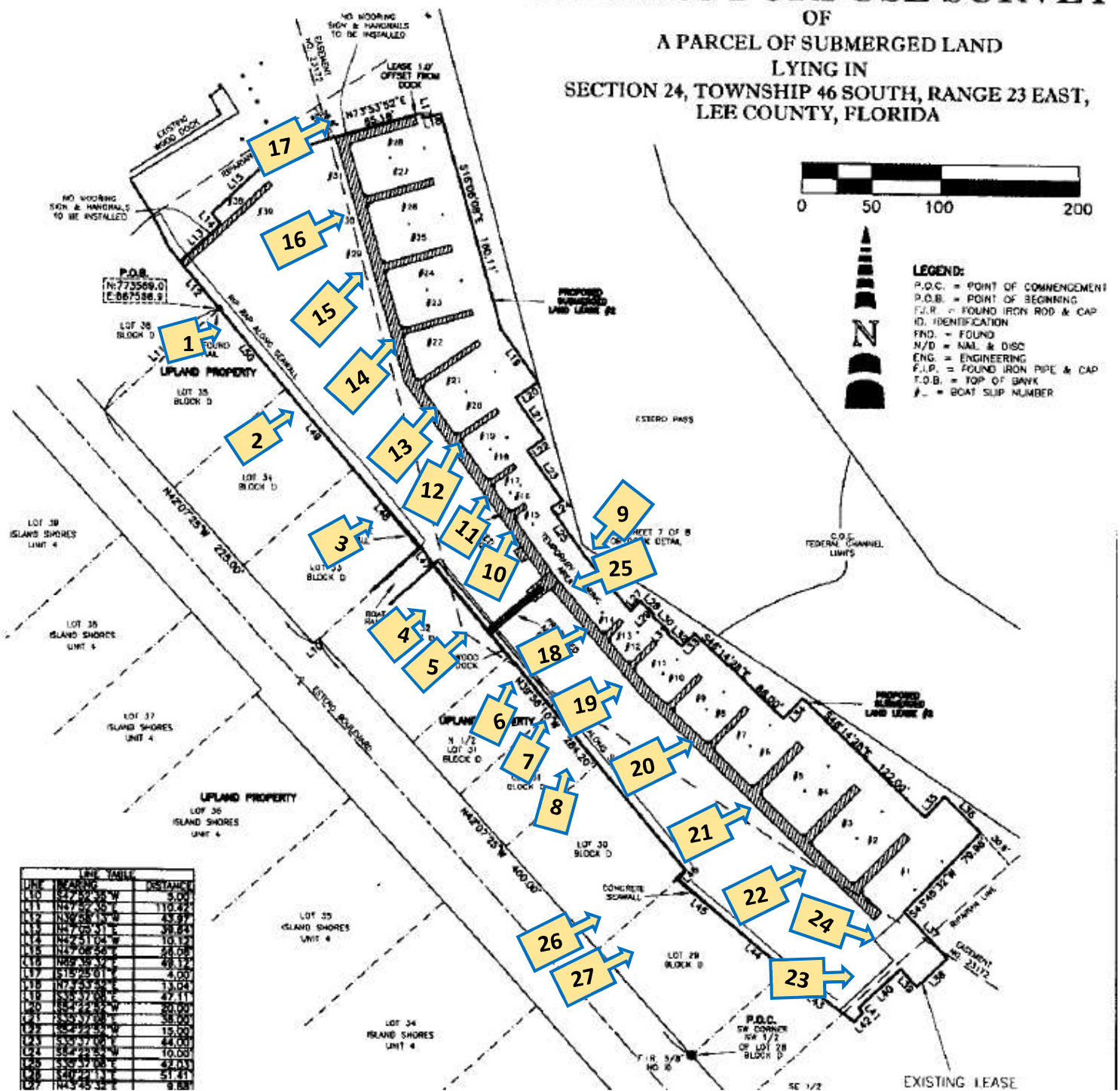
Manager Signature (if needed): Elizabeth Sweigert

Digitally signed by Elizabeth
Sweigert
Date: 2022.04.28 16:18:27
-04'00'

SPECIFIC PURPOSE SURVEY

OF
A PARCEL OF SUBMERGED LAND

LYING IN
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
LEE COUNTY, FLORIDA



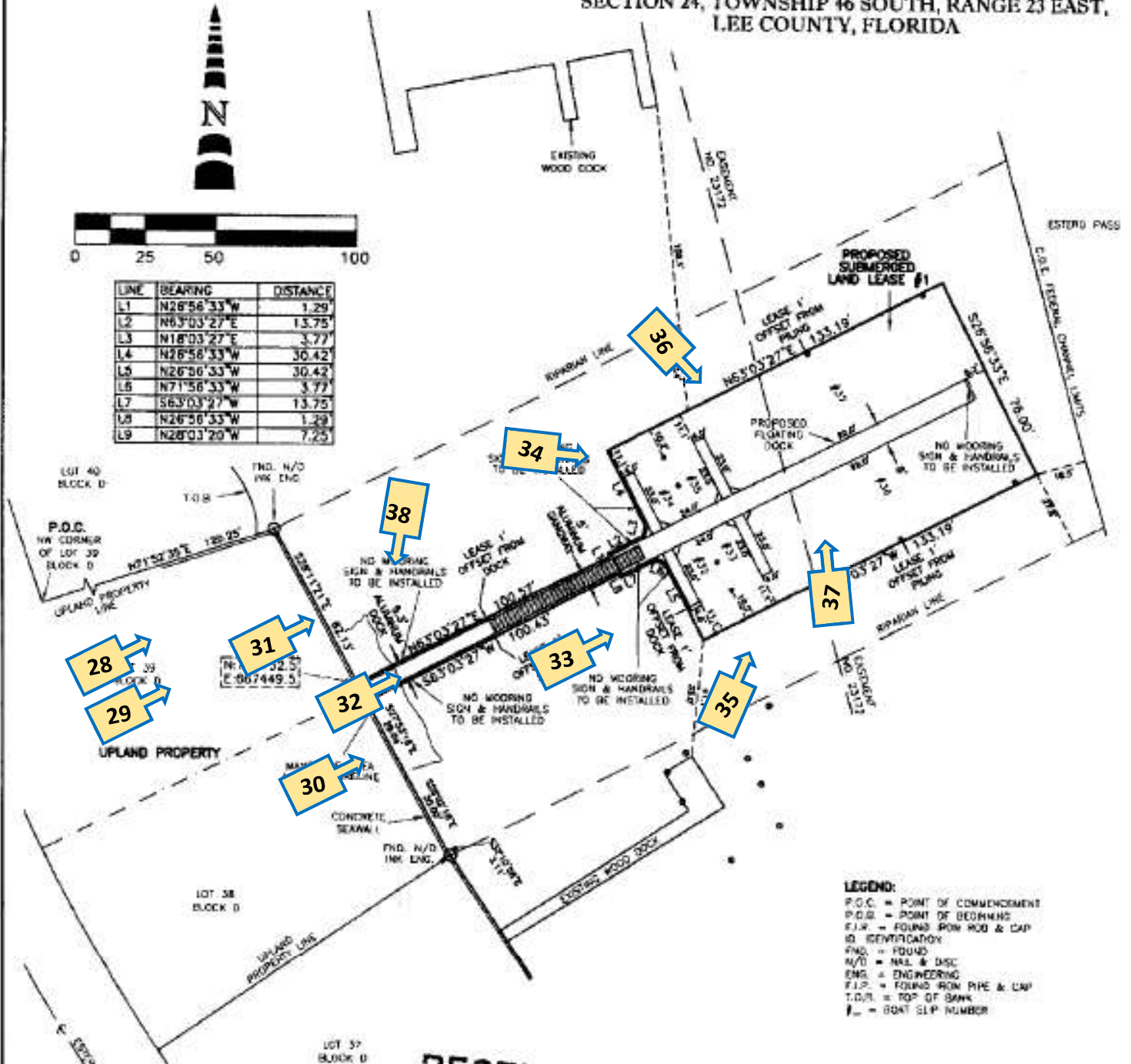
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OF
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LEE COUNTY, FLORIDA



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L3	N18°03'27" E	3.77'
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L5	N26°56'33" W	30.42'
L6	N71°56'33" W	3.77'
L7	S63°03'27" W	13.75'
L8	N26°56'33" W	1.29'
L9	N28°03'20" W	7.25'





1. View of white mangroves, healthy, trimmed to a height of 6 ft. Facing Northeast



2. View of mangroves, facing north



3. View of Kayak launch, facing northeast



4. View of Mangroves, facing north



5. View of monofilament receptacle facing northeast



6. View of environmental awareness (graywater) signs facing northeast



7. View of manatee educational signs, facing north east



8. View of access walkway facing northeast



9. View of sign directing boaters to pump out station



10. View of terminal platform and boat slips facing North



11. View of wrapped pilings



12. View of terminal platform facing North



13. View of slips facing North



14. View of terminal platform and slips facing North



15. View of terminal platform and slips facing North



16. View of finger pier facing northeast



17. View of no mooring signs



18. View of terminal platform facing south



19. View of terminal platform and slips, facing south



20. View of terminal platform and slips, facing south



21. View of terminal platform and slips, facing south



22. View of terminal platform and slips, facing south



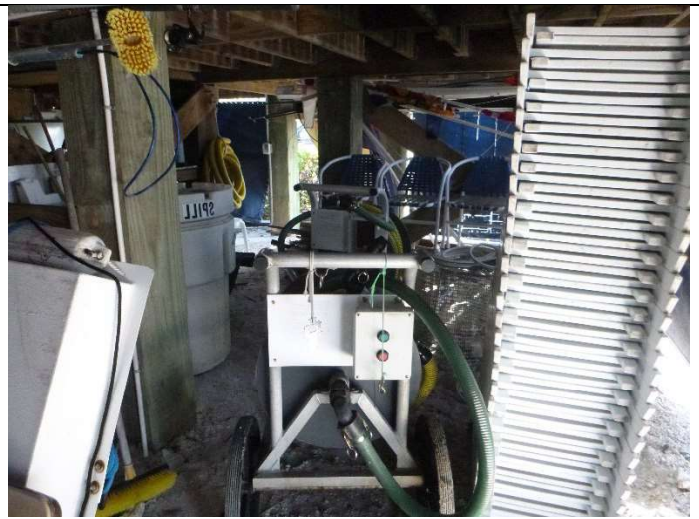
23. View of no mooring signs, facing south



24. View of terminal platform, facing south



25. View of pump out sign facing west



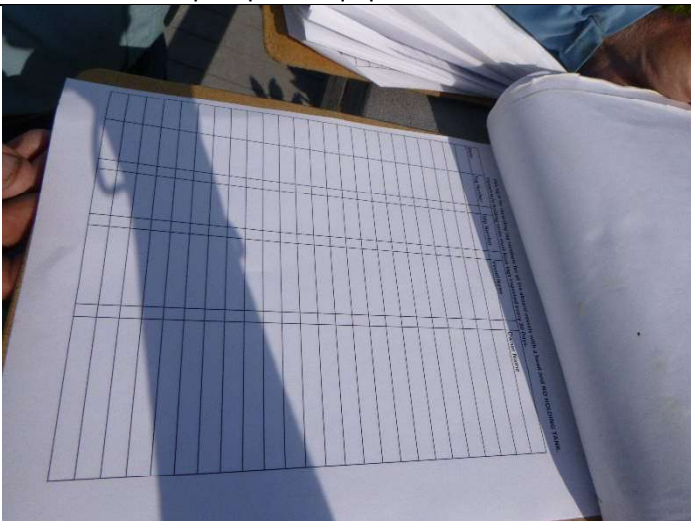
26. View of pump out equipment



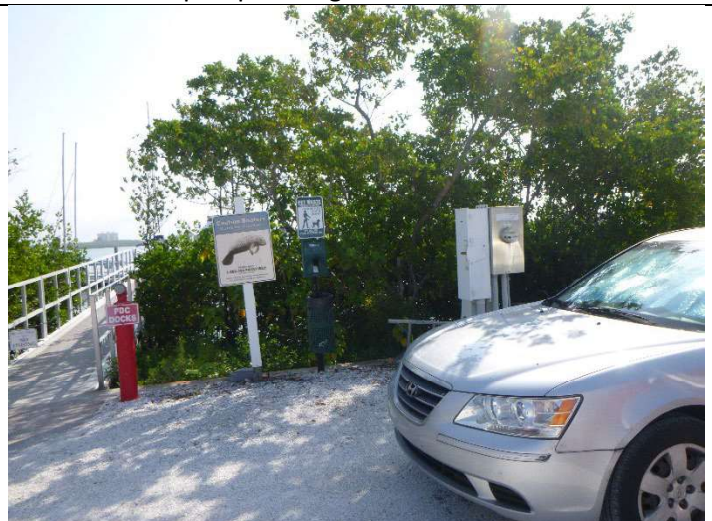
27. View of pump out equipment



28. View of pump out log



29. View of vessel log



30. View of manatee educational sign



31. View of pump out station



32. View of access walkway facing northeast



33. View of finger pier and no mooring signs facing northeast



34. View of finger pier and no mooring signs



35. View of finger pier facing south



36. View of finger pier facing north



37. View of dock facing east



38. View of access walkway and healthy untrimmed mangroves 10+ ft in height, facing west

Vessel registration photos







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: 200 and 275 ESTERO BOULEVARD

STRAP Number: 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0340 and 24-46-23-W1-00700.037A

Applicant: JABO LLC Phone: (239) 463-8601

Contact Name: BILL WAICHULIS, GENERAL MANAGER Phone: (239) 463-8601

Email: bwaichulls@boykin.com Fax: (239) 463-8640

Current Zoning District: CPD

Future Land Use Map (FLUM) Category: Mixed Residential; Recreation

FLUM Density Range: Six (6) DUPA 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*: JABO LLC Phone: (239) 463-8601

**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: 275 ESTERO BOULEVARD, FORT MYERS BEACH, FL 33901

Email: bwaichulls@boykin.com Fax: (239) 463-8640

Contact Name: BILL WAICHULIS, GENERAL MANAGER Phone: (239) 463-8601



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: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

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

Name: _____ Phone: _____

Address: _____

Email: _____ 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 _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☒ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☒ Amendment. List the project number: Add mobile food truck and eliminate prohibition on liveboards
- ☐ 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: 34-202(a)(2) Description: Boundary Survey

Code Section: 34-202(b)(5); 34-212(5) Description: Sketch of proposed building;
Architectural elevation

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, WILLIAM WAICHULIS, GENERAL MANAGER 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.

William Walchulis

Signature **General Manager, Pink Shell Resort & Marina** 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 _____ day of July, 2022, by

BILL WALCHULIS, GENERAL MANAGER



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

JABO LLC

Robert Boykin, John Boykin

100%

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

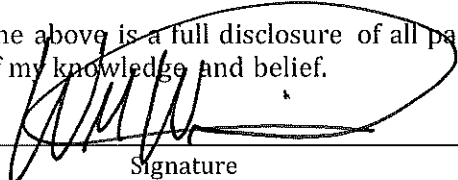
Date of Contract: _____

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

William Waichulis, Officer of JABO LLC

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, WILLIAM WAICHULIS (name), as General Manager of Pink Shell (title) of JABO 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

JABO LLC

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

Signature

WILLIAM WAICHULIS, GENERAL MANAGER

Typed or Printed Name

Manager

Title

July, 20**22**

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 **July**, 20**22**, by WILLIAM WAICHULIS, GENERAL MANAGER ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: **24-46-23-W1-00700.0330, 24-46-23-W1-00700.0340 and 24-46-23-W1-00700.037A**

Property Address: **200 and 275 ESTERO BOULEVARD**

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.

WAIVER IS ATTACHED

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 7 of 11



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) parcels of varying width feet
Depth (please provide an average width if irregular in shape) parcels of varying width feet
Frontage on street: _____ feet. Frontage on waterbody: _____ feet
Total land area: See maps and legal description ☐ acres ☐ square feet

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

from Sky Bridge go north on Estero Boulevard one mile. Pink Shell Resort is
located on both sides of Estero Boulevard

☒ 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.



Case # _____ Date Received: _____

Town of Fort Myers Beach **COMMUNITY DEVELOPMENT DEPARTMENT**

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This **part** requests specific information for a planned development rezoning or an **amendment** to an approved planned development. Include this form **with the** Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per **additional** acre
\$2000.00 PD Amendment minor (< acre total property **area**)
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: PINK SHELL AMENDMENT
Authorized Applicant: JABO LLC
STRAP Number(s):
24-46-23-W1-00700.0330, 24-46-23-W1-00700.0340 and 24-46-23-W1-00700.037A

Current Property Status: CPD
Current Zoning: CPD
Future Land Use Map (FLUM) Category: Mixed Residential; Recreation
Platted Overlay? ☐ yes, ☒ no FLUM Density Range: Six (6) DUPA

Requested Action:

☐	DRI (with rezoning)
☒	Planned Development (also check below)
☐	Rezoning from: _____ to: _____
☐	Amendment to Master Concept Plan/attendant documentation



Case # _____ Date Received: _____

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

☒	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐	The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)

B. Phasing of Construction

☒	The development is to be constructed in a single phase.
☐	The development is to be constructed in phases as follows: (describe proposed phasing below)



Case # _____ Date Received: _____

C. Comprehensive Plan Compliance.

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

SEE ATTACHED NARRATIVE EXHIBIT "A"

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

Not applicable - the change is internal and has no external change to design



Case # _____ Date Received: _____

E. Decision-making Compliance

Explain how the **proposed** development complies with the guidelines for decision-making embodied in LDC Section 34-85.

SEE ATTACHED NARRATIVE EXHIBIT "A"

F. Schedule of deviations and written justification

Provide a list of the requested deviations **keyed** to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

SEE ATTACHED NARRATIVE EXHIBIT "A"



Case # _____ Date Received: _____

G. Administrative amendments to approved Master Concept Plan

For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

NOT APPLICABLE

PART 2 Submittal Requirements

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

Required Items

- Public Hearing Request Form - **X**
- Supplement Form PH-D - **X**
- Master Concept Plan - **X**
- Traffic Impact Statement - **X**
- Architectural Elevations - **WAIVER**
- Schedule of Uses - **X**
- Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
- \$2000.00 PD Amendment minor (< acre total property area)
- \$4000.00 PD Reinstatement or \$6500.00 PD Amendment

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.



Case # _____ Date Received: _____

Guide to Filing Supplement PH-D for Planned Developments

Amendments Applications for amendments to an approved Master Concept Plan or its attendant documentation will **require** as much information as is needed to describe the changes requested, to specify **the** incremental change in impacts expected from the amendment, and to detail **the** changes in surrounding land uses that have occurred since the original application. Some amendments can be approved administratively as provided in LDC Section 34-219, but all other amendments must proceed through the public hearing process.

Through a pre-application meeting with Community Development staff, prospective applicants can determine whether proposed amendments will require a public hearing, and can request waivers from any submittal requirements that are not necessary to specify the changes requested.

All other planned developments All other applications must complete and submit the Request for Public Hearing and Supplement PH-D, **along** with all required documents. Refer also to the instructions for the Request for Public Hearing form.

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 whether the request is a DRI (Development of Regional Impact) that requires rezoning, a Planned Development, **or** an amendment to a Planned Development.

Part 1 Narrative Statements:

Comprehensive Plan Amendments

If Comprehensive Plan Amendments are pending that might affect **the** future use of the property, explain the amendments' possible effects.



Case # _____ Date Received: _____

Construction Phasing

If the project is to be constructed in multiple phases, describe the ordering and timing of the proposed phasing. In the absence of a phasing plan, phasing of development would be governed by the limitations of LDC Section 34-220.

Comprehensive Plan Compliance

Explain how the proposed development complies with the Fort Myers Beach Comprehensive Plan. Address the Future Land Use Map category or categories applicable to the subject property and any other relevant policies.

Design Standards Compliance

For properties and/or projects as described in LDC Section 34-992, explain how the proposed development will comply with the standards in LDC Sections 34-991 through 34-997.

Decision-making compliance

Explain how the proposed development will comply with the standards for decision-making in LDC Section 34-85.

Schedule of deviations and written justification

Identify the deviations from the requirements of the Land Development Code that are requested for the proposed development and justify them in relation to the guidance in LDC Section 34-932(b).

Administrative amendments

If the request is for an amendment to a planned development, indicate which of the requested changes could not be approved administratively as allowed by LDC Section 34-219.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for rezoning, including Planned Developments and Planned Development amendments for which public hearing is required, consist of the Public Hearing form and the supplemental form PH-D. Both parts of the application form must be completed and submitted.

Master Concept Plan. The master concept plan consists of maps, graphic illustrations, and written statements concerning the development. Space has

been provided on this form for many of the required narrative statements, though they can be attached on separate sheets. A master concept plan must include the following required information:

- a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase.
- b. The maximum height of any proposed buildings or structures, using the Land Development Code's method of measuring building height (see LDC Section 34-631).
- c. Proposed principal and accessory uses, identified using the terminology employed in the Land Development Code. Employ the groupings of uses in Tables 34-1 and 34-2 of the Land Development Code, or specify individual uses if necessary.
- d. The density and intensity of the proposed uses, in terms of dwelling units by type, or through conversion factors for hotel/motel units. Provide gross square footages for types of commercial uses, and maximum Floor-Area Ratio.
- e. The minimum width and composition of proposed buffers along the perimeter of the property. References to the types of buffers required by LDC chapter 10 are acceptable.
- f. The location of any environmentally sensitive land and water, based on standard environmental data capable of verification by Town staff. Developments larger than one acre in size may require a protected species survey under LDC Section 10-473.
- g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, with distances from other existing or planned rights-of-way or access points.
- h. Access and facilities for public transit, if applicable.
- i. The general location of stormwater management areas.
- j. The specific locations of requested deviations, including sample detail drawings illustrating their effects if applicable.
- k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded.
- l. Proposed dedications, if any, including beach access, boat ramps, park or recreation areas, open space, or other easements.



Case # _____ Date Received: _____

Traffic Impact Statement. A traffic impact statement in the same format and to the same degree of detail required for development orders (LDC Section 10-286).

Architectural Elevations. Architectural elevations or three-dimensional renderings that show at minimum all building façades adjoining public streets. These drawings will serve for the sketch requirement of LDC Section 34-202(b)(5) as well. If aspects of the proposed design will not comply with the commercial design standards of LDC Sections 34-991 through 34-997 (if required), the applicant may request deviations from those standards.

Schedule of uses. A list of all proposed principal and accessory uses. Identify these uses by reference to the groups of uses in Tables 34-1 and 34-2 of the Land Development Code unless greater specificity is necessary. For amendments to planned developments that were approved under different regulations, the enumeration of uses in the schedule of uses supplied for the amendment must be specific enough to explain what uses were previously approved without future reference to prior regulations or approvals.

NARRATIVE
EXHIBIT "A" TO SUPPLEMENT PH-D

Pink Shell Resort and Marina (hereinafter referred to as "Pink Shell"). JABO, LLC is filing this request to amend the Pink Shell Resort CPD to (a) add use of mobile food truck; and (b) revise condition on marine use (requires revision to Resolution 10-06 Condition 7).

Pink Shell Resort is designated as Mixed Residential and Recreation as the Future Land Use designations, which pertinent Comprehensive Plan policies are set forth in Exhibit 1. Pink Shell has a zoning designation of CPD (formerly PUD) on the Bayside CPD; a designation of CPD for White Sands (formerly PUD); and CPD for Captiva Villas (formerly MPD). Current uses include resort, guest units and residential dwelling units and assorted resort accessory uses including a marina and spa that are already approved.

The Mixed Residential designation in this area contains a number of resorts, hotels and high rise multi-family units. Immediately north of Pink Shell Resort is a regional beach park owned by Lee County which provides beach access to the Gulf of Mexico and the bay to Fort Myers Beach and Lee County residents and tourists. Fort Myers Beach is highly promoted by the Visitor, Tourist and Convention Bureau as a destination for families to enjoy the assets of the Gulf lifestyle. Pink Shell has always served families traveling to Fort Myers Beach.

Adjacent properties:

<u>Future Land use Map (FLUM)</u>	<u>Zoning</u>	<u>Existing land uses</u>	
<u>Northwest</u>	Mixed Residential, then Recreation	RM (Residential Multi-Family, then CF (Community Facilities)	Sanibel View, Pink Shell Vacation Villas Condo, and Bowditch Park
<u>Southeast</u>	Mixed Residential	RM and CPD	High-rise condominiums, then cottages
<u>Enclave:</u>	Mixed Residential	CPD	Abaco Beach Property – Multi unit
<u>Southwest:</u>	Recreation	EC (Environmentally Critical)	Gulf of Mexico beach
<u>Northeast:</u>	Tidal Water	None	San Carlos Bay

North Estero Boulevard runs between the "Bay side" parcels of the Pink Shell Resort and the "Gulf side" parcels, from southeast to northwest and terminates in a cul-de-sac at Bowditch Regional Beach Park.

Over the past decade a major financial commitment has been invested by Pink Shell into the Town of Fort Myers Beach with the construction of White Sands and with the construction of Captiva Villas, including wonderful recreation enhancements with aesthetic and creative pools,

excellent food and beverage service, and beautiful beaches. The new marina has increased boaters' interest in the asset of the Town of Fort Myers Beach.

Pink Shell always has been approved for resort use. Resort is defined by the Land Development Code Section 34-2 as:

Resort means a mixed-use facility that accommodates transient guests or vacationers as well as longer-term residents. Resorts contain at least one hotel/motel and at least 50 total units, which include a combination of dwelling units and guest units and may also include timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests.

The resort infrastructure includes the marina, pools and pool deck, beach and beach chairs, wave runners, skiffs, spa, and food and beverage services while having less impact than the existing commercial square footage.

The resort uses have been found to be consistent with the Comprehensive Plan and the Land Development Code and compatible with the neighborhood of multi-family, hotel and resort uses. Pink Shell is a lovely and intimate resort with capacity to share its amenities with residents of Lee County as well as tourists - international and out-of-state.

The purpose of this amendment is to request approval of the following use:

(a) Add use of mobile food truck. Schedule of Uses has been amended to add the use of mobile food truck which is to provide service solely within the boundaries of Pink Shell. In the same way where it is important to have employment in proximity to housing, it is important to have available services and amenities in proximity to the guests of Pink Shell. By providing opportunities to include service of a mobile food truck that adds variety of food and beverages and reduces any need to travel from the site by vehicle to another location.

(b) The approved Schedule of Uses already provides for dock use for non-occupants of the principal use and for use by Resort occupants. However, in Condition 7 attached to Resolution 10-06 there needs to be a modification to eliminate the prohibition on live-aboards. Condition 7 requires compliance with the requirements of the Submerged Land Lease and the Submerged Land Lease with the State of Florida which lease permits use of docks for overnight stays. Therefore, Condition 7 of Resolution 10-06 should be modified as follows:

7. Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. ~~No live-aboard uses are permitted.~~ Cruise ships are prohibited as provided by LDC Section 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, with the Mixed Residential Future Land Use Map

category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.

Pink Shell uses and operations have been found consistent with the Town's Comprehensive Plan, including the Mixed Residential Future Land Use map designation and policy. This Amendment (a) and (b) are also consistent with the Town's Comprehensive Plan policies.

A mobile food truck would be internal to the Resort and have no exterior impacts. It would be appropriately stored in time of storm events. It provides another food and beverage opportunity.

The change to Condition 7 of Resolution 10-06 makes it consistent with the Submerged Land Lease. It encourages participation in other island opportunities. It will have no external impacts.

We respectfully submit that the request proposes minor changes to the Pink Shell Resort and we request staff recommendation of approval to the LPA and Town Council.

GOALS - OBJECTIVES - POLICIES

Based on the analysis of land use issues in this element, the following goals, objectives, and policies are adopted into the Fort Myers Beach Comprehensive Plan:

GOAL 4: To keep Fort Myers Beach a healthy and vibrant "small town," while capitalizing on the vitality and amenities available in a beach-resort environment and minimizing the damage that a hurricane could inflict.

OBJECTIVE 4-A SMALL-TOWN CHARACTER — Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented "public realm" that allows people to move around without their cars even in the midst of peak-season congestion..

POLICY 4-A-1 Maintaining the town's current "human scale" is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

POLICY 4-A-2 The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm.

POLICY 4-A-3 The town shall protect residential neighborhoods from intrusive commercial activities (see Policies 4-C-2 and 4-C-3 below).

POLICY 4-A-4 Easy walking access to the beach is a key element of the town's human scale. Development trends that inhibit this access are undesirable (including traffic improvements to Estero Boulevard that would make it a barrier to the beach for pedestrians).

POLICY 4-A-5 The town contains many important natural resources despite its urbanized character. Preservation of those resources is of the highest importance and is a frequent theme throughout this plan.

POLICY 4-A-6 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.

POLICY 4-A-7 Estero Bay also provides great benefits to the town and can be enhanced by improving public access and reversing the decline in water quality. The Conservation and Coastal Management Elements of this plan outline the town's efforts on these matters.

POLICY 4-A-8 The town shall establish clear and consistent rules and processes that govern private and public development. They shall be incorporated into an illustrated Land Development Code that:

- i. defines the permitted uses and illustrates the dimensions needed to implement this comprehensive plan;
- ii. illustrates the types and dimensions of allowable signs that will identify businesses and other destinations with-

EXHIBIT

1
(7 PAGES)

POLICY 4-B-3

“LOW DENSITY”: designed for existing subdivisions with an established low-density character (primarily single-family homes). For new development, the maximum density is 4 dwelling units per acre, and commercial activities are limited to home occupations as described in the Land Development Code (limited to incidental uses by the dwelling unit’s occupant that do not attract customers or generate additional traffic).

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 activi-

ties are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.

POLICY 4-B-5

“BOULEVARD”: a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential 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). To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned develop-

ment rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.

POLICY 4-B-6

“PEDESTRIAN COMMERCIAL”: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. 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 affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All “Marina” uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

POLICY 4-B-7

“MARINA”: designed for prime sites that can provide access to the valuable waters around Fort Myers Beach. This category provides services for recreational boating, including related accessory uses provided that don’t displace recreational marina services. Cruise ships and similar uses that

draw large amounts of vehicular traffic are not permitted in this category. Specific regulations will be placed in the Land Development Code.

POLICY 4-B-8

"RECREATION": applied to public parks, schools, undevelopable portions of Bay Beach, and those parts of Gulf beaches that lie seaward of the 1978 coastal construction control line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line). The maximum density of residential development here is 1 dwelling units per 20 acres, with all dwelling units to be constructed outside this category. Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities. Non-recreational uses (such as the elementary school) now comprise 2.7% of the land in this category; additional school sites and public buildings shall not increase this percentage beyond 6%.

POLICY 4-B-9

"WETLANDS": a conservation district applied to all remaining wetlands. The maximum density of residential development here is 1 dwelling units per 20 acres. Other allowable uses, if compatible with wetland functions, are passive recreation, walking access to tidal waters (boardwalks and docks), and restoration of degraded habitats. Prohibited activities include placement of fill material; dredging of boat basins and channels; place-

ment of seawalls or other shoreline stabilization; and removal of native vegetation.

POLICY 4-B-10

"TIDAL WATER": applied to all saltwater canals and all waters surrounding Estero Island that lie within the municipal boundary (out 1,000 feet). No residential development is permitted. Allowable uses are water sports, boating, swimming, fishing, and similar uses. Also allowed are fixed structures for water access provided they comply with Land Development Code provisions designed to avoid impeding navigation and to minimize environmental damage and interference with aesthetic enjoyment of surrounding waters.

POLICY 4-B-11

PLATTED OVERLAY: This is not a separate category on the Future Land Use Map, but is applied in addition to one of the eight categories listed above. Allowable land uses are the same as in the underlying category, but the maximum residential density is 10 units per acre. This density level applies in the Pedestrian Commercial category only for affordable units consistent with the adopted redevelopment plan; in other categories it applies only to recognize existing dwelling units that were built legally but which would be non-conforming under a density cap of 6 units per acre.

POLICY 4-B-12

LAND-USE TYPES DEFINED: For purposes of this comprehensive plan, land uses are divided into the following types:

- i. **Residential uses** include detached homes, accessory apartments (see Policy 4-C-7), home occupations (see Policy 4-B-3), mobile homes, apartments, and condominiums, provided that no

in the Land Development Code will encourage more intense commercial uses only in the "Pedestrian Commercial" category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the "Pedestrian Commercial" category as high as 2.5, and in other categories as high as 1.5,

COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply:

- i. No rezonings for commercial uses shall be allowed in the "Low Density" category.
- ii. Where new or expanded commercial uses are encouraged, as in the "Pedestrian Commercial" category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.
- iii. In the "Mixed Residential" category, commercial uses are limited to lower-impact uses such as offices, motels, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design

concepts of this plan and the Land Development Code. Landowners may seek commercial rezoning only through the planned development process.

- iv. In the "Boulevard" category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.
- v. The following principles shall be considered by the town when evaluating requests for new commercial uses:
 - a. Shopping and services for residents and overnight guests are strongly preferred over shopping and services that will attract additional day visitors during peak-season congestion.
 - b. Shopping and services that contribute to the pedestrian character of the town are strongly preferred over buildings designed primarily for vehicular access.
- vi. The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by:

POLICY 4-C-3

- a. the type of commercial activities (such as traffic to be generated, hours of operation, and noise);
 - b. its physical scale (such as the height, and bulk of proposed buildings); and
 - c. the orientation of buildings and parking).
- Commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved.

POLICY 4-C-4 BUILDING HEIGHTS:

The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits

of the height limit against other public benefits that would result from the specific proposal.

POLICY 4-C-5

DENSITY: This plan establishes density levels as the maximum number of residential dwelling units allowed per acre of land (DU/acre). This acreage includes all residential land plus land within the development to be used for street and utility rights-of-way, recreation and open space, water management, and existing lakes that are entirely contained within the residential development. Commercial and other non-residential land shall not be included in this acreage; however, where mixed uses are permitted in a single building, residential densities will be computed without regard for commercial uses located on lower floors. When computing densities on existing subdivisions where lots are smaller than 15,000 square feet, one-half the width of adjoining streets and canals may be included in the acreage, and computed densities greater than 1.50 DU/acre may be rounded up to two dwelling units where multiple dwelling are permitted.

POLICY 4-C-6

MOTEL DENSITIES: The Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units. These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. They may vary between a low of one guest unit and a high of three guest units for each dwelling unit. (These factors would apply only where guest units are already permitted.) In order to implement the 1999 Old San Carlos Boulevard / Crescent Street Master Plan that encourages mixed-use buildings with second and third floors over shops on Old San Carlos, hotel rooms may be substituted for otherwise allowable office space in that situation and location

only without using the equivalency factors that apply everywhere else in the town. This alternate method for capping the number of hotel rooms applies only to properties between Fifth to First Streets that lie within 200 feet east and west of the centerline of Old San Carlos Boulevard. Hotel rooms built under this alternate method must have at least 250 square feet per rentable unit, and under no circumstances shall buildings they are located in exceed four stories (with the ground level counted as the first story).

POLICY 4-C-7 ACCESSORY APARTMENTS: Accessory

apartments are common at Fort Myers Beach and may be legal under several circumstances:

- i. If the apartment is in a building that meets all requirements (including density limits in this plan); or
- ii. If the apartment was built prior to zoning in 1962 and has been in continuous use, it may qualify as a "legally non-conforming use" and can continue in use until taken out of service; or
- iii. If the apartment was built between 1962 and 1984 and complies with all requirements except the density cap of 6 dwelling units per acre and the floodplain elevation requirements (both of which took effect in 1984); or
- iv. If a single existing apartment is in an owner-occupied home, it is not considered an independent dwelling unit and may be allowed under certain conditions as specified in the Land Development Code.

POLICY 4-C-8 DENSITY TRANSFERS: The Town Council may, at its discretion, permit the transfer of residential and hotel/motel development rights from one parcel to another if the following conditions are met:

- i. the transfer is clearly in the public interest, as determined by the Town Council;
- ii. the parcels affected by the transfer are in close proximity to each other;
- iii. the density of residential or hotel/motel units being transferred is based upon allowable density levels in the category from which the density is being transferred;
- iv. the transfer is approved through the planned development rezoning process; and
- v. binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.

POLICY 4-C-9 UTILITY SERVICES: Utility services may be constructed in any category on the Future Land Use Map provided all development regulations are met including proper zoning.

POLICY 4-C-10 MAP AMENDMENTS: The intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to this plan if such increases are clearly in the public interest, not just in the private interest of a petitioning landowner. Petitions from landowners will be accepted annually. The Town Council may accept applications more frequently at its sole discretion.

POLICY 4-C-11 SANTOS ROAD: The town is interested in considering land-use alternatives for parcels bordering Palermo Circle, Santos Road, and Estero Boulevard. Alternatives may include: Santos Road being added into the pedestrian zone; limited retail on the ground floor along Santos, with shared off-site parking; better buffering of existing parking and refuse areas; and a clear separation between all commercial uses and the residential areas on Palermo



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

- ☐ General Requirements
- ☐ DRI
- ☒ Planned Development
- ☐ Conventional Rezoning
- ☐ Special Exception
- ☐ Variance
- ☐ Appeal
- ☐ Other

Administrative Action

- ☐ General Requirements
- ☐ Planned Dev. Amendment
- ☐ Commercial Antenna
- ☐ Consumption on Premises
- ☐ Forced Relocation of a Business
- ☐ Interpretation of LDC
- ☐ Minimum Use Determination
- ☐ Setback Variance
- ☐ Other

Name of Project: PINK SHELL AMENDMENT

Applicant: JABO LLC c/o Bill Waichulis, General Manager of Pink Shell Resort & Marina

Strap Number: 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0340 and 24-46-23-W1-00700.037A

Street Address: 200 and 275 ESTERO BOULEVARD

Phone Number: (239) 463-8601

Email: bwaichulis@boykin.com



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements Specific requirements from which waiver is sought

Section Number	Requirement
34-202(a)(2)	Boundary survey
34-202(b)(5); 34-212(5)	Sketch of proposed building; Architectural elevation

Scope of project and reasons for request

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

The request is an Amendment to the Pink Shell Resort CPD to add mobile food truck to the approved uses, and eliminate prohibition of live-aboards (consistent with the FDEP approval).
Boundary surveys have been previously filed with the Town and accepted. Waiver to this item previously approved.
There will be no exterior changes viewable to the public by these amendments.
Since there is no change in the footprint, there is no reason to provide a survey when the Town has it on file.

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

_____, July _____, 2022

Signature

Date

Director's Decision _____ Approved _____ Denied

Comments:

Signature

Date

Revised 1/6/2017

Town of Fort Myers Beach
2525 Estero Blvd., Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Permits@FortMyersBeachFL.gov Fax: 239-765-0909

Page 2 of 2

SUBMIT

LETTER OF AUTHORIZATION

TO TOWN OF FORT MYERS BEACH COMMUNITY DEVELOPMENT

The undersigned on behalf of Captiva Villas Development, LLC does hereby swear or affirm that it is the owner of the property known as STRAP No. 24-46-23-W1-00700.037A, Estero Boulevard, Fort Myers Beach, Florida 33931.

The undersigned hereby authorizes and designates JABO, LLC, including Bill Waichulis, General Manager of Pink Shell Resort & Marina, to be the Applicant and represent it with the Town of Fort Myers Beach including the Community Development Department regarding the Application for Public Hearing involving above-referenced property.

CAPTIVA VILLAS DEVELOPMENT, LLC

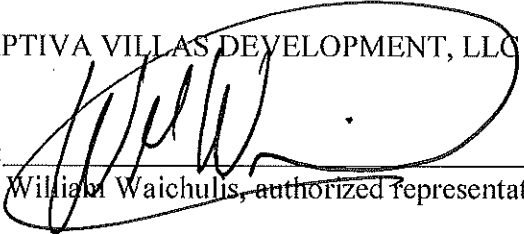
By: 
William Waichulis, authorized Representative

Exhibit G Request to withdraw mobile food unit use

From: [Spector, Sarah](#)
To: [Sarah Propst](#)
Cc: [Bill Waichulis - PSR](#)
Subject: Pink Shell CPD Amendment (DCI 20220032)
Date: Monday, January 9, 2023 4:03:16 PM

Good afternoon, Sarah-

Please accept this email as a formal request to withdraw the portion of the above-referenced request relative to the placement of a mobile food cart on the Gulf side of the property.

With the removal of the mobile food cart request, the request will be limited to one to remove the prohibition against liveboards.

Should you need anything further to process this request, please do not hesitate to let me know.

Thank you very much for your assistance with this matter.

Sarah E. Spector, Esq.
Roetzel & Andress, LPA
2320 First Street, Suite 1000
Ft. Myers, FL 33901
Direct: 239.338.4213
Main: 239.337.3850
Fax: 239.337.0970
E-mail: sspector@ralaw.com
www.ralaw.com



Akron - Chicago - Cincinnati - Cleveland
Columbus - Ft. Myers - Naples - Toledo

Both Sarah Spector and Roetzel & Andress intend that this message be used exclusively by the addressee(s). This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. Unauthorized disclosure or use of this information is strictly prohibited. If you have received this communication in error, please permanently dispose of the original message and notify Sarah Spector immediately at 239.338.4213. Thank you.

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public

disclosure.



Exhibit H

Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33966

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at DiamondHead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, Florida, 33931.

TIME: 9 AM

DATE: 1st hearing date February 21st 2023 , 2nd hearing date March 6th, 2023

CASE: DCI Rezoning 20220032

ADDRESS: 200 and 275 Estero Blvd

APPLICANT: JABO LLC, Bill Waichulis

REQUEST: The applicant is requesting an amendment to the existing CPD to allow live-aboard vessels in association with the submerged land lease.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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Community Development Services - Planning Division
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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

1. **Requested Motion:**

Meeting Date: February 21, 2023

Second and Final reading, Public Hearing and adoption of proposed Ordinance 23-02 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 3, SECTION 34-638 MINIMUM SETBACKS, SECTION 34-2 DEFINITIONS, AND TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open second public hearing and then vote to approve the Ordinance.

Why the action is necessary:

An ordinance to amend the Land Development Code (LDC) has to be read at two public hearings and approved by the Town Council.

What the action accomplishes:

Amending these sections of the Land Development Code (LDC) will reduce setbacks on residential corner lots, side setbacks on all residential lots and amend the other regulations explained in the staff report.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

A large number of the variance requests, submitted to the Town, are to allow development on corner lots. The Land Development Code (LDC) currently requires corner lots to provide a right of way setback, of 25 feet, from both rights of way, a side setback that is 15% of the width of the lot, and a rear setback of 20 or 25 feet. Often it is difficult to design a home on a lot with all of the setbacks applied. Staff was tasked with providing options to amend the code that would alleviate some of the common issues. This ordinance includes amendments to the corner lot regulations as well as porches and stoops, additional setbacks for houses longer than 65 feet, mechanical equipment setbacks and side setbacks.

Attachments:

1. Ordinance 23-02
2. Exhibit A New Corner Lot Regulations
3. Exhibit B New Setback Regulations
4. Feb 21 Memo

Financial Impact:

unknown

6. **Alternative Action**

Do not adopt ordinance 23-02

7. **Management Recommendations:**

Approve ordinance 23-02

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning
Steve Poposki, Community Development Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 2/7/2023
Approved - 2/7/2023
Approved - 2/10/2023
Approved - 2/14/2023
Final Approval - 2/15/2023

ORDINANCE NO. 23-02

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA
AMENDING CHAPTER 34, ARTICLE III., DIVISION 3, SECTION 34-638
MINIMUM SETBACKS, SECTION 34-2 DEFINITIONS, AND TABLE 34-3
DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING
DISTRICTS; PROVIDING FOR SEVERABILITY; CODIFICATION;
SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE
DATE.**

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 18, 2023, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 7-0, to recommend approval of the requested amendment to Chapter 34., Section 34-638, Section 34-2 and Table 34-3; and

WHEREAS, on February 6, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on February 21, 2023, the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Chapter 34, Article III., Division 3, Section 34-638 Minimum Setbacks, Section 34-2 Definitions, and Table 34-3 Dimensional Regulations in Conventional Zoning

Districts is hereby amended to read as found in attached Exhibit A – New Corner Lot Regulations and Exhibit B – New Setback Regulations:

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember _____ and seconded by _____ and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Bill Veach, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 21st day of February, 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

John R. Herin, Jr., Town Attorney

Exhibits

Exhibit A – New Corner Lot Regulations

Exhibit B – New Setback Regulations

Section 34-2 - Definitions:

Lot, corner means:

- (1) A lot located at the intersection of two or more streets where the corner interior angle formed by the intersection of the two streets is 135 degrees or less; or
- (2) A lot abutting a curved street if straight lines drawn between the intersections of the side lot lines and the street right-of-way or easement to the foremost point of the lot form an interior angle of less than 135 degrees.
- 3) Corner lots will have a front street setback, a side street setback, a rear setback and a side setback. See Sec. 34-638(a)(4) for additional explanation.

Lot line, front means the lot line which separates the lot from a street right-of-way or easement. A corner lot will have a front and a side street setback.

Lot line, rear means that lot line which is parallel to or concentric with and most distant from the front lot line of the lot. In the case of an irregular or triangular lot, a line 20 feet in length, entirely within the lot, parallel to or concentric with and at the maximum possible distance from the front lot line, shall be considered to be the rear lot line. In the case of a through lot, there shall be no rear lot line. In the case of a double-frontage lot, the line directly opposite from the front line shall be designated as either a rear lot line or a side lot line depending upon the designation of the adjacent property. In the case of corner lots, the rear lot line shall be the line most nearly parallel to or concentric with and most distant from the front street lot line. ~~most prevalent along the block.~~

Street setback means the setback extending across the front of a lot measured from the edge of an existing street right-of-way or street easement. See definition of "*Lot line, front*" and [§ 34-638](#) of this chapter. Corner lots will have two street setbacks, a front street setback and a side street setback, see Sec. 34-638(a)(4) for additional explanation.

Street setback, front means the street setback, on a corner lot, that is the opposite of the rear setback and is the full required depth of the street setback. Corner lots located on Estero Boulevard must have the front street setback from Estero Boulevard.

Street setback, side means the street setback, on a corner lot, that is opposite of the side setback and is less than the full required depth of the front street setback. See Sec. 34-638(d)(6) for additional explanation.

Sec. 34-638. - Minimum setbacks.

- (a) *Generally.* Most zoning districts require minimum setbacks between all buildings and structures and the street, the side lot line, the rear lot line, and any waterbody.
 - (1) Setbacks are minimum horizontal distances between a property line and the nearest point of all structures that ensure a minimum area without buildings. Detailed definitions are provided under "setback" in § 34-2 of this LDC.
 - a. Where an unusual lot configuration or orientation makes it unclear which property lines are street, side, or rear lot lines, the director will establish street, side, and rear lot lines for setback purposes after taking into account existing buildings on the same block as well as the intent of this code. Where access is provided by a shared driveway rather than a street, the director may determine that no street setback applies to that lot.
 - b. Once established through this process, the same setbacks will be applied by the director to other lots on that block.
 - (2) There are two types of side setbacks:

- a. *Side setbacks - waterfront lots.* Larger side setbacks are required for waterfront lots, defined as lots that immediately adjoin a tidally influenced body of water, whether artificial or natural (see definitions in § 34-2 of this LDC).
 - b. *Side setbacks - non-waterfront lots.* Smaller side setbacks are required for all other lots.
- (3) The distinction between street setback lines and build-to lines is explained in § 34-662 of this chapter.
- (4) *Corner Lot Street Setbacks.* Corner lots, as defined in 34-2, shall have a front street setback, a side street setback, a standard side setback and a standard rear setback, as defined in Table 34-3 – Dimensional Regulations in Conventional Zoning Districts.
 - a. Front Street Setback. The front street setback will be the typical required street setback as defined in Table 34-3. Any corner lot on Estero Boulevard, must treat the Estero Boulevard frontage as the front street setback. Any corner lot not on Estero Boulevard may choose the front street which best allows development of the property and meets all other code requirements. The rear setback shall be opposite of the front street setback
 - b. Side Street Setback. The side street setback width will vary depending on the width of the lot. Lot width is measured from the side street property line to the side property line (opposite from the side street property line). See Sec. 34-638(d)(6)
- (45) Certain exceptions to minimum setbacks are provided in subsection (d) below.
- (b) *Where to find minimum setback dimensions.* Minimum setback dimensions are specified as follows:
 - (1) *For principal buildings:*
 - a. For all conventional zoning districts, see Table 34-3.
 - b. For redevelopment zoning districts, as described for the individual districts in division 5 of this article.
 - c. For RPD districts, see § 34-943 of this chapter.
 - d. For CPD districts, see § 34-953 of this chapter.
 - (2) *For accessory buildings,* see §§ 34-1174—34-1176 of this chapter.
- (c) *Additional wetlands buffers.* New development must maintain a 75-foot separation between wetlands and buildings or other impervious surfaces, in accordance with Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan.
 - (1) This requirement does not apply to lawfully existing subdivided lots.
 - (2) This requirement also does not apply to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see ch. 15 of the Fort Myers Beach Comprehensive Plan for details).
- (d) *Exceptions to setbacks and dimensions.* In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in §§ 34-991—34-1010 of this chapter.
 - (1) *Exceptions to all setbacks.*
 - a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268 of this chapter.
 - b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.
 - c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.

- d. *Awnings and canopies.*
 - 1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.
 - 2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.
 - e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum setbacks for the district wherein located (see § 34-1617 of this chapter).
 - f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family buildings that are being subdivided must be separated by not less than one-hour fire resistance.
 - g. *Mechanical equipment.* Mechanical equipment such as air conditioners, generators, service panels, meters, and pool equipment, associated with new homes, may encroach up to three feet into rear and waterbody primary structure setbacks but must meet the same street and side setbacks as the building it serves. ~~These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.~~
 - 1. On lots where the side setbacks are not equal on both sides, mechanical equipment may not be placed on the side of the house with the smaller setback unless the smaller setback is 20 feet wide or more.
 - 2. For existing homes, mechanical equipment may be replaced or elevated in the original location it was installed, in conformance with prior regulations.
 - 3. New, elevated, mechanical equipment, for existing homes, may be located or relocated into the rear, side or side street setback. The equipment may encroach no more than three (3) feet or the same encroachment of the existing equipment, whichever is greater. An access ladder may be installed which encroaches no more than 3 feet into the side yard or side street setback and is removable or movable.
- (2) *Exceptions to street setbacks.* Certain structures are exempt from the street setback requirements as follows. See also § 34-1174 of this chapter.
- a. *Build-to lines.* Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662 of this chapter. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e) of this chapter).
 - b. *Porches, balconies and stoops.* Porches, balconies and stoops may encroach into the street setback extend up to ten feet or half the width of the street setback, whichever is less, into the 25-foot street setback on the first living level of residential buildings, provided that:
 - 1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony or stoop; and
 - 2. ~~No portion of a porch or balcony and no walls or screened areas may be closer than ten feet to the edge of any street right-of-way or street easement.~~
 - 3. Porches, balconies and stoops, which extend into the ~~front~~ street setback, may not exceed 35 feet in width.

- c. *Mail and newspaper delivery boxes.* Mail and newspaper delivery boxes may be placed in accordance with U.S. Postal Service regulations; however, the support for a mail or newspaper delivery box must be of a suitable breakaway or yielding design, and any mail or newspaper delivery box placed in an unsafe or hazardous location can be removed by the government agency with jurisdiction over the right-of-way at the property owner's expense.
 - d. *Bus shelters, bus stop benches and bicycle racks.* Bus shelters, bus stop benches, and bicycle racks may be located in any district without regard for minimum setbacks, provided the location of the structure is approved by the town manager. No advertising is permitted on bus stop benches.
 - e. *Telephone booths.* Telephone booths and pay telephone stations may be located in any zoning district that permits multifamily or commercial uses without regard for minimum setbacks; provided that the location shall be approved by the director.
- (3) *Waterbody setbacks.*
- a. *Gulf of Mexico.* Except as provided in this section or elsewhere in this code, no building or structure shall be placed closer to the Gulf of Mexico than set forth in ch. 6, articles III and IV of this LDC, or 50 feet from mean high-water, whichever is the most restrictive. See also special regulations for the EC zoning district in § 34-652 of this chapter and the coastal zone restrictions in § 34-1575 of this chapter.
 - b. *Other bodies of water.* Except as provided in this section or elsewhere in this chapter, no building or structure shall be placed closer than 25 feet to a property line adjacent to a canal, bay, or other waterbody. For purposes of measuring setbacks from a canal, bay, or other body of water, the following will also be used:
 - 1. If the body of water is subject to tidal changes, the setback will be measured from the mean high-water line.
 - 2. If the body of water is not subject to tidal changes, the setback will be measured from the control elevation of the body of water if known, or from the ordinary high-water line if unknown.
 - 3. In addition to the property line setback, if the property has a seawall, a minimum setback of five feet will be measured from the seaward side of the seawall, not including the seawall cap.
 - 4. If property lines encroach into the waterbody, then no more than five feet shall be applied to the setback measurement.
 - 5. If plats or legal descriptions of property reference water bodies as boundaries, the mean high-water line shall be utilized, unless otherwise stated in those legal descriptions or survey.
 - c. *Exceptions for certain accessory structures.* Certain accessory buildings and structures may be permitted closer to a body of water as follows:
 - 1. *Fences and walls.* See division 17 of this article.
 - 2. *Shoreline structures.* See § 34-1863 and ch. 26 of this LDC.
 - 3. *Nonroofed structures.* Swimming pools, tennis courts, patios, decks, and other nonroofed accessory structures or facilities which are not enclosed, except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade to the top of the enclosure, shall be permitted up to but not closer than:
 - (i) Five feet from a seawalled canal or seawalled natural body of water;
 - (ii) Ten feet from a nonseawalled artificial body of water; or
 - (iii) Twenty-five feet from a nonseawalled natural body of water;

whichever is greater. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with the setbacks set forth in subsections (d)(3)a. and (d)(3)b. of this section.

4. *Roofed structures.*

- (i) Accessory structures with roofs intended to be impervious to weather and which are structurally built as part of the principal structure shall be required to comply with the setbacks set forth in subsections (a) and (b) of this section.
- (ii) Accessory structures with roofs intended to be impervious to weather and which are not structurally built as part of the principal structure may be permitted up to but not closer than 25 feet to a natural body of water, and ten feet to an artificial body of water.

(4) *Exceptions for certain nonconforming lots.*

- a. Certain nonconforming mobile home lots in the village zoning district are subject to the modified side and rear setback requirements that are found in § 34-694 of this chapter.
- b. Certain nonconforming commercial lots are subject to the modified side and rear setback requirements that are found in § 34-3277 of this chapter.

(5) *Additional street setbacks for single-family and two-family homes exceeding 65 feet in width in the RS, RC and RM zoning district.*

- a. Single-family and two-family homes exceeding 65 feet in width, shall have additional street setback requirements.
 - 1. No more than 65 feet of the structure may be constructed between the street setback line (25 feet from right-of-way property line) and 37 feet from the street property line. Any portion of the structure exceeding 65 feet in width shall be set back an additional 12 feet (37 feet from the right-of-way property line).
 - (i) For corner lots, the additional 12-foot setback requirement applies to the front street setback.
 - (ii) For corner lots, the additional setback may be reduced for the side street setback. The side street additional setback shall apply to the length of the home, exceeding 65 feet, that fronts on the side street. The additional setback from the side street shall be based on the width of the lot from the side street property line to the opposite side property line.
 - Properties 50 feet or less in width shall have an additional setback of 3 feet.
 - Properties greater than 50 feet in width to 85 feet in width shall have an additional setback of 6 feet.
 - Properties greater than 85 feet in width shall have an additional setback of 12 feet.
 - 2. No more than 80 percent of the portion of the structure between the street setback line (25 feet from right-of-way property line) and 37 feet from the street property line may be taller than one story above flood elevation. Any portion of the building behind the 37-foot front setback may be built to the maximum buildable height for that zoning district.
 - 3. The 65 feet of building between the 25-foot street setback and 37 feet from the street property line, must be constructed as at least two separate projections. The front façade may not be a continuous wall without setback changes. See Figure 34-2.

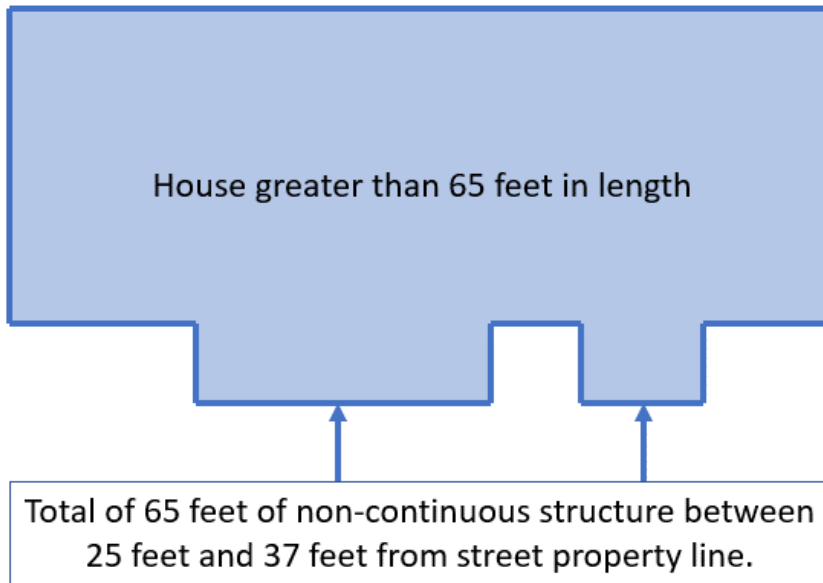


Figure 34-2

- b. *Exemption from additional setbacks for open ground level.* A residential structure greater than 65 feet in width will be exempt from the additional front and side setback requirements found in § 34-638(d)(5), if the ground-level enclosed or screened area is limited to no more than 30 feet in width, as viewed from the ROW. The enclosed area may extend the full depth of the house but limited in width to 30 feet.
- (6) *Side-setback requirement for single-family and two-family homes in the RS, RC and RM zoning districts.*
 - a. ~~Single-family and two-family homes must provide side setbacks equal to 15 percent of the lot width, but not less than 7.5 feet, on each side.~~
 - 1. ~~Lot width is measured from the property line adjacent to the right-of-way. Where the property is a corner lot, the front will be the side of the property that is deemed the front based on the setbacks (in relation to where the front setback, rear setback, and side setbacks are applied).~~
 - 2. ~~The cumulative total of the side setbacks shall be 30 percent of the parcel width, however, the setbacks do not have to be equal on both sides. No side setback shall be less than ten percent of the parcel width or a minimum of 7.5 feet, whichever is greater.~~
 - (i) ~~Mechanical equipment may not be located on the side of the house with a smaller setback unless the smaller setback is 20 feet wide or more.~~
 - 3. ~~The setback measurement shall be rounded to the nearest half-foot.~~
- (6) Corner Lot Street Setbacks. Corner lots, as defined in 34-2, shall have two street setbacks which may vary depending on lot width. a standard side setback and a standard rear setback shall apply, as defined in Table 34-3 – Dimensional Regulations in Conventional Zoning Districts.
 - a. Front Street Setback - for single-family and two-family homes in the RS, RC and RM zoning districts will be 25 feet. Any corner lot on Estero Boulevard, must treat the Estero Boulevard frontage as the front street setback. Any corner lot not on Estero Boulevard may choose the front and side street which best allows development of the property and meets all other code requirements. The rear setback shall be opposite of the front street setback

Exhibit A – New Corner Lot Regulations

b. Side Street Setback - for single-family and two-family homes in the RS, RC and RM zoning districts.

The side street setback will vary between 10 feet and 20 feet depending on the width of the lot, measured from the side street property line and the side property line (opposite from the side street property line).

1. Properties that measure 50 feet or less shall have a 10-foot side street setback.
 - (i) Proposed layout must indicate how parked cars will be maintained out of the right of way, if the property will be accessed from this side.
2. Properties that measure greater than 50 feet up to 75 feet shall have a 15-foot side street setback.
 - (i) Proposed layout must indicate how parked cars will be maintained out of the right of way, if the property will be accessed from this side.
4. Properties that are greater than 75 feet shall have a 20-foot side street setback.

([Ord. No. 20-08](#), § 2, 4-6-2020; Ord. No. [20-19](#), § 4, 1-19-2021; Ord. No. [22-01](#), § 2, 2-7-2022)

Table 34-3— Dimensional Regulations in Conventional Zoning Districts														
	street	side - waterfront lot	side - non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	percentage		feet	stories
ZONING DISTRICT	Setbacks (see § 34-638 for explanations and exceptions)						Lot size (see § 34-637 for explanations and exceptions)			F.A.R. §34-633	Building Coverage § 34-634	Density § 34-632	Height (see § 34-631)	
<i>RS Residential Single-family</i>	25(9)	15% of lot width <u>7.5 or 10</u> (8) (9)/(10)	15% of lot width <u>7.5 or 10</u> (8) (9)/(10)	20	25	50	7,500	75	100	-	40%	(3), (4)	30	3
<i>RC Residential Conservation</i>	25(9)	15% of lot <u>7.5 or 10</u> (10) width (10)	15% of lot <u>7.5 or 10</u> (10) width (10)	20	25	50	4,000	45	80	-	40%	(3), (4), (5)	30	3

Exhibit B - Proposed Setback Table Changes

<i>RM Residential Multifamily</i>	25(9)	20 (6) (10)	20 (6)	20	25	50	7,500	75	100	1.2	-/	(3), (4), (5)	35	3
<i>CR Commercial Resort</i>	10	20	15	20	25	50	20,000	100	100	1.2	-	(3)	30	3
<i>CM Commercial Marina</i>	20	20	20	20	0	50	20,000	100	100	1.0	-	-	35	3
<i>CO Commercial Office</i>	10	10	7	20	25	50	7,500	75	100	1.2	-	(3), (4), (5)	30	3
<i>Santos</i>	10	7	5	20	25	50	5,000	50	100	0.6	-	(3), (4), (5)	25	3
<i>IN Institutional</i>	20	10	7	20	25	50	7,500	75	100	0.8	-	(3)	35	3
<i>CF Community Facilities</i>	20	15	10	20	25	50	N/A	N/A	N/A	0.1	-	(3)	35	3
<i>BB Bay Beach</i>	— see § 34-651(b) —													

Exhibit B - Proposed Setback Table Changes

<i>EC Environmentally Critical</i>	20	25	-	25	20	50	(7)	N/A	N/A	0.01	-	(3), (7)	25	2
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Note (1): An additional wetland buffer is required for new development; see § 34-638(c). Note (2): See § 34-638(d)(3)a.

Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see Section 34-632

Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see Section 34-1178.

Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see Section 34-632, 34-1177, and 34-1178

Note (6): Single-family and two-family homes in the RM zoning district must maintain ~~a side setback of 15% of the lot width, but not less than a 7.5-foot side setback~~ for lots up to 75 feet and 10 feet for lots wider than 75 feet.

Note (7): See Section 34-652(e)(3).

~~Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.~~

Note (9): Maximum 65 feet of house may be built to the 25-foot front setback. Any house frontage exceeding 65 feet in length shall ~~be built 37 feet from the front~~ be subject to additional setbacks from the street property line. See Section 34-638(d)(5)a.

Note (10): ~~Each side setbacks shall be 15% of the lot width, but not less than 7.5 feet.~~ Each side setback shall be 7.5 feet for lots 75 feet or less wide and 10 feet for lots wider than 75 feet.



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Sarah Propst, Community Development
Date: February 21, 2023
Re: Corner Lot Setbacks

BACKGROUND

A large number of the variance requests, submitted to the Town, are to allow development on corner lots. The LDC currently requires corner lots to provide a right of way setback, of 25 feet, from both rights of way, a side setback that is 15% of the width of the lot, and a rear setback, of 20 or 25 feet. Often it is difficult to design a home on a lot with all of those setbacks applied. Staff was tasked with providing options to amend the code that would alleviate some of the common issues.

At a meeting with the Town Council, in June, three different ways to address corner lots were discussed. The option of Front and Side Street Setbacks, Two Fronts and Two Sides, and Minimum Buildable Width. The Council voiced support for providing a combination of Front and Side Street Setbacks with some of the Minimum Buildable Width language included.

Since that Council meeting, the LPA has had two meetings to discuss these options as well as impacts on porches and stoops, additional setbacks for houses longer than 65', mechanical equipment setbacks and side setbacks. This staff report will cover both the language presented to the LPA and any LPA recommendations that were substantially different.

At the February 6, 2023 Town Council hearing, the Council approved the LPA recommended changes and scheduled a second hearing.

PROPOSED SOLUTION

These proposed ordinance changes which would apply to residentially zoned lots.

Front and Side Street Setbacks (Corner Lot)

The current code requires corner lots to have two street setbacks of 25 feet, a rear yard setback of 20 or 25 feet and a side yard setback.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | **F.** 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



The proposed language would allow corner lots to have a front street setback, a side street setback and a rear and side setback. The owner/developer of the lot could choose which street property line is the front and which is the side, except for lots on Estero Boulevard. Lots with frontage on Estero Boulevard would have a front street setback from Estero Boulevard. The table below show the proposed side street setback width based on the lot width

Proposed

Lot Width	≤50	50< to 75	75<
Side Street	10	15	20

The code changes in this section also require that if access is taken from the narrower setback, the site plans must show how parked automobiles will not encroach on the right of way.

Porches, Balconies and Stoops (Corner Lot)

The current code allows porches, balconies and stoops to encroach up to 10 feet into the street setback but does not allow them closer than 10 feet to the street property line.

The proposed language would allow porches, balconies and stoops to encroach on the side street setback 10 feet or half the width of the setback, whichever is less.

Additional Street Setbacks for Houses Exceeding 65 Feet (Corner Lot)

The current code allows no more than 65 feet of frontage be built to the front setback line. Any portion of the house exceeding 65 feet must meet an additional setback of 12 feet.

The additional street setback for houses exceeding 65 feet along a side street, would be decreased from 12 feet to accommodate narrower corner lots. The proposed modification is shown in the table below, the side street setback is included to understand the relative impact.

Lot Width	≤50	50< to 85	85<
Additional Setback	3	6	12
Side Street Setback	10	15-20	25

Side Setbacks

The code currently requires a 15% side setback on all residentially zoned parcels.

The proposed language removes the 15% requirement and replaces it with a 7.5-foot side setback for lots 75 feet wide, or less, and a 10-foot side setback for lots greater than 75 feet wide.



Mechanical Equipment Encroachment

The current code language allows mechanical equipment to encroach into rear and waterbody setbacks up to three feet. It also allows existing homes to replace or raise mechanical equipment in the same location that it was previously permitted. It does not allow new equipment to encroach into side and street setbacks.

Per the proposed language, mechanical equipment encroachment would be permitted up to three feet in the side yard and the side street setback of the primary structure. Movable or removable access ladders would also be permitted up to three feet into the setback.

Matanzas Street and Court Setbacks

Matanzas Street and Matanzas Court both have required side setbacks of 10 feet, per footnote 8 in Table 34-3 Dimensional Regulations in Conventional Zoning Districts. Staff is unaware of why this special setback was applied to this neighborhood.

The proposed changes remove the setback of 10 feet for Matanzas Street and Matanzas Court. These lots will have the same required setbacks as other residential zoning districts.

Summary

The proposed changes will require amendments to the LDC code sections 34-635 Minimum Setbacks, Section 34-2 Definitions and Table 34-3 Dimensional Regulations in Conventional Zoning Districts. These are provided as Exhibit A and Exhibit B to the proposed ordinance.

At the February 6, 2023 Town Council hearing, the Council approved the LPA recommended changes and scheduled a second hearing.

ATTACHMENTS

Exhibit A – Proposed code language

Exhibit B – Proposed setback table changes

1. **Requested Motion:**

Meeting Date: February 21, 2023

Second reading and Public Hearing of proposed Ordinance 23-03 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 4, SECTIONS 34-3273 GENERAL REQUIREMENTS FOR RESIDENTIAL USES ON NONCONFORMING LOTS, SECTION 34-3274 MINIMUM USE DETERMINATIONS, AND CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Final adoption of ordinance 23-03

Why the action is necessary:

An ordinance must be read at two public hearings for adoption.

What the action accomplishes:

These code changes will allow the owners of small, nonconforming lots to be allowed to rebuild and in some instances receive an administrative variance.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

As the Town begins to rebuild from Hurricane Ian, some properties have been identified as potentially unbuildable due to the size and arrangement of the lot. The LPA asked staff to address these issues to ensure that these very small "cottage lots" are able to be rebuilt. These "cottage lots" are typically almost square and between 40 and 55 feet wide and long.

There are two sections of the code that impact the ability to build on the "cottage lots": Sec. 34-3273 General requirements for residential uses on nonconforming lots, and Sec. 34-3274 Minimum use determinations. There is one code section that would allow administrative variances for very small lots: Sec. 34-268 Administrative setback variances. By making minor changes to each of these code sections, owners of these "cottage lots" will be able to rebuild a home on these nonconforming lots.

Attachments:

1. Ordinance 23-03
2. Exhibit A
3. Exhibit B
4. Feb 21 TC Memo

Financial Impact:

unknown

6. **Alternative Action**

Recommend modification and adopt Ordinance 23-03.

7. **Management Recommendations:**

Adopt Ordinance 23-03.

8. Recommended Approval:

Sarah Propst, Planning & Zoning
Steve Poposki, Community Development Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Created/Initiated - 2/10/2023
Approved - 2/10/2023
Approved - 2/14/2023
Approved - 2/14/2023
Final Approval - 2/15/2023

ORDINANCE NO. 23-03

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA
AMENDING CHAPTER 34, ARTICLE V., DIVISION 4, SECTIONS 34-3273
GENERAL REQUIREMENTS FOR RESIDENTIAL USES ON
NONCONFORMING LOTS, SECTION 34-3274 MINIMUM USE
DETERMINATIONS, AND CHAPTER 34, ARTICLE II., DIVISION 6,
SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES;
PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S
ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.**

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 18, 2023, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 7-0, to recommend approval of the requested amendment to Chapter 34., Section 34-3273, Section 34-3274 and Section 34-268; and

WHEREAS, on February 6, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on February 21, 2023, the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Chapter 34, Article V., Division 4, Sections 34-3273 General Requirements

for Residential Uses on Nonconforming Lots, Section 34-3274 Minimum Use Determinations, and Chapter 34, Article II., Division 6, Section 34-268 Administrative Setback Variances is hereby amended to read as found in **attached Exhibit A** – Amended Residential Uses and Minimum Use and **attached Exhibit B** – Amended Administrative Setback Variances:

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember ____ and seconded by ____ and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Bill Veach, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 21st day of February, 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

John R. Herin, Jr., Town Attorney

EXHIBITS

Exhibit A – Amended Sec. 34-3273 and Sec. 34-3274

Exhibit B – Amended Sec. 34-268

Sec. 34-3273. - General requirements for residential uses on nonconforming lots.

Nonconforming lots may be developed subject to the following provisions:

- (1) All other regulations of this chapter shall be met, except as modified by this division.
- (2) A residential building may be placed on a single nonconforming lot provided the lot receives an affirmative minimum use determination per Sec. 34-3274 or ~~has at least 40 feet in width, 75 feet in depth.~~
- (3) Any development on nonconforming lots must comply with all density restrictions of the Fort Myers Beach Comprehensive Plan.
 - a. Density computations shall be in accordance with § 34-632 of this chapter.
 - b. If density computations do not allow even one dwelling unit on a nonconforming lot, one single-family residence may still be permitted if a minimum-use determination is obtained in accordance with § 34-3274, below.
- (4) No division of any nonconforming lot may be permitted which creates a lot with width, depth, or area below the minimum requirements stated in this chapter, except for combinations and redivisions in accordance with § 34-3275 of this chapter.
- (5) The burden of proof for demonstrating that a lot is a nonconforming lot in accordance with this division, and lawfully existed at the specified date, shall be with the owner.
- (6) The remaining lot after condemnation shall be treated in accordance with § 34-3206 of this chapter.
- (7) A nonconforming lot, which previously had or currently has a residence constructed on it, and receives an affirmative minimum use determination per Sec. 34-3274 may request an administrative setback variance in accordance with sec. 34-268.

(Ord. No. [21-04](#), § 2, 6-7-2021)

Sec. 34-3274. - Minimum use determinations.

- (a) A single-family residence may be constructed on a nonconforming lot which does not comply with the density requirements of the Fort Myers Beach Comprehensive Plan, provided the owner receives a favorable administrative interpretation of the single-family residence provision (also known as a minimum use determination) in accordance with ch. 15 of the Fort Myers Beach Comprehensive Plan, and the criteria included in subsection 34-3274(b). Density created through this process may not be transferred to any other property.
- (b) To qualify for a minimum use determination, the following additional requirements must be met:
 - (1) *Minimum lot requirements:*
 - a. The property is a legally platted, recorded lot; and
 - b. The property has ~~direct~~ access to a developed, public right-of-way by an approved access easement; and
 - c. The property has access to and will be connected to utilities; and
 - d. The lot is located within a future land use and zoning district that permits construction of a single-family residence.
 - (2) *Unplatted lot (a lot that is described in metes and bounds only and does not exist as part of a recorded subdivision) requirements:*

- a. The owner of any unplatted lot must provide evidence of the lot's existence prior to town incorporation, (January 1, 1996), and the lot's current legal description must match the lot's legal description prior to incorporation;
 - b. The property has direct access to a developed, public right-of-way by an approved access easement ; and
 - c. The property has access to and will be connected to utilities.
- (c) Lots qualifying for a minimum use determination may not place the home, accessory structures, or driveways on any land in the "wetlands" or "recreation" category on the future land use map of the comprehensive plan.
- (d) The rights granted by a minimum use determination run with the lot and are available to any subsequent owner if the lot is transferred in its entirety.
- (e) Applications for a minimum use determination shall be filed with the town clerk in accordance with ch. 15 of the comprehensive plan. Complete applications will be reviewed by the legal counsel for the local planning agency (see § 34-124(3) of this chapter) and may be referred to the local planning agency for a decision (see § 34-120(6) of this chapter).

([Ord. No. 20-01](#) , § 2, 2-18-2020)

Sec. 34-268. - Administrative setback variances.

- (a) Upon written request using a form prepared by the director, the director is authorized to modify the setbacks in §§ 34-638, 34-1174—34-1176, and 34-1744 of this chapter under the following circumstances:
- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in:
 - a. An increase in the height of the structure; or
 - b. A further diminution of the setback. The director may approve bay windows, chimneys, and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
 - (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure.
 - (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into an existing dwelling unit.
 - (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors, not exceeding 1 foot, in setbacks at the time of construction.
 - (5) Street, rear, or side setbacks may be modified for a residential lot with an unusual shape or orientation where, for instance, side and rear setbacks should be reversed.
 - (6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.
 - (7) Requirements for large satellite dishes may be modified as provided in § 34-1175(a)(6) of this chapter.
 - (8) ~~Certain n~~Nonconforming lots that receive an affirmative Minimum Use Determination (see § 34-32743) may qualify for an administrative setback variance.
- (b) The director, prior to approving the modifications, must make the following findings of fact:
- (1) There are no apparent deleterious effects upon the adjoining property owners;
 - (2) The modifications will not have an adverse impact on the public health, safety and welfare including safe access to the subject property or properties which utilize a common access easement; and
 - (3) The modifications will be the minimum required to allow a home with a footprint of the same square footage as was previously legally constructed on that property and one story two stories in height, above flood elevation, with no enclosure below base flood elevation.
 - (4) Modified setbacks may not be less than 5 feet except in instances where homes share a common wall, such as a duplex or townhome.
 - (5) Modified setbacks may not be encroached by mechanical equipment or structures.
- (c) Decisions by the director pursuant to this section are discretionary and may not be appealed in accordance with § 34-86 of this chapter.

(Ord. No. [21-04](#), § 2, 6-7-2021)



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Sarah Propst, Community Development
Date: February 21, 2023
Re: Minimum Use, Nonconforming Lots and Administrative Variances

BACKGROUND

As the Town begins to rebuild from Hurricane Ian, some properties have been identified as potentially unbuildable due to the size and arrangement of the lot. The LPA asked staff to address these issues to ensure that these very small “cottage lots” are able to be rebuilt. These “cottage lots” are typically almost square and between 40 and 55 feet wide and long.

There are two sections of the code that impact the ability to build on the “cottage lots”: Sec. 34-3273 General requirements for residential uses on nonconforming lots, and Sec. 34-3274 Minimum use determinations. There is one code section that would allow administrative variances for very small lots: Sec. 34-268 Administrative setback variances. By making minor changes to each of these code sections, owners of these “cottage lots” will be able to rebuild a home on these nonconforming lots.

PROPOSED SOLUTION

The code sections 34-3273 and 34-3274 include provisions that would make certain previously developed lots, unbuildable. These include requirements for lots to be at least 75 feet deep and to have direct access to a right of way. The proposed language, attached as Exhibit A, replaces these requirements with other requirements that address the issue which was resolved by the existing language.

The code section 34-268 addresses the ability to administratively approve a variance request. Under paragraph a, the numbered items identified the allowed administrative variances, including stairs to encroach, construction of ramps for accessibility and approval of minor construction errors. Proposed modifications to this section include limiting construction error administrative variances to one foot.



Under paragraph b. is the list of findings that must be made for the administrative variance to be approved. Modifications to this section include a variety of limitations to ensure that that administrative variances are used in strict circumstances, similar to the “cottage lots” being rebuilt and not in instances where a full variance is appropriate.

The proposed language would limit the administratively approvable house to the building footprint size of the previously approved and constructed building. It would allow two stories above flood stories with no enclosure below flood. The minimum structure setback would be five feet and the design of the lot would have to include the necessary access easements for the subject property and any properties that would be accessed through that property. The Fort Myers Beach staff will need to coordinate the plan review with the Fire Department to ensure an acceptable access width and material.

Summary

At the January 18th LPA hearing, the LPA recommended approval to Town Council for Sections 34-3273 and 34-3274, Exhibit A and Exhibit B, with minor modifications. At the February 6th Town Council hearing the Council scheduled the proposed amendments for a second reading at the February 21st Town Council hearing, with the modification to administrative variances to allow two stories above flood within the same size footprint. This essentially doubles the square footage of the existing cottage homes.

All allowable building area is dependent on providing the minimum five-foot setbacks and the required access easement approved by the Fire Department.

ATTACHMENTS

Exhibit A – Sections 34-3273 and 34-3274 with amendments

Exhibit B – Section 34-268 with amendments

1. **Requested Motion:**

Meeting Date: February 21, 2023

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING SPECIAL EXCEPTION SEZ20220095 AND VARIANCE VAR20220094 TO ALLOW THE USE OF PERMANENT SHARE PARKING WITH DIMENSIONAL AND DESIGN VARIANCES FOR THE PROPERTY LOCATED AT 237 OLD SAN CARLOS BOULEVARD; AND PROVIDING FOR AN EFFECTIVE DATE

Why the action is necessary:

Special Exceptions and Variance require approval by the Town Council.

What the action accomplishes:

Approval of the special exception and variances will allow the construction of a permanent shared parking lot.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

This will be a resolution.

4. **Submitter of Information:**

5. **Background:**

The applicant is proposing the expansion of an existing permanent shared parking lot located at 237 Old San Carlos, to the north and west of the Shipwreck building. A portion of this property was approved for a permanent shared parking lot in 2014 by SEZ2013-0006 (Exhibit A), the entire parcel was not included in the approval and the applicant is requesting that the use is allowed on additional areas of the parcel. A permanent shared parking lot is an allowed primary use in the Downtown zoning district only with an approval of a Special Exception.

Permanent, Shared Parking lots are subject to the location, design and landscaping criteria in the Land Development Code (LDC). The applicant is requesting variances from perimeter buffers, internal landscaping, interconnectivity, location, pedestrian crosswalks, dimensions, and the visibility triangle.

Attachments:

1. Resolution 23-17
2. Staff Report
3. Exhibit A SEZ2013 00006 Shipwreck
4. Exhibit B VAR2013-00007 Shipwreck
5. Exhibit C Site Plan
6. Exhibit D Landscape Plan
7. Exhibit D Landscape Plan streetview
8. Exhibit E Complete SEZ Application
9. Exhibit F Additional documents for VAR Application
10. Exhibit G parking letter from neighbor
11. Exhibit H postcard

Financial Impact:

unknown

6. **Alternative Action**

Recommend approval

7. **Management Recommendations:**

Recommend approval of the special exception and denial of variance request.

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning

Steve Poposki, Community Development Director

John R Herin Jr, Town Attorney

Amy Baker, Town Clerk

Keith Wilkins , Interim Town Manager

Created/Initiated - 2/14/2023

Approved - 2/14/2023

Approved - 2/14/2023

Approved - 2/14/2023

Final Approval - 2/15/2023

RESOLUTION NUMBER 23-17

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING SPECIAL EXCEPTION SEZ20220095 AND VARIANCE VAR20220094 TO ALLOW THE USE OF PERMANENT SHARE PARKING WITH DIMENSIONAL AND DESIGN VARIANCES FOR THE PROPERTY LOCATED AT 237 OLD SAN CARLOS BOULEVARD; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, applicant John Richard is requesting a special exception for the use of permanent shared parking in the Downtown zoning district and a variance from: Sec. 10-416(c)(2), Internal parking lot landscaping, Sec. 10-416(d), Table 10-8 and Sec. 34-677(b)(3) perimeter buffer, Sec. 34-676(b) Parking lot location, Sec. 34-676(c) Parking lot interconnections, Sec. 34-2016(1) & (2) Aisle and parking space sizes, Sec. 34-3131 Visibility Triangle; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W3-0050A.0080

WHEREAS, the Property is located in the “Pedestrian Commercial” category of the Future Land Use Map of the Comprehensive Plan and the “Downtown” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on December 18, 2023, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA voted 5-0 to recommend approval of the special exception and the six requested variances; and

WHEREAS, on February 21, 2023 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 and 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/deny the request.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did/did not meet its burden of proof that the requested Variance do/do not meet the requirements of the Town Comprehensive Plan and LDC, and approving/denying the Special Exception and Variances is in the best interest of the Town to approve/deny. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES/DENIES the special exception for the use of permanent shared parking in the Downtown zoning district and a variance from: Sec. 10-416(c)(2), Internal parking lot landscaping, Sec. 10-416(d), Table 10-8 and Sec. 34-677(b)(3) perimeter buffer, Sec. 34-676(b) Parking lot location, Sec. 34-676(c) Parking lot interconnections, Sec. 34-2016(1) & (2) Aisle and parking space sizes, Sec. 34-3131 Visibility Triangle.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval/denial of the request appropriate.
- B. The request is/is not consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets/does not meet or exceeds all performance and locational standards for the proposed use.
- D. The request will/will not protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible/incompatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will/will not be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

In approving the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

- A. There are/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval of the variance are/are not the result of actions of the Applicant taken after the adoption of the regulation in question.

C. The variance is/is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.

D. The granting of the variance will/will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. The conditions or circumstances on the Property are/are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves/denies the requested special exception and approves/denies the variance, the following conditions of approval are imposed on the Applicant and the Property:

A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

B. The applicant shall ensure that landscaping and hardscaping within the visibility triangle is less than 3.5 feet tall.

C. The applicant shall provide signage to make pedestrians aware of vehicles entering and exiting the site and signage for automobiles to be aware of pedestrians.

D. All ADA requirements shall be met in the final design.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Allers and seconded by Council Member Atterholt, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King	_____
Bill Veach	_____
Karen Woodson	_____

ADOPTED this 21st day of January, 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of October 2021.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception & Variance

CASE NUMBER: SEZ20220095
VAR20220094

CASE NAME: Special Exception for the expansion of previously approved permanent shared parking lot.

Variances from

- Sec. 10-416(c)(2), Internal parking lot landscaping
- Sec. 10-416(d), Table 10-8 and Sec. 34-677(b)(3) perimeter buffer
- Sec. 34-676(b) Parking lot location
- Sec. 34-676(c) Parking lot interconnections
- Sec. 34-2016(1) & (2) Aisle and parking space sizes
- Sec. 34-3131 Visibility Triangle

TOWN COUNCIL HEARING DATE: February 21, 2023 at 9:00 AM

LPA HEARING DATE: January 18, 2023 at 9:00 AM

STAFF RECOMMENDATION: Approve Special Exception request
Deny Variance request

**PREPARED/
SUBMITTED BY:** Sarah Propst AICP, PMP/ Jason Green AICP, CFM

I. APPLICATION SUMMARY

Applicant/Owner: John W. Richard

Requests: Special exception request for the expansion of a previously approved permanent shared parking lot located at 237 Old San Carlos Boulevard.

Variances in conjunction with the special exception:
1) Buffer Between Parking and ROW (10-416(c)(2));
2) Perimeter Buffering (10-416(d), Table 10-8, and 34-677(b)(3));
3) Parking Lot Location (34-676(b));
4) Parking Lot Interconnection (34-676(c));
5) Parking Dimensions (34-2016(1) and (2));
6) Visibility Triangle (34-3131)

Physical Address: 237 Old San Carlos
STRAP #: 24-46-23-W3-0050A.0080
FLU: Pedestrian Commercial
Zoning: Downtown

Adjacent zoning and land uses:

North:	DOWNTOWN Retail Store
South:	DOWNTOWN Retail Store
East:	DOWNTOWN Retail Store, Restaurant
West:	RESIDENTIAL CONSERVATION (RC) Single-Family Dwelling

II. BACKGROUND AND ANALYSIS

Background:

The applicant is proposing the expansion of an existing permanent shared parking lot located at 237 Old San Carlos, to the north and west of the Shipwreck building. A portion of this property was approved for a permanent shared parking lot in 2014 by SEZ2013-0006 (Exhibit A), the entire parcel was not included in the approval and the applicant is requesting that the additional area, shown in green, in Figure 1., be allowed the permanent shared parking use. Figure 2. Is the aerial of this parcel.



Figure 1.



Figure 2.

A permanent shared parking lot is an allowed primary use in the Downtown zoning district only with an approval of a Special Exception.

Permanent, Shared Parking lots are subject to the location, design and landscaping criteria in the Land Development Code (LDC). The original Special Exception for the permanent, shared parking lot was accompanied by a variance from several of the LDC requirements. VAR2013-0007 (Exhibit B) approved the following variances: allowing the parking lot to be located in the front and side yard; allowing a 2.5 foot wide, 42 inch tall buffer; not requiring a rear yard connection to adjacent parking; not requiring the visibility triangle; a decrease in the parking and aisle dimensions; not requiring internal landscaping and trees.

Analysis:

Based on a review of aerials in the Lee County GIS, this area appears to have been used as a parking lot, in some capacity, since the early 2000s.

A review of the previous variance VAR2013-0007 found two conditions that are germane to this request:

#2 Applicant may utilize the parking dimensions described in variance #5 above, however, at the time of redevelopment or the application of a building permit for the subject property, the parking space dimensions must come into compliance with all provisions of Section 34-2016.

#3 At the time of redevelopment the parking lot variance allowing a front and side parking lot must come into compliance and be relocated to the rear of the subject property.

The proposed development is a redevelopment of the site. Based on the previously approved variance condition #3, the approvals limited the location of the permanent, shared parking use to be located at the rear of the subject property. The current request conflicts with that prior location approval and restrictions. The previously

approved variance prohibited the permanent, shared parking from being located at the corner.

In addition, the site was required, per conditions of approval, to come into compliance with dimensional requirements at the time of redevelopment. The applicant has also requested a variance from the dimensional requirements.

Internal landscaping variance request.

The applicant is requesting a variance from:

- ✓ *Sec. 10-416(c)(2)a. provide trees internal to the parking lot.*
- ✓ *Sec. 10-416(c)(2)b. provide 10% landscaping area internal to the parking lot.*
- *Sec. 10-416(c)(2)c & d. minimum 10-foot-wide landscaping islands and islands between every 10 spaces.*
- ✓ *Sec. 10-416(c)(2)e. median divider with trees every 40 feet.*
- ✓ *Sec. 10-416(c)(2)f. groundcover in interior landscaped areas.*
- ✓ *Sec. 10-416(c)(2)g. optional tree grates in up to half of the required trees.*

The applicant proposes a landscape plan that is attached as Exhibit D. The plan meets several of the internal landscaping requirements .

- The plan **meets** Sec. 10-416(c)(2)a. for the number of required trees per square feet of internal islands.
- The plan **meets** Sec. 10-416(c)(2)b. 10% internal landscaping area requirement.
- The plan **does not meet all of** the components of Sec. 10-416(c)(2)c. for 10-foot landscaping island every 10 parking space requirement, although, several end cap islands and corner islands are provided.
- The plan **partially meets** the requirements of Sec. 10-416(c)(2)e. there is a median divider provided between two rows of parking and it contains the appropriate number of trees, however, the median is 7.8 feet, not 10 feet wide, as required in the code.
- The plan **meets** Sec. 10-416(c)(2)f for groundcover in the landscaping islands.
- Sec. 10-416(c)(2)g. is **not a requirement**.

The only remaining variance required is from Sec. 10-416(c)(2)c.

Perimeter buffer variance request.

The applicant is requesting a variance from:

- *Sec. 10-416(d) and Table 10-8 requires a type D buffer between parking and ROW: 15 feet wide, with five trees per 100 linear feet and a three-foot tall double staggered row of hedges.*
Table 10-8 requires a type C or F buffer between parking and a single family residence: the least wide buffer is the C buffer, which is 15 feet wide with 5 trees, 18 hedges and a wall.
- *Sec. 34-677(b)(3) Open space and buffers. There are no minimum open space and buffer requirements in the Downtown district comparable to the standards found in ch. 10 of this LDC, except in three instances: (3) Buffers are required*

between any off-street parking lot and a public street in accordance with the buffer requirements of ch. 10 of this code.

The applicant proposes a three-foot-tall white picket fence with Jasmine along Old San Carlos and 3rd Street. The buffer width along Old San Carlos is two feet and there is no buffer width indicated along 3rd Street.

Between the single-family residence and the parking lot, the applicant proposes a 3.2-foot-wide buffer planted with 28 coco plums. The number of coco plums provided meets the code requirement for shrubs but no trees are proposed. A 6-foot-tall fence that was demolished by the storm will be rebuilt adjacent to the parking lot, on the residential property.

Two, 18 to 20-foot square corner islands are proposed adjacent to the right of way, both contain trees and shrubs.

Parking lot location variance request.

The applicant is requesting a variance from:

- *Sec. 34-676(b) Parking lot locations. Off-street parking lots shall be placed in rear yards (in the Downtown District.)*

The applicant proposes that off-street parking in the Downtown zoning district should be permitted in this location which is a side and front yard.

Parking lot interconnection variance request.

The applicant is requesting a variance from:

- *Sec. 34-676(c) Parking lot interconnections. Rear-yard parking lots on properties fronting along Old San Carlos Boulevard shall be interconnected to eliminate or minimize driveways to Old San Carlos Boulevard.*

The applicant proposes that cross access should not be required because the adjacent property is developed.

Parking Space Size variance request.

The applicant is requesting a variance from:

- *Sec. 34-2016(1) & (2) the required aisle and parking space sizes, for 90° spaces 8.5' x 18', one-way aisles 20 feet and two-way aisles 22 feet.*

The applicant has proposed an updated plan that increases the size of parking spaces and aisles. The proposed parking breakdown is:

51 (50%) - 16'x8'

4 (4%) - 18'x8'

7 (7%) - 16'x8.5'

35 (35%) - 18'x8.5'

4 ADA parking spaces

Staff notes that the site plan indicates that 26 -18'x8' parking spaces, however 22 of those spaces are actually 16'x8' spaces, with low groundcover within the first 2 feet of the landscaping bed, to allow vehicles to overhang 2 feet. Additionally, one more ADA parking space is required to meet ADA requirements (5 ADA spaces/101-150 parking spaces). The applicant has been made aware of this and has agreed to resolve this issue.

Visibility triangle variance request.

The applicant is requesting a variance from:

- *Sec. 34-3131 the requirement that there shall be no obstruction within the triangle starting at the driveway, extending five feet internal to the lot perpendicular to the property line and connection 100 feet from the driveway along the street property line.*

The applicant proposes no visibility triangle along Third Street to match San Carlos Boulevard, where the visibility triangle is not required.

Neighborhood Compatibility:

Review of existing uses, prior to Ian, found the subject property is located within an area that includes many at-grade parking lots. In a cursory review of the area, parking lots appear to cover more area of the downtown, than any other land use. Some of those parking lots are for specific uses, several of them are for paid parking. Many of the parking lots were developed without the inclusion of landscaping buffers or internal landscaping. It is unknown whether these parking lots meet the dimensional requirements contained within the code.

Findings and Conclusions:

Special Exception Findings

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 conditions which make approval of the request appropriate.*

There are many potential changes to the downtown. Development of additional parking lots may be needed, however, there is no clear indication of this, at this time. The proposed use developed consistent with the Town's design requirements may provide a future benefit to redevelopment of nearby properties.

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

Several policies in the Fort Myers Beach comprehensive plan encourage the development of permanent, shared parking. The comprehensive plan also

encourages street trees, and the park once concept. The use with the proposed landscaping is consistent with the Comprehensive Plan.

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

The request, as proposed does not strictly meet the location or design standards set forth in the Town's LDC. It is proposed in a front and side yard, rather than a rear yard. The applicant has proposed additional landscaping and meets several design requirements to make it more consistent with the code. A variance will be required from the location requirement and several performance/design requirements.

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

The request does not impact the EC zoning district or 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 permanent, shared parking lot use is like other uses within the Old San Carlos corridor.

- 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 Land Development Code.*

The request for the permanent, shared parking lot special exception is accompanied by several variances. The shared parking lot, as proposed will not be in compliance with the applicable zoning and supplemental regulations, including site design criteria and location criteria. However, the variances applied for are requested for these design and location criteria.

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 parcel is a standard parcel in the downtown zoning district. The locational requirement for parking lots is the only requirement, which, because of the

parcel location/condition, would be very difficult to meet. If this project is considered redevelopment of the site, the request is contrary to past approvals for the special exception and variances for this parcel.

- 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.*

A parking lot could be developed to meet the requirements of the code. However, since the LPA hearing, many improvements have been made to the plan, reducing the number of requested variances by providing landscaping and reducing the number of parking spaces by four.

- 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 provided an updated site plan and landscape plan that meets the request of the LPA approval, in many ways. It does not, however meet all of the requirements and by decreasing the number of parking spaces further, more parking spaces could be brought into compliance with the code and additional buffering could be provided.

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

The granting of these variances will not have a negative impact on the welfare of the public.

- 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.*

Changes to the code made this variance request necessary and further changes to the code would not be warranted to address this particular situation. These requests are unique and specific to this site and the needs of this applicant.

III. RECOMMENDATION

Staff finds that the special exception for a permanent, shared parking lot may be appropriate for this location if designed appropriately. However, the requested variances would result in a parking lot which is not compatible with the land development code or typical development patterns of nearby properties. Additionally, it appears that the previous approved variance implemented conditions which will not allow the approval of the variance to the location requirement or approval of the variance for the parking space and aisle dimension.

- Special Exception: The LPA unanimously recommended approval of the Special Exception for the permanent parking lot use.
- Variance #1 Sec. 10-416(c)(2), Internal parking lot landscaping: The LPA recommended approval and asked that the applicant provide a landscaping plan that shows that it meets the internal 10% requirement for internal landscaping but may not need to meet the required location and size for internal islands.
 - o Staff recommends approval for this variance, additional proposed landscaping meets the majority of the code requirements and meets the intent of the code. Adequate trees are provided and proposed internal landscaping area is more than the required 10%.
- Variance #2 Sec. 10-416(d), Table 10-8 and Sec. 34-677(b)(3) Perimeter buffer: The LPA recommended approval with the understanding that the applicant would provide a landscape plan with landscaping enhancements that decrease the visual impact of the parking lot.
 - o Staff recommends approval of this variance, the proposed buffer landscaping while narrow, will provide a visual separation and the corner islands will provide trees and soften the exterior visual impact of the parking lot.
- Variance #3 Sec. 34-676(b) Parking lot location: The LPA unanimously recommended approval of the parking lot location variance.
 - o Staff does not recommend approval of this variance, while parking is necessary, the code recommends that parking be located to the rear of buildings and not on the right of way for highly pedestrian districts.
- Variance #4 Sec. 34-676(c) Parking lot interconnections: The LPA unanimously recommended approval of the parking lot interconnection requirement.
 - o Staff recommends approval of this variance, connection to the adjacent property would not provide usable internal circulation.
- Variance #5 Sec. 34-2016(1) & (2) Aisle and parking space sizes: The LPA recommended denial of the variance with a caveat that it could support some of the requests for compact parking with a good faith effort to redesign the parking lot to get closer to the code required parking space and aisle sizes.
 - o Staff does not recommend approval for this request, the applicant redesigned the parking lot, reducing the number of parking spaces, to create wider parking spaces in several places. The area behind the building does not have enough depth to provide 18 foot spaces and a 20 foot drive aisle, however, decreasing the number of spaces would allow for extra width to improve maneuverability in this area.
- Variance #6 Sec. 34-3131 Visibility triangle: The LPA recommended approval for a reduction in the visibility triangle, if the applicant minimizes the height of structures and plantings to 3.5 feet within the visibility triangle area.
 - o Staff recommends approve for this request, with approval of the condition that structures and plantings within the visibility triangle be kept at a height of less than 3.5 feet.

Since the LPA meeting the applicant has withdrawn the request from Sec. 34.2015(7) *Pedestrian system. In any parking lot where more than one tier of parking spaces is to*

be developed, walkways must be provided which accommodate safe and convenient pedestrian movement. The applicant does not feel this parking lot design includes tiered parking. The LPA agreed with the applicant's reasoning behind withdrawing this request.

Therefore, staff recommends **Approval** of SEZ20220095 for the expansion of a permanent shared parking lot only in accordance with approval of the requested variance for location and dimensional requirements. Staff recommends **Denial** of VAR20220094 for the variance to perimeter buffers, internal landscaping, interconnectivity, location, dimensions, and the visibility triangle because they do not meet the criteria in 34-87.

CONDITIONS OF APPROVAL

1. The applicant shall ensure that landscaping and hardscaping within the visibility triangle is less than 3.5 feet tall.
2. The applicant shall provide signage to make pedestrians aware of vehicles entering and exiting the site and signage for automobiles to be aware of pedestrians.
3. All ADA requirements shall be met in the final design.

Staff Report Exhibits:

A – Special Exception SEZ2013-0006

B – Variance VAR2013-0007

C – Updated Site Plan

D – Landscape Plan

E – Complete SEZ Application Packet

F – Additional Documents for VAR Application Packet

G – Letter from Adjacent Property Owner

H – Postcard to Adjacent Property Owners

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 14-07
SEZ2013-0006 – Shipwreck Special Exception

WHEREAS, Beverly Grady, authorized agent for the owner of property located at 237, 245, 309, 320, and 330 Old San Carlos Boulevard Fort Myers Beach, Florida has requested a special exception to add 'Retail Store, large,' 'Wholesale,' and 'Parking lot, shared permanent' to the North parcel of the subject property and 'Parking lot, shared permanent' and 'Retail Store, large' to the South parcel of the subject property as permitted uses on the subject property; and

WHEREAS, the subject property is located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP numbers for the subject property are 24-46-23-W3-00203.0020 and 24-46-23-W3-0050A.0080 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2013; and

WHEREAS, at the November LPA hearing the applicant requested and was granted a continuance of case SEZ2013-0006 to a date certain of the January 14, 2014 LPA meeting; and

WHEREAS, a public hearing was held before the LPA on January 14, 2014; and

WHEREAS, at the hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-88;

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on March 3, 2014, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-019, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2013-019 and the standards for granting special exceptions, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVES** the request for a Special Exception to allow 'Retail Store, large,' 'Wholesale,' and 'Parking lot, shared permanent' for the North parcel of the subject property and 'Parking lot, shared permanent' and 'Retail Store, large' for the South parcel of the subject property as permitted uses.

FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding approval of special exceptions, the Town Council reaches the following findings and conclusions:

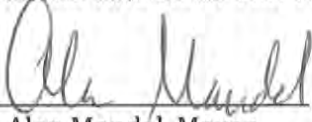
1. Changed or changing conditions **do** exist that make the requested approval, as conditioned, appropriate;
2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources;
5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property;
6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Kosinski and seconded by Council Member Andre, and upon being put to a vote, the result was as follows:

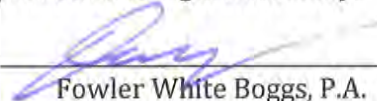
Alan Mandel, Mayor AYE
Jo List AYE
Dan Andre AYE

Joe Kosinski, Vice Mayor AYE
Bob Raymond AYE

DULY PASSED AND ADOPTED THIS 3rd day of **MARCH, 2014**.

By: 
Alan Mandel, Mayor

Approved as to legal sufficiency:

By: 
Fowler White Boggs, P.A.
Town Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

Exhibit A

Legal Description

Lots 2 through 6, 22 & 23, Block 3, Business Center Subdivision, and the Northerly $\frac{1}{2}$ of Vacated Fourth Street, according to the Map or Plat thereof as recorded in Plat Book 9, Pages 9 and 10, Public Records of Lee County, Florida.

AND

Lots 3 through 12, Block A, Island Shores Unit 2, according to the Map or Plat thereof as recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida,

AND

Beginning at the Southwest Corner of Lot 9, Block A, Island Shores Subdivision, Unit No. 2, as recorded in Plat Book 9 at Page 25 of the Public Records of Lee County, Florida; thence run N $63^{\circ}58'21''$ W, 11.82 feet to the outer face of a seawall; thence run N $29^{\circ}45'28''$ E, 50.11 feet to the outer face of a second seawall; thence run N $26^{\circ}01'39''$ E, 58.50 feet along said second seawall to a point of curve to the left in said second seawall; said curve having a radius of 10 feet; thence run along said seawall and curve an arc distance of 6.39 feet thru a delta angle of $36^{\circ}37'27''$ to a point which bears S $71^{\circ}01'39''$ W, 14.90 feet from the Northwest corner of Lot 5, Block A, of said subdivision; thence run S $26^{\circ}01'39''$ W, 125.00 feet to the Point of Beginning. Said parcel contains 1120.6 square feet more or less.

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 14-08
VAR2013-0007 – Shipwreck Variance

WHEREAS, Beverly Grady, authorized agent for the owner of property located at 237, 245, 309, 320, and 330 Old San Carlos Boulevard Fort Myers Beach, Florida has requested the following variances from the following LDC sections:

1. Section 34-676(b) parking lot location, to permit off-street parking in the front and side yards as depicted on the site plan in *Exhibit E*.
2. Table 10-8 Type D buffer, Section 34-677(b)(3) requiring a buffer between off street parking and a ROW, and Section 10-416(d) requiring buffer between parking and ROW to allow a 2.5' buffer with a 41" minimum height.
3. Section 34-676(c) parking lot location, to allow no rear yard connection between subject property and adjacent property.
4. A variance from Section 34-622 (b) and 34-3131, visibility triangle, to allow reduced visibility triangle for access to Third Street due to Town approval of SOB structure in right of way.
5. A variance from Section 34-2016 (1) and (2) parking dimensions to allow the following:

Angle	Parking Dim.	One-Way	Two-Way
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'
6. A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2(a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2(d) no landscape every 10 space requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass and 2(g) no tree grates; and

WHEREAS, the subject property is located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W3-00203.0020 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2013; and

WHEREAS, at the November LPA hearing the applicant requested and was granted a continuance of case VAR2013-0007 to a date certain of the January 14, 2014 LPA meeting; and

WHEREAS, a public hearing was held before the LPA on January 14, 2014; and

WHEREAS, at the hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-87;

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on March 3, 2014, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-020, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-87.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

The Town Council hereby **APPROVES** the following variances:

1. A variance from Section 34-676(b) parking lot location, to permit off-street parking in the front and side yards as depicted on the site plan in *Exhibit E*.
2. A variance from Table 10-8 Type D buffer; a variance from Section 34-677(b)(3), requiring a buffer between off street parking and a ROW, and a variance from Section 10-416(d) requiring buffer between parking and ROW to allow a 2.5' buffer with a 41" minimum height, said buffer to be installed within two (2) years of the granting of this variance.
3. A variance from Section 34-676(c) parking lot location, to allow no rear yard connection between subject property and adjacent property.
4. A variance from Section 34-622 (b) and 34-3131, visibility triangle, to allow reduced visibility triangle for access to Third Street due to Town approval of SOB structure in right of way.
5. A variance from Section 34-2016 (1) and (2) parking dimensions to allow the following for not more than fifty percent (50%) of the parking spaces:

Angle	Parking Dim.	One-Way	Two-Way
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'

The remaining fifty percent (50%) of the parking spaces must comply with current LDC requirements.

6. A variance from LDC Section 10-416 (c) internal landscaping requirements for parking lots to allow no internal landscape parking lot improvements to include 2(a) no tree requirement; 2(b) no internal landscape islands; 2(c) no 10' landscape island width; 2(d) no landscape every 10 space requirement; 2(e) no median required; 2(f) no interior landscape of sod and grass and 2(g) no tree grates.

CONDITIONS OF APPROVAL:

1. The applicant shall install a 2.5' wide buffer with a minimum height of 41 inches within two (2) years from the approval of the variance.
2. Applicant may utilize the parking dimensions described in variance #5 above, however, at the time of redevelopment or the application of a building permit for the subject property, the parking space dimensions must come into compliance with all provisions of Section 34-2016.
3. At the time of redevelopment, the parking lot variance allowing a front and side parking lot must come into compliance and be relocated to the rear of the subject property
4. A building overhang extending up to 12' into the right-of-way is hereby approved.

FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding approval of variance requests, the Town Council reaches the following findings and conclusions:

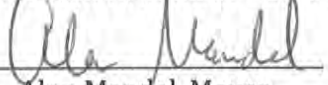
- a. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- b. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- c. The variance granted **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- d. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- e. The conditions or circumstances on the specific piece of property for which the variance is sought **are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Kosinski and seconded by Council Member List, and upon being put to a vote, the result was as follows:

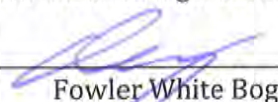
Alan Mandel, Mayor AYE
Jo List AYE
Dan Andre AYE

Joe Kosinski, Vice Mayor AYE
Bob Raymond AYE

DULY PASSED AND ADOPTED THIS 3rd day of **MARCH, 2014.**

By: 
Alan Mandel, Mayor

Approved as to legal sufficiency:

By: 
Fowler White Boggs, P.A.
Town Attorney

ATTEST:

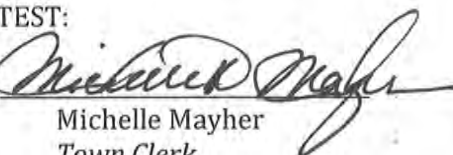
By: 
Michelle Mayher
Town Clerk

Exhibit A

Legal Description

Lots 2 through 6, 22 & 23, Block 3, Business Center Subdivision, and the Northerly $\frac{1}{2}$ of Vacated Fourth Street, according to the Map or Plat thereof as recorded in Plat Book 9, Pages 9 and 10, Public Records of Lee County, Florida.

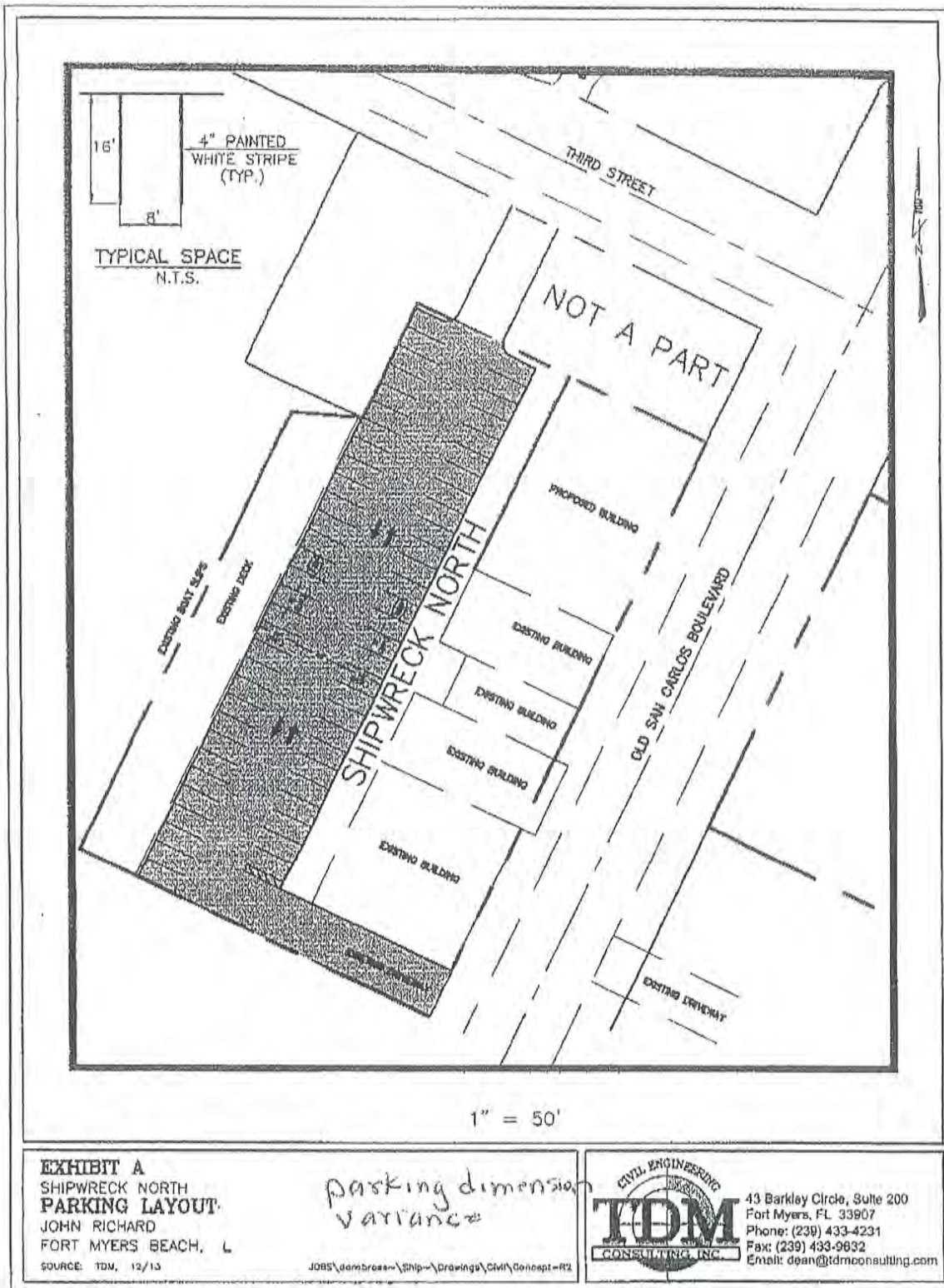
AND

Lots 3 through 12, Block A, Island Shores Unit 2, according to the Map or Plat thereof as recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida,

AND

Beginning at the Southwest Corner of Lot 9, Block A, Island Shores Subdivision, Unit No. 2, as recorded in Plat Book 9 at Page 25 of the Public Records of Lee County, Florida; thence run N $63^{\circ}58'21''$ W, 11.82 feet to the outer face of a seawall; thence run N $29^{\circ}45'28''$ E, 50.11 feet to the outer face of a second seawall; thence run N $26^{\circ}01'39''$ E, 58.50 feet along said second seawall to a point of curve to the left in said second seawall; said curve having a radius of 10 feet; thence run along said seawall and curve an arc distance of 6.39 feet thru a delta angle of $36^{\circ}37'27''$ to a point which bears S $71^{\circ}01'39''$ W, 14.90 feet from the Northwest corner of Lot 5, Block A, of said subdivision; thence run S $26^{\circ}01'39''$ W, 125.00 feet to the Point of Beginning. Said parcel contains 1120.6 square feet more or less.

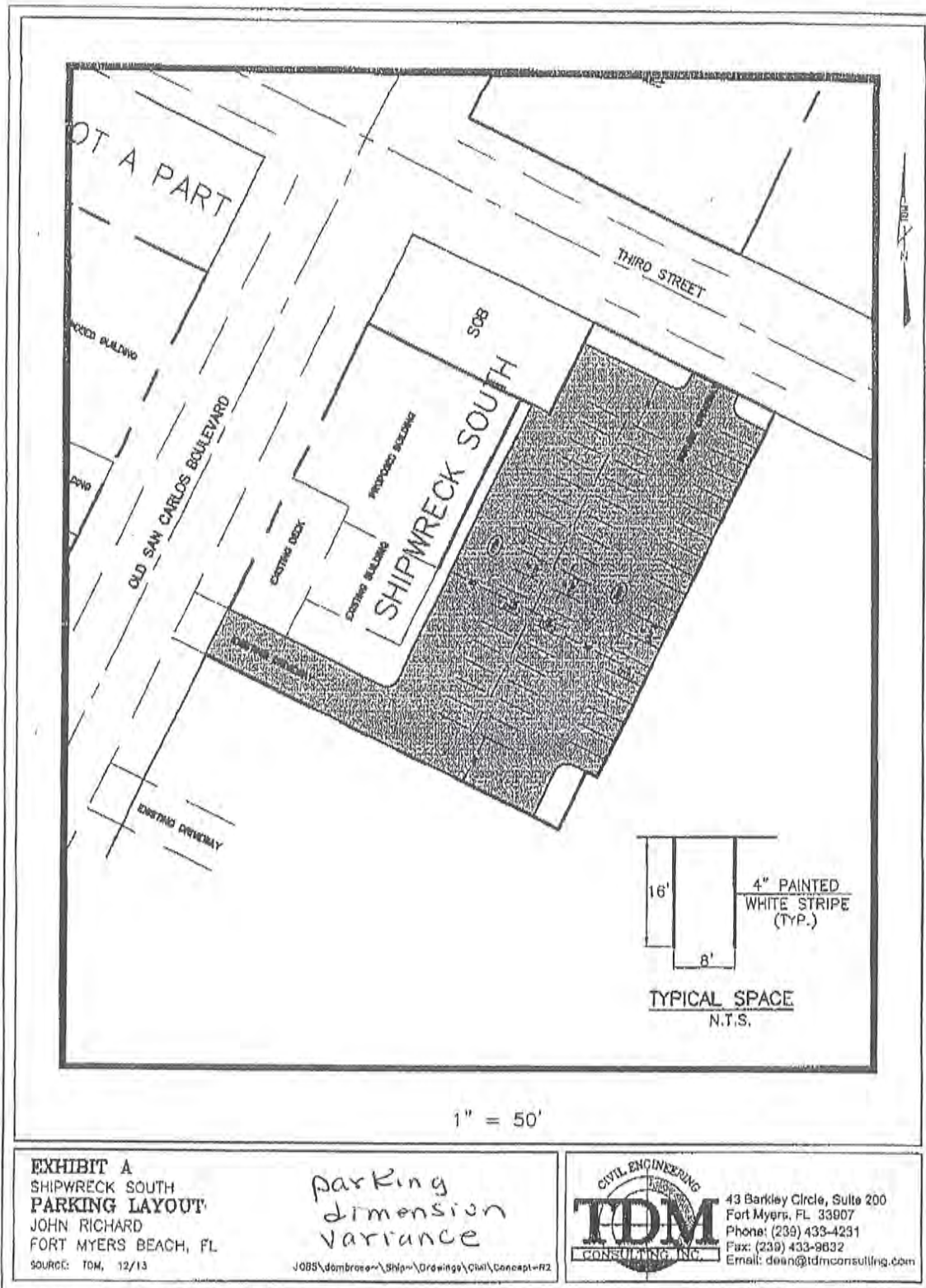
Exhibit E



variance, 3+4

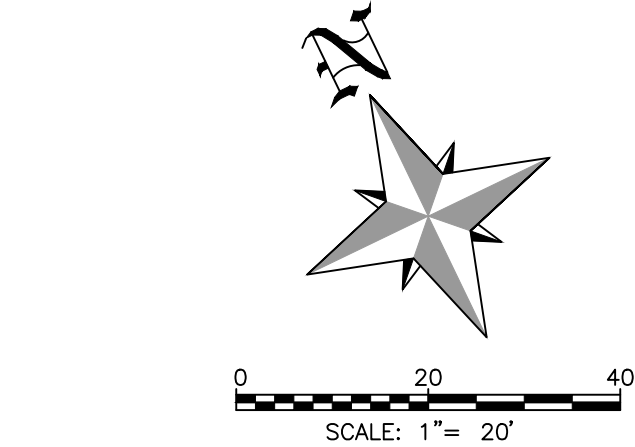
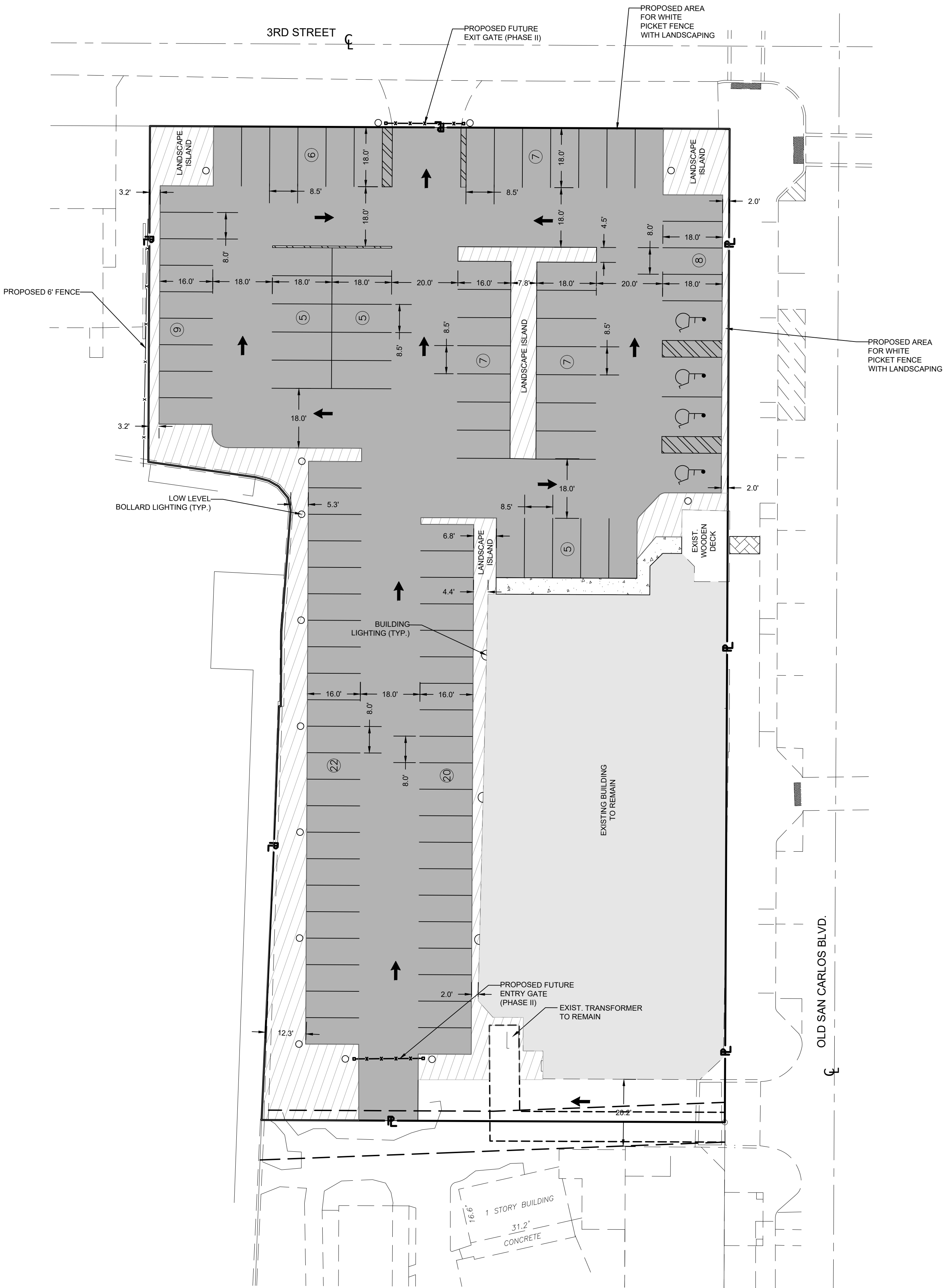
9

Exhibit E



Variance 4

4



LANDSCAPE AREA:
REQUIRED: 10% * 1.03 = 0.10 AC
PROVIDED: 0.13 AC

PARKING CALCULATIONS:

SPACES AT 16' X 8' = 29 SPACES (29%)
SPACES AT 18' X 8' = 26 SPACES (26%)
SPACES AT 18' X 8.5' = 42 SPACES (41%)
SPACES AT 18' X 12' = 4 SPACES (4%)

TOTAL SPACES 101 SPACES

*INCLUDES 22 SPACES ALONG WEST PROPERTY LINE
WITH 2' LANDSCAPE ENCROACHMENT.

PREPARED FOR:
JOHN RICHARD
237 OLD SAN CARLOS BOULEVARD
FORT MYERS BEACH, FL 33931

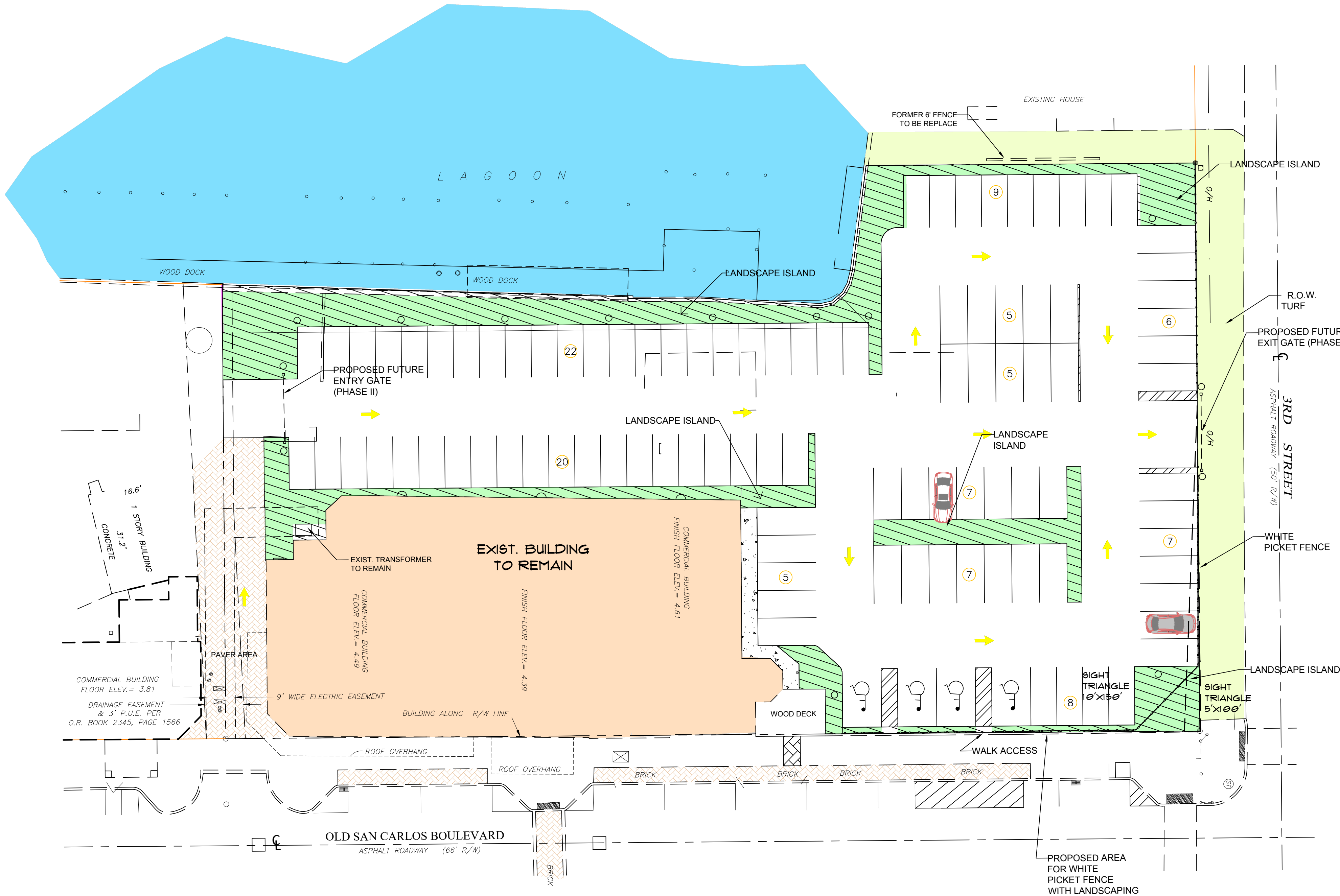
ALL ELEVATIONS ON CIVIL ENGINEERING PLANS REFERENCE: N/A			
NO.	DATE	REVISION DESCRIPTION	BY

BANKS
ENGINEERING
Professional Engineers, Planners, & Land Surveyors
Serving The State Of Florida

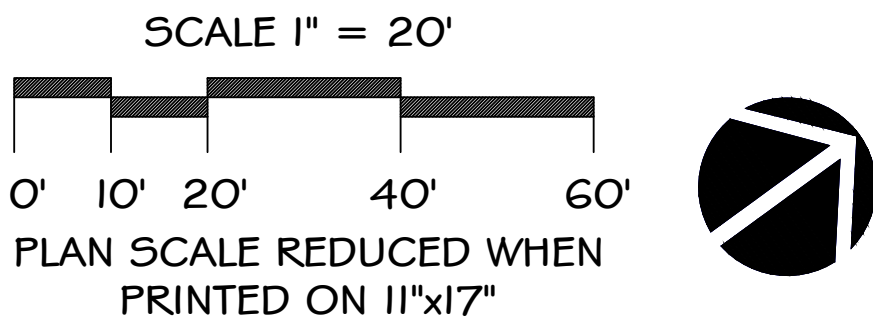
1415811 TAMIAWLETOURISM BLVD, UNIT, 5011
FORT MYERS BEACH, FL 33905-2
PHONE: (889) 839-5488 FAX: (889) 839-2589
ENGINEERING LICENSE # EB 6469
SURVEY LICENSE # LB 6690
WWW.BANKSENG.COM

PRELIMINARY SITE PLAN
237 OLD SAN CARLOS BOULEVARD
FORT MYERS BEACH, FLORIDA

COMPLETION DATE:	PROJECT:	DRAFTED BY:	DESIGNED BY:	REVIEWED BY:	SCALE:	SHEET:
1/31/2023	8699_237 OSC	KG			1"=20'	01



LANDSCAPE AREA PLAN



PARKING CALCULATIONS:

SPACES AT 16' X 8' = 51 SPACES (50%)
SPACES AT 18' X 8' = 4 SPACES (4%)
SPACES AT 18' X 8.5' = 42 SPACES (42%)
SPACES AT 18' X 12' = 4 SPACES (4%)

TOTAL SPACES 101 SPACES

LANDSCAPE AREA:

REQUIRED: 10% * 1.03 = 0.10 AC
PROVIDED: 0.13 AC

Site Data

Land Use: Downtown District
Site Area =44,887 SF (1.03+/-AC.)

Building Perimeter Planting

Not Applicable
10,630 +/- SF Building
842 SF of Landscape Area Provided

Parking Area Landscaping

Minimum of 10% of the parking area is required to be provided as internal landscape areas.
27,034 SF x10 % = 2,703 SF required and 5,789 SF Landscape Islands provided Per hatching

There shall be a minimum of one (1) tree for every 250 SF of parking islands, peninsulas and medians.
2,703÷ 250 = 11 trees Required and 14 Provided at 10' ct or 10' Ht, 2" caliper

Note: Native Palms utilized where applicable to provide water views.

BUFFER YARDS

Not Applicable

Parking Buffer

Parking Lot buffered with 36" height wood picket fence with 1 x 4 pickets with maximum of 3" opening. Fence to be planted with vines along Old San Carlos Boulevard.



DMJA

DAVID M. JONES, JR.
AND ASSOCIATES, INC.

LANDSCAPE ARCHITECTS
AND PLANNERS

2221 McGregor Blvd.
Fort Myers, Florida 33901
PHONE: (239) 337-5525
FAX (239) 337-4494

4161 Tamiami Trail
Building 5, Unit 501
Port Charlotte, Florida 33952
PHONE: (941) 235-2217
L.A. LICENSE: LC C000063

PROJECT INFORMATION:

SHIPWRECK
PARKING

FORT MYERS
BEACH, FL

PREPARED FOR:

Mr. John Richard
Shipwreck
237 Old San Carlos Blvd.
Fort Myers Beach, FL
33931
Tel: 239-565-9554
Email: Jvr237@gmail.com

CONSULTANT:

DESIGN PROFESSIONAL:

GREGORY J. DISERIO, RLA
RLA NO. 940 DATE:
STATE OF FLORIDA

PROJECT NO.	223021
PROJECT MGR.	GREG DISERIO
FILE NAME:	SHIPWRECK PARKING LS
DESIGNER:	GJD
CAD/TECH:	GJD
CHECKED BY:	GJD
ISSUED FOR:	PRELIMINARY FOR REVIEW

ISSUED DATE: FEB. 3, 2023

REVISIONS:

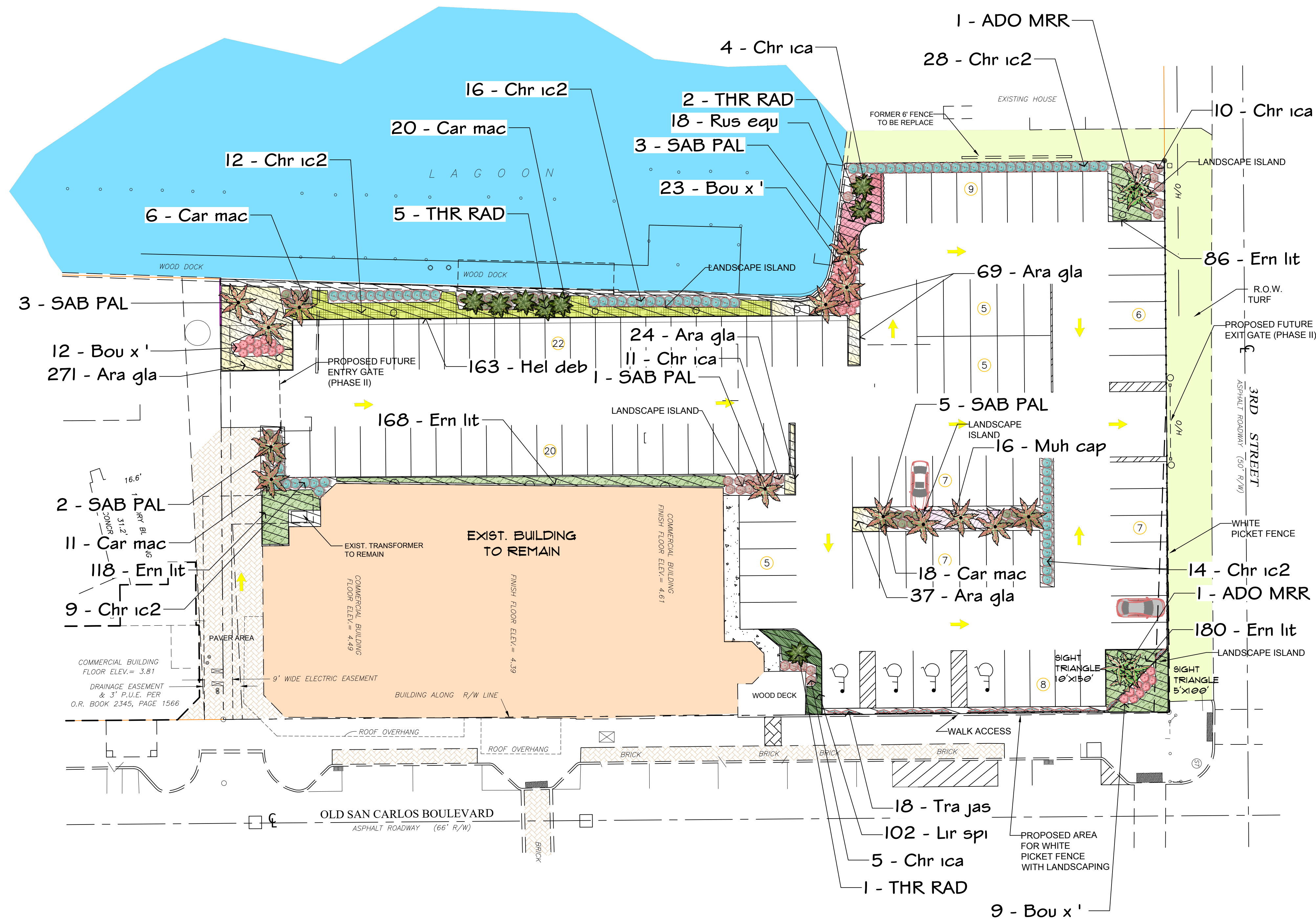
SHEET TITLE:

Landscape
Calculations

SHEET NUMBER:

L-1





PLANT SCHEDULE					
TREES	CODE	QTY	COMMON / BOTANICAL NAME	SIZE	
	ADO MRR	2	Manila Palm Adonidia merrillii	6-8' CT DOULBE	
	SAB PAL	14	Cabbage Palmetto Sabal palmetto NATIVE	10'-16' CLEAR TRUNK, REGENERATED	
	THR RAD	8	Florida Thatch Palm Thrinax radiata NATIVE	7' - 8' Clear Trunk (C.T.)	
SHRUBS	CODE	QTY	COMMON / BOTANICAL NAME	SIZE	
	Bou x'	44	Helen Johnson Compact Bougainvillea Bougainvillea x 'Helen Johnson'	3 gal. 12"-18" ht	
	Car mac	55	Spreading Natal Plum Carissa macrocarpa 'Horizontalis' NATIVE	3 gal. 12"-18" ht	
	Chr ic2	79	Coco Plum Chrysobalanus icaco NATIVE	3 gal., 18" ht.	
	Chr ica	30	Horizontal Coco Plum Chrysobalanus icaco 'Horizontalis' NATIVE	3 gal. 12"-18" ht	
	Tra jas	18	Confederate Jasmine Trachelospermum jasminoides 'Confederate'	3 GALLON, 30" HT ON TRELIS	
SHRUB AREAS	CODE	QTY	COMMON / BOTANICAL NAME	SIZE	SPACING
	Muh cap	16	Pink Muhly Grass Muhlenbergia capillaris NATIVE	MIN. 18" HT, 3 GALLON	36" o.c.
	Rus equ	18	Firecracker Plant Russelia equisetiformis	3 gal. 12"-14" ht/spr	42" o.c.
GROUND COVERS	CODE	QTY	COMMON / BOTANICAL NAME	SIZE	SPACING
	Ara gla	401	Perennial Peanut Arachis glabrata	1 gal.	16" o.c.
	Ern lit	552	Golden Creeper Ernodea littoralis NATIVE	1 gal.	16" o.c.
	Hel deb	163	Dune Sunflower Helianthus debilis NATIVE	1 gal.	24" o.c.
	Lir spi	102	Creeping Lilyturf Liriope spicata	3 gal.	16" o.c.

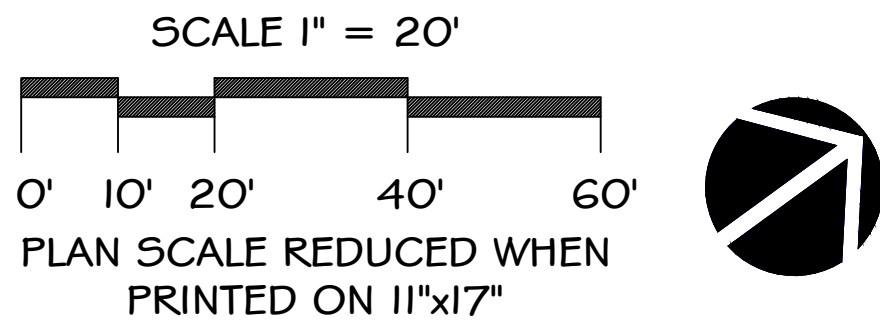
NOTES:

- *ALL PLANTINGS TO BE MULCHED WITH 3" DARK BROWN ORGANIC MULCH GRADE B OR BETTER.
- *CYPRESS MULCH PROHIBITED.
- *CONTRACTOR RESPONSIBLE FOR VERIFICATION OF QUANTITIES AT TIME OF BIDDING.
- *ALTERNATE PLANT SPECIES MAY BE ACCEPTABLE UPON THE TOWN OF FORT MYERS BEACH APPROVAL.

*ALL PLANTINGS SHALL BE IRRIGATED WITH LOW VOLUME IRRIGATION SYSTEM.

TREES 92%: NATIVE
SHRUBS 69%: NATIVE
GROUNDCOVERS: 59% NATIVE

LANDSCAPE PLANTING PLAN



DMJA

DAVID M. JONES, JR.
AND ASSOCIATES, INC.

LANDSCAPE ARCHITECTS
AND PLANNERS

2221 McGregor Blvd.
Fort Myers, Florida 33901
PHONE: (239) 337-5525
FAX (239) 337-4494

4161 Tamiami Trail
Building 5, Unit 501
Fort Charlotte, Florida 33952
PHONE: (941) 235-2217
L.A. LICENSE: LC C000063

PROJECT INFORMATION:

**SHIPWRECK
PARKING**

FORT MYERS
BEACH, FL

PREPARED FOR:

Mr. John Richard
Shipwreck
237 Old San Carlos Blvd.
Fort Myers Beach, FL
33931
Tel: 239-565-9554
Email: Jvr237@gmail.com

CONSULTANT:

DESIGN PROFESSIONAL:

GREGORY J. DISERIO, RLA
RLA NO. 940 DATE:
STATE OF FLORIDA

PROJECT NO. 223021
PROJECT MGR. GREG DISERIO
FILE NAME: SHIPWRECK PARKING LS
DESIGNER: GJD
CAD TECH: GJD
CHECKED BY: GJD
ISSUED FOR: PRELIMINARY FOR REVIEW

ISSUED DATE: FEB. 3, 2023
REVISIONS:

SHEET TITLE:
**Landscape
Planting Plan**

SHEET NUMBER:
L-2





Thrinax radiata
- Florida Thatch Palm



Helianthus debilis
- Dune Sunflower



Chrysobalanus icaco
- Cocoplum



Russelia equisetiformis
- Firecracker Plant



Adonidia merrillii
- Manila Palm



Chrysobalanus icaco 'Horizontalis'
- Horizontal Cocoplum



Sabal palmetto
- Sabal Palm



Bougainvillea x 'Helen Johnson'
- Dwarf Bougainvillea



Carissa macrocarpa 'Horizontalis'
- Spreading Natal Plum



Ernodea littoralis
- Golden Creeper



Liriope spicata
- Creeping Lilyturf



Arachis glabrata
- Perennial Peanut



Thrinax radiata
- Florida Thatch Palm



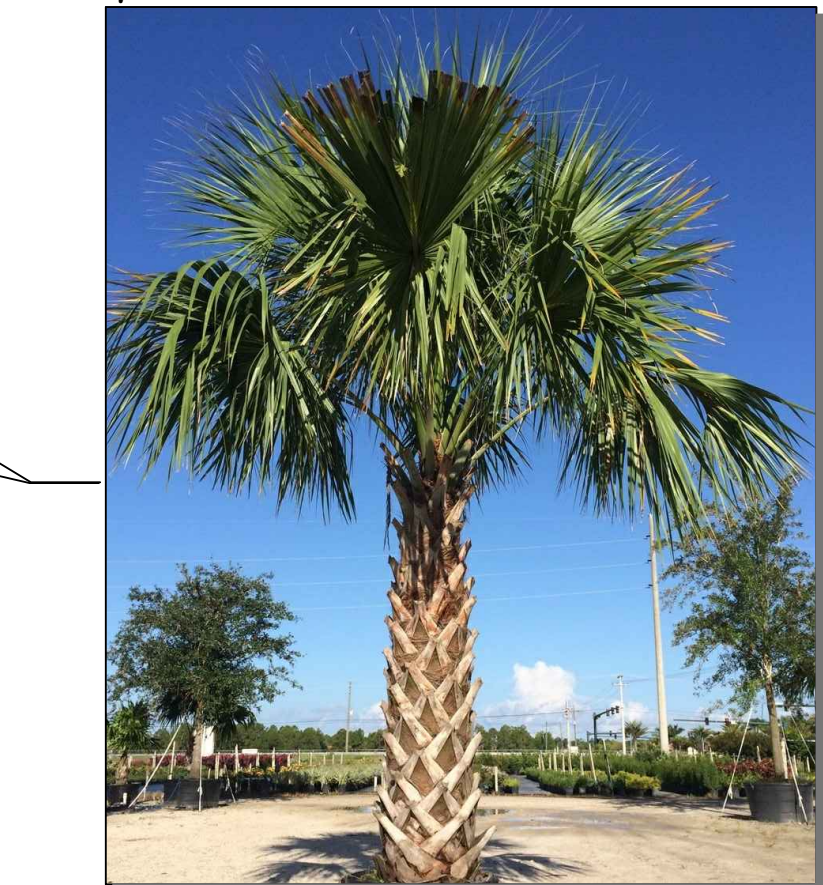
Trachelospermum jasminoides 'Confedate'
- Confederate Jasmine



Ernodea littoralis
- Golden Creeper



Muhlenbergia capillaris - Pink
Muhly Grass



Sabal palmetto
- Sabal Palm



Bougainvillea x 'Helen Johnson'
- Dwarf Bougainvillea



Adonidia merrillii
- Manila Palm



DMJA

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AND ASSOCIATES, INC.

LANDSCAPE ARCHITECTS
AND PLANNERS

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PROJECT INFORMATION:

**SHIPWRECK
PARKING**

**FORT MYERS
BEACH, FL**

PREPARED FOR:

Mr. John Richard
Shipwreck
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Fort Myers Beach, FL
33931
Tel: 239-565-9554
Email: Jvr237@gmail.com

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ISSUED DATE: FEB. 3, 2023

REVISIONS:

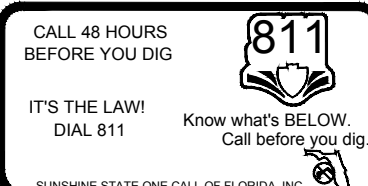
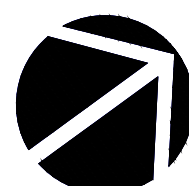
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**Landscape
Image Exhibit**

SHEET NUMBER:

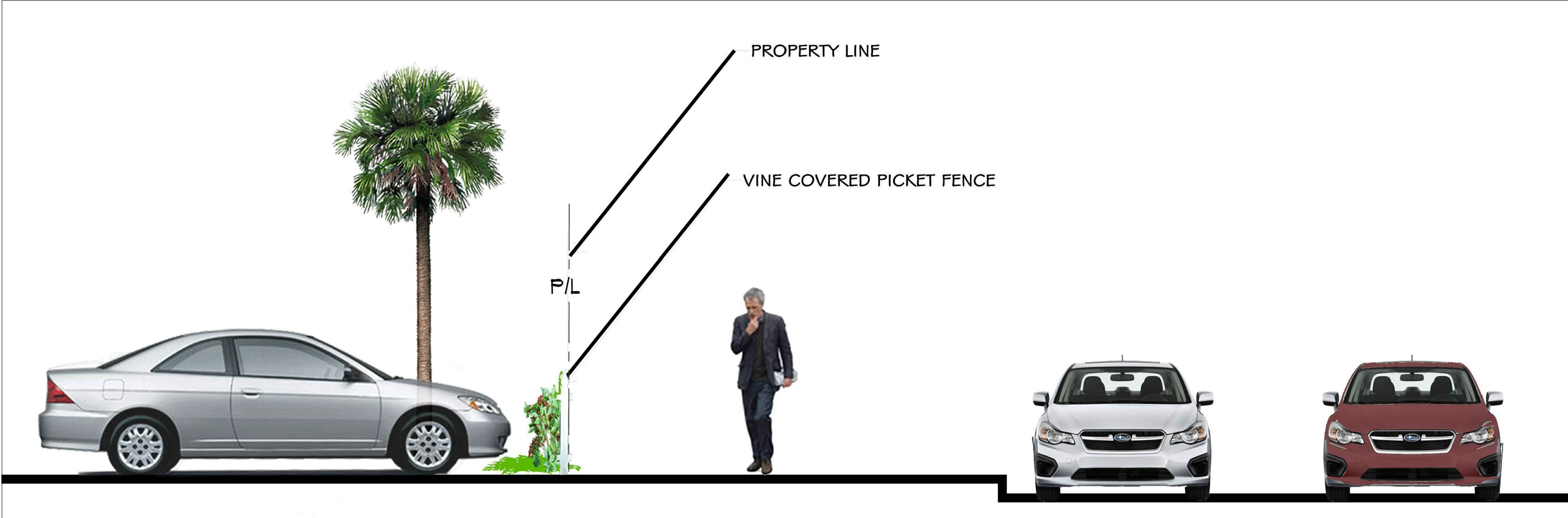
L-3

**LANDSCAPE
IMAGE EXHIBIT**

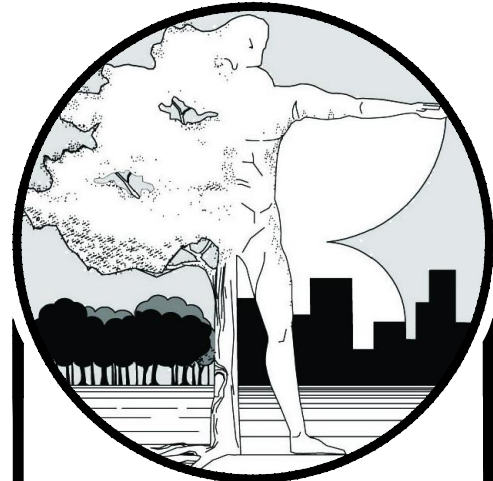




VIEW FROM OLD SAN CARLOS



OLD SAN CARLOS SECTION



DMJA
DAVID M. JONES, JR.
AND ASSOCIATES, INC.
LANDSCAPE ARCHITECTS
AND PLANNERS

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PROJECT INFORMATION:
**SHIPWRECK
PARKING**

FORT MYERS
BEACH, FL

PREPARED FOR:
Mr. John Richard
Shipwreck
237 Old San Carlos Blvd.
Fort Myers Beach, FL
33931
Tel: 239-565-9554
Email: Jvr237@gmail.com

CONSULTANT:

DESIGN PROFESSIONAL:

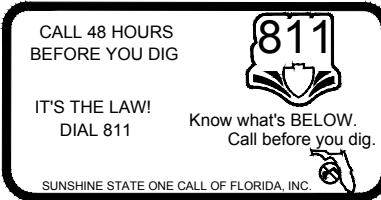
GREGORY J. DISERIO, RLA
RLA NO. 940 DATE:
STATE OF FLORIDA

PROJECT NO.	223021
PROJECT MGR.	GREG DISERIO
FILE NAME:	SHIPWRECK PARKING LS
DESIGNER:	GJD
CAD/TECH:	GJD
CHECKED BY:	GJD
ISSUED FOR:	PRELIMINARY FOR REVIEW

ISSUED DATE:	FEB. 3, 2023
REVISIONS:	

SHEET TITLE:
**SECTION AND
PEDESTRIAN
VIEW**

SHEET NUMBER:
L-4





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: 237 Old San Carlos
 STRAP Number: 24-46-23-W3-0050A.0080
 Applicant: John W. Richard Phone: 239-565-9554
 Contact Name: John Richard/Kara Stewart Phone: 239-770-4198
 Email: jwr237@gmail.com/stewart.karalyn@gmail.com Fax: _____
 Current Zoning District: Downtown
 Future Land Use Map (FLUM) Category: Pedestrian Commercial
 FLUM Density Range: _____ 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*: John W. Richard Phone: 239-565-9554
**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: 237 Old San Carlos Blvd
 Email: jwr237@gmail.com Fax: _____
 Contact Name: John W. Richard Phone: 239-565-9554



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: Sarah Spector/ Roetzel& Andress Phone: 239-338-4213
Address: 2320 First St #1000, Fort Myers, FL 33901
Email: Sspector@ralaw.com Fax: _____

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

Name: Kara Stewart Phone: 239-770-4198
Address: 13450 Electron Dr
Email: stewart.karalyn@gmail.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 _____ - see attached
- ☐ 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, *John W. Pelt* 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

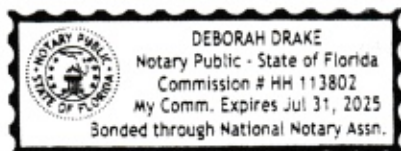
Printed Name

STATE OF FL COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of X physical presence OR _____ online notarization, this 24 day of AUGUST, 2022, by

JOHN W RICHARD, ☒ who is personally known to me OR ☐ who has produced

_____ as identification.



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

_____	_____
_____	_____
_____	_____
_____	_____

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

John W. Richard

100%

_____	_____
_____	_____
_____	_____
_____	_____

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

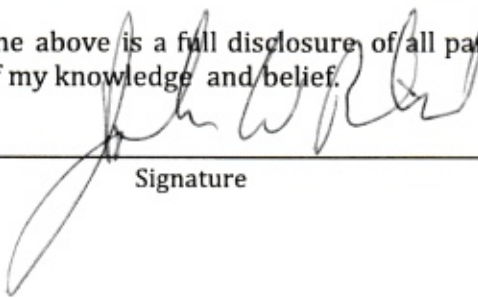
Date of Contract: _____

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

John W. Richard, Trustee

Printed Name
GADD-1 237 Old San Carlos
Blvd Trust, a Florida Land Trust

AFFIDAVIT

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

I, John W. Richard (name), as trustee (title)
of see below* (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.

*GADD-1 237 Old San Carlos Blvd Land Trust, a Florida Land Trust

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 6 of 11



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

GADD-1 237 Old San Carlos Blvd Land Trust, a Florida Land Trust

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

Signature

John W. Richard

Typed or Printed Name

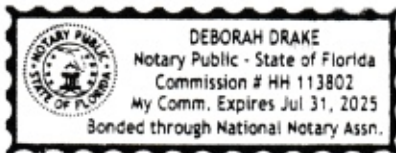
Trustee

Title

Date

STATE OF FL COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 24 day of AUGUST, 2022, by John W. Richard ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Deborah Drake
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 24-46-23-W3-0050A.0080

Property Address: 237 Old San Carlos 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: Please see attached

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**

PART VI – PROPERTY INFORMATION (CONT'D)

A. Legal Description:

STRAP: 24-46-23-W3-0050A.0080

Property Address: 237 Old San Carlos 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:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block A, Unit No 2 Island Shores, recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida

Portion of vacated lagoon right-of-way, Unit No 2 Island Shores, recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida, as more particularly described in Official Records Book 2736, Page 3705 *et seq.* and Official Records Book 2858, Page 1394, both of the Public Records of Lee County, Florida

Lot 1, Block B, Matanzas View, recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida

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**COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING**

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 250 feet
Depth (please provide an average width if irregular in shape) 150 + feet
Frontage on street: 250 & 175 feet. Frontage on waterbody: 190 feet
Total land area: 44,936 +/- ☐ acres ☒ square feet

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

☒ 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 |



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: 237 Parking Lot
Authorized Applicant: John W. Richard/ Kara Stewart
LEIPA STRAP Number(s): 24-46-23-W3.0050A.0080

Current Property Status: Developed
Current Zoning: Downtown
Future Land Use Map (FLUM) Category: Pedestrian Commercial
Platted Overlay? ☐ yes ☒ no FLUM Density Range:

Requested Action:

☐	Use of premises in the EC (Environmentally Critical) zoning district for:
☒	Use of premises in the <u>Downtown</u> zoning district for:
	Expansion of previously approved Permanent Shared Parking Lot
	(SEZ2013-0006)

PART I

Narrative Statements

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

This is a request for the extension of an existing permanent shared parking
lot to the portion of 237 Old San Carlos (Lot 1 and 2, Block A, Unit No 2 Island
Shores, recorded in Plat Book 9, Page 25, and Lot 1, Block B, Matanzas View,
recorded in Plat Book 9, Page 40, both of the Public Records of Lee County,
Florida) not previously approved in SEZ2013-0006 - Shipwreck Special Exception.
LDC Table 34-1 indicates the need for a special exception when a permanent
shared parking lot is requested.
Please see attached additional narrative statement.

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:
The Town is experiencing continuing growth and, with it, a great need for parking
in the downtown area. Allowing for the extension of an existing permanent shared
parking lot will not hamper the surrounding land uses or businesses. Instead, it
will benefit those businesses and the Town in general by allowing people to park
and walk to multiple destinations, taking traffic off the street. The request is
consistent with the goals, objectives, and policies and intent of the Comprehensive
Plan and exceeds all performance and locational standards for a permanent
shared parking lot. There are no environmentally critical areas or natural resources
that will be impacted. The request will be compatible with existing and planned
uses and will not cause damage, hazard, nuisance, or other detriment to persons.
The use will be in compliance with applicable general zoning provisions and
supplemental regulations pertaining to the use set forth in Chapter 34 of the LDC.

Granting the requested Special Exception could impact surrounding properties as follows:
The permanent shared parking lot on the portion of 237 Old San Carlos approved by Town Council through the adoption of Resolution 14-07 (SEZ2013-0006) has been operating pursuant to the terms of the Resolution since it was approved on March 3, 2014. The approved use has not had any adverse impacts on surrounding properties and it is not anticipated that the requested extension of the special exception to allow for use of the remainder of 237 San Carlos as a permanent shared parking lot will have any adverse impacts. Rather, as set forth above, it is anticipated that approval of the request will provide a benefit to surrounding uses and the Town in general.

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:

- 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:

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:

- 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:

“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.

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.

"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.

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.

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

- 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.

COMMUNITY DEVELOPMENT DEPARTMENT
Supplement PH-A
Additional Required Information for a Special Exception Application

PART I

Narrative Statements

This is a request for the extension of a previously approved permanent shared parking lot located at 237 Old San Carlos Boulevard (the “Property”). A special exception allowing for use of the majority of the Property as a permanent shared parking was approved on March 3, 2014 by Town Council’s adoption of Resolution Number 14-07 (approving SEZ2013-0006 – Shipwreck Special Exception) (the “Special Exception Resolution”). The Property consists of the following, with the property highlighted in yellow being the portion of the Property to which the previous special exception applies, and the property highlighted in green being the portion of the Property that is the subject of this request:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block A, Unit No 2 Island Shores, recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida (the “Island Shores Plat”)

Portion of vacated lagoon right-of-way, Unit No 2 Island Shores, recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida, as more particularly described in Official Records Book 2736, Page 3705 *et seq.* and Official Records Book 2858, Page 1394, both of the Public Records of Lee County, Florida

Lot 1, Block B, Matanzas View, recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida (the “Matanzas Plat”)

Similarly, the property highlighted in yellow below identifies the area included in the previous approval, and the property highlighted in green below identifies the area that is the subject of this request (with the picture on the left being a snippet from the Island Shores Plat and the picture on the right being a snippet from the Matanzas Plat):



The Special Exception Resolution allows for the establishment of 62 parking spaces. The applicant is looking to increase the number of parking spaces by 40 by extending the special exception approval and demolishing the following structures shown on the survey included with this request:

1. The structure labeled “Commercial Building” on Lots 3, 4, 5 and 6, Block A of the Island Shores Plat
2. A portion of the structure labeled “Commercial Building” on Lots 6 and 7, Block A of the Island Shores Plat
3. The structure labeled “2 Story Wood Frame” on Lots 11 and 12, Block A of the Island Shores Plat.

Parking for the public is a necessary and desired use in the Downtown zoning district. Providing parking for the public provides the ability to implement the Town’s “park once” philosophy. A visitor or resident of the Town can park in the Downtown district and from that location enjoy the Town’s assets, including the beach, restaurants, retail, and the bay, so that a number of amenities offered by the Downtown are visited without having to relocate the vehicle.

Consistent with Section 34-2015, *Location and design*, of the Town of Fort Myers Beach Land Development Code (“LDC”), the parking lot has been designed in accordance with the buffer, landscaping, drainage, and other requirements of the LDC. Additionally, the design incorporates sufficient maneuvering room so that exiting vehicles can leave the parking lot in a forward motion. The parking lot is and will be paved for high turnover use.

The subject property is located in the Pedestrian Commercial Future Land Use designation which is defined as follows:

POLICY 4-B-6 “PEDESTRIAN COMMERCIAL”: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. 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 affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All “Marina” uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%. (emphasis supplied).

Shared and permanent parking is a use consistent with the Pedestrian Commercial designation. The request meets or exceeds all performance and locational standards. The use of the Property as a permanent shared parking lot will have no impact on environmentally critical or natural resources.

While the Property has not yet been put into use as a permanent shared parking lot, it has operated in conformance with Section 34-2019(a) of the LDC.¹ Additionally, the property identified as 318/320 Old San Carlos Boulevard (STRAP Number 24-46-23-W3-00203.0020) has been in continuous use as a permanent shared parking lot since the Town Council approved Town of Fort Myers Beach Resolution Number 99-40 on October 11, 1999 and has operated within the same parameters being requested herein since the Special Exception Resolution was approved in 2014. Since the use has been in operation, it has had no adverse impact on the surrounding properties. In fact, parking in proximity to surrounding uses is a positive impact. The property immediately to the south is a restaurant use; the use to the north, across Third Street, is a mix of residential, commercial, and parking uses; the use to the west is the lagoon and residential uses; and the use to the east is Old San Carlos Boulevard and retail, restaurant, and accessory parking uses.

The site plan submitted with the request shows the location of the existing “permanent and shared parking” and, as required, also illustrates existing buildings that are to remain and other improvements.

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¹ Section 34-2019(a) of the LDC specifically provides that “[p]arking spaces that are not in daily use and are located in parking lots having ten or more parking spaces and meeting the other requirements of this division may be rented to the general public during peak periods.”

SKETCH TO ACCOMPANY DESCRIPTION OF
**LOTS 1, 2, 3, 4, 5, 6, 7, 8,
9, 10, 11 & 12, BLOCK "A",
ISLAND SHORES, UNIT No. 2**

(PLAT BOOK 9, PAGE 25)

LOT 1, BLOCK "B", MATANZAS VIEW

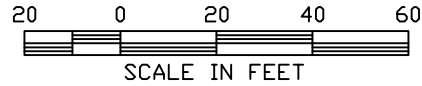
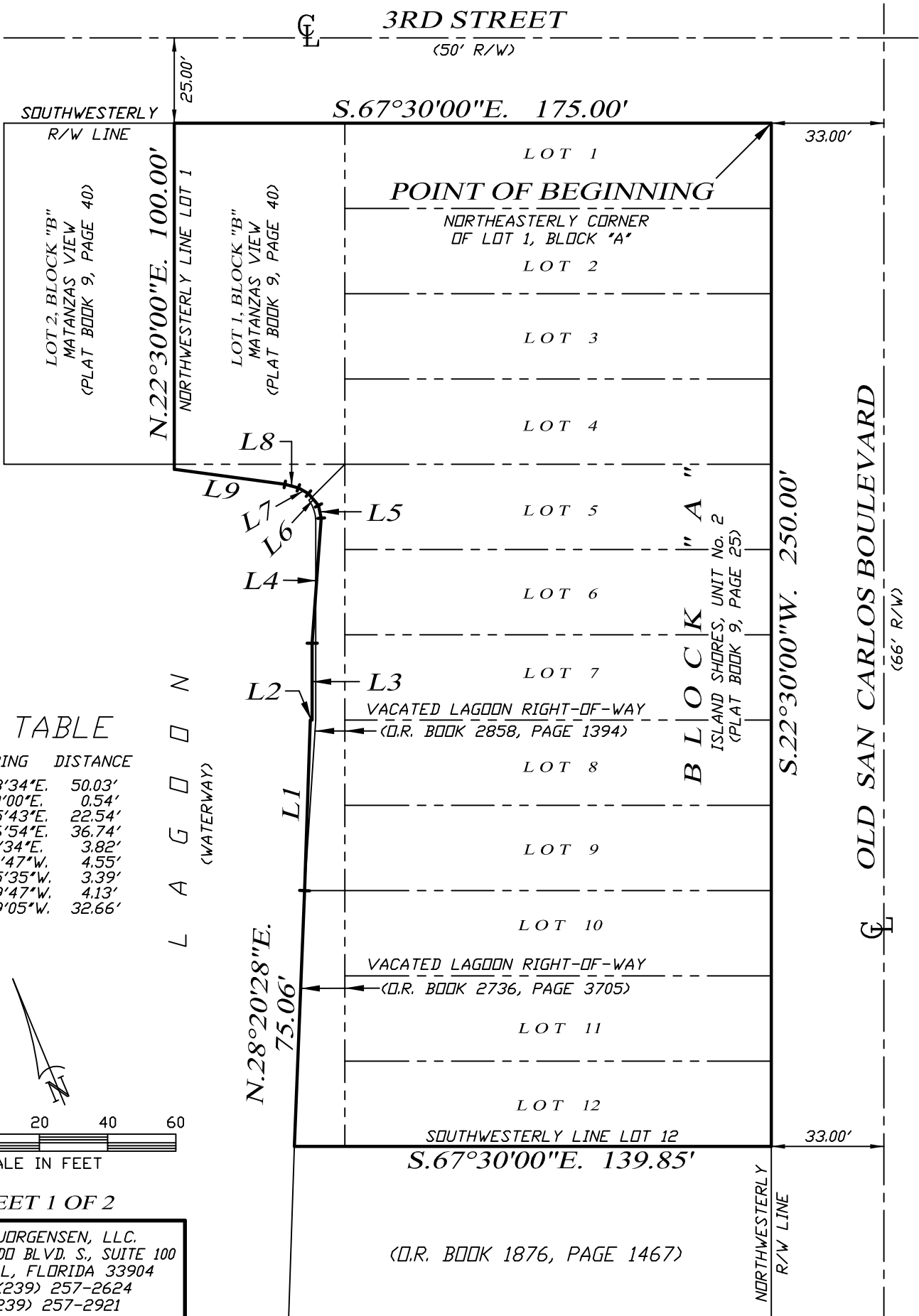
(PLAT BOOK 9, PAGE 40)

AND A PORTION OF LAGOON RIGHT-OF-WAY

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST,
ALL IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

THIS IS NOT A BOUNDARY SURVEY

SEE EXHIBIT "A", SHEET 2 OF 2 FOR DESCRIPTION



SHEET 1 OF 2

HARRIS-JORGENSEN, LLC.
3048 DEL PRADO BLVD. S., SUITE 100
CAPE CORAL, FLORIDA 33904
PHONE: (239) 257-2624
FAX: (239) 257-2921

(D.R. BOOK 1876, PAGE 1467)

DESCRIPTION TO ACCOMPANY SKETCH
EXHIBIT "A"

DESCRIPTION:

A PARCEL OF LAND BEING LOTS 1 THROUGH 12, BLOCK "A" AND A PORTION OF LAGOON RIGHT-OF-WAY, ISLAND SHORES UNIT No. 2, AS RECORDED IN PLAT BOOK 9, PAGE 25 AND LOT 1, BLOCK "B", MATANZAS VIEW, AS RECORDED IN PLAT BOOK 9, PAGE 40, ALL IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF THE AFORESAID LOT 1, BLOCK "A"; THENCE RUN S.22°30'00"W. ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD (66 FEET WIDE) FOR 250.00 FEET; THENCE RUN S.67°30'00"E. ALONG THE SOUTHWESTERLY LINE OF THE AFORESAID LOT 12 AND THE EXTENSION THEREOF FOR 139.85 FEET TO THE WATERS EDGE FACE OF A CONCRETE SEAWALL; THENCE RUN ALONG THE WATERS EDGE FACE OF CONCRETE SEAWALL THE FOLLOWING BEARING AND DISTANCES, N.28°20'28"E. FOR 75.06 FEET; THENCE RUN N.24°23'34"E. FOR 50.03 FEET; THENCE RUN S.67°30'00"E. FOR 0.54 FEET; THENCE RUN N.22°35'43"E. FOR 22.54 FEET; THENCE RUN N.26°36'54"E. FOR 36.74 FEET; THENCE RUN N.10°22'34"E. FOR 3.82 FEET; THENCE RUN N.17°33'47"W. FOR 4.55 FEET; THENCE RUN N.38°25'35"W. FOR 3.39 FEET; THENCE RUN N.52°39'47"W. FOR 4.13 FEET; THENCE RUN N.59°39'05"W. FOR 32.66 FEET; THENCE LEAVING SAID WATERS EDGE FACE OF CONCRETE SEAWALL RUN N.22°30'00"E. ALONG THE NORTHWESTERLY LINE OF THE AFORESAID LOT 1, BLOCK "B" AND THE EXTENSION THEREOF FOR 101.42 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF 3RD STREET (50 FEET WIDE); THENCE RUN S.67°30'00"E. ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE FOR 175.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 44887.736 SQUARE FEET OR 1.030 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD AS BEING S.22°30'00"W.

PHILLIP M MOULD
LS6515
AUGUST 1, 2022

NOTE:

THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006; FS 668.50; FS 472.025; 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.

SHEET 2 OF 2

DESCRIPTION:

A PARCEL OF LAND BEING LOTS 1 THROUGH 12, BLOCK "A" AND A PORTION OF LAGOON RIGHT-OF-WAY, ISLAND SHORES UNIT No. 2, AS RECORDED IN PLAT BOOK 9, PAGE 25 AND LOT 1, BLOCK "B", MATANZAS VIEW, AS RECORDED IN PLAT BOOK 9, PAGE 40, ALL IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF THE AFORESAID LOT 1, BLOCK "A"; THENCE RUN S.22°30'00"W. ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD (66 FEET WIDE) FOR 250.00 FEET; THENCE RUN S.67°30'00"E. ALONG THE SOUTHWESTERLY LINE OF THE AFORESAID LOT 12 AND THE EXTENSION THEREOF FOR 139.85 FEET TO THE WATERS EDGE FACE OF A CONCRETE SEAWALL; THENCE RUN ALONG THE WATERS EDGE FACE OF CONCRETE SEAWALL THE FOLLOWING BEARING AND DISTANCES, N.28°20'28"E. FOR 75.06 FEET; THENCE RUN N.24°23'34"E. FOR 50.03 FEET; THENCE RUN S.67°30'00"E. FOR 0.54 FEET; THENCE RUN N.22°35'43"E. FOR 22.54 FEET; THENCE RUN N.26°36'54"E. FOR 36.74 FEET; THENCE RUN N.10°22'34"E. FOR 3.82 FEET; THENCE RUN N.17°33'47"W. FOR 4.55 FEET; THENCE RUN N.38°25'35"W. FOR 3.39 FEET; THENCE RUN N.52°39'47"W. FOR 4.13 FEET; THENCE RUN N.59°39'05"W. FOR 32.66 FEET; THENCE LEAVING SAID WATERS EDGE FACE OF CONCRETE SEAWALL RUN N.22°30'00"E. ALONG THE NORTHWESTERLY LINE OF THE AFORESAID LOT 1, BLOCK "B" AND THE EXTENSION THEREOF FOR 101.42 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF 3RD STREET (50 FEET WIDE); THENCE RUN S.67°30'00"E. ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE FOR 175.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 44887.736 SQUARE FEET OR 1.030 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF OLD SAN CARLOS BOULEVARD AS BEING S.22°30'00"W.



EXHBIT 6-6

OLD SEAPORT PLACE INC
JAMES FIGUERADO
489 MADISON CT
FORT MYERS BEACH FL 33931

LALLO JOHN W & DEBORAH L
14526 RIVERSIDE DR
FORT MYERS FL 33905

KALYMNOUS PARTNERSHIP LLP
1001 ESTERO BLVD
FORT MYERS BEACH FL 33931

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

OLD SEAPORT PLACE INC
JAMES FIGUERADO
489 MADISON CT
FORT MYERS BEACH FL 33931

FREELAND FL HOLDINGS LLC
5333 HICKORY HOLLOW PKWY
ANTIOCH TN 37013

OLD SEAPORT PLACE INC
JAMES FIGUERADO
489 MADISON CT
FORT MYERS BEACH FL 33931

FREELAND FL HOLDINGS LLC
BERNARD G FREELAND
5333 HICKORY HOLLOW PKWY
ANTIOCH TN 37013

FIRST STREET RESTAURANTS INC
440 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

ESTERO BAY HOTEL COMPANY
416 CRESCENT ST
FORT MYERS BEACH FL 33931

HOUSEBOAT LLC
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

HOUSEBOAT LLC
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

MERSCHMAN I LLC
1421 E LAKE SHORE DR
SPRINGFIELD IL 62712

HOUSEBOAT LLC
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

ALN BEACHVIEW LLC
615 CAPE CORAL PKWY W # 104
CAPE CORAL FL 33914

ALN BEACHVIEW LLC
151 MATANZAS ST UPSTAIRS
FORT MYERS BEACH FL 33931

ESTERO BAY HOTEL COMPANY
416 CRESCENT ST
FORT MYERS BEACH FL 33931

ESTERO BAY HOTEL COMPANY
416 CRESCENT ST
FORT MYERS BEACH FL 33931

PIERHOUSE-FT MYERS BEACH LTD
1000 ESTERO BLVD
FORT MYERS BEACH FL 33931

HOUSEBOAT LLC
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

SOB INC
340 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR
237 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

LIGHTHOUSE ISLAND RESORT INC
1051 5TH ST
FORT MYERS BEACH FL 33931

STINGRAYS RAW BAR INC
250 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

HOLLAND DENNIS TR
570 KULAIWI DR
WAILUKU HI 96793

LIGHTHOUSE ISLAND RESORT INC
1051 FIFTH ST
FORT MYERS BEACH FL 33931

TPI-FMB LLC
103 15TH AVE NW STE 200
WILLMAR MN 56201

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

TPI-FMB LLC
103 15TH AVE NW STE 200
WILLMAR MN 56201

150 SAN CARLOS BLVD CORP
OMG INC
408 BROADWAY
NEW YORK NY 10013

TOWN OF FORT MYERS BEACH
FINANCE DEPT
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

CHAVEZ CARLOS L TR
991 AQUA LN
FORT MYERS FL 33919

CHAVEZ CARLOS L TR
991 AQUA LN
FORT MYERS FL 33919

BENSON BRADFORD J TR
927 PRESCOTT ST
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH
FINANCE DEPT
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

KLC SURF LLC
8201 MOCCASIN TRAIL DR
RIVERVIEW FL 33578

BIRKART HANS
151 MATANZAS ST
FORT MYERS BEACH FL 33932

RFN CORP
2401 ESTERO BLVD
FORT MYERS BEACH FL 33931

FREEMAN WILLIAM T &
15341 KILBIRNIE DR
FORT MYERS FL 33912

FREEMAN WILLIAM T &
15341 KILBIRNIE DR
FORT MYERS FL 33912

INTERNATIONAL CAPITAL
20 N MARTINGALE RD STE 180
SCHAUMBURG IL 60173

ANDERSON BRENT KORY &
13302 COACHFORD AVE
ROSEMOUNT MN 55068

MOSTEIRO CHRISTOPHER C +
923 THIRD ST
FORT MYERS BEACH FL 33931

HOULIHAN MARY N TR
917 THIRD ST
FORT MYERS BEACH FL 33931

DUDDY KATHLEEN & BRIAN TR
14 STETSON PL
DUXBURY MA 02332

CASEY KATHLEEN M +
32917 PEACH TREE LN
LEWES DE 19958

GREGG LEAH
253 PALERMO CIR
FORT MYERS BEACH FL 33931

URIAN JULIE A TR
432 BONITA ST
FORT MYERS BEACH FL 33931

FREELAND FL HOLDINGS LLC
BERNARD G FREELAND
5333 HICKORY HOLLOW PKWY
ANTIOCH TN 37013

TOMAILOLO FRANKLIN L &
934 THIRD ST
FORT MYERS BEACH FL 33931

932 THIRD STREET LLC
932 THIRD ST
FORT MYERS BEACH FL 33931

DUDDY BRIAN PATRICK TR
14 STETSON PL
DUXBURY MA 02332

FOSTER STEPHEN ALLEN
914 THIRD ST
FORT MYERS BEACH FL 33931

TYRELL PETER +
6 BURLEIGH ROAD
HEMEL HEMPSTEAD HP2 4PT
UNITED KINGDOM

KOSTER RODNEY A & THERESA A
880 THIRD ST
FORT MYERS BEACH FL 33931

KOSTER RODNEY A & THERESA A
880 THIRD ST
FORT MYERS BEACH FL 33931

TAMIA SA
949 STRATFORD DR
ENCINITAS CA 92024

WOODSON MARK T + KAREN K
820 THIRD ST
FORT MYERS BEACH FL 33931

KADO KELLY +
2560 ESTERO BLVD #6A
FORT MYERS BEACH FL 33931

KOSTER RODNEY A & THERESE A
880 THIRD ST
FORT MYERS BEACH FL 33931

PHELPS MICHAEL +
329 MEADOW RD
FARMINGTON CT 06032

PHELPS MICHAEL +
329 MEADOW RD
FARMINGTON CT 06032

LISAY CATHERINE MARY
435 BONITA ST
FORT MYERS BEACH FL 33931

ASHLAND PROPERTIES
10940 S PARKER RD #512
PARKER CO 80134

KIMYABAYKI SOROUGH +
91 PRINCESS DIANA DR
MARKHAM ON L6C 0H2
CANADA

GRIFFIS LLC
9051 E CHICAGO RD
JEROME MI 49249

BAHAN SUZANNE E +
169 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

ZOZO INVESTMENTS LLC
173 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

JENKINS CARROLL ANNE
3063 NORFOLK CR 23 RR6
TILLSONBURG ON N4G 4G9
CANADA

151 OLD SAN CARLOS LLC
17840 SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

BENSON BRADFORD J II TR
927 PRESCOTT ST
FORT MYERS BEACH FL 33931

HOLIDAY COURT MOTEL LLC
PO BOX 1118
LABELLE FL 33975

HOLBROOK LESLIE E +
PO BOX 206
GALION OH 44833

PURTELL JAMES F TR
855 LAGOON ST
FORT MYERS BEACH FL 33931

BOYD TODD & JULIE
SOMERS WHARF
16 WATER ST UNIT L
ST GEORGES GE 04
BERMUDA

DULLARD ROBERT TR +
PO BOX 2695
FT MYERS BCH FL 33932

BLOCD AHL LEASING LLC
3538 TIMBER RIDGE TRL
CEDAR RAPIDS IA 52411

ISLAND GEM LLC
8044 ESTERO BLVD
FORT MYERS BEACH FL 33931

SOUTHLAND CORPORATION
CORPORATE TAX DEPT
2711 N HASKELL AVE
DALLAS TX 75204

COURTNEY S MARK & DEBORAH S TR
83 CRANBERRY RD
GROVE CITY PA 16127

PAINE FRED
823 LAGOON ST
FORT MYERS BEACH FL 33931

ARTRIP BARBARA K TR
850 LAGOON ST
FORT MYERS BEACH FL 33931

SCHWARTZ DEREK & KRISTEN
3329 ROSA AVE
NEW SMYRNA BEACH FL 32168

SAND CASTLE BEACH CLUB CONDO
905 ESTERO BLVD
FORT MYERS BEACH FL 33931

SAND CASTLE BEACH CLUB CONDO A
905 ESTERO BLVD
FORT MYERS BEACH FL 33931

MARINA VILLAGE AT SNUG HARBOR
PO BOX 2430
FORT MYERS BEACH FL 33932

HARBOUR HOUSE AT THE INN CONDO

L & R PROPERTIES OF SOUTHWEST
798 CYPRESS LAKE CIR
FORT MYERS FL 33919

L & R PROPERTIES OF SOUTHWEST
798 CYPRESS LAKE CIRCLE
FORT MYERS FL 33919

JENKINS FMB LLC
4407 SE 19TH PL
CAPE CORAL FL 33904

FIVE MILE STRETCH
2480 SHIPS WATCH CT
VIRGINIA BEACH VA 23451

BENNETT CHAD & LINDY
214 SANGRIA DR
VINE GROVE KY 40175

BEACH AT HARBOUR HOUSE LLC
2770 REYNOLDSBURG NEW ALBANY RD
BLACKLICK OH 43004

STUDE INVESTMENTS LLC
483 LUNA BELLA LANE
NEW SMYRNA BEACH FL 32168

PMS PROPERTY MANAGEMENT LLC
2478 ALEXANDRIA DR
LIMA OH 45805

FRASCHETTI EDWARD TR
450 OLD SAN CARLOS BLVD #312
FORT MYERS BEACH FL 33931

FRASCHETTI EDWARD TR
450 OLD SAN CARLOS BLVD #312
FORT MYERS BEACH FL 33931

FLORIDA CONFERENCE ASSOCIATION
351 S STATE ROAD 434
ALTAMONTE SPRINGS FL 32714

BUTCHER JEFFERY S
1114 N COURT ST # 189
MEDINA OH 44256

BOWLING LARRY L +
1691 BATTLESBURG ST SE
EAST SPARTA OH 44626

PMS PROPERTY MANAGEMENT LLC
PO BOX 161
DELPHOS OH 45833

SERRA LUIGI
5490 PRINCE EDWARD AVE # 30
NIAGARA FALLS ON L2G 0G5
CANADA

BLAIN GAIL
450 OLD SAN CARLOS BLVD #216
FORT MYERS BEACH FL 33931

HARBOUR HOUSE AT THE INN CONDO
PO BOX 152047
CAPE CORAL FL 33915

LETS JUST DO IT LLC
1331 N LELA LN
GREENFIELD IN 46140

SOLANS ENRIC & ANTOINETTE TR
1821 BOULDER DR
MOUNT PROSPECT IL 60056

DIVITO JAMES & LAURIE
27 RUSHMORE RD
FOX LAKE IL 60020

WEBER ROBERT & LINDA
798 CYPRESS LAKE CIR
FORT MYERS FL 33919

KNISELY JAMES E & DEBRA M
322 BOWERS AVE NW
NEW PHILADELPHIA OH 44663

ENTRUST FREEDOM LLC
6410 COPPERLEAF CT
HOLLAND MI 49423

FINCH WADE J + REBECCA J
711 1ST AVE NW
BRITT IA 50423

CONTINENTAL LAND MANAGEMENT IN
24545 WILLOWBY AVENUE
EASTPOINTE MI 48021

RUFENACHT RICHARD F TR
W6379 WALD RD
MONROE WI 53566

BUTCHER JEFFERY S &
1114 N COURT ST UNIT 189
MEDINA OH 44256

BUCHINGER DAVID
465 S WEST ST # 8
VASSAR MI 48768

FRASCHETTI EDWARD TR
450 OLD SAN CARLOS BLVD #312
FORT MYERS BEACH FL 33931

IMPACT USA INC
KENNETH W HELMS
506 VENETIAN DR
SANDUSKY OH 44870

IMPACT USA INC
KENNETH W HELMS
506 VENETIAN DR
SANDUSKY OH 44870

DJURIN GORAN & BRANKICA
8954 ELSMERE DR
PARMA OH 44130

LETS JUST DO IT LLC
1331 N LELA LANE
GREENFIELD IN 46140

CALLAHAN DANIEL A TR
105 110TH ST
SEATON IL 61476

TCB PROPERTIES
112 MILLER ROAD
SPRING MILLS PA 16875

T + J HOMES SWFL LLC
450 OLD SAN CARLOS BLVD #G101
FORT MYERS BEACH FL 33931

LARSEN DANIEL S TR
2810 ESTERO BLVD UNIT 711
FORT MYERS BEACH FL 33931

LARSEN DANIEL S TR
2810 ESTERO BLVD UNIT 711
FORT MYERS BEACH FL 33931

HARBOR HOUSE AT THE INN
PO BOX 152047
CAPE CORAL FL 33915

HARBOUR HOUSE AT THE INN CONDO
PO BOX 152047
CAPE CORAL FL 33915

LAVALLE TAYLOR
640 ESTERO BLVD
FORT MYERS BEACH FL 33931

OLD SAN CARLOS INN DEVELOPMENT
416 CRESCENT ST
FORT MYERS BEACH FL 33931

TITUS VINCENT E & JESSICA L
300 SEMINOLE WAY
FORT MYERS BEACH FL 33931

ESTERO BAY HOTEL COMPANY
414 CRESCENT ST
FORT MYERS BEACH FL 33931

ESTERO BAY HOTEL COMPANY
416 CRESCENT ST
FORT MYERS BEACH FL 33931

OLD SEAPORT PLACE INC
JAMES FIGUERADO
489 MADISON CT
FORT MYERS BEACH FL 33931

OLD SEAPORT PLACE INC
JAMES FIGUERADO
489 MADISON CT
FORT MYERS BEACH FL 33931

OLD SEAPORT PLACE INC
JAMES FIGUERADO
489 MADISON CT
FORT MYERS BEACH FL 33931

MARINA VILLAGE AT SNUG HARBOR
645 OLD SAN CARLOS BLVD #2
FORT MYERS BEACH FL 33931

MARINA VILLAGE AT SNUG HARBOR
645 OLD SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

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: 237 Parking Lot
Authorized Applicant: John W. Richard
LeePA STRAP Number: 24-46-23-W3-0050A.0080

Current Property Status: Developed
Current Zoning: Downtown
Future Land Use Map (FLUM) Category: Pedestrian Commercial
Comp Plan Density: Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

Pls see attached narrative supplement

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from 34-676 (b)(1) **(LDC Section number)**

Explain the specific regulation contained in this section from which relief is sought:
Pls see attached narrative

Reasons for request

Explain why the variance is needed:
Pls see attached narrative



Pls see attached narrative

Pls see attached narrative

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

Pls see attached narrative

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- 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; and a clear illustration of the proposed variance
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

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.

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.

“Variance is requested from...” Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

COMMUNITY DEVELOPMENT DEPARTMENT
Supplement PH-B
Additional Required Information for a Variance Application

PART I
Narrative Statements

This variance request is submitted in conjunction with a request for the extension of a previously approved permanent shared parking lot located at 237 Old San Carlos Boulevard (STRAP Number 24-46-23-W3-0050A.0080) (the “Property”). In order to accommodate the special exception request being made, variances from the following Town of Fort Myers Beach Land Development Code (“LDC”) provisions are needed:

1. Buffer Between Parking and ROW (10-416(c)(2))
2. Perimeter Buffering (10-416(d), Table 10-8, and 34-677(b)(3))
3. Parking Lot Location (34-676(b))
4. Parking Lot Interconnection (34-676(c))
5. Pedestrian System (34-2015(7))
6. Parking Dimensions (34-2016(1) and (2))
7. Visibility Triangle (34-3131)

The requests made herein are identical to the requests that were made as to the previously approved permanent shared parking lot for a portion of the Property. The special exception was approved with the adoption of Fort Myers Beach Resolution Number 14-07 (the “Special Exception Resolution”) and the associated variances were approved with the adoption of Fort Myers Beach Resolution Number 14-08 (the “Variance Resolution”), both of which were adopted on March 3, 2014 (collectively referred to hereinafter as the “Existing Approvals”).

The following identifies the portion of the Property with Existing Approvals (highlighted in yellow) and the portion that is the subject of this request (highlighted in green):

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Block A, Unit No 2 Island Shores, recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida (the “Island Shores Plat”)

Portion of vacated lagoon right-of-way, Unit No 2 Island Shores, recorded in Plat Book 9, Page 25, Public Records of Lee County, Florida, as more particularly described in Official Records Book 2736, Page 3705 *et seq.* and Official Records Book 2858, Page 1394, both of the Public Records of Lee County, Florida

Lot 1, Block B, Matanzas View, recorded in Plat Book 9, Page 40, Public Records of Lee County, Florida (the “Matanzas Plat”)

Similarly, the property highlighted in **yellow** below identifies the area subject to Existing Approvals, and the property highlighted in **green** below identifies the area that is the subject of this request (with the picture on the left being a snippet from the Island Shores Plat and the picture on the right being a snippet from the Matanzas Plat):



The variance requests set forth in this document are meant to apply to the property highlighted in **green**. Though the portion of the Property highlighted in **yellow** received the necessary approvals, it has not been put into use as a permanent shared parking lot, instead operating in conformance with Section 34-2019(a) of the LDC.¹ With the approval of this request to extend the previously approved variances to the remainder of the Property, the intention is to put the entire Property into operation as one cohesive permanent shared parking lot.

The permanent shared parking lot has been designed to operate in the same manner as the permanent shared parking lot located directly across Old San Carlos Boulevard at what is now identified as 318/320 Old San Carlos Boulevard (STRAP Number 24-46-23-W3-00203.0020). In the way of background, 318/320 Old San Carlos Boulevard was identified in the Existing Approvals as the “South Parcel,” while the area highlighted in yellow above was identified as the “North Parcel.” As applied to the South Parcel, the Existing Approvals were meant to carry forward a use that was first permitted by Town of Fort Myers Beach Resolution Number 99-40, adopted by the Town Council on October 11, 1999. This use was again permitted when the Town Council approved Town of Fort Myers Beach Resolution Number 01-03 on January 22, 2001, which rezoned the North Parcel and the South Parcel from a commercial conventional district to Commercial Planned

¹ Section 34-2019(a) of the LDC specifically provides that “[p]arking spaces that are not in daily use and are located in parking lots having ten or more parking spaces and meeting the other requirements of this division may be rented to the general public during peak periods.”

Development (CPD) with “parking, commercial” and “parking, accessory” as approved uses on the South Parcel.

When the Existing Approvals were granted, the Town Council also approved another rezoning of the North Parcel and the South Parcel. That is, the Town Council approved Fort Myers Beach Resolution Number 14-06 (the “Rezoning Resolution”), which changed the zoning on both parcels from CPD to the Downtown conventional zoning district. Without the benefit of uses specified in the Rezoning Resolution itself, the applicant obtained the Existing Approvals to allow for the continued operation of the permanent shared parking lot on the South Parcel by way of the special exception process required for conventional zoning districts. At the same time, the use was also permitted on the North Parcel. The South Parcel has been in continuous use as a permanent shared parking lot since the original approval in 1999 and has operated with the same variances being requested herein since the Existing Approvals were granted in 2014.

Consistent with Section 34-2015 of the LDC, *Location and design*, the permanent shared parking lot to be operated on the Property has been designed with sufficient maneuvering room so that existing vehicles can leave the parking lot in a forward motion. The parking lot is and will be paved for high turnover use. In a general sense, the variances requested herein are the *de minimis* variance under the circumstances and rigid compliance is not essential to protect public policy. Rather, parking on Old San Carlos Boulevard, specifically, and in the Downtown district, generally, is difficult to secure given the abundance of commercial enterprises but lack of real property. The Town has recognized this predicament in the Transportation Element of its Comprehensive Plan where shared parking lots are encouraged as follows:

It has been widely demonstrated that parking lots serving a variety of land uses require much less space than separate on-site lots for each business. Fort Myers Beach can make walking more pleasant by wasting as little land as possible on parking lots. Shared parking lots are ideal when businesses are relatively small, clustered together, and have different busy periods (as at Times Square).

The same Transportation Element specifically references the suggestion made by a parking analysis performed by the Estero Island CRA in 1993 to provide shared parking along Old San Carlos Boulevard:

In addition to the new on-street spaces, the CRA study suggested creating a reservoir of shared parking behind businesses along Old San Carlos Boulevard. Storefronts would be built up to the right-of-way line of Old San Carlos, improving the pedestrian character of the street by replacing individual front parking lots with continuous storefronts. The result would be a high-quality urban streetscape similar to Los Olas Boulevard and Celebration as described above.

These same sentiments are carried forward in Policy 7-F-1 and Policy 7-F-2 of the Transportation Element.

This is a detailed street map of a residential area in San Francisco. The map shows a grid of streets including First St, Second St, Third St, and Fourth St. A red rectangle highlights a specific block bounded by Third St, Fourth St, and a diagonal street. The map includes building footprints, street names, and a compass rose.

By granting these variances, which the Town recognizes are needed to accommodate additional parking in light of conventional parking requirements², additional parking will be provided for those visiting the Town of Fort Myers Beach. This can be done without the need for parking garages suggested by the Comprehensive Plan, though it is also important to point out that properties in this area have been identified as potential locations for mid-block parking garages through the Old San Carlos Boulevard/Crescent Street Master Plan. The following Figure 34-8 from the LDC identifies these locations (shown as black squares) as compared to the Property (outlined in red):



Figure 34-8

Approval of this request, as well as the concurrent Special Exception request, will provide additional parking in this area at no expense to the Town. Accordingly, granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Instead it will provide a much needed resource. Given its location in the Old San Carlos area of the Downtown district, which is greatly limited in size, the conditions of the Property are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

² The “Implementing Shared Parking” section of Appendix A to the Transportation Element provides the following:

The redevelopment overlay district adopted by the town provides some relief, and some businesses have obtained variances from the conventional parking requirements. Without a clearer path during this interim period, however, the town may lose some opportunities to see its redevelopment plan move forward with private financing. Some alternatives are:

- Modifying development regulations to make it easier for businesses to substitute private arrangements they may be able to make for nearby (but not on-site) parking.
- If a parking garage is built, businesses could purchase some of its capacity (not necessarily specific parking spaces) for their customers.
- The town could act as a catalyst for the WRT shared parking concept. This could be done by requiring new development along Old San Carlos to design their sites to accommodate shared parking, or by actually acquiring key easements, or even building public parking lots in the suggested configuration.

Rather, the variance is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the conventional parking requirements to the Property.

These same general arguments are meant to justify each of the variance requests discussed in further detail below.

I. Internal Landscaping - 10-416(c)(2)

The applicant requests a variance from Section 10-416(c)(2), *Internal landscaping*, relative to internal landscaping requirements for parking lots, to allow for no internal landscape parking lot improvements, including the following:

- A. No tree requirement (10-416(c)(2)a.);
- B. No internal landscape islands (10-416(c)(2)b.);
- C. No 10' wide internal landscaped area (10-416(c)(2)c.);
- D. No landscape interruption by divider median (10-416(c)(2)d.);
- E. No divider median (10-416(c)(2)e.);
- F. No interior landscape with grass, groundcover, shrubs, or other approved landscaping materials (10-416(c)(2)f.); and
- G. No tree grates (10-416(c)(2)g.).

Section 10-416(c)(2) of the LDC provides a landscaping requirement for internal improvements to parking lots. Basically, it appears this provision was taken from the Lee County Land Development Code, which recognizes that parking is typically placed along the front of the parcel between the right-of-way and the principal structure. Therefore, landscaping is part of the public view area.

The specific design requirements for the Downtown core, and specifically Old San Carlos, provide that buildings be built with a zero foot (0') build-to line along the Old San Carlos street right-of-way. Thus, there will not be permanent parking lots along Old San Carlos that require internal landscaping.

Also, the criteria initially adopted by Lee County was likely drafted to apply to larger parcels than one would find in the Downtown core of Fort Myers Beach. Therefore, parking on a relatively small parcel compared to the application of these criteria on large tracts affects the ability to provide parking.

The variance will be a benefit not only to the property owner, but to the Town, allowing for the maximization of parking consistent with the strategies developed and adopted by the Town Council for Times Square and Old San Carlos.

II. Perimeter Buffering - 10-416(d), Table 10-8, and 34-677(b)(3)

Pursuant to Table 10-8 of the LDC, a Type D buffer is required between a parking use and a right-of-way. The applicant requests a variance from this requirement to allow, in its place, a four foot (3') white picket fence with landscaping. We respectfully submit that a variance should be granted from this provision of the LDC where Old San Carlos and Third Street have unique "build-to lines" and due to the required access with visibility triangles on side streets and Old San Carlos for entrance and exit.

Section 34-676 provides support for the Town's "Park Once" district. Although future goals include the Town providing additional parking, the Town should support maintaining existing parking and support additional parking to be provided by the private sector.

As to the buffer between the parking and ROW, we specifically submit that other provisions of the LDC reflect that this should not be a requirement along Old San Carlos. The buffer provision applies to the entire Downtown zoning district. But the LDC **requires** that **ONLY** on Old San Carlos the build-to-line must be a zero foot (0') setback. Thus, the LDC requires that the building be a zero setback and any buffer would be required to be removed. The Code does not require a needless act; approval of the variance is the appropriate relief rather than amending the Code.

Also, the build-to-line along Third Street is zero feet (0') to five feet (5'). See Section 34-674(a)(1)b of the LDC. A fifteen foot buffer along one lot line is a fifteen foot (15') taking of parking.

This is the minimum variance and is identical to the variances granted by the Town Council's approval of the Variance Resolution.

III. Parking Lot Location - 34-676(b)

As noted above, the applicant is requesting a variance to allow for off-street parking in the front and side yards as depicted on the proposed site plan. The request is the minimum variance to allow for a permanent shared parking lot where a portion is along Old San Carlos and the side street right-of-way. The granting of the variance will not injure or be detrimental. To the contrary, the off-street parking is an asset to the Downtown district. This use provides parking for the core area of the Downtown District, which is Times Square and Old San Carlos.

Much of Old San Carlos is developed with existing buildings. Therefore, a variance related to the location of parking lots along Old San Carlos is appropriate for recognition of the existing parking use along Old San Carlos and Third Street, adjacent to the Shipwreck building rather than behind it. Because development is unique along Old San Carlos, it is not practical to amend the regulation that applies to the remainder of the Downtown district.

IV. Parking Lot Interconnection - 34-676(c)

The Downtown Zoning District provisions require rear-yard parking lots on properties fronting along Old San Carlos Boulevard to be interconnected to eliminate or minimize driveways to Old San Carlos Boulevard. This request to allow no interconnection with adjacent property is essentially a request to avoid liability. Additionally, the adjacent property, which is also owned by the

applicant, is developed and does not currently allow for vehicular access or parking, so there is nothing to connect to.

V. Pedestrian System - 34-2015(7)

This provision of the LDC requires that walkways must be provided which accommodate safe and convenient pedestrian movement in any parking lot where more than one tier of parking spaces is to be developed. The applicant is requesting a variance to eliminate this requirement. As has been noted previously, this request is simply to extend an existing parking lot, operating in conformance with Section 34-2019(a) of the LDC, to the entire Property, which will then be operated as a permanent shared parking lot pursuant to Section 34-2011(2) of the LDC. The existing parking lot on the South Parcel does not have a pedestrian walkway and there have been no incidents involving a pedestrian-vehicle accident in the time it has been operating in that manner.

VI. Parking Dimensions - 34-2016(1) and (2)

This is a request for a variance from Land Development Code Section 34-2016(1) and (2), Dimensions, to permit the following parking dimensions:

Angle	Parking Spaces	One-Way Aisle	Two-Way Aisle
45°	8' x 16'	10'	20'
60°	8' x 16'	12'	20'
75°	8' x 16'	15'	20'
90°	8' x 16'	18'	20'

The identical relief was granted by the Town Council's approval of the Variance Resolution. Parking has operated safely and efficiently on the South Parcel with these dimensions. These are appropriate dimensions for the size of the vehicles that typically use the parking.

VII. Visibility Triangle - 34-3131

The applicant is requesting a variance from Section 34-3131 of the LDC to eliminate the required visibility triangle for the access on Third Street. An on-site visibility triangle provides no benefit and is not necessary for ingress or egress to the parking area. A visibility triangle will not provide increased visibility in this location. These statements are supported by the fact that Section 34-3131(a) of the LDC provides an exception from the prohibition against structures or plantings between two feet (2') and six feet (6') above the average grade of each street within the visibility triangle when applied to Old San Carlos Boulevard.

18708982_2

Mr. Mayor and City Council Members

My name is Frank Tomaiolo. I am unable to attend this meeting but I would like you to know I have been a neighbor of John Richard's parking lot for 18 years. The parking lot is always maintained and kept clean. Mr. Richard plants shrubs and trees to make it look nice. Everyday trash in the lot is picked up and his employees walk around to make sure everyone is safe and obeying the rules. If on a rare occasion there is a problem I have his personal phone number to let him know and Mr. Richard comes himself to take care of it. He has been a great neighbor and I have no problem with him making the parking lot bigger. I know he will continue to be a great neighbor for many years to come. He takes pride in his property and it shows.

Thank you for your time

Frank Tomaiolo
FRANK Tomaiolo
934 3rd St.
F.M.B.



Exhibit H

Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33966

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at DiamondHead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, Florida, 33931.

TIME: 9 AM

DATE: February 21, 2023

CASE: Variance 20220094/ Special Exception 20220095

ADDRESS: 237 Old San Carlos Blvd

APPLICANT: John W. Richard/Kara Stewart

REQUEST: The applicant is requesting a special exception to expand an existing permanent shared parking lot approved as case SEZ2013-0006- Shipwreck Special Exception, with variances to location and design requirements.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing the Town Council will review the application materials and hear testimony to make a decision. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

1. **Requested Motion:**

Meeting Date: February 21, 2023

Approve Resolution 23-16 entitled: A Resolution of the Town Council of the Town of Fort Myers Beach, Florida, Accepting the Ranking of Grubbs Emergency Services, LLC ("Grubbs") as the Top Ranked Responsible and Responsive Bidder to ITB-23-08-CD "Estero Island Emergency Berm"; Approving an Agreement Between the Town and Grubbs for the Construction of the Estero Island Beach Emergency Berm; Authorizing the Execution of the Agreement and Expenditure of Budgeted, Emergency, and/or Grant Funds by the Town Manager; and Providing an Effective Date

Why the action is necessary:

According to FEMA (2020), "if a natural or engineered beach has eroded to a point where flooding from a 5-year storm could damage improved property, cost-effective emergency protective measures on the beach that protect the improved property against damage from that 5-year storm are eligible. Eligible measures typically include the construction of emergency sand berms to protect against additional damage from a 5-year storm."

What the action accomplishes:

Installation of an Emergency Berm constructed of 89,406 CY of beach compatible sand that will be obtained from "a properly licensed, permitted, and qualified supplier of the material".. The Emergency Berm was designed to help protect improved property from a 5-year event.

The Town will also install native dune vegetation in a 10-foot wide strip along the Emergency Berm as required by the Town's Comprehensive Plan and Land Development Code Policy 5-D-1 ii which states: "Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected and non-native exotics removed" and Policy 6-E-3 which states "The Town will implement the following measures to promote the restoration of beach and dune systems: Initiate a program to recreate a dune line and plant appropriate vegetation such as sea oats wherever sand dunes have been destroyed."

The Emergency Berm will be constructed under the Florida Department of Environmental Protection's Emergency Order, OGC NO. 22-2602, DEP #22-2145. Section C.2 states "This section applies to activities conducted within the Emergency Area seaward of the CCCL as established by Chapter 62B-26, Florida Administrative Code. Emergency Permits may be issued by the Division of Resilience and Coastal Protection pursuant to Rule 62B-33.014, Florida Administrative Code. This Order constitutes the declaration of a shoreline emergency and activates emergency protection and permitting procedures established in s. 161.085 (3), Florida Statutes, and in Rules 62B-33.0051(5) and 62B-33.014, Florida Administrative Code. Subsection a.(3) authorizes the restoration of a dune system using beach compatible sand from an upland sand source."

The Town proposes the following schedule for the Emergency Berm Project.

- FEMA Category B Approval: December 2022 – January 2023
- Final Design: December 2022 – January 2023
- Bid Process: January – February 2023
- Construction: March – May 2023.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

The Town intends to enter into an Agreement with Grubbs Emergency Services, LLC to install an emergency berm constructed of 89,406 CY of beach compatible sand that will be obtained from "a properly licensed, permitted, and qualified supplier of the material". The Emergency Berm was designed to help protect private and public property from a 5-year storm surge event.

The Town will also install native dune vegetation in a 10-foot wide strip along the emergency berm as required by the Town's Comprehensive Plan and Land Development Code Policy 5-D-1 ii which states: "*Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected and non-native exotics removed*" and Policy 6-E-3 which states "*The Town will implement the following measures to promote the restoration of beach and dune systems: Initiate a program to recreate a dune line and plant appropriate vegetation such as sea oats wherever sand dunes have been destroyed.*"

The emergency berm will be constructed under the Florida Department of Environmental Protection's Emergency Order, OGC NO. 22-2602, DEP #22-2145. Section C.2 of the DEP Emergency Order states: "This section applies to activities conducted within the Emergency Area seaward of the CCCL as established by Chapter 62B-26, Florida Administrative Code. Emergency Permits may be issued by the Division of Resilience and Coastal Protection pursuant to Rule 62B-33.014, Florida Administrative Code. This Order constitutes the declaration of a shoreline emergency and activates emergency protection and permitting procedures established in s. 161.085 (3), Florida Statutes, and in Rules 62B-33.0051(5) and 62B-33.014, Florida Administrative Code. Subsection a.(3) authorizes the restoration of a dune system using beach compatible sand from an upland sand source."

The cost of the project is in the "not to exceed" sum of \$7,559,840.00

Attachments:

1. Resolution 23-16, Estero Island Beach Berm
2. 2023-02-08_Withdrawal of Notice of Bid Protest ITB-23-08-CD
3. Bid Tabulation ITB-23-08-CD
4. Construction Contract Agreement- draft
5. Recommendation Letter
6. beach berm funding schedule

Financial Impact:

Once funds are obligated by FEMA, the State (FDEM) will have funds appropriated and available to assist the Town of Fort Myers Beach to construct the Emergency Berm.

6. Alternative Action

Do not accept and authorize the Town Manager to enter into an agreement with Grubbs Emergency Services, LLC, the lowest and responsive bidder for the Invitation to Bid #ITB-23-08-CD Estero Island Emergency Berm and re-bid.

7. Management Recommendations:

Accept and authorize the Town Manager to execute an agreement with Grubbs Emergency Services, LLC. the lowest and responsive bidder for the Invitation to Bid #ITB-23-08-CD Estero Island Emergency Berm.

8. Recommended Approval:

Chadd Chustz, Environmental Services
Steve Poposki, Community Development Director
John R Herin Jr, Town Attorney

Created/Initiated - 2/14/2023
Approved - 2/14/2023
Approved - 2/14/2023

Amy Baker, Town Clerk
Keith Wilkins , Interim Town Manager

Approved - 2/14/2023
Final Approval - 2/15/2023

RESOLUTION NUMBER 23-16

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACCEPTING THE RANKING OF GRUBBS EMERGENCY SERVICES, LLC (“GRUBBS”) AS THE TOP RANKED RESPONSIBLE AND RESPONSIVE BIDDER TO ITB-23-08-CD “ESTERO ISLAND EMERGENCY BERM”; APPROVING AN AGREEMENT BETWEEN THE TOWN AND GRUBBS FOR THE CONSTRUCTION OF THE ESTERO ISLAND BEACH EMERGENCY BERM; AUTHORIZING THE EXECUTION OF THE AGREEMENT AND EXPENDITURE OF BUDGETED, EMERGENCY, AND/OR GRANT FUNDS BY THE TOWN MANAGER; AND PROVIDING AND EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“Town”) empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, on September 28, 2022, Hurricane Ian made landfall in Fort Myers Beach as a category 4 hurricane with 150-mph winds and a storm surge of approximately fifteen feet (15’) causing catastrophic damage to the Town’s beach, beach access facilities, public buildings, public communication systems, public drainage and utility systems, public streets and roads, and commercial and residential buildings and areas; and

WHEREAS, the Town desires to proactively protect the Town’s beach, public infrastructure and property, and private commercial and private property from future storm surge events by constructing a beach emergency berm (“Project”); and

WHEREAS, pursuant to a competitive procurement process in compliance with state law and Town Code – ITB-23-08-CD “Estero Island Emergency Berm” – the Town accepted bids for the Project and the Town’s engineering consultant and Town staff ranked Grubbs as the top ranked responsible and responsive bid; and

WHEREAS, the Town deems it to be in the best interest of the business owners, residents, and visitors of the Town to approve the Agreement between the Town and Grubbs for the Project, (“Agreement”), a copy of which is attached as Exhibit “A” and authorize the Town Manager to execute the Agreement and expend budgeted, emergency, and/or grant funds to effectuate the Agreement.

Section 1. The above recitals are true and correct, and incorporated herein by this reference and adopted as the legislative and administrative findings of the Town Council; all exhibits referenced and attached are incorporated herein and made a specific part of this Resolution.

Section 2. The Agreement between the Town and Grubbs for the Project, attached as Exhibit "A," is approved and the Town Manager is authorized to execute and expend budgeted, emergency, and/or grant funds to effectuate the Agreement on behalf of the Town.

Section 3. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 4. This resolution shall take effect immediately upon its adoption.

The foregoing Resolution was _____ by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Bill Veach, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of February 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____ 2023.



February 13, 2023

Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931

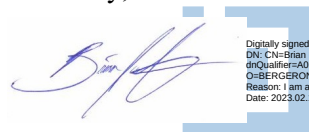
ATTN: Amy Baker
Town Clerk

RE: Withdrawal of Notice of Bid Protest #ITB-23-08-CD

To whom it may concern,

Bergeron Land Development, Inc is formally withdrawing the intent to protest #ITB-23-08-CD Estero Island Emergency Berm award to Grubbs Emergency Services, LLC. Bergeron felt strongly our protest had merit, however after listening to the Town Council meeting it is clear that any protest could have negative impacts on the City of Fort Myers Beach and its residents. It is not our company's intent to cause damage to the City in any way and we look forward to future opportunities.

Sincerely,



Digitally signed by Brian M Landis
DN: CN=Brian M Landis,
dnQualifier=A01410C00000180CCE468B2000BF684,
O=BERGERON LAND DEVELOPMENT INC, C=US
Reason: I am approving this document
Date: 2023.02.13 08:40:54-05'00'

Brian Landis, P.E.
Vice President
Bergeron Land Development Inc.

CC:
Sean Nicholl, Bergeron

Bergeron Land Development Inc.
19612 SW 69th Place
Ft. Lauderdale, FL 33332
Phone: (954) 680-6100

Proposing Firm	Total Base Bid Amount	Official Bid Form, pg. D-2, insert firm name at the bottom of the page	Signed copy of each addendum, if any, (3)	Official Bid Form, pg. D-3 through D-5	Official Bid Forms	Bid Bond / Cashier's Check/Certified Check	Contractor's Qualification Questionnaire	DBE Participation Form	Public Entities Crime Form	Non-Collusion Affidavit	Trench Safety Affidavit	Material Manufacturer List	List of Sub Contractors	Immigration Laws Affidavit	All required documents submitted (1 original and 1 PDF on disc or flash-drive)	Bid properly sealed in an envelope and marked "Sealed Bid", bidders name, project name, solicitation number, date and time of opening
EARTH TECH	8,797,200.00	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
BERGERON	8,489,456.05	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
GRUBBS EME	7,559,840.00	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		

Staff Present:

EVA SACHALSKI
Jadua Rosa

**PART E****FMB:006 - CONSTRUCTION CONTRACT AGREEMENT FORM**

(1 of 9 Pages)

CONSTRUCTION CONTRACT AGREEMENTContract No. ITB-23-08-CDCouncil Award Date: February 9, 2023**AGREEMENT**

THIS CONTRACT is made this _____ day of _____ by and between the TOWN OF FORT MYERS BEACH, FLORIDA, hereinafter called "**TOWN**," and **Grubbs Emergency Services, LLC**, a corporation, hereinafter called "**CONTRACTOR**."

WITNESSETH: For and in consideration of the mutual covenants herein set forth, the parties agree as follows:

ARTICLE 1. WORK

The CONTRACTOR shall commence and complete all work for PROJECT TITLE ITB-23-08-CD in accordance with the Contract Documents. CONTRACTOR shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the project described in the Contract Documents. A Scope of Services is attached marked Exhibit "A".

ARTICLE 2. CONTRACT SUM

- 2.1. The TOWN shall pay the CONTRACTOR, in current funds, for the performance of the work described in Exhibit "A", subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of:

\$7,559,840.00

said amount being the **Total Base Bid Amount** as listed on the CONTRACTOR's Official Bid Proposal Form that was submitted for this project.

ARTICLE 3. PROGRESS PAYMENTS

Based upon applications for payments submitted to TOWN'S Representative by the CONTRACTOR, and Certificates for Payment issued by the TOWN'S representative, the TOWN shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

- 3.1. Not later than ninety (90) calendar days following the approval of an Application for payment, TOWN will make payment to CONTRACTOR in an amount equal to ninety-five percent (95%) of that portion of the Contract Price properly allocated to labor, materials and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made

by the TOWN.

- 3.2. The Town shall withhold 5% of each progress payment as retainage until the project is completed.
- 3.3. Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the TOWN shall determine for all incomplete work, unsettled claims or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

The Term “**Contract Documents**” shall include this Contract; addenda; CONTRACTOR’s Bid, except to the extent it conflicts with any other contractual provision; the Notice to Proceed, the Public Payment and Performance Bond(s); the Bid Package prepared and issued by the TOWN; the General Conditions; the Specifications and Drawings; any Special Conditions; all Written Amendments; Certificates of Insurance; Change Orders; and Work Change Directives or Field Orders. In the event of conflict between any provision of any other document referenced herein as part of the contract and this agreement, the terms of this agreement shall control.

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 5.1. The CONTRACTOR shall commence work as required by the CONTRACT DOCUMENTS and as provided in the Official Notice to Proceed.
- 5.2. Substantial completion shall be achieved not later than the number of days specified in the Bid Proposal, unless the period for substantial completion is extended otherwise by the CONTRACT DOCUMENTS or by written agreement of the parties.
- 5.3. Final completion shall be achieved not later than the number of days specified in the Bid Proposal, unless the period for final completion is extended otherwise by the CONTRACT DOCUMENTS or by written agreement of the parties.
- 5.4. Time is of the essence in the performance of this Contract.

Liquidated Damages:

- 5.5. The TOWN and CONTRACTOR recognize that time is of the essence of this agreement and that the TOWN will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding and the actual loss suffered by the TOWN if the work is not completed on time. Accordingly, instead of requiring any such proof, TOWN and CONTRACTOR agree that Liquidated Damages will be assessed in the amount of **\$500.00** per day for each calendar day that is beyond the substantial and final completion dates required by the CONTRACT DOCUMENTS.

The TOWN shall have the right to deduct all damages due from the final payment

request as well as retainage.

Any sums due and payable hereunder by the CONTRACTOR shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the TOWN estimated at the time of executing the Contract. When the TOWN reasonably believes that substantial Completion will be inexcusably delayed, the TOWN shall be entitled, but not required, to withhold from any amounts otherwise due the CONTRACTOR an amount then believed by the TOWN to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay in achieving substantial Completion, or any part thereof, for which the TOWN has withheld payment, the TOWN shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable as liquidated damages, less sums incurred by the Town resulting from CONTRACTOR's delay in achieving substantial completion.

The CONTRACTOR shall also be liable for any actual damages sustained by the TOWN after CONTRACTOR has achieved substantial completion for CONTRACTOR's failure to fully complete the Contract Documents. Actual damages may include, but not be limited to, costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity and overhead. The TOWN shall have the right to deduct all damages due from final payment request as well as retainage.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce TOWN to enter into this Agreement, CONTRACTOR makes the following representations:

CONTRACTOR has been familiarized with the Contract Documents and the nature and extent of the work required to be performed, locality, local conditions, the areas of intended construction including surface and sub-surface conditions, and Federal, State and Local laws, ordinances, rules and regulation that in any manner may affect costs, progress or performance of the work.

CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site which may affect cost, progress or performance of the work.

CONTRACTOR has made or caused to be made examinations, investigations, tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, test, reports or similar data are or will be required by CONTRACTOR for such purposes.

CONTRACTOR has correlated the results of all such observations, examination, investigations, test, reports and data with the terms and conditions of the Contract Documents.

CONTRACTOR has given TOWN written notice of all conflicts, errors or discrepancies that have been discovered in the CONTRACT DOCUMENTS and the written resolution thereof by TOWN is acceptable to CONTRACTOR.

ARTICLE 7. GENERAL CONDITIONS**7.1 RESPONSIBILITY OF THE CONTRACTOR.****7.1.1 PROSECUTION OF THE WORK.**

The CONTRACTOR shall be responsible for the good condition of the Work until its release from its obligations. It shall bear all losses resulting to it on account of the amount or character of the Work, the character of the ground or existing underground installation being different from what it anticipated, or on account of the weather or the elements.

Information shown on the Drawings as to the location of the existing utilities has been prepared from the most reliable data available to the TOWN. This information is not guaranteed, however, and it shall be this CONTRACTOR's responsibility to determine the location, character and depth of existing utilities. Extreme caution shall be exercised to eliminate any possibility of any damage to utilities resulting from CONTRACTOR's activities. The location of all overhead utilities shall be verified and the TOWN notified on any conflict which might occur. The CONTRACTOR shall be responsible for determining which poles will need shoring during excavation and shall provide such shoring and support as is required.

Caution shall be exercised by the CONTRACTOR in grading operations, as some existing underground utilities have a minimum cover. The CONTRACTOR shall be responsible for replacing any underground facility broken or dislocated during construction for which sufficient underground information has been shown on the plans.

ARTICLE 8. TERMINATION FOR CONVENIENCE

This Contract may be terminated by TOWN for its convenience upon thirty (30) days prior written notice to CONTRACTOR. In the event of termination, the CONTRACTOR shall be paid as compensation in full for work performed to the date of such termination, an amount prorated in accordance with the work substantially performed under this Agreement. Such amount shall be paid by the TOWN after inspection of the work to determine the extent of performance under this Agreement, whether completed or in progress.

ARTICLE 9. PROJECT RECORDS

The following provisions are required by §119.0701, Fla. Stat., and may not be amended. Contractor shall keep and maintain public records required by the Town to perform the services required under this Contract. Upon request from Town's custodian of public records, Contractor shall provide Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract's term and following completion of the Contract if Contractor does not transfer the public records to Town. Upon completion of the Contract, Contractor may transfer, at no cost, to Town all public records in possession of Contractor or keep and maintain public records required by Town to perform the services required under the Contract.

If Contractor transfers all public records to Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town, upon request from Town's custodian of public records, in a format that is compatible with Town's information technology systems. The failure of Contractor to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

ARTICLE 10. MISCELLANEOUS PROVISIONS

- 10.1. Final payment, constituting the entire unpaid balance of the Contract Price shall be paid by the TOWN to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, form No. FMB: 013, has been approved by the TOWN.
- 10.2. Terms used in the Agreement which are defined in the General Conditions of the Contract (Part F) shall have the meaning designated in those conditions.
- 10.3. The TOWN and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 10.4. This Agreement may not be assigned except with the written consent of the TOWN, and if so assigned, shall extend and be binding upon the successors and assigns of the CONTRACTOR.
- 10.5. The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that he shall hold harmless and defend the TOWN and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the TOWN, excluding only the sole negligence of the TOWN. This provision shall also pertain to any claims brought against the TOWN by any employee of the CONTRACTOR, or sub-CONTRACTOR(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection.

- 10.6. This Agreement constitutes the entire and exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or oral.
- 10.7. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provision(s) were omitted.
- 10.8. No Amendments or changes to the terms or conditions of this agreement shall be valid unless in writing and signed by all parties.
- 10.9. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. All claims and/or dispute resolution concerning this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. Any litigation between the parties arising from this Agreement shall be conducted in Lee County, Florida. In the event of any litigation and/or binding arbitration arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees.
- 10.10. TOWN reserves unto itself sole authority to execute and authorize the issuance of Change Orders, directives, or other documents to the CONTRACTOR which impact on or change the Contract Time or Price. These actions by the TOWN will be taken after due consideration of the recommendations and analysis of the TOWN's architect or consulting engineer, if applicable. This provision supersedes any other contradictory provisions in the Contract Documents.
- 10.11 Pursuant to existing laws and procedures in the State of Florida, and if approved and authorized by the TOWN's Council, any dispute arising out of or relating to any of the contract documents or this Agreement shall be submitted to binding arbitration in Lee County, Florida, before a single lawyer arbitrator having at least ten (10) years' experience in similar matters, and who is mutually acceptable to the parties, or approved as selected by the Lee County Court Mediation/ Arbitration Office. The parties shall equally divide the expenses of such arbitration, and the prevailing party in such arbitration shall be entitled to award of reasonable attorney fees and costs (exclusive of the actual cost of arbitration to be shared equally by the parties) incurred in the preparation for arbitration of such dispute and further such prevailing party shall also be entitled to reasonable attorney fees and costs incurred in any proceedings to enforce or compel its arbitration rights or obtain order(s) confirming such arbitration or award or any attorney fees or cost incurred in proceeding thereafter to enforce such rights in addition to the above and foregoing rights.
- 10.12 No provision in this contract shall be construed more strongly against either party or in a light less favorable to either party because of who drafted it as a method of contract interpretation.

ARTICLE 11. E-VERIFICATION

- 11.1. As a condition precedent to entering into this AGREEMENT, and in compliance with

Section 448.095, Fla. Stat., Contractor and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.

- 11.2. A contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of the AGREEMENT.
- 11.3. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
- 11.4. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
- 11.5. A contractor terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that the Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.
- 11.6. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

ARTICLE 12. PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES

12.1. By execution of this Contract, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of Contract. The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Contract term,



Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.

In witness whereof, TOWN and CONTRACTOR have signed this agreement. One counterpart has been retained by the Town Clerk, one to the Project Sponsoring Department, and one part each has been delivered to the CONTRACTOR. All portions of the Contract Document have been signed or identified by TOWN and CONTRACTOR.

Signed, sealed, and delivered in the presence of:

(Secretary)

(Correct Name of Business)

(Corporate Seal)

BY: _____
(Title)

Date: _____

TOWN OF FORT MYERS BEACH COUNCIL
FORT MYERS BEACH, FLORIDA

ATTEST:

BY: _____
Town Clerk

BY: _____
Town Manager

Date: _____

Date: _____

APPROVED AS TO FORM

BY: _____
Town Attorney

EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS _____ day of _____,
2023 BETWEEN THE TOWN AND Grubbs Emergency Services, LLC., PROVIDER.

1. **SCOPE OF SERVICES:** The Provider will perform the following services under this Agreement:

ESTERO ISLAND EMERGENCY BERM

- a. The work on this contract generally consists of the following:
 - viii. Mobilization/Demobilization
 - ix. Purchase beach compatible sand from an approved inland sand mine
 - x. Preparing construction accesses and staging areas
 - xi. Providing maintenance of traffic
 - xii. Conducting construction stake-outs and surveys
 - xiii. Transporting, placing, and grading sand within Emergency Berm templates
 - xiv. Restoring all staging, access, and/or material handling areas
- b. The work shall be performed in accordance with the approved construction documents. All materials and shop drawings shall be submitted for review by the Engineer of Record.
- c. Additional work may be requested by the Town to be performed as negotiated based on pricing provided in this bid, as well as other items as deemed commensurate for the requested scope of work.
- d. Refer to Attachment 2 for Emergency Berm Technical Specifications
- e. Refer to Attachment 3 for Emergency Berm Contract Plans

The location of the project is the dry beach along Estero Island within the Town of Fort Myers Beach

**FEDERAL EMERGENCY MANAGEMENT AGENCY
PUBLIC ASSISTANCE**

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (Town) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally-Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Access to Records: The contractor agrees to provide the Town, the Florida Department of Emergency Management, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

DHS Seal, Logo, and Flags: The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval. The contractor shall include this provision in any subcontracts.

Domestic Preference for Procurements 200.322 As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

No Obligation by Federal Government: The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Prohibition on Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

Program Fraud and False or Fraudulent Statements or Related Acts: The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Rights to Inventions Made Under a Contract or Agreement: Exempt from FEMA Public Assistance Funding

Suspension and Debarment: (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the Town. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Town, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Procurement of Recovered Materials (§200.323) (Over \$10,000): In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Termination for Cause and Convenience (over \$10,000): See Standard Purchase Order and/or Contract Terms and Conditions

Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000): Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000): Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Town or FEMA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

Clean Air Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act (over \$150,000): 1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. 3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Administrative, Contractual, or Legal Remedies (over \$250,000): Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

CONSTRUCTION ACTIVITIES

Equal Employment Opportunity Clause (§60-1.4): Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

**STATE OF FLORIDA PROVISIONS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM**

Applicable Laws - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

Data Collection: The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

Inspector General Cooperation: The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

Record Retention: A. The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**Compliance with Federal Law, Regulations, And Executive Orders
and Acknowledgement of Federal Funding**

Certification

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Town for review and approval. The Contractor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Town and the Grantor Agency harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Town may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name _____

Date _____

Authorized Signature _____

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

TOWN OF FORT MYERS BEACH																					
ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT																					
Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.																					
A. PRIME VENDOR/CONTRACTOR INFORMATION																					
PRIME NAME		PRIME FBD NUMBER		CONTRACT DOLLAR AMOUNT																	
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS SA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN	Y	N	IS THE ACTIVITY OF THIS CONTRACT... CONSTRUCTION ? Y N CONSULTATION? Y N OTHER? Y N																
		DBE?	Y	N																	
		MBE?	Y	N																	
		WBE?	Y	N																	
		SDB 8A?	Y	N																	
IS THIS SUBMISSION A REVISION?		Y	N	IF YES, REVISION NUMBER _____																	
B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION																					
DBE VETERAN	M/WBE	SUBCONTRACTOR OR SUPPLIER NAME	TYPE OF WORK OR SPECIALTY	ETHNICITY CODE (See Below)	SUB/SUPPLIER DOLLAR AMOUNT																
					PERCENT OF CONTRACT DOLLARS																
TOTALS:																					
C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR																					
NAME OF SUBMITTER		DATE		TITLE OF SUBMITTER																	
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER																	
NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th>ETHNICITY</th> <th>CODE</th> </tr> </thead> <tbody> <tr><td>Black American</td><td>BA</td></tr> <tr><td>Hispanic American</td><td>HA</td></tr> <tr><td>Native American</td><td>NA</td></tr> <tr><td>Subcont. Asian American</td><td>SAA</td></tr> <tr><td>Asian-Pacific American</td><td>APA</td></tr> <tr><td>Non-Minority Women</td><td>NMW</td></tr> <tr><td>Other: not of any other group listed</td><td>O</td></tr> </tbody> </table>						ETHNICITY	CODE	Black American	BA	Hispanic American	HA	Native American	NA	Subcont. Asian American	SAA	Asian-Pacific American	APA	Non-Minority Women	NMW	Other: not of any other group listed	O
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Non-Minority Women	NMW																				
Other: not of any other group listed	O																				
D. SECTION TO BE COMPLETED BY TOWN OF FORT MYERS BEACH																					
DEPARTMENT NAME		FMB CONTRACT # (FBI/RFP or PO/REQ)		GRANT PROGRAM/CONTRACT																	
ACCEPTED BY:					DATE																

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

LOBBYING CERTIFICATION
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Contractor (Firm Name)

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date



Coastal and Marine Engineering
Environmental and Geological Services
Land and Marine Survey and Mapping
Website: www.coastalengineering.com

February 6, 2023

Mr. Chadd Chustz
Environmental Project Manager
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL. 33931

**Re: Estero Island Emergency Berm
Bid Review Summary, # ITB-23-08-CD
CEC File No. 22.502**

Dear Chadd:

Pursuant to the Town's request and within our contracted scope, CEC reviewed the apparent low bid as you tabulated and provided to us. This bid was submitted by Grubbs Emergency Services, LLC (Grubbs) and our review was to determine if they meet the requirements for the above referenced Project based on the criteria within the Bid Documents. As such, CEC reviewed the submitted bid forms and attachments which included the Contractor Qualification Questionnaire, references, and resumes.

Grubbs has successfully completed multiple debris removal and hurricane recovery projects for municipal clients including the City of Marathon after Hurricane Irma in 2017 and Osceola County after Hurricane Ian in 2022 and multiple hurricanes since Hurricane Charley in 2004.

Our recommendation of contract award is to Grubbs.

We appreciate the opportunity to be of service. If you have any questions, please do not hesitate to call me at (239) 643-2324, extension 126 or via email at mpoff@cecifl.com.

Respectfully submitted,
COASTAL ENGINEERING CONSULTANTS, INC.

A handwritten signature in blue ink that reads "Michael T. Poff". The signature is stylized with a large "M" and a long horizontal stroke.

Michael T. Poff, P.E.
President

FUNDING & SCHEDULE

DESCRIPTION	VOLUME	COST	TOWN	COUNTY/TDC	FDEP	FL DEM	FEMA
EMERGENCY BERM	89,406	\$7,259,000	\$0	\$0	\$907,375	\$907,375	\$5,444,250

* Assumes FDEP Pays Town Share of *Category B* Emergency Berm Project

Schedule

- Feb: Award and Mobilize
- Mar–June: Construction
- August–September: Plant Vegetation